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Personal Application – the Basis for Dismissal of a Public Servant

The dismissal of a public servant based on a personal application is a discretionary (optional) ground for dismissal which is related to the right of a person. It is a refusal of service but on the other hand, it obligates a public institution to obey a choice of a person. The article reviews the issues followed by the dismissal of a public servant on this basis. It also highlights the freedom of an officer's will, the purpose of protecting the interest of public service, and judicial practice, and the restriction of the right to dismiss the personal application.

Keywords: *Personal Application, Declaration of Will, Dismiss*

1. Introduction

One of the important issues in the labor-legal relationship is the manifestation of will which is related to the exclusion of forced labor. This is primarily provided by the Constitution of Georgia,¹ international acts, and legislation as well. “No person shall be deprived of the right to quit the public service (in a specific position) as it is his/her constitutional right, and no one has the right and legal opportunity to force a public servant into performing public duties.”² The Constitution of Georgia “protects a person from forced labor which is a violation of dignity.”³

The public holds conflicting views about bureaucracy and civil servants. In one case, bureaucracy seems to frighten and confuse society⁴ but the bureaucracy enhances the quality of life for citizens and the functioning of state institutions where public officials are the main interest groups. By one hypothesis majority of civil servants are decent people.⁵ In the modern state, New Public Management (NPM) considers the public as a consumer,⁶ whose opinion and degree of satisfaction are of paramount importance to the state. Only legal and economic security can contribute to ensuring a high level of performing a task by a public servant.⁷

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¹ Constitution of Georgia, 1995, <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> (in Georgian).

² Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 11, 2018, the case #AS-663-659(K-17) (in Georgian).

³ Decision №2/2-389 of the Constitutional Court of Georgia of October 26, 2007, in the case of Georgian citizen Maya Natadze and others against the Parliament of Georgia and the President of Georgia (in Georgian).

⁴ *Rosenbloom D.H., Kravchuk R.S., Clerkin R.M.*, Public Administration, Understanding Management, Politics, and Law in the Public Sector, 2015, 483.

⁵ *Ibid*, 549.

⁶ *Ibid*, 479.

⁷ Bundesverfassungsgericht, BVerfG, Beschluss vom 28. Mai 2008 – 2 BvL 11/07.

For mutual good faith, the termination of the service relationship should be “planned” except for the cases provided by law. It must not harm the legitimate interest of the public service and the rights of an employee. Civil service is not always expected to have the resources to replace an employee, but it should be prepared for any personnel outflow. In general, the dismissal of an employee will be considered legal if the procedures established by law are followed. A personal application is not a valid ground for the dismissal of an employee therefore, it is not found in Article 107 of the Law on Public Service of Georgia. The personal application is considered by the law as a non-mandatory (discretionary) basis for dismissal. The discretion is directed not to a dismissal as a result, but to the occurrence of this result in time.⁸ Dismissing an employee based on an application the main key issue is to determine whether the right to resign is related to his desire and free choice. Sometimes terminating the service on account of personal application can meet with approval and be morally justified if it is based on the desire of an employee.⁹

2. An application – Declaration of Intent

A civil servant has the right granted by the legislation to refuse the status of a public official (freedom of labor). The application of a public servant for dismissal is presumptively a declaration of his intent. The intent must be declared freely, without restrictions, and protected from negligent influences. Thus, the issue of free expression of intent is subject to investigation and evaluation.¹⁰ Determining the authenticity of the declaration of intent” serves the realization of the principle of freedom for the declaration of intent, which implies that a specific action, choice, decision must reflect the true wish of a person, it must not be provoked by violence, coercion, threats, blackmail, promises, and formed by the dishonest influence of another person.”¹¹

According to literature reviews the validity of the declaration of intent means its suitability for the origin, change, or termination of the legal relationship.¹² Years ago it was believed that because of the strict subordinate nature of administrative-legal relations, there was no free will. The contemporary approach has changed the perception, and even in public legal relations “the manifestation of free will has become a necessary condition for private interest”.¹³

A personal application constitutes a legitimate basis for the dismissal of an employee, if the fact of influencing the intent (coercion, intimidation, threats, deception, etc.) is not proven. Therefore, when an official applies to the court for the annulment of the decision on dismissal by a personal application, the validity of the intent is challenged. The court must examine and determine whether an

⁸ This issue will be discussed below.

⁹ *Rosenbloom D.H., Kravchuk R.S., Clerkin R.M., Public Administration, Understanding Management, Politics, and Law in the Public Sector, 2015, 552-553.*

¹⁰ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 11, 2018, case No. BS-663-659. (K-17) (in Georgian).

¹¹ Ibid.

¹² *Chanturia L., Introduction to the General Part of the Civil Law of Georgia, Tbilisi, 1997, 313 (in Georgian).*

¹³ *Zoidze B., Reception of European Private Law in Georgia, Tbilisi, 2005, 284 (in Georgian).*

intent is affected. In interpreting the declaration of intent, it is essential to identify the final result that a participant of the legal relationship intended.¹⁴

There are cases when an employee's resignation is related to his direct supervisor's desire (pressure, threats, etc.). According to the assessment of the Court of Cassation, “the main task of judicial bodies is to distinguish cases when an intent of a person is shaped by his/her attitudes, prospective plans, degree of self-esteem and others.”¹⁵

Threats of “disciplinary violence”¹⁶ are frequently applied. Dismissal as a measure of disciplinary responsibility is the most severe measure, which, in addition to a severe immediate consequence (loss of a job), has a restrictive nature for holding a position in the public service for one year in the future.¹⁷ Accordingly, a civil servant prefers to give up his service with a personal application.

However, voluntary dismissal is related to the preservation of the reputation of an employee when because of the second negative assessment dismissal is inevitably expected and an official chooses “bad” to save himself from the “worse” and leaves the job by his application. On this occasion, an official makes his/her decision, and coercion or violence against the intent shall not be considered. In one of the cases, the civil servant requested to be dismissed not because of failing in the attestation phase, but based on his application. It is easily seen that the dismissal serves the interests of the official.¹⁸ The law does not restrict the right of an employee to be dismissed by personal application, even if he expects to be dismissed on another basis according to the law.

The number of employees to have been dismissed based on their applications is suspiciously high. We can consider the studies published by the Civil Service Bureau as evidence. According to the 2022 data from the Public Service Bureau, 2,770 civil servants were dismissed from public service on their initiative, and 383 civil servants were dismissed on the initiative of a public institution.¹⁹ I think these numbers make one wonder why an official wants to leave his/her job when the law provides him/her with guarantees of stability, and social and legal protection. Public service is an interesting career considering the guarantees that the state offers.²⁰ As a result, when an officer declines the offer, it can be a reason for suspicion and should be examined to exclude the risk of influence. The court considered the abovementioned number of applications requesting dismissals so suspicious.²¹

¹⁴ Decision of the Civil Affairs Chamber of the Supreme Court of Georgia of June 28, 2011, case # AS-377-357-2011 (in Georgian).

¹⁵ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 18, 2014, case BS-463-451 (K-13) (in Georgian).

¹⁶ Ibid.

¹⁷ According to Article 27 of the Law on Public Service, a person will not be accepted into public service if he is dismissed. from public service for disciplinary misconduct and 1 year has not passed since dismissal for disciplinary misconduct (in Georgian).

¹⁸ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia, September 11, 2008, case #BS-434-417(K-08) (in Georgian).

¹⁹ See 2022 statistics on public service, <<http://csb.gov.ge/media/3513/897787.pdf>> [21.09.2023] (in Georgian).

²⁰ *Wiederkehr S.*, *Mitarbeitermotivation im Ofentlichen Dienst am beispiel der Wissenschaftlichen Bibliotheken in Deutschland*, 2014, 20-21 (in German)

²¹ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of December 24, 2020, case # BS-898 (K-19). (in Georgian).

An application of an employee does not give rise to the expectation of immediate dismissal. The application should be a real statement of an applicant's intention.²² The main purpose of conducting proceedings (investigation, study of the circumstances) on the application is to exclude the possibility of influence. In this regard, the Chamber for Administrative Cases of the Supreme Court of Georgia made an interesting decision before the 2015 Public Service Law. The 1997 Law on Public Service²³ did not directly include any reservations based on the declaration of intent, however, the court established the need for determination of the validity of an intent when an applicant is dismissed. As there was no special reservation in the law, the Court applied to the provisions of the VI General Administrative Code of Georgia (general provision of production, simple administrative production).²⁴ In the decision, the court assessed the reality, the established practice, and the issue related to the declaration of intent of the officer.²⁵ The decision is about the vicious practice that involves repeated cases of "regulation of relations behind the law." In the same decision, the court states that this trend " is the result of complete ignorance and disrespect of the status, disobedience, and neglect of the legal framework, lack of professional self-respect and human dignity from the head of the civil service and a civil servant "

The court is quite critical of his obligation to be firm and principled due to his status as a civil servant and, if necessary, to fight for the protection of his rights, otherwise "An official cannot be a defender of public interests and the rights of each member of society."²⁶ The 2015 Law on Public Service was written directly about a 14-day period, which is an opportunity for the public institution to study the circumstances of the case and determine the validity of the declaration of intent. As a civil servant, he/she was given a chance to analyze and change his/her decision. The issue is resolved in favor of an employee if he/she refuses to be dismissed and withdraws an application. The public institution is deprived of the opportunity to dismiss him/her and if an officer changes the decision, he/she can keep the position. The law does not require justification from an employee for a withdrawal of the application. Thus, the law exempts the applicant from the additional burden of justifying the reason for the application or its refusal. Such a reservation is applied in favor of the interest of the officer.

The peculiarity of the law is the fact that it obliges the public institution to investigate the validity of the applicant's intent while withdrawing the application it requires to scrutinize a refusal. The latter is an unconditional basis for a civil servant to keep his/her position because a refusal excludes the possibility of dismissing an official.

Unlike the Labor Code of Georgia, the Law on Public Service²⁷ does not specify the written form of the application, however, it refers to the registration of the application, and simultaneously,

²² *Kharshiladze I., Kasradze I., Guarantees of the Legal Protection of Civil Servants, Georgian-German Journal of Comparative Law, 12/2022, 21-22 (in Georgian).*

²³ Law of Georgia on Public Service, 1997 (repealed), <<https://matsne.gov.ge/ka/document/view/28312?publication=111>> [21.09.2023]. (in Georgian)

²⁴ See General Administrative Code of Georgia, 32(39), 15/07/1999 (in Georgian).

²⁵ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 18, 2014, case# BS-463-451 (K-13) (in Georgian).

²⁶ Ibid.

²⁷ Organic Law of Georgia, Labor Code of Georgia, LHG, 75, 27/12/2010 (in Georgian).

following the definition of Article 2 of the General Administrative Code of Georgia, the application must be in writing.²⁸ Accordingly, there must be a form of the declaration of intent – a compulsory written statement. “The protection of the written statement not only includes evidence of the declaration of intent but it also has a warning function.”²⁹

The public institution does not take responsibility to foresee how much the living conditions and socioeconomic situation of the dismissed official will be aggravated, however, for looking into the validity of the intent, many issues should be investigated: age, marital status, seniority, Bank guarantees³⁰ to keep logic between the true intent and the result of granting the application.

Of course, not every case can be made suspicious, however, based on adverse economic and social conditions, giving up the job voluntarily raises a question about a conscious choice. According to the decision of the Constitutional Court, “the right to free personal development includes freedom of a person to choose his means to protect his physical or mental integrity despite consequences.”³¹ Thus, the evaluation of the declaration of intent implies the exclusion of influence on him, and not the determination of expected results this person can acquire from his own decision. It is the best practice that the official not only considers the application to indicate the validity of intent but also assists the civil servant in discerning the consequences of his decision, especially if the person was under strong emotional stress and could not rationally foresee the result.

3. Is a Civil Servant Obligated to Justify the Motif for Dismissal in the Application?

According to the general rule, it is in the interest of the applicant to indicate not only the request but also the circumstances on which he bases this request³² because that is important for deciding in his favor. As for the application for dismissal, the law does not require a servant to indicate the basis of his desire. This means that the legislator “doesn't care” about the reason for the request for dismissal. There are cases in practice when the public official indicates the grounds for the request of dismissal (another job, family conditions, etc.), however, this is not done by legal obligation.

As the Court of Cassation notes considering the application for dismissal submitted by an employee, “the administrative body is not obliged to establish the true intention of an employee, which is confirmed even by the fact that in case of leaving a job based on a personal application, it is not mandatory to indicate the reason for leaving the job in the application. The necessity to establish the

²⁸ *Kereselidze D., Chachava S., Zaalishvili V., Shvelidze Z., Meskishvili K.*, Commentary on the Labor Code of Georgia, Tbilisi, 2023, 551 (in Georgian).

²⁹ *Biolingi H., Lutringhaus P.*, Systematic Analysis of the Foundations of Separate Requests of the Civil Code of Georgia, 2009, 30 (in Georgian).

³⁰ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of May 13, 2021, case #BS-724(2k-20) (in Georgian).

³¹ Decision #2/4/532,533 of the Constitutional Court of Georgia on October 8, 2014, Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze against the Parliament of Georgia (in Georgian).

³² It means a typical case of an application, when the applicant, to strengthen his right, formulates a request in an argumentative manner and presents the facts confirming the request (in Georgian).

validity of the intent of the employee arises when a specific factual situation provides the ground for doubting the validity of the applicant's declaration of intent."³³

Therefore, the official is neither obliged to indicate the reason for the dismissal nor is he required to justify the reason for his/her requests to leave the application unconsidered.

4. Legal Form of Dismissal of an Employee

The relevant official must issue an individual administrative-legal act on the dismissal of the employee, which is subject to the requirements of the General Administrative Code of Georgia and, accordingly, it must be substantiated.

Regardless of the reason for the dismissal, this requirement obliges the relevant official to issue a justified individual administrative-legal act. This reservation is related to the legal obligation of the administrative body, the public institution, and the compatibility of the decision with the law. Making the reasoned decision accessible for review is a prerequisite for entering it into force. These measures are the burden of the administrative body.

5. Terms

The Law of Georgia “On Public Service” does not establish the term for applying with a personal

application. A professional civil servant is appointed on the open-ended agreement, which creates an expectation of stability but this does not exclude the possibility of dismissal of an official. For example, in case of reorganization, the public institution is obliged to follow the procedure established by the law and warn the official 1 month before the dismissal. This period is related to the preparation of an employee for the outcome and providing the opportunity to plan his/her future. The warning period serves the purpose of causing little harm to the employee by dismissal.³⁴ The Court of Cassation explains that “the obligation of the administration to give the advance notification about the expected dismissal is a legal guarantee of the worker provided by law to be prepared for facing up the fact of dismissal.”³⁵ There is a question of whether we apply a certain term for notifying the public institution to be prepared to accept the request of an official for the dismissal or not.

In case of reorganization, the prior notification of an employee serves to protect his/her interest while the term related to a personal application would be considered as the defense of the interest of public service. Our legislation does not establish a specific period before which the public service should be notified about the desire to be dismissed. Unlike Georgia, for example, Estonian legislation

³³ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 13, 2022, case # BS-140(K-22). (in Georgian).

³⁴ *Shvelidze Z., Bodone K., Todria T., Khazhomia T., Gujabidze N., Meskhishvili K.*, Labor Law of Georgia and International Labor Standards, 2017, 257 (in Georgian).

³⁵ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 6, 2007, case #BS-822-788 (K-06) (in Georgian).

provides for a 30-day notice period, and in some cases, the term may be 10 days or less depending on the reasons for dismissal (e.g. illness, marital status, etc.).³⁶

Section 33 Paragraph 1 third of the German Federal Civil Service Act (BBG)³⁷ provides for the dismissal of an employee based on an application (appeal of an employee). The law establishes 2 weeks when the official can refuse to consider the application, however, with the consent of the public institution, it is possible to withdraw the application even after this period has expired. According to BBG, the application must be in writing. The law does not set any time limit, which means that the official can use this right at any time, nevertheless, the dismissal of the official is the authority of the public institution, therefore, the dismissal is based on the application after the decision is issued. German law furnishes the delay of dismissal for no more than 3 months depending on the need to fulfill the obligations of the official.³⁸ There is a conflict between the legitimate interests of public service and the dismissal of a civil servant. The law cannot refuse to dismiss an official, however, such a reservation allows the public institution to meet the expectations that the public official's obligation represents. This 3-month term reservation can be used in a specific case. The absence of such a term in the law on public service does not imply a complete disregard for the interest of the public service. As mentioned above, the law provides the levers that are used to meet the interest of public service.³⁹ Here, the emphasis is on targeted spending of funds⁴⁰ which public service applies for creating a protective mechanism following its legitimate interests. As for the interest of an official, it is clear that the absence of reservation on terms gives the official a wide opportunity to use the right to resign by personal application at any time. Unlike the civil service, the Labor Code of Georgia stipulates the obligation for an employee to notify an employer in writing 30 days earlier in case of being dismissed on his initiative.⁴¹ Also, the does not provide the direct provision of the term to grant the application of the civil servant. According to Article 109, Clause 3 of the Law on Public Service, from the registration of the application for dismissal to the issuance of the individual administrative-legal act on dismissal, the civil servant has the right to request the application to be left unreviewed. This application must be granted however, this record does not provide an accurate period. The 14-day period established by Paragraph 2 of the same Article, is not an extreme period for withdrawing the application. The public institution may need more than 14 days to consider the request of the official for dismissal or taking into account some circumstances (e. g. the interest of the public service, the unfulfilled obligation of the official) require a period of more than 14 days. The law does not make a reservation on a specific term, but on that period before the decision is made which the official can use to request the application to be left unconsidered. In such a case, the official's request has binding force and the public institution is obliged to obey it. Therefore, the withdrawal of the application

³⁶ Estonian Civil Service Act.

³⁷ Bundesbeamtengesetz (BBG), Ausfertigungsdatum: 05.02.2009 (in Georgian).

³⁸ Bundesbeamtengesetz (BBG), Ausfertigungsdatum: 05.02.2009.

³⁹ Refers to Article 54, Clause 6 of the Law on Public Service (in Georgian).

⁴⁰ *Turava P., Firtskhalashvili A., Dvalishvili M., Tsulaia I., Kardava E., Sanikidze Z., Makalatia E.*, Law of Georgia on Public Service, Comments, Kardava E. (ed.), Tbilisi, 2018, 193 (in Georgian).

⁴¹ Organic Law of Georgia, Labor Code of Georgia, 17/12/2010, <<https://www.matsne.gov.ge/ka/document/view/1155567?publication=24>> 21.09.2023] (in Georgian).

before making the decision excludes the possibility of dismissal of the official. Only the appeal of an employee is not enough for dismissal, but the period to satisfy the request. Still, Article 95⁴² of the 1997 Law of Georgia “On Public Service” provided for the dismissal of an official his/her initiative, according to which “an official shall be is dismissed from work on the basis of a personal application, if the superior official or organization having the right to hire him/her satisfies the written application.” According to the content of the norm, only desire was not considered as a mandatory basis for dismissal, the law stipulated the satisfaction of a written application as a condition. Hence, the norm did not create the application as an unconditional basis for dismissal but the consent of the decision-maker. The law did not point out the procedure, deadlines, or any other circumstances that could be related to the possibility of a person being dismissed at his/her initiative.

The primacy of the interest of public institutions does not conflict with the constitutional right to freedom of labor. According to the decision of the Constitutional Court of Georgia, “Freedom of labor covers the right of a person to perform the acceptable work”⁴³ Also, according to the practice of the Constitutional Court, freedom of labor implies the right to give up this work, which guarantees protection from forced labor.⁴⁴ A public institution has no right to force a person to continue his activity. Therefore, the public servant's application should be upheld. The main issue here is related to the time when the authority of the official can be terminated. This is the issue that the law connects with the will of the employer. A decision is made based on the legitimate interest of the public service. Considering the time, it is necessary to take into account both the desire of the civil servant – to release him in time and the legitimate interest of the public service – the dismissal of the civil servant should not hinder the functioning of the public service.

The Law on Civil Service recognizes two possibilities for dismissal based on a personal statement:

1. Immediate release – the application is satisfied immediately to achieve the instant result, that the applicant requests;
2. “Deferral” of release, satisfaction is not immediate but subject to a certain period or condition.

In the first case, there is no suspicion of influencing the formation of the will (there is no basis for deception, coercion, threats, or pressure) and the immediate dismissal of the employee does not contradict the law and the interest of the public service. The will is assumed to belong to the applicant, he has no unfulfilled obligation to the service and his release does not threaten the functioning of the public service.

In the second case, the reason for the delay can be 14 days or more, which is used to examine the question of 1. whether there is an influence on the will and 2. a legitimate interest of the public service that precludes immediate dismissal. For example, when certain procedures are required for the

⁴² Law of Georgia on Public Service, 1997 (repealed), <<https://matsne.gov.ge/ka/document/view/28312?publication=111>> (in Georgian).

⁴³ Decision No. 2/2/565 of the Constitutional Court of Georgia of April 19, 2016, on the case “Citizens of Georgia – Ilia Lezhava and Levan Rostomashvili against the Parliament of Georgia”, II-35 (in Georgian).

⁴⁴ Decision № 2/2-389 of the Constitutional Court of Georgia dated October 26, 2007, on the case of Georgian Citizen Maya Natadze and Others Against the Parliament of Georgia and the President of Georgia, II-19.

dismissal of an employee not to disrupt the operation of the service, also, finding and replacing a suitable staff, or when there is an unfulfilled obligation (until this obligation is fulfilled). The Chamber of Cassation explains that “writing a notice of dismissal does not release the official from the obligation to perform official duties, the official is released from service only if the statement is approved. Until then, the civil servant continues the labor relationship with the administrative body, and fulfills the assigned duties.”⁴⁵

The Law on Public Service, based on the objectives of public service, provides for a reservation related to the fact that “if the duration of the professional development program exceeds 3 months and this program is financed by a public institution, based on the contract concluded between the public servant and the public institution, the public servant does not have the right to be dismissed from the service of this program on his initiative within 1 year of completion. This rule does not apply if the official reimburses the public institution for the expenses incurred for his professional development.”⁴⁶ The competition indeed provides a basis for determining the suitability of the candidate's knowledge and skills for the position to be held, but this is not enough for the professional development of the official. The legislation obliges the civil servant not to stop developing his/her knowledge and skills which are promoted by the public sector through different educational courses and programs.⁴⁷ The “investment” that the public institution puts in the development of the individual needs⁴⁸ of the employee should be used for the further evolvement of the public institution. Taking this principle into account, the legislator established the limitation of a dismissal by personal statement. This reservation derives from the principle of public services of exercising official authority economically and effectively by the official who is not allowed⁴⁹ to use the property and other resources of the public institution for personal purposes. Thus, the law protects the benefit received by the official from the expenses incurred by the public service and tries to preserve it to be used for the public institution. It is an exception if the civil servant reimburses the costs incurred for this course, in such a case the civil servant will benefit from the possibility of being dismissed from the service by a personal statement.

6. Does the Employee Have the Right to Apply for Dismissal during the Period of Suspension of Employment?

According to the explanation of the court of cassation, the suspension of the labor relationship implies the suspension of all the powers of the administrative body towards the employee.⁵⁰ the suspension of the powers is mutual and limits the ability of the public institution to issue an act

⁴⁵ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 28, 2006, case# OE-235-224(A-06). (in Georgian).

⁴⁶ See Articles 54, 108-109 of the Law on Public Service, <https://matsne.gov.ge/ka/document/view/3031098?publication=46> (in Georgian).

⁴⁷ *Turava P., Firtskhalashvili A., Dvalishvili M., Tsulaia I., Kardava E., Sanikidze Z., Makalatia E.*, Law of Georgia on Public Service, comments, Kardava E. (ed.), 2018, 191-192 (in Georgian).

⁴⁸ Ibid, 193.

⁴⁹ Law on Public Service, 2015, Art. 76.

⁵⁰ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 5, 2016, case # OF-653-645 (2C-15). (in Georgian).

towards the employee. Despite this, the civil servant does not have the right to appeal with a limited application, while the public institution is limited in the capability of dismissing the civil servant during the period of suspension.

In one of the cases, to verify the absence of the desire to be dismissed, the official referred to the fact that he submitted the statement while on vacation. The court considered that “the legislation did not prohibit or limit the civil servant, even while on vacation, to make a decision about being dismissed, therefore, the administration was allowed to consider the application and satisfy it.”⁵¹

The court also did not consider the application of a person to leave work while keeping a medical card to be credible. “Requesting to be dismissed from work while keeping a medical card makes the appeals implausible.” As stated in the court decision, “this factual circumstance has a decisive importance to assess the legality of the impugned order.”⁵²

As mentioned above, the official has the right to appeal at any time, even when his authority has been suspended. Following the law, the suspension of authority means the temporary release of the official from the performance of official functions,⁵³ during this period the status and position of an official are preserved. If we take into account the court decision on mutual suspension of authority the public institution has no right to decide on the suspended official, but without a decision, the application of an official for dismissal cannot be satisfied. Thus, such a definition of the court should not apply to this particular case.

7. Protection of Rights

One of the challenges of public service reform is the stability of the official, which must be ensured. “The dismissal of an official should not depend on the changes⁵⁴ in government and public institution.” The government decree determined that the principle of personnel stability requires the law to precisely define the legal basis for the dismissal of an official and the legal and social guarantees of his protection.⁵⁵

One of the decisions of the German Constitutional Court indicated that civil servants should be effectively protected from arbitrary dismissal and its consequences.⁵⁶ Maintaining the principle of stability and continuous activity of a civil servant should be the function not only of the legislator but also of justice, to exclude the possibility of unjustified dismissal of the civil servant.⁵⁷

⁵¹ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 5, 2016, case # OF-154-144(2C-07). (in Georgian).

⁵² Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 5, 2016, case # OF-941(2C-20). (in Georgian).

⁵³ Article 55 of the Law on Public Service (in Georgian).

⁵⁴ Resolution No. 627 of the Government of Georgia on approval of the concept of public service reform and some related measures, 11/19/201(in Georgian).

⁵⁵ Ibid.

⁵⁶ Bundesverfassungsgericht, BVerfG, Beschluss vom 14.Januar 2020, 2 BvR 2055/16.

⁵⁷ *Rensen H., Brink S.*, Linien der Rechtsprechung des Bundesverfassungsgerichts – erörtert von den wissenschaftlichen Mitarbeitern, Berlin, 2009,244-246.

The subordinate attitude indeed means executing the tasks and instructions of the superior in the vertical to ensure the effective management⁵⁸ of organizational tasks, but this does not justify allowing to accomplish illegal instructions. Otherwise, public officials are formally accountable for conduct beyond their control.⁵⁹ Unfortunately, the term “cleansing” is generally used in practice to get rid of unwanted people.⁶⁰

I think one of the important challenges is to maintain the stability of the civil servant. The stability of civil servants provides steadiness and neutrality⁶¹ about the changing political orientation of service.

The lifetime employment and appointment to a position on the legal status of civil servant dominated German civil service from the 19th century.⁶²

An important task of administrative proceedings is to take into account the requirements of effective legal protection.⁶³

In the meritocratic system, under the conditions of social order, the social status, and income of a person are related to his achievements and ability.⁶⁴ Its preservation is particularly important and is often possible through litigation.

An official who is dismissed from public service by personal application and subsequently appeals to the court due to pressure and threats, in many cases indicates these facts in a claim, and not in dealings with an administrative body. Based on judicial practice, if the court does not have evidence of such illegality (coercion, deception, threat) in the case, the claim is not satisfied. If “the plaintiff has failed to meet the burden of proof imposed on him”, this is grounds for dismissal of the claim.⁶⁵

Coercion and threats are criminal offenses, but if the latter is proved during the trial, the court cannot be a criminal prosecution body, in this case, there is sufficient reason for the application not to be considered as an expression of the will, and accordingly, the claim must be satisfied.

In this case, the basis for satisfying the application is to determine whether the dismissal was lawful or not, which means that the applicant was not being discriminated in the reasoning. The Constitution of Georgia “considers the constitutional guarantees related to the position of a person employed in the public service – not to be dismissed from work without justification, to be protected from any external interference.”⁶⁶ In this regard, justice offers quite interesting practice.

⁵⁸ *Rosenbloom D.H., Kravchuk R.S., Clerkin R.M.*, Public Administration, Understanding Management, Politics and Law in the Public Sector, 2015, 546.

⁵⁹ *Ibid.*

⁶⁰ *Ludwig von Mises*, Bureaucracy, 1944, 119-120.

⁶¹ Bundesverfassungsgericht, BVerfG, Beschluss vom 28.5.2008.

⁶² Bundesverfassungsgericht, BVerfG, Beschluss vom 28. Mai 2008 – 2 BvL 11/07.

⁶³ Bundesverfassungsgericht, BVerfG, Beschluss vom 09 Juli 2007 – 2 BvR 206/07.

⁶⁴ *Rensen H., Brink S.*, Linien der Rechtsprechung des Bundesverfassungsgerichts – erörtert von den wissenschaftlichen Mitarbeitern, Berlin, 2009, 229 (in German).

⁶⁵ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of May 30, 2023, case #OF-496(C-22) (in Georgian).

⁶⁶ The decision of the Constitutional Court of Georgia on July 29, 2014, on the case N3/2/574, a citizen of Georgia Giorgi Ugulava against the Parliament of Georgia (in Georgian).

In one of the cases, the Court of Cassation gave a harsh assessment of the practice established in Georgia over the years, according to which officials were dismissed beyond administrative proceedings. That was completely inconsistent with “modern administration standards hinder establishing the credibility with its population, gaining the authority and fulfilling international obligations imposed by the country.”⁶⁷ Thus, the court established a strict test in assessing the legality of the decision before adopting the law in 2015 and indicated the need to conduct administrative proceedings and investigations. Following judicial practice even when it is not necessary to comply with the 14 calendar days stipulated by the Law of Georgia “On Public Service”, the administrative body is obliged to conduct administrative proceedings and ascertain whether an official has a desire to be dismissed from the position.⁶⁸

"The Court of Cassation considers that following justice in identical legal disputes judicial bodies have to distinguish cases when the will of a person is formed by his moods, attitudes, prospective plans, self-esteem, etc. On the one hand, the formation of the will can be conditioned by the low awareness about the obligations of public service, absolute obedience to the administration, and bribes (promotion, salary increase, bonus transfer, etc.). On the other hand, the will may be affected by coercion, or threats, due to the special condition of a public servant (health, difficult social situation, family status, etc.). Without establishing the mentioned facts, it will be impossible to exercise the right to judicial protection.”⁶⁹ In one of the cases, before writing the application for dismissal, the plaintiff took an insurance card at work on the same day and applied to the bank for a loan a few days earlier, which makes the Appeals Chamber believe that the plaintiff was fired from the job. He did not intend to write the application about the dismissal.⁷⁰

In its decision, the court states that a public official, who has the status and corresponding legal guarantees, is obliged to protect his rights, otherwise “he cannot respect and defend the rights of each member of society.”⁷¹ Practically, the court, according to his high reputation, defined the obligation of the civil servant to care for his rights.

In one of the cases, the Administrative Chamber of the Tbilisi Court of Appeals considered the application about the dismissal illogical and unconvincing, according to which, a person wrote the application about the dismissal 5 days before achieving retirement security (considering the period of stay at the disposal of personnel) and limits this important social right.⁷² Based on the legislation of

⁶⁷ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 29, 2014, case #BS-69-67(K-14) (in Georgian).

⁶⁸ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 13, 2022, case #BS-140(K-22) (in Georgian).

⁶⁹ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 11, 2018, case #BS-663-659 (K-17) (in Georgian).

⁷⁰ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of March 28, 2017, case #BS-802-794(K-16) (in Georgian).

⁷¹ Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 11, 2018, Case #BS-663-659 (K-17) (in Georgian).

⁷² Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 7, 2019, case #BS-1467(K-18) (in Georgian).

Georgia, it is possible to set a request for dismissal by personal statement at any time, however, in some cases, suspicious circumstances may raise questions about the validity of the will.

8. Conclusion

Despite the changes made in the legislation, the number of officials dismissed by personal application is still suspiciously high. We cannot always think about cases of coercion and pressure towards them, but the number of people leaving the service by personal application still raises doubts.

The legitimate expectation that the rights of civil servants protected by the law will be guaranteed, gives rise to procedural rights⁷³ to use the opportunity provided by the law to protect his rights.

The absence of a reason for dismissal in the application cannot be the basis for avoiding administrative proceedings on this application. Judicial practice demonstrates the following picture:

1. The validity of the applicant's will is disputed;
2. There is a request to leave the application unconsidered, but despite this fact, a decision about the dismissal of the employee has been made.

In the first case, the validity of the will must be identified to exclude the fact of influencing it, and in the second case, there is an evident violation of the law because it is imperatively established that in case of a request to leave the application unreviewed, the official should not be dismissed. If in the first case, it is necessary to stop the proceedings, in the second case the request of the applicant should be satisfied in keeping the position without any research. I think, if the legal dispute on this matter ends in favor of the official, the facts of the challenge to the will, proven in the court should be the basis for disciplinary responsibility against the relevant official so that it has a preventive value to avoid such vicious practice in the public service.

I think that in the Law of Georgia on Civil Service, not only paragraph 6 of Article 54, which is related to a financial obligation but also other unfulfilled obligations, which can also be considered as an obstacle to the dismissal of an official, should be indicated as a barrier to the dismissal of an employee. e.g. Not doing the work or delaying the completion of such work (transferring the work to another official) will harm the legitimate interest of the public service. Thus, only financial interest cannot be considered as a hurdle to dismissal based on a personal application.

The term of consideration and approval of the application requesting dismissal should be reasonable so as not to interfere with the further activities of the employee. This is supported by the fact that according to Article 18 of the Constitution of Georgia, the right to a fair consideration of the case by the administrative body is guaranteed. Due to public objectives, it is possible to delay the dismissal of the official, which may interfere with his plans. Hence, it is desirable to make a reservation in the law regarding the maximum period that can be used to satisfy the application of the official for public purposes.

⁷³ *Stott D., Felix A.*, Principles of administrative law, London, 1997, 152.

Bibliography:

1. Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995 (in Georgian).
2. Organic Law of Georgia, Labor Code of Georgia, 75, 27/12/2010 (in Georgian).
3. Law of Georgia on Civil Service, 2015 (in Georgian).
4. Law of Georgia on Public Service, Department of the Parliament, 45, 21/11/1997 (repealed on 27.10.2015, No. 4346) (in Georgian).
5. General Administrative Code of Georgia, LHG, 32(39), 15/07/1999 (in Georgian).
6. Resolution No. 627 of the Government of Georgia on approval of the concept of public service reform and some related measures, 11/19/2014 (in Georgian).
7. Estonian Civil Service Act.
8. 2022 statistics on public service, <<http://csb.gov.ge/media/3513/897787.pdf>> [21.09.2023] (in Georgian).
9. *Biolingi H., Lutringhaus P.*, Systematic analysis of the foundations of separate requests of the Civil Code of Georgia, 2009, 30 (in Georgian).
10. *Chanturia L.*, Introduction to the general part of the civil law of Georgia, Tbilisi, 1997, 313 (in Georgian).
11. *Cardona F.*, Support for Improvement in Governance and Management, A joint initiative of the OECD and the European Union, principally financed by the EU, Integrating National Administrations into the European Administrative Space, Budva, Montenegro, 2009, 7.
12. *Kereselidze D., Chachava S., Zaalishvili V., Shvelidze Z., Meskishvili K.*, Commentary on the Labor Code of Georgia, Tbilisi, 2023, 551 (in Georgian).
13. *Kharshiladze I., Kasradze I.*, Guarantees of the legal protection of civil servants, Georgian-German Journal of Comparative Law, 12/2022, 21-22 (in Georgian).
14. *Ludwig von Mises*, Bureaucracy, 1944, 119-120.
15. *Rensen H., Brink S.*, Linien der Rechtsprechung des Bundesverfassungsgerichts – erörtert von den wissenschaftlichen Mitarbeitern, Berlin, 2009, 244-246.
16. *Rosenbloom D.H., Kravchuk R.S., Clerkin R.M.*, Public Administration, Understanding Management, Politics, and Law in the Public Sector, 2015, 483, 546, 552-553.
17. *Shvelidze Z., Bodone K., Todria T., Khazhomia T., Gujabidze N., Meskishvili K.*, Labor Law of Georgia and International Labor Standards, 2017, 257 (in Georgian).
18. *Stott D., Felix A.*, Principles of administrative law, London, 1997, 152.
19. *Turava P., Firtskhalashvili A., Dvalishvili M., Tsulaia I., Kardava E., Sanikidze Z., Makalatia E.*, Law of Georgia on Public Service, comments, *Kardava E. (ed.)*, 2018, 191-193 (in Georgian).
20. *Wiederkehr S.*, Mitarbeitermotivation im Öffentlichen Dienst am Beispiel der Wissenschaftlichen Bibliotheken in Deutschland, 2014, 20-21.
21. *Zoidze B.*, Reception of European private law in Georgia, Tbilisi, 2005, 284 (in Georgian).
22. Bundesbeamtengesetz (BBG), Ausfertigungsdatum: 05.02.2009.
23. Bundesverfassungsgericht, BVerfG, Beschluss vom 14. Januar 2020, 2 BvR 2055/16.
24. Bundesverfassungsgericht, BVerfG, Beschluss vom 28. Mai 2008 – 2 BvL 11/07.
25. Bundesverfassungsgericht, BVerfG, Beschluss vom 09 Juli 2007 – 2 BvR 206/07.
26. Decision No. 2/2/565 of the Constitutional Court of Georgia dated April 19, 2016, in the case “Citizens of Georgia – Ilia Lezhava and Levan Rostomashvili against the Parliament of Georgia”, II-35 (in Georgian).

27. Decision of the Constitutional Court of Georgia dated October 8, 2014 #2/4/532,533 Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze against the Parliament of Georgia (in Georgian).
28. The decision of the Constitutional Court of Georgia of July 29, 2014, in the case N3/2/574, a citizen of Georgia Giorgi Ugulava against the Parliament of Georgia (in Georgian).
29. Decision № 2/2-389 of the Constitutional Court of Georgia dated October 26, 2007 in the case of Georgian citizen Maya Natadze and others against the Parliament of Georgia and the President of Georgia (in Georgian).
30. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of May 30, 2023, case #BS-496(K-22) (in Georgian).
31. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 13, 2022, case #BS-941(2k-20) (in Georgian).
32. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 13, 2022, case # BS-140(K-22) (in Georgian).
33. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of May 13, 2021, case #BS-724(2k-20) (in Georgian).
34. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of December 24, 2020, case # BS-898 (K-19) (in Georgian).
35. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 7, 2019, case #BS-1467(K-18) (in Georgian).
36. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of January 11, 2018, case #BS-663-659(K-17) (in Georgian).
37. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of March 28, 2017, case #BS-802-794(K-16) (in Georgian).
38. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 5, 2016, case # BS-653-645 (2k-15) (in Georgian).
39. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 29, 2014, case #BS-69-67(K-14) (in Georgian).
40. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 18, 2014, case BS-463-451(K-13) (in Georgian).
41. Decision of the Civil Affairs Chamber of the Supreme Court of Georgia of June 28, 2011, case # AS-377-357-2011 (in Georgian).
42. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of September 11, 2008, case #BS-434-417(K-08) (in Georgian).
43. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 18, 2007, case #BS-154-144(2K-07) (in Georgian).
44. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of February 6, 2007, case #BS-822-788(K-06) (in Georgian).
45. Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of July 28, 2006, case# BS-235-224(K-06) (in Georgian).
46. Decision of the Tbilisi Court of Appeal #3b/1907-15 (in Georgian).