

Politically or Personally Motivated Appointments and Engagements in Local Authorities after the 2013 Elections

Summary

General Background

On October 22, 2013, elections were held in 187 local authorities for head of the local authority and its council. A second round of elections was held on November 5, 2013 in 38 local authorities where no candidate for mayor received 40% of the legitimate votes¹ in the first round. Following the two election rounds, the mayor was replaced in some 90 local authorities. In most local authorities where a new mayor was voted in, many new workers were hired to staff either existing or new positions.

Civil service in Israel is based on a conception formulated in the early days of the State of Israel: a service of a national, professional nature devoid of any political interest, which implements the policy of the elected civil servants. The officials in the service are not replaced following a change in the local government. Regarding the negative phenomenon of political appointments, the Israel Supreme Court had this to say²: "A public authority which appoints a worker in the civil service, acts as a trustee of the public interest, the overarching rule being that such a trusteeship must be exercised with fairness and integrity, devoid of all extraneous considerations and in the interest of the public by virtue of which and for the benefit of which the power of appointment is given to the appointing authority... When a civil servant appoints a worker in the civil service based on extraneous considerations of political/partisan interests, such an appointment is not legitimate, as it is a breach of trust of the public which empowered the appointing authority."

The employee hiring procedure in a municipality was established by the Minister of Finance in the Municipalities Regulations [Tenders for Hiring Employees], 5740-1979 (hereinafter: "hiring regulations"). The regulations specify the cases where it is mandatory to hold a public tender to staff a position, as well as the positions where it is not obligatory to do so. The Ministry of Interior required, in the municipal corporation regulation procedure it issued at the beginning of 2011, that the municipal corporations' regulations include a provision whereby "the rules for employee hiring, promotion and employment terms shall be determined according to the guidelines of the Ministry of Interior. Until the issuance of such guidelines, the rules for employee hiring and promotion applying to the local authority shall apply to the municipal corporation."

Hiring of workers by a municipality is anchored in other, additional provisions, meant to ensure that the municipality will staff position vacancies with suitable candidates based solely on their professional

¹ Section 9(B) of the Local Authorities [Election and Tenure of Head and Deputy Heads]5735-1975, establishes that if on election day no candidate for mayor receives 40% of the legitimate votes, a runoff is held 14 days later between the two front-running candidates.

² HCJ 4566/90 **Dekel v. Minister of Finance**, IsrSC 45(1) 28, 33, 35 (1990).

qualifications, and that candidates' affiliation with the mayor or his party will not bias – favorably or adversely – the process of screening, selection and appointment to the position.

Audit Actions

At the end of 2014 and the beginning of 2015, the State Comptroller's Office reviewed the hiring procedures, primarily for senior positions, in respect of candidates with a political or personal affiliation with the mayor, his party or a party in the municipal coalition, in the municipalities of **Ashdod, Hadera, Neshet, Afula and Kiryat Ono** (hereinafter: "the audited municipalities"), following the elections held in said municipalities at the end of 2013 until the beginning of 2015 (hereinafter: "the audited period")³.

An audit was also made of the hiring procedures during the audited period, at the municipal corporations of three municipalities: in Afula – the **Afula Economic Development Corporation Ltd.**; in Ashkelon – the **Ashkelon Economic Development Corporation Ltd.**, the **Ashkelon Municipal Corporation for Culture, Youth, Sports and Recreation Ltd.**; and in Givatayim⁴ - **Ya'ad – The Givatayim Development Corporation Ltd.** To perform an audit of these companies, the State Comptroller decided at the end of 2014, by virtue of his authority under Section 9(7) of the State Comptroller's Law [Combined Version], 5718-1958, to invoke the state's power to audit said companies.

The State Comptroller's Office specifies in this report the candidates appointed to positions – some of them senior officials – in six municipalities, most of them a short time after the elections date, primarily owing to the political or personal affiliation with the mayor, his party members or members of another party in the municipal coalition. The affiliation was established following an evaluation of aspects of the appointment procedure, including – determination of the need for the position, manner of issuing the tender, establishment of the threshold conditions, the period of time for submitting candidacy, determination of the evaluation committee's composition, the candidates' qualifications, the evaluation committee's arguments and the employment terms and conditions of the winning candidate.

It should be noted that there are differences, some of them significant, in the degree of seriousness of the findings uncovered in the various municipalities. Particularly grave findings were revealed in the **Afula and Neshet municipalities.**

³ In the elections held at the end of 2013, Mr. Itamar Shimoni was elected mayor of Ashkelon; Mr. Zvika Gendelman – mayor of Hadera; Mr. Avraham Binamo – mayor of Neshet; Adv. Yitzhak Meiron – mayor of Afula; and Mr. Israel Gal – mayor of Kiryat Ono.

⁴ In elections held at the end of 2013, Mr. Ran Konik was voted in as mayor of Givatayim.

Major Deficiencies

Appointment of Candidates with a Vested Interest by a Flawed Process

This report presents data on the processes of 36 tenders for the appointment of workers: 17 in the **Afula municipality**, 7 in the **Nesher municipality**, 8 in the **Ashkelon municipality**, 2 in the **Hadera municipality**, and 2 in the **Kiryat Ono municipality**. The following flaws were revealed in said processes:

In 26 of the tenders inspected (17 in the Afula municipality, 2 in the Nesher municipality, 5 in the Ashkelon municipality, and 2 in the Hadera municipality) the grade of position was not specified, as required under the hiring regulations; in 17 tenders (12 in the Afula municipality, 4 in the Nesher municipality, which were designated for 9 positions, and 1 in the Hadera municipality) the threshold conditions laid down differed from those established in the Occupations File⁵, raising the suspicion that these were customized to suit the qualifications of specific candidates, with political or personal ties to the mayor; the periods of time allotted by the municipalities for submitting applications for participation in the tenders was short at times, resulting in the advantages of the tender process not being fully exhausted.

In 12 tenders (10 in the Afula municipality and 2 in the Ashkelon municipality) the number of members on the evaluation committee was even, contrary to that required by the hiring regulations; 13 of the evaluation committees (7 in the Afula municipality, 4 in the Nesher municipality and 2 in the Kiryat Ono municipality) failed to keep minutes of their deliberations as required, and thus these were not a true reflection of the evaluation process. In 2 cases in the **Nesher municipality** and all cases in the **Afula municipality** the committee members did not sign off the minutes as required under the hiring regulations. In 16 tenders (7 in the Afula municipality, 4 in the Nesher municipality, 3 in the Ashkelon municipality, and 2 in the Kiryat Ono municipality) the evaluation committees did not give grounds for their decisions, and in almost all the tenders there was no public representative on the committee. In most of the relevant tenders during the surveyed period – in the **Nesher municipality** until February 2014, and in the **Afula municipality** until April 2014 – the mayors failed to draw up a list of public representatives from which to appoint public representatives to the committee, as required by the hiring regulations.

Three tenders were issued by the **Afula municipality** and 2 tenders by the **Ashkelon municipality** for positions previously not existing in those same municipalities or for merged senior positions. In the **Afula municipality**, the audit workers were not furnished documents showing the necessity of the new job created or the definition of the job merging two departments.

⁵ In 1992, the Ministry of Interior published a file providing an occupations analysis and description of local government positions, designed to serve as a management aid tool for the local authorities (hereinafter: "the old file"). An updated file was issued in August 2012 (hereinafter: "the updated file"), which became a binding document at the beginning of February 2014 (see below).

The **Nesher municipality** hired workers at the end of 2013, who were selected for their posts without a tender process and without the convening of an evaluation committee. The fact of their being awarded the jobs was recorded in a document dubbed "Minutes," not in accordance with the hiring regulations and through the creation of a false representation – by the acting mayor, the then municipality treasurer and the then municipality secretary, in a fundamentally illegitimate process. Also in 2014, after the mayor's selection of representatives for the evaluation committee, the candidates were not asked to appear before the municipality as required by the hiring regulations.

In two tenders issued by the **Hadera municipality**, the evaluation committee included also "observers" without official status⁶; one tender issued by the **Hadera municipality** even had a public representative on the committee with ties to the elected mayor (raising the suspicion that the former's views were influenced by his relations with the mayor), and this contrary to the obligation to include at least one public representative on the committee, so there should be an objective person, independent of the elected public officials and municipality workers.

In 23 of the tenders reviewed (16 in the Afula municipality and 7 in the Ashkelon municipality) the evaluation committees included members with ties to the mayor, raising concerns that the ties had swayed their choice and tipped the scales in favor of candidates, who had worked during the election period to get the mayor elected or in support of his party, with some of them even appearing on the mayor's list of candidates for the municipal council.

Particularly glaring in this matter was the **Afula municipality**: the candidates positioned in places 4, 7, 10, 11, 13 and 14 in the party "Momentum for Afula" – the mayor's party, were selected to staff jobs at the municipality – most of them senior positions.

In the Afula municipality, irregular processes led to the replacement of the entire management echelon with candidates politically or personally affiliated with the mayor and his party members, as follows: In 6 tenders for senior jobs, specifically – the head of culture and sports administration, deputy operations manager, deputy education manager, municipality spokesperson, absorption department manager, and sports department manager – the winners' names had already been released before the candidates' evaluation before the evaluation committee. What is more, the "winners" were assigned internal telephone numbers at the municipality and assigned to rooms, prior to deliberations over the tender. In other tenders where flaws were uncovered, the municipality appointed candidates affiliated with the mayor, to senior positions, including the municipality general manager, human resources division manager, youth and young adults' strategy department manager, and the center for education and pedagogy director.

Also in other municipalities inspected, senior and other posts were staffed using flawed tender processes, with candidates affiliated with the mayor: in the **Hadera municipality** the operations and environmental protection department manager and the enforcement unit manager; in the **Nesher**

⁶ They did not serve as an "adviser-evaluator" within the meaning of the term under Section 24(B) of the hiring regulations.

municipality the municipal call center manager and the maintenance/upkeep unit manager; in the **Ashkelon municipality** the municipality director general, the education department manager, the municipal service department manager, manager of the municipal call center's area patrol unit, manager of community oversight and policing at the environmental protection department, and the mayor's driver; and in the **Kiryat Ono municipality** the municipality spokesperson and the emergency, oversight and security department manager.

Appointees Affiliated with the Mayor in Municipal Corporations and Other Organizations

In municipal and economic corporations in Ashkelon (5), in Afula (2) and in Givatayim (3), ten workers with an affiliation to their respective mayor or to the mayor's party members, and who worked during the election period to get the mayor elected, were appointed to the positions of general managers and other senior jobs. The appointment processes of these senior workers were generally marked by substantive flaws.

The Municipality's Gatekeepers

From the inspection's findings it appears that the internal auditor of the **Afula municipality** and the former legal adviser of this municipality, as well as the internal auditor of the **Ashkelon municipality**, who all attended the evaluation committees for the hiring of workers in their respective municipality, were not aware of the issue of political appointments and irregular processes in the evaluation committees they attended.

Engagement of Advisers

The **municipalities of Nesher and Afula** engaged lawyers having a previous acquaintance with the mayors, for the provision of legal counseling services, without putting out a tender, or at the very least, holding another orderly competitive process underpinned by predetermined criteria. No documents were found indicating the manner of determining the fees for engagement of the lawyers.

The **mayor of Hadera** picked an external media consultant by an irregular selection process. Two conditions set out in the agreement with him had not been announced in advance and had not been disclosed to two other bidders applied to by the municipality. Furthermore, the mayor, a member of the advisers selection committee, was in a suspected conflict of interest situation, since the media consultant had coordinated and handled all public relations and spokesperson services for the mayor's party during the elections period, and had been in close working relations with the mayor and heads of the party's election headquarters. In such a state of affairs, the mayor should not have taken part in the advisers selection committee which chose the media consultant.

Principal Recommendations

The municipalities inspected should staff position vacancies with suitable candidates based solely on their professional qualifications, guided by strictly pertinent considerations, in an egalitarian and transparent process coupled with rigorous compliance with all legal provisions and basic principles of public law and proper administration.

Municipalities must operate by Ministry of Interior directives in all pertaining to the job's requirements and the threshold conditions for the various positions defined by the Ministry in the "Occupations File."

The mayors should ascertain that the evaluation committees are not attended by members with a political or any other affiliation to any of the candidates in the tender, and make sure that they are not suspected of any conflict of interest with respect to the candidate.

In view of the serious, substantive and weighty flaws raised by the State Comptroller's Office regarding the conduct of the **Nesher and Afula municipalities**, the breach of trust of the local authorities' resident population in the local governing institutions, and the appointment of candidates whose ties appear to outweigh their qualifications, the State Comptroller's Office recommends that the Ministry of Interior take tough measures legally at its disposal against such mayors in respect of a grave compromise of proper administrative procedures, and of integrity and public morality. It should be noted that during the drawing up of the report and its conclusions, the suspicion strengthened at the State Comptroller's Office that criminal offenses had been committed with regard to several matters. Pursuant to legal provisions, these will be conveyed to the Attorney-General.

Given the substantive flaws raised in this report, the State Comptroller's Office recommends that the Ministry of Interior consider several recommendations for a profound rectification of the situation:

To make an in-depth study of alternatives for dealing with the phenomenon of political appointments in the local authorities, including the initiation of processes for amending the legal provisions applying to the local authorities, which would require a candidate for a municipal position to report in a personal questionnaire any political or personal affiliation he has.

To examine whether there is any room for altering the provisions regarding the composition of the municipal evaluation committees by prescribing arrangements that would ensure that the main considerations in selecting workers for senior municipal positions by a tender, particularly after the elections period, will not be connected with the candidates' degree of support for the elected mayor and their participation in his election campaign.

To consider the initiation of legislative amendments, which would ensure a proper balance in the composition of the tenders committee for the selection of senior workers, to allow for the proper

representation of the opposition, insofar as possible. If this cannot be done, the committee should not include a management member.

If the mayor has not appointed a public representative to the evaluation committee – i.e. an external public official who is not associated with the municipality's elected officials and employees – or if he has appointed a public representative but the latter has not been invited to attend the committee, then an evaluation committee should not be convened at all. If the committee has been improperly convened, it is incumbent on the Ministry of Interior to review the appointments carried out by such a process.

If a public representative has been appointed and invited to attend an evaluation committee but does not show up, his absence could affect the best choice of candidate; therefore, an evaluation committee should be convened only if he is present. To prevent the convening of a committee in the absence of a public representative, one should consider appointing a greater number of public representatives, including a "reserve" public representative for each committee, and to timely verify the attendance of one of them at the evaluation committee meeting.

If one of the candidates for the municipal position is politically or personally affiliated with the elected mayor or his party or a party that supported his election or is a member of the municipal coalition, then committee members who are also politically affiliated with the mayor or his party should not participate in the evaluation committee meeting, or at the very least should ask the opinion of the legal adviser regarding their membership on the committee and proceed accordingly. The participation of the latter under the aforesaid circumstances does not allow for fair competition among the tender candidates and is likely to impair the principle of equality among them.

The Ministry of Interior should review the appointments of the workers admitted to the municipality, to the economic and municipal corporations and to other organizations, by processes found to have serious flaws, giving rise to concerns that the basis for their selection is their political background rather than their qualifications.

Conclusion

This report indicates that during the period following the elections to the local authorities in November 2013, scores of workers who were political activists or close associates of the mayor or of coalition members were hired by the audited municipalities and their corporations, in irregular processes. Most of these workers were hired by tender processes found to have serious flaws. Some of the appointments gave rise to real and reasonable concerns that the political or personal aspect was an influencing factor and at times even the decisive one in the worker's selection for the job. The number of political appointments uncovered also points to a worrying phenomenon of deviation from the legal provisions relating to the staffing of positions and from the rules of proper administration.

Moreover, some of the municipalities dismissed senior employees or encouraged their retirement and resignation, raising concerns that the dismissals were politically motivated and meant to vacate the positions for political activists.

Public service in Israel is predicated on tenured workers, who are supposed to be appointed to their jobs based on their professional qualifications, without political affiliation having any bearing, either favorable or harmful, on the process of screening, selection and appointment to the job. Appointment of a worker in the public service by a civil servant based on extraneous considerations of narrow political/partisan interests is illegitimate, and breaches public trust in the executive authority and the public service. Such an appointment compromises the principle of rule of law as well as the principle of equality, which is likely to affect the professional level of the public servants, promote the phenomenon of giving precedence to ties over qualifications, and lead to a conflict of interest, ultimately raising concerns that decisions are influenced by extraneous considerations, resulting in the favoring of partisan issues over the public interest. Furthermore, in most of the employee hiring processes described in this report, a great deal of needless trouble and anguish was undoubtedly experienced by all potential competitors for the jobs, who thought they were being given an equal opportunity to win the tenders.

In view of the serious, substantive and weighty flaws identified by the State Comptroller's Office, especially regarding the conduct of the Neshet and Afula municipalities, and in view of the breach of trust of the local authorities' resident population in the local governing institutions, and the appointment of candidates whose ties appear to outweigh their qualifications, the State Comptroller's Office recommends that the Ministry of Interior take tough measures legally at its disposal against the mayors of Neshet and Afula in respect of a grave compromise of proper administrative procedures, of integrity and public morality. It should be noted that during the drawing up of the report and its conclusions, the suspicion strengthened at the State Comptroller's Office that criminal offenses had been committed with regard to several matters. Pursuant to legal provisions, these will be conveyed to the Attorney-General.

It should be emphasized that the remarks of the State Comptroller's Office in no way disparage the qualifications of any of the selected candidates. The criticism focused on the defects identified in the appointment procedures and on the discrepancies between the statutory requirements and actual appointment procedure, and not on the quality of work or service performed by the job holders.