SIGMA

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ASSESSMENT OF THE CIVIL SERVICE SYSTEM

OF

THE REPUBLIC OF ARMENIA

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I. Introduction

This assessment report was prepared under request of the Civil Service Council (CSC) of the Republic of Armenia. It aims at analyzing strengths and weaknesses of the current situation of the civil service system in the country as well as identifying challenges and opportunities for change.

As requested, the assessment was carried out following the same methodology and baselines that Sigma uses for assessing civil service systems in countries that are candidates to EU accession. Although Armenia has a different political and administrative background, characteristics and ambitions, the purpose is to provide a general analysis using the same principles, perspective and objectives that could allow, in the medium term, to reform the Armenian civil service according to the same civil service concept as is generally established in European countries.

It is worth mentioning that the request of the CSC and the open discussions during the assessment mission to Armenia, as well as the provided documents, demonstrated a great interest in reforming civil service and public administration. The direction and intensity of the reform is, however, rather unclear, shifting from progressive, incremental changes to radical reforms. In any case, it seems that there is a firm belief that reforming the public administration's organization and functioning, and improving skills and professionalism in management and in the civil service are basic conditions for the sustainable economic development of Armenia.

Information collected during a mission carried out in November 2009 and also several pieces of legislation and other documents obtained before, after and during this particular mission were used in the preparation of this assessment.

II. General conclusions

The adoption of a Civil Service Law (CSL) in 2001 and the subsequent alignment of the Laws regulating specific sectors of the public service in State institutions and Local Communities to the new principles (professionalism, access to positions based on merit and through competitive procedures, guarantees of stability and independence, etc.) enshrined in this Law, seem to have indeed marked a turning point in the process of establishing a stable and professional public service in the Republic of Armenia.

The creation of an independent state body – the Civil Service Council (CSC) was the response to a genuine need and possibly the best solution under the circumstances at that time. The CSC's principal function is to conduct the process of establishment and development of the new "Civil Service" as a cross-institutional professional structure (the "roster" of civil service positions) and a "corps" of professional public administrators, based on principles of political neutrality, professionalism, stability and objective service to the public interests, as defined by the laws.

Although much still remains to be done in the way of ensuring an effective consolidation of this "model", it seems that at this stage the model itself might also need to be reviewed, particularly in the light of the constitutional changes introduced in 2005. Furthermore, the model needs to be aligned to more modern concepts and approaches to public management, which are now being incorporated into the Government's policies.

The establishment of a common set of principles and basic rules for the entire public service – including different professional positions and groups in state public institutions, as well as the in local self-governments – is considered, at present, to be one of the key needs and priorities in this field. However, given the constitutional division of public authority – between not only the legislative, executive and judicial branches, but also between the state and the local self-governments – such a need cannot be easily translated in terms of a common structure for the actual management of the public service. The legislative (and the state bodies directly accountable to it, such as the Control Chamber or the Human Rights Defender), executive (with the presidency and the government at the top) and judiciary (including the Constitutional Court and an independent Public Prosecution office) branches of the State, as well as the local self-governments (Communities) must all have their own and separate capacity to manage their

human resources, in accordance with relevant laws adopted by the Parliament and the financial resources allocated to them by the legislation.

However, what can and should be the subject of further integration, in terms of human resources management, are the "Services" or public service groups operating under the direct responsibility of the executive branch or, more specifically, of the government. This doesn't preclude the subsistence of specific statutory rules for groups of public servants dealing with particular "executive" functions (for example, those involving the use of arms); but the government as such (prime minister and ministers) must be able to exercise an effective authority – including regulation, planning and coordination – over all those groups.

The functional autonomy of a body responsible for advising and supporting the government in the design and implementation of a human resources policy can and should be preserved. This should include the guarantee of professionalism, stability, and independence of the permanent staff of all bodies and institutions belonging to, or otherwise subordinated to, the executive branch. Considering this, it might be necessary to discuss the current status of the Civil Service Council as a "state body" independent from the Government itself. As such, as an external provider this "state body" would be concerned primarily with the provision of some methodological and technical services e.g., related to job descriptions, recruitment processes, attestations, etc. Other functions would include the defense and protection of the professionalism, independence and other legitimate interests of a core but limited group of public servants (the civil servants).

The status of this Council (not mentioned in the Constitution) as a "state" body not depending on the Government, reporting directly to the Parliament with complete autonomy to elaborate its own budget and decide on its own organization and staffing and even holding the power to issue secondary legislation on Civil Service, may have been justified in 2001. However, it doesn't seem at present the most appropriate solution in terms of integration and consolidation of the legal regimes applying to all public servants serving at the executive branch.

As for the type of positions to be subject to such common principles and rules, a clear-cut separation line must be drawn between purely professional positions and positions to be filled through democratic elections. Or otherwise, positions subject or open to direct appointment by those officials and institutions democratically elected (such as the ministers, or the chiefs of staff of the presidency and the prime minister's office or the Mazpetarans). These should be subject to separate rules (to be laid down in the statutes of the respective institutions), even if certain rules are similar or equivalent to the rules applying to professional public servants. The common principles and rules for the public service at large should preferably be limited to professional positions (public employees).

At present, there seems to be a division between those holding the top responsibilities for the administration of the "Civil Service" (as the core group of professional public service positions and staff dealing with general public administration functions, including managerial positions in ministries and other governmental bodies) and those responsible for designing and introducing policies, programs and instruments aimed at modernizing and improving the effectiveness and efficiency of the Government's administrative and service delivery machinery. Moreover, the CSC seems to be playing quite a secondary role in decision-making processes concerning the allocation of human resources (and corresponding financing) needed for the implementation of the various public policies, including needs assessment and planning. However, the CSC is generally recognized as an independent and credible institution struggling towards improving the professionalism and neutrality of civil servants.

Apparently, the main (or sole) common element of both functionalities (Civil Service and Public Administration reforms) seems to be the figure of the "Chief of Staff" who exists in every public administration body. However, this commonality is not sufficient to reconcile management of the civil service with the broader management of human resources and with the implementation of reforms in the overall management of the public administration bodies depending on the government. A closer integration of the Civil Service Council into the mainstream of the governmental structures leading work on the reform and modernization of the public administration could be considered at this stage. And perhaps, in this context, an expansion of its responsibilities at least towards the broader concept of management of human resources.

As for the contents of the legislation on public and civil service, after eight years of implementation of the legislation enacted in 2001, perhaps it is now time to undertake a thorough review of some of the solutions adopted at that time. This report provides several recommendations regarding the different chapters of the civil servants statute. The proposals concerning the elaboration of a new and more general "framework" law for the entire public service could provide a good opportunity to undertake this in-depth review of the model which has been in place since 2001.

This exercise would indeed take some time as it would require additional studies and discussions, at various levels. In the meantime, should there be a need– as the Anti-corruption Strategy seems to point out – to quickly introduce some additional legislation and instruments on particular aspects in which the existing ones are perceived as insufficient or unsatisfactory (for instance, on conflicts of interests, gifts and declarations of interests), this can be done through separate legal instruments, which could then be consolidated, at a later stage, in the future "framework" law on the public service (or in others). Moreover, such specific and anti-corruption-aimed legislation could then be elaborated taking into account the specific requirements of the various types of positions that exist in the wider concept of public service (political, discretionary, professional), which demand specific solutions in a number of aspects.

In sum, the "consolidation" and "integration" of public service regimes and management, as proposed in the Anti-corruption Strategy, should involve a reinforcement of the Government's role and capacity to effectively manage the human resources of the public administrations depending on the executive branch. Indeed, this should not imply a return to past Government's discretionary power in these matters (which led to the politicization of the public service), nor to an unnecessary and undesirable "uniformisation" of all aspects of the legal statute of different groups of civil/public servants.

What would, therefore, be needed is the constant improvement of the legislation and other instruments (competitions for access to positions, training programs and facilities, performance appraisal methods, ethics codes and commissions, salaries, etc.) as well as the maintenance of some sort of structure or body with a reasonable level of functional autonomy and in charge of guaranteeing the professionalism, honesty and political independence of the public servants..

Legal status of Public Servants

1.1. Constitutional provisions

The Constitution of the Republic of Armenia (firstly adopted in 1995 and substantially amended in 2005) does not contain a precise definition or any specific principles or rules concerning the public administration, the public service or the civil service. However, it contains (art. 30.2) a provision that recognizes and guarantees "equal access (for all citizens) to the public service" through "procedures to be prescribed by the law". In the same article, the Constitution creates a *reserve of law* for laying down "the principles and procedures for organizational aspects of the public service". Such a provision serves a dual purpose: it aims at ensuring a higher degree of legitimacy of public service legislation by involving the National Assembly, and it is an instrument to protect the status of public servants. Art. 85 of the Constitution, in turn, places under "the authority" of the Government (Prime Minister and Ministers) "all aspects of public administration not bestowed – by the law - on other state or local self-government bodies".[1]

The right of all employees, and this includes public servants, to fair remuneration and adequate working conditions is set out in Art. 32 paragraph 2; paragraph 3 provides for the right to strike, while limitations need to be defined by law. The right to form and to join trade unions and parties is provided for by Art. 28, paragraphs 1 and 2. For certain groups of public servants, restrictions with regard to these rights may be prescribed by law (e.g. armed forces, police, national security, prosecutor's office, as well as judges and members of the Constitutional Court). The same restriction applies to the right to assemble peacefully according to art. 29.

Article 5 is the basis for the principle of legality with regard to exercising state powers. This is equally relevant for the performance of public servants as for the protection of their status.

Article 14.1 prohibits discrimination and Art. 18 entitles everyone to effective legal remedies to protect his/her rights and freedoms before judicial and other public bodies. These provisions are applicable to everyone and restrictions for public servants are not provided for in the Constitution.

1.2. Primary and secondary legislation

The Civil Service Law, adopted already in 2001 prior to the Constitution, corresponds to the formal requirement set out in Art. 30.2 of the Constitution.

Special aspects, such as remuneration of civil servants, are covered by special law (Law on Remuneration of Civil Servants[2], and labor legislation is applicable to employment issues not regulated explicitly in civil service legislation (Art. 6 paragraph 2 CSL)).

The nine chapters of the Law deal with many of the standard topics of any civil service legislation covering the following aspects:

- Rules concerning the definitions and the determination of the scope of application of the Law (in terms of state bodies, positions and position holders);
- Main principles of the civil service and definition of the legislation applying to it (including the subsidiary application of the Labour Code to some aspects of the employment relationship and working conditions);
- Classification of the civil service positions (11 levels in four groups) and the corresponding grading system for the position holders (the civil servants); regulation of the "roster" of CS positions and the "passport" of each individual CS position as key elements of the CS system (the Law sets the minimum general requirements to be set in such "passports" or job descriptions, in

[1] "Civil Service" is precisely one of the aspects of public administration for which the Government doesn't have full authority, since the Law (CSL) gives most of the authority on this issue to the Civil Service Council, which is a State body not depending on the Government.

[2] Other than the CSLaw itself the Law on Remuneration is applicable also to judicial servants and state servants from the National Assembly.

regards to professional grade and years of experience needed for access to such positions);

- General requirements and conditions for access to CS positions and the methods to be used for filling the vacancies in positions included in the CS roster (plus rules on final appointments);
- Mandatory training and "attestation" of civil servants;
- Legal status of civil servants (rights, duties, restrictions, incentives, disciplinary regime, retirement age, etc.). Causes of removal from CS positions/termination of the civil service relationship/status;
- Civil Service organization and management bodies.

Procedural and technical details are provided for in several pieces of secondary legislation based on explicit authority in the CSL itself. These pieces of secondary legislation, which are in most cases highly detailed, are prepared and adopted by the Civil Service Council. The most important are:

- Civil Service Council Decision (5 April 2002) on approval of the Charter of the Civil Service Council.
- Civil Service Council Decision (1 June 2002 with later amendments) on approval of the order of the personal file and ledger maintenance for the civil servants.
- Civil Service Council Order (23 May 2002) on order of development of tests for conducting competition and attestation.
- Civil Service Council Decision (13 June 2002, with later amendments) on defining the order on conducting competitions for occupying vacant civil service positions.
- Civil Service Council Decision (13 June 2002) on determining an order for conducting attestations of civil servants.
- Civil Service Council Decision (14 June 2002, later amendments) on approval of the working order of the Commission conducting the Competition for occupying highest and chief level vacancies in civil service and of the Commission conducting the attestation of civil servants occupying these positions.
- Civil service Council Decision (18 June 2002, with later amendments) on the general description of each group of the civil service positions.
- Civil Service Council Decision (31 July 2002 with later amendments) on approval of the Charter of the RA Civil Service Council staff.
- Civil Service Council Decision (22 November 2002) on setting out the order for conducting service investigations.
- Civil Service Council Decision (17 June 2003) on defining the order of registering in and removing from the civil service personnel reserve.
- Civil Service Council Decision (31 May 2004) on defining the order of signing temporary employment contracts.
- Civil Service Council Decision on rules of ethics for the civil servant.
- Civil Service Council Decision (1 December 2004) on approval of the order on the commissions of ethics.
- Civil Service Council Decision (26 June 2006) on determining the order for conducting training of civil servants.

The Guidelines for the development of work plans and performance appraisal adopted by the Government on 30 April 2009 are a special case. The Government is, of course, entitled to issue regulations for work plans and evaluation of performance by ministries and the respective subdivisions; this follows from the organizational and managerial prerogative of the executive. Doubts may be raised, however, with regard to the entitlement of the Government to introduce a performance appraisal system for individual civil

servants, which is basically different from the attestation procedure provided for in the current Civil Service Law (see especially No.21 of the Guidelines). Currently, both systems coexist creating confusion and inefficiency. It would be preferable, therefore, to include the new approach to performance appraisal of civil servants in the Law on Civil Service and to provide authority, as foreseen in the current system, for the independent Civil Service Council to develop and issue the respective secondary legislation.

In this context it should be mentioned, however, that the power of independent institutions to issue civil service secondary legislation might cause friction within government. Government will necessarily give priority to the efficiency and the effectiveness of the civil service (the performance appraisal guidelines are a prominent example of this), while the independent Civil Service Council will be more focused on the legality of activities. A balanced solution could be to give the Civil Service Council the right to prepare secondary civil service legislation, while government should have the right to adopt the respective drafts if they are aligned with government policies.

The scope of the Law on Civil Service is restricted; it deals only with the "classical" civil servants in ministries and regional offices (Marzpetarans), while other executive services like police, tax, customs, foreign service and other special services are, or shall be, covered by separate legislation; the same applies to the staff of the legislative and judicial branch as well as to local staff (for details see below 1.3).

The new draft Law on Public Service (LPS) aims, however, to establish a common framework for all public servants in state and self governing bodies. The first objective of this draft law is to set out the principles of public service and its organizing procedure in the Republic of Armenia, as well as to regulate the status of public servants and other relations therewith. The second important objective is to provide an ethics system for all public servants. The very general framework for the whole of the public service includes: a list of main principles of public service; the provisions about the roster of public service positions; the definition of requirements for occupying public service positions; and finally the list of public service rights and duties. However, crucial issues such as recruitment, classification or appraisal are dealt with in the draft law in a very superficial manner by just referring to the regulation in another special law.

In fact, the draft law fails to use the opportunity provided by the framework concept to define some ambitious, though general, standards and procedures applicable in the whole of the public service; recruitment, selection and mobility are some of the most important issues for any modern public service law. In fact, the draft law does not deal with the substance of the issues at all. Instead, the respective regulation is left primarily to other laws regulating separate types of public service and community service[3]. Therefore, these laws need, for example, to cover the question of public announcement, the basic requirements for selection, the body making final decisions etc. This increases the danger of fragmentation of public service legislation and undermines any public policies aiming at guaranteeing equal quality standards in selection and at ensuring a high degree of mobility of public servants between different administrative spheres and bodies. In addition, it is questionable whether this type of rather pointless provision in the draft law represents any added value.

Finally, certain issues, equally essential for such a general legislative framework, are not dealt with in the draft LPS at all. One of these issues refers to the establishment of a system for managing, coordinating and monitoring the public service so that common standards are applied; another example refers to the participation of public service personnel or their representatives in management processes; a further issue is the question of how to deal with redundancies in the case of abolishing, merging or restructuring administration bodies. All these issues have general relevance for all branches of the public service, and principles could well have been included into the draft Law to really ensure common standards.

1.3 Legal definition and scope of Public Service and Civil Service

According to the CSL, public service is "the implementation of authorities (*powers, tasks and responsibilities*) reserved to the state (*public authorities*) by legislation, which includes implementing policy by state and local self-governmental bodies, state service and the service in communities, as well as the civil work in state and local self-governmental bodies". This wide and old-fashioned definition of

[3] *Communities* is the term used by the 2005 Constitution for the local self-governments (Municipalities)

Public Service is also reflected in the first article of the new draft LPS, currently under preparation.

In this wide and "functional" conception used by both the CSL and the draft law on PS, "public service" is thus a task entrusted to three groups of persons, servicing state and local self-government public-law bodies[4]: 1) persons occupying *political* positions; 2) persons occupying *discretionary* positions or leading/membership positions in "permanent standing bodies created by the laws of the Republic of Armenia" (defined as "*civil positions"* in the CSL, and as *"state positions"* in the draft LPS); and 3) persons occupying *professional* positions.

Among the persons occupying "professional positions", there exist three main groups: 1) *State service*; 2) *Community service*; and 3) *Civil work*, at both state and local self-government bodies.[5]

From a legislative viewpoint, groups 2) and 3) are subject to separate but uniform regulation: the specific legislation on Community Service (with a Law adopted in 2005) for core staff of the local self-governments; and the ordinary labour legislation (Labour Code) for the "civil workers".

State Service, on the contrary, is subdivided into a multiplicity of sub-groups or "services", each one of them with its own specific legislation, without any common legal framework that applies to all of them (for the time being). The main categories in this group are:

- Judicial Department and Public Prosecutor's Service (professional staff of the Judiciary, including court system and public prosecution);
- Parliamentary staff;
- Special services (expression that refers to Defence/Military staff, Diplomatic Service, National Security and Police Services, as well as other Services such as Tax and Customs administrations, Rescue service, Criminal-Executive Service, Judicial Acts Enforcement service[6], etc.)
- Civil Service

While the concept of Public Service seems to cover all those serving in the non-entrepreneurial public sector at both central and local level, the concept of Civil Service is in fact much more restricted. It only applies to a certain number of professional staff positions at the Presidency; the Government (Council of Ministers): Ministries and other bodies integrating the executive branch of central government system of which staff – or part of which – is civilian (not subject to military or para-military status); the regional administrations (Marzpetarans); and other State bodies established by a Law (such as the Central Electoral Commission, the State Commission for the Protection of Economic Competition or the Civil Service Council itself). In total, 44 state bodies are currently included within the scope of the "Civil Service".

According to this, the RA "Civil Service" statute covers a number of professional jobs in the public service that stands at a figure of around 8000 positions (in mid-July 2009, 7905 jobs out of a total number of

[4] Public-owned entrepreneurial sector (industrial or commercial), as well as the National Bank, are not included in the scope of the public service.

[5] The category of "civil work", as distinct from State or Community Service, is not clearly defined in the CSL, but seems to refer to public employees directly involved in the provision of professional services in public service delivery areas such as education (teachers) and health care (doctors, nurses). These employees are hired under labour law contracts (as the draft Law on PS clarifies). The CSL seems to differentiate between these "civil workers" and what are called (Art. 3.1.je) "persons implementing technical support" (janitors, drivers, maintenance staff or other persons hired – also under labour law - to take care of some technical services, such as IT systems) in CS bodies. Article 4.2 of the CSL, seems to exclude the presence of "civil workers" in the bodies to which the CSL applies.

[6] Criminal Executive Service is the Armenian name for prisons and prison's wards system; and Judicial Acts Enforcement system stands for the bailiff service in charge of execution of decisions of non-criminal courts (mainly civil courts)

18429 jobs existing in the 44 organizations to which the Law on Civil Service applies)[7].

However, it should be noted that, while the CSL only applies to these few thousand jobs, the legislation in force governing the statutes of other groups of the public service – notably the local self-governments ("Community") service, the Parliament's staff and many of the "Special Services"- seems to be inspired, to a greater or lesser extent, in similar principles and rules as those laid down in the Civil Service Act, meaning that the CSL has a certain "vocation of universality".

Art. 58 of the CSL envisages the adoption of separate Laws for the regulation of "peculiarities connected with service" in areas (services) such as Tax and Customs, Defence, National Security, Police, Foreign Affairs and Rescue services. This fact, probably in combination with the resistance of the state authorities responsible for those services to accept that the role assigned to the CSC in relation to the Civil Service may also be extended to those "special services", seems to have resulted – for the time being - in the subsistence of totally separate statutes for those services.

In conclusion, from a legal basis viewpoint, the public service in the Republic of Armenia is highly fragmented; and for the time being there is not any legal text that clearly contains the basic principles and rules that apply to the multiple groups of public servants[8]. The draft Law on Public Service attempts to deal with this issue, however, not yet in a satisfactory manner.

Moreover, the horizontal scope of the Law on Civil Service is defined by enumerating the institutions on state and regional level which are entitled to have staff with civil servant's status (art. 4 paragraph 1 CSL). The underlying concept seems to be that civil servants are employed by the respective institution and not by the state or other legal entity. This does not correspond to the prevailing approach with regard to civil service employment. Furthermore, the Law does not really clarify how to distinguish civil servants positions governed by public law and involved in exercising public authority in the public interest from merely technical support positions subject to labor law (see Art. 4 paragraph 2 CSL). Ultimately, the decision as to whether a position is a civil service position or not, is included in the approval of the roster of civil service positions (Art. 9 paragraph 1); however, clear criteria for this approval, which is one of the responsibilities of the Civil Service Council, are not spelt out in the Law.

1.4 Civil Service positions

With regard to the vertical scope, the Law draws a clear dividing line between political and a rather large number of so-called "discretionary" positions on the one side, which are not subject to the Law, and professional civil service positions in the executive on the other side, which are fully covered by the provisions of the Law (Art. 3 clause 2 and 2 CSL).

It is, of course, obvious that so called political positions (the President, the Prime Minister, Ministers, MPs, members of the Constitutional Court) should be excluded from the Law, because they are not staff "employed" by the state or by any institution, but state organs provided for in the Constitution and representing the executive, judicial and legislative branch. Highly questionable, however, is the far reaching exclusion of the so called discretionary positions listed in Art. 3 paragraph 3 CSLaw[9]. Admittedly, some of the positions included in the list have a political character and should be occupied by political appointees (they should be covered, however, by special rules e.g. with regard to ethics and

[7] The distribution of the rest – 10500 – between political, discretionary and "civil" positions, as well as positions of "persons implementing technical support" or even "civil workers" (these latter ones apparently excluded by Art. 4.2 for those 44 bodies), is unknown.

[8] One of the key measures proposed in the Anti-corruption Strategy and Action Plan 2009-2012 is to "consolidate the legislative regulation of all types of public service by extending it to services provided by state commercial and non-commercial organizations, and establishing common principles of regulating the rights and responsibilities of public servants, recruitment, promotion and dismissal, codes of conduct and conflicts of interests. However, the Government's program does not envisage such general "consolidation" but instead, a number of specific "modernization" measures to be equally applied across the various levels (political, professional) and sectors of the public service

[9] This regulation already represents progress compared to the situation before the Law on Civil Service came into force; in these times, an even higher number of civil servants were replaced as a result of political changes

selection and dismissal). Other positions in the list, however, have clearly administrative functions (heads and deputies of public administration bodies attached to the Government or within ministries). For these positions, a political appointment or an appointment on the basis of the spoils system is not really adequate. Furthermore, including ambassadors and other international representatives into the list of discretionary positions might cause constraints with regard to the establishment of a professional Foreign Service. At any rate, the very broad definition of discretionary positions facilitates objectionable politicisation and undermines professionalism. At present, a core "Civil Service" system involving the separation of professional functions of general public administration from the political ones and the development of a cadre of stable professional staff dealing with such functions in a number of state and government institutions and organizations and not subject to changes in the Government, has started to emerge but needs to be improved.

Recommendations

It is recommended that the Law on Civil Service elaborates more clearly on the definition of civil servants and that the Law clarifies that civil servants are employed by the state, not by the respective institution.

The horizontal scope of the Law should be enlarged to avoid fragmentation of the public service, especially taking into account that the provisions of some special laws are more or less duplicating the content of the Law on Civil Service.

The approach in the draft Law on Public Service aiming at perpetuating this fragmentation should be given a thorough review. A viable option with regard to this issue could be to adopt the provisions of this draft dealing with the integrity system separately, and to upgrade the other provisions dealing with the principles and procedures of the public service.

The very comprehensive list of discretionary positions not covered by the Law on Civil Service should be restricted to those positions with a clearly political character.

The new performance appraisal procedure should be included explicitly into the Law where appraisal of individual civil servants is concerned.

From a technical point it should be noted that the Law elaborates quite often in detail on issues, which would be included in other systems in schedules attached to the law (classification details) or placed in secondary legislation (competition details).

It should be examined, whether the power to issue civil service secondary legislation could be shared by Government and the Civil Service Council. A possible solution is to recognise the right of initiative of the CSC in elaborating secondary legislation on CS while full authority to adopt such regulations should remain in the Government.

1.5. Principles of Civil Service

Art. 5 of the CSL enumerates the "main" principles of the CS (which are reproduced in art. 8 of the draft Law on Public Service and hence seen as wider general principles that apply to the entire public service). These include the principles of legality, stability (permanence), equal access based on merit and capacity (knowledge and skills), professionalism, transparency (openness), political restraint (neutrality), and accountability, as well as the principles of "uniformity of principal requirements for civil servants and their equality before the law", "legal and social protection of civil servants" and their individual responsibility for non-performance or inadequate performance of service duties.

Recommendations

What is missing in this list of principles that govern the Civil Service (and the public service as a whole, since these same principles are reproduced in the draft Law on PS) is a reference to delivery of effective and impartial/objective service to both citizens and the general interest, which is a note that characterizes the most modern and advanced CS conceptions and systems (as properly understood and reflected in the Program of the current Government). Also, there is no reference to the CS responsiveness to the efficient implementation of policies defined by the democratically elected institutions (so that political neutrality is not understood as total independence from the government).

Other than this, it would be advisable to include the principle of merit and capacity as applicable to the professional promotion of the civil servants (not only to access). A reference to the principles of hierarchy (in which the obligation of civil servants to comply with lawful orders and instructions received from their superiors is based) and to the participation of the civil servants in the determination of their conditions of employment (one of the missing elements in the CSL) would indeed improve the contents of this important article.

However, identifying the correct set of principles is not enough. Proper action is required in order to promote a clear and common understanding of such principles and to support their implementation.

2. Legality and Accountability of Civil Servants

The provisions of the Constitution recognizing the rule of law as a basic principle with regard to exercising state powers (Art. 5), the ban on any discrimination (Art. 14.1)[10] and the guarantee of effective legal remedies to protect anyone's rights and freedoms before judicial and other public bodes (Art. 18) are applicable with regard to the performance of civil servants as well as to exercising their rights and duties. These principles are reinforced in some more detail in Art. 5 CSLaw: the supremacy of the Constitution and other laws; the legal equality of civil servants; and the accountability of civil servants for their performance. Article 41 of the CSLaw reinforces the principles that disputes with regard to the application of the Law shall be dealt with in the procedure provided for in the civil service legislation as well as in the judicial procedure. Article 22 ensures that the civil servant concerned has access to all information relevant for protecting his/her rights.

By virtue of Art. 23 civil servants are obliged to follow the decisions and instructions of their superiors**.** Article 25 deals with conflicts arising between the loyalty to the Constitution and to the law on the one hand and the duty to comply with instructions of the hierarchical superiors on the other hand. According to this article, civil/public servants cannot be given assignments (or instructions) that contradict the Constitution and the laws and if so, are entitled to request written confirmation from their superiors, to report to the CSC on those instructions and in any event to reject assignments or orders of which the implementation could lead to criminal or administrative liability, as defined by the legislation of the Republic. The text corresponds largely to common practice.

The disciplinary procedure is one of the instruments to ensure accountability of civil servants with regard to violations of their official duties. Disciplinary sanctions provided for in Art. 32 paragraph 1 CSL are in principle applied by the official having the power to appoint the respective civil servant; special rules are provided for chiefs of staff (Art. 32 paragraph 3 CSL). The Law neither sets out the principles of the procedure[11] nor provides any precise definition of disciplinary violations possibly differentiated according to minor and major ones (as in many other systems). This does not correspond to the relevance of the disciplinary procedure for the status of civil servants, which requires coverage of the main issues in primary legislation[12].

One of the more specific critical aspects of the whole disciplinary procedure is the statute of limitations provided for in Art. 32 paragraph 2 of the CSL. According to this provision, disciplinary sanctions cannot

[10] One of the few minorities in the country are the Yezides.

[11] Something like the following list of principles would represent an improvement: a. presumption of innocence of the civil servant concerned; b. guarantee of the right to defense of the civil servant concerned; c. celerity of the procedure; d. legality of the sanction; e. proportionality between disciplinary sanction and violation of official duties.

[12] However, a large number of procedural provisions are included in the Decision of the Civil Service Council of 22 November 2002 setting out the order for conducting service investigations. Service investigations are, however, not conducted in every case of a disciplinary violation, but according to No. 6 of the CSC Decision of 22 November 2002 only when requested formally by the respective civil servant or in other cases explicitly defined in the regulation (mostly the more severe ones). Service investigations conducted by the Civil Service Council are therefore to a certain extent a legal remedy for the civil servant concerned and at the same time an instrument to ensure an in-depth review of the more severe cases.

be applied if more than six months have passed from the day of committing the disciplinary violation. This period is too short for many ordinary cases, but it is certainly too short for any corruption related violations. These offences are often concealed and might not come to light for many years (e.g. when a regime change occurs). Many cases may also be complex and require the gathering of voluminous evidence. All this requires provisions that allow much more time to conduct an investigation.

The new and ambitious procedure for developing work plans of institutions, subdivisions and individual civil servants and the new approach to result-oriented performance appraisal introduced by the Government decision of 30 April 2009 is another instrument intended to enhance and to enforce accountability on the institutional and individual level. Since the new system is still in its inception, it will be necessary to evaluate its effectiveness / efficiency and to examine to what extent this procedure is accepted among civil servants.

The rather rudimentary provisions of the Law dealing with conflict of interest, ethics, and financial disclosure will be superseded by the more refined and detailed respective provisions of the draft Law on the Public Service (for details with regard to the integrity system see below).

As part of the system aiming at protecting legality of the activity of the public administration, the right to appeal to courts is generally recognised, according to the Administrative Procedure Code. The Administrative Court is functioning since January 2008 but it has no full jurisdiction. Rulings from the Administrative Court can be appealed to the Court of Cassation (Civil and Administrative Chamber).

Recommendations

The major legal prerequisites for ensuring legality and accountability in the civil service are in place. There is, however, some room for further improvements, notably with regard to elaboration on the disciplinary procedure in primary legislation. One of the more specific shortcomings of the current regulation relates to the extremely restrictive statute of limitations in disciplinary cases. Excluding disciplinary procedures and sanctions for violations committed more than six months prior undermines accountability especially in corruption cases or in other cases with ethical relevance.

The system of administrative justice is still a novelty in Armenia and its development must be stimulated in order to improve its efficiency. Clarification regarding the content of the Administrative Procedure Code is also necessary. Usually, administrative procedure codes establish the rights of citizens regarding the activity of the public administration and the decision-making procedure, while administrative disputes codes define rules and procedures before administrative courts.

3. Professionalism of the Civil Service

3.1 Selection and Recruitment

According to the CSL, access to the CS is linked to the existence of a vacancy in the roster of CS positions (either for a previously existing position or for a newly created one). Chiefs of staff in relevant CS organizations ("corresponding bodies") have a legal obligation to notify the existence of any vacancy to the Civil Service Council.

The Law treats competition and the so called "out of competition procedure" equally with regard to filling vacancies (Art. 12.1 CSL). In practice the non competitive procedure covered by Art. 12.2 of the CSL even seems to be the rule except for newly created positions and for positions which could not be filled in the non competitive procedure.

The "out of competition procedure" privileges civil servants from the respective institution insofar as they meet the criteria for an appointment by this procedure listed in Art. 12.2 paragraph 1 of the CSL. These criteria are formal and do not include any explicit reference to the merits principle. Of course, the "out-of-competition" procedure will satisfy career development aspirations of the civil servant selected in this procedure, and it will serve the interest of the respective body to appoint somebody from "inside" in a very simple procedure. However, it is questionable whether this procedure really ensures that candidates with the appropriate knowledge and skills are selected on the basis of the merits principle. One option, to upgrade the procedure, could be to introduce a system of internal competition entitling only civil servants

working already in the civil service (whole civil service or in the respective institution) to participate in the competition. This approach would combine elements of the career system and of the position system.

For "junior" positions, the amendments to the CSL which are currently being processed at the Parliament will introduce a new system. According to these amendments, the CSC (Attestation Commission) will organize – on a quarterly basis – tests aimed at the granting of a "certificate" that all citizens meeting the general criteria for access to the civil service (as laid down in articles 11 and 12 of the Law) and not exceeding the age of 65 (retirement age set in art. 34) can take. Those who succeed in passing the test (very much oriented on legal knowledge -limited to questions related to Constitution and legislation on civil service) will be provided with a certificate with one year validity. When a vacancy for a junior position arises in any CS body, any citizen holding a valid certificate can apply for the position. There are no rules as to the need to publicly announce the vacancy or to follow any additional competitive procedure for the selection of the most suitable candidate for the position. The positive impact of this procedure is that there will always be candidates to fill junior positions on short notice; the disadvantage of the new approach is the lack of transparency.

The possibility of filling a vacancy for a "higher", "chief" or "leading" position through direct appointment is very restricted. It requires the availability of a professional civil servant in the same department who meets the requirements of the position and certain other professional requirements as laid down in art. 12.2.1 of the CSL (and the consent of the civil servant to be appointed). However, in case of reorganizations, direct appointments to the CS positions from among the civil servants whose positions have been affected by the reorganization seem to be the first step.

Except in those cases, all vacancies for higher, chief and leading positions in the CS roster are to be filled in through competition. For higher and chief positions, the competition is organized and carried out by the CSC. For leading positions, the competition is organized and carried out by the body in which the vacant position exists

The principle of public announcement and competition for vacancies is covered by Art. 14 of the CSL. However, the scope of open competition is rather narrow. The selection is decided by the person responsible for appointments. In the case of chief, leading, and junior positions the selection will be by the respective chief of staff, In the case of the highest and some chief positions, the respective political head of the body is responsible (president, prime minister etc (Art. 15 CSL). Staff at Marzpetaran level is recruited on this level and the respective chief of staff is responsible for human resources management.

Competitions, if they take place, need to be organized separately for each vacancy, which could make the system uneconomic and cumbersome. Candidates are screened in two stages (Art. 14 clause 6 ff CSL): first a written multiple choice test aiming at testing the knowledge of the Constitution, civil service legislation and legislation from the field of competences of the respective body. The currently pending amendments require that the candidates should additionally be tested also with regard to checking their ability to work on the given position (draft Art. 1 no. 3). Second, an interview with those candidates who have obtained at least the threshold of 90% correct answers in the written examination. In practice the number of applicants passing the threshold seems to be rather large, accordingly the significance of the interview is strengthened.

It is questionable whether these rather uniform and formal testing methods are fully appropriate to meet the criterion "recruitment on merit". In fact, assessment of candidates should be tailored rather towards assessing the behaviors and competencies required for the position in question. This includes, of course, the relevant knowledge, including, of course, legal knowledge, but also a series of other competencies including interpersonal skills, for example. Interviews with candidates for positions involving leadership functions should aim at evaluating in a systematic approach motivation, communication skills, and aptitudes, as well as the professional and managerial experiences of the candidates[13]. The amendments take this up by requiring that the structured interview should focus on testing the professional knowledge, the competences, practical abilities and managerial skills.

[13] In some organizations (such as the Ministry of Economy), additional tests are already being implemented to check other aspects of the candidate's profile and suitability for certain positions (such as job-oriented psychological tests)

The testing is conducted by Competition Commissions composed, according to Art. 40 CSL, of randomly selected members from the Civil Service Council (one third), the respective body (one third) and from scientific or academic institutions (one third). Competition results are made accessible to the participants on the same day and participants have the right to appeal (Art. 9 and 9.1 CSL). The successful candidates are submitted to the official responsible for the appointment, who decides whom to appoint (Art. 14 clause 10 CSL). This discretion with regard to the question whom to appoint from the list could possibly contribute to reducing the true competitive nature of the procedure as well as to the constitutional right of equal access (Art. 30.2. clause 1 of the Constitution). The envisaged amendments mitigate this problem by requiring that only the three highest ranking candidates are submitted to the person responsible for appointment (draft Art. 1 no.5). However, discretion with regard to these three candidates is still not restricted, nor is there any duty to provide reasons in case the second or third ranking candidate is selected.

Persons appointed to a civil service position for the first time are on probation for up to six months (Art. 15 paragraph 4 of the CSL). Given the fact that appointment is permanent (Art. 15 paragraph 1), this period seems to be rather short.

Article 18 of the CSL provides for short term contracts to fill temporary vacancies at the discretion of the person responsible for appointment. This instrument needs to be used with care, because it could be used to further undermine competitive procedures. Clear – and restrictive - specification of cases in which such contracts can be used and effective procedural and budgetary mechanisms to exclude misuse is strongly recommended.

Recommendations

There is little doubt that, when compared with previous discretionary power in the selection and appointment of candidates for vacant positions, the system of competitions introduced by the CSL was a big step forward in ensuring the objective evaluation of the merits and capacity of the candidates for any CS position, thus reducing the chances of arbitrary appointments or appointments purely based on cronyism. However, it seems that the Law is, in this aspect, perhaps too detailed, hence forcing the need for changes and amendments in primary legislation every time that improvements in the technical aspects of the competitions are found necessary and have been agreed. Primary legislation should be circumscribed to setting the basic rules and principles applying to the selection processes, referring to secondary legislation (normative legal acts adopted by the CSC) the technical details of how the two main stages of the competition are to be implemented.

The proposed amendments could improve the quality of the selection and recruitment process but it will depend to a large extent on the implementation of the new provisions and on the quality of the respective secondary legislation. However, there are still shortcomings with regard to the "out of competition procedure" which should be upgraded into an internal competition.

The envisaged competition for junior positions should be complemented by a framework for the procedure to be followed when selecting from the list. This framework should also ensure transparency of vacancies on the junior level, because the current approach does not meet this requirement.

Additionally it should be examined whether the composition of the Competition Commissions is really adequate. This composition does not provide a majority for the institution seeking to fill a vacancy. What should be avoided is that the Commission impose unwelcome candidates on the respective institution and that the vacancy cannot be filled because of a split vote in the Commission.

The duration of the probation period should reflect the fact that appointed civil servants receive tenure. Tenure should be granted only to those civil servants who have served satisfactorily at least one year.

3.2. Guarantee of employment and causes of removal/termination of the CS relationship.

Art. 15.1 of the CSL sets the rule and principle of permanent tenure (non removability) for those having been appointed to a CS position in accordance with the established legal procedures (first entrants to the CS are nonetheless subject to a probation period of six months); the sole exception to this rule being the positions of chief of staff, for which the tenure is, according to Art. 34.3, limited to 4 years (renewable for

periods of 4 years, but not exceeding the retirement age)[14].

However, in other parts of the CSL the cases and situations in which a civil servant can actually be removed from his/her position, and therefore lose the status of civil servant[15], are numerous. This is a matter of deep concern since, in practice, it puts at serious risk the basic principles of civil service of legality, neutrality and impartiality, as well as the objective of creating a merit-based system.

Article 33 contains a long list of "grounds for releasing (removing) a civil servant from his/her position", which seems to have been continuously expanded since the adoption of the first version of the Law. This list puts together situations that are completely diverse, and in fact is more a list of situations of "termination" of the CS relationship" and corresponding status than a list of causes for removal from a position.

Some of the situations listed in art. 33.1 are quite obvious: resignation (the law says "personal application"); termination (loss) of the citizenship of the RA; reaching the retirement age; death.

Others have to do with health conditions: permanent incapacity for work (as declared by a court decision), temporary work disability for more than six months in a year (except for pregnancy or maternity leave); "catching" one of the illnesses that "may impede the performance of service duties" , which are also impediments for acceding the CS, according to art. 12.1 CSL (list of illnesses approved by the Government)

A third group refers to judicial decisions: criminal convictions or a court decision depriving the person of the right to hold a CS position (a particular one or anyone), as well as judicial declarations of incapacity or absence.

Acceding (by election or appointment) to a political, discretionary or "civil" position is a specific case of termination of the CS relationship, regardless of the right to enroll in the "CS personnel reserve" after leaving such positions.

A further group of "causes" of loss of the position is related to administrative reorganizations or liquidation of CS bodies, when the civil servant is not re-assigned to one of the new CS positions arising from them[16].

The CS position will also be lost (putting an end to the CS status and relationship) in case of failure to receive a positive result in the periodical "attestation" (regulated in art. 19)

Finally, there are a number of causes related to application of the disciplinary regime:

- Lack of compliance with some of the duties of a civil servant, as laid down in article 23 (only lack of submission of a declaration of income and reiterated "absence" from periodical attestation can be sanctioned directly with dismissal);
- Infringement of any of the prohibitions (*restrictions*) that apply to active civil servants, as laid down in article 24 (mostly related to incompatibilities, gifts, conflicts of interest, political neutrality and impartiality);
- Accumulation of other disciplinary sanctions in a period of one year (with several combinations detailed in the law).

Recommendations

Concerning the right to tenure, the rules concerning the effects of administrative reorganizations in the administrative situation of civil servants affected should be refined, so as to ensure the effective re-assignment of such civil servants to other jobs, in the same or other bodies.

[14] Before a recent amendment to the CSL, there was a limitation stating that the tenure of chiefs of staff could be renewed just once. Such limitation is now removed.

[15] Since the CS system in Armenia is mainly a job-based system, and notwithstanding the provisions concerning the existence of a CS Personnel Reserve (art. 21), removal from a CS position normally involves the loss of the condition or status of civil servant.

[16] It was reported that this a very common situation in which discretionary power to dismiss civil servants is almost unrestricted.

The discretionary power of the managers of Civil Service bodies to get rid of professional civil servants on the occasion of such reorganizations should be deeply reduced. Precise criteria should be established for identifying redundants and the rights of the civil servants in such situations should be subjected to clearer rules. If the objective is to build a stable "corps" of professional civil servants with a certain stability of tenure, the legislation should make it possible that removal from a particular position doesn't normally involve the loss of the status of civil servant.

The possibility to remain in the "civil service reserve" should not be limited to one year and some level of basic remuneration (for instance, the lower level corresponding to the group of the latest position held) should be guaranteed during the entire period of "reserve" (also as an incentive for the administration to quickly relocate the civil servants who are in this situation).

3.3 Classification of the Civil Service

Article 7 of the CSL provides for four classification groups: highest civil service positions, chief civil service positions, leading civil service positions and junior civil service positions. The highest group is divided into two subgroups while the other groups are each divided into three subgroups. The grades granted to civil servants reflect these groups and subgroups (Art. 8). It should be noted that each civil servant has the possibility to move up one grade without changing position no sooner than 3 years and no later than 5 years after acquiring the grade corresponding to his/her position (Art. 8 paragraph 5 clause 2 CSL). The respective higher classification grade corresponds to the lowest grade of the next subgroup. The criteria used for the classification are set out in a very general manner in Art. 7 paragraph 1 of the CSL and detail the level of responsibility, authority to take decisions, external contacts and representation, complexity of issues to be dealt with and creativity as well as knowledge and skills.

The general description of each group needs to be approved by the Civil Service Council. Job descriptions ("passports" of the civil service position) are established on the basis of these general descriptions. They include additional information about the necessary education and the required length of working experience (Art. 10 CSL). It is noteworthy that the minimum length of service necessary to occupy the various classification groups has been deleted since 1 January 2009 (Art. 10 paragraph 2 of the CSL) with the aim of reducing the impact of mere seniority. Approval of the CSC is also required for the schedule of all civil service positions in each of the various institutions ("roster" of civil service positions, Art. 9 CSL). In practice approval seems to be denied from time to time. It is unclear, however, whether the reasons for refusal are substantial or mere formal ones.

The classification system should not be seen as an isolated phenomenon. The system should correspond to an efficient and effective organization of the administration and to a fair and transparent remuneration system. The mechanisms to link the classification system with the organization and the remuneration system are organizational review and job evaluation. Organizational review is aimed at developing models for a rational and effective internal organization of public institutions including the establishment of flat hierarchies and adequate management spans. The purpose of job evaluation is to weight/evaluate the intrinsic value of the jobs taking into account the necessary know-how for the job, the degree of autonomy and initiative and the importance of the final contribution of the job to the overall results and its relative positioning vis-à-vis the other jobs. From a managerial and organizational point of view, job evaluation is crucial for any civil service system. There are however no indications that job evaluation based on a sound methodology is practiced in the Armenian system. In practice, the decision on the classification of a civil servant seems to depend largely on the respective minister. The terminology used for three out of four classification groups, "highest, leading and chief civil servants", indicates even to a certain extent, that there is an inflation of positions in the managerial levels. The reason for this inflation might be to compensate for the low level of civil service remuneration.

It must also be underlined that while important at a certain stage in the development and organization of the system established by the CSL, nowadays the relevance of these passports has decreased, since they are not an instrument that can provide solutions for the introduction of new and modern management systems.

Recommendations

The formal monitoring and approval of responsibilities by the Civil Service Council with regard to the classification system and to the rosters of civil service positions should be reviewed and upgraded.

Classification should be explicitly linked to job evaluation at least in each case a position becomes vacant.

3.4 Rights and Duties

Article 22 of the CSL includes a broad, though not exhaustive list of the rights of civil servants.

Some of these rights are directly related to conditions for the effective discharge of the tasks and duties corresponding to the position held: getting acquainted with the legal acts defining the tasks and duties linked to the position; receiving information and materials necessary for the effective performance of such tasks and duties; right to adopt the service decisions assigned to the position through the established procedures.

Others are related to the civil service status as such: access to all the documents contained in his/her personal file, the assessments of his/her activities and other documents, as well as the right to submit explanations concerning such documents and assessments; the right to get an upgrade of his/her Civil Service classification grade by the defined procedure; right to appeal the results of own attestations, including through judicial procedure; right to demand a service investigation by the defined procedure and cases; right to training at the expense of the resources of the state budget or other resources not prohibited by the legislation (without loss of job or salary); right to legal protection, including from political persecutions; or the right to participate in the examination of issues of the organization and improvement of the Civil Service and to submit proposals thereon.

Finally, a third group of rights are related to general employment conditions: right to perceive the remuneration set for his/her job or position and other payments or economic compensations regulated by the legislation (for instance, travel costs and per diem for business trips); right to safe and healthy working conditions; right to social protection and social security (including compensations for disability or compensations to his/her family in case of death); annual paid vacation; etc.

However, a general definition is missing. Such a definition could refer to the right of civil servants to fair and equitable treatment with regard to all aspects of personnel management, career development, remuneration and legal protection. Further particular rights, notably those with social relevance, are spelt out in other legislation, especially in the labor legislation (Art.s 26, 28 of the CSL). Tenure as one of the central rights of civil servants is mentioned rather incidentally in Art. 15 paragraph 1 of the CSL (as an exception chiefs of staff are appointed currently for four years).

An important desideratum for inclusion into the list of rights would be reference to the right to join trade unions and other public service associations pursuing objectives in the area of public service as well as the right of a civil servant to exercise his/her political rights outside working hours and without interfering with the duty of political neutrality in office. This follows indirectly from the regulation in Art. 24 paragraph 1 lit d. CSL prohibiting party activities when carrying out service duties.

A particular problem in this area is the fact that common labor law (the Labor Code) still applies to the civil servants in a number of areas related to general working conditions. Therefore, there are a number of specific rights and entitlements that are not included in the legislation on civil service (working time, leaves, vacations, etc.) and this forces numerous consultations with the Ministry of Labor, what is perceived as a lack of authority of the CSC to regulate the specific conditions of enjoyment of these rights and entitlements by the civil servants. It might be worth considering the inclusion of the necessary provisions with regard to these rights and entitlements in the body of the CSL (or, even better, in secondary legislation), so as to unify in a single body of legislation (including regulations issued by the CSC) all aspects of the legal regime of the professional work of the civil servants.

The duties corresponding to the rights of civil servants are spelt out in article 23 and 24 of the CSL. The duties include: compliance with the Constitution, the laws and other legal acts; carrying out the tasks assigned to the position by the legislation in an accurate and timely manner and reporting thereon; carrying out the assignments given by superior bodies and officials (art 25 sets the rules and procedure in case of unlawful assignments); dealing with citizens' applications, petitions and complaints through the defined procedure and within the time period (set by the norms); observing the internal labor disciplinary rules and the ethics rules of the civil servant (not enumerated as such in the CSL itself); observance of the legislation

on state, service or other secrets protected by law (even after finishing civil service); how to submit a declaration of revenues/income in the way prescribed by the law; keeping acquainted with the professional knowledge needed for a proper performance of the tasks linked to the position; participate in mandatory attestation and training.

Again there is no general definition like "the civil servant shall be obliged to perform his/her activities in full compliance with the principles set out in Art. 5 of this Law, he/she shall be personally accountable for the legality of his/her activities".

Article 24 represents a rudimentary approach to a civil service integrity system dealing with conflict of interest, secondary occupation, gifts, incompatibilities and related issues. The main stated "restrictions" (prohibitions) are: performing other paid work, with the exception of scientific, pedagogical, and creative work[17]; being personally engaged in entrepreneurial activity[18]; being the representative of third persons in relations connected to the body where he/she is employed, or which is immediately subordinated to or supervised by himself/herself; using his/her service position in the interests of parties, non-governmental organizations, including religious associations, proselytizing in their favor or implementing other political or religious activities while carrying out his/her service duties; receiving an honorarium for publications or speeches arising from the performance of his/ her service duties; using material and technical, financial and information resources, other state property and service information for non-service purposes; receiving gifts, amounts of money or services from other persons for his/her service duties, with the exception of the cases envisaged by the legislation; working together with close relatives or in-laws (parent, spouse, child, brother, sister, spouse's parent, child, brother and sister), if their service is connected with direct subordination to or supervision over one another; concluding property transactions as a state representative with those close relatives or in-laws, except for the cases envisaged by the legislation.

By a decision of the CSC, the rules of ethics of the civil servants were adopted with the aim of "regulating the peculiarities of relations of behavior and attitude of the civil servants based on the general moral principles". Besides existing doubts about the nature and enforceability of this regulation, its content also requires deep review. Such review will also be necessary to bring in line these rules with the draft Law on Public Service, when adopted.

The integrity system is expanded considerably in the draft Law on Public Service, which attempts to provide a comprehensive approach to this topic. However, the draft would benefit considerably from a thorough review with the aim of aligning the proposals to practices in OECD countries (for details see below 3.6).

An aspect that requires specific consideration in this context is the disciplinary regime, which is, alongside the criminal and civil responsibility (liability) of the individual public/civil servant (not mentioned in either of the two laws), the ultimate guarantee of consistent and effective implementation of all those norms.

The disciplinary regime for the Civil servants is regulated in art. 32 of the CSL, which enumerates the types of disciplinary sanctions that can be imposed (preliminary warning, reprimand, severe reprimand, salary reduction, removal from the position, downgrading). This article also sets a number of additional rules on the exercise of disciplinary action, including the specification of the authority competent for imposing such sanctions in each case. However, the content of this article is far from meeting minimum EU standards on this issue.

First, this provision does not contain any list or description of disciplinary infringements, other than a generic reference to "*not performing or improperly performing service duties for an invalid reason, as well as…exceeding service authorities, violating the internal rules of labor discipline*"; nor does it establish a correlation between infringements and sanctions, or any criteria for assessing the severity of an

[17] Within a period of one year after his/her removal from the CS position, the Civil Servant cannot accept employment with an employer or organization over which he/she had implemented immediate control as a CS.

[18] Within a period of one month after appointment to a Civil Service Position, a Civil Servant having 10 % or more shares in the statutory capital of any commercial organization, is obliged to hand it over for entrusted management by the procedure defined by the legislation. The Civil Servant shall have the right to receive income from the property handed over for entrusted management.

infringement so as to ensure proportionality between infringement and sanction.

Some of the answers can be found in the following article (art. 33, on "Grounds for releasing/removing a civil servant from the position"), which gives some clues as to the infringements that may give rise to the removal/dismissal from the position (which is the strongest disciplinary sanction that can be imposed, since it bears the loss of the status of civil servant). Such infringements are: 1) failure to submit the mandatory declaration of revenues/income; 2) failure to comply with other restrictions (prohibitions) applying to the civil servants (those laid down in art. 24); 3) failure to participate in mandatory attestation (three times); 4) accumulation of disciplinary sanctions in one year (several combinations possible).

It is to be noted that neither the most serious infringements of the general obligation of performing the duties in compliance with the laws (which is mentioned in art. 23 as the first duty of a civil servant), nor infringements related to the relations with citizens (an element that is, in general, missing in the CSL) are explicitly mentioned as possible causes for removal/dismissal.

Second, although the article contains the basic principle of "audience" to the civil servant (through a *written explanation* about the facts or his/her behavior), two rules concerning the statute of limitations (same for all types of infringements, no matter their seriousness), and the principle "*non bis in idem*", the detailed regulation of the disciplinary procedure is otherwise entirely referred to the CSC (however, the article is extremely detailed when it comes to identifying the authorities entitled to impose the sanctions).

As for the public servants, the sole "common" rules or elements of disciplinary regime envisaged in the draft Law on Public Service are the very generic definitions of what can be subject to disciplinary action; the right to audience – in writing – "unless otherwise foreseen by the law"; and the principle that only one sanction can be imposed for every infringement. The rest – including the specification of the infringements which may be sanctioned with dismissal, other than infringements of the common "restrictions" – is referred to in the legislation specific to every "service".

Recommendations

Although many of the standard principles and rules on civil service ethics, statutory duties, incompatibilities, prohibitions and restrictions, can be found in various articles of the CSL and the draft Law on PS, the overall conclusion is that a clear and consistent understanding is missing regarding ethical principles and corresponding duties inherent to the public/civil service, statutory obligations related to work in a hierarchical organization, specific prohibitions and restrictions linked to both of them and the mechanisms through which compliance with all those ethical principles, duties and prohibitions/restrictions is to be ensured and non-compliance adequately prevented and, if necessary, punished. Therefore, the lists of civil servants' rights and duties should be reviewed and amended. The integrity system defined in the draft Law on Public Service should be aligned with best practice in OECD countries in order to improve the implementation of the rules (see below - 3.7).

The legal regulation of the Civil Service disciplinary regime (infringements, sanctions, procedural rules) is unsatisfactory and should be substantially improved. In particular, infringements related to performance of service in violation of the Constitution and the Laws – namely in violation of human and citizens' fundamental and constitutional rights – and infringements related to service obligations towards the citizens, should be properly and clearly defined as serious disciplinary infringements, that will be subject of appropriate sanctions.

Having matters related to rights and duties of civil servants regulated by the labour law should be avoided as much as possible because it is, usually, a source of inadequacy, inconsistency and rigidity.

3.5 Grievances

Article 22 lit k. CSLaw stipulates the right of civil servants to appeal against the results of the competition and of the attestation procedure. These and other complaints relating to the civil service legislation are dealt with by the Civil Service Council (art. 37 paragraph 2 lit d of the CSL; art. 41 CSL; and CSC Decision of 22 November 2002 on setting out the order for conducting service investigations). The complaints and service investigation mechanisms seem to be quite effective because the involvement of the administrative courts is an exception. There has not been any lawsuit dealing with recruitment and

selection decisions during the last seven years, and the only cases brought to court refer to dismissal in the context of restructuring of institutions.

A problematic aspect of this approach is that the CSC has to examine complaints against decisions, which were originally also taken by the Council. This might appear to affect the impartiality of the Council. However, the issue could be mitigated by providing procedural "firewalls" excluding those persons from dealing with the complaint who were involved in the original decision. Furthermore, it should be taken into account that the appellant is, of course, entitled to take legal action against the appeals decision of the Council.

3.6 Professional Independence from Politics

Art. 5 lit e. of the CSL stipulates political restraint as one of the main the principles of the civil service. This involves – among other elements – the prohibition for the civil servants to use their positions in the interest of parties, to proselytize in their favour or to carry out any political activity during the exercise of their tasks and duties; and a correlative right of the civil servants to enjoy legal protection (from the state) in case of political persecution. This principle is also reflected in the Code of Ethics and its infringement can be sanctioned with removal from the position.

It would have been preferable, of course, to refer to political neutrality in this context, and not only to restraint. Impartiality is not mentioned at all in the CSL as a basic principle of civil servants´ behaviour. Civil servants are not, however, restricted with regard to exercising their political rights outside of the office. The possibility of restrictions with regard to joining parties is provided for in art. 28 of the Constitution for groups of the public service which are not subject to the Law on Civil Service (armed forces, police, national security, the prosecutor's office, and bodies as well as judges and members of the Constitutional Court).

In practice, it seems that porosity between the public service system and the political system is high in Armenia. According to the Anti-corruption strategy, excessive discretionality in the final stages of the recruitment processes (appointment to the positions) still persists, highlighting the fact that such appointments are formally done by officials holding political or discretionary positions, thus creating room for some sort of political/party influence.

Considering the linkage between holding a position and civil service employment and status (career progression, remuneration and decision-making capacity), it is possible to conclude that the real chances for a civil servant to remain free of political influence in some specific moments and decisions is limited.

3.7 Integrity

The rather modest approach to civil service ethics in Art.s 23 and 24 of the CSL has been upgraded considerably in the draft Law on Public Service which is an attempt to put an end to the extreme fragmentation of legal regimes on these (and other) issues, so as to establish a set of clear basic rules and standards that should be uniformly and consistently applied across the various sectors, bodies and professional groupings of the public service (state and local). It aims also to extend the application of such ethical principles and rules to the holders of non-professional positions (political, discretionary and state/civil positions).

In fact regulating economic incompatibilities whistle blowing, conflict of interest and ethics management seems to be the second main objective of the draft Law besides providing a general public service framework. The draft law mentions all the key issues which are relevant in the area of civil/public service ethics, however, some issues need further clarification, differentiation and elaboration to be operational in practice (for an example see the footnote to "whistle-blowing"). Even if detailed comments have been set out already in a previous Sigma paper in which the draft law was analysed, it is worth underlining the following:

- Restrictions for civil servants' involvement in economic activities: art. 26 paragraph 1 of the draft Law deals with the prohibition of paid outside activities of civil servants. The only exception is for scientific, pedagogical, and creative work. This clause needs further elaboration. For instance, it is

necessary to clarify: if secondary occupations within the public sector are excluded; if it is required (and how) to notify admissible ancillary activities to the superior; how to deal with the management of the personal property (without entrepreneurial activities).

- Gifts policies: the draft law deals with "gifts" in art. 26 paragraph 1 no.7 and art. 36. Gifts can be given in return for something the public servant has done (as set out in the provision) but also to influence future activities (e.g. decision in procurement procedures). This should be equally excluded because the public servant might not feel free and independent to carry out his/her job in the future In principle, any payment, property, service or other benefit with material value can be considered as a gift[19].
- Regulation of the conflict of interest: art. 26 and 35 of the draft law cover the issue of conflict of interest in a very general way. The OECD has issued Guidelines for Managing Conflict of Interest in the Public Service (OECD, Managing Conflict of Interest in the Public Service, OECD Guidelines and Country Experiences, 2004). It is recommended to use these guidelines for policy formulation and implementation.
- Incompatibilities in decision-making: the draft law provides for disclosure to the superior in case of actual, potential and apparent conflicts of interests. The draft does not, however, provide for counselling mechanisms to give advice to civil servants with regard to ethical issues.
- Incompatibilities in employment after leaving the civil service: post employment restrictions are covered by art. 26 paragraph 4 of the draft. The scope of this provision should be expanded (e.g. application in case of any type of termination of employment in the public service; temporary prohibition of all forms of post employment activities in an area corresponding to the former field of responsibility).
- Administrative mechanisms to prevent corrupt activities and legal remedies against corruption or misbehaviour: the administrative mechanism to investigate and to decide on ethical violations is provided for in art. 32 of the draft Law. According to this provision, ethical commissions shall be established in the various bodies to deal either on its own initiative or upon application following alleged unethical behavior. The findings of the ethics committees are the factual basis for a subsequent disciplinary procedure. Counseling mechanisms aimed at providing possibly confidential advice to public servants with regard to ethical questions are not provided for in the draft Law.
- Prosecute and denounce (including whistle-blowing) of corrupt activities: whistle-blowing as set out in art. 25 of the draft law could be a relevant instrument in fighting corruption and other administrative wrongdoing. However, the instrument will be effective only if the procedure provided for in the legal text is adequate. Some doubts may be raised with regard to this question[20].

[19] Further details are described in the following publication: OECD - Managing Conflict of Interest in the Public Sector, 2005, p. 45 ff. It is recommended to base the "gifts policy" on this approach. This approach distinguishes "reportable" gifts from those gifts, which are not required to be reported by the public servant who receives them.

[20] The definition in paragraph 1 of what shall be disclosed is very much focussed on illegal activities (which probably need to be reported already on the basis of other laws). It is recommended to include a more comprehensive list for mandatory reporting of integrity breaches. The procedure should be set out clearly step by step: definition of the authority to whom, in the first instance, the misconduct is to be reported (internal report); the authority to whom the conduct is to be reported in the event that the officer who should be contacted in the first instance is disqualified (because, for example, the officer is a party to the breach of integrity); an obligation for the competent authority within the organization to investigate the allegation and to report the results of the investigation to the informant within a reasonable period of time; an opportunity for the civil servant to report the breach to an external and independent agency (ethics committee, ombudsman) in the event that the authorities process or assess the internal report in an incorrect manner according to the informant; this agency / committee investigates the report and advices the responsible administrative body; legal protection for civil servants who report a breach in good faith and in accordance with the procedure, and for confidential counsellors who perform their duties in accordance with the regulations.

Regulations of corrupt activities of civil servants as criminal offences: the Criminal Code already criminalizes the giving and taking of bribes. Additional clarifications are envisaged in the Anti-Corruption Strategy and its Implementation Action Plan for 2009-2013. It is worth mentioning that Armenia is a participant of the Istanbul Anti-Corruption Action Plan and one of the objectives of this network is the criminalization of corruption. Furthermore, as stated by the Anti-corruption Strategy, "the Republic of Armenia has ratified the main international conventions and agreements establishing the standards for criminalization of corruption, which has resulted in making amendments in the Criminal Code. Nevertheless, it is necessary to continue bringing the RA legislation in compliance and harmonizing with provisions of international documents".

Regarding anti-corruption policies, the Anti-Corruption Strategy and its Implementation Action Plan for 2009-2013 updates the 2003 Programme. However, it seems that the practical impact of these efforts is insufficient. In 2009 Armenia's Transparency International Corruption Perception Index score dropped again, this time from 114 to 120. Armenia as perceived by business people and international analysts is a state where no progress has been made to reduce the level of corruption.

Recommendations

The most important precondition for a successful anti corruption policy is, of course, that there is strong commitment from the very top for implementing the relevant rules adequately, and that the very top provides an outstanding example of leadership with regard to ethical behaviour.

The integrity system developed in the draft Law on Public Service should be reviewed taking into account best practice of OECD member states.

The fact that in a number of areas the legislation to be applied to professional public servants is mixed up in the same legal texts with norms applying to political and discretionary position, creates a lot of confusion and must be avoided.

Better understanding concerning civil service neutrality and conditions for protecting and enhancing it need to be developed and implemented. Quality of law matters, but real implementation is the most important issue.

3.8 Salary System and Pay Determination

Other than a provision on the right of every civil servant to a payment adequate to his/her work, without discrimination, the CSL does not contain any other substantive rules on the remuneration of civil servants, which are dealt with in a separate Law (the Law on Remuneration of Civil Servants). This Law does not include the whole of the public administration, but only the civil servants as well as judicial servants and state servants from the National Assembly. It might be desirable to expand the scope of the law and to establish a unitary pay system for all branches of the public service. This would complement the approach taken by the draft Law on Public Service.

At present, the remuneration system for civil servants consists of a monthly salary, calculated on the basis of a common base amount[21], which is multiplied by a coefficient that is set for each position group (grade), sub-group (class) and step/level (reflecting years of service in the relevant group and sub-group)[22], plus a one-time bonus that can be paid once a year (in February) for an amount equivalent to 1.2 of the monthly salary. The highest monthly salary in the CS is 235600 AMD (coefficient: 5.89)[23]

Thus, the salary structure for the CS is legally defined and openly disclosed (it is enshrined in the annual budget law), but still too low to ensure a proper remuneration of civil servants when compared to the private sector. The low level of remuneration in the civil service is perceived as one of the main obstacles

[21] 40000 AMD, equivalent to about 70 €

[22] The salary tabloid comprises 11 scales corresponding to the subgroups of the 4 position levels. Each scale comprises 11 steps of around 3 %, the first 4 annually, the following 3 biannually and the last 3 triannually, so flattening the life-earning curve.

[23] About 412 €

for recruiting and retaining qualified staff in the civil service, as well as one of the root causes of corruption in the public administration sphere.

It is also to be noted that different groups of the Public Service, and even of the more limited "State Service", have different remuneration regimes. Apparently all these remuneration regimes are based upon the same "philosophy" (a system based upon a basic salary and multiplying "coefficients" that are supposed to reflect all the other aspects included in the total pay – personal grade, rank, seniority; level, characteristics and particular conditions of the position held, etc.); and the differences between groups are not substantial (except for Judges and Diplomats).

Article 31 of the CSL provides for monetary and other incentives to reward length of service and excellent performance. For these bonuses, 10 % of the annual salary budget is reserved (two thirds of this sum is decentralized to the ministries, bodies and Marzpetarans). In the strict sense only civil servants can profit from such bonuses whereas technical staff and other groups can only be awarded bonuses out of savings through unfilled vacancies and similar cases. Precise criteria are not defined in the Law, leaving the decision more or less to the discretion of the person responsible for appointing the respective civil service. The question is whether this highly flexible approach corresponds to fair and equitable treatment and whether it is really suitable to motivate civil servants to improve performance[24].

Remuneration of the non-civil service staff (including discretionary positions below the position of deputy minister, such as advisers) is set annually by a Government Decree.

There is no process of collective negotiation in any branch of the public service.

The Program of the Government envisages "the development and implementation of a public servants' remuneration strategy that will reinforce a high-quality public service system". It seems that one of the elements of this strategy is the introduction of some system of performance-related pay, based upon the performance assessment system which is at present being introduced and pilot tested as part of a World Bank-funded project being implemented by the Government's Office. This aspect has to be handled with care given the ambivalent or even negative experiences of other countries with performance related pay in the public sector.

Concerning transparency in the remuneration system, it seems that such transparency does exist as far as the salaries paid out of the central government's budget are concerned. However, the presence of a certain number of extra-budgetary resources managed by different public bodies and the possibility that some of these resources are actually being used for improving the remuneration of some groups of public servants cast serious doubts on the transparency of the remuneration system as a whole.

Recommendations

An effort is necessary to increase the attractiveness of civil service through more competitive salaries in relation to those of the private sector, within the fiscal capacity of the country.

Transparency in awarding bonuses should be improved and strictly controlled in order to ensure fairness and to control costs. The basic principles and conditions for awarding bonuses must be clearly established by law, leaving to secondary legislation the definition of procedures and other details.

Introducing mechanisms of performance-related pay without ensuring good regulations, professional managers and transparency puts at risk the overall fairness of the salary system.

Attractiveness of the civil service should also be increased using also other non monetary incentives. Top civil servants especially could be attracted and motivated by sharing policy and decision-making powers, by opportunities for developing their personal skills, by coordinating projects, by being socially recognized as good professionals, etc.

3.8 Performance Appraisal

[24] According to the Anti-corruption strategy, "some public administration bodies have off-budget resources defined by law, which may also be used for incentives for state servants**.** Even though such an approach improves the living standards of state servants working in bodies with off-budget resources, it also creates unequal conditions for servants in a consolidated state service system and gives rise to additional corruption risks."

The Armenian approach to performance appraisal as set out in art. 19 of the CSL dealing with "attestation of civil servants" add a further variant to the diversity of appraisal mechanisms.

First, with regard to the frequency: regular attestation is carried out according to art. 19 clause 2 every three years (although "extraordinary" attestations can also take place – after one year of the last regular attestation – if so decided by the hierarchical superiors of the civil servant). Every year at least one third of the civil servants working in a body shall be the subject of mandatory attestation.

Second, with regard to the method: responsibility for attestation is not assigned to the immediate or higher superior of the civil servant concerned, but to Attestation Commissions, composed similarly to the Competition Commissions (art. 40, CSL). However, the procedure before the Attestation Commissions, which might include testing and an interview, is based on material provided by the immediate superior (art. 19 clause 8).

The third difference relates to the possible results of attestation: the Attestation Commissions do not decide on grading the performance of the civil servant concerned, but only on his/her conformity to the position occupied (art, 19 clause 12). In the case of non-conformity, the civil servant concerned shall be released from office. The civil servant is entitled to submit an appeal to the CSC in case of disagreement with the decision made by the attestation Commission.

From a managerial point of view, it seems to be questionable whether the three years period for attestation is really appropriate in order to address potential shortcomings with regard to performance as well as to provide recognition or other rewards for outstanding work. And secondly, a closer examination should be made to ascertain whether the possible consequences of attestation, either conformity or non-conformity to the position, are differentiated enough.

It must be underlined that there is no provision in the CSL that links the result of this periodical "attestation" to professional promotion. In the Law, the only two possible results of the attestation is "conforms to the position occupied" (and therefore may continue holding it); or "doesn't conform to the position occupied" (leading to removal/dismissal). Furthermore, attestations are not able to identify civil servants' training needs.

Acceptance of the attestation among civil servants seems to be rather low. Many civil servants seem to think that the attestation is a mere bureaucratic exercise which is not suitable for the intended purposes.

The shortcomings of the current attestation procedure were taken into account when designing the new and rather ambitious rules on "appraisal of institutions and individual civil servants" in the Government Guidelines adopted on 30 April 2009. This new approach to appraisal is based on work plans to be developed for ministries, their subdivisions and individual civil servants. In the appraisal procedure, quality, quantity and timeliness of performance are measured against these work plans. The new procedure is not directly linked to career development. However, there seems to be a linkage with payment of variable parts of the remuneration. This procedure is currently in the pilot phase. The plan is that all ministries and Marzpetarans use the new system in 2010.

Recommendations

The new performance appraisal procedure should replace the current attestation procedure after they have successfully carried out the practice test. This process should be accompanied by focused training measures for evaluators and information for civil servants. The respective legal provisions should be included in the Law on Civil Service, because mere guidelines are inappropriate to introduce new procedures with relevance for the status of civil servants. Special attention should also be paid to the administrative burden imposed on managers and civil servants due to the complexity of the system.

3.10 Promotion and Mobility

In the Armenian system, seniority or length of service, calculated according to art. 17 of the CSL play a crucial role with regard to promotion to the next higher classification grade without changing the position (art. 8 paragraph 5). Seniority is also relevant to the content of the passport of the civil service position defining the requirements for a specific position (art. 10) and with regard to special rewards (art. 31).

The impact of seniority on promotion corresponds to the traditional approach in many and especially the continental civil service systems. One of the main advantages of seniority is that this principle is easy to apply and at the same time fully accepted by the majority of civil servants. However, it should be noted that this rather mechanistic approach has been modified during the last decades by more performance related aspects. This is especially relevant for cases of promotion to the next step on the pay scale or to a higher classification grade without changing the functions. A common model to deal with these cases is combining quantitative factors (years of service) with qualitative factors (quality of performance as ascertained by performance appraisal).

Mobility refers to a change of position occupied by a civil servant. Two aspects have to be distinguished: horizontal and vertical mobility. Horizontal mobility refers to the transfer or secondement[25] of a civil servant to a position with different, but comparable functions and with (in most cases) the same title in the same or in another administration, while vertical mobility refers to the appointment to a higher position with different functions and with a different title either in the same or in another administration. This type of mobility is also called promotion.

Mobility is not only an instrument of career development of the respective civil servant meeting his/her individual career aspirations, but it is equally and even primarily a management instrument to improve the efficiency of the institution by enhancing the competencies of staff members, to deal with difficulties arising from reorganization and restructuring of institutions – since it reduces opportunities for redundancy - and to serve the public interest by improving the quality of services delivered by the public administration. Therefore, flexibility with regard to mobility is equally in the interest of civil servants as of the management, assuming that certain rights of civil servants are respected.

Filling vacancies in the "out of competition procedure" is the most common case of horizontal and to a certain extent even vertical mobility within the same institution. Another example is provided by art. 20 paragraph 7 of the CSL dealing with secondment as an instrument to enhance the professional knowledge and skills of the respective civil servant.

By contrast, mobility of civil servants from service in one institution to service in another institution does not seem to rank high among the priorities of the Law. At least there is no explicit provision dealing with the issue. However, if employment relations of civil servants are with the state and not with the particular institution, this kind of mobility should not create any difficulties in principle. In fact, increased flexibility with regard to this type of mobility of civil servants would be highly desirable to meet the management objectives mentioned above. In certain cases, especially if secondement or transfer is only for one or two years, mobility should be even possible without consent of the civil servant concerned.

Article 17 of the draft Law on Public Service goes explicitly further than the Law on Civil Service and provides for "rotation" of public servants. The term "rotation" might be misleading, but basically it is very important to enhance the possibilities for mobility within the service.

Recommendations

Mobility should be assumed as an important tool for human resources policy, development and management.

In the current situation of fragmentation of the public service between different "Services", each one with its own legislation and without a common authority for the management or coordination of the entire system (or at least the part of the system that depends on the Government), it is difficult to think of the possibility of having a model of mobility that could be implemented across the whole public service.

The Civil Service being – apparently - the only part of the system that is cross-ministerial and has a coordinating authority (the CSC), it would make sense to include in the ongoing reform of the CSL some provisions for enhancing horizontal and vertical mobility of civil servants from service in one institution to service in another institution. The consent of the civil servant concerned should be

[25] Transferred civil servants become fully part of the recipient organizational unit or administration; seconded civil servants are only "on loan" in the respective recipient organizational unit or administration

required only in cases of permanent or at least long term transfer (option: more than two years). An important precondition should be that seniority is not lost in case of transfer/secondment from one service to the other.

3.11 Training

It is common practice that public servants have the right to receive and to undertake training at the expense of the state. Article 20 paragraph 2 of the CSL corresponds to this practice by providing for mandatory training which each civil servant is expected to undergo once every three years. Training shall take place upon request of the responsible chief of staff (paragraph 3) on the basis of a programme developed by the CSC. Basically the CSL contains enough legal provisions necessary to deal appropriately with training.

In practice, approximately 40 training courses are offered per year, with 2500 civil servants participating. Training is delivered by training institutions selected and accredited by the CSC. The State Administration Academy (established in 1994), which is now attached to the Civil Service Council, is one of these institutions. For training community public servants, the Ministry of Territorial Administration launches a competition to select the training provider. For the time being, the Academy is the selected institution.

The CSC budget has a separate budget line for training. Funds are provided by the Ministry of Finance based on the estimated cost (12,000 AMD[26]/week of training/trainee) and assuming than 1/3 of the whole civil service will undergo training each year.

Shortcomings in practice seem to be that the requests for training are generally not based on a systematic training needs assessment, that courses are not tailor-made to the real needs of the civil service[27], and that the CSC does not have the adequate resources for planning the programme and assessing the delivery of training. Another problem is the lack of visible linkages between training and career development, which accordingly leads to a low level of interest on the side of civil servants.

In general, there seems to be a gap between the training needs as perceived by the managers of public administration bodies (frequently specialized and increasingly related to practical working skills) and the actual supply of training offered by the public institutions responsible for responding to those needs (with a tendency to the development of more "academic" courses and diplomas). This gap may become even more evident in the context of the current Government's intentions to move towards a more managerial approach to public service.

All these shortcomings are, of course, not related to the legal situation, but to the practical implementation of the provisions.

Recommendations

A more proactive approach to training from the CSC as well as from the chiefs of staff and training providers, especially from the Academy would improve the situation considerably.

This proactive approach should be based on a comprehensive training strategy to be developed by the CSC and to be adopted by the Government. Items to be dealt with in this strategy should be a system of training modules for the various groups of civil servants (including the top level and going beyond legal training), methods for training needs analysis and methods for systematically evaluating the impact of training.

Training managers should be a priority since their managerial capacities are a critical factor for success. A special approach for training of top and middle level managers is necessary for this purpose and training should be compulsory and a requirement for being appointed or, at least, for being reappointed.

The State Administration Academy should be restructured in order to become a real training school – not providing academic degrees, masters or PHDs - focused on professional training in order to put it at

[26] About EUR 23,5

[27] A practical example is a recent software training delivered by the Academy. This training dealt with software used by the Civil Service Council but not used anymore by the Government.

the service of the development and modernization of the Armenian public administration. Subjects such as European and international relations, ethics, anti-corruption, management, quality of public service delivery, etc. must be included (or improved) in the training programs.

A methodology for assessing training needs and the impact of training must also be developed.

4. Efficiency in Management of Public Servants and in Control of Staffing

4.1 Management Capacity

The Armenian Civil Service Council as provided for in Article 37 ff of the CSL is an example of a rather strong independent central management capacity for the civil service, however, not for the other services which are not covered by the Law on Civil Service.

The independence of the seven members Council is secured by appointment through the President, by a separate budget (Art.37 paragraph 5) and by a sufficiently precise list of reasons entitling the removal of Council members (Art. 37 paragraph 8). Further strengthening of the Council is intended by providing an advisory vote of the Council Chairman in Government meetings (Art. 37 paragraph 3). It enjoys full organizational, functional and budgetary autonomy and its decisions are only subject to judicial review and control.

The Council has a broad range of responsibilities, including regulatory, monitoring and supervisory powers, as well as decision-making powers in individual cases explicitly mentioned in the Law. These responsibilities do not include, however, any powers with regard to a coordinated management of the top level civil servants.

The CSC is entitled to undertake legal actions against any decision of other public authorities on CS matters and in a number of cases. It functions as an instance of appeal on civil service matters. Its agreement is needed for the application of disciplinary sanctions to civil servants (except for the minor ones) and plays a major role in the adoption of the Code of Ethics for the civil servants and in the monitoring of its compliance through the Ethics commissions that are established in each state body.

The professional ethos of the Civil Service Council is primarily shaped by the institutional independence of Council members based on appointment by the President and enabling them to act as control mechanism *vis a vis* the Government and other political demands. The evaluation of the "customers" of the Council varies between "positive cooperation" and "does not impede our work".

The decentralized management functions in the bodies employing civil servants are generally exercised by the Chief of Staff of the respective body (Art. 39 CSL). Special regulations are provided for management decisions concerning the highest civil service positions. Except in the offices of the President and the Government/Prime Minister, the position of Chief of Staff is a Civil Service position (professional) and their holders are civil servants of the highest grade.

In practice one of the major problems of chiefs of staff seems to be that they feel overburdened with technical management issues, which does not leave much room for a conceptual approach to human resources management.

Practical and legal prerequisites which should be in place to ensure efficient and effective operations of an independent central management capacity are:

- A high degree of political commitment from the top of the Government for the development of a merit based, professional and politically neutral civil service.
- General acceptance of the notion of a merit based, professional and politically neutral civil service and the need of common standards guiding personnel management.
- A balanced distribution of monitoring, regulatory and management responsibilities between the independent capacity on the one side and the Government and the ministries on the other side.

- Good cooperation with the Ministry of Finance aimed at the shared opinion that civil servants should be perceived more as a productivity factor with regard to delivering services than as an expenditure item.
- Sufficient allocation of human and financial resources for the execution of central management functions.
- Adequate counterparts for personnel management in the various state authorities.
- Appropriate instruments to enforce management decisions.

A thorough review of the rights, duties and activities of the Civil Service Council is recommended in order to confirm the degree to which the Council corresponds to these criteria and its ability to answer to new expected challenges (the possible adoption of the draft Law on Public Service). As far as it was possible to assess, the result is moderate: some conditions are clearly in place while others are quite imprecise or even contradictory.

Recommendations

The institutional role of the Civil Service Council within the overall system should be evaluated in a separate review. The review should focus on two issues: a. whether the confinement of the Council to civil service management is still appropriate in times when the draft Law on Public Service attempts to establish common standards for the whole of the public service; and b. whether the distribution of powers (including the power to issue civil service secondary legislation, see above) between the Government and the Civil Service Council is adequately balanced.

4.2 Staffing and Control

The rosters of civil service positions within the various institutions need to be approved by the Civil Service Council according to Art. 9 paragraph 1 of the CSL; and job descriptions ("passports") of civil servants are drafted on the basis of general guidelines for each group developed by the CSC (Art. 10 paragraph 1). This is, of course, only one facet of manpower planning and only a piecemeal approach at a rather late stage. The initiatives for reorganization and staffing are in principle submitted by the particular institutions to Government or to the Prime Minister, while the Civil Service Council is involved only in the final stage for formal approval. The Law does not provide, however, for consolidated manpower planning for the whole of the public administration.

The most important role in staffing and controlling numbers is performed by the Ministry of Finance (budget department). Their opinion is mandatory and usually determinant in relation to any proposal or initiative taken by ministries or other governmental or state bodies involving changes in their staff (increases in the number of staff needed for some functions, establishment of new units to deal with additional functions assigned by the laws. The Ministry of Finance (MoF) as such does not have any direct statutory power or responsibility on staffing issues. In fact, decisions of this kind are taken by the Government or the Prime Minister (or, in some cases, the President), based upon the justified proposals submitted by the respective body and in view of the availability of the necessary financial resources (as indicated by the MoF). Thus, the CSC only intervenes at a later stage, once the staff increases or the administrative reorganizations have been decided upon and in relation to the necessary classification of the new CS positions to be created, the approval of the "passports" for such positions and thereafter intervening in the process of recruitment of the position holders, in the way regulated in the CSL.

Therefore, in the Armenian state administration there does not seem to exist any structure or body holding an overall and cross-government responsibility for human resources management as such. It seems that, concerning overall staffing issues, it is the Government's office that is the focal point for the study and elaboration of the necessary policies and decisions, as part of a broader responsibility for the overall management and performance of the administrative apparatus depending on the Government.

The responsibilities of the CSC have, on the one hand, a wider scope (because the Civil Service covers not only the administrative bodies depending on the Government, but also other state bodies such as the Presidency or public bodies that are independent from the Government); but on the other hand are

narrower because such responsibilities are limited to the regime applicable to the positions reserved to the civil service (which, as already mentioned, covers just part of the overall state service).

Other than this, as pointed out in the Anti-corruption Strategy 2009-2012, the management of human resources in both State and Local self-government bodies seems to remain pretty weak and still very much linked to the implementation of legal rules.

Recommendations

More comprehensive manpower planning for the public sector should be introduced. To what extent the Civil Service Council could be involved in this manpower planning process is a matter to be considered as well.

The information system that could be useful for planning coherent human resources policies and for supporting its implementation and control needs to be improved.

4.3 Staff Representation

The right to form and to join trade unions is guaranteed by Art. 28 of the Constitution. In practice there is, however, no specific civil service trade union to act as an advocate of the interests of individual civil servants**.** The objectives of the existing unions or service associations are different (e.g. the Union of Armenian Government Employees). They are involved informally or by memoranda of understanding in the reform processes (developing training modules, drafting texts, etc) and by providing professional expertise. The focus of these organizations is more on a systematic approach to civil service issues than on protection of individual rights of civil servants. They can be considered as constructive partners of the Government and of the Civil Service Council and not as pressure groups.

Neither the Law on Civil Service nor the draft Law on Public Service covers the issue of the participation of public service personnel or their representatives in regulatory and management processes. This includes also the involvement of trade unions in collective bargaining with regard to service conditions and pay development. Of course, this is not a necessary item for regulation specifically in the Law on Civil Service. However, the issue needs to be dealt with somewhere, possibly in a Law on Personnel Participation. Staff representation and participation could have a positive role in improving the overall quality of regulations and management (especially in human resources management). However, it seems that trade unionism as such is a concept that still generates some kind of social and intellectual rejection due its association to soviet time practices.

5. Capacity to Reform and Sustainability of Reforms

Many civil service systems have experienced comprehensive reform efforts in recent decades, some of which are still ongoing. The direction and intensity of these reforms vary considerably across countries.

The ongoing efforts in Armenia are primarily focussed on unifying the standards of public service and enhancing the integrity system (draft Law on Public Service, Code of Ethics), on introducing more sophisticated mechanisms of institutional and individual performance appraisal and on promoting e-government. All these issues are of high importance and should even be given more attention. The driving force behind this reform agenda seems to be the Government, specifically the Prime Minister and his environment, while the contribution of the Civil Service Council is primarily focussed on providing technical expertise and on operating the formal procedure. The main risk of these initiatives is, however, overburdening the absorption capacities of the service. In fact, it seems that there is a gap between the thinking of the political top on the one side and the civil service apparatus on the other side. Clear and shared objectives and strategies, supported by efficient communication seem necessary in order to build consistency and sustainability.

The organisation of the reform process should establish clear responsibilities to avoid duplication of efforts. The sequence of reform steps should follow the simple pattern: first strategy and policy development and then legal drafting.

The informal network joining the CSC and chiefs of staff has the potential to play a relevant role in coordinating the implementation of reforms and legislation related to civil service and public administration, in general. However, since the main reforms are decided by the government, the network should be enlarged in order to include the whole cycle of policy making and implementation. It will also improve dialogue, common understanding and feedback.

Decision making is too concentrated at the highest levels. This seems to be part of the still dominant political and administrative culture and therefore changes are also necessary in this regard. In such circumstances, sustainability of reforms is at risk due to strong personalization of decisions, difficulties in building and keeping institutional capacity, loss of institutional memory and demotivation of staff. A culture of participation and delegation should be encouraged in order to reduce such risk.

The current Government and some of the high ranking civil servants seems to be well-aware of the need to introduce modern public service management practices and tools in what has, until now, developed as a traditional bureaucratic model, mostly based on ensuring uniform application of laws and regulations.

In documents such as the Government's Program and the Anti-corruption Strategy 2009-2012, a number of strategies and proposals have been outlined, ranging from further efforts in the field of program budgeting and effectiveness (outcomes) and efficiency (value for money) in the implementation of the budget-funded programs, introducing modern performance appraisal methods and tools at all levels (including programs, organizations, units and individual civil/public servants), introducing quality improvement and management systems in public services, expanding usage of ICT in the management of public service (including e-Government and e-administration solutions in many areas), introducing public-private partnerships, increasing citizens' participation in public services, etc.

Perhaps two of the measures to be highlighted as more promising, from the viewpoint of the motivation of civil/public servants, which are otherwise interconnected, are the Government's intention to increase the salaries of public servants and to introduce new salary systems that will link the remuneration – at least in part – to individual performance (as measured through newly designed and results-based performance appraisal tools). However, concerning this latter innovation, it would be prudent to recall that, as some OECD studies have rightly pointed out, this type of formal management system has limitations when it comes to influencing people's behaviour; and in some situations (for instance, when it is not accompanied by a decentralization of the decision-making capacity, control over the inputs needed, proper management information systems, internal dialogue and implemented by well trained and professional managers) can even be counterproductive and reduce internal motivation rather than enhance it. There is also the risk that, if not properly implemented, such systems could just increase costs without any relevant impact on the overall quality of the administration.