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The Armenian Civil Service Law seen from the OECD and EU perspective

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1. European Civil Service Principles¹

Civil service legislation in EU-Member States is characterized by a broad diversity. In some old Member States certain principles even date back to the times of the emerging national state, while others, especially the new Members adopted their legislation only during the last decade. The EU does not and did not impose on members or candidates the adoption of a particular set of rules for the civil service because there is no Treaty based authority to intervene in these affairs. The EU legislation rather respects that the civil service is a national prerogative traditionally.

There are, of course, some Council Directives with relevance for the civil service (e.g. Directive 2000/43 of 29 June 2000 dealing with non discrimination) and there are a series of decisions of the European Court of Justice focusing on civil service issues (e.g. decisions dealing with the exception to the free movement principle with regard to employment in the public service according to Article 39 paragraph 4 EC Treaty). But on the whole there is no general explicit legal framework for the civil service.

Nevertheless there is a growing impact of the EU on the civil service of Member States going beyond the direct influence exercised by the European Court of Justice and by the few pieces of relevant EU legislation. This process has several facets: europeanization of national civil servants and public administration through cooperation, negotiation and decision-making on EU level and on bilateral level; europeanization of civil service systems through participating in the currently EU-wide ongoing public administration reform, coordination and cooperation efforts²; and most of all europeanization through developing certain basic civil service principles and assessing the compatibility of legislation and practices in candidate countries with regard to these principles. The most comprehensive summary of these principles is set out in the SIGMA civil service baselines, applied by SIGMA since 1999³. The principles centre around the following key issues: legal basis defining the status of civil servants; efficient management, coordination and control structures for the civil service; professionalism of civil servants ensured by merit based recruitment, efficient evaluation and training; an appropriate system of rights and obligations defining the responsibility and accountability of civil servants as well as their impartiality and integrity.

These principles are part of a more comprehensive public administration reform policy prepared primarily by SIGMA and aiming at helping candidate countries to meet the political criteria for membership, and more specifically serving as indicator for the preparedness for administering the *acquis communautaire*. However, the scope of these principles is not necessarily restricted to this purpose. The essence of these principles can be used more

¹ Recent civil service literature: SIGMA Paper No.44, *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession* (J.H. Meyer-Sahling), April 2009; OECD, *The State of the Public Service*, 2008; Raadschelders/Toonen/ Van der Meer, *The Civil Service in the 21st Century, Comparative Perspectives*, 2007

² A prominent example for this cooperation is EUPAN, an informal network of the Directors General responsible for public administration in the Member States of the European Union and the European Commission www.eupan.org

³ www.sigmaweb.org for practical examples see especially publications, assessment reports

universally for discussing and assessing other civil service systems. This paper attempts to do exactly this with regard to some important aspects of the Armenian Civil Service Law. At this stage, however, this attempt is focussed only on the legal text, not on the respective practice or on the attitudes of civil servants.

2. Civil Service Legislation in Armenia

The Armenian 2005 Constitution provides for primary legislation to define the principles and the procedures of public service (Article 30.2 clause 2). This formal requirement, which corresponds to the constitutional situation in most European states, is met, of course, by the Law on Civil Service, adopted already prior to the new Constitution in 2001 (last amended 26 May 2006). Special aspects, such as remuneration of civil servants, are covered by a special law (Law on Remuneration of Civil Servants), and labor legislation is applicable to employment issues not regulated explicitly in civil service legislation (Article 6 clause 2 CSLaw). The Law on Civil Service is complemented by several pieces of secondary legislation providing further details *e.g.* of competitions (Article 14 clause 12 CSLaw) or attestation of civil servants (Article 19 clause 16 CSLaw).

The scope of the Law is defined by enumerating the institutions on state level which are entitled to employ staff with civil servants status (Article 4 clause 1 CSLaw). The respective employment relations of these “classical” civil servants, involved in executive and administrative activities, are governed by public law, and have to be distinguished from labor law employment of *e.g.* support staff in the same institutions. However, special state services as police, tax, customs or judiciary are not subject to the Law on Civil Service (Article 1 clause 3 CSLaw), though their employment relations are governed without doubt by public law, too. The same applies to staff of the communities on local level, which is also not included in the civil service (Article 1 clause 4 CSLaw). All this contributes to a certain fragmentation with regard to the legal frameworks for the various groups of staff within the public service. However, it corresponds to the practice in some European states, while others have adopted a model with uniform general standards for all or most staff members employed under public law.

The Law draws a clear dividing line between political and so-called “discretionary” positions on the one side, which are not subject to the Law, and professional civil service positions on the other side, which are fully covered by the provisions of the Law (Article 3 clause 2 and 2 CSLaw). The question is, of course, whether this dividing line is adequate or whether it rather facilitates objectionable politicization and undermines professionalism and legal accountability by including top officials like heads of state administration bodies attached to the Government and their deputies, heads and deputies of state bodies acting in the administrative field of the ministries and a rather big number of other staff into the category of discretionary positions. There are certainly arguments for the merits system as well as for the patronage system with regard to some of these appointments. A realistic approach to the issue should take into consideration the given political and socio-economic context, which might require going beyond theoretical concepts of a depoliticized civil service. In principle, however, discretionary political appointment should be exceptional and restricted by an effective system of checks and balances.

The nine chapters of the Law deal with the standard topics of any civil service legislation, though sometimes in an unusual systematic context: General Provisions, Classification (division into four groups: the highest, chief, leading and junior civil service positions), Employment on Civil Service Positions, Attestation (appraisal) and Training, Legal Status of Civil Servants, Dispute Solving, Final and Transitional Provisions. Interesting is, what is

missing: mobility of civil servants, special provisions for senior civil servants, and finally staff participation with regard to decision making and control with regard to human resources management. These issues are playing a prominent role in the ongoing civil service reform discussion in many countries and should be further examined also in Armenia. The major questions in this context are: To what extent would enhanced mobility of civil servants contribute to the effectiveness of the Armenian civil service? Would a separately managed group of top level civil servants with a special corporate culture improve the overall performance of Government? Is there a positive relation between strengthening personnel participation and acceptance of the civil service system by civil servants?

From a technical point of view it is worth noting that the Law quite often elaborates 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). One reason might be that the Civil Service Council and not the Government is in charge of issuing secondary civil service legislation.

3. Civil Service Management

Usually there are two main types of institutional arrangements for dealing with civil service issues across the administration aiming at coordination and coherence of civil service management: the model with a more or less independent authority for horizontal coordination and management, which is mostly based on the concept of Civil Service Commission as used in Anglo-Saxon systems, and the model with the responsibility of the Prime Minister or a Minister for the civil service, which is common in countries with a civil law tradition. In both models payroll management and financial control is usually exercised by the Ministry of Finance. A further distinction has to be made with regard to the functions of civil service management capacities. The more decentralized models provide for a strong decision making power of line managers on most personnel management functions such as recruitment, training, performance appraisal etc, leaving the centre with the responsibility of defining policy guidelines, preparing primary and secondary legislation and monitoring the performance of the decentralized personnel management units. In models with a centralized management capacity major functions with regard to personnel management and supervision are exercised at central level.

The Armenian Civil Service Council as provided for in Article 37 ff CSLaw is an example for a rather strong independent central management capacity. The independence of the seven members Council is secured by a separate budget (Article 37 clause 5 CSLaw) and by a sufficiently precise list of reasons entitling to removal of Council members (Article 37 clause 8 CSLaw). Further strengthening of the Council is intended by providing an advisory vote of the Council Chairman in Government meetings (Article 37 clause 3 CSLaw). 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. However, effective instruments to enforce compliance with Council decisions are not mentioned in the Law itself.

The decentralized management functions in the bodies employing civil servants are generally exercised by the Chief of Staff of the respective body (Article 39 CSLaw), special regulations are provided for with regard to some decisions, especially those concerning the highest civil service positions.

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 and possibly representation of the management capacity in the Cabinet to advocate the principles of a modern 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 distribution of management responsibilities between the central level and the ministries which are likely to be accepted by ministries taking into account the traditional background of the respective system.
- Good cooperation with the Ministry of Finance aiming at the shared opinion that civil servants should be perceived more as productivity factor with regard to delivering services than as 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 activities of the Civil Service Council could confirm the degree to which the Council corresponds to these standards of efficiency and effectiveness.

4. Civil Service Recruitment and Selection

Open competition for civil service vacancies starting with a public announcement of the vacancy is a core instrument for implementation of the merits principle. Public advertisement aims at reaching more and potentially better applicants for civil service positions in an open and transparent procedure and at excluding patronage and unfair treatment. In career systems open competition is generally restricted to the entry positions, while in position systems open competition is more widely applied.

The Law mentions the principle of public announcement and competition for vacancies in Article 14. However, the scope of open competition is rather narrow, because in principle it is restricted to new positions and to positions which are not filled by the so called “out-of-competition” procedure (Article 14 clause 1 CSLaw). In the “out-of-competition” procedure according to Article 12(2) clause 1 CSLaw vacancies can be filled by a civil servant from the respective body and meeting the formal requirements of the position in question. The selection is decided by the person responsible for appointments; in case of chief, leading and junior positions this is the respective chief of staff (see Article 15 CSLaw). 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 to participate in the competition. This approach would combine elements of the career system and of the position system.

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 (Article 14 clause 6 ff CSLaw): 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. Second an interview with those candidates who have

obtained at least the ambitious threshold of 90% correct answers in the written examination. Whether these rather uniform testing methods are fully appropriate to meet the criterion “recruitment on merit” needs further examination; actually assessment of candidates should be rather tailored to assessing the behaviors and competencies required for the position in question; this includes, of course, the relevant knowledge, but also a series of other competencies including interpersonal skills. Especially the interview with candidates for positions with leadership functions should aim at evaluating in a systematic approach the motivation, the communication skills, the aptitudes, as well as the professional and managerial experiences of the candidates.

The testing is conducted by Competition Commissions composed according to Article 40 CSLaw of randomly selected members from the Civil Service Council (one third), the respective body (one third) and from scientific or academic institutions (one third). The successful candidates are submitted to the official responsible for the appointment, who decides whom to appoint (Article 14 clause 10 CSLaw). 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 of the constitutional right of equal access (Article 30.2. clause 1 of the Constitution).

5. Seniority

In the Armenian system seniority or length of service, calculated according to Article 17 CSLaw, plays a crucial role with regard to acquiring the next higher classification grade (Article 8 clause 5 CSLaw), with regard to the content of the passport of the civil service position defining the requirements for a specific position (Article 10 CSLaw) or with regard to special rewards (Article 31 CSLaw).

This corresponds to the traditional approach in many, 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 internal “promotion” to the next step on the pay scale; a common model to deal with these cases is combining quantitative factors (years of service) with qualitative factors (quality of performance).

6. Performance appraisal

Appraisal of civil servants is increasingly focusing on performance results rather than on personal traits. It may provide a basis for decisions in personnel matters of the civil servant concerned (e.g. monetary incentives, promotions, dismissal), but it is also an instrument for human resources management in a more general perspective (e.g. staff development, training, providing feedback). Appraisal therefore serves the interests of sides, the employer and the civil servant concerned. And ultimately appraisal aims, of course, at improving the quality of services provided by civil servants by aligning the objectives of the institution with the efforts of individual civil servants. Methods, frequency and most of all quality of performance appraisal systems differ across countries and quite often appraisal schemes have not obtained the expected results.

The Armenian approach as set out in Article 19 CSLaw dealing with “attestation of civil servants” adds a further variant to the diversity of appraisal mechanisms. First with regard to the frequency: regular attestation is carried out according to Article 19 clause 2 CSLaw every three years, while the most usual appraisal period is one year (in some countries complemented by an additional appraisal focusing on the potential of the respective civil

servant every two or three years). 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 (Article 40 CSLaw); however, the procedure before the Attestation Commissions, which might include testing and an interview, is based on material provided by the immediate superior (Article 19 clause 8 CSLaw). 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 (Article 19 clause 12 CSLaw); in case of non-conformity the civil servant concerned shall be released from office.

From a managerial point of view it seems to be questionable whether the three years period for attestation is really appropriate for addressing potential shortcomings with regard to performance as well as for providing recognition or other rewards for outstanding work. And secondly it should be examined closer, whether the possible consequences of attestation, either conformity or non-conformity to the position, are really differentiated enough. The three, four or five points grading scales used in most systems provide more options with regard to this issue. One option, which should be exercised with caution of course, could be to link the various financial and other incentives listed in Article 31 clause 1 CSLaw to the grade acquired in the attestation procedure. Currently the Law allows a rather discretionary or even arbitrary approach to the decision on incentives. 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.

7. Civil Service Ethics

Ethics in public service has gained growing importance and increased sensitivity in the public discussion during the last years, as preventing and managing conflict of interest, corruption and other forms of unethical behaviour have been considered critical for ensuring good public governance and maintaining public trust in decision making.

The various reform measures, especially human resources management instruments and mechanisms, aiming at providing incentives, guidance and advice to encourage high standards of ethical behaviour in the civil service (e.g. codes of conduct), prevent conflict of interest situations, detect non-compliance, and ensure exposure of misconduct by internal and external control and monitoring processes, are based on a widespread consensus that ethical behaviour in the public sector, especially incorruptible behaviour, does not depend on one single instrument, but on a multidimensional strategic approach. A significant number of EU-Member States have adopted new policies and have amended existing legislation or developed new codes and standards. Especially the new EU-Member States have introduced detailed and strict regulations. Meanwhile there is certainly no shortage of rules and regulations anymore in most systems, but the real problem is implementation and a lack of capacities and efforts in the enforcement process.

The Armenian approach to civil service ethics in Articles 23 and 24 CSLaw is rather modest compared to the level of regulation in many other countries. The question is whether this catalogue of ethics and conflict of interest instruments and measures should be reviewed and possibly upgraded in the light of recent developments in other countries.

8. Civil Service Reform

Many civil service systems have experienced comprehensive reforms efforts in recent decades, some of which are still ongoing. Direction and intensity of these reforms vary

considerably across countries. They focus quite often on rather general and to a certain extent vague concepts like flexibility, innovation, better performance and efficiency, and in other cases reforms seem to be more paper or verbal exercises of politicians than real life reform.

A major momentum for these reform efforts can be linked to “New Public Management” as a new managerial way of thinking about the civil service system. This philosophy has initiated a series of human resource management policies relating to introducing more flexible employment relationships and new payment schemes, altogether aiming at aligning the working conditions in the public sector to the private sector. New Public Management ideas were and are still popular in the UK, in the Scandinavian countries, the Netherlands, while especially France, Germany and Italy, as well as the other southern European countries seem to be more reserved. In the last years, however, there are growing doubts with regard to continuously adapting the civil service system to private sector employment. First: the new managerial approach, though it is certainly different from the traditional bureaucratic model, does not seem to be necessarily better. And second: the classical bureaucratic values such as neutrality, stability, hierarchy and impartiality are increasingly restored to their conventional relevance and importance for the civil service; a development which will certainly be reinforced by the current economic and financial crisis. Finally third: all civil service systems stay deeply influenced by national traditions and specific structures.

Scepticism with regard to “New Public Management” does not allow losing sight of the need for public administration reform and especially for civil service reform, because this is a continuous task. Reform measures, either based on theoretical managerial approaches or on by far less dramatic piecemeal engineering were and are primarily motivated by budgetary restrictions and the need for delivering quality services to the citizens. They might be very comprehensive and include changes of organisational structures, personnel management and public finance, or they might refer to targeted reforms as the revision of the Civil Service Law. At any rate the Eastern Partnership adopted at the first summit on 7 May 2009 provides a clear additional stimulus for Armenian reform efforts in this direction.