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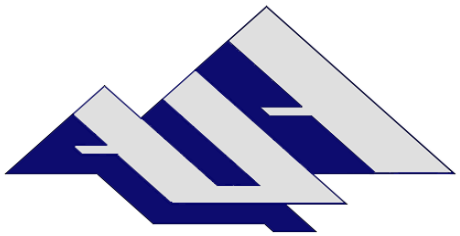

The Civil Service Reform in Armenia

The Civil Service Law (Draft)

A MASTER'S ESSAY SUBMITTED TO THE FACULTY OF THE GRADUATE SCHOOL OF POLITICAL SCIENCE AND INTERNATIONAL AFFAIRS FOR PARTIAL FULFILLMENT OF THE DEGREE OF MASTER OF ARTS

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ABSTRACT

The topic of the given MA Essay is the study of the reforms in the field of Public Administration in Armenia and analysis of the Civil Service Draft Law. The purpose of the essay is to explore the present situation of the Bureaucratic structures in the republic, to see how they are formed, whether there are any regular patterns in the promotion within the system or entrance into the system, as well as the necessity for and significance of the Draft for the required systemic transformations.

The Paper focuses on :

1. the study of the Armenian Draft Law on the Civil Service, several documents of the similar type, such as the Estonian Public Service Act, the Russian State Service Law; literature covering the French State Service and the US Public Administration, etc.

2. the analysis of the Armenian Draft in the light of the international standards and the Armenian reality.

The paper will dwell on the articles which are seen as the most important for the formation of Civil Service. The Law will also be analyzed from the point of view of its accordance to the principles of structural integrity, administrative feasibility and political feasibility. There will also be discussed some problems found in the Draft, which often result from the contradictions between the major principles – that of structural integrity and administrative feasibility.

The final part will conclude the analysis and comprise some recommendations concerning the solution of the problems, as well as some considerations as to the possibility of the Draft to pass as a Law.

List of Abbreviations

The CEEC	***-***	***the Central-Eastern European Countries***
The C.S.Council	***-***	***the Civil Service Council***
The FSU	***-***	***the Former Soviet Union***
The NA	***-***	***the National Assembly***
The NIS	***-***	***the Newly Independent States***
The PAI	***-***	***the Public Administration International***
The RA	***-***	***the Republic of Armenia***
The UNDP	***-***	***the United Nations Development Program***

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Man himself changes slower than he changes the world.

A. Platonov

Introduction

The political agendas in the modern world imply major democratic and economic reform programs. Macro-economic stabilization, privatization, European integration, reform of the welfare systems, reform of the tax systems, decentralization of self-government are typical areas of systemic changes. The number of new laws regulating reforms and changing political systems is considerable. The main characteristic of any legitimate state is the presence of laws, their applicability and efficiency.

On its way to democratic and legitimate state Armenia is struggling through the period of transition, which consists primarily of the process of building a working state system. This mainly means the construction of those necessary cells of the governing system, which were either destroyed or even absent at the beginning of independence. The major trend here is the law-making process. Many of the Newly Independent States (NIS) have no experience in this field and Armenia in its strive to build a modern and legal state system is following a path similar to the most NIS. Governments must continue to strengthen the institutions and processes that produce and implement legal instruments. This is a fundamental requirement for the development of public institutions. No government can function well without developing on all levels of the administration a strong capital stock of human resources, with language skills and specialized knowledge in fields such as economics, law and public administration. These efforts must be accompanied by measures to provide senior civil servants with career continuity, as well

as opportunities to gain international exposure and to use their accumulated experience (Derry Ormond, 1998, p.3).

These fundamental changes call for not only new structures and institutions for public administration but also major changes in public management, including human resources management. To meet these challenges, it is crucial for the public workforce to acquire as quickly as possible new skills and qualifications, including changes in behavior towards the public.

The transformation of communist and post communist Bureaucracies into "classical" one—neutral, professional, impartial, effective—is an organic part of a systemic transformation. Assuming that organizational processes are shaped by a dynamic interaction of organizations with ever-changing environment, they caution that managing human side of an organization, in particular, is to a great extent influenced by the political, economic, legislative and cultural climate within which the organization operates. From this perspective it is very important for the civil servant to be protected from any kind of outside influence which can interrupt his/her duties. Development of the administration as an instrument to carry through political and economic reforms and to manage the established governmental systems requires long-term investment and must be protected from any kind of abuse and mismanagement. Creation of a permanent, non-political and professional administration is recognized as necessary in order to move away from an inherited administration, where admission and careers were not based on merit but on political or other reasons, and where dismissals were not based on objective professional grounds. The State is primarily seen as the attribute of sovereignty the ultimate arbiter and defender of virtues in all relations of power (David Coombes, 1996, p.13). This was

seen as the prerequisite of the subsequent development of political institution designed to promote political values such as justice, democracy and welfare.

The main line of inquiry in this research focuses on the conditions under which the law can be implemented and be effective. To understand the specificity and logic of democratic processes in Armenia it is necessary to look upon the changes in the concept of perception of the state per se and its components in particular. Armenia as the other former socialist countries, inherited the legacy of grossly inadequate public administration structures and a bankrupt economy system which were to be changed as soon as possible. The redesign of public administration and the redefinition of its role in society have, nevertheless, proved extremely difficult for these states. One of the main problems is the degree of the public administration being politicized under the former regime. According to Verheijen, it will be particularly difficult for institutions accustomed to being in a subservient relationship with political power in a command economy to change to a framework-serving function in a market economy, and to shift from a reactive to a creative policy style (Verheijen,1998, p. 3). Besides, Verheijen also mentions the fact that public administration and public management have hardly been developed as an academic discipline, which adds to the general difficulties. "… the public administration, or bureaucracy, is the highest institutionalized form of the modern state" (Verheijen, 1998, p.11).

According to Staffan Synnerström (1998, p. 3):

> A law defining the civil service should contain provisions protecting the civil service from political interference or other kinds of interference; equally importantly, it should also contain provisions aiming to raise the quality and the performance of the staff subject to the law. In order to benefit from more secure appointment conditions, civil servants should be required to meet certain quality and performance standards.

So, we may figure out that a Civil Service Law should balance between the duties and accountability implied in a public office and the rights that ensure professional integrity in carrying out the office. It must meet a number of different objectives; in particular, the law must:

1. raise the professional quality of staff so as to improve performance, grant a certain degree of independence for those staff executing public powers in order to prevent political abuse and other mismanagement, and foster appropriate ethical standards in public administration;

2. enable the government to adapt the administration to changed needs, e.g. to restructure, to cut costs or to reallocate human resources from one part of the civil service to another;

3. give the public administration legitimacy in the eyes of the citizenry, and make citizens and other groups of state employees accept the features underlying a professional civil service (providing a balance between qualitative requirements and duties on the one hand and rights and benefits on the other); and

4. render a career in the civil service attractive, and to retain people in that career (Staffan Synnerström,1998, p. 3).

The need for a Civil Service Law has been underconsideration for a long time already. The reform in the field of Public Administration, according to the Human Development Report (UNDP,1998), should include:

- ✓ *streamlining existing public administration structures and adding new structures where appropriate,*
- ✓ *modernizing the civil service, and*
- ✓ *reorienting the government's methods and objectives to the new realities"* (UNDP Armenia, 1998).

According to the report the Civil Service in Armenia should be based on a number of important principles, including

- ✓ *independence from changes in political leadership,*
- ✓ *continuity and stability of personnel,*

- ✓ *legal, economic, and social security,*
- ✓ *merit-based promotions, based on competition, classification, qualification, grades, training, and enhancement of qualifications,*
- ✓ *ensuring the required level of knowledge, management skills, and ethical attitudes, through training and professional development.*

International experience shows that the provision of civil servants without the implementation of a corresponding training system is ineffective.

The effectiveness of public administration depends on the rational, optimal, and flexible features of other administrative bodies (ministries, agencies, Marzpetarans, communities), which implies that reestablishment of their by-laws and other administrative regulations is necessary. The administrative reform is deemed to be a long-term process and it is difficult to speculate at this stage what the final result be. The absence of an institutionalized civil service system, according to the Human Development Report (UNDP, 1998), has led to a number of negative consequences in Armenia which are supposed to be eliminated after the implementation of the Law.

The specificity of the FSU countries is also in the fact that in all of them public employment has been regulated for a long time by labor codes, and the understanding of the differences between a labor code and a Civil Service Law tends to be limited. The objectives of a Labor code are different from that of a Civil Service Law. A labor code aims to create fair and equal politically determined conditions for all employees and at the same time to define their general obligations. A special law, a Civil Service Law, is seen as the means to define the civil service and the qualifications, duties and the rights of the civil servants, as well as their working conditions. Such a law also is needed to define the relationship between itself and other laws,

whether superior, complementary or subordinate, such as the labor code, laws on pension rights, etc. Professor Keith W. Patchett, University of Wales, Cardiff, United Kingdom, has brought together the concepts and recommendations from different sources and organized them in a checklist. The checklist does not recommend specific solutions, but does point out what must be considered, as well as the likely consequences of the solutions chosen. It may and has been used as the basic framework for many reviews of draft civil service legislation in Central Eastern European Countries. Yet the Checklist stands by itself as a practical document defining a professional, impartial and permanent civil service in legal terms. A law defining the civil service should contain provisions protecting the civil service from political interference or other kinds of interference; equally importantly, it should also contain provisions aiming to raise the quality and the performance of the staff subject to the law. In order to benefit from more secure appointment conditions, civil servants should be required to meet certain quality and performance standards.

The main purpose of the paper will be to see whether the Armenian Civil Service Law (Draft) corresponds to the international standards, introduced by the above-mentioned checklist, UNDP demands and conditions needed for the law to prove workable and efficient. As for the conditions within the state, Edward Ordyan in his article “The Problems of Public Administration in Armenia” (p.3) declares that the state has shifted from the policy of directly influencing the public administration in its work and is setting “the rules of game.” One of the goals of the paper is also seen in the examining the real conditions the state supposes for the existence of the Law.

The method to be used is seen as simple comparison and analysis of the Armenian Law with the international standards. Beside the Draft there will be also used other documents, such as

documents of Government of Armenia, the Estonian Public Service Act, some patterns of the Russian State Service Law, etc.

The overall picture of the paper will include the following parts:
The General Environment in the field of Public Administration in Armenia;

The Necessity and Purpose of the Law;

The Content, *where will be covered the articles seen as essential;*

The Problems;

The Solutions;

Conclusion.

The main questions to be ultimately answered are:

Does the Law correspond to the international standards?

How does the Law contribute to the structural integrity of the System?

Is the content and implementation administratively feasible?

Does it make possible the implementation of the merit system in the Public Administration in Republic of Armenia?

Each factor is very important for the study. In some cases the Armenian draft has been compared to other documents of the kind, namely Estonian Public Service Act and Russian State Service Law.

The final format of the paper is seen like a judgment concerning the quality and the applicability of the Draft concerning the conditions needed for the implementation and those present in Armenia.

The General Environment in the Field of Public Administration in Armenia

Before taking up the analysis of the Law, it would be helpful to give the general picture of the Armenian Bureaucracy. As such it has never existed. The life of the First republic was too short; the Second republic was Soviet (with its specific bureaucracy); and one of the most important and negative phenomena in the current period (that of the Third republic) is the absence of any type of centralized professional administration.

In this administrative vacuum the functioning of this apparatus became closely interconnected with political activities and there can not be traced any reasonable principles in the structural movements inside the system. Patronage system still goes on, and the talks about the merit system still remain talks. The principles of entering into the service, leaving it, or getting promotion are still covered by dark mystery, which is quite apparent if looked at under the straight light. In reality it reminds of the USA of 1829, when coming to power Andrew Jackson institutionalized the "victor's spoils system" according to which the old administration was dissolved, and then positions were given to the people supporting the president during his campaign.

The administration was, thus, tailed to the political preferences, which is in principle against the idea of ideal Bureaucracy. As opposed to the US government, who overcame the problem, we still keep the system in this situation. Nevertheless, the present situation can not continue for ever, as the reform of administrative system is included in the package of reforms that Armenia should go through on its way to democratic state. Besides, the establishment of a liberal democracy and a market economy in Armenia put forward a demand for drastic re-

conceptualization of the entire public administration system. A set of reforms revising the State's role, objectives and functions has been passed to meet the new challenges and to introduce an appropriate legal framework. The following laws were developed and introduced within the scope of reforms:

The Law on Private property, the Law on Peasant Farmers and Collective Farms, laws on Local Self-Governance, Elections of Local and Self- Governing Bodies, Administrative-Territorial Divisions, etc. (E. Ordyan, 1999, p. 3).

The main emphasis in the field of Public Administration has been 1) modernizing the civil service system and 2) optimizing the balance between centralized and decentralized government. The ultimate goal is seen in the shift of the State from directly influencing the Public Administration to becoming a partner that regulates, stimulates, assists and sets "the rules of the game"(ibid.). Respectively, very much attention was given to the following aspects:

- ✓ *the decentralization of vertical structures of administration and the strengthening of horizontal connections*;
- ✓ *the delegation of more authority, functions and responsibilities to lower levels of government;*
- ✓ *program-oriented management;*
- ✓ *the streamlining and merging of public administration bodies for maximum efficiency and effectiveness.*

Armenia's independence and the intention to establish a market economy brought forth a need for formation of Public Administration system, consequently, greatly influenced also the range of activities in the economic system. This, in its turn, resulted in the creation of a legislative base. In all this turmoil, Public Administration could not remain the same. There took

place multiple-way changes: on the one hand, there were eliminated tasks, which were not seen as necessary any more, on the other hand, some other tasks expanded and added other duties. Among the latter E. Ordyan (1999, p. 5) mentions the following:

- ✓ *identification of the volume and types of activities of the public administration in relation to the current state of political and economic development;*
- ✓ *the election of adequate bodies of public administration;*
- ✓ *the distribution of administrative functions between various public administrations bodies to avoid duplication and vacuum.*

These are the most problematic areas in the Armenian Public Administration, and the priority an any case is given to the reform of the field in terms of the transformation of functions inherited from the former system to modern needs, and the formation of the mechanisms to execute these new functions. The reason why Public Administration is seen very important is that it is, at least partially, responsible for the creation of favorable conditions for market competitions, the implementation of anti-trust policies and for the management of civil service.

The Civil Service Reform, however, has a long way to pass to enter the legislative priority. Armenia lagged behind many other Newly Independent States that attached great importance to the civil service and adopted related laws. The absence of social legal civil service institutions in the Public Administration resulted in a number of quite negative consequences, such as

- ✓ *instability in state organizations and their frequent restructuring;*
- ✓ *arbitrariness in recruitment, promotion, grading and displacement;*
- ✓ *enormous staff turnover;*
- ✓ *lack of professionalism and qualifications among civil servants;*

- ✓ *drastic decrease in respect for the state institutions;*
- ✓ *highly blossoming corruption in the latter.*

The situation could be changed only through a reform—a serious, wholesome and appropriate one. Steps were taken in 1994, 1997 (when the "Concept of the Civil Service" was developed) and later in 1998, when a draft law on Civil Service was under the development. But all these attempts were nullified either by the system or by some other forces. The real work began at the end of 1999,when PAI office, that works as a contractor of the British Government, which provides technical assistance to the Armenian Government, was opened in Yerevan and the Government initiated the creation of a Civil Service Law. The draft was ready in June 2000, and had to pass the Parliamentary reading in the fall session. Unfortunately, it did not pass the first reading due to certain reasons, one of which was the inappropriate introduction of the draft and misunderstanding of the provisions of the Draft by the Members of Parliament. The second reading is due in December 2000 and the results can not be predicted yet.

As it has been already mentioned, Armenia like all FSU republics has no traditional experience in preparing this kinds of laws and as the law per se is not a renovation of something already existing, but is rather an entirely new document, the law-drafters had to rely on their own perception and understanding of the term Civil Service, the acquaintance with the working laws of RA, as well as the already created similar laws of some NIS. In particular, these were Estonia, Hungary and Russia, as well as the US, France, UK, etc. After several months of hard work the draft is ready. Is it good or bad, efficient and easy to implement or not, success or failure will be seen in the course of time. Meanwhile, we can only study it and try to give some evaluation to the document and make some predictions concerning the way it will work out.

The Necessity of the Reform and Purpose of the Law

The necessity of the Public Administration Reform and the creation of a Law on it became evident connected with the desire of the Republic of Armenia to enter the European Union. Though, this can not be said the only reason for reforms: the internal situation also demanded changes in the system, as the implementation of many other laws and regulations greatly depends on a well-developed, professional and well-trained bureaucracy. The mechanisms for the law implementation in Armenia are either obsolete, as inherited from the passed Soviet system, or do not exist at all, giving place to chaos and some kind of anarchy. There are no controlling mechanisms either, to follow the work of those who are supposed to control the implementation of Laws. This often ends up in the misunderstanding, misuse or mis-implementation of very important governmental regulations and decisions. The natural solution out of this kind of situation was seen the reform of the system of public administration and a law on it.

The main document for comparison has been the Estonian Public Service Act, and there is a reason for this—the group of the Armenian Law drafters has been to this country to study their Law. Why Estonia? Because Estonia was one of the first among FSU countries to take such a document. Studying the Estonian Act and their experience our law drafters arrived at several essential conclusions:

- ✓ *The Law should not be very detailed;*
- ✓ *There should be secondary legislation;*

✓ *The scope of Law should not be very large just from the beginning*. It would rather expand in the course of time. All these considerations, as well as the international standards and demands, played their role in the process of drafting the law.

The Armenian law drafters decided first specialize on one branch of the state service, namely on the civil service. This was also influenced by the fact that the Estonian Public Service Act, that has been studied quite thoroughly, appeared to be not very effective and implementable due to its huge size. The Armenian law-drafters avoided this problem by taking a small scope for the beginning. This issue will be discussed more detailed in The Content, a little while later. The main objectives of the Civil Service reform in general and of the law in particular are:

✓ *creation of permanent, nonpolitical, and professional administration,*

✓ *establishment of the merit system of admission and career in administration*

✓ *striking a balance between the duties and accountability and the rights that ensure professional integrity.*

The stability of the service is a very important factor for the well functioning of the system as the high turnover finally results in a badly trained, not very professional and not interested staff. This, consequently, ends up in the total failure of any regulation. Besides, the administration, as we know, is to be independent from changes in the political environment and leadership of the country, as the public sector is supposed to be a machine, which serves any master, independent of his/her political affiliation. The functioning of the machine is worked out so well, that any political change should and could have no great influence on it.

Another important factor is the social, legal and economic protection of the people who are working in the system, as there is nothing so fragile as the psychological perception of being unprotected, that can spoil any system through its employees. Thus, among the objectives of the

law is also this one- to ensure the servant that he is protected both from the arbitrariness of the immediate supervisors and the State per se. If formulated and carried out professionally, the law is supposed to entirely change the system and the perception of it.

The Content

The content of the law has been studied and analyzed according to three criteria:

- ✓ **Political feasibility**
- ✓ **Administrative feasibility**
- ✓ **Systemic integrity**

These criteria have been chosen as the main lines, along which the law is to be passed and later on implemented. In other words, the study and analysis of the Law will go on several factors simultaneously the see whether the law is politically acceptable, administratively easy to implement and adds to the integrity of the whole structure of the state and civil service. The Law supposes 19 regulations to be passed, most of which is under the authority of the Civil Service Council as envisaged by the Law. Secondary legislation together with administrative directions composes regulatory instruments required to implement legislation relating to the Civil Service. Secondary regulations are mostly used for detailed implementation of Civil Service Law, as the Law itself does not go into detail while describing the particular processes to be conducted, the procedures to be followed, and the standards of performance or behavior to be expected of employees. The general provisions the Draft are in accordance with accepted standards and include the basic principles of the Civil Service: Classification, Competition, Entering the Service and appointment to the position, Attestation, Social guarantees for Civil Servants, Disciplinary provisions.

The competition and attestation are needed to raise the quality and the performance of the staff subject to the law. The attestation provides the security for those who really fit the demands of the post they occupy, and, consequently civil servants should be required to meet certain quality and performance standards. To describe these standards the civil service job descriptions are to be worked out. The existence of such kind of a document makes less possible the patronage recruitment and promotion of the civil service employees. This is also important as the strict classification and rules for employment are given in the law and there are also bases described in the law concerning the release of the civil servants. The employees who are aware of the law will know their rights and will know about the right to appeal on the decision of relieving them from a post if they consider the release unfair and lawless.

Scope of Law

A peculiarity of the Armenian Law is that it differentiates between State and Civil service as not all the state services (e.g. Police, Army, Customs etc.) are immediately included in the Law. At the third year of implementation it is supposed to extend on the staffs of the republican executive bodies of Defense, National Security, Internal Affairs, Foreign Affairs, Taxes, Customs and Emergency (Article 57). At the given moment the scope of law covers the staffs of the President of the RA, National Assembly, the Government, the republican executive bodies, local self-governments, Marzpetarans (Yerevan municipality) and the staffs of the standing committees formed by the laws of the RA (with exception of the Central Bank Commission). The effect of the Law does not extend over political and discretionary posts, as well as the technical support staffs. The Armenian Law has a narrow specificity- it concerns only the Civil Service. It doesn't include other state agencies and is not, thus, overloaded.

Attempts to meet all the needs in one document are usually to result in a lengthy, complex and detailed document—the case which is better to escape while preparing such kind of regulation. The Estonian Law consists of 13 Chapters and 185 paragraphs, whereas the Armenian Law has 8 Chapters and 57 Articles. In difference to the Estonian Law, which speaks of all the details in the law, the Armenian Law plans 19 Regulations, which will concern particular details or matters, not to be discussed in the Law. The main purpose of having the regulations is that the Law is supposed to give the basic ideas and principles. It can't and shouldn't go in every detail, as the details may change from time to time and situations may vary; something may become obsolete, something may appear in the course of time. The law can not be changed on such matters because of the length and complexity of the procedure. Meanwhile, the regulations are meant to give the particularities and details of the main body; besides, it is easier to make changes in the regulations. Secondary legislation is used extensively for the detailed implementation of Civil Service Acts. According to Keith Patchett "Regulatory instruments are invariably required to implement primary legislation relating to the civil service"(1998, p.5).

One of the main disadvantages of the Estonian Act is the fact that the drafters couldn't foresee the problems arising from such an excessive document. On the contrary, the Armenian Law has left the details to the secondary legislation. Again referring to Keith Patchett, "secondary legislation is necessary in cases where specific duties or rights are to be applied to civil servants, as terms or conditions of their service, or existing terms or conditions amplified or restricted, as these alter the legal relationship of the civil servant with his or her employer created by the Civil Service Act "(ibid).

As the same time there might be mentioned an interesting detail in the Armenian Draft Law, that is that the draft does not suppose to include the Judiciary/Court and Prosecutor's Administration into the scope of Law. There seems to be no real reasons not to include them into the system. The exclusion of these two does not act to the favor of the structural integrity of the system, as this branch of administration happens not to be considered as civil service, which is incorrect. This argument appears to seem stronger when taking into consideration the fact that power structures—Army, Police, Internal Affairs are supposed to be included later on, after the trial period of the law. The main reason for leaving these two out of the scope of the system are said the following reasons:

- ✓ *the impossibility of implementing the law at once on such a large scope;*
- ✓ *financial and time difficulties connected with the civil post passports preparation and competition procedures;*
- ✓ *resistance on behalf of the certain interested powers inside the state structures.*

The last argument seems to be the very one, which may explain the fact, as the financial and time difficulties will not change very much from adding these two into the system, as these administrations are not numerically big and will not demand any special time or efforts, out of the scope. So, the political considerations are seen as the main ground of them being not included into the Law.

Another fault with the scope of the draft, which is also difficult to explain, refers to the local self-government bodies. The point is that the latter are considered as subject to the law, which can not be due to the law on Self-governing bodies. According to that Law, the self-governing bodies are admitted to be a separate branch (Article 18). So, here we have a contradiction to the

Constitution that can not be afforded. This destroys the integrity of the system, which is one of the main components of my study.

The Fundamentals of the Civil Service Law (Article 4)

The fundamentals of the Civil Service are given in accordance to the international standards and classical demands to the Bureaucracy:

Supremacy of the Constitution and Laws of RA; priority of the Human rights and liberties; stability, transparency and political restraint of the service; openness of the service to join; professionalism; equal rights and social protection of the civil servants. There are two points in this Article (4) that demand special attention:

(k) Mandatory nature for the civil servant of decisions made by the superior bodies and key officials, within the limits of the power thereof and in compliance with prescribed procedure;

(l) Personal responsibility of civil servants for failure to exercise or improper exercise of service duties.

At the first sight it may seem that the civil servant is deprived of his/ her own judgments and opinions here, and the whole system is based on the obligatory instructions given by the superiors. It might be so if we did not later on come to the Article 24, Chapter5, called "Limitations of instructions to Civil Servants" which gives the latter not to obey instructions if they:

a) contradict the Constitution and Laws of the RA; and

b) are beyond the framework of competence of either the issuer or the receiver thereof.

All in all, any bureaucratic or military system is really based on the priority of the instructions by the superior and it would be chaos were it otherwise. The case here is to what extent can the orders and instructions stretch and what limitations are envisaged for those who issue orders. Besides, the responsibility imposed upon the civil servant makes the issue of obeying the orders more important, as the penalty for the failure will also be more severe. Thus, beginning from the lowest grade and moving ahead within the system, the servants get more experienced and skillful and taking the higher position should be ready take over more and more serious tasks, especially concerning the responsibility of giving instructions. As the new generation of the civil servants is expected to be more daring and enthusiastic, and, besides, be aware of the fundamentals of the Law, the superior is also supposed to be very careful and precise in his steps not to be challenged from below. This Article also makes it less possible to abuse the service post as it supposes the system of checks, which may result in serious punishment. On the other hand, this will work out only if the service is seen as an attractive and respectable field of activity. Two factors are very decisive in this case: salary and career opportunities. The Law describes the second one rather detailed and it is possible to deduce that having in sight the opportunity of a quick movement up the system, the young people would apply for the Civil Service. However, the high turnover in the system at present is mostly due to

- ✓ *the low salaries, which are not so attractive to keep the young and enthusiastic people in the system; and*
- ✓ *the feeling of not being protected from the arbitrariness of the superiors.*

This may (and does) result in the situation, when the best are leaving without doubt whenever being given an opportunity to earn more somewhere else. This, in turn, may bring to the reality of weak and mediocre civil service, which first of all will not contribute to the authority of the

State, as the Bureaucracy is the largest representative of it. In the second place, the weak Bureaucracy, in the meaning of efficiency, can not contribute to the development of the democratic state.

This Article is also important in the sense of protection of the civil servants from arbitrary orders, as in this case the servant is obliged to report in writing on his/her doubt on legal nature of the instructions received. In this case the affirmation of the instruction should also be in writing. Otherwise, it is not valid. This might seem not so actual, were it not be the case of arbitrariness and personal gains over the public interests. In the present situation quite a small number of employees would dare to contradict the instructions from the superior even being well aware of their illegal nature. This may be explained by the fact that he employees are not sure whether they will be protected if they disobey. On the other hand, if they perform some illegal action even following the instructions of the superior, if the case becomes known, it will be the employee, who will suffer-- lose his job--not the person giving instructions. Thus, the presence of such an article within the rights of the civil servant gives place to hope that the civil service will become unbiased and impersonal.

Both from the point of view of structural integrity and administrative feasibility this Article seems to fit the demands posed before such kind of a document.

Classification of the Civil Service Posts (Articles 6-9)

This is one of the most disputable questions of the Law. The case is that the Law supposes to have four groups of Civil Service posts with three subgroups in each. This kind of

division is taken from the classical classification, where it is necessary to differentiate between the groups and subgroups for the better job description and pay system. If we try to show them in the form of a chart it will look like this:

Group	**Grade**	**Bestowed by**	**appointed to & released from the post by**
Highest	State Councilor	President	Head of the relevant body
Chief	Councilor	Chairperson of the C.S.Council	Head of the relevant body
Leading	Leading servant	Secretary general of the relevant body	Secretary general of the relevant body
Junior	Junior servant	Secretary general of the relevant body	Secretary general of the relevant body

The leading principle of the classification is that positions should be classified "on the basis of duties performed t make compensation uniform for work of the same kind" (Shafritz, 1992, p.134). Saying classification we mean position classification. Thus, first of all, positions and not the individuals should be classified. Respectively, the duties and responsibilities pertaining to a position should constitute the outstanding characteristics qualifications in respect

to the education, experience, knowledge, and skills necessary for the performance of certain duties are determined by the nature of those duties.

The problem with the Armenian classification is that as a matter of fact, it does not look as a pyramid, as it does not mention whether the numeric size of the group is limited or not. On the opposite, it supposes the same number of grades for every group. But the classical public administration supposes more workers, less bosses-- the easiest jobs are on the bottom or middle, which is larger than the upper layer. The top includes the most responsible and difficult tasks. So, can there be as many grades at the top as at the bottom? Would it be reasonable to have as many State Councilor grades as envisaged for the Junior and Leading positions?

Much responsibility in this step is put over those who prepare the job descriptions, as the present situation in Armenia within the so-called Public Administration is seen very chaotic and non-systematic. The process of preparing job description itself might take such a long period of time that the descriptions prepared may become outdated. The whole meaning of the Classification is the reduction of a huge bureaucratic apparatus and, based on it, increase in salaries of those who will be included in the service. This, supposedly, will make the system work more efficiently, thus bringing changes (supposedly positive) to the society. First of all, this process, together with Attestation is supposed to establish merit system versus patronage system, so very widespread in the bureaucratic apparatus (This may be said to be due to the spoils system, which functions perfectly in Armenia).

Another peculiarity of the Law is that it supposes some stable mechanisms be worked out for the implementation of laws in general, as no law will do any good, if there are no means providing the functioning of it. The law will also bring young, open-minded, educated people to the system, thus resulting in a change of generation and, may be mentality. The latter is very

important for he implementation of the Law, as it demands compliance with the idea that no ties and relations will help one much if the person does not possess his/her own skills and characteristics for the certain position.

Classification in its administrative meaning is a formal job description that organizes all jobs in a given organization into classes on the basis of duties and responsibilities for the purpose of delineating authority, establishing chains of command, and providing equitable salary scales. Nevertheless, classification cannot be taken once and forever, as the requirements and responsibilities demanded by any job usually grow, change and innovate in the course of time. On the other hand, in the system of Public Administration, there cannot be many qualitative changes in the very close future, as it is supposed to be just formed and thus, cover all the innovations and changes already taken place within the system. However, in the age of rapid changes, when skills become obsolete within a very short period of time it is very important for the system to have envisaged the development and improvement of the Service in the Law. And to the honor of the Armenian Law it has foreseen this problem and given place to the Article on Training, which is to be discussed below. The administrative feasibility of this process is seen a bit complicated but not unreal, as once having regulated the mechanism of implementation it will become a matter of automatic solution. Moreover, the correct implementation will add to the structural integrity of the system, making all the representatives of it equal before the Law.

Attestation (Article 18)

The attestation is supposed to grade the civil servants according to the classification chart. The whole meaning of attestation is to create a career opportunity for those inside the system and, consequently, the maintenance of the quality of the service.

The Armenian Law supposes four categories (groups) with three grades in each category. The lowest grade will suppose the minimum requirements to join the service. The highest group is the last step in the service and will supposedly be achieved not by every servant. The movement within the service is from the 3rd grade to the 1st within the group, and from the lowest (junior) group to the highest within the system. The grades are changed as the result of attestation only. The change of grade does not require the change of the post up until the 3rd grade of the higher group. Once achieving the position the civil servant can not move further without being given a higher post.

It is worth mentioning that it is supposed that the by-law on the attestation will allow out-of-term attestation on the request of the civil servant. Otherwise, the regular attestation will take place ever year and will cover 1/3 of the civil servants. It will result in the every-three-year assessment. The result of the attestation will move the civil servant one grade higher, lower or no change. In the case of negative evaluation the employee should take training courses to catch up with the demands of the evaluation. Attestation, together with classification and training, is among the most essential articles, as these three are seen as the basis for the civil service from the point of Pubic Administration. Besides, they are to the favor as of the structural integrity so of the administrative feasibility of the system. They help to create what is called a "merit system" in the field of administration.

Training (Article 19)

The most essential advantage of the civil servant, given by this article is the possibility to keep up with he demands of the time and organization on the expense of the relevant body or the

state, without interrupting the length of service. This is very important in our reality, as any kind of training, be it narrow professional or wider additional skills, is costly to the population. This is the main reason, why the skills go out-of-date within a very short period of time: once the graduate student is out of the university, he/she may be cut off from the rapidly coming innovations if he/she does not find a job or enter the service at once. And it may happen that when at last having become employed, the person will find out that the demands for moving forward are out of his/her scale of skills.

The opportunity, given by the Civil Service Law for the civil servant to get trained at the expense of the state is to the benefit of the service and the servant first of all, and to the benefit of the society as well. The better trained the employee is, the more efficient he/she is supposed to perform. It is worth mentioning that the training is mostly supposed as the result of attestation, but not necessarily. The attestation may end up in excellent results and it may appear that there is no need in training for the civil servant at that particular time. In any case, the law envisages an obligatory training for every civil servant once in three years. The training period, according to the law, is equated to the civil service work. The training will take place in the educational institutions affirmed by the Civil Service Council on the basis of the relevant syllabus and according to the criteria determined by the Council.

Accordingly, the duties and responsibilities pertaining to a position should constitute the outstanding characteristics: qualifications in respect to the education, experience, knowledge, and skills necessary from the performance of certain duties are determined by the nature of those duties. It would be a utopia, of course, to believe that the Law will change the whole system at once and will establish an ideal, so-long-desired bureaucratic system in Armenia, without meeting resistance and complaints. Actually, there is to be great resistance on behalf of those

who will certainly remain out of the system, but who have more or less power or influence today. Moreover, there will certainly be objections on the part of those who are to lose power with the adoption of the Law, as the restrictions put on the top management are to be considered serious as well as the rights of the Civil Servants.

Competition (Article 13)

Competition is the issue not very much popular in the Armenian public administration. The problem here concerns the infected mentality of the people in general, and those who have the power to appoint in particular. The thing is that it is difficult to imagine that one must take part in a competition where ones personal ties do not matter much as ones personal and work skills are in the focus. Naturally, there will be objections to the whole process, though everybody understands and admits the necessity to have a qualified and responsible staff. Competition envisages the best (from the point of view of the job requirements) take the position.

As compared with the Estonian Act there is an essential difference referring to the competition between the two laws. The fact is that the Armenian Law has NO post of the civil service filled without competition, as it draws a strict line between the political post, discretionary post and Civil Service post. The promotion inside the system is meant only by the way of competition. The Estonian gives the Government and the Prime Minister power to appoint officials to the Service, as well as mentions promotion as one of the means to fill the post without competition. This rises some doubts concerning the merit system of and equal pay for the employment.

The other difference in this point is that Armenian Law supposes one ONE candidate to win the competition, otherwise there will be place for patronage or discrimination or broad interpretation of the Law. The Estonian Act says that there shall be three winners and "the person with appointment authority shall appoint to the office one of the candidates from among the persons who were presented for the position by a competition and evaluation committee" (Public Service Act of the Republic of Estonia, 1995, Chapter 2 §35 [2]).

The fact of the competition ending in more than one final winner may say to nullify the idea of the competition itself, as the competition is usually held to calculate the best one. The Armenian Law supposes the second stage of the competition if there are more than one winner. The Armenian Law has also another peculiarity concerning the competition: it says that the competition shall be held even in the case of one candidate to the position.

There is no recruitment out of competition and no reserve is supposed for any category of citizens. Here the French example may be referred to as a comparison: those who suffered serving to the Motherland; orphans and widows of war; disables who are able to perform some duties in the public sector have special reserved entrance into the system (French State Service 1999, p.218). The explanation here may be that in Armenia this kind of reserve would again end up in some patronage movement, which is highly undesirable. Otherwise—no sense in the reform. On the other hand, one-winner system does not give any alternative to the employer, thus giving no choice. This problem should by all means be taken into consideration in the future, as it may become an amendment later on, when the system is established and functioning.

The Legal Status of the Civil Servant

The chapter dwells on principal rights and obligations of civil servants: limitation in relation to service; social guarantees for civil service; financial satisfaction and social benefits of civil servants; legal status of the civil service during the reorganization of the relevant body; the order of keeping personal files of civil service, as well as the limitations of instruction to the civil service, which has been discussed earlier.

From the perspective of the rights it may be said that they are in accordance with the freedoms and guarantees provided by the Constitution, as well as by the Labor Code and demand for transparency of the Civil Service. The latter is provided by the rights of the civil servant:

- ✓ *to get acquainted with the legal act, defining his/her rights and duties in the post occupied;*
- ✓ *to feel acquainted with all the materials contained in his/her personal file, all evaluations of his/her performance;*
- ✓ *to receive the information and materials necessary for the performance of his/her service duties in he prescribed manner;*
- ✓ *to protect labor, financial, health, ensuring adequate and safe working conditions.*

Moreover, the civil servants are given right to take part in discussions of issues and decision making within the framework of their authority and to submit proposals aiming at he improvement of the civil service. This is supposed to make the civil servant more flexible in the work, develop the feeling of responsibility for the work done, be eager to really be helpful to and

interested in the job performed. Besides, the Civil servant is given the right to appeal the results of the competition and attestation if he/she considers them unfair which is also a way not to let any kind of arbitrariness on behalf of those who hold these. One more important point within the rights of the civil servant is that for demanding service investigation when accused unreasonably or being penalized unfairly. This means again that if the civil servant knows his/her rights, he/she should feel very much confident and protected from the partial attitude on behalf of the superiors. The feeling of being protected is quite necessary for any employee to perform efficiently.

Together with rights given to the civil servants there are also obligations to be maintained. The obligations are in general accord with the Constitution, Labor Code, Human Rights demand. In contrast to the Estonian paragraph on this point, the Armenian Law dwells a bit longer on it, giving, however, the general set of obligations, among them:

- ✓ *assistance in the preservation of the constitutional procedures and implementation of the provisions of the Constitution and other laws of the Republic of Armenia [Article 22.1.a];*
- ✓ *implementation of the assignments and decisions made by superior bodies and officials within the framework of their competence [Article 22.1.d];*
- ✓ *maintenance of state, official and other secrets protected by the law, including after the office, in a stipulated manner [Article 22.1.h];*
- ✓ *submission of declaration of revenues through procedures stipulated by the Law [Article 22.1.j] etc.*

These are, as mentioned above, general requirements of any civil/public service. More detailed description of obligations arising from the principal ones are to be defined by the job descriptions of the civil service posts, which are under preparation now.

The Demands to the Civil Servant

These include the standard set of the requirements: the assistance in the preservation of the Constitutional procedures and implementation of the provisions of the constitution, laws and legal acts of the Republic of Armenia; accurate, timely, conscientious and selfless performance of the duties; insurance of the protection of human and civil rights; maintenance of state, official and other secrets protected by the law etc. If to look attentively, here might be seen the balance between the demand to follow the disciplinary rules and obey the instructions and the right of the servant to take part in the discussion and decision making process. Moreover, the balance is made more stable by the right of the civil servant be acquainted with his/her own files; the right to demand service investigation if needed and the right to appeal the unfair competition and attestation. There is a specific right—that of disobedience, when the servant must not perform the instructions, which are out of the authority of the issuer or the receiver. If the servant finds the instruction lawless or out of the scope of his/her authority he/she must inform the superior official in written form about his/her doubts. The repeated instruction must be in writing, otherwise the servant should keep the Civil Service Council informed concerning the matters. There is a special article in the Armenian Law on this, called "Limitations of Instructions to Civil Servants".

At the same time there are incentives **(Article 30)** for the civil servants for a good service and penalties **(Article 31)** for a badly performed one. The incentives are also in accordance with the existing standards. For example, the citation of gratitude, awards of a cash-bonus, a valuable gift or an additional leave, salary rising, award with orders, medals and honorary titles. These are

necessary in the Civil Service as everywhere else, as it is normal when good or outstanding performance or long-term of service is given some evaluation beside the official attestation. It has existed throughout the history of the mankind and may end up only in positive feelings.

At the same time the penalties foreseen by the article are very strong, too: from a preliminary warning to downgrading the civil servant, salary reduction and dismissal from the occupied post. As the process of the rehabilitation may appear long, costly (if the servant is dismissed) and unpredictable (in the case when the decision implemented is found to be correct) it seems better not to break the Civil Service demands and requirements.

Central Coordination---Civil Service Council

Government should have an interest in the content and effective implementation of regulatory instruments, concerned with the Civil Service. One way in which this might be secured is to confer the power to make them on a single authority. This enables common requirements to be made operative throughout the service. Such a single body is seen the Civil Service Council, which is supposed to be the main operating and legislative body of the system, busy with the bylaws, implementation mechanisms, rights and duties of the civil servants. The Civil Service Council gives the possibility to follow the work of service, control and check it, as well as for the civil servants to know that they have a real administrational body to protect their rights. I would like to mention here that in the Estonian Public Service Act the Law does not suppose one, whole body to control the implementation of the Law. It is supposed that every relevant body will have its committee: “the statutes of the committee, the procedure of carrying

out a competition and evaluation and the evaluation requirements for the basic categories of offices shall be established by the Government of the Republic" (Public Service Act of the Republic of Estonia, 1996, §93 [3]). This is considered to be one of the biggest faults of it. The Armenian Law also plans Competition Attestation Commissions at different levels of the Civil Service, but these Commissions will be accountable to the Civil Service Council, which is seen as the organizing, controlling, supervising body and which is accountable only to the president of the Republic. Respectively, the statute, the organizational structure and the maximum staff number of the Civil Service Council shall be approved by the president of the Republic of Armenia.

This body can and has already become the issue of lots of arguments and disagreement. The case is that it is supposed to be appointed by the president and, consequently, subject and accountable to the president. This option does not seem the best from the point of view of the parliamentarians as it gives too much power to the president over the Civil Service. On the other hand, the president has no right to manipulate the work of the Council and can not do it directly as he has no right to dismiss or reveal any member of the Council on his will. The cases for revealing the members of the Council or the Head of it are envisaged by the Law and include the following:

1. upon the personal request;
2. upon the end of the service period;
3. in the event of impossibility perform his/her duties and missing the work due to the incapacity to work three months persistently;
4. in the event of terminating the citizenship of the Republic of Armenia;
5. in the event of being sentenced to imprisonment;

6. in the event of being recognized as invalid or absent on unknown reasons;
7. in the event of occupying other position;
8. in the event of breaking the Law;
9. in the event of his/her death.

Thus, it may be clearly seen that there is no direct relationship between the President and the Council after the latter is formed. Besides, the way in which the Council is supposed to be formed allows keeping it flexible and professionally uninterrupted. The draft says that the members should be appointed in the following order:

One member for a year,

one for two years,

one for three years and so on, afterwards everyone serving a fixed term.

This will mean that the Council will never be changed wholly but every year there will be some kind of "refreshment" in it. The functioning of the Council will not be interrupted, as there will always be the people familiar to the work. On the other hand, the change of a member every year also supposes that the Council will not "stagnate" during the years of no change. The Council is to be formed in a week's period after the Law is passed and enters into force. It supposes a Chairman and six members, and the arrangement of the length of term is made in the way to have a new member each year and at the same time always have experienced ones without interruption. This is supposed to contribute to the efficient functioning of the Council. Though, there arises a problem: the Chairman and the members of the Council are not considered civil servants, so how are they to pass attestation, how are they to prove be the right people for the position?

Of course, the fact that the Council is appointed by the President and not the National Assembly is worrying the parliamentarians very much, but the problem here is that the Constitution of the Republic of Armenia says that the power of the National Assembly is limited within the scope of the Constitution (Article 62) and can not go over that. So, who else is the Civil Service Council supposed to be appointed by and accountable to if not the president? Of course it must be an independent body and only in that case it can work fairly, but in any case there should be some authority to appoint and dismiss the Council. There are not any other options yet, though there may be suggestions, for example, that the Council should be elected. But this can be said to be absurd idea, as the Council being not a civil servant, is not a political body as well. So any kind of elections to the Council would be politically and administratively incorrect. The experience of other countries shows that the Council should be there, otherwise the whole system‘s accountability is under the question, as there is no central body to regulate the work of the system and the implementation of regulations, as well as the functioning of the apparatus. Otherwise, the Law should be as detailed as the Estonian one which will make it more inflexible. There are debates over the fact that there is supposed to be a Head of Civil Service Council and the power of the latter seems to be unlimited. This is a dangerous situation when the power over a whole apparatus is in the hands of one person and that is too much and can not be allowed.

The situation should not be as that, as in any case we have ministers who run whole industries or branches of government, why there should not be a post regulating the functioning of the Civil Service? It is disputable, of course that there should be worked out a system of checks and balances not to let the chairman turn the Council into the private realm of functioning but this also depends on the members of the Council, on their understanding of the system and

the Law. The system of checks and balances is to be one of the main mechanisms to keep the system functioning fairly and transparent.

Transparency

Among the principal demands to any democratic process is the demand for transparency. It is very important that the public should have every chance to follow all the processes taking place in the system. As we know, one of the characteristic features of a democracy is the right of the public to be informed about the decision making and implementation in the sphere of politics and administration. Paraphrasing the well-known saying we can affirm that the draft Law ensures that the Civil Service should be for the people, and to the people. This right is taken into consideration by the law-drafters and the Council is to supervise that the transparency should be kept. Thus, the Law demands that all the vacancies should be announced and published in the mass media. This will give those who would like to join the service to find out that there are vacancies and recruitment in the system. After all, this will give the public the opportunity to follow the work of the Civil Service.

It is worth mentioning here that the Draft does not suppose close and open competition- i.e. a competition for those who are already in the system (closed) and for the general public (open). On the one hand, this cuts the possibilities for patronage promotion and keeping the system closed for new arrivals. On the other hand, such a big competition may always provide for a headache and mess in the system, as just from the point of administrative feasibility it is seen quite difficult to have continuous competitions all the year round.

Taking into account the fact that there is a high turnover in the system, the continuous vacancies and competitions are seen unavoidable. It could be argued that it would be better to have special closed competitions for specific high positions in the system. This argument may be easily overcome, as there is little probability that somebody outside the system would apply for a high civil service post, because there can rarely be outside people fitting the demands. So, the danger of nonprofessional applicants may be deleted.

In any case the transparency is to be kept and it is not only the business of the Council but also the matter of maturity of the public, that is supposed to be well aware of its rights and demand that they should be respected.

Limitations in Relation to Civil Service

To have a professional civil service there should be limitations on the activities of the people employed in the service, especially as to the kinds of occupation, benefits outside the system and kinship relationships within the system. Here the main emphasis is put on the following points: it is prohibited for the civil servant

- ✓ *to enter other paid employment except pedagogical, academic and creative occupations;*
- ✓ *be personally engaged in entrepreneurial activities;*
- ✓ *use the office service benefits in the interests of political parties, NGOs, including religious associations through acting or propagandizing in their interests;*
- ✓ *violating the requirements determined by the Law while having to deal with documents containing state, employment related or other secrets*.

As for the financial side of the service, the civil servant shall not:

- ✓ *take business trips at the expense of a third party if not stipulated by law;*
- ✓ *receive any kind of payments outside the law for performance of his/her service duties (such as for publications or public appearance);*
- ✓ *receive gifts, sums of money or services for the performance of service duties from other persons (expect the cases provided by the legislation).*

Concerning the business activities or shareholding, the civil servant has no right to directly have 10% and more share in the statutory capital of commercial organizations, and is to transfer his/her share for trust management within a period of one month after joining the civil service. To bring a comparison with the Estonian Public Act it is worth mentioning that it allows "a state public servant to belong to an organization which possesses weapons, is military organized or performs military exercises" if permitted by the "person or administrative agency who has appointed him/her to office and with the knowledge of his/her immediate superior" (Chapter 4, § 68).

Another difference between Armenian Civil Service Law and Estonian Public Service Act is that the latter prohibits the state official to belong to "the permanent directing body or present control or audit of a commercial organization, except as a representative of the state" (Chapter 4, § 69). The Armenian Law does not dwell on this, may be leaving the subject to the Secondary regulations.

The Estonian Public Service Act allows the state official to be engaged in the enterprise though it is stipulated "only with the permission of the person or administrative agency who has appointed him/her to the office of the enterprise does not hinder the performance of his/her functions or damage the reputation of his/her position" (Chapter 4, § 72).

Beside this, § 73 also gives the state official the right to be employed with another employer, but again with the permission of the immediate superior.

Thus, it may seem that the Estonian public service officials are given more freedoms and larger scope to deal outside the service. On the other hand, every time they need the permission of their superior and a guarantee that their outside activities will not interrupt with their performance.

The professional civil service demands no other beneficiary employment, as the service is supposed full time. Besides, the outside employment is not desirable, as the civil servants do often have access to information, which should not be used to the benefit outside the system. Thus, being employed somewhere else might end up in the abuse of professional privileges or biased decision making of the civil servant, while performing his/her duties for the state.

Another difference in limitations for the civil servants is that Estonian Public Service Act does not allow the state official released from the office "enter the service of an employer over whom, or join a commercial association over which, he/she exercised supervision within the last three years" for three years after release. This is again supposed to keep the servant from using state secrets or other information to the benefit of the interested parties or for personal benefit or misuse of that kind of information. The Armenian Law foresees to restrict the civil servant for only one year and this is more reasonable from the point of view of freedoms stipulated by the Constitution.

It is very interesting to bring another difference, which points out a very specific characteristic of the two nations: The Estonian Act prohibits the state official to conclude property transactions with his/her close relatives and close relatives by marriage and only. The Armenian Law has a separate point in Article 23, which states that "civil servant does not have the right to occupy a post of civil service that is under direct supervision of his/her next to kin or

in-laws". I suppose this is done to lessen the patronage opportunities in the service or to strengthen impartiality and fairness. We do not know whether this is of great importance or not, but this point is much due to special mentality (good or bad) inherited from the Soviet timed, when any responsible position became a kind of heritage. We can not say whether this will work out or not, but the presence of even such a small detail once more affirms that the Law drafters have tried to foresee and include every chance to prepare a basic document for professional Bureaucracy.

Basis for Relieving

The civil servant cannot be relieved on the arbitrary decision of the superior any more. The reasons for the relief of a servant are given in the draft and they are in accord with the international standards. The main points in this case are seen the following ones:

- ✓ *upon a personal request ;*
- ✓ *in event of not submitting the personal income;*
- ✓ *in the event of repeated disciplinary penalties within one year;*
- ✓ *in the event of being elected or appointed to political and discretionary posts;*
- ✓ *in the event of violating the procedures for joining the civil service;*
- ✓ *in the event violating the laws and being sentenced to imprisonment;*
- ✓ *in the case of terminating the citizenship of the Republic of Armenia.*

This is not the whole list of the points but these are the most important ones, and the others are in general the same as in any other document of the kind. This Article is to make the civil

servant feel more or less protected from the personal preferences of the superior, thus being sure that while following all the demands of the Law he/she will not lose the job.

There is also to be mentioned the point on the pregnant civil servants, which gives the latter the right to have up to three years' time to look after the child and not to be relieved from the post. This supports the rights of the female servants not to become unemployed while being on the maternity leave.

The Provisional Articles

The Law supposes that the whole process of the basic implementation will take two years at maximum. It is divided into phases, which will be covered during three years after the Law has passed.

The first phase will include the formation of the Civil Service Council; the formation of the relevant bodies wit the establishment of the post of the General Secretary; the completion of the creation of the job descriptions; as well as the creation of the Competition Attestation Commissions. During this phase the employment in the system will be on the contract basis.

The second phase will include the recognition of the employees of the staffs of all the bodies, covered by the Law, as civil servants. This phase may last for more than a year, as not all the relevant bodies will undergo the process simultaneously. First will come the staffs of the President, National Assembly the Government, the Republican executive bodies, the standing commissions (councils) formed by the laws of the RA.

Then come the staffs of Marzpetarans of the RA (the Municipality of the City of Yerevan).

And the third in the line will be the staffs of the local self-government bodies of the RA.

There arises a question- what will happen to the people working in the system today and how is seen the functioning of the present system before all provisional steps are taken? The fact is that as soon as the Law is passed, it is supposed that all the employees will remain on the contract basis. This will mean that all the employees of this sector would sign temporary contracts that will be terminated after the period envisaged by the Law. Besides, the Draft envisages Civil Service Reserve for those who lost their jobs in the system due to the staff reduction, the end of the contract, or any reason stipulated by the Law. Though the time period of staying in the reserve is not very long- only 6 months, it gives, however, some feeling of not being thrown out to the civil servants. Moreover, it also gives opportunity to be employed again if there is a corespondent job in the system within those 6 months.

Problems

There are two main problems that are apparent after the examination of the Law. One is in the Law itself. It arises when the two demands fall in contradiction: structural integrity versus administrative feasibility, which bring about the inconsistencies, that should not be there. The law-drafters seem to have tried to create a law, which would fit both international and domestic standards, thus giving up in some special points to win in some others. In any case it should not be left out of the consideration that a Law could not be inconsistent with the main Law of the country as well as the other laws. This would mean that more attention should be paid to the three main problematic issues about the scope:

- ✓ ***the problem with the Court Administration (staff) being let out of the scope;***
- ✓ ***the problem of the Prosecutor's Office staff being not included;***

✓ ***the problem of the staffs of the self-governing bodies being included in the scope of Law.***

The first two issues bring forth the inconsistency with the demand of structural integrity. Leaving these two State Offices out of the Civil Service can not contribute either to the integrity of the system or to the be benefit of the State in the whole. The arguments about the too large scope do not seem appropriate, as the staffs of these two offices can not be so huge in number as to make any difference in the whole system. On the other side, their small size does not also allow them be given a special status, as it would be too much for such a small country as we are. It would also mean to break the state system into pieces, which entirely contradicts the idea of reform.

The third issue, the one concerning the self-governing bodies, represents just an opposite case, when the certain bodies are included in the scope of the Civil Service in contradiction to the Law on the Local self-governing bodies. This inconsistency is also to be revised as it also contradicts the Constitution and the Draft can not be passed as a Law with such rough controversies. The solutions here may be two: either to revise the article on the scope of the Law, or to revise the Law on Local self-governing bodies. The latter seems to be more complicated than the former, but from any perspective the law-drafters are to revise these issues.

The second group of problems relates to the Law indirectly and concerns the complaints of the Members of Parliament. The main issue of dissatisfaction and objections of the parliamentarians appears to be the Civil Service Council. They seem to have confused the fact that the Council regulates the work of the Service with that of the Council to appoint people. This rather may be explained by the mentality that does not allow grasp that the appointment can be independent of one's preferences and affiliation, but to one' s consistency to the job. And this

problem is to be overcome by those who are introducing the Draft to the NA. To make the Members of Parliament believe that the Civil Service Council regulates the functioning of the whole system but does not rule. That is very essential both for the Members of Parliament and the Law and the society in general.

Conclusion

The analysis of the Law and other related documents and the study of the general environment in the field of Public Administration in Armenia allows us to conclude that it is high time there were taken some decisive steps in the direction of the reforms. The study of the Draft Law has also shown the very serious attitude of the drafters to their task, as the Law in general corresponds to the classical standards of that kind of a regulation. The overall picture of the Law may be said the following: it is

- ✓ *Short (8 Chapters, 57 Articles);*
- ✓ *Comprehensive (covers all areas envisaged by experts and evident in the laws of other countries);*
- ✓ *Administratively Feasible (leaves space for the Secondary Legislation, will cut the huge number of bureaucratic apparatus);*
- ✓ *Contributes (in general) to the structural integrity of the System.*

The purpose of the Law is quite clear and it may be claimed that the Law

- ✓ ***Has all the potential to introduce and establish merit system in the civil service;***
- ✓ ***Is to build a classical-- neutral, professional and efficient Administration;***
- ✓ ***Protects the rights of the civil servants against arbitrariness of the superiors;***

- ✓ ***Will benefit to the development of democratic structures in Armenia.***

The adoption of the Law is very crucial not to the system only, but the State in the whole, as the State is primarily seen as the Creator and Implementer of any reform and whether the reform is a success or failure is to the great advantage of the State or just the opposite. Here comes forward the demand for skillful and educated staff—those who are taking in the implementation of the Law should have a very clear vision of the objectives of the Law. Moreover, they also should believe in what they are doing and in the general idea of the fair and unbiased service.

The study of the Draft has once more shown that the idea that there can not be bad laws, but bad implementers, does not always prove to be universal. There may be quite a good Law or draft, but because of vague interpretation or misunderstanding or just inactivity of those in whose hands is the implementation of the Law, it can be spoiled or even "killed" before entering the force. Besides, the study of the Draft brought up nearly as many new question as there had been to answer. While being really perfect in some special points, the Draft is weak in some other ones. In my opinion, this is to more to the political pressure than to the inability of the drafters to grasp the problem.

This comes to support my deep belief that to change anything in our country there is a need of mentality, which is the result of the too much prolonged transitional period that is marked by a mess in the legal system. We are trying to build a democratic society, clearly ignoring the fact that democracy is not only a formal set of institutions but also a culture. Without the customs and practices that define democratic behavior--what Alexis de Tocqueville called "the habits that freedom forms"--new and nominally democratic institutions can revert to

being storefronts for closed, authoritarian, aggressive societies. Thus, to replace the existing chaos in the Administration by an order it is not enough to pass a law and several regulations. We need a change of mentality that is to come with change of a generation**.**

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