

IILHR COMMENTS: FEDERAL CIVIL SERVICE COUNCIL DRAFT LAW OCTOBER 2008

After studying the current Federal Civil Service Council Draft law, IILHR has compiled the following comments for your review. The main areas of concern are the following:

- ❖ The present draft is too limited in its focus: this draft refers to establishing public or independent institutions without developing the public system and further it does not discuss the substance of the debated issue [civil service in this case];
- ❖ Normal State Practice takes a legal approach which is more inclusive:
 - Defines civil service and civil servant, categories/classification of civil servants, management/administration of civil service, rights and obligations, selection and appointment, incompatibilities, performance evaluation, promotion and benefits, disciplinary actions against civil servants and penalties', modification and cease of work relations of civil servants;
 - establishes a governmental or independent institution implementing legal provisions should be a separate chapter; this law should focus solely on general provisions on composition of Council, selection, election and dismissal of officials and general duties of Council; details on functions and organization of civil service and the Council should be left to executive regulations;
- ❖ Annexes of a comprehensive list of civil service positions [leadership and executive positions and categories within] in different local/regional/federal public institutions and an organizational chart of Council should be attached to the law;
- ❖ Financial analyses and implications should be included in every draft law; review and suggestion of financial implementation into the annual or future federal budget needs to be addressed in a separate article;

For specific examples see the annexes attached from Bosnia-Herzegovina and Albania.

Further review and suggestions are set out in this paper. Please contact IILHR for further discussion, information and clarification.

Article 1 – Defining the Council of Federal Civil Service

- COMMENT: a much clearer definition of the Council and its role as governmental institution is needed. Would suggest rephrasing in more than one paragraphs for clarity;
- SUGGESTION: add language such as:

[(1) For the setting up and the development of a professional body of civil servants the Council of Federal Civil Servants [hereinafter called the Council] is hereby established pursuant to the provisions of the present Law.
(2) The Council is a specialized body of federal public administration with legal personality, financial and administrative independence, under the supervision of the Council of Ministers.
(3) The Council shall be led and represented by a president with the rank of Deputy Minister, appointed by the Prime Minister.
(4) The Council shall be financed from the federal {regional/local budget??}.]
- COMMENT: many European countries opted for a mixed approach to appointment of Council Members (by Presidency, Parliament or Local authorities) and approved by Parliament.
- SUGGESTION: See Annex 1 (attached) - Law on the Status of Civil Servant of Albania Article 5

Article 2 – Main authorities of the Council

- COMMENT: defining the purpose and main authorities' seems vague. Suggest more accurate rephrasing of the article;
- SUGGESTION: add language such as:

[The Council shall have the following responsibilities:

- (1) To develop the strategy and policies on federal civil service system; to provide management of federal civil service, based on the constitutional principle of equal opportunity for all citizens, in cooperation with the Council of Ministers and ministries/agencies/independent commissions; to supervise and oversee all activities and institutions on issues related to federal civil service;

- (2) To contribute to the development of implementing regulations of the present law in order to unify public policies on federal civil service including appointments, promotions, formation and competences of civil servants;
- (3) To work on making the civil service system more efficient; to develop programs/policies for the professional development of civil servants and provide proper social welfare for civil servants, in cooperation with specialized institutions.]

Article 3 – Formation/composition of the Council

- GENERAL COMMENT: for the clarity of the provision would suggest listing conditions members should fulfill in separate paragraph and then the way of appointing, dismissal or term of office.

First:

- COMMENT: the first paragraph should refer to the composition and procedure of appointing members of the Council; appointing authority should be the same for all members, as the Council is under the supervision of the Council of Ministers;
- SUGGESTION: add language as follows:

[(1) The Council shall have 11 (eleven) members appointed by the Prime Minister. Nominations shall be made by Council of Ministers, representative unions and other professional bodies.]
- COMMENT: for different approach please see Comments to Article 1 on page 2 of this Memo

Second:

- SUGGESTION: rephrasing as follows:

[(2) The president shall have the rank of Deputy Minister. The Vice-President and other members shall be given the rank of Director General.]

Third:

- SUGGESTION: for the logic of Article would suggest to include term of mandate, possible re-appointment and replacement of Members immediately after Paragraph (2) with language as follows:

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[(3) The members of the Council shall be appointed for a term of four years. Members may be reappointed for a second term only. The members appointed as replacement of another member whose term of office ended, shall hold office upon the expiration of the Council mandate.]

- COMMENT: Why give the power to the Premier to choose the president – leaves room for bias.
- SUGGESTION: Change to allow council to elect President and VP from amongst the members by majority vote of members present at first meeting.

Fourth:

- SUGGESTION: would suggest to enlist conditions to be fulfilled by Members appointed as follows:

[(4) The Members of Council shall fulfill the following conditions in order to be appointed:

- i. Be an Iraqi Citizen;
- ii. Be more than 30 years old;
- iii. at least 20 years work experience with University degree (BA) or 18 years work experience with Masters degree (MA) or 15 years work experience with Doctorate degree (PhD);
- iv. have no criminal record]

Fifth:

- SUGGESTION: suggest moving it to Paragraph (2) and replace it and merge it with Paragraph (6) with the following new language:

[(5) The President represents the Council and issues orders in order to fulfill financial and administrative authorities given by the present law. The Vice-President carries out the duties and tasks delegated to him or her by the president, by order.]

Sixth:

- SUGGESTION: would suggest merging it w paragraph (5) and delete

Seventh:

- SUGGESTION: Add language similar to the following:

(6) Members of the Council shall be dismissed by decision of the Prime Minister:

- i. upon their own request;
- ii. in case of failing to perform their duties or tasks in a professional manner or contrary of the present law or orders of the Council;
- iii. if one or more conditions included at paragraph (5) are not fulfilled

Article 4 – Oath of Council Members

- COMMENT: in order to respect equity of members of Council would suggest a slight re-phrasing of the Article
- SUGGESTION: add language as follows:

[Members of the Council shall take the following oath in front of the Prime Minister:

{Swear by God Almighty to carry out my duties honestly, neutrally, independently and faithfully, and to be keen to apply the Constitution, laws and instructions, and protect the confidentiality and the dignity of the position. God is my witness}]

Article 5 – Delegation by President

- COMMENT: moved to Article 3 Paragraph (4)
- SUGGESTION: delete article

Article 6 – Council's work

- COMMENT: provision should include type of decisions taken by Council and for accuracy would suggest re-phrasing Article;
- SUGGESTION: add language as follows:

[(1) The Council shall take decisions, issue instructions or regulations in the presence of 2/3 of its members.

(2) The presence of the President or Vice-President is required at every meeting.

(3) In case of equal vote the President's or Vice-President's (if President is absent) vote is decisive.]

Article 7 – Tasks of the Council

First:

- COMMENT: paragraph contains 2 of the main tasks of the Council and for accuracy of provision would suggest splitting it in 2 separate paragraphs

- SUGGESTION: add language as:

[(1) drawing up strategies and policies of civil service system, mechanisms of implementation and process of evaluation

(2) planning, supervising and controlling the affairs of public posts]

Second:

- COMMENT: The Council should not be proposing laws as they are not constitutionally allowed to do so.

- SUGGESTION: Change language to reflect that the Council's advice and opinion should be taken into account on all laws that affect the Federal Civil Service. Additionally add language dictating that the Council is responsible for implementing the laws that govern the Federal Civil Service:

[(1) Provide written advice to the Ministry of Finance on all laws that affect the Federal Civil Service. This written advice should accompany such drafts through the process of ratification of said law.

(2) Implement the laws which govern the Federal Civil Service, as well as all rules and regulations that effect federal employees]

Third - Eleventh:

- COMMENT: paragraphs Third to Eleventh are confusing and do not reflect the main responsibilities/tasks of the Commission. For example, who/what are these "competent bodies", "specialized bodies", "bodies in charge"? Or: Are these the appropriate Ministries to be tied to?

- SUGGESTION: add new language as follows:

[(1) Coordinate and monitor the implementation of the present law;

(2) Develop regulations for all public authorities and institutions regarding civil service positions, the grading and classification of these positions;

- (3) Develop proposals for setting up a unitary wage system applicable to all civil servants;
- (4) Establish criteria on evaluating civil servant activities;
- (5) Organize the vocational training system for civil servants;
- (6) Develop and manage the database on the records of civil servants and public positions;
- (7) Write annual reports regarding civil servants and public positions management, which will be submitted to the Council of Representatives by the Council of Ministers;
- (8) Develop and monitor the implementation of rules on organizing competitions for becoming civil servant;
- (9) Grant specialized assistance and coordinate activities on human resources management with public authorities and institutions;
- (10) Cooperate with international bodies and organizations in the field of human resources management]

Article 8 and Article 9

- ⊖ COMMENT: Is this chapter (Art8 & 9) in the right place in the law? The structure and tasks of the Council should be determined by the bylaws of the Council, which should be passed by the majority of the members present at the first meeting. Bylaws etc should be decided at the first meeting of the Council by the whole Council and not just by the President of the Council alone. Gives too much power to the President.
- ⊖ SUGGESTION: Merge the two articles and add language as follows:

[The structure and tasks of the departments of the Council, along with their divisions and tasks shall be determined by bylaws issued by the Council. These bylaws shall be determined and implemented at the first meeting of the council by a simple majority vote of the total members of the Council]

Article 10 – Final Provisions

- COMMENT: Council should not need the assignment or approval of the Premier in order to attend meetings of the Committees of the Council of Representatives when the Committee is discussing issues that affect the Federal Civil Service.

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- SUGGESTION: Change language to reflect that the Council may attend any ICOR Committee meeting upon evaluating that the said committee is discussing a matter that may affect the Federal Civil Service.

Article 11 - NO COMMENT

Article 12 - NO COMMENT

Article 13 -

First: NO COMMENT

Second:

- COMMENT: Gives too much power to one person. The Council as a whole should enact the bylaws necessary to enforce this law.
- SUGGESTION: modify language to be similar to the following:

[The Council may enact bylaws and instructions to facilitate enforcement of the provisions of this law by a simple majority vote of the total members of the Council.]

Article 14: NO COMMENT

Article 15:

- COMMENT: This draft law does not make clear as to who will finance the Council. State practice indicates that state budget is the main resource for developing and supporting civil service systems across the world.
- SUGGESTION: Include a new article on the financing of the Federal Civil Service Council adding language as follows:

[The Federal Civil Service Council shall be financed by federal/regional/local budgets.]