

Uzbekistan: What is Wrong with the Civil Service Draft Law?

The draft law “On Civil Service” of Uzbekistan needs revision.

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The draft law “On Civil Service” regulates relations in the field of the state civil service, that is, the work of the middle ranking employees of the state bodies and organizations. At the same time, the document does not clearly define the subject of the legal regulation; the goal is described in broad terms that do not reveal its meaning.

What is the state civil service?

According to the project’s description, the state civil service is a professional paid activity of Uzbek citizens for the public benefit in state bodies and organizations. There was no such concept previously, and even now, it is not very clear how the civil service differs from other types of public service (if any implied in the draft law). In general, the public service can be civil, law enforcement, diplomatic and military (by the type of service), or political and non-political (by participation in the development and implementation of the state policy).

Why is this bill needed?

Unfortunately, there is no single normative legal act (and even its draft) in Uzbekistan yet, which would consider the civil service as a single mechanism. In 2017 and 2018, draft laws on state service were presented for public discussion. However, in 2020, the word “civil” appeared in the title of the draft law. It is important to understand that the law on

civil service cannot replace the law on state service.

Good. What is wrong with that?

In addition to conceptual problems, the draft law contains a number of significant weaknesses:

- Weak conceptual framework, definitions with imprecise and polysemantic terms are used. The principles of the state civil service are not explained; the concept of serving the people, which is at the core of the public service, is described poorly.

- Presidential Decree No. 5843 states that a “career model” of the state civil service should be introduced. However, as the Doctor of Law Isa Khamedov noted in an interview to Gazeta.uz, the key steps of the career model are not reflected upon: the civil service in the reserve, a competent qualification exam, a proper administrative procedure, career growth based on competencies, etc.

- The principles of meritocracy (a system of rewards for abilities and achievements) should ensure the development of the civil service. However, the tools described in the bill will not be able to ensure this. The selection of personnel, admission to the civil service, promotion, and prosecution are built on the subjective assessment of managers at the department level.

- The law uses the term “employment contract” to secure relations, which is not applicable to public service. An employment contract is created on the freedom of contract for both parties. That is, the employee and the employer can influence the contract’s content and have the right to negotiate the provisions. In the public service, there is no such choice, because it is based on the hierarchy of power and the mission of serving the people.

- Some articles may contradict the Constitution of Uzbekistan. For example, Article 8 proposes the development of an ideological platform. What it means is not clear, because

according to the Constitution, no ideology can be established at the state level. The Article 12 proposes to conduct psychological assessment and assess the mindset of a civil servant. How can one's mindset be tested? Moreover, the Constitution guarantees citizens the freedom of thought, speech, conviction, and conscience. In addition, the draft law gives the government almost unlimited powers, while limiting the president's powers.

It limits the President and expands the government's powers? Is it bad at all?

Yes, because it upsets the balance and the system of checks and balances. As for the President, his powers are described in the Article 6; the list is specific and rather limited.

The list of powers of the Cabinet of Ministers is also short, but the imprecise terms are also used instead of specific ones:

- "participates in the implementation of the unified state policy in the field of state civil service",
- "assists in coordinating the activities of state bodies and organizations to fulfill the effective implementation of the state civil service's requirements",
- "also exercises other powers in accordance with the legislation".

The list of government's powers should be limited, comprehensive and precise.

In addition, the document contains many declarative tasks that relate to the head of state: the approval of the state register of positions, payment procedures, etc. However, the President should not decide on such processes. He determines the main directions of state policy, and the relevant state body should ensure the development of the civil service.

Unfortunately, the mechanism of this body's work is described very shortly. The proposed bill does not clarify how the system of checks and balances will be implemented in the state policy, if the Agency is subordinate and controlled by the President only.

Who can benefit from this?

Was anyone interested in reducing the state service law to a narrow discussion of the civil service? There is no single answer to this question. Considering that there are few specialists in administrative law in Uzbekistan, it is quite possible that this was a technical mistake. Let us review the chronology of the events since the inauguration of President Shavkat Mirziyoyev:

THE DEVELOPMENT OF THE LAW ON THE STATE SERVICE IN UZBEKISTAN

FEBRUARY 7, 2017

The President Shavkat Mirziyoyev signed a Decree on the Strategy for the Further Development of the Republic of Uzbekistan (Presidential Decree No. 4947)

AUGUST 29, 2017

A draft law on state service prepared by the Ministry of Employment and Labor Relations of the Republic of Uzbekistan was presented on the System of Legislation Acts Impact Assessment.

SEPTEMBER 8, 2017

The President signed a Decree on the Approval of the Concept of Administrative Reform in Uzbekistan (Presidential Decree No. 5185)

APRIL 13, 2018

The Regulation for the Ministry of Justice of Uzbekistan was updated, according to which, "The central apparatus of the Ministry, the Ministry of Justice of the Republic of

Karakalpakstan, local departments of justice, departments of justice of districts (cities) are law enforcement agencies". Previously, the Ministry of Justice did not have such a status.

MAY 21, 2018

A draft law on the civil service prepared by the Ministry of Justice of the Republic of Uzbekistan was presented on the System of Legislation Acts Impact Assessment. In the draft, the law enforcement agencies were defined: "The legal status of civil servants from the law enforcement agencies is determined by this Law, according to the legislation regulating the activities of the relevant law enforcement agencies". This is normal: in many countries, the service in the law enforcement agencies is regulated by separate legislative acts.

OCTOBER 3, 2019

The President signed a Decree on Measures for Cardinal Enhancement of Personnel Policy and the Public Service System in the Republic of Uzbekistan (Presidential Decree No. 5843). This narrowed the state service law to the civil service. The decree also provides for the preparation of a number of subordinate acts: "The Procedure for the Establishing and Functioning of the System of the National Personnel Reserve", "The Procedure for Assigning Qualification Ranks to Civil Servants", "The Procedure for Advanced Training of Civil Servants", etc. All these issues were reflected in the relevant sections of the 2018 draft law on state service.

MAY 22, 2020

The draft law on the state civil service prepared by the Civil Service Development Agency was presented on the System of Legislation Acts Impact Assessment. Law enforcement agencies are completely excluded from it: "The legal status of civil servants from the law enforcement agencies, defense, state

security, diplomatic, rescue services is regulated by separate legislation acts". At the same time, there are still no normative legal acts regulating the civil service in general in Uzbekistan.

Why is the unity of the civil service necessary at all?

In order for the civil service to work effectively, as a single mechanism. For this, it is important to create a unified system of interagency interaction with common goals and vision. Currently, there is no such unity in Uzbekistan; each department serves its own interests.

For example, the country still does not have a unified system of e-keys for generating the digital signatures. The key can be obtained from the State Tax Committee, or through the state enterprise "Unicon.uz". There is only one standard, but there is no mutual recognition of keys, thus, it is impossible to sign a tax report with a key from Unicon.uz.

In Uzbekistan, there is still no single digital database of all individuals and legal entities. It could be used to issue a TIN, EDS, to maintain registers in different departments. Now, each department creates its own database with limited access.

The state civil service law was supposed to unite all departmental interests within the state policy framework. However, this will not happen if the bill developers do not eliminate conceptual, systemic problems and pass the law with minimal and declarative changes.