CDL(1994)025e-restr
Strasbourg, 9 May 1994

THE ORGANISATION OF THE CIVIL SERVICE IN STATES GOVERNED BY THE RULE OF LAW

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When one considers the problems facing the different civil service systems in most Western European countries, which call into question basic principles and rights inherent in states governed by the rule of law such as the principles of equality, non-discrimination, proportionality, impartiality, freedom of speech and opinion or fundamental rights such as the right of association and the rights to belong to political parties or trade unions, to strike and to choose one's place of residence freely, to name but a few, the question arises as to whether the Venice Commission should not give wide-ranging consideration in its work to these fundamental issues, given that most countries in transition are currently establishing civil service systems or reforming their existing systems, often following the example of the major systems found in our Western countries.

Concerns of such fundamental importance as, for instance, the safeguarding of the rights of the defence in the various administrative procedures applicable on entry into or during service - whether concerning recruitment, promotion, reassignment, appraisal, the adoption of various internal administrative measures, the application of disciplinary procedures or the termination of service - have led us to rethink, weigh up or call into question the justification of certain rules which depart from ordinary law and which many civil service systems had no difficulty at all in imposing until only a few years ago. In particular, in certain proceedings instituted against civil servants, the relevant government department often seems to be both judge and party, the official concerned is not always able to be assisted by the person of his/her choice or he/she is not allowed to challenge one of his/her "judges". The obligation to hear the persons concerned before any disciplinary sanctions or serious internal administrative measures are taken against them has not always been accepted as a general legal principle or a principle of good government.

It has often been asked whether or not Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms applies to disciplinary proceedings in the civil service.

To what extent are the restrictions imposed by the various duties of office (duty of discretion, reserve, loyalty and fairness) compatible with Article 10 of the aforementioned convention?

Do the conditions for entry into the civil service or for promotion, in particular the appraisal procedures for civil servants, always comply with the provisions of Article 14 of the Convention, or, on the contrary, do they introduce unacceptable discrimination?

Freedom of association and the right to join trade unions, along with the criteria governing the latter's representativeness, have caused many problems in connection with different countries' civil service legislation.

It is not surprising therefore that not only are an increasing number of disputes being referred to the administrative tribunals and the courts of the states parties to the Convention, but the European Court of Human Rights has also ruled in favour of the rights and interests of the officials concerned in many such cases which it has heard. The effect of these rulings has been quick and, in most cases, has involved significant reforms of the civil service legislation concerned.

The question is whether the Venice Commission should undertake an in-depth study on this issue, given that the democracies in the former Eastern Bloc are currently working to establish their various civil service systems.

The slow progress made in the civil service legislation in our Western countries, which has undoubtedly been influenced by the application of the principles set out in the Convention, demonstrates that governments are now concerned to respect certain fundamental rules that protect public servants against arbitrary decisions.

These are the avenues for discussion which it would seem worthwhile looking into more closely.