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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT OPINION
ON THE DRAFT CIVIL SERVICE ACT
OF THE REPUBLIC OF BULGARIA**

Drawn up on the basis of the appended comments by:

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I. Introduction

The Council of Europe Parliamentary Assembly has asked the European Commission for Democracy Through Law (Venice Commission) to give an opinion on the Civil Service Act of the Republic of Bulgaria. At its 37th plenary meeting in December 1998, the Venice Commission held an exchange of views on the bill, based on preliminary opinions given by the rapporteurs.

After further information had been received, the rapporteurs resumed their work on the basis of a new draft forwarded by the Bulgarian authorities.

The present opinion was drawn up on the basis of the text supplied by the Bulgarian parliament in January 1999. The bill submitted to the National Assembly for a second reading differed in some respects from the version initially submitted to the Venice Commission.

This opinion incorporates the rapporteurs' main comments. A more technical analysis of the text of the Civil Service Act is given in their individual opinions, which are appended to the present opinion.

II. General comments on the text as a whole

1. The text outlines the general structure of the civil service, lays down the main organisational rules and establishes a status for civil servants, including rules for their appointment.

Firstly, it should be noted that the main rules applicable to the Bulgarian civil service are dispersed in various laws and regulations which partially overlap.

For example, the basic principles governing the civil service are laid down in Section 2 (1) of the Administration Act, and reproduced in almost identical terms in Section 19 of the bill, which deals with the duties of civil servants. The same applies to the provisions concerning the power to appoint civil servants (Section 9 (2)), their responsibilities (Section 2 (5)) and the different positions available (Section 12 (1)).

2. Organisational and operational rules are set out in the "Organisational Codes" adopted by the Council of Ministers¹ for each ministry, but there is no basic text defining the concepts used.

According to the text of the bill, Bulgaria intends to establish a civil servant status; it must make a definite choice between a career-based system and a post-based system. It is not clear from the text of the bill which of these the Bulgarian legislature has selected. Although the draft appears to favour a career-based system, concepts such as civil servants, categories, ranks, groups and positions are not defined clearly enough to avoid confusion with a post-based system.

3. The draft fails to strike a balance between general provisions such as basic principles to be observed by civil servants and very detailed technical provisions on their economic and social rights.

The Act should normally be confined to basic rights and principles, leaving it to a regulation-making body such as the Council of Ministers to adopt detailed implementing measures. This is simply a

¹ See page 2 of Prof. Herbiet's opinion, set out in Appendix 1 to this consolidated opinion.

question of efficiency: it should be possible to adjust the arrangements for application of a law easily and quickly without any need for legislative intervention.

III. Problems raised by specific sections of the Act

4. The bill divides civil servants into two categories - "directing servants" and "experts" (Section 5). The legal significance of such a distinction is unclear. Section 2 (2) requires the Council of Ministers to determine job titles for different civil service positions and to divide them into groups and ranks. The question arises as to whether the "groups" refer to the categories mentioned in Section 5.

There does not seem to be any justification for the fact that the principles to be observed by civil servants in the course of their duties are divided between Sections 4 and 19. Moreover, these sections simply echo the provisions of Section 2 (1) of the Administration Act. The bill would be more homogeneous if all these provisions were brought together in a single chapter on the duties of civil servants.

5. It is unfortunate that the new version of the bill does not retain the principles of accessibility and openness contained in the previous version. In the new text, they are replaced by the principle of "stability". This might weaken the position of citizens vis-à-vis the administration, particularly since the right of access to information is guaranteed by Article 41 (2) of the Bulgarian Constitution.

The omission of these principles may even give rise to a violation of that constitutional rule. Section 25 (1) requires civil servants to respect the principle of confidentiality. However, the appointing authority determines which information is to be considered confidential (Section 25 (2)). It is therefore left entirely up to the authorities to decide whether information is confidential; this is contrary to the logic of the constitutional rule².

6. A serious problem arises in relation to Chapter 10 concerning monitoring of the proper application of civil servant status. This chapter sets up an internal monitoring body within the government: the "State Administrative Commission".

According to Section 128, this body exercises its powers in conjunction with the Council of Ministers, which determines its membership on the proposal of the Minister for State Administration. The appointment of its members consequently appears to be a highly political process. Given that its structure and activities are also determined by a Council of Ministers regulation, it is doubtful whether this body enjoys the necessary independence from the political authorities. Its precise role and the scope of its powers are not clear from Section 131.

Section 135 also gives this body the power to issue instructions and orders to the appointing authorities; this may result in a politicised civil service.

In this connection, a monitoring institution similar to that of the ombudsman would be more appropriate than the Administrative Commission as presented in the text under discussion.

² This situation might be remedied by the adoption of a specific Information Act.

