

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS ON THE DRAFT CIVIL SERVICE LAW
OF THE REPUBLIC OF ARMENIA

By

Mr Kaarlo TUORI
(Member, Finland)

1. The following remarks concern the new version of the draft law, dated 28 June 2001. A general reference can be made to my previous comments (2 February 2001) on the draft from 14 June 2001.
2. The Venice Commission adopted the report on the revised Constitution of the Republic of Armenia ([CDL-INF \(2001\) 17](#)) at its July 2001 session. The draft Constitution (21 June 2001; [CDL\(2001\)61](#)) forms the general background to the assessment of the draft civil service law. My focus is on the rule of law and democracy; I shall bypass issues of a more technical nature.
3. A significant change in the scope of application has been made in the new draft: local self-government has now been left outside the laws field of regulation (Article 4). This accords with the principle of local self-government as acknowledged in the draft Constitution (Article 11(2) and Chapter 7). An exception seems to be the municipality of Yerevan (Article 4(1), paragraph d).

Reference can be made here to the remarks made with respect to the constitutional position of Yerevan in the report adopted in July ([CDL-INF \(2001\) 17](#), paragraphs 57 and 74).

4. In other respects, the exact scope of application of the draft law is not entirely clear. Article 30.1(2) of the (draft) Constitution presupposes that the principles and the procedure for organisation of state service shall be defined by law. According to Article 1(3) of the draft civil service law, state service includes the Civil Service, the Judicial Service and the special services, namely in the Republican Executive Bodies of Defence, National Security, Internal Affairs, Tax, Customs, Emergencies, as well as Diplomatic and other Services envisaged by the laws. The provision gives rise to the interpretation that not only the Judicial Service but also the other fields of state service listed fall outside the scope of application of the civil service law. The reasons for this are not clear.
5. The main principles of the civil service are laid down in Article 5. The list still includes principles of varying weight and scope of application; an internal grouping of the principles is recommended. The most important principle is that of paragraph a): the supremacy of the Constitution and laws of the Republic of Armenia, the priority of human and citizens rights and liberties. As I have stated in my previous comments, the wording of this provision should be brought into harmony with the relevant articles of the (draft) Constitution, especially 4, 5 and 6, and the human and citizens rights and liberties should be explicitly linked to the Constitution and international human rights treaties. I also wish to restate my remark that the oath of civil servants (Article 17), as well as the provision on their principal duties (Article 24) should concur with the provision concerning the fundamental principles of civil service. What is meant by the lawful interests that civil servants are supposed to swear to maintain remains unclear.
6. The openness of the Civil Service is one of the main principles listed in Article 17. The requirements of this extremely important principle, however, receive no specification in the following articles. In Article 24, concerning the main duties of civil servants, there is no reference to this principle, nor do any other provisions refer to any complementary regulations on access to information.
7. Paragraph e) of Article 5 lays down the principle of the political restraint of civil servants. This principle is specified in Article 25(1), paragraph 5, according to which the civil servant shall not have the right to implement violations of the principle of the political restraint of the Civil Servants, that is, to use his/her service position in the interest of parties, non-governmental organisations, including religious associations, proselytise in their favour or implement other political or religious activities. Article 28(3) of the (draft) Constitution permits that the rights to create and become members of parties and trade unions may, in the manner defined by law, be limited for individual groups of servants of the armed forces and public servants. The draft civil service law does not include any explicit restrictions of this kind. If these are the aims, they should be explicitly regulated, and the appropriate place for such a regulation is the general civil service law.
8. Article 30.1(1) of the (draft) Constitution states that citizens have the right to be accepted into state service on general terms stipulated by law. Accordingly, Article 12 of the draft civil service law restricts the right to be appointed to a civil service position to citizens of the Republic of Armenia. It is true that international human rights treaties do not require the opening of civil service to non-citizens. By contrast, EC law allows for citizenship-based limitations only with regard to positions involving the exercise of public authority or touching on national interests. In this respect, the general requirement of Armenian citizenship for all civil service positions is too strict.
9. According to paragraphs a-b) of Article 13, a person can be deprived of the right to occupy a civil service position only through judicial procedure. This additional requirement is to be welcomed.

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