

§ 5 Civil servants law - illustrated by the example of Germany

I. The dual system of civil servants and ordinary employees in the public service

- in 2013, 37 % of persons employed in the German public sector were civil servants
- a recent tendency to employ more persons as ordinary employees

II. The constitutional foundations of civil servants law

Art. 33 of the German Basic Law (extracts):

...

- (2) Every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievements.
- (3) Neither the enjoyment of civil and political rights nor eligibility for public office nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or non-adherence to a particular religious denomination or philosophical creed.
- (4) The exercise of sovereign authority on a regular basis shall, as a rule, be entrusted to members of the public service who stand in a relationship of service and loyalty defined by public law.
- (5) The law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service.

- *institutional guarantee of the professional civil service* (art. 33(4, 5))
 - in order to achieve the stability and continuity of public administration
- *reservation of exercise of public power in general to civil servants* (art. 33(4))
 - a limit for all reforms of the public service
 - DISPUTED for teachers

III. The principle of equal eligibility for public office and of selection of the best candidates ["Bestenauslese"] (art- 33(2) BL)

- extended by statutory law to all EU citizens
- guarantees equal access to and equal chances of promotion within the civil service
- *principle of selection of the best candidates (achievement principle)*
 - no access to public office because of family or personal relationships!
 - requires thorough examination of aptitude, qualifications and professional achievements of all candidates and thorough reasoning in the selection decision
 - important for promotions: the assessment by the superiors in the regular staff reports
 - in practice often difficulties to identify the best among several well-qualified candidates
 - in case of equal aptitude, qualifications and achievements civil servants law usually encourages to prefer women if this is necessary to eliminate existing discriminations

IV. The special status of the public servant and the traditional principles of professional civil service (cf. art. 33(5) BL)

- a *special relationship of service and loyalty* under public law with far-reaching duties of allegiance, care and protection
- regulation in the Federal Civil Service Act ["Bundesbeamtengesetz"], the federal Law regulating the status of civil servants in the Länder ["Beamtenstatusgesetz"], the civil service acts of the Länder and other federal and Land laws

- regulation with due regard to the *traditional principles of professional civil service* (art. 33(5)), in particular:
 - life-long special relationship
 - dedication to the civil service with full commitment
 - career in a legally regulated tenure
 - obligation of comprehensive loyalty to the state and to the constitution
 - *no right to strike* but right of association to promote professional interests
 - obligation of self-restraint in political activity
 - obligation of confidentiality
 - alimentation with regard to the office instead of salary
 - civil service pensions instead of ordinary pensions
 - right to benefits in the event of illness, birth and death
 - transparency of personnel decisions and access to the own personnel records
 - right to an office-appropriate official title
 - right to staff representation

V. Legal protection for civil servants

- first administrative review in *objection proceedings*, afterwards, if necessary, *judicial review* before the administrative courts
- in particular actions for annulment against administrative decisions affecting the civil servant's status (e.g. transfer or retirement) or declaratory actions (e.g. against wrongful staff reports)
- very common: action of competitors (and interim relief) against the appointment or promotion of other candidates

VI. Is civil servants law still up-to-date?

- a long debate triggered by supporters of a neo-liberal approach