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COMPARATIVE OVERVIEW ON THE ORGANISATION AND STATUTES OF ADMINISTRATIONS OF PARLIAMENTARY ASSEMBLIES

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The questions of staff, recruitment, career development and management are some of the most sensitive in any organisation but they take on a very special dimension when it is a question of parliamentary assemblies.

In any case, **the question of staff cannot be managed without first having a clear idea of what a parliamentary assembly is.** It is one of the most important – if not the leading - body in the state – so it can be qualified as a « *public body* » (and consequently has « *public administrations* ») but they are mostly important by their particularity among the other public bodies.

1- The conception of public service inside a parliamentary assembly is the consequence of their specificity:

Effectively, a parliamentary assembly has **the basic function of representing the nation and is the expression of its sovereignty.** It is significant that in most cases, when a Constitution is to be elaborated, it is a collective and representative body taking into account all the tendencies of the opinion of the nation. So, whatever the Constitution may be, a Parliamentary assembly conserves that very special blend of « *collective representation* » or, to be even clearer, **the special quality of bringing together the diversity of the nation.** This aspect is even above the notion of majority to which the concept of democracy is often reduced.

The first consequence of this aspect is as follows: every representative must receive equal rights to their colleagues, especially of information and expression, but also the same provision for their basic needs (regarding assistance, secretariat, offices or transport facilities). This is the first challenge to be addressed. The basic obligation of the organisation of the services is to ensure that **this equal access to information and means is made possible.** This should be the first priority of a parliamentary administration. It is clear that a specific code of ethics must be created in order to ensure success. **This is not only a question of practical organisation but a real understanding of the duties of parliamentarians.** The concept of parliamentary administration has to be governed by this first observation.

The second structural element of this concept is the fact that, to correctly carry out its duties, a parliamentary assembly **needs to be autonomous vis à vis other powers.** It is true, of course, in systems of separation of powers but also – and moreover - in so called « *parliamentary regimes* ». There are two main bases for this requirement:

- the first is a question of principle : as an expression of the « *people's sovereignty* », a parliamentary assembly cannot be limited in its organisation by any other power.

- to correctly accomplish the mandate given by the people, consent to the taxes and control the expenses and elaborate common rules of living, it is necessary to have a liberty of organisation, proper sufficient means, and constitutional guarantees of the freedom of expression of the members. **The question of public services is one of the most sensitive topics of this autonomy: it requires quality and adaptation of recruitment, any dependency to the outside (private or public), capacity to give to the members equivalent services that could be expected by the executive power or /and to the President from the general administration of the state.** This is a huge challenge and it can be seen that in reality, these principles have been developed and applied with some diversity depending on the countries.

2-The needs: the question of quantity and style of work:

Any conception of parliamentary staff has to concretely take into account **several characteristics**:

Parliamentary work is, by definition, not the execution of decisions of parliament. That would be the responsibility of the different powers in the state and, mainly of the « *executive* » branch of government. So the « *quantity* » cannot be the same. In fact, parliamentary work is, basically, **a job to advise and organise**.

Parliamentarians have to be supported in:

- **Quantity and quality of adapted information** according to the diversity of the matters they have to cope with. The question is: at what level? Personal? Through collective bodies (like committees for example)? Devoted services (library, documentation, draft assistance...)?
- **Organisation of their work** : rights, timetable, plenary and committee sittings, legislation and control
- **Providing material**: indemnity (permanent and regular) or vacations; material: offices, transport, documentation, technology, communication.

So the particularity of parliament requires **quite different qualities**, as it is not responsible for the execution of laws:

- **Quality of management** of materials - and in this aspect, that quality could be considered to be not so different from what is required by any organisation.

- But, at the same time, **specific professionalism, at the limit between expertise work and involvement in the political process**.

The result is that, *de facto*, many questions emerge:

- Is it possible to distinguish the specific parliamentary process (legislation and control) with a special organisation and recruitment from what could be called the ordinary management process (which is less affected by the specificity of parliamentary task)?
- Should two main categories of civil servants in parliament be defined? Or a unique status but with different types of posts throughout the career? How could this status be different from the general rules of civil service?
- Moreover, is it necessary to define a special status for parliamentary civil servants, allowing them to spend their entire career in parliament or /and accept for some tasks or technical specialties to be offered short term contracts, (organisation and following of new technologies for example)? Would it be possible for civil servants of the executive or another constitutional body to find legal positions allowing some of them to work for parliament?
- Is it possible (or necessary) to distinguish the recruitment of employees for general tasks in parliament from the recruitment of political groups or from the staff of individual MPs?

All these questions show **the complexity of the choices and the different possible solutions**.

They cannot be considered without also reflecting on the **special style of work** inside parliament:

- Whatever the task may be, it has to be done in a **special atmosphere, quite different from regular administration**: the beneficiary of the services is not (at least not directly) the citizen. They are elected persons who can have very dramatically different political opinions. So **the question of a non-partisan code of ethics appears to be absolutely essential**. It is important to distinguish the structural assistance to individual MPs from the collective (or institutional) assistance by the assembly staff members and the assistance by the parliamentary group staff. The recruitment of providers of collective (or institutional) assistance would require a **procedure which is both as public and as transparent as possible**.
1. **The diversity of tasks** (advice, legislative organisation, documentation, management, etc...), as well as the necessity to offer an interesting career inside parliamentary administration and moreover, the rhythm itself of parliamentary activity depending on political climate and events, require a recruitment **favouring aptitudes for adaptability and mobility** (more than a classic administration with more repetitive tasks). The consequence would be that it is necessary **to set a minimum common set of rules for all members of parliamentary administration**.
 2. **The quality of civil servants has to be at least equivalent and, if possible, greater than in the administration of ministers** dealing with parliament. It is absolutely inconceivable, in any case, to duplicate the administration of executive. The volume of staff has to be determined by a **very different philosophy based on efficiency and the best value for money : less quantity, more quality**. The number of civil servants for parliament has to be limited as much as possible in order to prevent structural blockages and necessary compensation provided through training, motivation and competences of the staff. In that perspective, the policy of the assembly could be to give supplementary incentives in order to attract the best candidates. This aspect is **an argument in favour of specific rules for civil servants in Parliament**.
 3. In that perspective, the final question should be: if this method is chosen, **what kind of rules** should be the most adequate to define the specific rules or statute applying to civil servants in parliament? Several considerations have to be taken into account :
 - If parliamentary autonomy is an argument for specificity, **it is not conceivable that the general principles adopted by the parliament, according to the Constitution, are not applied to the parliament itself and its civil servants**. These principles nevertheless authorize adjustments, but within the limits justified by the specificity of the tasks to be completed.
 - They could be made by the competent collective authorities of the House through specific regulations. It could also be done in the form of a law, detailing the general rules applicable to the different categories of civil servants. In any case, some principles: independence, guarantee of career, right to make appeals against individual decisions must, at least, be confirmed by law.

All these questions must be debated within the Verkhovna Rada of Ukraine in the light of the most general solutions adopted in other European parliaments.

3-The solutions: Homogeneity and diversity

a) Homogeneity: the common general tendencies :

The question of autonomy of the assemblies is generally considered as a founding principle, but we have to distinguish what is relevant to **political autonomy and what to administrative autonomy**. The first is generally weaker than the second, especially in classic parliamentary regimes. *De facto*, these are often considered as regimes of *confusion of powers* instead of *separation* (between legislative and executive. Judiciary or federalism is to be set aside).

With the position of Prime Minister as leader of the majority comes a strong influence on the decision of parliament.¹

Another point could manifest this risk of confusion: the fact that the ministers could be also members of parliament.

Some practices seem to encourage this tendency. For example, in Germany a deep culture of cooperation exists; the term « *working parliament* » is used to describe the strong, practical and permanent cooperation between ministries and committees.

The situation is different in France where the ideas on parliamentarism are vaguer: the leadership is not only the privilege of the Prime Minister but also of the President. Despite this, no entry was granted to the parliament until 2008 in exceptional circumstances (which can be compared to the « *speech on the union* » in the American style). On the contrary, ideas of the previous « *Republics* », when parliament was powerful, still inspired a jealous sense of protection of parliamentary rights, if not "*privileges*"²

Nevertheless, the « administrative autonomy » is a very deeply rooted concept:

- **Through the decision system in which a lot of proceedings have to limit the discretionary power of majority and of the president:** this is the general case through collective bodies for the most important decisions (including rules applying to civil servants). In some parliaments (Belgium, France or Italy, for instance), there is a clear separation between procedural management of the house and representation (privilege of chairman) and the concrete management, that is to say administrative or financial management, which is assumed either by a special committee including opposition representatives (« *college of questors* » or « *committee of verification of the accounts* ») or by services (*treasury*). In others (Germany), there is also a separation between the organisation of parliamentary business and the other responsibilities of parliament; the first is the responsibility of « *the Council of Elders* », the second is the responsibility of the « *Presidium* » but both are presided by the Chairman of the Bundestag. The members of the Presidium take part in the Council of Elders but they are in

¹ But at the same time the spirit of « *scrutiny* » is very powerful and lies in the very acute work of permanent select committees.

² Contested now not by the government but by opinion on behalf of « *transparency* » and ,the wish to abolish the differences between parliamentarian and people.

charge of the day to day administration of the House, both regarding management questions of the staff (including personal questions) as well as negotiation of contracts or communication. In Spain, the same organ (*Mesa del Congreso*) is competent both for parliamentary business and general management (including staff and services). The British Speaker is a completely independent MP in the conduct of the debates but he has no management powers. They are entrusted to the Secretary General under supervision of “*the House of Commons Commission*” (including members) and its sub-committee, “*the House of Commons Executive Committee*” composed of senior officers. So the organisation of the Houses relies on a subtle combination of political leaders of the House and senior civil servants.

- **Through the autonomy of budget and expenses:** In the most ancient democracies, the budget cannot be controlled « *a priori* », and it is even more difficult to introduce some control *a posteriori*. The tendency is to develop internal controls with outside expertise cooperation.
- **Regarding civil servants:** The tendency is to distinguish the more senior categories (administrators, counsellors, and so on) which are relevant to a special status. This one is parallel to the general one applying to the services of the executive branch of government but with some specificity (time of work for example or specific code of ethics).

The status could be defined either by the collective management of the house – « *Bureau* » or “board”, for example, in France or Italy authorised to define rules concerning different aspects of the house organisation, under the presidency of the Chairman of parliament after concertation with the representatives of personnel - either by law. These posts are directly involved in the legislative or supervisory actions of Parliament.

The « *execution* », or technical, posts, (*security for example*) which do not require the same specific qualifications or other specificities and are not directly linked to the legislative power, could be filled by way of contract workers or salaried employees. In any case, none of them is supposed to receive instructions from outside

Generally speaking, the proportion of this second type of employee, when the legal distinction exists, is more important than that of the tenured civil servants. This is the case for example in Germany.

- Nevertheless, situations do exist in which all the civil servants and agents hold a unique and specific status defined and adopted by the collective Bureau of the assembly (France).

b) Diversity

The ideal framework has to be composed of traditions along with different realities:

- **The length of parliament**

It is evident that the most achieved framework (i.e. special status adopted by the house itself and applying to all the members of the staff) cannot be set up from the beginning because of the difficulties of conceiving and organising new processes of recruitment. For practical reasons, parliamentary staff is made up of important number of civil servants from the executive branch. This is clearly the case for countries which left a period of communist organisation, as in Central and Eastern Europe. The concept of « *autonomy* » or, moreover, of a special status was, *per se*, quite beyond understanding. Generally speaking, the consequence is the existence of general law on public administration applying to parliament administration as well to other public bodies.

Still, those are fewer cases than an absence of regulation. It relies on the rulers of the House to minimise the consequences of that lack by training and reduction of risks of conflict of interest, or by minimizing the influence of the governmental structure on the parliamentary business.

We can consequently distinguish three different situations (the list is not exhaustive):

- The countries in which a special status is given to the parliamentary civil servants: Belgium, France, Italy, Netherlands, United Kingdom and also Estonia, Poland or Spain.

- The countries in which the same status does exist for all public functions but in which parliamentary civil servants benefit from special rules regarding remuneration (higher): Denmark, Greece, but also Slovakia)

- The countries in which the same laws for legal status do exist but also regarding wages: Austria, Iceland, Sweden, but also Bulgaria, Croatia, Lithuania, The Former Yugoslav Republic of Macedonia, Serbia, and Slovenia.³

- **The difference of legal traditions**

It is not difficult to distinguish, generally speaking, the continental/roman tradition in which the idea remains of a difference between public and private bodies and other traditions (the English common law of course) but also the importance given, for an even longer time, to democratic principles, privileging equality between state and the public (Scandinavian countries for example). In the latter, the tendency is to give a greater importance to contracts.

- **The search for efficiency and adaptability**

Parliamentary administrations cannot escape from the general and ongoing evolution which affects all organisations : the importance of communication and of relations with the public, development of new technologies which affect the traditional organisation (in management: *e-amendments* to the texts under debate, for exam-

³ Enquiry on 28 countries, European centre for parliamentary research and documentation,2009

ple, which allow more simplicity, circulation of information and speed of reaction); Greater capacity for individual members to be in line with society (with new risks of conflict of interest through biases information); Transformation of the work: less difficult to find information now but higher necessity of competent advisers to make adequate filtration.

The rapidity of the evolutions makes it impossible to generalists, as members of staff most frequently are, to be in line with all the changes. So a tendency appears which privilege consultants, experts and short term contracts in some specific fields. This is a way of diversification of the legal situation of the staff but also a weakening of parliamentary code of ethics and specificity. Such an environment opens the door to permanent research of adequacy of the structures and allocation of resources.

The management of parliament in an information society must be both dynamic and very attentive that such evolutions do not modify the subtle balance between political groups, majority and opposition, or the different committees too much. This diversity and balance are necessary conditions for a fair and open debate.

- **A symbolic case: the secretary general status**

As the leading civil servant in parliament, the Secretary General is, in a way, the best guarantor, under the supervision of collective management organs, of an administration code of ethics. He can be helped by an adviser that he appointed or by any special committee he proposed to the board of the parliament.

The more sensitive question is, nevertheless, **the way in which the Secretary General may be chosen**. There is a parallel on that question with the situation in local and regional authorities: Could the chief of administration be a personal choice of the President? If so, there are two emerging problems: Firstly, it would be difficult to have the confidence of all the MPs as well as colleagues. Secondly, it would seem impossible to be able to stay in post after a change of the President, whatever the reasons may be.

The practices on that point vary according to the countries

The more frequent practice, especially in countries where parliamentary traditions are the most deeply rooted, is that the Secretary General cannot be nominated by a person other than the President. The Secretary General cannot be chosen from outside the members of the administration, neither reglementary, nor traditionally. The consequence is that the Secretary General cannot be dismissed only for the reason of a change of President.

Hypotheses may exist where the Secretary General may be chosen from outside by personal choice of the President, but this situation is not the most frequent. An example could be found in the recent choice for the European Parliament, when the President chose somebody who was very officially involved in the structure of his own party. But the European Parliament is in a rather singular situation in which

it is possible to enter the administration as an employee of a parliamentary group and then to be integrated into the services.

The real alternative is a third one: to consider that the post of the Secretary General is a specific one which needs a selection larger than the existing senior tenured civil servants. It could be, in that way, recruitment made on merit, with emphasis on managerial capacities rather than parliamentary expertise. This is the case for example in Denmark and it was also done at the beginning of the new institutions after fall of the Berlin Wall, in Poland for example. In most cases, a vote of the most senior management body (if not the plenary) is normally accurate. Such is the case in the other situations.

- **Organisation of services**

The organisation of services is generally considered as a prerogative of the general management of the assembly. The organisation of departments can be defined by internal regulations and an instituted body can be entrusted with preparing or adapting such a task. Generally, but not always, the organisation makes a distinction — between departments supporting legislative or supervision control on government and departments dealing with the different ways and means (sometimes it can justify a clear distinction from the summit of the administrative pyramid, and, even, a distinction between the political bodies in charge of parliament management (“*questeurs*” in Belgium, France, or Italy for support departments for ways and means). This difference of organisation does not correspond necessarily to a difference of status. It is more a functional distinction and a way of introducing more transparency and pluralism. **In any case, a difference of departments justifies a difference in recruitment** (that is to say all the recruitments have to be made at the House level). Among the support departments to legislative business, support to plenary or to committees can be distinguished but without no difference in status. Often rules on “*mobility*” of civil servants among the different departments can be institutionalised (France for example).

- **Guarantees, supervision and control:**

The basic principle is that the different status or contracts are relevant to the “*rule of law*”- that is to say a legal framework existing before recruitment - and that recruitment and management are made through as transparent and as objective procedures as possible. This is the case in Belgium, Finland, Greece, Iceland, The Netherlands, Norway, Poland, Romania, Slovakia or United Kingdom⁴

During a career, collective or individual rights of civil servants have to be protected by different ways of appeal, internal (collective representation and disciplinary or management committees) or external (judiciary). The external review could vary according to the importance given, in principle, to administrative autonomy. In most situations, the judiciary review is possible without limitation, but in some cases, they could be limited by the nature given to “*internal act of parliaments*”. This is the

⁴ Answers to our own inquiry on behalf of Association of Secretaries general of Parliament in 2009 for the preparation of the report on “*The autonomy of Parliaments*”.

case in France (no judicial review for collective questions for explicit constitutional reasons), likewise in Italy in which an internal due process is organised. Nevertheless, the tendency is to reduce the scope of what could be leaked from an external review, especially in light of a growing preoccupation of transparency and equality in public opinion. What can be sure is that which can be admitted – with some reserve due to separation of powers- for the judges, is less and less acceptable from the executive branch of government.

The counterpart is the development of special bodies in charge of internal management.

- **Quantative approach and evaluation of the importance of civil servants in parliament in comparison with the number of elected members:**

According to a survey made by the Spanish “*Congreso di los diputados*” in 2013, the “*ratio*” between civil servants and members could vary greatly according to the countries and the aggregations made of different categories of personnel (for example European parliament mixed permanent and temporary officials and general secretariat and political groups so the ratio reached as high as 8⁵. In Denmark it is, on the contrary, less than 1). The average is around 2.5 with important variations: Portugal - 1.15 , Spain -1.7, Netherlands - 1.8, Austria and Sweden - 1.9, Germany - 2.3, Finland - 2.5, Italy and Poland - 4, Greece and Belgium – 4.7.

4 - General outline and summary

The question of the place and rules applicable to civil servants and employees in Parliament must first be considered in relation to the question of autonomy of the parliament in general.

This can justify special recruitments, and, in some cases, a specific status. This could be adopted either by the way of rules of procedure or by law. Nevertheless, the constitutional guarantees for the civil service must be respected by parliaments.

If, for different reasons, the people working for a parliament can be chosen among existing civil servants (from the executive branch of government principally), it is in the true interest of Parliament that the careers could not be in any way affected by external decisions.

The evolution of the parliamentary civil service is growing very fast according to the flexibility and sensitivity of the assemblies to political context: increasing demand for transparency and equality, importance of questions of communication and clarity for the public, development of new technologies, diversity of matters examined,...But in any of these cases, the basic principle of non-partisan administration could be affected.

Every parliament is facing different situations so it is not possible to give a model which would be universally applicable but what is essential is the creation of, if not a status, then a specific code of ethics based on the principle of separation of powers and the unity of administration, whatever the diversity of legal status may be (more often for practical reasons).

⁵ According also to the importance of people in charge of interpretation and translation of 24 official languages.