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Public Administration and the Transformation of Civil Service: A Comparative (Law) Perspective

The Civil Service in Germany

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In Germania il pubblico impiego si divide in due sistemi, molto diversi in linea di principio, ma non così dissimili nella pratica: la sua architettura a due livelli consta dei funzionari (Beamte) e dei pubblici dipendenti (Tarifbeschäftigte). In larga misura, le posizioni più elevate sono detenute da pubblici funzionari. Il loro status giuridico è definito da una serie di leggi approvate a livello federale e dei Länder. In questo processo, i legislatori hanno dovuto conformarsi ai vincoli imposti dalle disposizioni costituzionale che impongono il rispetto di principi tradizionali. Ciononostante, sono in corso sviluppi e discussioni al riguardo.

The civil service in Germany encompasses two systems that differ significantly in principle but are not so dissimilar in practice: the two-tier system comprises civil servants (Beamte) and public employees (Tarifbeschäftigte). Civil servants predominantly occupy higher positions within the system. Their legal status has been defined by a series of laws enacted at both the federal and State (Länder) levels. Throughout this process, legislators have been constrained by constitutional provisions mandating adherence to traditional structures. Nonetheless, there have been ongoing developments and discussions regarding potential reforms.

Summary: 1. Some empirical facts.- 2. The two-tier-system.- 3. The Constitutional Framework.- 4. Areas of reform – some examples.- 4.1. Access and the Bologna-process.- 4. 2. Competition between employers.- 4.3 The constitutional form of alimentation.- 5. Other discussions.- 5.1. Reforming the two-tier-System.- 5.2. Impact of EU law/ECHR.- 5.3. Dealing with shortage of skilled workforce.- 5.4. Protecting officials.- 5.5. Religious Neutrality.- 5.6. Identifying persons opposed to the constitutional order.- 6. Conclusion.

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Constitutional Framework. - 4. Areas of reform – some examples. - 4.1 Access and the Bologna-process. - 4.2 Competition between employers. - 4.3 The constitutional form of alimentation. - 5. Other discussions. - 5.1 Reforming the two-tier-System. - 5.2 Impact of EU law/ECHR. - 5.3 Dealing with shortage of skilled workforce. - 5.4 Protecting officials. - 5.5 Religious Neutrality. - 5.6 Identifying persons opposed to the constitutional order. - 6. Conclusion.

1. Some empirical facts

Approximately 6,2 Million people work in the German public sector, including soldiers and persons employed by companies that are exclusively or predominantly owned by the state[1]. On the basis of these figures, about 16% of the total workforce work in the public sector[2]. Appr. 5 Million persons are employed by the state or public sector bodies directly[3].
About one half of them work for the Länder (states), appr. 10% for the federal government[4]. This allocation is a consequence of the specific form of federalism as set out by the German constitution (GG). According to Art. 83 ff. GG, the states are – as a general rule with few exceptions – in charge of implementing the laws including the federal laws. As most of the legislative powers are vested in the federal level, the states need to have a competent administration in all areas in which the federal legislature passed rules that are not – on the basis of some constitutional exception – implemented by the federal administration. Perhaps even more important is the fact that, constitutionally, the states are – including the legislative powers – responsible for a number of tasks that require a workforce of a considerable size, namely schools, policing, tax administration and universities. Schools account for approximately 20% of the personnel in the German public sector[5].

2. The two-tier-system

While it is not at all uncommon in Germany to speak of the "civil service", in fact there are two different systems for which this expression is used as a common headline: civil servants ("Beamte") and public employees ("Tarifbeschäftigte"). Paradoxically, both systems are remarkably different structurally and at the same time not that different in practice[6]. Nevertheless, there are some features that

show relevant distinctive characteristics also in practical terms although there is no clear legal obligation pointing in this direction: Higher positions are typically reserved for the civil servants while positions requiring manual or more repetitive work are almost exclusively reserved for public employees. Consequently, the majority of public employees work for local governments. The largest group of civil servants are teachers that nowadays are almost always civil servants employed by the states. As the status is more attractive than the one of public employee (one of the distinctive features) and because qualified teachers are nowadays very difficult to find, it seems very unlikely that any of the states would find it advantageous to change the status in this field.

The status of civils servants is firmly founded in public law. Civil servants do not enter a contractual agreement with their employer, but rather are appointed to their position by a public body. Rights and obligations are determined by law. This is potentially relevant at two levels: The central elements of the status are unitarily regulated by federal law, while details are decided either – for the people serving the federal government – by federal law or – in the case of civil servants of the states or local governments – by state law. Typically, civil servants are tenured for life, but other types of engagement – mainly temporary service – exist in cases in which there is sufficient justification. The remuneration civil servants receive is determined by law (again: federal law for federal civil servants, state law for the ones at the state or local level). The legislatures are not completely free in their decision as they are bound by the constitutional principle of adequate alimentation, connecting certain payments to particular offices (current challenges with regard to these principles are discussed in sub-chapter 4.3.). To gain higher payments is generally only possible by promotion to a higher office. Legal disputes are decided by or settled before the administrative courts. After their active time in office, civil servants receive their pensions from the same public body (see also 4.2.). The last remuneration is one of the two elements deciding on the money received[7] – the other one being the number of years spent as a civil servant. This tends to be much more attractive than the retirement pay one would have received from the national insurance after a comparable career as a public employee.

Public employees are employed on the basis of a contract referring to collective working agreements. In this sense, the main difference to employment in the

private sector lies in the fact that one of the contractual partners is "the state" which includes local governments. Arising disputes have to be decided by the employment courts which mainly deal with traditional – civil – employment cases.

3. The Constitutional Framework

Given the prominent role the Federal Constitutional Court – the *Bundesverfassungsgericht* – plays in the German legal as well as in the political system, it is probably not surprising that the starting-point for any description of the German civil service has to be a rule deduced from the constitution. Two provisions are essential for the understanding of the role civil servants play in the German public sector. First, Art. 33 sec. 4 defines the situations in which tasks generally have to be fulfilled by civil servants: «*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*»[8]. These members of the public service are the already-mentioned civil servants – the position of public employees does meet the underlying definition. It is also shown quite clearly what the picture is that the constitution paints with respect to the civil service: one of a special relationship defined by "service and loyalty". While this rule determines that a special status is required when this particular kind of authority is exercised, the following section gives an impression of the content of this status: «*The law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service*» (Art. 33 sec. 5 GG). Therefore, it is fair to say that this part of the public sector – which concerns the rules relevant for the top positions in the civil service – to this day is coined with a special reference to traditions.
It should be noted, though, that the expression "and developed" had not been part of the original clause but was added in 2006. What could be regarded as a pretty clear indication that the constitution-changing legislature had wanted to give more leeway to the legislation hasn't proved to be as influential as had perhaps been intended by the proponents of the reform. This is due to the fact that the federal constitutional court has basically deprived this reform of any meaningful scope[9]. As a consequence, the most important point of reference in

the civil service law at the federal, state and the local level are traditional principles. In a long-standing case-law, the court has defined these principles as such that have been accepted and observed for a longer period. This period comprises first and foremost the Weimar Republic (1919 to 1933)[10]. It has been stated, that the core principles regarding the civil service need to be observed, while others, less central ones, need to be taken into account[11]. This differentiation leads to the question what principles could be so essential to the civil service that even the Legislature is prohibited from changing them. The Federal Constitutional Court stated explicitly as follows: «*The core of structural principles, which must be observed, and is therefore excluded from profound structural changes by the general legislature, includes among others the civil servants' duty of loyalty (...), the principle of lifetime employment (...), the principle of alimentation (...) and the corresponding principle that remuneration of civil servants must be determined unilaterally by law*»[12]. Altogether, this results in rather strict boundaries for any kind of reform in the law of the civil service.

4. Areas of reform – some examples

Despite this starting-point, there have been numerous reforms and a similarly massive number of plans to reform the civil service law. The sheer amount of various topics in this regard makes it impossible to claim that a full overview could be given. There are a number of areas in which changes were regarded as inevitable.

4.1. Access and the Bologna-process

The first example of reforms that have taken place is related to the education required for access to the civil service. Historically, the rules were both easy and clear-cut. Until this day, the career in the civil service in Germany follows a clear career path – even though it is impossible to predict at which point of this path the career will end. The so called "*Laufbahnprinzip*" is based in the above-mentioned «*traditional principles of the professional civil service*» (Art. 33 sec. 5 GG)[13]. In accordance with the tradition, there have been four different careers paths with certain distinguishing features in some of the states. Which one of these four a particular civil servant enters depends on the education the respective

person has had[14]. The first – now largely abolished – point of access to the civil service is traditionally named the "einfache Dienst" ("simple service"). Joining the "einfache Dienst" requires a degree from a secondary school, then followed by a specialized vocational training. The highest entrance level ("höherer Dienst" – higher service) now is requiring a Masters degree, and a preparatory time in a structured vocational training program as organized by the administration. Fully qualified lawyers – that are people with a first and second state exam in law – have the education required for this entrance point into the civil service. Consequently, there is no difference between the qualification required to become a judge, a solicitor, barrister or to access this career track of the administration – a situation that undoubtedly has been instrumental in establishing the proverbial "lawyers privilege"[15] (originally even called "lawyers monopoly") in the higher positions of the German civil service.

Although, until then, there hadn't been a significant move to change the system of the civil service, changes did become inevitable when the Bologna process led to a situation in which the main degrees available in higher education became the Bachelor's and the Master's degree thereby abolishing the differences between degrees from traditional universities on the one hand and universities of applied sciences on the other hand. While originally university degrees in the respective areas enabled access to the preparatory courses relevant to the higher career in the civil service, now the same access had to be given to graduates from the University of applied sciences with Master's degrees.

At the same time, various reform efforts under the influence of the international movement called "New Public Management" led to a situation in which the "lawyers privilege" combined with the deep-rooted legalistic tradition of the German administrative system started to be regarded as a cause of inefficiencies. In this context, competences other than the ones acquired in legal training were regarded as more and more relevant. From this development, graduates of social sciences, and especially from business backgrounds benefited. Having said this, it can still be seen as the normal background for the high-ranking civil servants to hold a law degree, or rather: to be fully qualified lawyers. This is not only an expression of the above-mentioned correspondence with the traditional degree requirement, but also the long-standing perception that lawyers are suited to be generalists and have a special ability to analyze and to structure therefore being

particularly well-suited to play leadership roles in a variety of areas and, in particular, in institutions shaped by a legalistic tradition.

4. 2. Competition between employers

In the 2010th years, a phenomenon suddenly became a reality that only a couple of years before would have seemed simply incredible. This phenomenon is the massive shortage of skilled workers in relation to the demand as created by the various employers[16]. This lack of specialists made it more and more difficult to find people qualified for the various tasks in the administration. Of course, skills in Informatics or Computer Science have been particularly needed. But also, in non-technical positions, the state, somewhat surprisingly, found itself in a position in which topics like employer branding[17], competitive levels of payment and other aspects of being an attractive employer became relevant. This kind of competition concerned public sector employees at several levels. First of all, it put pressure on employers with regard to other public employers. Secondly, the competition with the private sector suddenly became a matter of concern.
Regarding the first aspect, a fairly new aspect of public sector legislation became relevant. While for numerous decades, a federal law setting the payments with regard to the specific careers in the public sector was in place, following a constitutional reform in the year 2006 the states gained the authority to decide on the payment of their civil servants and of those employed by the local governments in the respective states. This led to a situation in which the remuneration that the different employers in the public sector offer has become very diverse. The federation and the states have passed and typically adapted them frequently that decide on the payment for their own and – in the case of the states – "their" local governments. It is very transparent how much the various states pay their civil servants in certain positions. Also, the budget plans make it very transparent how many positions at a certain level are available. A field in which employers can notice a particular strong competition in this regard are public universities. Their situation is unlike any other in the public sector as universities are allowed to negotiate premiums that are paid on top of the respective salary, according to the university laws in the respective states. These premiums are typically negotiated when the respective academic has received an

offer from another university.
The second type of competition the public sector is faced with concerns the private sector. While for many years, the stability of an employment in the public sector has been a major attraction, the widely perceived skills shortage has reduced the fear of job loss, so that job security ranks far less high on the list of benefits relevant for the decision regarding career paths. Apart from the general question of how to create an attractive work environment, this has generated some concrete rules that are relevant in the immediate situation of an offer from a private employer.
Another aspect of the somewhat difficult relation between public and private employers in Germany stems from the fact that traditionally there has been extremely little exchange between both sectors. Typically, careers in Germany start in the same sector as they end. One of the reasons for this phenomenon is the difference in the retirement payments. While the private sector and public employees jointly contribute to the national public retirement system, there is a completely different system for civil servants. As a general rule, this system is more generous. The amount of money paid to the pensioners is linked to two factors. The first one is the amount of time spent in public service, the second is the last remuneration the civil servant received in his last position in active service (see above, 2.)[18]. Leaving this system before the age of retirement traditionally led to a cessation of the public service which included the end to the right to the acquired pension. Instead of the public sector pension, the state would pay retroactively into the insurance system, thereby causing a significant net loss for the recipient. At the same time, changing from the private to the public sector wasn't that attractive because one of the benefits, the relatively high pension package, was impossible to reach at a later stage of one's career, considering that the number of years spent in the public sector was one of only two deciding factors. This system is, in principle, still in place. In order to improve the possibilities for exchange between the private and the public sector, in recent times, legislatures have reduced the disincentives for a change between the two. Especially, the acquired sums nowadays are not lost when one changes into the private sector ("Altersgeld")[19]. It is debatable, though, if this has changed anything for the better in any relevant way: A first evaluation of the first three years this option existed came to the conclusion that the impact of this new rule

had not been significant[20]. Nevertheless, this reform shows that the perception of the borders between both sectors have somewhat changed. It has to be said, though, that this has not fundamentally removed the difficulties of making the public sector an attractive choice at a later stage of people's careers, especially for people that have been quite successful in the private sector.

4.3 The constitutional form of alimentation

A third aspect of the development of the civil service in Germany that has led to many difficult legal questions, concerns the alimentation of civil servants[21]. Part of the above-mentioned traditional principles of the professional civil service has been the specific understanding of the remuneration. The principle of alimentation demands that civil servants have to be paid according to the office they hold[22]. The idea behind this system is the fact that it is not just some contractual relationship. The state and the officeholder are bound by this principle. In this sense, the payment received by the person is not a compensation for the work done during a certain amount of time spent in the service of the employer but for the service in a certain office itself.
It is therefore an expression of the care the state owes the civil servant who in return serves with full commitment – the Federal Constitutional Court identifies a "correlate"[23]. Part of this commitment has always been that industrial actions cannot be taken: Civil servants are traditionally – despite the jurisdiction of the European Court on Human Rights – not allowed to strike. The Federal Constitutional Court has, even in recent times, and with knowledge of European rights provisions deduced this prohibition from the above-mentioned article 33 section 5 GG[24]. While public employees can use industrial actions – strikes in the public sector do take place quite often – to make employers agree on changes in the collective working agreements, including pay rises, civil servants cannot exercise this kind of pressure. It seems adequate to regarded it as a kind of compensation that the Federal Constitutional Court has started to control in great detail if the levels of payment civil servants receive can be regarded as adequate with a view to the principle of alimentation[25]. As a consequence, the court has ruled a number of levels of employment – especially with regard to lower paid jobs – as insufficient[26].

This has left the legislatures in the respective states with the task to increase payment for certain groups of civil servants. What might seem as a task easily fulfilled – increasing payments for certain groups of people – turned out to be quite difficult considering budgetary restraints, and the apparent wish of the respective legislatures not to raise payments for groups that did not fall under the judgement. At the same time, the system as a whole required, according to the Constitution Court, a certain logic, in which higher offices in principle have to lead to higher remuneration[27].
It seems fair to say that the challenge has proved to be quite massive as legal requirements arose from various angles. The legislatures had to combine budgetary responsibility with the fulfilment of legal requirements, deriving from decisions by the Federal Constitutional Court, and at the same time to consider certain restrictions regarding the coherence of the remuneration system as a whole, the absence of which itself could have led to new legal challenges. The Federal Constitutional Court had been remarkably specific, developing highly specified rules regarding the constitutional requirements that could be applied in specific cases. What added to the complexity of the tasks, the legislatures were faced with are the implications for families. Alimentation is not something that is restricted to the respective civil servant but rather involves by definition her or his whole family. In the long-standing case law, the Federal Constitutional Court has made it very clear that the specific financial burdens that children and their specific needs imply have to be taken into account when the system of alimentation is developed[28]. Basically, the idea is that the standard of living should not be impacted negatively by the number of children the respective civil servant has to support financially. In particular, three and more children are not supposed to lead to a decrease of the parts of the alimentation not particularly aimed at the children[29]. It probably does not need any further explanation that it has proved to be a massive challenge for legislatures to fulfill these various legal demands at the same time.

5. Other discussions

The law of the Civil Service is constantly faced with challenges. As pointed out, some of these stems from the constitutional provision that has led to a number of

principles each of which can be the basis for rules the legislature has to comply with. Another source are new developments – problems that are perceived as sufficiently relevant to demand changes in the law. It seems impossible to paint a complete picture[30]. The order in the depiction is somewhat arbitrary as challenges are so manifold and it is virtually impossible to find criteria to rank them. Therefore, the following notes should give an impression of some of the topics under discussion without giving the impression of any kind of completeness.

5.1. Reforming the two-tier-System

The fact that the two-tier-system has proved to be very stable might be somewhat surprising. Two groups of people working in the same administrative body, sometimes – at least at the medium level – doing the same kind of work necessarily leads to all kinds of discourses about fairness and possible privileges[31]. Indeed, there have been challenges, but they have all proved to be far from any considerable impact. First, it should be noted that a number of elements of the civil service law that seem very particular have also been introduced in the law of public employees. This is due to the fact that some of them have been regarded as desirable also for the other kind of working relationship so that the parties of the collective workers agreement have made them part of their contracts. Therefore, the differences sometimes seem more relevant in theory than they do in practical terms. On the other hand, there can hardly be any doubt that the status as a civil servant is more attractive, especially with regard to the net remuneration and pensions. Even where the gross salary might be similar, this does not imply a similar situation regarding net amount of money received. This is due to the fact that – in contrast to civil servants – public employees are part of the national social insurance systems (health, nursing care, pensions, unemployment) so that employee and employer have to contribute to them. This has also led to a concrete legal question: the similarity of the work combined with the benefits only civil servants retain might be in violation of the principle of equality[32]. While this argument certainly seems valid, the argument up to now has not led to any actual legal challenges, let alone successful ones.

5.2. Impact of EU law/ECHR

According to Art. 45 sec. 4 TFEU, the provisions of this article – the guarantee of freedom of movement for workers – shall not apply to employment in the public service. This shows that certain areas of the public service are accepted as requiring special rules and that the EU legal order does recognize the necessity of distinctions between various kinds of employment.

Nevertheless, this is only one aspect of the legal system established by the European treaties.

In general terms, EU employment law does not accept any status that leads to exceptions from the general application of the relevant legal documents. The same can be said about the application of the ECHR. As part of their, in general terms, rather privileged positions, civil servants in Germany have had to accept that certain rights traditionally are not applicable to them – or are regarded as substituted by other mechanisms. As described in the remarks about the system of remuneration, there have been elements in place that serve as a kind of compensation for some of the losses in terms of exercise of human rights. This applies particularly to the right to strike, which civil servants do not have. At the same time, this somewhat compensated by the constitutional rights as developed and applied[33] by the Federal Constitutional Court.

The various legal instruments dealing with the employment situation in the EU are undoubtedly applicable also to civil servants in the member states[34]. This has led to a situation in which all laws concerning the rights and duties of employees generally are applicable to the public sector irrespective of the status the person has. Also, it has to be asked if certain traditional aspects of the civil service law are in compliance with the employment laws as passed at the European level.

This has proved to be a challenge. The development has shown that particular systems like the German civil service law are necessarily under challenge from rules that stem from a different tradition. The principle of subsidiarity has not provided any significant threshold for this development.

5.3. Dealing with shortage of skilled workforce

One of the topics most pressing for the administration nowadays is the enormous

shortage of a qualified workforce. A number of changes in the public sector can already be attributed to this phenomenon. It should be noted in particular, that the problem tends to be worse in many rural areas. As the public administration needs to be present in all parts of the country, this becomes increasingly an area of concern for the public sector.
During the pandemic, for example, the massive problem in the health departments of many districts became apparent. As a highly specialized administration it obviously needs administrators with a professional background in medicine. As there are also many job opportunities for medical personnel everywhere in the country, it sometimes is difficult for the public administration to compete with these options, especially as the salary might not be that attractive and as further training might be needed in order to exercise the role of the chief medical officer of a county.

5.4. Protecting officials

A phenomenon that has increasingly become a matter of concern for the administration and that has started to be discussed in the public sphere are threats public officials are faced with. Obviously one part of this is the kind of behavior certain users show on social media. This might be insults or defamation that now a much larger part of the population takes notice of than would have been the case before social media became a factor. There are many reports about threats that have been expressed, thereby putting a lot of psychological stress on officials and their families. In a worryingly high number of cases actual physical violence against public servants has taken place. A seemingly ever increasing number of report describe attacks on personnel serving on ambulances and firemen as well as members of the police at demonstrations – being there to actually protect the demonstrators. This – compared to former times – generally far more tense situation has led to calls to provide the police with cameras and microphones which can tape encounters with the public that might turn into conflict. Discussions have also turned to the penal code, in the hope that criminal punishment might be a deterrent. Altogether, though, there seems to be a certain helplessness as to the appropriate reaction to behavior that in many cases is already illegal, so that further punishment might not have the desired effect.

5.5. Religious Neutrality

Although churches and the state are connected in many ways in Germany, it is appropriate to describe the state as being neutral in religious matters. That said, it is also very clear that civil servants, as all human beings under the constitution, have the right to choose and exercise their religion, or to choose not to be religious. A possible consequence of that neutrality became apparent, when the Federal Constitutional Court decided in the 1995[35], that – in contrast to the tradition in Bavaria – the state was not allowed to demand that crucifixes have to be displayed in every classroom. This is the background for a discussion that has had quite an impact also on the civil service in an increasingly diverse society. In particular, headscarves have become an object of both political and legal discussions.

This has led to a debate about the exercise of human rights in classrooms. The Federal Constitutional Court had to decide whether a rule in one of the states prohibiting teachers from wearing headscarves violated religious freedom as guaranteed by the constitution. The majority of judges made a very clear-cut decision: Wearing a headscarf is indeed an exercise of religious freedom, so intentions to regulate this must be based on a specific justification[36]. In the first case, the court decided that this kind of justification was only possible if introduced by statutes passed by Parliament[37]. Then, in a second case, it pointed out that first of all, it was prepared to control if this justification was really given, and that the respective rule must not discriminate against a particular religion[38].

What made it particularly interesting from a legal perspective was the fact that in a minority opinion three judges in the first case argued for a completely different view on the matter[39]. They made the point that the teacher in the classroom acts in an official capacity as a representative of the state[40], thereby bringing the question of state's neutrality into the equation. This offered a new perspective with the consequence that at least these particular civil servants had a role that would have left them – at least while in the classroom in front of their students – with less than the full constitutional right with regard to religious freedom. Therefore, it seemed that a completely new discussion could be opened up. In fact, though, this hasn't left many marks on the case law.

The third relevant decision by the constitutional court on this matter concerned

rules prohibiting wearing of headscarves in courtrooms[41]. This led to renewed questions of neutrality – in this case not only of the state but the concrete person exercising judicial independence, and especially the potential doubts people appearing in front of the court might have in this regard. Again, the Court did not enforce a certain rule, but gave the legislatures the power to prohibit any religious symbols in the courtroom[42]. In essence, religious symbols thereby have been one of the most controversial objects in the debate about the role of human rights in the civil service.

5.6. Identifying persons opposed to the constitutional order

Given the far more difficult political climate at the fringes of the political spectrum, it is not surprising that this is also a challenge for the public sector. The history of the federal Republic has seen very different phases in the dealing with this. It could be regarded as a first phase that at the beginning of the Federal Republic after the second world war, the state was indeed very generous in (re-)employing people that had supported an inhumane dictatorship – a political system the Constitution of 1949 had been created to make impossible in the future. It took decades to fully acknowledge the amount of people that had served the Nazi regime and that now were (again) in high-ranking public positions – in all three branches of government as well as at all levels of the public administration.

It was, interestingly, the first federal chancellor from the center-left Social Democrats, who himself had to flee Nazi Germany, who agreed with the state prime minister to amend the system of employment of civil servants: According to this decision ("Extremistenerlass"), the security services had to check in each case if persons about to be made civil servants opposed the constitutional order. This course of action – considered constitutional by the Federal Constitution Court[43] – was mainly aimed at the German Communist Party which never had a considerable backing in the western German population, but indeed took part in elections while having close ties to the regime in the German Democratic Republic. The end of the Cold War led to a much more relaxed attitude towards the – no longer deemed existing – threat from communism so that the system of prior checks by the Secret services ended.

The discussion has now been reopened with a view to cases in which people in the civil service, or the Army respectively, have turned out to be in opposition to the constitutional order. This has given the security services a new task, namely to make sure that any form of active fight against the constitutional order cannot be staged from within the civil service. Nevertheless, there is still a lot of insecurity regarding the question of how to deal with this kind of attitudes or behavior. The latest suggestions in that regard aimed at rules that would make it easier to end the time in the civil service of persons in case this kind of attitude or rather behavior was noticed.

6. Conclusion

The two-tier public service has proved to be very stable and at the same time very dynamic in its development. While fundamental changes are almost impossible given the constitutional requirements, a number of changes have been made and an even greater number is under discussion. These – actual or potential – changes can be seen as a reflection of the various challenges the civil service is faced with. Some of them are encountered by literally any employer, some of them are specific to the civil service as the constitution calls for certain specific features in the "relationship of service and loyalty defined by public law". The latter is an ideal that will not easily by changed – certainly not by calls for reforms that are inspired by the private sector.

1. Federal Statistical Office of Germany, Wirtschaft und öffentlicher Sektor – Auszug aus dem Datenreport 2021 (Datenreport 2021 - 4 Wirtschaft und öffentlicher Sektor (destatis.de)), p. 146; for an empirical analysis – also from a comparative perspective – see C. Reichard, E. Schröder, *Civil Service and Public Employment*, in S. Kuhlmann, I. Proeller, D. Schimanke, J. Ziekow, *Public Administration in Germany*, Palgrave Macmillan, 2021 (open access: https://link.springer.com/book/10.1007/978-3-030-53697-8), p. 205 (208 ff.); all websites quoted in this article were last visited 31/3/2023.
2. Federal Statistical Office of Germany, ibd.
3. Federal Statistical Office, Öffentlicher Dienst - Statistisches Bundesamt (destatis.de); Personal des öffentlichen Dienstes - Fachserie 14 Reihe 6 - 2021 (destatis.de), p. 20.
4. Federal Statistical Office, Personal des öffentlichen Dienstes - Fachserie 14 Reihe 6 - 2021 (destatis.de), p. 20.
5. See n. 1.

6. C. Reichard, E. Schröter (n. 1), p. 212 f.
7. See BVerfGE 117, 372 (379 ff.).
8. Translation of the GG according to the "official" site: Basic Law for the Federal Republic of Germany (gesetze-im-internet.de).
9. See BVerfGE 119, 247 (272 f.).
10. See e.g. BVerfGE 106, 225 (232); 117, 330 (344 ff.).
11. See e.g. BVerfGE 148, 296 (Rn. 119), english version: Bundesverfassungsgericht - Decisions - Ban on strike action for civil servants is constitutional.
12. BVerfGE 148, 296 (Rn. 120). Bundesverfassungsgericht - Decisions - Ban on strike action for civil servants is constitutional.
13. See e.g. BVerfGE 145, 1 (Rn. 21).
14. C. Reichard, E. Schröter (n. 1), p. 215
15. See V. Mehde *Neues Steuerungsmodell in der Verwaltung – „Juristenprivileg" in der Kritik*, in *ZRP* 1998, 394 ff.
16. See J. Siegel, I. Proeller, *Human Resource Management in German Public Administration*, in S. Kuhlmann, I. Proeller, D. Schimanke, J. Ziekow (n. 1), p. 375 (382).
17. J. Siegel, I. Proeller (n. 16), p. 381 f.
18. See n. 6.
19. See: BMI - Altersgeld (bund.de)
20. Bundestag-Drucksache 18/10680, p. 9.
21. For a depiction of compensation schemes and benefits see C. Reichard, E. Schröter (n. 1), p. 216 ff.
22. From more recent times see e.g. BVerfGE 117, 372 (381); 130, 263 (292); 145, 1 (Rn. 18); 155, 1 (Rn. 24 ff.)
23. BVerfGE 155, 1 (Rn. 24); 155, 77 (Rn. 27).
24. BVerfGE 148, 296 ff.
25. See especially BVerfGE 130, 263 ff.; 139, 64 ff. (Bundesverfassungsgericht - Decisions - Salary grade R1 in Saxony-Anhalt unconstitutional from 2008 to 2010); 140, 240 ff.; 155, 1 ff.; 155, 77 ff.
26. BVerfGE 130, 263 ff.; 139, 64 ff.; 140, 241 ff.; 155, 1 ff.; 155, 77 ff.
27. BVerfGE 130, 263 (293); 145, 1 (Rn. 37); 145, 304 (Rn. 74 ff.); 155, 1 (Rn. 42 ff.).
28. BVerfGE 81, 363 (376 ff.); 99, 300 (314 ff.); 155, 77 (Rn. 26 ff.).
29. BVerfGE 81, 363 (378); 99, 300 (316); 155, 77 (Rn. 30).
30. For a, somewhat different, perspective see C. Reichard, E. Schröter (n. 1), p. 219 f.
31. C. Reichard, E. Schröter (n. 1), p. 213.
32. See B. Winter-Peter, *Zur Entdifferenzierung im Recht des öffentlichen Dienstes*, Verlag Dr. Kovac, Hamburg, 2021.
33. See n. 24 and 25.
34. For a detailed account of the impact European law had on German civil service law see F. Klaß, *Die Fortentwicklung des deutschen Beamtenrechts durch das Europäische Recht*, Nomos, Baden-Baden, 2014.

35. BVerfGE 93, 1 ff.
36. BVerfGE 108, 282 (298 f.); 138, 296 (Rn. 83 ff.); 153, 1 (Rn. 79 f.).
37. BVerfGE 108, 282 (310 ff.) (English: Bundesverfassungsgericht - Decisions - Teacher wearing a headscarf)
38. See BVerfGE 138, 296 ff. (English: Bundesverfassungsgericht - Decisions - A General ban on headscarves for teachers at state schools is not compatible with the constitution)
39. BVerfGE 108, 282 (314 ff.).
40. See especially BVerfGE 108, 282 (319).
41. BVerfGE 153, 1 (English: Bundesverfassungsgericht - Decisions - Ban on wearing a headscarf imposed on legal trainees is constitutional).
42. See especially BVerfGE 153, 1 (Rn. 101).
43. BVerfGE 39, 334 ff.