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Evolution and Permanence of the French Civil Service

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La legislazione francese sul pubblico impiego ha recentemente subito modifiche significative, in particolare con l'emanazione della Legge n. 2019-828 del 6 agosto 2019 sulla trasformazione del pubblico impiego, che enfatizza il ruolo degli agenti contrattuali. Ulteriori riforme includono l'Ordinanza n. 2021-702 del 2 giugno 2021 sull'alta dirigenza pubblica e la pubblicazione del Codice generale del pubblico impiego il 1° marzo 2022, che consolida le disposizioni statutarie per gli impiegati pubblici sia a tempo indeterminato che contrattuali, rendendo la normativa più chiara e accessibile. Dopo avere fornito alcuni fatti e cifre generali per offrire una panoramica del pubblico impiego in Francia oggi (1), verrà esaminato lo sviluppo storico del modello di pubblico impiego francese (2), per, infine, discutere i cambiamenti in corso (3).

French civil service law has recently undergone significant changes, notably with the enactment of Act No. 2019-828 of 6 August 2019 on the transformation of the civil service, which emphasizes the role of contract agents. Further reforms include Order No. 2021-702 of 2 June 2021 on the senior management of the civil service and the publication of the General Civil Service Code on 1 March 2022, which consolidates statutory provisions for both permanent and contract civil servants, making the law clearer and more accessible. Iwill begin with some general facts and figures to provide an overview of the civil service in France today (1), before examining the historical development of the French civil service model (2), and finally discussing the ongoing changes (3).

Case Law.- 2.2. Adoption of the 1946 Civil Service Statute.- 2.2.1. The First Attempts to Adopt a General Civil Service Statute.- 2.2.2. The 1946 Compromise.- 2.2.3. Extension of the General Civil Service Statute to the local civil service.- 3. Changes in the French Concept of the Civil Service.- 3.1. Increased openness of the civil service to the private employment sector.- 3.1.1. Use of Contract Agents.- 3.1.2. A Rethink of the Career System?- 3.1.3. The Development of an Ethical Framework.- 3.2. Enhancing Flexibility in the Statutory Framework.- 3.2.1. Evolution of the Corps Structure.- 3.2.2. Reform of Employee Co-Determination.- 4. Conclusion.- 5. Essential Bibliographic References.

1. The Civil Service - Facts and Figures[1]

According to the latest data published in 2022 by the Ministry for the Transformation and Civil Service, as of 31 December 2020, France employed 5.66 million civil servants, representing 18.8% of the working population (30.1 million people). This equates to an average ratio of 74 civil servants per 1,000 inhabitants. The number of civil servants has consistently increased to meet the needs of a growing population in a more complex society with extensive public intervention expectations. From around 650,000 in 1900 to 1.5 million in the 1950s, the civil service workforce has now surpassed 5 million, growing by 0.5% per year between 2011 and 2019, matching the rate of total employment growth.
It is important to note that administrative structures in France often assume functions performed by churches in other EU countries, particularly in social and health fields, which must be considered when comparing figures. Civil servants in France are divided into three main categories, each with distinct statuses that structure the statistics.
State Civil Service includes employees of the state and its public establishments, such as central administrations and regional and departmental administrations ("*services déconcentrés*"). In 2020, this sector employed 45% of public employees (2.52 million), including around one million teachers (42% of the state civil service). Employees in central administration represent only 4% of the workforce.
Local Civil Service comprises employees of local authorities (regions, départements, municipalities, and their public establishments). In 2020, it

employed 34% of public sector employees (1.93 million).
Hospital Civil Service encompasses employees of public health establishments (hospitals, residential centers for the elderly, disabled, children, etc.), excluding strictly medical staff. It employed 21% of public sector employees (1.21 million).
In public employment, a distinction is made between civil servants, whose legal situation is defined by unilateral acts of the legislator or administration, and contract staff, who are employed based on contracts that may be subject to private or public law, depending on the nature of their duties. The French civil service model, designed as a career civil service, traditionally filled permanent posts with civil servants, with contract staff used mainly for non-permanent needs. However, the number of contract staff has been rising, encouraged by recent reforms. In 2020, contract staff made up 21% of all civil servants, up from 17% in 2011. Of these, 55% are on fixed-term contracts, but a significant proportion (59% in the state civil service) are on permanent contracts.
Civil servants are categorized into three or four hierarchical levels:
- Category A: Design, management, supervisory, or teaching posts.
- Category B: Positions involving application and drafting.
- Category C: Executive functions.
- Category D: Menial functions, integrated into Category C since 1992.

Within Category A, a sub-category A+ includes higher management, expertise, control, inspection, or teaching roles, though it is not legally defined. Category A+ accounts for 2% of civil servants, Category A for 36%, Category B for 17%, and Category C for 45%.
In terms of gender distribution, women represent 63% of public sector employees (excluding the military), compared to 46% in the private sector, with variations by activity type. Women make up 78% of hospital civil servants, 57% of state civil servants, and 61% of local civil servants. Their presence in the A+ category has increased by 5 points to 43% between 2011 and 2020.
The average net monthly salary in the civil service is €2,378, compared to €2,518 in the private sector. The salary scale is tighter in public employment, with Category C civil servants earning €1,854, Category B €2,457, and Category A €2,958 per month. The lowest-paid 60% of civil servants earn more than their private sector counterparts, while the highest-paid 1% earn 27.5% less. This compression has been accentuated by the 2016 protocol agreement on careers

and pay (P.P.C.R.), which merges grades for Category C and transfers Category B bodies to Category A.

2. The Construction of the Sources and Regime of Civil Service Law in France

The French civil service developed gradually as the country's ministerial departments and administrative structures were established. Until the 18th century, the royal administration relied on officers and commissioners. The former were responsible for the day-to-day administration of the kingdom. They held their office, acquired from the king, and were therefore relatively independent and irremovable. For more specific tasks, the king appointed commissioners, whose term of office was limited and whose duties were specific, but who remained under his immediate authority and could therefore be dismissed. Officers and commissioners were assisted by clerks, who reported directly to them and whose numbers grew as the number of functions taken on by the administration increased.

It was not until the 17th century that civil servants in the modern sense of the term appeared as bodies of agents recruited by competitive examination and entrusted with permanent, technical missions, unlike commissioners, who were placed directly under the hierarchical control of the royal authority, unlike officers.

The royal professors, responsible for teaching civil law, were created in 1679, the fortification engineers in 1690, whose function clearly reflected their military character, and the *Ponts et Chaussées* engineers in 1716. Their structure, inspired by military organization, would be adopted when it came to organizing the careers of the many clerks who, initially recruited directly by officers and commissioners, were responsible for the day-to-day running of the administrations, and whose numbers grew steadily.

Unlike Germany, which adopted a general statute for its civil service as early as 1873, France had only piecemeal regulations, coordinated to some extent by case law in the form of general principles. It was not until 1941 and 1946 that a general statute for civil servants was adopted. It was extended, not without adaptation, to the local civil service in 1984 and has recently been codified.

2.1. Before the Civil Service Statute

Throughout the 19th century and the first half of the 20th century, although several attempts were made to adopt a General Statute, these efforts faced numerous obstacles due to differing views between governments and representatives of civil service organizations. While the latter sought to extend the social achievements of labor law to civil servants, particularly the right to strike and collective bargaining, and opposed a unilaterally adopted statute, governments were reluctant to abandon the distinction between civil servants and private law employees, which protected the State from trade union influence over its employees.

In the absence of a General Statute, special statutes were gradually adopted for each ministry and each corps of civil servants, leading to significant diversity. The law of 23 October 1919 required municipalities with more than 5,000 inhabitants to adopt a set of statutes applicable to their civil servants, organizing recruitment, promotion, and discipline, notably by establishing a disciplinary committee. This obligation was extended to all municipalities by the law of 12 March 1930.

The existence of these special statutes posed a further obstacle to the adoption of a General Statute, as ministerial departments were not in favor of adopting such a statute that would interfere with their freedom to organize their services. Meanwhile, civil servant organizations were often unwilling to challenge the achievements they had made in specific departments. However, these special statutes were gradually being harmonized, either through the application of general texts that clarified certain points of the civil servants' regime (2.1.1), or through case law (2.1.2).

2.1.1. Texts of General Application

The special statutes were based on common principles, particularly derived from the Act of 19 May 1834 on the status of officers. This text established the principle of the distinction between rank (grade) and employment (emploi), thus clarifying Article 69 of the Constitutional Charter of 1830, which stated: « *The following will be provided for successively by separate laws and as quickly as*

possible: (...) *6° Provisions that legally guarantee the status of officers of all ranks on land and at sea*». Officers thus held their rank, which could not be arbitrarily taken away once granted, while their employment remained at the discretion of the administration; the same applied to civil servants.

In addition to these founding principles, a number of texts, although adopted without a general plan, imposed common rules in various areas. For example, procedural guarantees were introduced for the careers of public servants by several acts, such as the Act of 30 August 1883 on the reform of the organization of the judiciary (Article 15) for magistrates, the Act of 27 February 1880 establishing the disciplinary system for secondary school teachers, supplemented by the Act of 30 October 1886 for primary school teachers (Article 26 f), which, in addition to the involvement of academic councils, provided for the communication of the case file in the event of dismissal. Similarly, the Act of 10 July 1896 for higher education teachers, Article 3 of which entrusted the university council with adjudicating contentious and disciplinary cases relating to public higher education.

Article 65 of the Act of 22 April 1905 laid down the principle that all civil and military servants must be given access to their files before any disciplinary measure, compulsory removal, or delay in promotion based on seniority, following the scandal of the "files affair" (*affaire des fiches*). This scandal was caused by the creation of files on officers by the Minister of War, General Louis André, with the help of Masonic networks of the Grand Orient de France, distinguishing officers according to their religious practices. Anti-clerical officers were promoted, while Catholic officers saw their careers blocked.

Mention should also be made of the Act of 9 June 1853 on civil pensions, which extended the right to a retirement pension to civil servants, previously reserved for military personnel, in order to strengthen the commitment of civil servants and retain high-quality staff despite low salaries. Similarly, the Act of 27 February 1912 extended the promotion table mechanism for promotion by choice to all civil servants in central government, while the so-called Roustan Act of 30 December 1921 laid down rules of general application for bringing together civil servant spouses.

2.1.2. The Role of Administrative Case Law

When civil servants and their organizations were granted the possibility of legal recourse before administrative courts in matters of legality, thanks to the extension of the *recours pour excès de pouvoir* at the beginning of the 20th century, as well as in matters of liability, the *Conseil d'Etat* developed a body of case law. This case law established general principles applicable to a wide range of situations, thus forming a comprehensive body of jurisprudence that subsequent texts largely adopted.

2.2. Adoption of the 1946 Civil Service Statute

In 1946, during the Liberation, a General Statute applicable to all civil servants was adopted. This marked the culmination of a long-standing effort to unify the civil service, an effort that had initially succeeded in 1941 during the Occupation but had not been implemented due to the circumstances of the time.

2.2.1. The First Attempts to Adopt a General Civil Service Statute

In 1939, at the end of the Third Republic, a new draft of the Civil Service Statute was prepared by an administrative reform committee established under the President of the Council of Ministers. The onset of the Second World War temporarily halted the adoption process. Conversely, a decree on 18 November 1939 removed all disciplinary guarantees for civil servants for the duration of the war. During the Occupation, the Act of 17 July 1940 allowed public service employees to be relieved of their duties, leading to severe purges. However, the project to adopt a General Civil Service Statute was resumed in March 1941. The *Conseil d'Etat* was tasked with drafting a proposal, largely based on the 1939 draft by the administrative reform committee, before discussing it with the ministries. The Civil Service Statute was finally published in the form of three Acts on 14 September 1941. It largely stabilized the solutions previously established by case law and unified the diversity of special statutes into a single text. Notably, it authorized the formation of associations of civil servants, which

had previously only been tolerated, as case law had already granted them the right to take legal action. Above all, the 1941 Statute adopted a solution that was subsequently rejected, even though it is frequently adopted abroad and remains a reference model for certain current trends. This solution reserved the status of civil servant «*to those occupying permanent posts corresponding to the specific purpose of the public service, to the exclusion of those whose jobs are similar to private sector jobs*». Thus, Article 1 of the Act of 14 September 1941, relating to the organization of the staff of public services and public establishments of the State, states: «*All jobs which do not correspond to the specific purpose of the public service and all those which, by their nature, are similar to private jobs are occupied by employees. Other jobs are filled by civil servants*». This solution was extended to municipal staff by the Act of 9 September 1943, relating to the organization of the staff of public services and public establishments of the municipality.
Although it never came into force and was expressly abolished by the Order of 9 August 1944, relating to the re-establishment of republican legality in mainland France, this first Statute prevented any future return to the previous solution of having different statutes for each department. It also provided for some of the structures that would be adopted after the war, particularly the interministerial recruitment of central administration executives, the creation of a steering structure under the Presidency of the Council, and a common training school in the form of an Institute of Advanced Administrative Studies. The text also included provisions imposing a strict separation between the civil service and the private sector to remedy pre-war difficulties: *pantouflage* (Article 8), conflicts of interest (Articles 9 and 20). It was therefore up to the Provisional Government of the French Republic in 1945 and the Constituent Assembly in 1946 to take up the project of a general status for civil servants.

2.2.2. The 1946 Compromise

Even before the 1946 Statute was adopted, the Provisional Government led by General de Gaulle took measures to reorganize the senior civil service. The principles were the same as those formulated in the 1939 project and incorporated into the 1941 Statute. Order no. 45-2283 of 9 October 1945 on the training, recruitment, and status of certain categories of civil servants established

a civil service directorate and a permanent civil service council. It introduced centralized recruitment for senior civil servants in central government departments, a common training program through the *École nationale d'administration*, and interministerial management by the *Direction générale de l'administration et de la fonction publique* (DGAFP). It also replaced the employment statutes for senior civil servants with a genuine inter-ministerial body, that of civil administrators, to ensure appointments were not made for career development purposes.

However, it was up to the government that emerged from the elections of 21 October 1945 to replace the first Statute of 1941 with a new General Statute for civil servants. The coalition in power at the time, composed of Communists, Socialists, and Christian Democrats, reached a "compromise" that revived the idea of a statute, to the detriment of applying labor law, which had long been favored by civil servants' organizations. This compromise made ample room for social rights, particularly participation rights. The text, prepared by the team of Communist minister Maurice Thorez, General Secretary of the Communist Party, was promulgated on 19 October 1946. It was intended to apply to all civil servants in permanent employment within the State administration, rejecting the distinction between civil servants and employees made in the 1941 Statute.

The 1946 text also codified principles previously developed by case law. The legal and regulatory status of civil servants, although already recognized, was now clearly established in Article 1 of the Statute. In 1909, the *Conseil d'Etat* had attempted to qualify the relationship between civil servants and the administration as a public law contract, but this idea was immediately criticized by legal writers and expressly abandoned by the courts in 1937. Above all, the 1946 Statute extended to civil servants the social principles that would be enshrined a few days later in the preamble to the Constitution of 27 October 1946, as «*particularly necessary for our times*». Civil servants were granted freedom of association (Article 6 of the Statute), and joint structures were established: joint technical committees for decisions concerning civil servants personally, and joint technical committees for matters concerning the organization or operation of the administration or service (Article 20 of the Statute), thus implementing the principle of participation.

The question of the right to strike is not mentioned in the statute itself, but case

law, relying on the preamble to the constitution of 27 October 1946, ensured that public employees benefited from this right. Although the Statute of 19 October 1946 was silent, the right to strike, which is constitutionally guaranteed, was considered by case law to also benefit public employees. This represented a complete reversal of previous case law, which had prohibited civil servants from striking, on pain of a penalty that could be imposed outside any disciplinary procedure, a prohibition expressly taken up by the 1941 Statute. However, case law recognizes that the administrative authority may restrict the right of public employees to strike to protect «*the needs of public order*», particularly the continuity of public services, which also has constitutional status, or to meet the «*essential needs of the country*». The right to strike is thus prohibited by law for certain categories of public employees, such as police, prison staff, magistrates, Ministry of the Interior transmission services, and military personnel. These legislative prohibitions may be supplemented by the administrative authority at the ministerial level or by each head of department, under the supervision of the administrative court, for example, air traffic controllers, level crossing guards, and certain prefecture staff.

In addition to these prohibitions, both the legislator and the administrative authorities may regulate the exercise of the right to strike, for example by imposing notice periods and obligations to negotiate in advance, or by prohibiting certain types of strike, such as rotating strikes or surprise strikes. The authorities may also requisition certain employees to provide a minimum service, where this appears necessary to preserve public order or meet the essential needs of the nation. It remains certain that in this eminently political area, the law cannot do everything, and many practices must be resolved through negotiation.

In 1946, the extension to public employees of principles that had emerged in the private sector as a result of trade union struggles represented a significant upheaval in civil service law. The 1946 Civil Service Statute was subsequently amended slightly in 1959 to account for the new division of powers introduced by the Constitution of 4 October 1958 between the legislative authority, which retained sole responsibility for setting «*rules concerning the fundamental guarantees granted to civil servants*», and the regulatory authority. However, the 1959 regulations did not call into question the options adopted in 1946.

2.2.3. Extension of the General Civil Service Statute to the local civil service

Following the election of Socialist François Mitterrand as President of the Republic on 10 May 1981, a major decentralisation policy was implemented. To enable local and regional authorities to exercise the new powers granted to them under the best possible conditions, it was deemed necessary to reform the local civil service to make it more attractive by offering local and regional authority employees broader career prospects and by regulating recruitment conditions. The principles adopted since the 1946 General Statute, which still only applied to the State civil service, were thus extended to the civil servants of local authorities and their public establishments.

The core of the reform was the adoption of the Act of 26 January 1984 on the local civil service, which extended to the local civil service the principles laid down by the 1946 State Civil Service Statute, adapting them to account for the constitutional autonomy of local authorities. This was followed by the Act of 9 January 1986 on the hospital civil service, which took account of the specific features of the healthcare professions. At the same time, the 1959 status of State civil servants was replaced by an Act bringing together the general principles applicable to the three types of civil service: Act no. 83-634 of 13 July 1983 on the rights and obligations of civil servants and the Act of 11 January 1984 on the State civil service, which incorporates and modernises the main provisions of the previous status.

The four statutory laws in force since 1983-1986 have been codified, in accordance with the law as it stands, to improve the readability of the texts, which may have been affected by successive reforms since their adoption. Planned on several occasions since the end of the 1990s, this codification work was effectively completed with the adoption of Order no. 2021-1574 of 24 November 2021 on the legislative part of the General Civil Service Code (CGFP), which came into force on 1 March 2022. The regulatory part is not expected before the end of 2025. The Code extends the presentation adopted in 1983 of the cross-cutting nature of the sources of civil service law but takes it a step further by adopting a thematic organisation for the Code as a whole that no

longer places the three levels of the civil service in the foreground: state, territorial, and hospital.
From a socio-economic perspective, the implementation of the General Civil Service Statute has led to the civil service becoming a showcase for the government's social policy in favour of workers. As a result, the general trend has been towards a pay policy that favours the lower echelons of the civil service, leading to a gradual flattening of the hierarchy to the detriment of the senior civil service, and a decline in the attractiveness of civil service competitive examinations. The need to renew the organisation of the civil service will thus lead to the gradual emergence of greater recourse to contract staff, in an attempt to encourage more flexible management of civil servants, thereby calling into question the global application of the Statute to all civil servants.

3. Changes in the French Concept of the Civil Service

The French civil service model, as set out in the 1946 Civil Service Statute, views the civil service as essentially distinct from the private employment sector. Designed to govern the recruitment and employment of civil servants who must devote their entire careers to serving the public interest, in accordance with the career civil service system, the statute is based on the stability of public employment and consequently offers civil servants full career development prospects.
Civil servants are recruited into a civil service body following a competitive examination that ensures equal access to public service as guaranteed by article 6 of the Declaration of the Rights of Man and of the Citizen, which retains constitutional value.
This model of a closed civil service, which has always had its moments, is now moving towards a more open model, also promoted by the need to encourage the mobility of European nationals, and is gradually moving towards greater openness to the private employment sector, coming closer in some respects to an employment-based civil service model. At the same time, within the Civil Service Statute itself, there has been a trend towards greater mobility of civil servants between the various jobs available to them, and a change in the conditions of participation of civil servants in the management of the civil service, which was

one of the distinctive features of the Civil Service Statute since 1946.
The Act of 6 August 2019 on the transformation of the civil service, the latest in a long series of texts accompanying changes in the way the civil service operates, continues this dual movement. Adopted as part of a policy to transform - the term undoubtedly signifies a desire to go further than mere reform - public action presented on 13 October 2017 by the Prime Minister, at the start of President Emmanuel Macron's first five-year term, under the title "Public Action 2022", with the threefold objective of improving the quality of public services by stepping up the digitisation of administrative procedures; modernising the framework of the civil service; and reducing public spending, the law finds its source in the preliminary report drawn up by the Public Action 2022 Committee (or CAP 22) comprising some forty members mixing economists, personalities from the public and private sectors, and elected representatives, set up within this framework.

3.1. Increased openness of the civil service to the private employment sector

The most recent developments seem to be increasing the use of contract agents, thereby encouraging greater fluidity between public and private employment. Do these developments go so far as to call into question the career system? In any case, such a blurring of boundaries does not go without strengthening the mechanisms designed to protect the ethics of the civil service and to combat conflicts of interest.

3.1.1. Use of Contract Agents

Historically, exceptions to the strict separation between the civil service and the private employment sector have always existed, despite the career civil service system's principle of such separation. Competitive recruitment of civil servants, primarily targeted at young candidates through "external" competitive examinations, also allows for the recruitment of individuals who have spent part of their careers in the private sector. These external examinations are not closed to them, and specific "third" competitive examinations are often organized to

encourage such professional profiles to enter the civil service. For instance, the INSP (formerly ENA) conducts a third competition alongside the external and internal competitions, which is open to private sector workers, volunteers, and local elected officials with at least eight years of professional experience, without requiring a diploma. Such competitive examinations are available for access to numerous bodies, regardless of their hierarchical rank.

While the principle remains that only civil servants may fill permanent public-sector posts, the use of contract staff for certain types of positions has always been an option. Contract staff are not integrated into a body of civil servants where they would develop their careers. Instead, their relationship with the government is based on the contract that binds them, with the duration of this relationship fixed by the contract. Although some contracts are open-ended, the majority are fixed-term, expecting the holders to continue their careers in the private sector.

Additionally, the "*disponibilité*" scheme allows civil servants to be released from their duties for a certain period while retaining their civil service grade, enabling them to be reinstated in an equivalent job at the end of this period. This scheme is designed to allow civil servants to hold positions in the private sector or politics, enriching their careers without undermining the principle of a career civil service.

However, there is an emerging trend toward strengthening these restrictions, potentially challenging the principle of a career civil service in favor of an employment-based civil service, particularly through the increased use of contractual civil servants. The career system was generalized in 1946, establishing the principle that all permanent posts should be filled by civil servants. This was significant, given that in 1946, contract employees accounted for around 40% of civil servants. The Act of 13 July 1983 aimed to restore the monopoly of civil servants in occupying permanent civil service posts, whereas the previous period had seen the development of the role of contract staff.

While reaffirming the principle that jobs meeting permanent requirements should be entrusted to civil servants, the Act allows for the use of contract agents in certain specified cases. For example, in the State civil service, contract agents may be appointed to senior posts at the government's discretion. The list, set out in a decree by the *Conseil d'Etat*, includes directors-general, directors of central

administration, prefects, ambassadors, and certain consuls general. They are then incorporated into a set of employment regulations determining access, conditions, and remuneration for these posts. This derogation is justified by the political nature of these senior posts and the necessary proximity to the government to ensure proper transmission of political impetus.

Contract staff may also be appointed to specific posts in certain public establishments due to the special nature of their tasks. Similarly, contract staff could be recruited for permanent posts where justified by the nature of the duties or the needs of the service, such as when no body of civil servants is capable of carrying out these duties or where the duties require highly specialized technical knowledge. Lastly, contract staff could be recruited to fill permanent positions requiring incomplete service or to meet seasonal or occasional requirements. Specific mechanisms have been established to integrate them into the statutory civil service as part of the policy of «*eliminating precarious employment*».

The Act of 6 August 2019 extends and perpetuates the use of contract agents without questioning the primacy of civil servants for permanent posts. It broadens the cases in which contract agents may be used, allowing all public establishments of the State to employ contract staff without limitation. The 2019 Act reverses the restriction introduced in 1987, which limited the use of contract agents to fill permanent posts to category A agents, and reverts to the 1984 Civil Service Statute, opening it up to all categories. It also introduces the possibility of recruiting contract staff for specific projects or operations, mirroring an innovation in the Labour Code designed to make open-ended employment contracts more flexible.

Moreover, the 2019 Act extends the use of contract agents to all management posts, including head of department, deputy director of central administration, deputy director of a hospital, and director-general of services in municipalities with more than 40,000 inhabitants, among others. In total, almost 5,700 jobs could be filled by non-civil servants. These contract staff are not intended to be integrated into the civil service, as their contracts cannot be transformed into open-ended contracts, nor can they be given permanent status. However, the Act makes contractual employment in the civil service more permanent, as many of these contracts can now be concluded for an indefinite period from the outset.

This extension of the use of contract agents to fill permanent civil service posts

was made possible by the Constitutional Council's interpretation of the relevant constitutional provisions. During its preliminary examination of the Act of 6 August 2019, the Council ruled that the principle of equal access to public employment, guaranteed by Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789, «*does not prevent the legislature from providing that persons who are not civil servants may be appointed to posts that are in principle occupied by civil servants*» and that «*there is no constitutional requirement that all posts involved in the exercise of "sovereign functions" must be occupied by civil servants*». This solution departs from the principle contained in Article 33(5) of the German Basic Law, which states, «*As a general rule, the exercise of public powers must be entrusted on a permanent basis to members of the civil service who are in a relationship of service and loyalty under public law*».

3.1.2. A Rethink of the Career System?

The implementation of these new provisions could be seen as a further step towards the deconstruction of the traditional career civil service system in favor of an employment-based system. Although the number of contract staff in France remains well below that in other European Union countries, it has significantly increased in recent years, reversing a trend that had been in place since 1946. From 17% in 2011, the proportion of contract staff rose to 21% in 2021. In 2021, while the number of civil servants decreased by 0.5%, the number of contract staff increased by 2.8%. Between 2010 and 2017, the number of contract staff, expressed in full-time equivalent (FTE) terms, grew faster (15.8%) than the overall public sector staff (5.9%).

The new General Civil Service Code, which came into force in 2022, appears to be moving towards relativizing the role of civil servants among all public employees. The second article of the Code states that it «*also applies to contract agents*». Similarly, the rule that permanent government posts are in principle filled by civil servants, which was previously at the forefront of the Staff Regulation Statute, is mentioned much later in the new Code. The principles of recruitment by competitive examination and the distinction between grade and post are also less emphasized.

It should be noted that the 2019 reform did not follow the recommendation

from the preliminary report by the *Action Publique 2022* committee, which suggested «*broadening the use of private law contracts as a 'normal' means of access to certain public service functions*», thus reverting to the solution adopted in 1941. However, the Act of August 6, 2019, maintained the solution established by the case law of the Tribunal des conflits, which states that contractual agents of administrative structures, i.e., non-economic structures, are bound by public law contracts. These contracts, classified as public law contracts, are not covered by the Labour Code but are subject to a regime largely based on case law and similar to the statutory law applicable to civil servants, placing them in a virtually legal and regulatory situation.

Recent case law has reiterated this by strictly applying the principle of equality between civil servants and contract civil servants, in line with the case law of the Court of Justice of the European Union. This applies particularly to the recruitment of contract staff, which the General Civil Service Code stipulates must follow a procedure that guarantees equal access to public employment. Thus, the use of contract agents does not fundamentally challenge the status of the civil service, as its provisions are extended to these agents. The explicit inclusion of contract agents in the scope of the General Civil Service Code illustrates this trend towards the functionarisation of contract agents, which gradually diminishes the perceived flexibility in their management. This is due in part to the fact that these agents do not benefit from seniority-based promotions reserved for civil servants and can be recruited and promoted without the constraints of membership in civil service corps with competences defined by specific statutes. Their salary and career development are determined by the contract binding them to the administration. The only obligation in the texts is to assess the professional situation of employees on permanent contracts based on a regular professional interview; the same applies to employees on fixed-term contracts of more than one year. However, these interviews do not entail any obligation to increase the remuneration of contract staff. Only if they are appointed as permanent civil servants will they have their seniority recognized. The introduction of an automatic pay rise system similar to that applied to civil servants would be illegal.

The increased use of contract agents should therefore be analyzed primarily as a factor in making the management of civil servants more flexible, rather than as a

factor in the evolution of a career civil service towards an employment civil service. It is often the rigidity or slowness of recruitment or mobility procedures for civil servants that lead to the hiring of contract agents to fill vacancies. Similarly, when the remuneration conditions laid down in the Staff Regulation Statute are not adapted to certain segments of the employment market, the use of contract agents allows for flexibility.

There is a significant dichotomy between two types of contract staff. Some remain in precarious situations, occupying menial jobs corresponding to needs that are sometimes recurrent but non-permanent. They are mainly found in the hospital civil service and the local civil service, as well as in the State civil service when the jobs are subsidized to promote access to employment and transformed into contract agent posts. Their situation is often worse than that of civil servants. Other contract staff are employed in short-staffed or highly technical jobs where competition between the public and private sectors is strong, and their salaries can be negotiated favorably. In the latter case, the use of contract staff enables employees to escape the constraints imposed by the statutory system and its general salary scale, which has gradually led to a flattening of the pay pyramid. It is notable that the use of contract agents has been developed especially recently in the context of management functions, so that the French civil service system remains far from mixed systems such as that in Germany, where management functions are reserved for civil servants, while subordinate posts are taken on by contract agents.

3.1.3. The Development of an Ethical Framework

The increased use of contract agents, particularly in secondary management positions (deputy directors, heads of departments, directors of public establishments), raises concerns about the resurgence of a spoils system that could compromise the neutrality of the civil service. This concern is heightened by the fact that the law explicitly states these positions are filled through fixed-term contracts that cannot be converted into permanent contracts.

Historically, the stability of civil servants and the associated neutrality ensured continuity of public service regardless of political changes. However, the use of contract agents, especially in local authorities, poses a risk of politicization. This

instability, coupled with the recruitment of contract staff outside the competitive examination framework, could foster nepotism or recruitment based on criteria other than the expected quality of a civil servant, who is likely to serve various political figures throughout their career. Furthermore, in his opinion on the 2019 draft law, the *Défenseur des droits* (Ombudsman) noted that «*the increasing use of contractual staff, and therefore of recruitment processes that are often much less regulated (than those applicable to civil servants), calls for greater vigilance on the part of public employers*» to prevent increased risks of discrimination.

The intention to open the civil service to the private employment sector, encouraging transitions between public and private employment, and moving away from a closed career civil service model towards one where civil servants can develop their careers in both sectors, sometimes leads to contradictions with the renewed focus on combating conflicts of interest. It is crucial to ensure that information accessible to civil servants within the public service, protected by confidentiality obligations, cannot be used in private sector jobs, and that powers held in public functions are not used to benefit private companies with which a civil servant has had, currently has, or is considering having special employment relations.

An Act of 6 October 1919 introduced into the Criminal Code provisions now set out in Article 432-13, prohibiting any public official entrusted with supervising or controlling a private company, or expressing an opinion on its operations, from holding a position in said company for five years following the cessation of their supervisory or control functions. The Conseil d'Etat's case law does not hesitate to apply these provisions even outside the specific rules of the civil service.

A public service ethics commission was established by decree on 17 January 1991, tasked with monitoring the departure of public servants and certain private-sector employees planning to work in the private or competitive public sector. More recently, the issue of ethics in public functions has been addressed by various texts. Act 2016-483 of 20 April 2016 on the ethics, rights, and obligations of civil servants enshrines in the General Civil Service Statute the obligations of dignity, impartiality, integrity, probity, neutrality, and respect for secularity, already recognized by administrative courts. It also introduces the concept of conflicts of interest into the general status of civil servants, defined as «*any*

situation of interference between a public interest and public or private interests which is likely to influence or appear to influence the independent, impartial and objective performance of one's duties», along with the obligations of civil servants faced with such situations.

Following a 2018 parliamentary report on the ethics of civil servants and the management of conflicts of interest, the Act of 6 August 2019 modified the conditions for ethics checks on civil servants transitioning to the private sector (*pantouflage*) and created a new check for transitions from the private to the public sector, consistent with the increased recruitment of contract agents. Institutionally, the *Commission de déontologie de la fonction publique* (Public Service Ethics Commission) has merged with the *Haute Autorité pour la transparence de la vie publique* (HATVP - High Authority for the Transparency of Public Life), an independent administrative authority created in 2013 to succeed the *Commission pour la transparence financière de la vie politique* (Commission for the Financial Transparency of Political Life) established in 1988, and to monitor the assets of elected representatives and certain senior civil servants. The HATVP, now comprising two separate colleges – one for political staff and the other for civil servants – consists of magistrates and qualified individuals appointed by Parliament and the government.

The HATVP is responsible for examining the declarations of interest and assets made by certain senior civil servants upon their appointment and departure. It also intervenes in cases where civil servants plan to set up or take over a business and apply to work part-time, or where civil servants plan to transition to the private sector (*pantouflage*). Previously, the *Commission de déontologie* was consulted by administrations on requests for authorization to work part-time to create or take over a business or transition to the private sector for all civil servants. Now, referral to the HATVP is only mandatory for the most exposed positions (directors of central administrations, certain directors of public state establishments, directors-general of services of regions, departments, and municipalities with more than 40,000 inhabitants, members of ministerial cabinets, and employees of the President of the Republic, etc.). For other public-sector employees, whether civil servants or under contract, checks are carried out by their hierarchical superiors, with the assistance of the organization's ethics officer and, if necessary, referral to the HATVP. The proposed move to the

private sector may then be authorized, with or without reservations, or refused.
The 2019 Act also introduced a new ethics check when contract staff are recruited or when civil servants who have worked in the private sector in the previous three years return to the civil service, to verify that the activities carried out in the private sector are compatible with the duties envisaged within the civil service. Contract staff appointed to managerial posts are required to undergo ethics training.
Additionally, new measures have been adopted regarding pay transparency, including the obligation to publish annually on the websites of ministries, the largest local authorities, and the largest hospitals, the ten highest salaries paid to employees (with the share of the number of women and men). In 2018, the top 1% of civil servants earned more than €6,718, compared to more than €8,680 net per month in the private sector.

3.2. Enhancing Flexibility in the Statutory Framework

While the use of contract agents allows for some circumvention of the cumbersome management of civil servants – particularly in terms of recruitment, mobility, and promotion – the desire to both facilitate the management of civil servants and offer them more varied career prospects has led to changes in the very structures of the civil service. As outlined in the explanatory memorandum to the Act of 6 August 2019, the goal is to «*strengthen and empower public-sector managers by developing the levers that will enable them to be real team leaders: by recruiting the skills needed for their departments to run smoothly, by promoting the professional commitment of their teams, and by making decisions as close to the ground as possible, without systematically reporting back to the national level*».
The aim has been to modernize the conditions under which civil servants' careers are managed, particularly by reorganizing the corps structure (3.2.1) and simplifying the rules governing civil servant participation (3.2.2).

3.2.1. Evolution of the Corps Structure

Civil servants are typically recruited into a corps, which corresponds to a specific profession. Each civil servant's career is expected to develop within this corps, with promotions occurring either through seniority (time-based progression) or

by merit (advancement to higher grades), impacting both remuneration and responsibilities. Each corps is responsible for a certain number of jobs, determined by its specific statutes. The first corps appeared as early as the *Ancien Régime*, serving as guilds for public servants, such as the *Ponts et Chaussées*, mines, and rural engineers. Until the mid-20th century, the number of corps was limited, but they proliferated under the 1946 Civil Service Statute, reaching around a thousand, driven by administrative needs and civil servants' associations seeking to secure career prospects.

However, this proliferation led to excessive segmentation, limiting personnel management flexibility, as each civil servant's career was confined within highly specialized corps. Exceptions to this rule include secondment, allowing civil servants to temporarily join other corps with the option to return or integrate into the new corps, and internal competitions encouraging mobility between corps. Special staff regulations also permit discretionary promotions within different corps, often based on age and service length.

These mobility options have been gradually extended, such as through the Law 2009-972 of 3 August 2009, which established a right to integration for seconded civil servants after five years. Additionally, efforts have been made to reduce the number of corps. The Act of 26 January 1984 introduced broader job categories for the local civil service. While there were around 700 State civil service corps in 2004, this number dropped to around 350 by 2012, with mergers mainly in category C. By 2020, there were 288 civil service bodies, reducing to 284 in 2021 and 280 in 2022, with a target of 270 by 2023. These mergers have led to interministerial bodies with ministerial management, facilitating staff mobility across ministries.

More recently, the senior civil service was reorganized by Order no. 2021-702 of 2 June 2021, resulting in the abolition of around fifteen civil service corps. Initiated by President Emmanuel Macron and based on a 2019 government report, this Order, alongside the Act of 6 August 2019, not only renamed the *École nationale d'administration* (ENA) to the *Institut national du service public* (INSP) but also merged most senior civil service corps, enabling functional management of senior State jobs. The new corps of State administrators now includes former INSP students and incorporates various other corps, such as civil administrators, public finance administrators, and several inspectorates.

However, major corps with jurisdictional functions retain their organic independence to ensure the impartiality of their roles, as protected by the constitution. For example, the *Conseil d'Etat* recruits its youngest members from among State administrators with two years of effective public service. Members of the State administrators' corps are appointed to senior management positions, including directors-general, ambassadors, prefects, and senior managers of public State establishments, totaling around 13,000 positions. The Interministerial Delegation for Senior State Personnel (DIESE) manages these roles on an interministerial basis.

The previous grading system of the *École nationale d'administration*, used to classify students into various civil service corps, is no longer applicable. Instead, students join the State administrators' corps, and the DIESE organizes interviews to determine job placements. This new mechanism, replacing the competitive examination system, has raised concerns about impartiality, particularly for inspectorate roles. Special measures have been adopted to ensure their independence, including specific appointment conditions and public commission opinions. These measures have been validated by the *Conseil d'Etat*.

3.2.2. Reform of Employee Co-Determination

Since 1946, the Civil Service Statutes have provided for broad participation by civil servants through various bodies involved in managing civil servants' careers and negotiating the general conditions for the organization and operation of services. These elements have evolved over time, with the Act of August 6, 2019, contributing to recent changes.

To simplify procedures for managing civil servants' positions and enhance their mobility, the law has redefined the role of the joint administrative committees (*Commissions administratives paritaires* - CAP), which include representatives from both the administration and staff. These committees are now responsible only for examining individual decisions unfavorable to employees, such as refusal of tenure, dismissal, training, part-time work, teleworking, and disciplinary actions. They no longer handle transfers, mobility, or promotions.

For non-adverse decisions, management guidelines (*Lignes directrices de gestion* - LDG) have been introduced. These guidelines now set the general directions for

transfers, mobility, and promotions within the civil service. They must include a multi-year human resources management strategy that defines the "challenges and objectives" of the administration's policy. The number of CAPs has also been reduced; they are no longer organized for each body but for each hierarchical category, addressing the careers of civil servants within the same category. Depending on the organization's size, several such committees may be established.

In terms of collective bargaining, since 1946, the civil service statute has provided for public employee participation bodies, particularly through the establishment of joint technical committees designed to give employees a voice on issues related to the operation and organization of services. The Act of August 6, 2019, simplifies matters by merging the powers previously divided between the technical committees (*Comités techniques* - CT) and the health, safety, and working conditions committees (C*omités d'hygiène, de sécurité et des conditions de travail* - CHSCT) into new social committees (*Comités sociaux*).

These social committees are consulted on issues regarding the operation and organization of the service, management guidelines (LDG) for transfers, mobility, internal promotion, and grade advancement of staff, among others. The reform initiated by the Act of August 6, 2019, and specified by an Order of February 17, 2021, also promotes the conclusion of collective agreements in various areas such as apprenticeships, quality of life at work, social support for service reorganization measures, collective profit-sharing, and the terms and conditions for implementing compensation policies. These agreements now have normative value and provide a framework for their conclusion, whereas previously, consultation resulted in memorandums of understanding with no legal effect that had to be unilaterally transposed by law or regulation. The first collective agreement negotiated under this ordinance was concluded on July 13, 2021, to implement teleworking in the civil service. Negotiation levels are set at the national level for pay and purchasing power, as the State wishes to retain control over the budgetary aspect of such measures; issues relating to working conditions can be negotiated at both national and local levels.

4. Conclusion

The French civil service model, established in 1946, is based on the principle that all civil servants, regardless of their hierarchical level, should be subject to the same legal and regulatory framework. This status ensures that all civil servants enjoy the social rights guaranteed to all workers, including the right to strike and the right to participate both individually and collectively. The civil service is also based on a career system, expecting civil servants to spend their entire careers in government service, thereby establishing a relatively strict separation between the public and private employment sectors and minimizing conflicts of interest. This model, initially established for State employees, was extended in the 1980s to local authority employees, including hospital staff.

The civil service is a powerful force in social policy due to the large number of people it employs under a coordinated status. Depending on the government in power, the civil service has acted as either a showcase or a counterweight. However, over the years, it has not escaped a certain petrification of its management methods, particularly through the multiplication of bodies, or a squeezing of the pay conditions of the staff it employs.

To maintain its attractiveness and attract quality candidates, the status of the civil service has had to evolve in various ways. This is exacerbated by the fact that all civil servants remain more or less subject to the statutory system, which, particularly in terms of pay, complicates any policy designed to promote the attractiveness of public sector jobs due to the domino effect of any increase and the resulting cost. More generally, the Civil Service Statute has incorporated new forms of social rights that have emerged in parallel in private employment law.

In this respect, the question of a rapprochement between civil service law and labor law is often raised. Some elements recently introduced into civil service law are inspired by developments in labor law. This includes the new role accorded to collective agreements, the development of staff representative bodies based on the model introduced in 2017 in private companies, the introduction of the "*rupture conventionnelle*" (contractual termination), and the replacement of staff appraisals with individual interviews. However, this kind of approximation was already a feature of the 1946 civil service statute, which introduced into civil service law some of the social advances achieved in labor law. It is therefore only

natural that civil service law should continue to evolve in line with general changes in working conditions, especially as fundamental rights and European law apply relatively uniformly to employment relationships. The development of the use of contracts in the civil service also leads us to take a nuanced look at their role in this rapprochement, as they are considered to be an element of employee protection in labor law, whereas in the civil service they are seen as a factor of precariousness.

Through these developments, it appears that the French model of a career civil service, integrating all civil servants under a common status, is finding the means to ensure its continued existence. It adapts to the requirements of European law and freedom of establishment while developing new instruments that enable it to keep pace with social developments in general labor law. This ensures it remains competitive in the job market, continuing to attract the talent needed to manage public services.

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