

THE CIVIL SERVICE IN GERMANY

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1. Two parts of civil service in Germany

The civil service in Germany is divided into two parts. The greater part of employment relationships at the Federal, State and commune level (in total about 2.6 million) is based on civil law. These are the workers in the public service. Their relationship corresponds structurally to the right of employees in the private sector. The basis for that are the respective individual employment contracts and above all the collective agreements or wage agreements. Uniform collective agreements were being used for public service only until 01.10.2005. These collective agreements were terminated by the federal States. Now applies: The collective agreement for public service (**TVöD**) deals with the employees in the Federal government; the communes, however, use the collective agreement for the public sector in the federal States (**TV-L**), which allows for differences in labour times between these federal States. Separate, somewhat different collective agreements are being applied in Hessen and Berlin.

In a slightly smaller part of the civil service, employment relationships are based on public law (1.8 million). In particular, officials, judges and soldiers and other specific public legal relations (mandates of the members of the parliaments, legal relationships of Ministers, etc.) are within this group.

2. Common developments

Both groups are characterized by three common lines of development in Germany:

- First, the number of employees in public service has decreased for many years. The continuous efforts since the reunification of Germany, not to let the state budget overrun, are resulting in permanent job cuts in public services. This has led to a decrease of employees in ten years by about 60,000, or about 15%.
- Second, the legislature is trying to keep the pension insurance of both the insured ones on the one hand and officials, judges and soldiers on the other

hand financed. This is leading to several, mostly small recesses in the amount of pension payments (pension or supply of officials).

- Third, the uniformity of the employment relationships of the respective groups were given up or reduced. Now, for an official in Berlin and an official in Bavaria, exercising similar activities, more differences in rights and obligations can be found than a decade ago.

3. Law on public officials

Within the civil service based on public law, the law on public officials is the central one. The other public-service relationships are based on this kind of Civil Service Law.

The civil service law in Germany is traditionally not open to reform. This is mainly due to a constitutional rule, according to which the legislature is required to comply, while adopting the rules on civil service, with general principles of law which were already laid down in the Weimar Constitution (1919 to 1933) or even earlier ([Article 33 paragraph 5 GG](#): (The law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service.).

4. Federalism Reform I, 2006

This standard is very debatable and was inserted on purpose by the legislator of the constitution, trying to complicate the access to the civil service law by progressive groups. Despite this fundamental immobility, the civil service legislation is changing in Germany. This goes back to a major constitutional amendment in September 2006, with which the relationship between the federal States and the government, i.e. the rules on the organisation of the Federal Republic, were substantially altered (Federalism Reform I, 2006). The legislative powers between Federation and States in the civil service law have been redeployed under this federal reform. Federal States can now decide for themselves, especially on the payment, utilities (pension rates of civil servants) and the rules governing the career (outline and relation of offices to each other).

In contrast, the Federal government can pass standardized laws, only on the fundamental rights and duties for all officers, while not dealing with any remuneration and pensions. Currently, all Federal and state rules on civil service officials are being changed due to this shift in competence. Through that, a much larger variety of specific issues is going to arise than it has been the case in recent years. This process is still going on.

The range of diversity that is expected is not very large. This is initially based on Article 33, paragraph 5 GG. Also, the restricting jurisprudence of the Federal Constitutional Court, which is interpreting the general principles of the civil service law very traditionally, seems to result in a continuous homogeneity of civil service law. One can see this point in the last three important decisions (as in particular the waiting period for care of three years, [BVerfG, Decision v. 20.03.2007, 2 BvL 11/04](#), the problem with forced part-time, [BVerfG, Decision v. 19.09.2007, 2 BvF 3/02](#), and finally the judgment on the temporary high-ranking positions, [BVerfG, 28. Mai 2008, 2 BvL 11/07](#)). Thirdly, the parliaments of all 16 federal States and the Federal legislature are trying not to complicate the exchange of officials too much among federal States and between the federal State and the government.

Finally, fourthly, the political pressure on the civil service law has decreased. Politically, a reform of civil service law is not anymore required in the same way as ten years ago. There is a certain resignation, which is based on the recognition that the current design is difficult to change and, moreover, is not only disadvantageous for the employer.

If one wants to qualify the German civil service law content, it is possible to say: The Federal Constitutional Court says that the civil service has the task to secure a stable, law-abiding government in the political power play (see [BVerfGE 121, 205, 221](#)).

5. Principles of civil service law

The civil service law is based on the following idea: officials devoting their entire abilities to the employer for the purpose of realizing public wealth, and particularly the acts of parliaments, in a neutral and equal way. The employer shall care for the official and his family in return. The officer is given a secure legal status, which makes him independent and allows him to fully concentrate on his task. However, he cannot influence the content

of this status himself in a contract. The rights and obligations are designed unilaterally by the legislature, under constitutional guidelines.

Central principles of civil service legislation are:

- loyalty (the officials must faithfully serve his employer);
- moderation obligation (the officer mustn't behave extremely in his official position or in private life);
- Dependence on instruction (the officer must comply with instructions coming from his superiors - unless the instruction violates criminal law or human dignity);
- ban on strikes (the official musn't strike);
- not quite fixed working hours (if required, the official shall work overtime);
- disciplinary rules (erratic behaviour is sanctioned by separate administrative penalty rules);
- Principle of alimentation (the official receives a salary for the position he holds, not specifically for his work);
- Official principle (the official only receives a raise when obtaining a new position);
- Recruitment on accomplishment (In a vacancy, the candidate who is best suited for the job will get it);
- The pension depends on the position occupied by the officials at the end (if he has held it at least three years);
- Care Duty: The employer must take care of his officials.

6. Future problems of the development of civil service law

Central problems of the development of civil service law in the near future are going to be:

- the relief of public budgets off the expected huge costs for the accumulated supply of retired officers;
- the flexible deployment of officers by the employer and thus an improvement for the employer in putting officers at posts that do not completely conform with their previous activity;
- the introduction of an assessment system that is linked to the accomplishment and not to the fact, that the officers are acquainted with the employer or supervisor;
- Increasing the influence of unions of civil servants;
- Easing the change from the civil legal relationship to the free market;
- the easy change and advancement within the public service; it is intended to allow, according to the principle of lifelong learning, an easier rise within the civil service;
- the further equality of same-sex partnership with the married couple.