

CAMEROON'S PUBLIC SERVICE LAW

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L'Harmattan

FROM THE AUTHOR

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GENERAL INTRODUCTION

I. CONCEPT OF THE PUBLIC SERVICE

What is the public service ?

This recent notion that was barely in use thirty (30) years ¹ ago may carry at least three different meanings :

I.1- Fundamental meaning

The term “public service” ordinarily designates all staff, that is to say, all the people working for the State, and in some cases and conditions², for decentralized local authorities.

The regulatory provisions are eloquently clear to this effect :

"The public service of the State is constituted by all the work positions corresponding to different levels of classification. It is organized in corps, income brackets, ranks and categories".

"Local governments freely recruit and manage the necessary personnel to accomplish their tasks in accordance with the laws and regulations and the status of the staff in question is determined by presidential decree."

"These provisions, in addition to the public service of the State, allow for the existence of the new decentralized regional and local authorities, which are yet to be set up. There are therefore state civil servants and local government civil servants.

However, it should be noted that *"civil servants and staff made available (on secondment) to local authorities continue to be governed by the **general rules and regulations and the labour code**".*

The organic meaning can thus be summarized in these terms :

¹ GAZIER (F.), *La fonction publique dans le monde*, Edition Cujas. P13.

TEKAM (G.J.), *Fonction publique camerounaise, Statut général et textes d'application – Recueil des textes commentés*, 311 pages, secrétariat général des services du Premier ministre.

² Refer to article 19 of law n° 2004-17 of July 22 on the orientation of the decentralization.

- a State public service governed by the general rules and regulations ;
- and a parallel civil service, to be created in the context of decentralization, governed by a Presidential decree,
- state employees governed under the labour code and recruited by decision, that is to say a unilateral act of the administration (from category 6 to category 12), are no longer considered as civil servants¹.

I.2- Formal meaning

From a formal point of view, the civil service refers to a legal regime applicable to a class of public officials.

"The civil servant is a person possessing a permanent status within the hierarchy of the State administration".

The civil servant, vis-à-vis the administration, is in a "*statutory and regulatory situation*" whereas state agents are governed by the labour code, thus, from an essential legal regime of the common social law, they are not civil servants and their relationship with the administration is contractual.

I.3- Material meaning

Finally, the public service may simply mean the permanent participation, in a professional capacity, in the actions of the public legal entities of the State and decentralized communities.

"Shall be considered a civil servant any person holding a permanent job" within the set-up of the hierarchy of government departments².

Provision must be made for the job position in the State budget. It corresponds to all the tasks, duties and responsibilities requiring special knowledge and skills. A change of job position is allowed on condition that this position corresponds to some special knowledge and skills.

A corps is made up of all the civil servants carrying out specific duties within a given sector of activity and governed by the same regulations.

The cadre includes all the positions reserved for staff recruited at the same level of education or professional qualification. They are subject to the same treatment.

¹ Refer to TEKAM, *Fonction publique camerounaise, Op cit.*, p. 7.

² Refer to article 3 of the general rules and regulations of the public service.

The rank defines the position of the civil servant in the hierarchy of his income bracket.

The "*public service*" therefore refers to so many things : all civil servants of the State and decentralized communities to which must be added State agents or contract workers, the public law legal regime applicable to them or the hierarchy of corps holding permanent job positions within the State.

II. STATE PERSONNEL IN CAMEROON : Data and Evolution

The development of administrative staff has known considerable growth in Cameroon. Three major periods mark this evolution, first from colonization to independence, then the period under structural adjustment, and the present time.

II.1- THE SETTING UP A PUBLIC SERVICE IN CAMEROON : from the colonial era to 1982

The german colonizers emphasized the training of cameroonians to actively assist them. By 1913, there existed several specialized schools notably the schools of nursing in Buea and Victoria, the first school of agriculture in the country opened in 1910. At the beginning of French colonization, the indigenous staff, as valuable assistants to the colonial administration and private enterprises, was trained at the senior primary school in Yaoundé in a three-year course that prepared for careers as education instructors, central service officials, postal workers, nurses and agricultural instructors. The teacher training college at Foulassi, the minor seminary at Akono and two mission schools played a similar¹ role.

Two acts of the French commissioner in Cameroon as from 1921 organized local European staff as well as local native staff in Cameroon².

This embryonic colonial civil service was to experience rapid growth with the country's accession to autonomy and independence. Official statistics as of june 30, 1974 show 13,494 State employees for the former Eastern Cameroon alone and 17,154 employees for the entire Republic. By march 31st, 1976, these figures had risen to 36,659. And as at 31

¹ Refer to YOUBI (J. F.), « La Camerounisation des cadres », Mémoire de licence en droit, Faculté de Droit et des Sciences économiques, UY, 1974, pp.11-12.

² Ibid.

december 1982, the cameroonian public service had 40,200 tenured civil servants (table 1) and 7,704 contract employees (table 1).

Table 1 : Evolution of Cameroonian State employees by category and year of enrolment from 1962 to 1982

Nos	Year	Number of civil servants per category							Absolute Increment	Rate %
		A2	A1	B2	B1	C	D	TOTAL		
1	1962	76	185		571	2 510	3 624	6 966	717	11,47
2	1963	104	195	9	747	2 713	3 884	7 652	686	9,85
3	1964	104	303	11	984	2 814	3 986	8 206	554	7,24
4	1965	155	351	17	1 12	3 050	4 089	8 774	568	6,92
5	1966	223	415	83	1 277	3 311	4 621	9 929	1 155	13,16
6	1967	259	487	113	1 552	3 581	5 106	11 098	1 169	11,77
7	1968	270	573	141	1 672	3 863	5 402	11 921	823	7,42
8	1969	298	741	159	1 808	3 402*	4 875*	11 283*	-638	-5,35
9	1970	559	913	76	1 968	3 620	4 325*	11 461*	178	1,58
10	1971	568	1 041	88	2 261	3 800	4 655	12 412	952	8,31
11	1972	667	1 110	149	2 445	3 920	5 203	13 494	1 081	8,71
12	1973	783	1 362	209	3 029	4 736	6 091	16 210**	2 716	20,13
13	1974	801	1 381	298	3 574	5 351	6 696	18 101**	1 891	11,67
14	1975	855	1 417	385	3 977	6 124	6 914	19 672	1 517	8,68
15	1976	981	1 701	409	4 204	7 258	7 789	22 342	2 670	13,57
16	1977	1 163	2 009	453	4 530	8 047	8 008	24 193	1 851	8,2
17	1978	1 343	2 311	569	5 200	9 669	8 308	27 400	3 207	13,26
18	1979	1 452	2 432	726	5 576	10 770	9 108	30 064	2 664	9,72
19	1980	1 665	2 783	875	6 222	12 187	9 659	33 391	3 327	11,07
20	1981	2 030	3 249	1 024	6 949	13 324	10 343	36 919	3 528	10,56
21	1982	2 398	3 604	1 182	7 943	14 403	10 670	40 200	3 281	8,89

Source : Public Service. Workforce Control Department, Bureau of Statistics.

*Except for the personnel of the Police corps that became autonomous. That explains the drastic fall in numbers of State employees down to a -5.5% rate.

** Including State employees of the former Western Cameroon, taken into account after the merger of the three public services. Hence the jump from 8,71% to 20,13%.

We notice that in 1982 the education sector employed 15,446 persons, thus 38,42% of the state agents, ahead of the technical sector (21,25%), medical and social sector (17,13%), administrative and law sectors (16,86%)...

Table 2 : Number of State employees per sector of activities (1981-1982)

Rank : Sector	Total number as of Dec. 31, 1981	Total number as of Dec. 31, 1982	Absolute increment	Rate in %	Percentage compared to the whole
1 st : Education	14 146	15 446	1 300	9,19	38,42
2 nd : Technical	7 863	8 543	680	8,65	21,25
3 rd : Medical	6 326	6 887	561	8,87	17,13
4 th : Administration And Law	6 133	6 775	642	10,47	16,86
5 th : Finance	2 451	2 549	98	4,00	6,34
Total	36 919	40 200	3 281	8,89	100,00

Source : Public Service. Workforce Control Department. Bureau of Statistics.

II.2- WORKFORCE DEVELOPMENT : from structural adjustment to nowadays (1982 – 2008)

The steady increase in the number of civil servants in all categories still remains a constant trend. However, the economic crisis of the 80s followed by a necessary structural adjustment of the workforce in 1990 hence led thereof to a remarkable reduction.

From 1990 to 1994, the number of civil servants was modest. It dropped (from 74,018 to 71,699), but the difference was offset by the use of workers recruited on decision and contract basis. In effect, during this period, the number of workers progressively move from 5921 up to 6375 for contract workers and from 15 544 up to 16 735 for workers recruited on the decisional basis (see table 2).

The year 1998 represents a significant milestone in the reduction of State employees workforce with a total of 83,788, which was lower than the 1990 total of 95,483. This represents a reduction of about 12,000 workers, with 4,294 being civil servants and 6,282 workers recruited on decisional basis.

The upward trend resumed in 1999 when the global number shot up to over 100,000 state employees with 74,344 civil servants, 7,548 contract workers and 19,618 decision workers, making a total of 121,704 employees. The highest figures were attained in the year 2001, but later in 2004 and 2008, the figures rose to 124,085 and 126,482 respectively (see Table 2).

The education sectors take priority in the distribution plan :

- general education 23 837 ;
- primary and nursery 26 514 ;
- higher Education 1686 ;
- technical Education 6087 ;
- nursing 5722.

Table 3 : Growing numbers of State employees

Year	Civil servants	Contract Workers	Decision makers	TOTAL
1990	74 018	5 921	15 544	95 483
1991	71 294	5 704	14 972	91 969
1992	72 949	5 836	15 319	94 104
1993	71 269	5 702	14 966	91 937
1994	79 692	6 375	16 735	102 803
1995	80 071	6 406	16 815	103 292
1996	90 822	7 266	19 073	117 160
1997	90 762	7 261	19 060	117 083
1998	69 541	75 563	8 684	83 788
1999	79 344	6 348	16 662	102 354
2000	84 034	6 723	17 647	108 404
2001	94 344	7 548	19 812	121 704
2002	85 907	6 873	18 041	110 820
2003	88 095	7 048	18 500	113 643
2004	96 190	7 695	20 200	124 085
2005	90 064	7 205	18 913	116 183
2006	91 450	7 316	19 204	117 970
2007	92 568	7 405	19 439	119 413
2008	90 901	26 773	8 808	126 482

This resumption of the upward trend in the size of the workforce though contingent upon adjustments, resulted in the creation of an organ for the rationalization of management in certain ministries (education, public service, etc.).

The effect of the adjustment on the evolution of the workforce was short lived, as the same old causes already referred to provoked the same effect of increasing the state personnel. Could the projected decentralization accelerate the upward trend process in the size of local government workforce ?

II.3- Reasons for the development of government personnel (1910 – 1982)

The reasons for the bloated development of the cameroonian administration's staff are several and have varied with the political regimes :

i) the various colonizers were mainly looking for effective backup for their political and economic domination of the country ;

ii) post-colonial political authorities sought to bring government closer to the governed so as to ensure better supervision of citizens and to have a firm grip on the country, sometimes with greater priority being given to issues of national security¹ ;

iii) the excessive “cameroonization” of public and semi-public sectors is an important² factor in the development of the size of the public service ;

iv) and finally, reinforcing the workforce of the very profitable (income generating) services of the State (customs, P & T and agriculture), without forgetting the need of monitoring technical progress (P & T) or provide training to future officials (national education), have also contributed to this trend (see appendixes n°1).

¹ Refer to NYOGOK MPEK Germain, « La création de nouvelles circonscriptions administratives au Cameroun. Approche problématique », Mémoire Licence en Droit 1976-1977, pp. 68-73.

² Refer to YOUBI, « La camerounisation des cadres », *Op cit.*

CHAPTER I

GENERAL PROBLEMS OF THE PUBLIC SERVICE

- The study of general problems of management and the principles governing this domain ;
- Determining the composition of the heterogenous staff of the Administration ;
- Analysis of the civil servants' career ;
- And the list of pecuniary benefits of the civil servant supplemented by that of his rights and obligations.

I. SOURCES OF PUBLIC SERVICE LAW

Like other areas of the administrative law inspired by french law, cameroonian public service law has a duality of sources :

- First, a body of written, hierarchically heterogeneous, constitutional, statutory or regulatory rules ;

- Then, a system of fundamental jurisprudential safeguards identified by praetorian imitation of the *conseil d'Etat* and administrative courts in France by the successive administrative courts of independent Cameroon and by the litigation council of the administrative bench of the supreme court.

I.1- WRITTEN SOURCES OF PUBLIC SERVICE LAW

In Cameroon, the Constitution, the law and legislative and regulatory enactments are the main sources of the public service law.

I.1.1- The constitutional regulations of Public Service law

Those who draft and enact the Constitution in Cameroon are not averse to the prescription of rules applicable to the public service. Thus, article 25 of the 1957 statute provided that :

"within the limits of budgetary appropriations, the Prime Minister organizes the services of the State under his supervision and defines the areas of competence and the general thrust of the action of each of them."

Article 16 of the 1958 statute comes up with similar provisions :

"The Prime minister, head of cameroon government, chairs cabinet meetings, organizes the public services, makes appointments to all jobs within the State of Cameroon and ensures the proper administration of justice."

Law n° 59-2 of 18 february 1959 seeking to secure the functioning of the public service, also provided that the Prime minister appoints into all public positions within the limit of budgetary authorizations and :

"The Prime minister or ministers may by nominative order delegate their powers to officials in their respective departments, with the exception of signing or countersigning laws and decrees" (articles 28 and 29).

With independence, a more comprehensive system of public service was to develop. The president of the Republic, head of State, appears as the central pivot. In the constitution of march 4, 1960, *"he presides over the council of ministers"* (article 15), *"presides over the higher national defence councils and committees"*, *"he is the head of the armed forces"*, *"accredits ambassadors"* (article 16). *"He makes appointments to civilian and military jobs"* (article 17). The council of ministers *"must be consulted when making appointments to senior positions in the State the list of which shall be established by organic law"* (article 21). The status of judges and that of the civil service are within the *"realm of the law"* (article 23). The federal Constitution of 1961 confirmed most of these rules. The rules and regulations of the civil Service, however, ceased to belong to the realm of law (article 24).

The current Constitution, the one of 1972, which is the fundamental norm of the State, has maintained this heritage of rules on management and organization of the civil service. Following the example of the french Constitution of 4 october 1958, it sometimes enunciates the rules governing the civil service. The provisions to be considered are numerous :

- the are of new section 5 which states that the president may delegate some of his powers to members of government and some senior administration officials of the State, within the framework of their respective areas of competence ;

- that of new section 8, concerning the appointment of members of government and the determination of their areas of competence ;

- and finally, those of Article 9 which make the head of State, head of the armed forces, who accredits ambassadors and is the main holder of the power of appointments to civilian and military positions. He creates, organizes and directs all administrative services necessary to accomplish his mission, the Constitution¹ expressly provides.

In short, the Constitution of Cameroon, a fundamental norm of the State, is also the country's supreme administrative charter.

The original text revised² several times, maintained similar provisions that make the president the backbone of the cameroonian government, sometimes assisted by a Prime minister, head of government.

The president, through his arbitration, assures the proper functioning of public authorities (Article 5).

He may delegate some of his powers to the Prime minister, other cabinet members and some senior officials of the state administration in their respective duties. As part of an express delegation and in case of temporary incapacity, the president may instruct the Prime minister to ensure some of his functions.

The Prime minister is the head of government thus directs government action. He is responsible for the enforcement of laws. He exercises regulatory power and makes appointments to civilian jobs with the exception of those partening to the prerogatives of the president. He directs the administrative services necessary to accomplish his mission.

It should be noted *in fine* that the president of the Republic may, for a limited period and with empowerment from parliament, pass ordinances of a regulatory nature before notifying the latter.

I.1.2- Legislative rules and regulatory instruments of public service law

Other written rules make up the bulk of the legal provisions governing the civil service.

¹ Refer to articles 13, 20, 21 and 34 of the French Constitution of 4 october 1958.

² See the Constitution of the united Republic of Cameroon, National printing press, 2nd of june 1972 ;

Law nr 2008/001 of 14 april 2008 modifying and completing some dispositions of law n° 96/06 of 18 january 1996 revising the Constitution of June 2, 1972.

a. Tangible primacy of regulatory sources in Cameroon public service law

The idea of a set of predetermined rules written for the entire civil service only established itself progressively in France. The empire granted "*status*" only to certain corps of the State : foreign affairs. The July monarchy conferred status along with valuable guarantees to officers by the act of May 19, 1834. The only overall provisions applicable to all workers focused on limited issues : the act of 8 June 1953 establishing a general retirement plan and section 65 of the act of 22 April 1905 establishing the rule in the communication of records in disciplinary matters. The first general status that came into being with the Vichy regime in 1941, disappeared with the restoration of "*republican legality*" at the liberation. The October status, voted by the constituent assembly, remained in force throughout the Fourth Republic. It was replaced by the ordinance of February 4, 1959, made pursuant to a constitutional authorization under article 92 of the 1958 Constitution. The fact remains that the fundamental guarantees granted to civil servants, unlike the provisions of article 20 of the Constitution of Cameroon, fall within the realm of the law in France. According to Cameroon law, only the rules relating to the general organization of national defence remain within the competence of the lawmaker.

The jurisdiction of parliament, regarding the management of the civil service, remains very limited physically. Parliament votes the budget, as well as the budgets of various government departments and that vote results in control.

Parliament controls government action through oral or written questions and the establishment of commissions of inquiry into specific cases that may well affect the activities of government departments, and consequently the administration of the State or local councils.

This fundamental difference, with regards to their material significance, establishes the primacy of regulatory sources in the corpus of norms of the Cameroonian public service. This significance is confirmed by positive national law.

b. Evolution of regulatory sources of public service law

Article 51 of the statute of 1957 multiplied the status of civil servants to excess : corps of state employees serving overseas, corps of executive supplements locally organized by the high commissioner, civil servant of

the cameroonian corps, civil servants and workers of the metropolitan corps, etc (section 51 of the statute of april 16, 1957).

Regulatory sources of the public service law are closely linked to the political forms of the unitary State up to today.

b.1- Plurality of statutes in the federal system

The law on autonomy characteristic of the federal system presupposes a distinction between the status of civil servants of the federal State and those of the federated states. Three regulatory statutes governed the public service during the brief period of the federation of Cameroon from 1961 to 1971. Order n° 59/70 of 27 november 1959¹ mainly inspired by the general French status of the time, governed the public service of East Cameroon. In West Cameroon, "civil servants" who up to then were under conditions close to those of "private contract law"², on 1st July 1969 were granted a status supplemented by legislation on pensions³. The latter, for convenience, incorporated the provisions in force in East Cameroon. And at the federal level, decree n° 66/DF/53 of 13 february 1966 on the general status of the federal public service, whose originality was not much different when compared to the former enactment of 1959, applied.

The de facto harmonization resulting from the similarity of the provisions of the three separate statutes formally ceased with the advent of the United Republic of Cameroon in 1972.

b.2- The unique rules and regulations of february 18, 1974

The former federal status was applied transitorily to the entire unified cameroonian public service.

Two enactments laying the beginnings of a specifically cameroonian law in several of its provisions came along in 1974 :

- decree n° 74/138 concerning the general rules and regulations of the public service and structured in a long series of 202 extremely diverse articles was signed on february 18, 1974 ;

¹ Refer to JOC n° 1339 du 12-12-1959, p.1701.

² Refer to the press conference of the minister in charge of the public service, march 11, 1966.

³ Refer to *West Cameroon official gazette supplement*, 1969, n° 26, volume 9, 21st june 1969, Part B B 57.

- and on 26 august 1974, decree n° 74/759 standardizing the legal regime of civil servants' pensions in a consolidated text was signed.

Many other texts implementing regulations clarified this unique status with regard to personnel of the general administration, the diplomatic corps, etc.

The rules and regulations have so far remained unique. They are supplemented by other texts of a regulatory nature¹. Decree n° 94/199 of 7 October 1994 concerning the general rules and regulations of the State public service, as amended and supplemented by decree n° 2000/287 of 12 October 2000, together with the labor code, remains the essential text applicable to contract agents of the administration.

Except where the law is silent or a legal vacuum exists, the said general rules and regulations of the public service do not apply² to :

- personnel recruited and managed directly by the national assembly ;
- auxiliaries of the administration, a category that is fast disappearing ;
- judges ;
- the military ;
- civil servants of the national security.

¹ Refer to TEKAM, *Statut général et textes d'application. Recueil des textes commentés*, Yaoundé, février 2006, 290 pages. And particularly

- law n° 92/007 of 14 April 1992 and decree n° 78/484 of 9 November 1978 ;
- decree n° 2000/684/PM of 13 September 2000 fixing the modes of attribution of the death benefit ;
- decree n° 2000/685/PM of 13 September 2000 on the organization and functioning of the permanent disciplinary board of the public Service and fixing the rules of the disciplinary procedure ;
- decree n° 2000/686/PM of 13 September 2000 on the organization and functioning of the health boards ;
- decree n° 2000/696/PM of 13 September 2000 fixing the general system of administrative competitive examinations ;
- decree n° 2000/698/PM of 13 September 2000 fixing the organization and functioning of the highest council of the public service, etc.

² Refer to article 10 of the general status of the Public service, above mentioned TEKAM ... ;

- special status of the corps of civil servants of the penitentiary administration, decree n° 92/054 of 17 March 1992 amended by decree n° 93/846 of 22 December 1993 ;
- decree n° 2001/055 of 12 March 2001, decree n° 2001/066 of 12 March 2001 fixing the indexed scale of executives of the national security services ;
- decree n° 95/048 of March 8, 1995, amended and completed by decree n° 2004/0802 of 13 April 2004.