

5 The Civil Service in Belgium

Between Fragmentation and Common Principles

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I. Introduction

In recent decades, four trends have characterised the evolution of the Belgian civil service: the federalisation of the country, the Europeanisation of the administrative system, the influence of *New Public Management* ideas, and the growing importance over time of private law employment contracts. Taken together, these trends have contributed to reshaping deeply the law regulating the Belgian civil service and the logic of the “career system” that it encompasses, even though the main logics of hierarchy, neutrality, and professionalism remain standing. These trends have further contributed to the fragmentation of the law regulating the Belgian civil service, while also introducing and protecting some elements of uniformity in the form of common principles.

This contribution explains this paradox, first by providing an overview of the traditional Weberian administration and its transformations in Belgium (Section II), then explaining the constitutional framework within which the Belgian civil service operates (Section III), the increasing application of ordinary law to public employees (Section IV), and the influence of European instruments on the Belgian civil service (Section V).

II. A Weberian Administration and Its Recent Transformations

The Belgian “civil service” can be defined as

all staff members who do not hold an elective mandate of a political nature, who ensure, in any capacity whatsoever the functioning of the services of the various authorities, whatever their level and missions, under the hierarchical power or supervision of the latter, within the framework of a system of public law derogating from ordinary law.¹

As Gosselin puts it, slightly differently, the civil service can be understood organically, to refer to “all the people who perform public service tasks by being subject to a *statut*, which is defined as the set of rules drawn up unilaterally by the administrative authority

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1 Lewalle et al. (1997), p. 43. Definition adopted by de Broux (2005), pp. 158 f. who notes that the definition has been debated over time.

and which apply indiscriminately to all the agents subject to them”² However the recent transformation of the Belgian civil service makes this organic definition outdated, hence a functional definition seems more adequate, namely “all persons who participate in the activity of the public authority”³ with no reference to the specific regulations applicable to them. The notion of “public authority” includes all legal persons of public law at the federal, regional, and community levels, the so-called *organismes d'intérêt public*⁴ (i.e. agencies in various forms, though not necessarily independent agencies) and local government. Teachers and medical staff may be civil servants or not, depending on the public or private law nature of their employer.⁵

This situation calls for three comments: first, about the historical background of the Belgian administrative model (Section II.1); second, about the main traditional features of the Belgian civil service (Section II.2); and third, about the level of employment in the civil service today (Section II.3).

1. Historical Background

When the Belgian State was set up in 1831, the civil service was limited and weak, so much so that for a significant period in the 19th century, legal scholarship was not concerned with possible abuses of power by civil servants but rather with a perennial lack of professionalism and administrative inertia.⁶ A number of reforms were attempted to remedy this problem.⁷ Only in 1937, under the pressure of extremist movements threatening the legitimacy of administrative action, did a reform produce an enduring change: the enactment of the so-called *statut Camu* (named according to the person who drafted it)⁸ or the Royal Decree of 2 October 1937 *portant le statut des agents de l'État*.⁹ This statute remains the cornerstone of the general principles applicable to Belgian civil servants in practice,¹⁰ even if their formal legal bindingness across the whole sets of various civil services has been strongly eroded, as this chapter will explain. Five different periods (1937–1945, 1945–1979, 1980–1999, 1999–2014, post-2014) can be distinguished in terms of their respective federal and management reforms, which have radically transformed the structure of the civil service as a whole even though the main logics of hierarchy, neutrality, and professionalism remain standing.

The *statut Camu* heralded the first major reform of the Belgian civil service: it is the first codification of principles and norms that until then had been scattered across different documents. This meant that the organisation of the civil service became more logical. The *statut* clearly consecrated the distinctive legal relationship that was supposed to link public bodies

2 Gosselin (2017), p. 99 (our translation).

3 Gosselin (2017).

4 Some of these public bodies are regulated by the Law regarding the control of certain organisms of public interest of 16 March 1954 (*Loi relative au contrôle de certains organismes d'intérêt public*), *Official Gazette*, 24 March 1954; www.ejustice.just.fgov.be/eli/loi/1954/03/16/1954031601/justel.

5 Durviaux (2012), pp. 9–10 (teachers).

6 Wodon (1920), pp. 111–112.

7 Thijs and Van de Walle (2005), pp. 38–54. For more details of an earlier reform (1859), see Crabbe (1956), pp. 566–590.

8 Louis Camu was the chair of a royal commission gathering high civil servants, university professors and trade union leaders, see de Broux (2005), p. 160.

9 *Official Gazette*, 8 October 1937; www.ejustice.just.fgov.be/eli/arrete/1937/10/02/1937100201/justel.

10 For details: Leurquin-De Visscher (1991), p. 333.

with civil servants.¹¹ Seeking to ensure administrative efficiency, the *statut* provides general principles of appointment and advancement with a significant role for “merits” (based on an open competition organised by an appointment commission known then as the *Secrétariat permanent au recrutement*)¹² and general principles regulating the rights and duties of civil servants. These principles were mostly a uniformisation of the existing practices with little, if any, substantive innovation.¹³ Since its adoption, the *statut Camu* has been a major point of reference for the regulation of the Belgian civil service in general.¹⁴

Between the Second World War and 1979, Belgian administrations became more diverse and specialised, which led to detailed regulations kept within the mindset of uniformisation. In practice, new specialised administrations were given technical regulations for their civil service, referring in large part to the *statut Camu*.¹⁵ Political parties, however, found ways to influence appointment and advancement in the civil service.¹⁶

In 1980, Belgium adopted the first piece of legislation relating to the powers of the regions and communities – two types of federated entities. Federalisation was then deepened through a number of reforms, leading to a complexification of the administrations and the civil service. Federal civil servants were transferred to the regions and communities in order to maintain the continuity of the public service, thanks to skilled civil servants whose entitlements were protected.¹⁷ Regions and communities increasingly gained autonomy over time in regulating their civil service,¹⁸ while, until 2014, the King retained the power to define the general principles applicable throughout the Belgian (federal, regional, and *communautarian*) civil service.¹⁹ This means that from there on one part of the principles applicable to the civil service remained shared across Belgium while another part depended on the specific administration to which the civil servant belonged.²⁰ During this period, contractual relationships between public employees and the administration

11 De Broux (2005), p. 161.

12 Some functions were exempted from open competition, namely auxiliary functions, temporary functions and individuals with “une haute valeur administrative, scientifique, technique ou artistique”. These functions remain peculiar within the civil service as they are also the functions where private law contracts are most often applicable (see Section IV).

13 de Broux (2005), p. 161.

14 Lombaert, Mathy and Rigodanzo (2007), p. 13.

15 de Broux (2005), p. 164.

16 de Broux (2005), pp. 165–166.

17 Barbeaux and Beumier (1989), pp. 14–19; de Broux (2005), p. 167.

18 Leus et al. (2016), pp. 302–314.

19 Article 87 of the Special law of institutional reforms of 8 August 1980 (*Loi spéciale de réformes institutionnelles*), *Official Gazette*, 15 August 1980 (further abbreviated as LSRI); www.ejustice.just.fgov.be/eli/loi/1980/08/08/1980080801/justel), as modified by *Loi spéciale* of 8 August 1988, *Official Gazette*, 13 August 1988, and by *Loi spéciale* of 16 July 1993, *Official Gazette*, 20 July 1993 (now repealed). These general principles have been enacted in successive royal decrees. An example is the Royal Decree laying down the general principles of the administrative and financial status of State employees applicable to the staff of the Executive and the legal persons governed by public law dependent on it of 22 November 1991 (*Arrêté Royal fixant les principes généraux du statut administratif et pécuniaire des agents de l'Etat applicables au personnel des Exécutifs et aux personnes morales de droit public qui en dépendent*), *Official Gazette*, 24 December 1991; www.ejustice.just.fgov.be/eli/arrete/1991/11/22/1991000690/justel. On these general principles of the Belgian civil service, see Leurquin-De Visscher (1995), pp. 84–91; Leus (2002), pp. 55–73; Weekers (2004), p. 68.

20 For the details, see Stenmans (1999), pp. 183–333.

strongly increased, reaching approximatively 20%.²¹ The politicisation of higher functions became more structural, although within objective limits.²²

The federalisation of the civil service in the 1980s was succeeded by its managerialisation in the period between 1999 and 2004, under the name of “Copernic Reform”. The main idea was to modernise the civil service according to the principles of the *New Public Management* and to introduce business management methods within the administration. Four key ideas were put forward: the involvement of citizens; subsidiarity in public management, allowing the delegation of certain tasks to the private sector; administrative efficiency and simplification; and clarification of the roles of politics and the administration.²³ As part of the “Copernic Reform”, specific rules were also introduced for civil servants in (top) management positions. They are recruited for a limited period of time and can be recruited either from the civil service or from the private sector. A specific regime also applies to several aspects of their legal position, such as their evaluation.²⁴

In 2014, the power of the King to define the general principles applicable throughout the entire Belgian civil service was abolished.²⁵ This opened the door to increasing divergences between the laws that apply to civil servants depending on whether they work at the federal, the Walloon, the Flemish, the French-speaking Community, the German Community, or the Brussels levels of government. Constitutional principles such as the equality principle and European law constraints, however, remain unifying factors,²⁶ as will be explained later. Mobility between administrations must also remain possible,²⁷ while the appointment of regional or community civil servants working in ministerial departments must still involve the *Secrétariat permanent du recrutement du personnel de l'État* (now called SELOR).²⁸ The latter must guarantee uniformity in the quality of the civil service throughout the different levels of the Belgian government.²⁹ Furthermore, issues such as retirement wages and collective bargaining remain federal responsibilities.³⁰

2. Historic Features of the Belgian Civil Service

The overall Belgian administrative structure was strongly influenced by Napoléon, as it followed in the wake of his European conquests: the Belgian territorial organisation is a direct transposition of the “departments” and “communes” as they were set out in France.

21 de Broux (2005), p. 170.

22 de Broux (2005), p. 170.

23 de Broux (2005), p. 172.

24 Royal Decree on the designation and exercise of management functions in federal public services and federal public programming services of 29 October 2001 (*Arrêté royal relatif à la désignation et à l'exercice des fonctions de management dans les services publics fédéraux et les services publics fédéraux de programmation*), *Official Gazette*, 31 October 2001; www.ejustice.just.fgov.be/eli/arrete/2001/10/29/2001002158/justel.

25 Articles 37 and 42 of the Special Law concerning the Sixth State Reform of 6 January 2014 (*Loi spéciale relative à la Sixième Réforme de l'Etat*), *Official Gazette*, 31 January 2014; www.ejustice.just.fgov.be/eli/loi/2014/01/06/2014200341/justel.

26 Leus et al. (2016), p. 309.

27 Article 87 § 3 LSRI.

28 Article 87 § 2 LSRI.

29 Sarot (1994), p. 118.

30 Leus et al. (2016), pp. 311–314. See also Article 87 §5 LSRI (collective bargaining). Peeters and Vanpraet (2020), pp. 1–51, give a comprehensive account of the division of powers regarding the civil service under Belgian constitutional law.

The general principles applicable to the Belgian civil service were the outcome of a deep concern for the risks of arbitrariness entailed by the politicisation of the civil service, leading to the adoption of a Weberian model of administration based on hierarchy, neutrality, and professionalism in the first half of the 20th century.³¹

These general Weberian principles translate into the career system of the Belgian civil service (in an organic way): once appointed in the civil service, the person starts an administrative career, which in principle entails the advancement of staff in the administrative hierarchy,³² which is divided into “niveau”, “grade”, and “rang”. The “niveau” or level is fixed according to the qualification, in terms of training and skills, that must be demonstrated to hold a job.³³ There are four levels: level A for holders of university degrees (such as doctors, chemists, civil engineers, commercial engineers, or those holding a master’s degree (60 credits at least), levels B and C for holders of bachelor degrees or non-university degrees, and level D for holders of no degrees. “Grades” have been reformed and have taken new names over the years, but they aim to identify a level of complexity, technical expertise, and responsibility. They exist only for levels B, C, and D at the federal level. Article 4 § 2 of the *Statut Camu* specifies that:

Level B shall comprise the grades of administrative expert, financial expert, technical expert and ICT expert. Level C shall comprise the grades of administrative assistant and technical assistant. Level D shall comprise the grades of administrative assistant and technical assistant.

“Rang” refers to the “title which entitles the agent to occupy a specific post”.³⁴ The hierarchy is not merely a matter of a pyramidal design; it also translates into a sophisticated disciplinary system and a duty to comply with orders from superiors.

No training school similar to the French ENA (now *Institut national du service public*)³⁵ has ever been set up in Belgium (either at the national/federal level or the regional level). However, professional training, including specific degrees tailored to the administration, has been set up and is run in various forms (internal, external, university, higher education).³⁶ Since 2014, Belgian federal civil servants spend approximatively three days a year doing professional training; this is less than in previous periods.³⁷ One significant area of professional development is language learning, with specific statistics about this important area for professional progression, as bilingualism (French/Dutch) is often mandated for accessing a higher position, in particular in Brussels and at the federal level of government.³⁸

31 de Broux (2005), pp. 160–167.

32 Durviaux (2012), p. 104.

33 Art. 3 § 1 (2) of the Royal Decree on the status of State employees of 2 October 1937 (*Arrêté Royal portant le statut des agents de l’État*).

34 Durviaux (2012), p. 105.

35 See *The Civil Service in France: The Evolution and Permanence of the Career System* by D. Capitant in this volume.

36 *Arrêté Royal* of 16 July 2013. For an example of this formation, see <https://web.umons.ac.be/fweg/fr/offre-de-formation/formation-pour-fonctionnaires-federaux>. Add Gosselin’s book (2017) which is aimed at these students of level B studying to gain a university degree allowing these students to reach level A.

37 <https://infocenter.belgium.be/fr/statistiques/ensemble-institutions-publiques-federales/developpement-du-personnel/formations>.

38 <https://infocenter.belgium.be/fr/statistiques/ensemble-institutions-publiques-federales/developpement-du-personnel/langues>.

3. Key Figures at the Federal Level³⁹

The Belgian Infocenter released four key figures about the Belgian federal civil service in 2021, revealing namely that 53.5% are women, 81.6% of individuals work under a “statute”, 71.7% work full time, and they are 46 years old on average.⁴⁰ It does not appear that the Belgian statistics keep records of the degrees (e.g. law, engineering, classics, management studies, etc.) held by civil servants, although it is possible to infer that most civil servants at level A have a university degree (at master’s level), while civil servants at other levels do not have one in principle. The current allocation between level A and other levels in the Belgian federal civil service is about 25,000 Full-Time Equivalent (FTE) at level A, among 75,000 FTE for all levels, making holders of a university degree approximately one-third of Belgian federal civil servants.⁴¹

When it comes to diversity, the Belgian statistics seek to monitor the increase in employment of individuals with disabilities and of non-Belgian nationals. Since 2009, a special commission has been in charge of ensuring that the level of employment for individuals with disabilities reaches a target of 3%.⁴² Yet, as of 2021, the official figure remains at a disappointing 1.22%.⁴³ When it comes to non-nationals employed in the Belgian federal civil service, their figures have plummeted, from about 700 in 2011 to zero in 2016, when statistics stopped being available.⁴⁴

III. The Constitutional Framework and its Structure

Despite major changes in the structure of the Belgian civil service and in its activities since the 19th century, the constitutional framework regulating the civil service has remained strikingly unchanged since the enactment of the Belgian constitution in 1831. The courts, however, have arguably interpreted the constitutional provisions protecting the equality between civil servants and equal access to the civil service increasingly stringently, while also seeking to articulate the Belgian constitutional framework with the process of European integration. In addition, judicial review in the context of the civil service has changed considerably over time and has become more effective than in the 19th century, notably with the creation of the Council of State in 1946. Fundamental rights such as the right to administrative transparency and the duty to give reasons for individual decisions were also enacted at the constitutional or legislative level in the 1990s.⁴⁵

39 For statistics at other levels: in Wallonia, the civil service working in ministerial departments accounts for approximately 10,000 staff (<https://spw.wallonie.be/actualites/des-chiffres-et-des-etes-qui-sont-les-agents-du-spw>). For Flanders, see here https://www.vlaanderen.be/statistiek-vlaanderen/overheidspersoneel?order_publicationdate=desc.

40 <https://infocenter.belgium.be/fr>. The numbers cover civil servants working in ministerial departments.

41 <https://infocenter.belgium.be/fr/statistiques/ensemble-institutions-publiques-federales/emploi/effectifs>.

42 Royal Decree on various measures relating to comparative selection for recruitment and probationary periods of 6 October 2005 (*Arrêté Royal portant sur les diverses mesures en matière de sélection comparative de recrutement et en matière de stage*), *Official Gazette*, 25 October 2005.

43 https://fedweb.belgium.be/fr/a_propos_de_l_organisation/administration_federale/la-diversite-au-sein-de-l-administration-federale/thematiques/personnes-avec-un-handicap/carph.

44 <https://infocenter.belgium.be/fr/statistiques/ensemble-institutions-publiques-federales/diversite/etranger>.

45 Article 32 of the Belgian constitution (www.ejustice.just.fgov.be/eli/constitution/1994/02/17/1994021048/justel); Law regarding the formal motivation of the administrative acts of 29 July 1991 (*Loi relative à la motivation formelle des actes administratifs*), *Official Gazette*, 12 September 1991; www.ejustice.just.fgov.be/eli/loi/1991/07/29/1991000416/justel.

In the 19th century, the Belgian administration at the national level was unitary for the most part, in the sense that there were few public bodies operating outside the ministerial departments of the central government.⁴⁶ The 1831 Belgian constitution did not envisage that public power should be exercised outside of either the legislature or the executive at the central level, although the existence of local authorities was constitutionally entrenched.⁴⁷ The organisation of powers in Belgium has not, however, remained static since the 19th century. Since the beginning of the 20th century, an increasing number of administrative tasks have been taken up by public bodies located outside the ministerial departments, enjoying variable degrees of autonomy from the government.⁴⁸ A significant number of Belgian civil servants work for these public bodies, even though consolidated numbers are hard to compile. Since the 1990s, an increasing number of public bodies that enjoy even greater autonomy from the government have also appeared, often under the influence of European Union law.⁴⁹ These are the *autorités administratives indépendantes*. This fragmentation of the Belgian civil service between ministerial departments and other public bodies has come on top of the fragmentation resulting from the transformation of Belgium into a federal State since the 1970s, as described previously. The multiplication of public bodies outside of ministerial departments can be observed both at the federal level and at the level of the federated entities.

The law regulating the Belgian civil service is characterised by its lack of a statutory footing: the Belgian constitution protects the competence of the executive to appoint civil servants who work in ministerial departments,⁵⁰ and this competence has been interpreted as encompassing the power to define the law applicable to the civil service as well. This interpretation of the Belgian constitution dates back to 1937 and the enactment of the *statut Camu*.⁵¹ Since then it has been repeatedly accepted by the Belgian courts.⁵² The constitutional competence of the executive to define the law regulating the position of civil servants in ministerial departments in Belgium means that the legislature can intervene in this area only under limited circumstances, such as to protect the fundamental rights of civil servants.⁵³ Large delegations of powers to the executive are also standard as far as civil servants working outside ministerial departments are concerned, even though essential choices remain a responsibility of the legislature.⁵⁴ As a result, most of the rules applicable to the Belgian civil service are contained in Royal and governmental decrees, rather than statutes. This entails that these executive rules must comply with the general principles of administrative law, such as the rights of the defence or *audi alteram partem*, as these have been developed by the courts and have judicially been found to be of general applicability.⁵⁵ The general principles of administrative law outrank the administrative acts in most

46 de Broux (2010), pp. 4–6.

47 Article 162 of the constitution, see Slautsky (2021a), p. 52.

48 Buttgenbach (1954), pp. 112–113.

49 Slautsky (2021a), pp. 45–46.

50 Article 107 of the Belgian constitution. For the Belgian Regions and Communities, see Article 87 § 2 LSRI. This second provision is interpreted per analogy with Article 107 of the Belgian constitution, see e.g. Peeters and Vanpraet (2020), p. 7.

51 Adriaenssen and Lombaert (2019), pp. 390–394.

52 See e.g. Constitutional Court, decision of 2 June 2004, 99/2004, para. B.6.2.

53 The position under Belgian law is summarised e.g. in Belgian Council of State, Opinion of 5 October 2018, 64,133/AG, pp. 5–8. See also De Becker (2007), pp. 148–159.

54 Belgian Council of State, Opinion of 15 May 2019, 65, 877/4, p. 6.

55 Belgian Council of State, decision of 9 May 1985, 25,299 *Van Belleghem*.

cases in the hierarchy of norms.⁵⁶ The executive character of the rules regulating the civil service in Belgium also means that cases regarding the position of civil servants or regarding the validity of the rules applicable to them are often litigated before the Administrative Litigation Section of the Council of State, as it is the Council of State that has jurisdiction to annul individual decisions or regulations from the executive that are contrary to higher norms and to suspend their enforcement in case of emergency.⁵⁷ The Council of State was created in 1946 and its powers have been extended over time. Ordinary courts must also set aside administrative acts applicable to their case that are contrary to higher norms,⁵⁸ and they also have jurisdiction as far as the enforcement of individual rights is concerned (e.g. disputes regarding labour law contracts or the payment of wages). This is a role that ordinary courts have had since 1831. The rules regulating the civil service are also normally reviewed as to their legality prior to their enactment by the Legislation Section of the Council of State.⁵⁹

Other constitutional provisions that matter for the organisation of the Belgian civil service are those that protect the equality between citizens and prohibit discrimination.⁶⁰ The courts have decided that these provisions also protect equal access of Belgian citizens to employment in the civil service,⁶¹ as well as the equality between civil servants throughout their career, including promotion.⁶² This is in line with the Weberian model of public administration adopted in Belgium, and with the idea that access to positions in and progression through the civil service should be merit-based. This constitutional protection of the equality between civil servants is regularly enforced by the courts⁶³ and it is also one of the main principles on the basis of which the Legislation Section of the Council of State reviews amendments to the rules regulating the civil service. For example, the Legislation Section of the Council of State is of the opinion that the constitutional principle of equality requires that procedural and institutional guarantees against bias or arbitrariness should be put in place as far as recruitment procedures are concerned.⁶⁴ Both the federal government and the regions and communities must abide by the constitutional principle of equality when regulating their civil service, which puts a brake on the extent to which they might diverge from one another.

Despite the aim of neutrality underlying this choice for a Weberian model, however, a significant degree of politicisation of the Belgian civil service has long remained. The main Belgian political parties have tended to informally share between them the highest positions within the administration so as to ensure proportional representation of different

56 Goffaux (2015), p. 503.

57 Articles 14 and 17 of the Coordinated laws on the Council of State of 12 January 1973 (*Lois coordonnées sur le Conseil d'État*), *Official Gazette*, 21 March 1973; www.ejustice.just.fgov.be/eli/loi/1973/01/12/1973011250/justel.

58 Article 159 of the constitution.

59 Article 3 of the Coordinated laws on the Council of State of 12 January 1973 (n. 57).

60 Articles 10 and 11 of the constitution.

61 Belgian Constitutional Court, decision of 1 June 2005, 96/2005, para. B.16; Belgian Council of State, Opinion of 11 April 2012, 50, 047/2, p. 8; Belgian Council of State, Opinion of 5 March 2014, 54, 917/2, p. 5.

62 Belgian Council of State, decision of 29 October 1954, 3, 775 *De Kempeneer*.

63 See, e.g. the case law discussed in Marique (2021), pp. 613–624.

64 Belgian Council of State, Opinion of 11 June 2018, 63.386/4, with references to decisions from the Council of State of 7 September 2001, 98, 735 *Jador*; 5 June 2015, 231,454 *Bessem and Vildaer* and 5 June 2015, 231, 455 *Bossuroy*. Opinion of 5 October 2018, 64,133/AG.

political affiliations in these top positions.⁶⁵ Faced with an attempt to formalise this arrangement within certain parts of the civil service, the Belgian Constitutional Court ruled in 1993 that this was in breach of the constitutional principle of equality and non-discrimination, as it makes access to, and progression through the civil service dependent on the personal views of the civil servant.⁶⁶ The practice nonetheless remains widespread.

IV. From a Special Status for Civil Service Employees to a More Ordinary Status

The nature of the employment relationships between civil servants and their public body has changed over time. Partly under the influence of the *New Public Management* ideas fostering efficiency principles and encouraging public bodies to borrow managerial techniques from the private sector, private law employment has been increasing over time within the Belgian civil service, compared to the number of civil servants working for public authorities under a more traditional public law regime. The Belgian courts have, however, made sure that some public law principles also remain applicable to civil servants working under a private law regime.

After years of controversy in the legal scholarship regarding the public law or the private law character of the relation between civil servants and the State, the *statut Camu* of 1937 established the rule that most Belgian civil servants should fall by default under a public law regime,⁶⁷ the so-called *statut*, already mentioned. The *statut* is unilaterally enacted by the State and contains the administrative (appointment, promotions, duties, disciplinary regime, etc.) and financial rules applicable to civil servants. This choice was in line with the case law of the Belgian Supreme Court for civil matters (*Cour de cassation/Hof van cassatie*). In a 1932 decision,⁶⁸ the Court decided that:

*La collation des emplois publics et les allocations qu'ils comportent sont en dehors des tractations contractuelles,*⁶⁹ and *En vertu des principes généraux du droit administratif, le caractère public d'une institution implique que le régime de son personnel est normalement le régime statutaire, notamment en ce qui concerne le licenciement et la suppression d'emploi.*⁷⁰

The Belgian Council of State reaffirmed this default application of a public law regime to civil servants after World War II.⁷¹

65 Hustedt and Houlberg Salomonsen (2014), pp. 754–755.

66 Belgian Constitutional Court, decision of 16 December 1993, 86/93.

67 Feyt (2006), pp. 227–228; De Wilde et al. (2017), pp. 368–372.

68 *Cour de cassation*, decision of 8 December 1932, *Pasicrisie* (1933 I), p. 44; 22 October 1942, *Pasicrisie* (1942 I), p. 249; 13 June 1973, *Pasicrisie* (1973 I), p. 949.

69 “The collation of public jobs and the allowances they entail fall outside the scope of contractual negotiations” [the authors’ translation].

70 “According to the general principles of administrative law, the public nature of an institution implies that the regime for its staff is normally the statutory regime, in particular as regards dismissal and redundancy” [the authors’ translation].

71 Council of State, decision of 13 July 1979, 19,754 *Solon*: “the staff of a public service is, as a rule, placed in a public law relationship with that service and is therefore, in the absence of its own staff regulations, deemed to be subject to the general principles that underlie the legal situation of staff in public service” [the authors’ translation].

The choice of a public law regime for the Belgian civil service was influenced by French administrative law and, in particular, the work of Maurice Hauriou.⁷² It has been further justified by the text of Article 107 of the Belgian constitution, which gives the King the power to (unilaterally) appoint civil servants; the general character of the rules defining the legal regime applicable to civil servants and the impossibility of altering them in individual cases; the fact that civil servants may have to exercise part of the *imperium* and the need to do so under a public law regime; the need for public bodies to be able to unilaterally amend the rules regulating the civil service when the general interest so requires; and the need to protect (local) civil servants from undue political influence by submitting them to a legal regime of general application.⁷³ The existence of a core of civil servants employed in a public law regime and operating within a career system has also been presented in the scholarship as a condition to ensure the stability and continuity of administrative activities over time.⁷⁴

This choice of a public law regime for the Belgian civil service never meant, however, that contractual employment under an ordinary labour law regime was not allowed. On the contrary, some civil servants remained employed under a private law regime after the *statut Camu*,⁷⁵ but the choice made in the 1930s meant that contractual employment had to be explicitly provided in order for it to be possible and that the default rule should be public law employment.⁷⁶ Since then, most legal texts regulating the Belgian civil service at the different levels of government have limited the possibilities to employ civil servants under a private law regime to specific cases. For example, one of the principles enacted by the King, thanks to his former power to define the general principles applicable throughout the Belgian (federal, regional, and *communautaire*) civil service was that all Belgian civil servants should fall under a *statut*, except for civil servants hired to undertake temporary and exceptional work, civil servants hired to replace civil servants who are absent, civil servants hired to undertake auxiliary or specific tasks, and civil servants hired to undertake tasks requiring specific or advanced expertise or experience.⁷⁷

In time, however, the proportion of civil servants employed under a private law regime has increased substantially at the different levels of the Belgian government (federal, regional, community, and local), and particularly at the local level. This is both because the number of legally provided exceptions to public law employment has increased and because these exceptions have been used liberally in some cases.⁷⁸ As an example, data for 2018 collected by De Becker and Heirbaut give the following numbers regarding

72 De Wilde (2017), p. 369.

73 De Becker (2007), pp. 101–256.

74 Stenman (1999), p. 51.

75 Feyt (2006), pp. 228–229.

76 De Wilde (2017), pp. 371–372.

77 Article 2, § 1 (2) of the Royal Decree establishing the general principles of the administrative and economic statut of the civil servants of 22 December 2000 (*Arrêté Royal fixant les principes généraux du statut administratif et pécuniaire des agents de l'Etat applicables au personnel des services des Gouvernements de Communauté et de Région et des Collèges de la Commission communautaire commune et de la Commission communautaire française ainsi qu'aux personnes morales de droit public qui en dépendent*), *Official Gazette*, 9 January 2001; www.ejustice.just.fgov.be/eli/arrete/2000/12/22/2000002114/justel.

78 For an overview, see De Becker and Heirbaut (2020), pp. 470–488.

the proportion of private law versus public law employment throughout the Belgian civil service.⁷⁹

	<i>Public law regime</i>	<i>Private law regime</i>	<i>Total</i>
Federal government	148,351 (74.36%)	51,151 (25.64%)	199,502
Flemish government	165,210 (59.90%)	110,577 (40.10%)	275,787
Local governments	124,496 (35.08%)	230,421 (64.83%)	354,916

Updated figures for 2022 read as follows:⁸⁰

	<i>Public law regime</i>	<i>Private law regime</i>	<i>Total</i>
Federal government	132,947 (73.9%)	46,726 (26.1%)	179,673
Flemish government	157,964 (62.7%)	93,922 (37.3%)	251,887
Local governments	91,866 (41.7%)	128,263 (58.2%)	220,129

This trend towards increased contractual employment in the civil service is likely to continue in future years, as the application of a public law regime to civil servants is often perceived as cumbersome, rigid, and too formalistic.⁸¹ Legislation has been passed or envisaged at the different levels of Belgian government to augment the possibilities of hiring civil servants under a private law contract rather than under a public law regime.⁸² In an important opinion of 5 October 2018, the Legislation Section of the Council of State accepted the constitutional validity of a reform at the federal level that would have limited the benefit of a public law regime to positions requiring the exercise of *imperium* powers.⁸³ In other cases, the default rule for employment in the civil service would have been a private law contract, which would be a reversal of the current state of the law.⁸⁴ The reform has been postponed for the moment, but it may be revived in the future.

The coexistence of large groups of civil servants working under a private law contract with other civil servants working under a public law contract raises difficulties of different

79 De Becker and Heirbaut (2020), p. 469. The authors use figures from the Belgian social security system, which seem to include both ministerial departments and non-departmental public bodies. Compare with the numbers available here for the same year (numbers for ministerial departments at the federal level of government): <https://infocenter.belgium.be/fr/statistiques/services-publics-federaux/emploi/repartition>.

80 ONSS, *Emploi salarié pour le deuxième trimestre 2022*, title IV, table II, available at www.onss.be/stats/analyse-du-marche-de-lemploi-donnees-trimestrielles-detaillees#data. Thank you to Inger de Wilde for pointing us in the direction of this update.

81 Feyt (2006), pp. 257–259.

82 See e.g. Article 1 of the Decree of the Flemish Government amending the Flemish personnel statute of 13 January 2006, regarding the harmonisation of working conditions of 26 April 2019 (*Besluit van de Vlaamse Regering tot wijziging van het Vlaams personeelsstatuut van 13 januari 2006, wat betreft de harmonisering van de arbeidsvoorwaarden*); www.ejustice.just.fgov.be/eli/arrete/2019/04/26/2019012962/justel; Article 184, § 1 of the Decree on local government of 22 December 2017 (*Decreet over het lokaal bestuur*), *Official Gazette*, 15 February 2018; www.ejustice.just.fgov.be/eli/decret/2017/12/22/2018030427/justel.

83 Belgian Council of State, Opinion of 5 October 2018, 64, 133/AG, p. 9. See also Lombaert (2019), pp. 501–515.

84 Lombaert (2019), pp. 509–510.

kinds.⁸⁵ For example, a change of position of civil servants employed under labour law contracts can at times be hampered when this change of position is unilateral,⁸⁶ or when it implies a shift to a public law regime of employment, and differences in financial or administrative status between both categories may lead to discrimination when the individuals concerned exercise similar functions.⁸⁷ These differences, however, have been partly reduced through the combined action of governmental measures and decisions by the courts, which have both led to a gradual standardisation and publicisation of the rules that apply to civil servants employed under a private law contract. Executives at the different levels of Belgian government have sought, by means of decrees, to standardise the provisions that apply to civil servants employed under private law contracts, as far as their recruitment, duties, financial status, and so on, are concerned, in order to guarantee uniformity, prevent arbitrariness, and organise their careers within the civil service.⁸⁸ These rules apply on top of, or as a complement to, the provisions from the Act of 3 July 1978 regulating labour law contracts in general. The regulation of the procedures followed to employ someone as a civil servant under a private law contract is even a constitutional requirement, as the Legislative section of the Council of State has stated that the constitutional principle of equality and non-discrimination requires that rules should be enacted to guarantee equality between candidates in regard to accessing the contractual Belgian civil service.⁸⁹ Furthermore, the Belgian courts have held that public law principles such as the principles of good administration should also apply to civil servants employed under a private law regime, and not only to those falling under a public law regime. For example, the Constitutional Court ruled in 2018 that the principle *audi alteram partem* should apply both to civil servants working under a public law regime and civil servants employed through a labour law contract.⁹⁰ This is because the difference in the nature of their legal employment does not justify that they should be treated differently from this perspective according to the Court. This reasoning applies to public law principles of good administration in general.⁹¹ It is a further brake on the divergence in the legal positions between civil servants working under a public law regime and those working under a private law contract.

V. The Influence of European Union Law and the European Convention on Human Rights

Another trend is related to the influence of the law of the European Union and the law of the European Convention on Human Rights on the regulation of the Belgian civil service. For instance, this has resulted in the recognition of a right to strike for civil servants and

85 On this topic see: Janvier (2015).

86 De Wilde (2017), p. 423.

87 See e.g. Belgian Council of State, Opinion of 10 February 2014, 54, 934/3, pp. 13–16.

88 As far as the Brussels Region is concerned, see e.g. the *Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à la situation administrative et pécuniaire des membres du personnel contractuel des organismes d'intérêt public de la Région de Bruxelles-Capitale* of 21 March 2018, *Official Gazette*, 30 March 2018; www.ejustice.just.fgov.be/eli/arrete/2018/03/21/2018011464/justel.

89 Belgian Council of State, Opinion of 5 October 2018, 64, 133/AG, p. 16.

90 Constitutional Court, decision of 22 February 2018, 22/2018. The Supreme Court (Cass., 12 October 2015, R.G. s.13.0026.N, *J.L.M.B.* (2016) 14, p. 628) decided against this principle, but the Constitutional Court (decision of 6 July 2017, 86/2017) decided in its favour. De Somer and Vuylsteke (2016), pp. 125–138; Vuylsteke (2016), p. 8; Cuypers (2015), pp. 9–72.

91 Belgian Council of State, Opinion of 5 October 2018, 64, 133/AG, p. 17.

in opening up the Belgian civil service to foreign nationals, despite constitutional provisions to the contrary. The latter evolution is a result of the well-known insistence of the Court of Justice of the European Union (CJEU) that only positions in the civil service that involve the exercise of the imperium of the State can be reserved for State nationals. This case law has put pressure on the career logic that underlies the Belgian civil service, by creating a divide within the civil service between positions that may or may not be reserved for Belgian nationals. This European influence, however, goes in different directions, sometimes clearly strengthening individual protection, and sometimes less clearly, as the following selection of examples illustrate.⁹²

1. *Nationality, Access to the Civil Service, and Recruitment*

A priori Article 10(2) of the Belgium constitution reserves some offices for Belgians. In theory this contradicts the European freedom of movement and the interdiction to discriminate on the grounds of nationality.⁹³ However, Article 45, paragraph 4 of the Treaty on the Functioning of the European Union (TFEU) provides for an exception in the case of “employment in the public service”. As this is an exception to a freedom, it is interpreted restrictively. The European case law has been received in Belgium, but the constitutional text has not been amended. This point led to a landmark administrative law case, the *Orfinger* case decided in 1996.⁹⁴ In that decision, the Belgian *Conseil d’État* decided that, with direct effect, European law had priority over the constitutional provision – and in this way followed the Belgian Supreme Court (*Cour de Cassation/Hof van Cassatie*) for the first time.⁹⁵ This case was an opportunity for the *Conseil d’État* to justify its position by reference to Article 34 of the constitution, according to which “[t]he exercising of specific powers can be assigned by a treaty or by a law to institutions of public international law” and by reference to the case law of the Court of Justice.⁹⁶ This reasoning has been debated,⁹⁷ but it currently constitutes the applicable law.⁹⁸ In subsequent times, the CJEU was e.g. asked whether the restrictions on nationality should apply to *référéndaires* to the Belgian Supreme Court.⁹⁹

92 This selection is by no means exhaustive. The landmark case on the application of the principle of non-discrimination in pay for men and women for equal work both in private and public employment was a Belgian case, for instance: CJEU, judgment of 8 April 1976, *Defrenne v. Société anonyme belge de navigation aérienne Sabena*, C-43/75, para. 22: “[the principle of non-discrimination] applies even more in cases where men and women receive unequal pay for equal work carried out in the same establishment or service, whether public or private”. For a detailed analysis of the European influence on the Belgian civil service, see De Becker (2021), pp. 13–28; Gosselin (2017), pp. 421–704; De Becker (2010), pp. 418–436; Lombaert, Mathy and Rigodanzo (2007), pp. 183–229; Krenc (2005), pp. 213–258; Lombaert (2001), p. 169.

93 De Becker (2010), p. 424.

94 Belgian Council of State, decision of 5 November 1996, 62,922 *Orfinger*. Add. decisions 62,923 (*Gerfa*); 62,924 (*De Baenst*) and 62,926 (*Menu*) also of 5 November 1996, and decision 62,921 (*Goosse*). Commented by Slautsky (2021b), pp. 37–49.

95 Cass of 27 May 1971, (1971-I) *Pasicrisie* 886, S.A. *Fromagerie franco-suisse Le Ski*, concl Procureur Général van der Meersch. Add. Ganshof van der Meersch (1968), p. 485–496.

96 CJEU, judgment of 2 July 1996, *Commission v. Grand-duché de Luxembourg*, C-473/93.

97 For two distinct interpretations of this reasoning, see Gehlen (2006), pp. 29 and 31 and Vandernoot (2007), pp. 1618–1621. Add. Gilliaux (1999), pp. 499–505; Ergen (1997), p. 256.

98 See e.g. Opinion of 4 November 2005, 39, 192/3, para. 46.3.

99 CJEU, judgment of 6 October 2015, *Brouillard v. Jury de recrutement de référendaires près la Cour de cassation et État belge*, C-298/14, para. 33.

2. *The Right to Strike*

Article 11 of the European Convention on Human Rights (ECHR), Article 6 of the European Social Charter, and Article 28 of the European Charter of Fundamental Rights protect freedom of association and the right to collective bargaining. Belgian civil servants have enjoyed freedom of association (in particular under the form of trade unions) since the early 20th century.¹⁰⁰ The right to strike has long been forbidden for civil servants for reasons of continuity of State activities,¹⁰¹ and it was only in 1990, when Belgium approved the European Social Charter, that the right became accepted.¹⁰² However, there is no specific provision to this effect in the *statut Camu*. If a civil servant uses her right to strike, part of her pay can be withheld, but no disciplinary sanctions can be taken.¹⁰³ In addition, the right to strike cannot be exercised in an abusive manner,¹⁰⁴ and it can be regulated for reasons of public order, such as security reasons.¹⁰⁵

3. *Other Individual Freedoms*

The ECHR and in particular the provisions pertaining to privacy, freedom of association, and conscience, as well as Article 6, paragraph 1 when it comes to the right to a fair trial¹⁰⁶ – including the case law developed around these provisions regarding civil servants, in particular the *Pellegrin*¹⁰⁷ and the *Vilho Eskelinen*¹⁰⁸ cases – are relevant when assessing the influence of European law on the Belgian civil service. Over time, the Belgian system has become aligned with the European interpretation of these provisions, although problems do surface periodically. Three illustrations can be provided.

First, the Belgian *Conseil d'État* promptly applied article 6 to disciplinary proceedings (reasonable time, impartiality) in two cases following the *Vilho Eskelinen* case of the European Court of Human Rights (ECtHR).¹⁰⁹ However, its interpretation is considered to have been mistaken, as Belgian civil servants had enjoyed a right to appeal to a judge in disciplinary matters for a long time and the European cases do not need to lead to an application of Article 6, paragraph 1 in the administrative phase of disciplinary proceedings.¹¹⁰ In subsequent case law, the Belgian *Conseil d'État* has reiterated that Article 6 does

100 Batselé and Scarcez (2015), para. 324.

101 Belgian Council of State, decision of 3 November 1961, 8, 913 *Magrez*; decision of 9 January 1964, 10, 362 *Steys and Dudicq*.

102 Law approving the European Social Charter of 11 July 1990 (*Loi approuvant la Charte sociale européenne*), *Official Gazette*, 28 December 1990; www.ejustice.just.fgov.be/eli/loi/1990/07/11/1990015185/justel. Mayence (2021), p. 222.

103 Gosselin (2017), para. 777.

104 Belgian Council of State, decision of 22 March 1995, 52, 424.

105 Civ. Brussels, (réf.), 16 October 2015, R.G. 15/161/C and 15.162/C (not published) mentioned in footnote 2540 in Gosselin (2017). See also Law on the continuity of passenger rail services in the event of strikes of 29 November 2017 (*Loi relative à la continuité du service de transport ferroviaire de personnes en cas de grève*), *Official Gazette*, 17 January 2018; www.ejustice.just.fgov.be/eli/loi/2017/11/29/2017040982/justel and Belgian Constitutional Court, decision of 14 May 2020, 67/2020.

106 Renders and Caccamisi (2007), pp. 640–642.

107 ECtHR, judgment of 8 December 1999, *Pellegrin v. France*, 28541/95.

108 ECtHR, judgment of 19 April 2007, *Vilho Eskelinen et al. v. Finland*, 63235/00.

109 Belgian Council of State, decision of 7 May 2007, 170,887 *Darville*; Belgian Council of State, decision of 4 December 2007, 177,593 *Beaumont*.

110 Gosselin (2017), para. 800.

not apply to disciplinary proceedings *per se*, and that an appeal to the administrative judge complies with the requirement of Article 6.¹¹¹

Secondly, the right to property (Article 1 of the Protocol no. 1) applies to civil servants. The situation pertaining to their pension, however, is intricate. In 2002, the third Chamber of the ECtHR decided that Article 1 of the Protocol no. 1 does not in itself protect civil servants' pensions, but "the right to a pension which is based on employment can in certain circumstances be assimilated to a property right".¹¹² The circumstances in that case included the fact that the "employer (. . .) has given a more general undertaking to pay a pension on conditions which can be considered to be part of the employment contract".¹¹³ It seems that the automatic revocation of a pension would infringe the right to property. The Belgian case law has been hesitant – with some cases following it,¹¹⁴ while others have done so less clearly.¹¹⁵ In *L. v. Belgium*,¹¹⁶ a civil servant lost his public law pension as a consequence of repeated non-respect for his professional duties. This meant that he fell into a private law pension for part of his past career. The ECtHR considered that in such a system, the claimant could not invoke Article 1 of the Protocol no. 1. In its subsequent case law, the Belgian *Conseil d'État* has followed this solution.¹¹⁷ In short, this illustrates that although there was some hesitation in the Belgian case law, the less favourable interpretation for the civil servant was not considered to infringe Article 1 of the Protocol no. 1 by the ECtHR, which allowed the Belgian *Conseil d'État* to stabilise its case law around the less favourable interpretation.

Finally, Article 10 of the ECHR protects freedom of expression (as does Article 11 of the European Charter). The case law of the ECtHR tries to draw a balance between this freedom and other concerns specific to the civil service, such as the hierarchy principle and civil servants' duties to obey their superior, to respect confidentiality and to be loyal.¹¹⁸ This leads to potential problems in cases of whistle-blowing. Belgium adopted a specific system to protect whistle-blowers in the civil service in 2013.¹¹⁹ It needed to modify the criminal procedure code (Article 29 of the Code of Criminal Procedure, *Code d'instruction criminelle*) pertaining to the obligation of civil servants to denounce infractions directly to the public prosecutor immediately. This system was updated following the implementation¹²⁰ in Belgium of the Directive 2019/1937 of the European Parliament and of

111 Gosselin (2017).

112 ECtHR, judgment of 20 June 2002, *Azinas v. Cyprus*, 56679/00, para. 32 [reformed by GC, 28 April 2004].

113 ECtHR, judgment of 20 June 2002, *Azinas v. Cyprus*, 56679/00, para. 34.

114 Belgian Council of State, decision of 24 May 2007, 171, 523 *Dassonville*.

115 Belgian Council of State, decision of 9 February 2007, 167, 662 *Dolinsky*.

116 ECtHR, judgment of 9 March 2006, *L. v. Belgium*, 73511/01.

117 Belgian Council of State, decision of 25 March 2008, 181, 466 *Blondeel*; Belgian Council of State, Decision of 25 October 2010, 208,407 *Ansion*.

118 Blay-Grabarczyk (2018), pp. 855–871; ECtHR, judgment of 9 January 2018, *Catalan v. Romania*, 13003/04, para. 56; Bychawska-Siniarska (2017), pp. 66–71.

119 Law concerning the reporting of a suspected breach of integrity within a federal administrative authority by a member of its staff of 15 September 2013 (*Loi relative à la dénonciation d'une atteinte suspectée à l'intégrité au sein d'une autorité administrative fédérale par un membre de son personnel*), *Official Gazette*, 4 October 2013; www.ejustice.just.fgov.be/eli/loi/2013/09/15/2013002044/justel.

120 Law on reporting channels and the protection of whistleblowers in federal public sector bodies and the integrated police force of 8 December 2022 (*Loi relative aux canaux de signalement et à la protection des auteurs de signalement d'atteintes à l'intégrité dans les organismes du secteur public fédéral et au sein de la police intégrée*), *Official Gazette*, 23 December 2022.

the Council of 23 October 2019 on the protection of persons who report breaches of Union law.¹²¹

Overall, the European instruments increased the legal protection of Belgian civil servants in terms of access to employment in the civil service, and the right to strike, but the achievements are more limited when it comes to freedom of expression for potential whistle-blowers and the (non-existing) right to a pension in principle.

VI. Conclusion

The product of a 1937 reform, the Belgian civil service was organised alongside the logic of a “career system” based on hierarchy, neutrality, and professionalism, with extensive power assigned to the King (executive power) to regulate it. Since then, the Belgian civil service has been reshaped by the federalisation of the country, the influence of *New Public Management* ideas, and the increasing use of private law employment contracts. These factors have led to a fragmentation of the law regulating the Belgian civil services – in terms of the different frameworks applicable to the federal, regional, and *communautarian* levels, and in terms of the distinction between public law and private law employees. Against this background of fragmentation, some factors provide a level of uniformity across the different Belgian civil services. First, there are the constitutional provisions pertaining to equality, and in particular equality in accessing the civil service, as well as the general principles of administrative law. Second, there is the application of principles of good administration across the public/private divide thanks to the constitutional case law. Third, there is the influence of the European instruments and their case law. These factors of uniformity generally contribute to protecting civil servants (access to employment in the civil service for European Union nationals, the right to strike or the right of defence). However, some of these protections result from judicial interpretation and not from legislative or constitutional reforms, potentially weakening this protection. In addition, the European case law is at times less protective of civil servants and their rights than the national judges might be inclined to be (e.g. the non-existing right to a pension). All in all, this leads to a fragmented landscape where the specificities of the civil servant as an agent of the State, acting under its authority, remain standing, although they are more in the shadows than they have been in the past.

Bibliography

- Adriaenssen S., Lombaert B. (2019), ‘Le pouvoir réglementaire autonome du Roi face aux ingérences du législateur: le statut de la fonction publique’, in Detroux L., El Berhoumi M., Lombaert B. (eds), *La légalité. Un principe de la démocratie belge en péril*, Brussels: Larcier, 387–421.
- Barbeaux M., Beumier M. (1989), *Administration, parastataux et réforme de l’Etat*, Faculté de droit de Namur, Centre de droit régional.
- Batselé D., Scarcez M. (2015), *Abregé de droit administratif*, Brussels: Larcier.
- Blay-Grabarczyk K. (2018), ‘Le statut du lanceur d’alerte dans les arrêts de la Cour européenne des droits de l’homme’, *Revue trimestrielle des droits de l’homme*, 855–871.
- Buttgenbach A. (1954), *Principes généraux, organisation et moyens d’action des administrations publiques*, Brussels: Larcier.
- Bychawska-Siniarska D. (2017), *Protecting the Right to Freedom of Expression under the European Convention on Human Rights – A Handbook for Legal Practitioners*, Strasbourg: Council of Europe.

121 OJ L 305/17.

- Crabbe V. (1956), 'Etude sur la réforme administrative d'Edouard Ducpétiaux', *Revue internationale de sciences administratives*, 566–590.
- Cuyppers D. (2015), 'Beginselen van behoorlijk bestuur in personeelsmateries: Zowel voor ambtenaren als voor overheidscontractanten', in Janvier R., De Becker A. (eds), *Le statut juridique du personnel des services publics en évolution*, Bruges: La Charte, 9–72.
- De Becker A. (2007), *De overheid en haar personeel*, Bruges: die Keure.
- De Becker A. (2010), 'De invloed van de rechtspraak en de regelgeving van de Europese Unie op de rechtspositie van het Belgische overheidspersoneel', *Chroniques de Droit public – Publiekrechtelijke Kronieken*, 418–436.
- De Becker A. (2021), 'De rol van het EU-recht in the publieke sector: Een moeilijke tweestrijd tussen bestuursrecht en arbeidsrecht', *Revue de Droit Social/Tijdschrift voor Sociaal Recht*, 13–28.
- De Becker A., Heirbaut I. (2020), 'Het bestuurlijk landschap volgens de Grondwet en de bijzondere wetten', in De Somer S. (ed), *Bestuursorganisatierecht*, Bruges: die Keure, 470–488.
- De Broux P.-O. (2005), 'De Camu à Copernic: l'évolution de la fonction publique en Belgique', *Administration Publique – Trimestriel*, 158–177.
- De Broux P.-O. (2010), 'Introduction à la décentralisation administrative: évolutions théoriques et pratiques politiques', in Jadoul P., Lombaert B., Tulkens F. (eds), *Le paraétatisme*, Bruges: La Charte, 1–32.
- De Somer S., Vuylsteke V. (2016), 'De Wet Motivering Bestuurshandelingen en het ontslag van de overheidscontractant: het langverwachte oordeel van de Hof van Cassatie en een blik op de toekomst', *Tijdschrift voor gemeenterecht*, 125–138.
- De Wilde I. (2017), *Flexibiliteit of paradoxale rigiditeit? De wijzigbaarheid van de arbeidsvoorwaarden van de overheidscontractant*, Bruges: die Keure.
- De Wilde I., Janvier R., De Becker A. (2017), 'Naar een principiële contractuele tewerkstelling in de Belgische publieke sector?', *Chroniques de droit public – Publiekrechtelijke Kronieken*, 368–372.
- Durviaux A.L. (2012), *Droit de la fonction publique*, Brussels: Larcier.
- Ergec R. (1997), 'Observations sous C.E., 5 novembre 1996, n° 62.922, Orfinger', *Journal des tribunaux*, 254–259.
- Feyt A. (2006), 'La fonction publique de demain sera-t-elle de carrière ou d'emploi?', *Revue de droit de l'ULB*, 223–260.
- Ganshof van der Meersch W.G. (1968), 'Réflexions sur le droit international et la révision de la Constitution', *Journal des tribunaux*, 485–496.
- Gehlen S. (2006), 'Hiérarchie des normes', 30 *Administration publique – Trimestriel*, 20–32.
- Gilliaux P. (1999), 'L'intégration du droit européen selon le Conseil d'État: primauté et efficacité', in Bléro B. (ed), *Le Conseil d'État de Belgique*, Brussels: Bruylant, 473–530.
- Goffaux P. (2015), *Dictionnaire de droit administratif*, 2nd edition, Brussels: Bruylant.
- Gosselin F. (2017), *Droit de la fonction publique belge à l'aune du droit européen*, Brussels: Bruylant.
- Hustedt T., Houlberg Salomonsen H. (2014), 'Ensuring Political Responsiveness: Politicization Mechanisms in Ministerial Bureaucracies', 80(4) *International Review of Administrative Sciences*, 746–765.
- Janvier R. (ed) (2015), *Le droit social de la fonction publique*, Bruges: La Charte.
- Janvier R., De Becker A. (eds) (2015), *Le statut juridique du personnel des services publics en évolution*, Bruges: La Charte.
- Krenc F. (2005), 'Le fonctionnaire et la Convention européenne des droits de l'homme: éléments de synthèse', *Annales de droit de Louvain*, 213–258.
- Leurquin-De Visscher F. (1991), 'Les principes généraux du droit de la fonction publique et la réforme de l'État', 51(3–4) *Annales de Droit de Louvain*, 333–350.
- Leurquin-De Visscher F. (1995), 'Heurs et malheurs de l'arrêté royal fixant les principes généraux du droit de la fonction publique', *Administration Publique – Trimestriel*, 84–91.
- Leus K. (2002), 'Sens et non-sens de l'arrêté royal contenant les principes généraux de la fonction publique', in Andersen R., Leus K. (eds), *La réforme de la fonction publique*, Bruges: La Charte, 55–73.
- Leus K., Belleflamme F., Slautsky E. (2016), 'Droit bruxellois de la fonction publique – Brusselse recht van ambtenarenzaken', in de Broux P.-O., Lombaert B., Yernault D. (eds), *Le droit bruxellois. Un bilan après 25 ans d'application (1989–2014)*, Brussels: Bruylant, 301–398.
- Lewalle P., Herbiet M., Dressen C., Coumont P. (1997), 'Le concept de fonction publique en droit belge. Essai de définition', *Administration Publique – Trimestriel*, 25–45.

- Lombaert B. (2001), *La Convention européenne des droits de l'homme dans le contentieux de la fonction publique belge*, Brussels: Bruylant.
- Lombaert B. (2019), 'S.O.S. statut! ou quand le Conseil d'État sonne le glas du principe statutaire', *Administration publique – Trimestriel*, 501–515.
- Lombaert B., Mathy I., Rigodanzo V. (2007), *Éléments du droit de la fonction publique*, Waterloo: Wolters Kluwer.
- Marique Y. (2021), 'Comparaison des titres et mérites', in Goffaux P., Slautsky E., Sohier J. (eds), *Les grands arrêts du droit administratif*, Brussels: Larcier, 613–624.
- Mayence A. (2021), 'La continuité du service public', in Goffaux P., Slautsky E., Sohier J. (eds), *Les grands arrêts du droit administratif*, Brussels: Larcier, 213–224.
- Peeters Y., Vanpraet J. (2020), 'Het bestuurlijk landschap volgens de Grondwet en de bijzondere wetten', in De Somer S. (ed), *Bestuursorganisatierecht*, Brugge: die Keure, 1–51.
- Renders D., Caccamisi D. (2007), 'L'irrésistible extension du champ d'application de l'article 6, § 1^{er}, de la Convention européenne des droits de l'homme', *Journal des Tribunaux*, 640–642.
- Sarot J. (1994), *Précis de fonction publique*, Brussels: Bruylant.
- Slautsky E. (2021a), 'Independent Economic Regulators in Belgium: Contextualising Local Resistance to a Global Trend in the Light of the Belgian Economic Constitution', 14(1) *Review of European Administrative Law*, 37–73.
- Slautsky E. (2021b), 'C.E. (VIe ch.), arrêt Orfinger n° 62.922 du 5 novembre 1996', in Goffaux P., Slautsky E., Sohier J. (eds), *Les grands arrêts du droit administratif*, Brussels: Larcier, 37–49.
- Stenmans A. (1999), *La transformation de la fonction administrative en Belgique*, Brussels: CRISP.
- Thijs N., Van de Walle S. (2005), 'Administrative Reform Movements and Commissions in Belgium, 1848–2004', 20(4) *Public Policy and Administration*, 38–54.
- Vandernoot P. (2007), 'Regards du Conseil d'État sur une disposition orpheline: l'article 34 de la Constitution', in *En hommage à Francis Delpérée: itinéraires d'un constitutionnaliste*, Brussels: Bruylant, 1599–1630.
- Vuylsteke V. (2016), 'Motivation formelle du licenciement des agents contractuels: la fin de l'histoire ou l'histoire sans fin?', 8 *Publicum*.
- Weekers B. (2004), *Ambtenarenrecht: het koninklijk besluit tot bepaling van de algemene principes. Een raamwerk voor de rechtspositieregeling van het personeel bij de diensten en instellingen van de Gemeenschappen en de Gewesten*, Brugge: die Keure.
- Wodon L. (1920), *Le contrôle juridictionnel de l'administration et la responsabilité des services publics en Belgique*, Brussels: Lamertin.