

PERSONNEL RECRUITMENT
IN
VIETNAM

SAIGON
THE DIRECTORATE GENERAL OF CIVIL SERVICE
- 1958 -

P E R S O N N E L R E C R U I T M E N T

i n

V I E T - N A M

1)- First Part:

COMMISSIONED PERSONNEL

2)- Second Part:

NON-COMMISSIONED PERSONNEL

o
o) o
)

First Part

COMMISSIONED PERSONNEL

o
o)
o

The personnel of public administrations is composed of:

1. Commissioned personnel or "cadre" assigned to a permanent job and ruled by statutes having a juridical character.
2. Non-commissioned personnel, recruited as daily paid personnel (journalier) as well as contractual, and placed under special regime.

"Personnel of the cadres"

The personnel of "cadres" is ruled by common and by special statutes. They are subject to various special obligations and are liable to deduction for pension.

The common statutes called "general statutes of the Fonction Publique" deal with:

1. the general organization of the Fonction Publique, the mode of recruitment and the salary policy for personnel.
2. the administrative life of the civil servant (stage, appointment, leave, special assignment, transfer, mobilization, resignation, retirement, promotion or disciplinary action).

Besides the general provisions of the common statutes the personnel of each cadre is ruled by special statutes.

According to the statutes, the civil servant is placed in a determined position vis-à-vis the administration. He must

devote himself to his job, receives rewards for services rendered and sanctions for faults committed. In the carrying out of his functions, the civil servant is protected against injustice or provocative actions; his existence and his future, however, being secured.

A.- Organization of the Fonction Publique.

The Fonction Publique is placed under the authority of the President of Republic. He is assisted, in this duty, by the Secretary of State for the Presidency and the Director General of the Fonction Publique, the latter appointed by decree.

The Secretary of State for the Presidency, assisted by the Director General of the Fonction Publique, is charged with:

1. the supervision^{of} the carrying out of statutory texts and the checking of the conformity of the general principles stated to the regular provisions of each administration or service;
2. the following, in accordance with other Secretariats of State, of the application of general rules stated by the statutes for the recruitment of personnel and the organization of cadres;
3. the determining, in accordance with other Secretariats of State, of conditions of salary of the personnel;
4. the setting up of documentations and statistics concerning the Fonction Publique;

5. the processing, in accordance with concerned Secretariats of State, of the organization, reorganization of administrations and services, and the improvement of working methods.

The Secretary of State for the Presidency countersigns all regular texts concerning the Fonction Publique. He signs individual texts concerning the transfer or special assignment of civil servants of administrative cadres.

He delegates part of his attributions to the Director General of the Fonction Publique.

The Secretaries of State sign individual texts concerning personnel of cadres B and C depending from their authority after counterseal of the Fonction Publique.

Any regular text concerning the organization of cadres, the fixation of salary and allowances, the granting of material benefits must be submitted - a priori - to the agreement of the Secretary of State charged with the Fonction Publique and Budget.

There is created a High Council of Fonction Publique which composition is as follow:

- The President. Chairman
- Secretaries of State or their delegates Members
- One representative of the staff of each
concerned Department appointed by legally
constituted groupments or by concerned staff. . Member

- A civil servant of the Secretariat of State
for the Fonction Publique or the Director
General himself Reporting
Officer
(no voting
member)

The High Council of Fonction Publique gives advice on all important questions submitted to it by the Secretariat of State for Fonction Publique or by the Directorate General of Fonction Publique.

When the Council has to settle a question of a limited importance, it may meet in restricted committee which has the following composition:

- The President Chairman
- Secretaries of State or their delegates . . . Members
- Representative(s) of concerned staff. Members

The High Council of Fonction Publique follows the procedure on the spot. The same procedure is followed when it states in restricted committee.

There is instituted in each Department of State an Administrative Commission on personnel which is composed of:

- The Secretary of State or his delegateChairman
- Concerned chief of serviceMember
- 2 representatives of the staff appointed by
legally constituted groupments or by the
concerned staff.Member

The Administrative Commission on personnel carries out all attributions charged to it by the present Ordinance, specially on matter of promotion, discipline, removal for disciplinary reasons or change of cadre.

It meets upon the call of its Chairman.

In case of balloting, the Chairman's vote is preponderant.

B.- Recruitment.

a.- Conditions of recruitment.

Recruitment is ruled by the provisions of article 22, Ordinance 9 of July 14, 1950.

"None can be appointed in the cadres of the Administration without justifying:

1. his Vietnamese nationality or citizenship acquired at least since 5 years - exception made for French nationalized born Vietnamese and their children.
2. his possession of civil rights and his good morality.
3. his age (18 to 30 max.).
4. his physical ability to the position.
5. his qualifications (diplomas and capacity) meet the requirements of the special statute of the cadre in which he requests his admission".

Nationality.- It is granted that only Vietnamese citizens are entitled to appointment to the national cadres.

Provisions of Ordinance 34 of June 27, 1956 state that "civil servant of Vietnamese origin having French citizenship are maintained in the national cadres or incorporated in these cadres on the condition that they have opted for Vietnamese nationality."

Half-bred French-Vietnamese who have opted for the Vietnamese nationality according to the French-Vietnamese Convention on Nationality of August 16; 1955, are entitled to enter the national cadres if their qualifications meet the conditions stated in the common statutes and special statutes of each cadre.

Are exempted of the 5 years of Vietnamese nationality's condition:

1. Vietnamese French national having 18 years as of August 16, 1955;
2. half-bred (Father-French; mother Vietnamese or vice-versa, or both parents half-bred) having 18 years or over as of August 16, 1955;
3. Vietnamese women married to a French;
4. French women married to a Vietnamese.

The delay of option is fixed to 6 months after enforcement of the Convention on Nationality.

Civil rights and good morality.- The Constitution of the Republic of Vietnam provides in article 19 that "Any citizen has the right of access to public services according to his ability, on a egalitarian basis".

The condition of age is variable; the age-limit can be extended for 5 years for candidates having a diploma of upper Schools and of 10 years maximum for those who, having served as daily paid employee or contractual in a public service, are entitled to validation.

Physical ability the candidate to a public job must be physically able and free of any infections or incurable disease i.e.: tuberculosis, leprosy, mental disease...

His physical ability is attested by a certificate issued by the concerned medical authority of the Service of Public Health.

The procedures for such certificate of physical ability are fixed by Instructions of September 12, 1934 - Journal Officiel of October 27, 1934; page 3298 - modified by Instructions of November 18, 1935 - Journal Officiel of November 23, 1935; page 3868.

Diplomas.- This condition is provided in the common statutes of Fonction Publique and in the special statutes of each cadre:

- Category A: Diplomas of upper Schools (Licence, Doctorate)
- Category B: Baccalaureat
Diplomas of Superior primary studies
- Category C: Certificate of primary school.

In other words, any Vietnamese citizens of either sex, enjoying his civic rights and having good morality, can be recruited as civil servant if he or she meets the requirements of the common statute of the Fonction Publique.

To justify his full enjoyment of civil rights, the candidate to an administrative job must present a copy of his police record dated within the past 3 months.

Age.- For admission into a regular cadre, the Vietnamese citizen must have at least 18 years and less than 30, the age of 18 is required as age minimum because it is the age of:

- draft,
- full and complete responsibility as of penal matters,
- enjoyment of full salary according to the Labor Code,
- civil majority according to Far-East customs.

The age maximum is 30.

The condition of age is based on the principle that can be incorporated in a cadre only those who get rights to a seniority pension when they reach 55 years old.

New statutes are more flexible in matter of pension. Any citizen having meet the requirements for a proportional pension is suitable for admission into the cadres.

Furthermore, considerations have been taken to reduce to 25 years seniority in the service for having rights to a seniority pension.

b.- Modes of recruitment.

Documents constituting a recruitment file are:

1. Birth certificate,
2. Copy of the police record,
3. Certificate of good morality,
4. Certificate of physical ability,
5. Statement on military status, or certificate attesting the regularity of military status,
6. Declaration of loyalty toward the government of the Republic of Vietnam,
7. Agreement to serve in any part of the territory of Vietnam.

The documents above mentioned are required for all applications for recruitment. According to the case, files should be completed by:

1. a declaration of non-dismissal by disciplinary action if the candidate has served in a public office,
2. a copy of diploma or graduation certificate (if it is required by the special statute) or a copy of the arrêté of the result of the examination,
3. a statement of service for a daily paid agent,
4. a file of validity of service if the agent is over 35 years old.

The employing service must complete the file by:

1. a report of the Service of Investigation on morality and political activities,
2. a proposal rating the conduct and qualifications of the employee.

A priori, it seems not difficult to gather all the documents above mentioned, but as for their validity, they should meet certain conditions.

Birth certificate.- Due to recent events, district registers have been destroyed or lost. If the candidate can show a birth certificate issued at his birth, or a document signed by witnesses in lieu issued by the officer of the district registers of the place of birth, none can deny its validity.

But if none of these documents is available, a copy of a decision of Court of the place of residence is valid.

Copy of the Police record.- In principle, this document must be delivered by the Court of the birth place. However, as of the actual circumstances, derogations are admitted for the issuing of these documents for citizens born north the 17th parallel.

Certificate of good morality.- The procedures required for having this document are simple. The Administrative authority of the place of residence delivers this certificate if the applicant brings evidence that he has lived in the locality for more than 6 months in Saigon, this document is issued by the

Council of Arrondissement (quarter) of the domicile.

Certificate of physical ability.- This certificate, to be valid, must be issued by a competent organism of the Public medical Assistance.

Declaration of loyalty and agreement to serve any where.- This form is provided by circulars 181-PTT/CV/M of June 20, 1955 and 1-MI/Dirpers/I/Cir of January 1, 1954. The agreement must be hand written by the applicant, dated and signed, the signature must be authenticated by competent administrative authority.

Description and military service statement.-

- a description and military service statement for those having accomplished their compulsory service;
- a certificate of exemption or delay for those benefiting by this measure;
- a certificate of census for those who have been registered.

C.- Salary and allowances.

As above mentioned, the national administrative or technical cadres are classified in 3 categories A, B, and C corresponding, in principle, to 3 degrees of instruction:

Category A: Diploma of higher education

Category B: Diploma of Bachelor or termination of Superior Primary Education

Category C: Certificate of Primary Education.

Civil servants of these categories benefit according to their cadre and grade, of a rate of salary, varying from 100 to 1,200, as follow:

Category A: 430 to 1,200 for administrative and technical cadres

Category B: 200 - 670 -id-

Category C: 100 - 300 -id-

The calculation of the statutory salary of a civil servant is done as follow:

$$\frac{l \times M \times 120}{100 \times 100}$$

l = rate of salary

M = minimum vital fixed by decree after deliberation of the Council of Ministers.

Actually, the minimum vital is fixed to 1,020 piasters according to decree 28-VN of May 8, 1954, article 2.

Here are few examples for the calculation of the statutory salary, without deduction for retirement civil pension:

- Civil servant having a rate of 300:

$$\text{Statutory salary: } \frac{300 \times 1,020 \times 120}{100 \times 100} = 3,672\text{\$}00$$

- Civil servant having a rate of 430:

$$\text{Statutory salary: } \frac{430 \times 1,020 \times 120}{100 \times 100} = 5,263\text{\$}00$$

A deduction of 60/o to the benefit of the "Caisse des Pensions" (Pension Funds) shall be discounted from this salary.

Besides the statutory salary, the civil servant shall benefit:

- A. allowance for cost of living
- B. family allowance, which rates are fixed by decree 28 of May 5, 1954:
 - 1. Family allowance:

Legitimate wife	350\$
Each child	250\$

(no limitation on number of children)
 - 2. Allowance for cost of living:

This allowance is fixed according to the cadres and areas in which the civil servant is servicing.

Civil servants in service in South Vietnam and in
South Central Vietnam

<u>Category A and B</u>		<u>Category C</u>	
Recipient	1,200\$	Recipient	800\$
1st wife	350\$	1st wife	150\$
Child	350\$	Child	150\$
(limited to 5 children)		(limited to 5 children)	

Civil servants in service in North Vietnam andNorth Central Vietnam

<u>Category A and B</u>		<u>Category C</u>	
Recipient	1,600\$	Recipient	1,000\$
1st wife	470\$	1st wife	230\$
Child	470\$	Child	230\$
(limited to 5 children)		(limited to 5 children)	

For example: a clerk secretary, married, 2 children, in service in Saigon, shall have as salary:

Rate 280

- Statutory salary , deduction made for the Pension Funds:

$$\frac{280 \times 1,020 \times 120}{100 \times 100} - 60/o = \dots\dots\dots 3,221\$56$$

- Allowances for cost of living:

Recipient	1,200\$		
1st wife	350\$		
2 children (350x2)	<u>700\$</u>	=	2,250\$05

- Family allowances:

1st wife	350\$		
2 children (250x2)	<u>500\$</u>	=	850\$00
Total			<u>6,321\$56</u>

A messenger of 4th class, married, 2 children, in service at the same place, shall receive:

Rate 110

- Statutory salary, deduction made for the Pension Funds:

$$\frac{110 \times 1,020 \times 120}{100 \times 100} - 60\% = \dots\dots\dots 1,265\$61$$

- Allowance's for cost of living:

Recipient	800\$		
1st wife	150\$		
2 children (150x2)	<u>300\$</u>	=	1,250\$00

- Family allowances:

1st wife	350\$		
2 children (250x2)	<u>500\$</u>	=	850\$00
		Total	<u>3,365\$61</u>

The family allowances and allowances for cost of living are allowed to the legitimate wife of 1st class and to dependent children.

Are considered as dependent children (Ordinance 9, article 30).

1. Legitimate or legitimized children;
2. Children of a previous union legally contacted by the wife of the civil servant, except if in a case of divorce, the 1st conjoint of the wife contributes to their support;
3. Natural children recognized;
4. Children legally adopted (true orphans).

These allowances are granted to children up to the age of 16. This limit is extended to 21 years for children continuing

their studies in a school of general or professional education or for those unable to work for disability.

In the case of a husband and wife both civil servants, the chief of the family shall receive the allowances on behalf of the children.

Besides allowances for family charges and cost of living, the civil servant of a certain position can receive an allowance called position allowance payable in currency or in service which rate is fixed by decree 175-VN dated May 23, 1955.

The minimum vital, as above defined, as well as family allowances is inalienable and non-seizable.

D.- Probationary Period.

Prior to his definite admission in the cadres, the civil servant must accomplish a Probationary Period.

According to provisions of article 36 of Ordinance 9 of July 14, 1950, the stage of the civil servant is of 2 years minimum up to 3 years maximum, starting from the date of his taking service. If the leave is of more than 30 consecutive days, it shall be accounted for the extension of the period.

During his probation, the civil servant reckoned incompetent from a professional stand point as well as in his physical ability is dismissed from his job after advice of the Commission of medical experts and of the Administrative Commission on personnel of his

cadre. The dismissal or the validation is stated 3 months after the termination of the 3rd year of probation.

Any civil servant in probation dismissed **for** other reasons than that of discipline is granted an allowance of dismissal equivalent to one month and half of the global salary for every 6 months of effective service.

E.- Permanent Status.

In general, the civil servant in probation must be given permanent status after 2 years of probation. However, this delay can be reduced in certain cases:

1st case:

The period of daily paid services of the same nature is taken into consideration for reducing the probation period up to 1 year.

In other words, if the civil servant on probation has more than one year of daily paid service at the time of his appointment, he can be given permanent status after 1 year of probation.

2nd case:

The probationary stage of 1 year is also required even for a civil servant who has one or 2 years of dailypaid service and 1 or 2 years of military services. (Ref. letter No. 256-TTP/CV/NNV of September 1956 of the Directorate General of Fonction Publique).

This provision can be justified by the statutes of the Fonction Publique, providing that the civil servant cannot be given permanent status of the cadres right after his appointment as trainee.

Military services, not accounted for the reduction of probation, are taken into consideration, during the administrative career of the civil servant for reducing the minimum period for promotion.

3rd case:

Circular No. 57-TTP/CV/PC of April 29, 1957 provides that previous services of an agent, even interrupted, as of the date of his appointment, are taken into consideration up to 1 year for the reduction of his probation period under the condition that the interruption should not exceed:

- 3 months for agents having 2 years of previous services;
- 6 months for agents having 3 years of previous services;
- 9 months for agents having previously served more than 3 years.

4th case:

Trainees appointed prior to the events of 1945 and having not yet accomplished their 2 years of effective training, ^{can} be given permanent status as soon as they have accomplished 2 years of probation after their reintegration.

On the contrary, civil servants having more than 2 years of probation at the moment of the events, must, however, accomplish

a probationary period after their reintegration but the total period of probation should not exceed 3 years.

Finally, civil servants having accomplished 3 years of probation as of December 19, 1954 can be given permanent status immediately after their reintegration. This granting of permanent status has retroactive effect only on the seniority standpoint. (Ref. Circular No. 68-MI/Dirpers/2 of January 9, 1954).

File for giving a permanent status.

The file for giving a permanent status does not have as many documents as that of the file for appointment.

It includes:

1. Statement of proposal formulated explicitly;
2. Copy of the appointment of the concerned civil servant as trainee;
3. Medical certificate of physical ability.

If the civil servant proposed for the granting of permanent status is more than 35 years old, he must valid his previous services.

F.- Rating.

At the beginning of the 4th quarter of each year, chiefs of services receive from concerned departments a circular on the delay of transmittal of **rating** sheets of civil servants under their supervision.

However, the following circumstances can be considered as for the calculation of these 2 years of seniority:

1. seniority for military services,
2. sojourn in unsanitary or dangerous places ($1/2$ of seniority increased).

1st circumstance: According to circular 56-TTP/CV/PC/VP of April 29, 1957, military service seniority can be accounted up to 1 year for the calculation of the seniority required for promotion.

2nd circumstance: According to provisions of article 42 of Ordinance 9 of July 14, 1950, civil servants in duty in area classified unsanitary or dangerous shall benefit of an increase of seniority accounting for 1 half of the period of sojourn in the area.

Unsanitary and dangerous areas are classified by arrêté 153-TTP/CV of December 6, 1955.

Every year, as of the second half of December, a presidential circular fixes the percentage for promotion: 60% for the personnel of category A and 66% for other categories. These percentages are in force since 1952.

Basing on these percentages, each Department takes measures for fixing the inscriptions on the Promotion list. Commissions meet on the call of the Chairman and select candidates to be listed on the Promotion list.

These forms must be established according to a specific model for administrative or technical cadres. Each civil servant must fulfill them in giving all informations concerning his administrative status as well as his familial situation and he has to testify of their accuracy.

The hierarchical chiefs and chiefs of services rate the civil servants as of their ability and their professional value.

Rating sheets must be established for civil servants on leave or on military duty.

A hierarchical chief is not expected to rate a civil servant if the latter has not been within his service since 3 months as of the date of rating.

If a civil servant has met the seniority requirement for promotion, the hierarchical supervisor must propose him for promotion. In case of non proposal, he must justify his motive.

The rating of civil servants subject to proposals for promotion must be backed by a mark (in figures).

G.- Promotion.

a.- Regular promotion.

Article 41 of Ordinance 9 of July 14, 1950 fixing the common statutes of the Fonction Publique provides that a civil servant can not be promoted if he has not accomplished at least 2 years of effective service in his actual grade.

The composition of the Commission for Promotion is as follow:

- The Secretary of State or his representative. . . . Chairman
- A representative of the Directorate General
of Fonction Publique. Member
- A representative of the Directorate General
of Budget. Member
- A representative of the concerned service Member
- A representative of the personnel of the cadre.
(This representative must be selected among the
high rankings of the cadre and non proposed for
promotion). Member
- A secretary of the Commission.

The secretary of the commission keeps the minutes of the meeting, and the concerned service of personnel makes projects of arrêté, which shall be submitted for the approval of competent authority.

A civil servant can only be proposed for a promotion to the next higher class. He shall be at the head of the promotion list if he has 4 years of seniority in the grade (article 41, Ordinance 9 of July 14, 1950).

The arrêté mentionning the names on the Promotion list is valid for one year only. A civil servant penalized for disciplinary reason is crossed out of the promotion list (article 44, Ordinance 9 of July 14, 1950).

The arrêté of promotion is taken after the arrêté mentioning the names on the promotion list.

The decision of the commission is sovereign. But the Secretary of State can use his discretionary power.

b.- Exceptional promotion.

1. The special statutes of certain cadre provide the granting of promotion by exceptional measure. Two conditions are essential for obtaining these promotions:

- Exceptional and remarkable service,
- Perilous act accomplished at the risk of his life.

The seniority minimum is not required for exceptional promotion.

2. Ordinance 56 of October 13, 1956 provides also exceptional promotions.

It results from joint provisions of articles 2 and 3 of the mentioned Ordinance that promotion within the origin cadre, promotion to a superior cadre, admission to a regular cadre can be granted to civil servants, daily employee and individuals having rendered exceptional services to the Nation or to the People of Vietnam.

The choice is very carefully made and must be proposed by a commission composed of:

- Secretary of State to the Presidency or his
representative. Chairman

- Director General of Fonction Publique. Member
- Representative of the Administrative department of the ^{1/2}cadre in which the civil servant requests his admission Member
- The representative of the Department having submitted the candidature. Member
- A civil servant of the mentioned department. . . Secretary

Proposals are submitted to the decision of the President of the Republic.

H.- Penalties.

Any fault committed by a civil servant in the carrying out of his functions or any act accomplished by him susceptible to be nuisible to his honor, exposes him to disciplinary penalties without prejudice-if it is the ^{case} /to punishment provided by the Penal Law.

According to the Statutes of civil servants (Ordinance 9 of July 14, 1950) a civil servant can be penalized by:

1. warning
2. blame with notation in his record
3. disciplinary removal
4. postponment of promotion for 1 or 2 years - or crossing out from promotion board
5. retrogradation of one or two steps

6. temporary withdrawal of functions for 3 to 6 months without pay
7. dismissal with pension
8. dismissal without pension.

On this point it must be noticed that the provisions of Ordinance of July 14, 1950 has provided more attenuations to the severity of the former regime (arrêté of September 21, 1953) i.e.:

1. prior to the blame, there is a warning
2. prior to the dismissal, there is the temporary withdrawal of functions.

Warning and blame without notation into the record are taken by the Chief of Service; other penalties are taken by the Authority committed with the power of appointment, on the proposal of the Chief of Service and after advice of the Disciplinary Council.

The composition of the Disciplinary Council is as follow:

- Secretary of State or his delegate Chairman
- Chief of concerned service Member
- Two representatives of the personnel appointed by groupments of civil servants or by the concerned staff. Member
- A secretary-reporting officer, without voting power, appointed by the Secretary of State.

As warrant of the impartiality of decisions of the Disciplinary Council, the following provisions are taken:

1. Are not eligible as members of the Disciplinary Council those who have formulated, at the origin of the case, reports against the involved civil servant or those who are related to the latter up to the 4th degree.
2. The involved civil servant is authorized to have his file communicated to him and to present in writing observations on allegations against him.
3. The involved civil servant may call witnesses and be assisted by lawyer or a colleague of the same cadre.

If the Disciplinary council thinks that it is not enough informed on allegations against the civil servant or on the circumstances in which these facts were committed, it may propose that an inquiry be opened.

The advice of the Disciplinary Council should as far as possible, intervene within a delay of 1 month as of the date that the case was brought to the council. This delay is extended to 3 months if an inquiry has been decided.

When the civil servant is subject to a much severer penalty than that proposed by the Disciplinary council, he is authorized, within 1 month as of the date of notification to him of the disciplinary decision, to present an appeal.

If he does not receive satisfaction, he may call for an Administrative Court.

In regard to the civil servant suspended of his functions, the following provisions are also made:

- The decision decreeing the suspension must mention if the involved civil servant keeps during his suspension, the benefit of his salary or determine the part of the deduction which could not be more than half of the salary. In any case, the civil servant continues to receive the total of his family allowance.

- The situation of the suspended civil servant must be settled within 3 months. If at the end of these 3 months no decision concerning him is made, the civil servant is authorized to receive his full salary.

- At the end of the delay mentioned above, if no statement is made on his case or if the involved civil servant is subject to a disciplinary penalty of lesser importance than that of retrogradation, he is authorized to be reimbursed for deductions made on his salary.

- However, when the civil servant is subject to penal prosecutions, the suspension of functions with deduction of salary can be extended beyond 3 months up to the juridical decision.

- Any civil servant in preventive detention on "delictious or criminal inculpation" as being actually on duty shall receive during his detention and up to the date of the definitive juridical decision to his concern, half of his salary and the total of his family allowance.

- In the case that the involved civil servant benefit of a discharge or of an ordinance of non-lieu, and that he is not

subject, elsewhere, to any administrative penalty other than a warning, blame or removal, deductions made on his salary during his detention shall be reimbursed to him.

- In any other case, the civil servant is not reimbursed.
- The civil servant subject to a disciplinary penalty and who has not been expelled from the cadres may request by hierarchical channel, that any track of his penalty be taken off his record. This request can only be formulated after 3 years if it was a warning or a blame and 6 years for any other penalty.

These are, in general, the procedures concerning disciplinary penalties.

However, in order to insure the best discipline, Ordinance 20 of August 1st 1954 and Ordinance 51 of July 6, 1955 provide that the "President of the Government, the Secretaries of State, the Delegates of the Government in the Administrative areas are sovereign in what concerns disciplinary penalties toward the civil servants placed under their authority as for having violated the discipline according to the regulations in force (missing of professional obligations, insubordination, violations of security, acts of a nature to discredit him during the carrying out of his functions or off duty, private commercial activity or non declared commercial activity of the wife, etc...) or for having demonstrated attitudes not in compliance with the policy of the Government (passive attitude, avoiding of responsibility, counter-propaganda, connection with rebel activities...).

Besides the penalties provided by regulations in force (warning, blame, removal, postponement of promotion, retrogradation, withdrawal of duties for 3 to 6 months without pay, dismissal with pension, dismissal without pension), civil servants of all cadres lacking of discipline can be suspended from duty without pay for an indefinite period.

I.- Leaves.

Besides the right and prerogatives peculiar to the civil servant who is taken care of by a physician of the administration in case of sickness and secured in an administrative sanitary institution in case of hospitalization, the civil servant can benefit:

1. weekly rest and leave on official holidays.
2. annual, administrative convalescent and long-term leaves.

Annual leave.

The civil servant having accomplished one year of service, is entitled to 30 days of leave (article 64, Ordinance 9). Practically, the civil servant does not have to wait until the end of the year for requesting a 30 day leave. He may request leaves during the year but the total must not exceed 30 days yearly, exception made for the personnel of Education who benefit every year of scholar-holidays longer than 30 days.

Administrative leave.

Any civil servant having served consecutively for 6 years and who has had no more than 90 days of annual leave or convalescent leave is entitled to an administrative leave of 6 months.

By virtue of Ordinance 9, article 66, the civil servant on administrative leave shall benefit from his salary plus his family allowance. Arrêté 98-TTP/CV/PC/VP of July 22, 1957 grants also to the civil servant allowance for cost of living.

Convalescent leave.

In case of sickness, the civil servant is granted a leave on the proposal of the doctor of the Administration.

If the leave requires a long period, it can be only granted by decision of the Secretary of State after consultation of medical experts and this by 1 to 3 months period susceptible to be renewed but the total must not exceed 1 year.

The civil servant on convalescent leave shall benefit of:

- during the 3 first months, his full basic salary, plus allowances for cost of living for himself and for his family, and of the full family allowances.
- during the 6 succeeding months, half of his salary, half of his allowance for cost of living for himself and his family and his full family allowances.

At the end of the 9th month, if the civil servant cannot resume his job, he should be put in unassignment position or

dismissed for health or be granted retirement if he is considered definitely unable to resume work by a commission of medical experts.

The one year maximum length mentioned above can be however extended to 2 years in case of casualties received during the service or sickness of an endemic or pestilential origin contracted during the carrying out of his functions.

Long-term leave.

The civil servant having tuberculosis, leprosy, mental disease or cancer is automatically put on long-term leave for a period of 6 months susceptible to renewal; he may have for a period of 5 years his full salary as well as his family allowance.

Long-term leaves are granted by the concerned Secretary of State after advice of a medical commission of experts.

Maternity leave.

Female personnel have the right to maternity leave of 2 months with full salary.

Special leave.

As for the personnel of Education, physicians and nurses assigned to X-Ray departments shall benefit from a special leave which shall be ruled by arrêté of the Secretary of State for Public Health.

Unassigned employee.

An unassigned employee is one who is placed out of the cadres of his administration and stops benefiting from his rights to promotion and retirement.

An employee is on unassigned position at his own request or by order.

1st case - Shall be on ordered unassigned position (for a period of one year and maximum 3 years).

- a. the civil servant, at the end of a convalescent leave (9 months for ordinary cases) 2 years for civil servants wounded in duty or having disease that can be attributed to the service.
- b. the civil servant at the end of the 5th year of long-term leave.

2nd case - Shall be on unassigned position upon request civil servant for personal reason (maximum 1 year that can be renewed up to 3 years).

At the end of the period of unassigned position, civil servants in cases a) or b) (above-mentioned) must be reintegrated in his original cadre or admitted to retirement or dismissed if he has any right to retirement pension; any civil servants on unassigned position upon request, at the end of his leave, can resume his duty and be reintegrated in his original cadre at the first 3 vacancies.

J.- Duties and responsibilities of the
civil servant.

Being placed under a public regime, the civil servant has duties toward the administration. In the carrying out of his duties, he is responsible for his actions.

a.- Professional duties.-

The duties of the civil servant vary from one position to another; however, the civil servant has such common duties:

- Professional conscience,
- Sense of the interest of the service,
- Compliance to orders of higher authority,
- Fidelity and loyalty toward the government,
- Moral and material integrity.

Professional conscience.- The civil servant is linked to the service by professional duties; whatever his ranking in the administrative hierarchy, the civil servant is responsible for the carrying out of the tasks assigned to him. He cannot - on his own - stop his functions or interrupt them at the prejudice of the good functioning of the service.

When he wants to stop his functions, he must formulate a request and can be released from his duties only after having received notification of the acceptance of his request.

If this is not done in this manner, the civil servant is subject to disciplinary penalties.

The right to strike is not allowed to the personnel of the Administration.

In the interests of the service it is forbidden to the civil servant to:

1. to carry out - on a private basis - a lucrative professional activity in any field, but in art, science and literature. However, the Secretary of State can personally decide if the civil servant under his supervision can practice or not these topics.
2. have himself - or by third person - personal interests in an enterprise placed under the control of his service.

The civil servant whose spouse is carrying a lucrative personal activity must make a declaration to the service to which he depends. The competent authority shall take - if needs be - all necessary measures for the safe-guarding of the service's interests, after consultation with an Administrative Commission on personnel.

Compliance to the orders of Higher Authority.- The carrying out of orders is the condition sine qua non of the good functioning of a service.

Besides the magistrates who judge according to their professional conscience, all civil servants must carry out intelligently the orders of higher authority.

When the orders lack clarity, the civil servant must refer to his direct supervisor.

The question of responsibility concerning the carrying out of an order issued by the higher authority has been subject to much controversy.

In general, the civil servant charged with the carrying out of an order is responsible for carrying out this order if it is in conformity with the law or is issued by the legal authority.

On the contrary, his responsibility is engaged when he carries out an order or an instruction which illegal character appears clearly enough.

Fidelity and loyalty. - Without prejudices to the provisions of penal laws, any civil servant is linked by the obligation of professional discretion for facts and information acknowledged by him during the carrying out of his functions.

It is formally forbidden to the civil servant to divert and to communicate to third persons any administrative documents, except for certain authorized ones.

The civil servant whose activity is of a nature prejudicial to the security of the State can be brought before the Criminal Court.

However, the civil servant is authorized, within the frame of the law and regulations in force, to have political activities, in order to clear the policy of the government and backing it.

On the contrary, he can be prosecuted if he engages in subversive activities.

Moral and material integrity.- One of the basic qualities of the civil servant must be integrity. He must avoid extortion, embezzlements, abuse of authority and usurpation of one's property.

As provided above, the civil servant can not have directly or indirectly financial interests in an enterprise placed under his control.

Any infraction to this regulation is liable to disciplinary penalty without prejudice to judicial prosecutions. Article 175 of the modified penal code, establishes sentences of 6 months to 2 years of imprisonment for any civil servant having directly or indirectly interests in bids, and enterprises or firms placed under his control or authority. Same penalties shall be applied to the civil servant who, charged with the liquidation or ordering of a service, shall be favorable to the interests of third persons (physical or moral) to the detriment of his service.

Accepting a bribe is severely fined. Ordinance 18 of July 28, 1954 (Journal Officiel 1954, page 1888) fixing the probationary legislation for penalties inflicted for abuse of power (bribery, traffic in influence and corruption) penalizes the guilty for a fine of VN\$ 20,000 to \$ 500,000 or \$ 1,000,000 with the loss of his civic rights and of those of the citizen, and the total or partial confiscation of properties.

The appropriation of public properties being considered as a sabotage to the economy of the nation - the inculped can be sentenced to death.

b.- Responsibility of the civil servant as of the penal law and civil law points of view.-

The civil servant is not only responsible for his conduct in his private life and out of duty hours, but he is also responsible for the carrying out of his duties, in the point of view of penal and civil law.

It is expressed in the preceeding paragraph that failing to perform properly professional duties is subject to penalty, even penal. This is considered within the relationship between the civil servant and the administration.

Furthermore, the Administration has relations with the public through the civil servant. These relations create new obligations. The civil servant who consciously or unconsciously breaks these obligations, shall be responsible for his actions to the law.

The administrative law has provided the case of "joint responsibility" i.e. the employing service has its part of responsibility for the actions of the civil servant who represents it.

But if the fault committed has a distinctly individual character, the civil servant is singly responsible to the court under penal laws as well as civil laws.

K.- Administrative Court.

When a civil servant is penalized administratively or when a governmental decision concerning personnel seems to him not complying with the statutes of the Fonction Publique, he may call

upon the Administrative Court.

This court is created by Ordinance 2 of January 5, 1950, modified by Ordinance 36 of October 8, 1954, and is composed of:

- a) a Chairman
- b) a Vice-Chairman
- c) a Commissioner of the Government, selected from among the Councillors of the Court.

The Administrative Court makes decision in first instance, on all requests for annulment of ministerial or prefectoral arrêtés concerning personnel and of an individual character.

The State Council, created by Ordinance 38 of November 9, 1954, is empowered to:

- a. review arrêtés stated in 1st instance by the Administrative Court.
- b. break arrêtés stated in last instance by that same jurisdiction.
- c. cancel out governmental decisions of an individual character or presenting of the following vices:
 - abuse of power
 - incompetency
 - violation of laws
 - lack of motives or motives without proof.
- d. consider in first instance, administrative decisions concerning the situation of those civil servants assigned by Presidential Decree or arrêté.

L.- Retirement pension.

The welfare of the individual being the constant preoccupation of the government, in this country, the question of retirement pensions is given particular attention.

Furthermore, it is important that the retired civil servant knows that with the 60/o deduction made on his basic salary he could not have enough substantial pension after his retirement. In fact, besides the deduction of 60/o on his salary, the Administration finance for each civil servant a contribution of 20o/o of his basic salary, constituting a patrimony which shall permit a decent life to the retired civil servant as well as his family.

a.- A civil servant can request reimbursement of his deductions for pension:

1) In case of resignation and before having met the conditions for a pension, the condition that the request must be made not later than 12 months after the date of his resignation.

2) The civil servant having met the conditions for a pension, but dismissed from his functions without pension, (article 59, Ordinance 9 July 14, 1950 fixing the General Statutes of the Fonction Publique).

b.- Seniority retirement pension.-

Civil servants are admitted to seniority pension:

1. Upon request, those who have serviced effectively for 30 years with deductions of salary (for former soldiers and students of higher schools, the military service and the scholar time will be counted).
2. According to the regulations, those who have 30 years of service and are over 55 years old, age limit provided by the statutes over which he is not physically able to the serve.

In short, to be eligible for a seniority pension, the civil servant must be titularized in his cadre before 25 years, age limit for having at 55 years the 30 years of services accountable.

However, the limit of age of admission in the cadre is extended to 5 years for candidates having a diploma of higher studies and to 10 years maximum for those having serviced formerly and who services are susceptible to be validated for retirement (article 22, Ordinance 9 of July 14, 1950).

c.- Calculation of the retirement pension.-

This pension is equal to $1/60$ of the average of the annual basic salary (allowances excluded) of the 3 last years.

The calculation of the retirement pension shall be made in basing upon one of the 3 following formulas, according to the fact that the salary of the civil servant remains the same or has changed during his 3 last years of service.

L = Same salary

L' = Different salary

N = Number of years of service - to be converted in months
because the number of years is not often complete.

T = Number of months.

1. The civil servant has had the same salary during his 3 last years of service:

$$\frac{\frac{3 L}{3} \times N}{60} = \frac{L \times N}{60}$$

2. The civil servant has had a higher salary the third year than the 2 preceeding years:

$$\frac{\frac{2 L + L'}{3} \times N}{60}$$

3. The civil servant has had a higher salary during the last two years than the 1st one:

$$\frac{\frac{L + 2 L'}{3} \times N}{60}$$

d.- Pension for proportional retirement.-

The civil servant is authorized to request a retirement pension when he is 55 years old, age-limit. He may request:

1. seniority retirement pension if he has served effectively for 30 years.

2. proportional retirement pension if he has served less than 30 years.

Any civil servant having served more than 20 years, but less than 55 years of age, and being unable to carry out his functions due to physical disability testified by a medical certificate issued by a physician of the administration, can request a proportional retirement pension.

If the civil servant is unable, to perform his duties, physically or professionally, the employing service may request the proportional retirement pension for him.

The proportional pension as well as for the seniority pension is based on the number of years of service:

1. If he has served more than 20 years, but less than 25, the pension shall be $1/90$ (instead of $1/60$) of each year of effective service in relation to the proportional salary of the last 3 years of service of the civil servant.

To the fact that the salary remains the same for the last 3 years or not, the amount of the pension will be:

S : Salary

N : Years of service.

$$\frac{S \times N}{90}$$

$$\frac{\frac{2 S \times S'}{3} \times N}{90}$$

$$\frac{\frac{S \times 2 S'}{3} \times N}{90}$$

2. If he counts more than 25 years of service but less than 30, the amount of his pension shall be of $1/75$ instead of the $1/60$ of the seniority retirement pension.

For the calculation of this pension, the same formulas are employed:

$$\frac{S \times N}{75}$$

$$\frac{\frac{2 S \times S'}{3} \times N}{75}$$

$$\frac{\frac{S \times 2 S'}{3} \times N}{75}$$

e.- Disability pension.-

As defined above, any civil servant having the age of 55 and having effectively served for 30 years can pretend to a seniority retirement pension. He is authorized to request a proportional pension if he has served for less than 30 years, but more than 20. However, in the case that a civil servant, in the carrying out of his functions or in the accomplishment of a service of common interest has had an accident bringing him a disability, he may, according to the case, be eligible for a seniority or proportional retirement pension (seniority for less than 30 years, proportional for less than 20 years) on the condition that the illness or the disability be the direct and certain cause for a permanent disability.

The causes, characters of the sickness or wounds must be confirmed by a statement issued by competent authority.

Disability pension shall be accounted as follow:

1. Proportional pension (1/75) if the civil servant has served less than 20 years.
2. Seniority pension (1/60) if he has served more than 20 years.

The mode of computation of proportional or seniority disability pension is the same than that of the civil pension.

f.- Widow pension.-

According to the regulations in force, only widows of civil servants are eligible for a widow pension - except for those widowers of female civil servants.

A widow of a civil servant is entitled to a pension:

1. When the husband entitled to a retirement pension is dead.
2. When the husband in service has met - before ~~his~~ dead - the requirements for a seniority or proportional pension.
3. When the husband in service is dead by disability or accident as mentioned in the chapter concerning disability pension.

When the husband dies before having 5 years of retirement and that his pension has not been yet liquidated, the widow must request the liquidation of that pension before the end of this

5 year period as of the date of the retirement of the husband or as of one year, as of the date of the death of the husband.

The widow enjoys her husband's pension at the date of the death of the latter.

If the widow is a civil servant.

If the widow is a civil servant (i.e. she is entitled to a pension too) she can choose from her salary and her pension, the one that seems to her advantageous, but she cannot collect both her salary and her pension.

Ex: Mrs. X., civil servant whose husband left a pension of \$ 3,000, has for salary \$ 2,800. She has 3 dependant children of less than 18.

Thus her widow pension is higher than her monthly salary. She may choose her widow pension (3,000\$) to what shall be added allowances for the 3 children.

Another exemple: Mrs. Y. is a retired civil servant. If her husband dies, she has no right to add her widow pension to her own, but she can choose the one that seems to her most advantageous.

Allowances for dependent children - if it is the case - shall be added to the selected pension as for Mr. X.

g.- Orphan pension.-

Orphans are entitled to a pension if:

1. the parents (father or mother) are entitled to a pension before their death.

2. the father or mother dies in service, and is entitled to a proportional or seniority pension.
3. the father or mother dies by sickness or by accident incurred during the service, as in cases mentioned in the chapter "disability pension".

Amount of the pension.

The orphan pension is equal to that of a widow pension, whatever the number of children.

Exp: a widow dead left 5 dependant children. These 5 children shall benefit of the same pension as that of the widow.

As they reach 21, the same pension shall remain to those under that age until the last one reaches 21.

Right to choose between the father's or mother's pension.

Let us take the above mentioned case, if the father dies after the mother, the guardian of dependant children has the choice between the most advantageous pension of the father or the mother.

If the female civil servant is wife of the second-degree, legal children of the concerned civil servant will benefit of the pension of their mother while the father's pension shall be committed to the children of the first wedding.

M.- Delegation by Law of Salary.

A delegation by law of salary is granted by the Government to legal heirs of civil servants contractual agents or daily paid

agents in duty in the Vietnamese administration:

- dead in duty or by their duties, or in case of ennemy attack.
- dead for having helped and assisted people in perilous situation.
- kidnapped as hostage or disappeared in the carrying out of their functions.

The "legal heirs", being: the legal wife of 1st degree non remarried, dependant children up to 21 years old (including the child born in the period of 300 days after the date of the death or disappearance of the father - direct dependants of the victim.

According to the regulations stated in Decree 80-NV of October 31, 1953, modified by Decree 97-NV of September 28, 1954 and Decree 47-CV of February 21, 1955 the legal heirs, must submit, besides the request, a file including:

- report describing the circumstances of the death, disappearance or kidnapping of the civil servant or concerned agent.
- a statement on the salary that the victim should receive at the moment of his death or disappearance.
- police record evidencing the quality of "legal heirs" of the applicant (certificate of wedding, birth certificates for children).
- copy of the arrêté granting a subsidy of 12 months, taken according to Decree 30-CP of April 1st, 1952 (subsidy

granted in case of death or disappearance of the civil servant in the carrying out of his functions.

- a certificate issued by the medical commission of experts testifying that the husband - applicant is unemployed or disabled (case of a women civil servant).

The delegation of salary is granted by arrêté of the concerned Secretary of State after advice of the Administrative Commission on personnel; it includes:

- half of the monthly salary of the civil servant or agent dead or disappeared, according to his cadre, grade and pay policy in force (basic salary and allowance for cost of living).
- full family allowances. The woman civil servant benefiting a delegation by law of salary cannot receive to the allowances mentioned in this paragraph.

The delegation of salary, allotted to the budget paying the civil servant, shall be paid:

- as of the date of death or disappearance in the case that the request is formulated within one year, as of the day after that date.
- as of the 1st of the month of the deposit of the request, if the request has been formulated after that delay.
- as of the date of kidnapping, if it is the case of a kidnapping as hostage.

The delegation by law of salary cannot be added to the retirement pension.

However, in the case that the retirement pension is higher than the delegation of salary, the heirs are entitled to request advance from the pension instead of the delegation of salary.

Second Part

NON - COMMISSIONED PERSONNEL

o
o) o
)

Government temporary personnel

Prior to the issuance of Arrêté No. 739-NV, June 25, 1954, the status of the Government temporary personnel in the South was governed by Arrêté No. 3031-MI/P3 of July 24, 1948. The latter provided that applicants graduated with upper degrees should be hired by contract, while the others were rated into 7 categories, according to their degrees and responsibilities: A/1, A/2, B/1, B/2, C, D and E.

Until now Arrêté No. 3031-MI/P3 of July 24, 1948 stands as the most complete legal document in its domain since not only has it provided regulations on the recruitment and the salary but also all minor details on the management of the temporary personnel.

As regards the North and Central V.N., Round Order No. 8119-P May 18, 1948 also ruled that the hiring of employees graduated with upper degrees should be thru contract, while others, likewise in South Viet Nam, were rated into 7 categories but called differently: categories 1, 2, 3, 4, 5, 6, and 7.

Conversely to Arrêté No. 3031-MI/P3, circular Order No. 8119-P of May 18, 1948 has merely fixed main elements of recruitment. Details on salary and management were missing. This failure was met by arrêtés of local governors which provided a specific regime for each region and in accordance with its particular situation and cost of living.

With the view to uniformizing all these disparate regulations, Arrêté No. 739-NV, June 25, 1954 issued a single scheme for recruitment of Government temporary personnel common to all Vietnam.

Arrêté No. 739-NV, June 25, 1954 divides Government temporary personnel into 8 categories:

1. Category A.- Personnel graduated with upper degrees and hired thru contract.
2. Category B1.- Personnel graduated with the Baccalaureat or an equivalent degree of secondary studies (after 13 years of study)
3. Category B2.- Personnel graduated with the Diploma or an equivalent degree of intermediary studies (after 10 years)
4. Category B3.- Personnel graduated with a Primary Studies Certificate (after 6 years) and having had 4 years study of the Intermediary, or technical personnel with recognized specialties
5. Category C1.- Personnel with no recognized specialty but graduated with the Primary Certificate degree, or personnel hired on probation in a position of specialist worker.
6. Category C2.- Personnel with no specialty and no Primary Certificate degree.
7. Category D1.- Permanent laborer
8. Category D2.- Laborer hired on temporary basis and paid on ticket.

Hired thru
recruitment
list

Based on the above recruitment specifications it comes out that Government temporary personnel can be sorted into 3 groups:

- a. Contractual personnel of category A
- b. "Journalier" personnel of categories B1, B2, B3, C1, C2 and D1, hired thru recruitment list.

- c. "Floating" personnel which include all personnel hired on emergency basis, are paid for the number of days actually worked.

x

x x

I.- Particulars to the status of
Government Temporary Personnel (G.T.P.)

The status of G.T.P. has the 2 following particulars:

1. The statutory and regulatory being of the public law.

Thru regulations, the Government has fixed pilot-cases met by given conditions, and the employee when recruited should be placed in one of these prefabricated cases.

In addition, the Government still has the right to unilaterally alter recruitment specifications if required by the service needs without the personnel having the right to any compensation.

2. The provisional being.

In principle and as emergency workers are hired just to meet a temporary shortage of career personnel, G T.P. are engaged only on a temporary and removable basis for journalier personnel and by 6 months renewable-contract for contractual personnel. In fact and due to the circumstance, most of them continue their employment as G.T.P. or enter the government career thru public examinations.

x

x x

II.- Recruitment

The applicant for a government position should meet all requirements pertaining to health, academic degree, good reputation, etc. and exhibit all necessary proofs.

- a. General requirements.-- Except for requirements involving the applicant's nationality and age, all those provided by art. 22 of Ordinance No.9, July 14, 1950 for applicants for a permanent position in the government career, should be met by the applicant for a Government temporary position. It may be found that an alien whose technical capacity is judged useful for the service and who enjoys a good reputation in politics, might be hired as a temporary agent. Furthermore while applicants under 18 and above 30 could not enter the permanent body, they might be hired under the temporary personnel scheme. Art. 15 of Arrête No. 3031-MI/P3, July 24, 1948 expressly provides that journalier employees 15 to 18 years old, get their salary discounted 20 o/o.

Nevertheless since the issuance of Arrête No. 739-NV, June 25, 1954 which has resulted in a more severe application of the recruitment provisions, the hiring of employees under 18 has actually been discontinued.

- b. Veterans first.-- Circular Order No. 25-CV and 65-PTT/CV, April 12, 1955 and May 29, 1956 recommended first priority to demobilized service-men in all personnel recruitment operations.

This does not mean veterans should be preferred at any price. As a rule if 2 applicants (1 civilian and 1 ex-service man) meet equal requirements, the service man should be preferred.

Nevertheless if the civilian fulfills required conditions while the service man doesn't, the priority recommendation will not apply and the civilian should be hired.

As to requirements pertaining to academic degrees, art. 4 of Arrêté No.566-MI/Dirpers/Arr/2 of June 10, 1953 admits that the service man applicant might be excused if while fulfilling his military duties, he was:

- wounded
- mentioned for a brilliant deed

c. The recruitment file.- If agreed, the applicant has to furnish the following materials required by his recruitment file:

- his birth certificate and other vital statistics
- documents pertaining to his wife and children
- copies of diplomas
- identification sheet
- certificate of physical capacity
- certificate of good reputation
- judicial certificate
- description of past employment
- description of military service

All these materials should be issued and certified exactly in the same manner as for permanent personnel.

In addition, the government agency employer has to provide the following materials:

- a proposal of recruitment with comments
- status of the existing staff and the budgetary estimates.
- an investigation report of the Security Service on the political activities of the applicant.
- a draft of the contract or recruitment list.

d. Process of recruiting. - As mentioned in the above paragraph one can refer to the process of recruiting in order to sort government temporary personnel into 3 groups:

- contractual personnel
- journalier personnel
- floating personnel

1. Contractual Personnel

Arrêté No.739/NV, June 25, 1954 rules the recruitment of category a personnel through contract Art. 2 classifies these personnel as follows:

- a. Employees graduated with upper degrees and Professors of Secondary Schools.
- b. Exceptional personnel with no upper degrees but proved capable and having necessary experience in assuming the management of a technical, administrative or political agency.
- c. The government has recently by Decree No.102-TTP, July 19, 1956, provided for another category of contractual personnel: Technical Assistants and Technical Surveyors.

The duration of the contract is 6 months (Direction No.334-BCV of July 24, 1950) except for Technical Assistants and Technical Surveyors for whom Decree No.102-TTP of July 19, 1956 says 1 year.

In addition, Direction No.1-BCV/TT, January 8, 1951 provides that the contract could be renewed by amendment for 6 months and only twice: a 3rd renewal should be ratified by another contract.

The contractual employee should hand-write this statement: "Read and agreed" on the last page of the contract and sign beneath.

2. "Journalier" Personnel.

Despite the fact that they are called "journalier" ("which means daily paid), employees of this category are hired by period of 1 year and paid monthly like career employees.

Attached is a model of a recruitment list being used throughout the Vietnam territory for the recruitment of employees of categories B1, B2, B3, C1, C2 and D1...

If service needs require, journalier employees may be re-hired for 1 year, at the inception of each year, thru a re-recruitment list similar to the above.

On the receipt of the recruitment proposal file, the Directorate General of "Fonction Publique" checks whether the applicant meets all required specifications, the recruitment agrees will service needs and the funds actually allotted. If the F.P. sees no objection, it will give the visa and transmit the complete folder to the Control of Obligated Expenditures if the applicant is hired for the starting grade.

If the applicant records previous services and is hired for a higher grade, the F.P. transmits the file to the National Committee for Contracts and Journalier Recruitment. This Committee, set up by Arrêté No.15-VP/TTK, April 24, 1951, is composed of:

- A representative of the Secretary of State for "Fonction Publique" - President.
- A representative of the Secretary of Finance - member
- A representative of the concerned Department - member

In accordance with Direction No.2866-TTP/CV/NNV/2 of October 29, 1956, the applicant recruited can only commence his work on the day the contract or the recruitment list is approved. His salary shall only be paid from this date.

3. "Floating" Personnel.

As a principle floating personnel are hired on a temporary basis to meet emergency work their employment should cease at the completion of the work.

Arrêté No.739-NV, June 25, 1954 admits only one category of floating personnel: laborer of category D2. Later on and due to the service needs created by events, recruitment of a new category of floating personnel paid a lump-sum salary, has been allowed: agents of Information, Propaganda, Youth, Labor, Social Action, etc.

The simplicity of the process of hiring floating personnel should be pointed out: only visa from the Finance Control and the signature of the concerned Secretary of State are needed.

III.- Salary

As mentioned above government temporary personnel were not ruled by a single scheme before the issuance of Arrêté 739-NV of June 25, 1954. Methods of computing and listing salary were not alike in North and South VN.

Establishment of a single scheme, by Arrêté 739-NV has resulted in bringing about a raise for some personnel and a reduction for others.

With a view to avoiding such disadvantages, a comparative chart of existing and new positions has been attached. The Arrêté has furthermore provided that employees who suffered a reduction would

keep their existing salary until a promotion will raise it to that level in accordance with the new scheme.

In accordance with the provisions of Arrêté No. 739-NV, temporary personnel enjoy a salary which can be detailed as follows:

- basic salary
- family allowances
- cost of living allowances.

A. Contractual Personnel.

1. Employees graduated with upper studies degrees and Professors in Secondary Schools.
2. Employees with no such a graduation but recognized being capable and with required experience for assuming the management of a technical administrative or political agency.
3. Technical assistants and Technical Surveyors.
1. Employees with upper studies degrees and Professors in Secondary Schools.

Art. 2 of Arrêté 739-NV, June 25, 1954 provides that employees of this category shall receive 90⁰/o of the salary and allowances of a career employee of equivalent grade (salary not deducted yet by retirement withholding).

Computation of basic salary for temporary personnel is carried out according to the same rules as for career personnel, by using the following formula:

$$\frac{I \times M \times 120}{100 \times 100}$$

I = salary index

M = Minimum living salary which has been fixed as 1020 by art.2 of Decree No.28-NV, May 8, 1954.

Family allowances rate and cost of living allowances rate, as enjoyed by career personnel, are applied to temporary personnel.

For example: an employee graduated with the "Licence en Droit" degree, married and having 2 children will receive 90% of what a career employee of index 430 will i.e.:

- Basic salary: $\frac{430 \times 1020 \times 120}{100 \times 100} \dots\dots 5,263.20$

- Family allowances

Wife.	350)	
Children 250 x 2 =	500)	850.

- Cost of living allowances

Basic:	120)	
Wife	350)	2,250.
Children 350 x 2 =	700)	

- 90% over:

$\frac{8,363.20 \times 90}{100}$	7,526.90
----------------------------------	----------

Should the concerned employee be a retired career employee who continues his service as a contractual one, the salary computed above (7,526.90) will be deducted by the monthly amount of retirement pension.

The difficulty actually does not lie in the computation of the salary, but in the listing of upper degrees and in the evaluation of diplomas delivered by foreign universities.

In fact upper degrees have been listed by several categories. Each one of them has been given a starting index:

- Licence	430
- Teaching licence	470
- Doctorate and equal diplomas	510
- Engineer of Highways and Bridges and equal diplomas	550

In the past, in cooperation with the National Education Department, the Directorate of "Fonction Publique" was responsible for the classification of these degrees and decided upon the equivalent degrees.

However, with the view to carrying out his work in a more sensible and equitable way, arrêté No. 1277-TTP/CV and 2518/TTP/CV, May 5 and October 10, 1956, establishes a specific committee, the composition of which is as follows:

- The Secretary of State for National Education as representative of the President of the Republic - President.
- The Secretary of State for Fonction Publique or his representative - Member
- The Director of the National School for Administration or his representative - Member
- The Dean of the National University - Member
- The Director of the Planning - Member

- The Secretary of State for the concerned Department or his representative - Reporter-Member.

The committee has 2 Sections: 1 for examining French diploma and 1 for other foreign diplomas.

2. Employees with no upper degrees but recognized to be capable and having required experience for assuming the management of a technical, administrative or political agency.

Employees of this category enjoy 85^c/o of salary and extra salary of a career employee with equal grade (salary before deduction of retirement withholding). Arrêté No.739-NV, art. 2 paragraph b).

A specific committee has fixed as follows the salary index:

For those judged capable of Bureau chiefs' responsibilities:

85^o/o of index 220

- id - of Service Chief's respons. 85^o/o of index 320

- id - of Directorate Chief's res. 85^o/o of index 350

Arrêté No.739-NV provides some exceptions: employees graduated with the Baccalaureat degree are classified in category B-1. However as regards customs agents, it has been ruled that:

- Customs officers and checkers graduated with the Baccalaureate degree enjoy 60^o/o of index 320 and 75^o/o of the allowances (family and cost of living).
- The same employees if having been trained in France enjoy 85^o/o of salary and allowances of an index 320 career employee.

3. Technical Assistants and Technical Surveyors (Decree 102 TTP of July 19, 1956).

	Salary Index	Monthly Special Allowances
- Principal Technical Surveyors:		
1st class	1.000	10.000\$
2nd class	920	8.000
- Technical Surveyors		
1st class	840	5.000
2nd class	720	4.000
- Technical Assistants		
1st class	600	2.500
2nd class	480	2.000

Employees of this category are hired through contract the duration of which is 1 year instead of 6 months. They enjoy 100⁰/o.

B. Journalier Personnel.

Art. 4 of Arrêté 739-NV, June 25, 1954 lists journalier personnel into 5 categories B1, B2, B3, and C1, C2. Each category numbers 10 grades and the following chart shows the basic salary for each one of them.

Grades	Cat.B1	Cat.B2	Cat.B3	Cat.C1	Cat.C2
1	1,700	1,400	1,200	1,000	900
2	1,850	1,520	1,300	1,080	960
3	2,000	1,640	1,400	1,160	1,020
4	2,150	1,760	1,500	1,240	1,080
5	2,300	1,880	1,600	1,320	1,140
6	2,500	2,020	1,720	1,420	1,220
7	2,700	2,160	1,840	1,520	1,300
8	2,900	2,300	1,960	1,620	1,380
9	3,100	2,440	2,080	1,720	1,460
10	3,300	2,580	2,200	1,820	1,540

In addition the following allowances are granted:

I. Family

Wife 262\$50

Each child (without limits) 187\$50

II. High cost of living.

	South and South of the Central VN		North and Central VN	
	Cat. B \$	Cat. C \$	Cat. B \$	Cat. C \$
Bachelor	900	600	1,200	750
Married	1,162.5	712.5	1,552.5	922.5
Married + 1 child	1,425	825	1,905	1,095
Married + 2 children	1,687.5	937.5	2,257.5	1,269.5
Married + 3 children	1,950	1,050	2,810	1,440
Married + 4 children	2,212.5	1,162	2,962.5	1,612.5
Married + 5 children	2,475	1,275	3,315	1,785

This is an example: An employee category B1, grade 6, married and having 3 children will obtain:

- basic salary	2.500\$
- family allowances: wife:	262\$50
children 187.5x3:	562,50
- cost of living allowances	
basic	900
wife	262\$5
children 262\$5 x 3:	787\$5
<u>Total</u>	<u>5,275\$00</u>

C. Floating Personnel.

There are 2 groups of floating personnel:

1. Employees paid on ticket
2. Employees paid a monthly lump sum as salary
1. Employees paid on ticket.

Art. 10, paragraph 1, of Arrêté No.739-NV provides that:

"Shall be classified into category D2 non-permanent laborers hired on ticket". The daily salary varies from 40 to 51, depending on the region. They may in addition be granted a family allowance similar to that enjoyed by a permanent laborer of category D1.

It comes out that the regulations provide just 1 category of floating personnel paid on ticket.

In fact, however, and due to the emergency need of the service for necessary personnel available within a short time, many agencies used to hire other categories of floating personnel for rather permanent functions like clerks, typists, mechanics, messengers, etc. By this time employees of this kind total 15.000 persons.

In order to put an end to the increasing number of personnel of this category, 2 measures have been taken:

- a) Circular Order No.38-TTP/CV/NNV/2 of March 27, 1957 prohibits the recruitment of additional floating personnel (employees of Cat. D-2 excepted) and schedules a progressive integration of the present employees into the journalier personnel, in accordance with the available funds.

- b) Pending the completion of the implementation of this measure, the salaries of those floating personnel, who cannot yet be integrated into the journalier personnel, will be adjusted in accordance with provisions or circular order No. 117-TTP/CV/PC/VP, January 1, 1957, i.e:
- The salary of an equivalent journalier employee shall be divided into 30 parts.
 - The number of days actually worked shall not go beyond the number of scheduled work days.

2. Personnel paid a lump sum salary.

Includes the following:

a) Agents of Information, Social Action, Youth, Propaganda, Refugee etc. whose salaries have been fixed by Memo No.1035-PTT/TTK, August 5, 1954 as follows:

- 1500\$ monthly, exclusive of all allowances pertaining to the family and the cost of living.
- Agents of the upper class receive, in addition, a monthly allowance which amounts from 200 to 500\$.

Upper category of Information agents who are mentioned for exceptional professional ability, can expect a monthly salary of 2.500\$ (Memo No.1204-PTT/TTK of September 13, 1954).

In addition there are many other bonuses, such as efficiency bonus, seniority bonus etc ...

Circular Order of the Presidency No.88-TTP/VP of September 1956 rules that agents of all bodies should be integrated into a single body of Civic Action agents.

b) Temporary School Teachers in South V.N.

Primarily fixed at 800\$ a month, regardless of whether or not they have graduated and of their family status, their salary has been adjusted by Circular Order No.83 - NCC/3, June 23, 1954 of the South Governor, as follows:

- | | |
|-----------------------------|-------------|
| - Basic salary | 1.500\$ |
| - Wife | 300\$ |
| - Children (without limits) | 150\$ each. |

However Circular No.566-TTP/CV-NNV/2 of August 12, 1957 prohibits the recruitment of new agents of this category and schedules the progressive integration of those in service into the body of journalier teachers.

c) Administrative Agents and Auxiliary clerks in Central VN

These agents have been recruited specially in Central VN in order to meet emergency needs which occurred following the extension of the legal authority over areas evacuated by the Viet Cong. Their salary has been ruled as follows:

- | | |
|---|-----------------|
| - Administrative Agents and auxiliary clerks | 1,800\$ a month |
| - Assistant teachers graduated with the complete secondary studies, 1st cycle, degree | 2,700\$ a month |
| - Assistant-teachers graduated with the Certificate degree | 1,700\$ a month |
| - Teachers of popular education | 1,300\$ a month |

The government is studying appropriate measures with the view to terminating this system.

IV.- Promotion

Circular Order No. 334/BOV of July 24, 1950 requires from contractual personnel 3 years seniority in each grade before making them eligible for promotion.

Article 5 of Arrêté No. 739/NV requires 2 years minimum for journalier agents.

As to employees of cat. D-1, paragraph 2 Art. 8 of Arrêté No. 739/NV rules that the salary will equally be raised for 50\$ a month for each 2 years of actual service.

Proposal for promotion occurs once a year at the beginning of the year.

Evaluation sheets are established in accordance with form model No. 2 (piece No. 11) and classified by category of agents.

The Directorate General of Fonction Publique centralizes all the evaluation sheets and submits them to the National Committee for Contracts and Journalier Recruitment.

Decisions taken by this Committee are recorded in a report and can only be enforced after being visaed by the Secretary of State at the Presidency or the Director General of "Fonction Publique"

V.- Advantages

Career employees, temporary employees enjoy many advantages.

A - Remuneration.

Temporary employees are granted a remuneration presumed to permit them to enjoy a decent life. This remuneration has the following two characteristics:

1. It has no contractual but a regulation basis.

The Government has the right to unilaterally fix the wages and make changes without its being required to obtain previous agreement of the concerned employee.

Nevertheless at the end of each month actually worked, the employee has the right to his monthly salary that the Government is bound to pay him.

2. The remuneration is not the counterpart of the work done.

The employee, according to his social class, is believed to be capable of living decently on his salary.

On the other hand, the wages are believed to be adequate to allow employee and his family to live well on his salary. That is why the law forbids attaching wages for any reason whatsoever.

B - Promotion.

Every 2 or 3 years, temporary employees may be promoted followed by a raise of salary.

In the past there were 2 kinds of promotions:

- by seniority
- by merit

At this time only promotion by merit is applied, aiming at boosting commendable talents.

C - Protection of the Personnel health.

Temporary personnel enjoy 15 days annual leave. In the past it was 10 days.

They also enjoy free medical check up and care. He and his family can be admitted in hospitals in accordance with the following classifications.

1st class: those whose basic salary is equal or higher than 4,947\$

2nd class: those whose basic salary is 2,301 - 4,946\$

3rd class: those whose basic salary is lower than 2,300\$

Withholding for hospital sojourn is computed as follows:

1st class: 12\$ a day

2nd " : 10\$ "

3rd : 8\$ "

If the hospital is a private one, it will be:

1st class: 50\$ a day

2nd " : 40\$ "

3rd " : 30\$ "

4th " : 20\$ "

The employee receives his entire salary as long as he stays at the hospital.

Should his health be not fully recovered when leaving the hospital, he might be granted, in addition to his annual leave, a convalescence leave which will be computed as follows:

- first 15 days: salary in full
- following 15 days: half remuneration.

If the sickness was caught on duty (this should be certified by a Medical expert evaluation committee). The employee will still enjoy 1¹/₂ month's leave with half pay.

73

In case of injuries which result in disability or death, Arrêté of January 31, 1944 on "damages caused by the work", will be applied.

In addition to the above mentioned advantages, pregnant female personnel can be granted 2-month maternity leaves with full pay.

D - Advantages granted when resigning.

When definitely resigning from the service, except for disciplinary reasons, the employee can be granted a compensation which is detailed as follows:

- 7 days salary if he has been working for less than 6 months.
- 14 days salary if more than 6 months.
- 1 month salary for each year of actual service but not more than 3 months' salary.

E - Right to Government protection.

Temporary personnel have the right to the protection of the government in both aspects: material and moral.

1. Material. - The Government is bound to assure its personnel the necessary security. In case of fatal accident, Arrêté of January 1, 1958 gives the employee's heirs the right to 12 month's salary, and from the 13th month to the legal transfer of salary. Procedures for this grant are the same as for career employees.
2. Moral. - The Criminal Code punishes those guilty of assault and any violence against agents vested with a public function.

Arts. 222 and 233 expressly provide penalties for insults and assaults against judges or persons holding a position in the Government while in the exercise of their functions.

Insults might result in sentences of 6 days to 1 month of imprisonment, and assault, 1 month to 3 years plus fines. If assault has caused bloodshed, hospital confinement, or fatal injury: hard labor or even capital penalty, if willful.

In addition, the concerned employee can sue the culprit before the civil jurisdiction for damages.

VI.- Duties

Duties of a temporary employee are the same as for a career employee, which mean:

- a. he must properly fulfill his functions.
- b. he must be concerned with nothing but his official duties
- c. he must obey the orders of higher authorities.
- d. he is bound by professional secrecy
- e. he must be diligent, thrifty, honest and straight.
- f. he must be loyal to the Government.

VII.- Responsibilities

They include those vis-à-vis the third party and those vis-à-vis the Government.

1. Vis-à-vis the third party. While performing his duty, the employee is not liable for damages he might have caused to the third party otherwise his initiative would be hampered.

Nevertheless one should discriminate between personal faults and service ones.

Those regarded as service faults are all those which would inevitably be committed by any employee working in like conditions. In this case the government will cover the liability.

Personal faults are conversely those unrelated to the performance of the duty. They involve the personal reaction of the concerned employee and another employee would not commit them. For example: a policeman beating a person who has been arrested without resistance; a teacher insulting a third party while teaching. The employee is personally responsible for this category of fault before the court and liable for damages.

2. Responsibility vis-à-vis the government.

While performing his duty, the employee might cause damage to the government, for instance a postman misplacing the mail, a commissary not delivering supplies on time ...

In this case, except for accountants, a government employee is not responsible. The argument is: if the government is impaired this is due to a failure in the recruitment of the employee or the control of the work done.

As regards government accountants, they are responsible for the fair handling of government funds. To cover this responsibility the government has the usual guarantees over their properties (real estate bonds, cash bonds).

Penalties.

There are 2 kinds of penalties: penal and disciplinary which can be applied at the same time or separately.

1. Penal punishment.

Penalties of this category are usually very severe and involve either the personal liberty or his property.

- a. As it was said in the above chapter: "Obligation to perform nothing but the official duties," temporary personnel and career personnel as well should not take advantage of their functions in order to perform any other remunerative work, or have interest - direct or indirect -- in firms with which they have official dealings.

Art. 175 of the Criminal Code punishes by a sentence of 6 months to 2 years in jail, plus prohibiting the resumption of service those government employees who receive a reward from government enterprises they are supervising or who have interests in governmental business they are managing.

- b. Art 177 of the Criminal Code punishes bribery by 1 to 5 years of jail plus fines. Arrêté 96-TP, January 30, 1954 creates a special committee for the repression of bribery, abuse of authority and other corrupt action. The penalties provided are extremely severe: fines of 20,000\$ to 500,000\$ or 1 million piastres, seizure of properties and loss of civic rights.

2. Disciplinary penalties.

Ordinance No. 9 of July 14, 1950 (Art. 45) merely provides for a scale of disciplinary penalties for guilty career employees in accordance with the gravity of the offense.

Circular Order No. 5⁵~~6~~-TTP/CV/PC/VP, April 29, 1957 rules as follows for the temporary personnel:

- warning
- blame to be recorded in the personal folder
- disciplinary assignment
- 1-2 years suspension of promotion
- reduction to 1 or 2 grades lower
- discharge (in this case the concerned will not be granted the discharge compensation or other advantages).

The first two penalties are pronounced by the Chief of the employing service.

The others can only be inflicted by the authority which nominated the employee and on the proposal of the concerned service.

AppendicesModel of FORM 2 (proposal for promotion)

1. Name:
2. Place and date of birth:
3. Nationality:
4. Family status:
5. Degrees:
6. Profession:
7. Date of entry
8. Present position
 - a. Date of the report made by the Committee of Contractual and journalier agents.
 - b. Category:
 - c. ^{Step:} Echelon:
 - d. Monthly salary:
 - e. Starting date:
 - f. Termination date:
9. How long since the last promotion or the recruitment ^{of interruption} (with mention of any discontinuation period).
10. Seniority in the present position
11. Evaluating quotation
12. Proposal:
Quotation ^{on the scale 0 to} by 20.

Model of Contract Formfor the recruitment of the contractual personnel

Between:

- The Secretary of State for _____ on ^{the} one hand
- and Mr. _____, born on _____, graduated with _____ living at _____.

The following provisions have been agreed:

Article I

Mr. _____ agrees to hire out his service on a temporary basis, to the Secretary of State for _____ starting on _____.

Whatever ~~might~~ the assignment of Mr. _____ ^{may} be, the present contract ~~would confer~~ ^{on} to Mr. _____ neither the capacity of being a civil servant, agent or employee of the government, nor the right to be nominated in the permanent and regular body.

Throughout the duration of the validity of this contract, the Government can assign Mr. _____ to work in any place ⁱⁿ of the Viet Nam territory without its being ^{required to give} engaged in giving any notice or extra compensation.

Throughout the duration of the contract if service needs prevent the government ^{from} to assign Mr. _____ ^{ing} with the above mentioned employment, Mr. _____ ^{to} promises to perform any other similar functions.

Article 2Duration of the Contract

The duration of the contract is agreed as ^{1 year} 6 months starting _____.

Article 3Renewal of the Contract

In ^{no} ~~any~~ case, ^{can} ~~this~~ contract could not be renewed by tacit agreement.

On the government proposal or the concerned's request, this contract ^{may} ~~might~~ be renewed for ^{one-year} ~~each 6 month~~ periods by an amendment.

Article 4Salary

Mr. _____ is agreed ^{to} ~~a~~ salary of _____

Article 5

Throughout the validity of the contract, Mr. _____ has the right to 8 days leave for each 6 months period of Service, 15 days leave for each 1 year of service.

Article 6

Medical care, admittance in hospital, convalescent
leave

Mr. _____ has the right to medical care and admittance in accordance with the regulations applicable to civil servants ^{in the status} ~~to whom~~ he is assimilated.

In case of sickness formally witnessed by a Government physician, Mr. _____ can obtain a 15-days leave ^{certified} ~~full paid~~ ^{with pay} and a 15 additional days leave ^{at} ~~half-paid~~ ^{pay}.

After this leave, the Government can, on the advice of the Health Committee which has examined Mr. _____, cancel the contract without notice if Mr. _____ is recognized ^{as} ~~unfit~~ for regular service. In this case:

Article 8

If the cancellation is for disciplinary reasons the party can not be hired by any other government service.

Article 9

The contract is established in 2 copies.

(Mr. ✓ should handwrite
the statement: "Read
and accepted" and sign here.)

Date

The Secretary of State for _____

1. If Mr. _____ has not ^{completed} attained 1 year ^{of} service he has the right to 1 month's salary ^{or} compensation.
2. If Mr. _____ has more than 1 year of service, he has the right to 1 month's salary ^{as} compensation for each period of 1-year service, with 6 months' remuneration as the ^{maximum} limit.

Article 7

Cancellation of the contract

1. The contract will be cancelled if Mr. _____ does not work satisfactorily; proof is given of lack of discipline, inefficiency or incapacity; commits a grave fault; refuses to join an assigned post; works for a third party or is sentenced ^{period of the} during the contract.

In this case the cancellation will be, by right, without notice nor compensation.

2. If Mr. _____ intends to terminate his service, he ^{must} should give 2 month's notice to the Government.
3. If the Government realizes that the employment which has been assigned to Mr. _____ appears ^{no} longer indispensable, it ^{must} should send a notice 2 months in advance to Mr. _____ and grant him 1 month's salary for 1 year of service, 15 days salary for each 6 months' service, 7 days' salary for each 3 months' service, with 3 months' salary as the ^{maximum} limit.
4. If the contract is cancelled for health reasons, Mr. _____ will have the right to ^{the} advantages provided by art. 6, above mentioned.