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The Problematic of Justice in Disciplinary Accountability Between the Requirements of Administrative Discipline and the Imperative of Protecting the Public Employee

إشكالية العدالة في المسائلة التأديبية بين متطلبات الإنضباط الإداري ومقتضيات حماية الموظف العام

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Abstract:

Disciplinary accountability occupies a central position in the civil service system, as it ensures the regular functioning of the public facility and prevents deviations from the requirements of the public interest. The Algerian legislator, through Ordinance No. 06 03 of 15 July 2006 establishing the General Civil Service Law, introduced legal provisions regulating disciplinary accountability. These provisions encompass mechanisms guaranteeing the rights of employees subject to disciplinary proceedings, together with rules governing the imposition of disciplinary sanctions. However, practical application has revealed difficulties concerning the effectiveness of these mechanisms and their capacity to secure justice. The study therefore analyzes these mechanisms, identifies the principal obstacles limiting their efficiency, and proposes appropriate means to reinforce justice within the framework of disciplinary accountability in the civil service.

Key Words: *Disciplinary Accountability, Public Employee, Disciplinary Authority, Justice, Disciplinary Guarantees, Rules of Disciplinary Sanction.*

الملخص:

تحتل المساءلة التأديبية مكانة محورية في منظومة الوظيفة العامة، نظراً لارتباطها الوثيق بضمان سير المرفق العام بانتظام، ومنع أي انحراف قد يشوب الأداء الوظيفي بعيداً عن مقتضيات المصلحة العامة، وفي هذا السياق أرسى المشرّع الجزائري من خلال الأمر رقم 06 – 03 المؤرخ في 15 يوليو 2006 المتضمن القانون الأساسي للوظيفة العامة جملة من الأحكام القانونية لتنظيم المساءلة التأديبية، تضمنت جملة من الآليات المرتبطة بضمانات الموظف محل المتابعة التأديبية، إلى جانب الضوابط القانونية الحاكمة لتوقيع العقوبة التأديبية، غير أن التطبيق العملي لهذه الأحكام أفرز عددًا من الإشكالات المرتبطة بمدى فعالية هذه الآليات و قدرتها على تحقيق العدالة المنشودة، ومن ثمّ تم تناول مختلف هذه الآليات بالتحليل، مع بيان أبرز العوائق التي تحد من فعاليتها، واقتراح السبل الكفيلة بتعزيز العدالة في نطاق المساءلة التأديبية داخل الوظيفة العمومية.

الكلمات المفتاحية: المساءلة التأديبية، الموظف العام، سلطة التأديب، العدالة، الضمانات التأديبية، ضوابط العقوبة التأديبية.

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Introduction:

The civil service constitutes one of the fundamental pillars upon which the modern state is built, being the essential instrument relied upon by public authorities in implementing public policies and achieving comprehensive development objectives. The civil service is an integrated system through which the effectiveness of public administration and its capacity to respond to the requirements of the public interest are manifested, ensuring the continuity of public utilities in a regular and consistent manner. Within this framework, the public employee occupies a central position in this system, as the human element through which the activities and functions of the administration are carried out. This makes the employee's professional conduct and adherence to his duties a decisive factor in achieving administrative efficiency and reinforcing citizens' trust in the performance of public services.

In this context, the disciplinary system assumes particular importance as the legal mechanism enabling the administration to impose functional discipline and ensure respect for the professional obligations incumbent upon employees, by allowing it to hold them disciplinarily accountable when these duties are breached or when violations occur that may compromise the proper functioning of the public service. However, the disciplinary authority must refrain from abusing its powers or deviating from the rules governing the disciplinary system.

Within this framework, Ordinance No. 06-03 of 15 July 2006, containing the General Statute of the Civil Service, established the legal framework governing disciplinary accountability within the Algerian civil service. Its purpose was to regulate the exercise of disciplinary authority through a set of substantive and procedural rules, and to achieve a balance between the requirements of administrative discipline and the guarantees of protecting the public employee. Through this Ordinance, the legislator sought to classify professional misconduct and the corresponding sanctions according to varying degrees, while also providing a set of safeguards granted to the employee subject to disciplinary proceedings. Furthermore, it introduced procedures for disciplinary accountability, some specific to sanctions of the first and second degrees, and others specific to sanctions of the third and fourth degrees.

These provisions, taken as a whole, embody the legislator's intent to establish a disciplinary system founded on the principles of legality and justice. Yet, the practical application of these texts raises a series of issues concerning the adequacy of the prescribed safeguards and the effectiveness of the disciplinary authority in achieving the desired justice. Added to this is the broad scope of the administration's discretionary power in defining professional misconduct and determining sanctions, which may negatively affect the realization of genuine disciplinary justice within the civil service. This leads to the following problematic question: To what extent has the system of disciplinary accountability contributed to achieving actual justice within the Algerian civil

service sector, balancing the requirements of functional discipline with the necessity of protecting the public employee against abuse and deviation in the exercise of disciplinary authority?

We shall address this problematic through two sections: the first will examine the mechanisms for achieving disciplinary justice within the civil service, while the second will highlight the obstacles to realizing justice in disciplinary accountability and the means of strengthening it.

Section I:
Mechanisms for Achieving Justice in Disciplinary Accountability

Given the direct impact that the exercise of disciplinary authority in the civil service has on the rights of employees and the stability of their professional careers, the legislator intervened to establish legal mechanisms that regulate the exercise of this authority within the framework of justice and legality. This was achieved through the adoption of a set of procedural safeguards to protect employees' rights and substantive rules governing the imposition of disciplinary sanctions. Accordingly, these mechanisms will be presented under the following two requirements:

A) Safeguards for the Public Employee Subject to Disciplinary Accountability:

The safeguards granted to the public employee vary according to the different stages of disciplinary accountability. Some of these safeguards pertain to the stage preceding the imposition of a disciplinary sanction, while others relate to the stage following the imposition of such a sanction. These safeguards will be examined through the following two branches:

1- Safeguards for the Public Employee Before the Issuance of the Disciplinary Decision:

The stage preceding the imposition of a disciplinary sanction is of paramount importance, as it represents the opportunity available to the public employee to avoid the issuance of an arbitrary disciplinary decision against him. For this reason, the legislator surrounded this stage with a set of safeguards, which may be outlined as follows:

Firstly: The Safeguard of Informing the Employee and Granting Access to His Disciplinary File

Informing the employee means that the administration must notify him of the misconduct attributed to him before taking decisions that could cause him material or moral harm. This notification includes informing him of the charge brought against him and the various pieces of evidence indicating its commission[1]. As for granting access to his disciplinary file, it refers to acquainting him with all the contents of the file, including papers, documents, and records related to the case and the charges attributed to him, which assist him in preparing his defense. Allowing the accused employee to review the investigation file is considered an extension of informing him of the charge attributed to him, and this right enables him to prepare adequately to defend himself, given the importance of the file and the information and documents it contains concerning the case[2].

The Algerian legislator enshrined this safeguard in Article 167 of Ordinance No. 06-03, containing the General Statute of the Civil Service, which provides: "The employee subject to disciplinary proceedings has the right to be informed of the misconduct attributed to him and to review his entire disciplinary file within fifteen (15) days from the initiation of the disciplinary action."

It is noteworthy, however, that the Algerian legislator remained silent on specifying the manner in which the employee should be notified of the misconduct attributed to him, as well as the method by which he should be informed of his right to review his disciplinary file. The legislator also did not address the sanction resulting from non-compliance with this procedure.

Moreover, the legislator did not clarify the means to be used for notifying the employee of the alleged misconduct, nor did he establish a mechanism to ensure the employee's access to his disciplinary file. In addition, he did not stipulate the consequence of violating this safeguard. Nevertheless, Algerian administrative jurisprudence has considered this safeguard to be a fundamental procedural requirement, the breach of which leads to the annulment of the disciplinary decision issued against the employee.

Secondly: Request for Administrative Investigation

The disciplinary investigation holds significant importance within disciplinary procedures, as it serves as a legal instrument enabling the clarification of the relationship between the accused employee and the charge attributed to him, and as a means of collecting sufficient evidence. Since disciplinary proceedings are punitive in nature, conviction cannot be based merely on suspicion or doubt; rather, it must rest on certainty derived from the facts themselves. Moreover, the investigation constitutes the foundation upon which the superior authority relies in proposing or imposing a sanction[3].

The legislator did not define the administrative investigation in Ordinance No. 06-03, which led legal scholars to provide several definitions[4]. The most appropriate definition is that it is: *"**A procedure undertaken by the administration with the aim of ascertaining the truth of the acts attributed to the public employee, and determining whether they constitute a disciplinary violation warranting referral to the disciplinary body or not.**"* This investigation draws upon multiple sources, such as instructions from the employee's immediate superior, reports from inspection bodies, or complaints and notifications from beneficiaries of public services. It must be conducted with seriousness and objectivity, serving as a means of uncovering the truth and assessing the employee's legal responsibility, rather than as a tool of retaliation by the administration.

Article 171 of Ordinance No. 06-03 provides for the request of an administrative investigation, stating: *"**The competent Joint Administrative Committee, convened as a disciplinary council, may request the opening of an administrative investigation from the authority vested with appointment powers before ruling on the case at hand**."*

An analysis of the text of this article reveals a clear legislative deficiency in two points. The first consists in the legislator's failure to confer upon the investigation procedure a mandatory character, which is understood from the term *"may"* appearing at the beginning of the article. Thus, the investigation procedure is subject to the discretionary power of the administration, which may deprive the employee subject to disciplinary accountability of benefiting from this safeguard. The second consists in the legislator's assignment of the task of conducting the investigation to the appointing authority, which undermines the principle of impartiality, since this authority combines both the functions of accusation and investigation at the same time. There is no doubt that this is not in the interest of the employee in many cases, and the legislator could have avoided this deficiency by entrusting the task of investigation to an independent body.

Thirdly: The Safeguard of Defense

The safeguard of defense is considered a fundamental means of enabling the accused to prove his innocence or to refute the accusations attributed to him. This safeguard aims to reveal the truth and prevent arbitrariness by allowing the employee to deny responsibility for what has been attributed to him, or at least to provide mitigating circumstances for that responsibility[5]. This safeguard was enshrined in Article 175 of the Constitutional Amendment of 2020: *"**The right to defense is recognized**."* It is also stipulated in Article 169 of Ordinance No. 06-03, which states: *"**The employee may present written or oral observations and summon witnesses, and he has the right to be assisted by an authorized defender or by an employee of his own choosing**."*

The Algerian legislator guaranteed the public employee a set of legal means enabling him to exercise his right of defense, pursuant to Articles 168 and 169 of Ordinance No. 06-03. These include: notifying the employee of the date of his appearance before the council at least fifteen (15) days in advance, through registered mail with acknowledgment of receipt; enabling him to present written or oral observations; granting him the right to be assisted by a lawyer or an employee of his choice to help in his defense; and granting him the right to summon witnesses[6].

Failure to respect the legal means established to guarantee the right of defense results in the disciplinary decision being tainted with a defect in form and procedure, making it subject to judicial annulment. This is the position adopted by Algerian jurisprudence in its rulings, including the decision of the Algerian Council of State dated 30/04/2002, which suspended the execution of a disciplinary decision on the grounds that the disciplinary authority had violated the constitutionally guaranteed right of defense by failing to respect a procedural requirement, namely granting the plaintiff sufficient time to prepare her defense[7].

2- Safeguards for the Employee After the Issuance of the Disciplinary Decision:

The safeguards granted to the public employee subject to disciplinary accountability are not limited to the stage preceding the issuance of the disciplinary decision; rather, they also extend to the stage following it. This allows the employee the

possibility of reviewing the decision and verifying its conformity with the principle of legality. The safeguards established for this stage are as follows:

Firstly: The Safeguard of Notification of the Disciplinary Decision

After the issuance of the disciplinary decision, the disciplinary authority must notify the concerned employee within a period not exceeding eight (8) days from the date of its adoption. This is stipulated in Article 172 of Ordinance No. 06-03.

Notification has great importance because knowledge of the decision constitutes the legal fact upon which the time limit for submitting an administrative grievance and the time limit for filing an annulment action against the disciplinary decision begins to run.

Secondly: The Safeguard of Grievance before the Appeals Committee

The right to grievance is considered a fundamental safeguard for the employee to contest the disciplinary decision issued against him in cases where the administration has exceeded its powers, thereby ensuring a review of the legality of this decision. The Algerian legislator enshrined this safeguard in Article 175 of Ordinance No. 06-03, which states: *"**The employee who has been subject to a disciplinary sanction of the third or fourth degree may submit a grievance before the competent Appeals Committee within a period not exceeding one month from the date of notification of the decision**."*

It is understood from the text of the last article that the legislator acknowledged the possibility for the employee to submit a grievance before a specialized committee, namely the Appeals Committee[8], within a period not exceeding one month from the date of notification of the disciplinary decision. The legislator explicitly restricted the right of grievance to disciplinary sanctions of the third and fourth degrees, and did not extend it to sanctions of the first and second degrees. It would have been preferable for the legislator to recognize this right for them as well ،particularly since one of the sanctions of the second degree, namely removal from the promotion list, should necessarily be subject to grievance before the Appeals Committee due to its seriousness and impact on the employee's professional career.

The administrative grievance is an optional procedure for the employee against whom the disciplinary decision has been issued. He may choose either to resort to it or to go directly to the judiciary. This is understood from the phrase *"the employee may"* at the beginning of Article 175 of Ordinance No. 06-03. The submission of the grievance before the administrative authority can be proven by all written means, and it is filed together with the petition. The submission of the administrative grievance to the Appeals Committee suspends the execution of the disciplinary decision.

If the employee chooses to resort to the administrative grievance, he must comply with the formal and substantive conditions stipulated by law[9].

This committee rules on the appeal within a period of 45 days from the date the grievance is submitted to it. This is stipulated in Article 55 of Executive Decree No. 20-199 dated 25/07/2020 concerning joint administrative committees, appeals committees,

and technical committees in public institutions and administrations. The committee issues its decision in writing, either by confirming the disciplinary sanction imposed on the offending employee, modifying it in accordance with the requirements of the law, or annulling it if it is unlawful.

It should be noted that the deadlines and time limits relating to administrative grievance differ. In the Code of Civil and Administrative Procedure, paragraph one of Article 830 stipulates that the time limit is four (04) months starting from the date of personal notification of the administrative decision, whereas Ordinance No. 06-03 provides for a time limit of one month starting from the date of personal notification of the disciplinary decision.

It should also be noted that the deadlines and timeframes relating to administrative grievance are inconsistent. In paragraph two of Article 830 of the Code of Civil and Administrative Procedure[10], the legislator granted the administrative authority a period of two months to rule on the grievance, starting from the date it was received. In contrast, Article 55 of Executive Decree No. 20-199 mentioned earlier grants the competent Appeals Committee a period of 45 days to issue a reasoned decision, starting from the date it was notified. It would have been preferable for the legislator to unify these deadlines and make them consistent between the Code of Civil and Administrative Procedure, the Civil Service Statute, and Executive Decree No. 20-199[11].

It should be noted that the employee may resort directly to the judiciary to challenge the disciplinary decision without first submitting a grievance to the administration. In this case, the time limit begins to run from the date of individual or personal notification of the concerned employee, or from the date of publication of the decision. The time limit, depending on the situation, ends on the day following the expiration of that period, that is, upon the completion of the previously specified duration[12].

Thirdly: The Safeguard of Judicial Appeal

The safeguard of judicial appeal represents the last resort for the employee when other safeguards do not assist him in achieving the annulment of the disciplinary sanction issued against him[13]. In application of this safeguard, disciplinary decisions, as individual administrative decisions, are subject to the supervision of administrative courts through the annulment action.

The legislator set the time limit for this appeal at four months in Article 829 of the Code of Civil and Administrative Procedure, which stipulates: *"**The time limit for appeal before the administrative court is set at four months, running from the date of personal notification of a copy of the individual administrative decision or from the date of publication of the collective or regulatory administrative decision**."*

The legislator also specified the judicial authority competent to rule on appeals against administrative decisions. If the administrative decision is issued by local bodies (the wilaya, the municipality, executive directorates, and public institutions of an administrative nature), jurisdiction lies with the administrative courts. If the

administrative decision is issued by central administrative authorities, jurisdiction lies with the Administrative Court of Appeal of Algiers[14].

The admissibility of an annulment action against a disciplinary decision, in accordance with the provisions of the Code of Civil and Administrative Procedure, is subject to a set of formal and substantive conditions. Formal conditions require that the disciplinary decision be final, that the public employee has a legitimate interest in bringing the action, and that both the standing of the challenging employee and the issuing administration be established. In addition, the annulment action must be filed within four months from the date of notification of the contested disciplinary decision. Substantive conditions require that the annulment action be based on one of the recognized grounds for challenging administrative decisions, namely: defect of incompetence, defect of form and procedure, defect of subject matter, defect of cause, and abuse of power[15].

Judicial appeal against the disciplinary decision results in the suspension of its execution. Therefore, the concerned employee must file an annulment action before the competent judicial authority (the administrative court or the Administrative Court of Appeal of Algiers, depending on the case), followed by a request to suspend the execution of the disciplinary decision before the same authority, under penalty of inadmissibility of the action. The suspension request is decided by a reasoned ruling, which must be notified to the concerned administrative authority within 24 hours of its issuance. This order is subject to appeal before the Council of State within 30 days from the date of notification[16].

Fourthly: The Safeguard of Erasing the Disciplinary Sanction (Rehabilitation)

The safeguard of rehabilitation for the employee against whom a disciplinary decision has been issued carries great importance, as it constitutes a means of professional reintegration for this employee. It aims to open the door of repentance before the employee and encourage him to rectify his conduct, thereby removing all the negative effects left by the disciplinary sanction on his professional life[17]. The legislator enshrined this safeguard in Article 176 of Ordinance No. 06-03, which states: "***The employee who has been subject to a first or second degree sanction may request rehabilitation from the authority vested with appointment powers, after one year from the date of the sanction. If the employee has not been subject to a new sanction, rehabilitation shall occur by operation of law after two years from the date of the sanction decision. In the case of rehabilitation, all effects of the sanction are erased from the concerned employee's file***."

The issuance of a rehabilitation decision produces two important effects. The first is that the disciplinary sanction is considered as if it never existed for the future, meaning that all consequences resulting from this sanction are erased as of the date of the competent authority's decision to accept the request for erasure. The second effect concerns the removal of the sanction documents from the employee's file.

In this context, a question arises as to whether the administration actually destroys all administrative documents containing the disciplinary sanction permanently from the employee's file, or whether it retains them in some form. Referring to the last paragraph of Article 176 mentioned above, it is clear that the legislator confirmed the administration's obligation to remove and erase every trace of the disciplinary sanction. This requires the administration to promptly implement this without delay or negligence, ensuring the effectiveness of this safeguard and achieving its intended purpose.

B) Rules of Disciplinary Sanctions:

Although the disciplinary authority enjoys the original right to impose sanctions on the public employee when he commits disciplinary violations, this right is subject to a set of legal rules established to limit arbitrariness and achieve justice. These rules are divided into two main types, which will be addressed in the following branches:

1- General Rules Governing Disciplinary Sanctions:

Disciplinary sanctions are subject to a set of fundamental general principles that form the legal framework regulating the process of determining the sanction. These principles consist of four main rules, which are presented as follows:

Firstly: The Principle of Legality

The principle of legality of the sanction means that when an employee commits a professional violation, the disciplinary authority imposes one of the sanctions provided for by law, and it is not permitted to impose any other sanctions, otherwise it would be considered a violation of this principle[18].

While the principle of legality in criminal law covers both the crime and the sanction (*no crime and no sanction without a legal text*), in disciplinary law this principle is limited to sanctions without covering violations[19].

The principle of legality of the sanction requires the disciplinary authority to adhere to the limits prescribed by law for the sanction, respecting the quantitative scope of the types of sanctions without increase or decrease. It also requires interpreting punitive provisions narrowly, meaning analogy cannot be used to create a new sanction not expressly provided for by the legislator. Finally, it prohibits resorting to disguised punishment, that is, imposing a sanction not stipulated by the legislator[20].

Secondly: The Principle of Equality

The principle of equality was enshrined in international treaties and conventions, and the Algerian legislator derived it in Article 37 of the constitutional amendment and Article 27 of Ordinance No. 06-03. Its implication is that the sanctions provided for must apply to all violating employees without any distinction between them. A disciplinary sanction does not differ according to functional positions, whether in terms of its type or its degree in the administrative hierarchy. A professional error deserves the appropriate sanction whether it is committed by a newly appointed employee or a long-serving one, or whether he occupies an ordinary grade or a higher grade[21].

Thirdly: The Principle of Personalization of the Sanction

The principle of personalization of the disciplinary sanction means that the sanction affects only the employee responsible for the disciplinary violation[22]. Consequently, if the employee dies before the issuance of the sanction decision, the disciplinary action is extinguished. If he dies after the issuance of the sanction decision but before its execution, this leads to the disappearance of the effects of the disciplinary decision, since these effects cannot be imposed on the heirs of the deceased employee. A disciplinary action can only be brought against a specific person and no one else, in order to avoid imposing a sanction on an innocent party who has no connection to the disciplinary violation, and to provide job security, stability, and reassurance to employees. This positively reflects on the proper functioning of public services[23]. The legislator adopted this principle in Article 160 of Ordinance No. 06-03, which states: *"**Every abandonment of professional duties or breach of discipline, and every error or violation committed by the employee during or on the occasion of performing his duties, constitutes a professional error exposing its perpetrator to a disciplinary sanction…"*** The phrase *"exposing its perpetrator to a disciplinary sanction"* indicates that the disciplinary sanction is personal[24].

Fourthly: The Principle of Non-Retroactivity

The principle of non-retroactivity of the disciplinary sanction means that the date of imposing the sanction and the consequences resulting from it can in no way be retroactive. A disciplinary sanction cannot affect the rights and legal positions already acquired by employees with retroactive effect. The date of imposing the sanction is determined by the decision issued regarding it, which must be subsequent to the date of committing and observing the professional error, and it can in no way be prior to or simultaneous with it[25].

2- Rules Related to the Assessment of the Disciplinary Sanction:

The disciplinary authority, when assessing the disciplinary sanction, is bound by a set of principles that regulate its discretionary power in line with the requirements of justice and fairness. These principles are addressed as follows:

Firstly: The Principle of Proportionality

The principle of proportionality means the necessity of observing the appropriateness between the degree of seriousness of the violation and the type and extent of the sanction imposed. This principle is achieved through the disciplinary authority's choice of the sanction suitable for the committed fault, avoiding both excess and arbitrariness[26], as well as unjustified leniency that may strip the disciplinary sanction of its intended purpose.

The principle of proportionality requires a balance between the principles of *effectiveness* and *guarantee* in the disciplinary field. While the disciplinary authority has the right to choose the appropriate sanction from among those established by the legislator, in order to ensure the proper functioning of the administrative body, it is also

obliged not to abuse this right, as a safeguard for the employee so that he is not punished more severely than what he has committed[27].

The legislator adopted this principle in Article 161 of Ordinance No. 06-03, which states: *"**The determination of the disciplinary sanction applied to the employee depends on the seriousness of the fault, the circumstances in which it was committed, the responsibility of the concerned employee, the consequences on the functioning of the service, as well as the harm caused to the service or to the beneficiaries of the public facility**."*

Secondly: The Principle of Unity of the Sanction

The principle of unity of the disciplinary sanction means that a public employee cannot be punished for a single fault with two disciplinary sanctions unless there is a legal provision allowing it. The disciplinary sanction achieves its purpose once it is imposed on the violating employee, without subjecting him to another sanction for the same fault. Otherwise, this would constitute an excess in punishment and a deviation from the objective for which the disciplinary system was established[28]. The legislator adopted this principle in Article 183 of Ordinance No. 06-03, which states: *"**The cases of professional faults provided for in Articles 178 to 181 of this Ordinance lead to the application of one of the disciplinary sanctions of the same degree, as provided for in Article 163."*** **The phrase *"application of one of the disciplinary sanctions of the same degree"*** clearly indicates the principle of unity of the disciplinary sanction, meaning that a single professional fault can only result in one sanction of the same degree. This ensures that punishment is not excessive and preserves the fundamental purpose of the disciplinary system.

Thirdly: The Principle of Reasoning

The reasoning of the disciplinary decision means that it must clearly include the essential elements on which the sanction is based, as well as the circumstances and conditions surrounding the commission of the violation that had weight in assessing the sanction[29]. This enables the employee to determine his position towards the decision, either by challenging it before the judiciary or by accepting it[30]. The legislator enshrined this principle in Article 165 of Ordinance No. 06-03.

The reasoning of the disciplinary decision, in order to be effective in producing its legal consequences and achieving its intended purpose, requires compliance with a set of conditions[31]: that the reasoning of the disciplinary decision be serious and sufficient, that it be direct and contemporaneous with the issuance of the disciplinary decision, that it include a statement of the fact and its circumstances, that it include the legal basis relied upon by the disciplinary authority to impose the disciplinary sanction, and that it include a response to all the aspects of the employee's defense.

Section II:
Obstacles to Achieving Justice in Disciplinary Accountability

Despite the legislative efforts made to establish legal mechanisms aimed at achieving justice in disciplinary accountability, through the consolidation of a set of guarantees that regulate the exercise of disciplinary authority, practical reality reveals the existence of a number of obstacles that may limit the effectiveness of these mechanisms and affect the realization of disciplinary justice as intended. These obstacles will be presented through the following two requirements:

A) The Non-Exclusive Definition of Disciplinary Faults:

While the criminal field is governed by the principle of legality, the essence of which is *"no crime and no sanction without a legal text"*; meaning that all crimes and the sanctions prescribed for them are exhaustively defined, the administrative nature of disciplinary law leaves wide room for discretionary power, especially in disciplinary criminalization, due to the absence of an exhaustive enumeration of professional faults[32].

The Algerian legislator, in regulating professional faults, relied on combining both methods of codification and classification in defining professional faults. As for codification, some laws outside the scope of the Civil Service Law provided for certain forms of disciplinary offenses, such as the Penal Code, the Anti-Corruption Law, the General Statute of Workers, in addition to specific texts regulating the affairs of employees. As for classification, the legislator, in Articles 178 and 181 of Ordinance No. 06-03, used the phrase *"are considered in particular..."* to clarify the professional faults associated with each of the four degrees by way of example, which allows the inclusion of other violations according to the specificity of certain corps, such as national security officers, prison administration, and customs administration, within each degree in the special statutes[33].

1- Reasons for the Non-Exclusive Legislative Definition of Disciplinary Faults:

The legislator's approach in not providing an exclusive definition of disciplinary faults was not an arbitrary legislative choice, but rather came in response to a set of factors and considerations that can be summarized as follows:

Firstly: The Broad Scope of Acts Considered Disciplinary Faults

The acts that can be considered professional faults are numerous and diverse[34], which makes their precise enumeration difficult for the legislator due to their vast complexity. This difficulty is further increased by the multiplicity and diversity of professional duties, which vary according to the nature of the work, its circumstances, and the status of the employee. Moreover, these duties themselves are derived from the laws governing the functioning of the public service, which leads to the impossibility of defining professional faults in a general manner applicable to all categories of employees.

Secondly: The Difficulty of Precise Linguistic Description and Definition of Professional Duties

The drafting by the legislator of legal texts describing professional duties and prohibitions is a difficult and arduous task, as it is hard to precisely determine their intended meaning with clear expressions and accurate, well-defined terms that do not allow for interpretation or differences in explaining and clarifying their meanings[35].

Thirdly: Attempting Exclusive Definition Would Weaken Administrative Effectiveness

The non-exclusive definition of professional faults strengthens disciplinary effectiveness because the nature of professional work requires that the administration not be confined within a rigid framework of texts. Rather, it must be left with a margin of freedom to keep pace with the transformations that occur in the professional field and to enable it to criminalize certain acts even if they are not included in the list of professional faults, if it sees in them a violation of the requirements of professional duty, while at the same time setting controls so that it does not abuse its discretionary authority[36].

2- Effects of the Non-Exclusive Definition of Disciplinary Faults:

The legislator's failure to define disciplinary faults exhaustively results in two important consequences that reflect on the system of disciplinary accountability and the way its mechanisms are implemented. It is therefore necessary to examine and explain them as follows:

Firstly: The Enjoyment by the Disciplinary Authority of Wide Discretionary Power

The non-exclusive definition of professional faults, unlike what the legislator did with criminal offenses, grants the disciplinary authority the possibility of criminalizing acts committed by its employees by exercising its discretionary power. It is established that whoever legally holds disciplinary authority may consider a positive or negative act committed by the employee in the course of his duties as a professional fault if it does not conform to his professional obligations.

The concept of authority, as the essence of the disciplinary system, is not merely a basis upon which disciplinary power is determined, but it also defines the very concept of professional fault. Thus, the disciplinary authority has wide discretionary competence in considering whether a certain act constitutes a professional fault or not, depending on its interpretative and classificatory approach toward expansion or restriction. This has made it enjoy a quasi-legislative power in creating descriptions of professional fault, assessing in each case whether the act committed by the employee undermines his professional duties or his status as a state employee[37].

Secondly: Judicial Oversight of the Disciplinary Authority's Discretionary Power

If the non-exclusive definition of disciplinary faults has led to the expansion of the discretionary power granted to the administration in classifying the acts of the employee and considering them professional faults, this in turn requires subjecting such power to the oversight of administrative justice, in order to avoid any abuse or deviation in its use. The administration's freedom in assessing disciplinary fault, although imposed by the

reality of administrative organization, since the essence of administrative law is discretionary competence and the ambiguity and insufficiency of legal texts[38] remains bound by the limits of legality.

This justifies the intervention of administrative justice to verify the soundness of the basis upon which the disciplinary decision rests and the legality of the classification of the acts attributed to the employee.

Administrative courts exercise their jurisdiction and competence in overseeing the discretionary power exercised by the disciplinary authority, both in terms of the material existence of the facts and their classification, in addition to their oversight of the proportionality of the sanction to the offense committed[39].

B) The Limited Role of the Joint Administrative Committee as a Disciplinary Council:

The Joint Administrative Committee was established with the aim of enabling the public employee to participate in organizing and monitoring his professional career, of which discipline is a part, given its direct impact on his professional rights. From this perspective, the committee plays a central role in disciplinary accountability. However, the effectiveness of this committee is limited due to several factors, which we will present after first examining the nature of the tasks and opinion of this committee in the following two requirements:

1- The Nature of the Tasks and Opinion of the Joint Administrative Committee Convened as a Disciplinary Council:

Determining the nature of the tasks of the Joint Administrative Committee and the nature of its opinion as a disciplinary council constitutes a necessary basis for understanding and analyzing the reasons for the limited role of this committee. Therefore, we will set them out as follows:

Firstly: The Nature of the Work of the Joint Administrative Committee Convened as a Disciplinary Council

The Joint Administrative Committee convened as a disciplinary council undertakes the task of adjudicating the disciplinary case within 45 days from the date of its notification. This is what the legislator referred to in paragraph two of Article 165 of Ordinance No. 06-03. The committee carries out its task according to the following procedures[40]:

a. Holding the Session:

Once the disciplinary case is initiated before the committee in accordance with Article 165 of Ordinance 06-03, after being notified by the authority vested with the power of appointment, the president of the council sets the date, time, and place for the meeting of the disciplinary council. The accused employee is summoned to appear before the committee convened as a disciplinary council at least 15 days prior to the date of the session, by means of a registered letter with acknowledgment of receipt, in accordance with Article 165 of Ordinance 06-03.

On the day set for the meeting of the disciplinary council, the president of the council appoints a rapporteur for one or more cases depending on their importance. The rapporteur then reads the disciplinary case before the attending members and the employee, in the presence of the person chosen by the employee to defend him.

The rapporteur also reads the report by which the competent authority notified the disciplinary council. After that, the council proceeds to hear the witnesses mentioned by the administration in its report, one after another.

b. Request for Additional Investigation:

The disciplinary council may order an additional investigation if it finds that the facts concerning the employee or the circumstances in which they occurred are insufficient. The purpose of this is to obtain further information related to the facts of the disciplinary case. This investigation is carried out under the supervision of the administration with the participation of one or more members of the council. The person responsible for conducting the additional investigation is designated during the session in an official record, and the results of the investigation are sent to the president of the council, who then summons the accused employee in accordance with the previous procedures.

c. Deliberation:

After completing the hearing of the various interventions and observations related to the disciplinary case and its circumstances, the disciplinary council withdraws to deliberate in closed sessions. The rapporteur does not attend the deliberation if he is not a member of the disciplinary council, nor does the accused employee or his defender. Only the committee's secretary is allowed to attend, given the confidentiality of the deliberation.

d. Issuing the Binding Reasoned Opinion:

After carrying out the aforementioned procedures, notification, hearing of witnesses, additional investigation in case of insufficient facts, and deliberation; the council issues its opinion by majority vote of those present. The council's opinion is recorded in an official report, which is immediately communicated to the employee and to the authority vested with the power of appointment.

Secondly: The Authority of the Opinion of the Joint Administrative Committee Convened as a Disciplinary Council

By referring to the wording of Article 165 of Ordinance 06-03, the phrase *"after taking the binding opinion of the Joint Administrative Committee"*, and Article 12 of Executive Decree No. 20-199 concerning Joint Administrative Committees, Appeals Committees, and Technical Committees in public institutions and administrations: *"...the Joint Administrative Committees shall be consulted to give a prior conforming opinion on matters related to the following cases: ... 6 – sanctions of the third and fourth degrees..."*.

It is understood from the two aforementioned texts that the legislator has conferred upon the opinion issued by the committee a binding character, whereby the authority

vested with the power of appointment is obliged to adhere to it, whether it coincides with its classification of the professional fault or contradicts it. Thus, if the disciplinary committee issues an opinion that does not agree with the administration's proposal, and since the opinion of the disciplinary council is mandatory, the administration cannot pronounce the sanction it had proposed. Likewise, the administration cannot lodge an appeal before the Appeals Committee pursuant to the provisions of Executive Decree No. 20-199[41].

2- Reasons for the Limited Role of the Joint Administrative Committee Convened as a Disciplinary Council:

Despite the central role played by the Joint Administrative Committee in organizing disciplinary accountability, its practical effectiveness remains limited. This is due to a set of factors that affect its independence and the efficiency of its work. These factors will be explained as follows:

Firstly: The Dominance of the Administration

By referring to the legal texts, we find that the legislator has established the dominance of the administration over the disciplinary accountability process, and this is manifested in two main aspects. The first is the administration's exclusivity in preparing the disciplinary file, collecting evidence, and determining the legal classification of the professional fault. This is stipulated in Article 166 of Ordinance 06-03: *"The disciplinary council must be notified by a justified report from the authority vested with the power of appointment…"*. It is also stipulated in Article 162 of the same Ordinance: *"Disciplinary procedures are taken by the authority vested with the power of appointment."* This makes the Joint Administrative Committee convened as a disciplinary council rely to a large extent on the information provided by the administration and contained in the disciplinary case file.

The second aspect is represented in the fact that the representative of the administration assumes the presidency of the Joint Administrative Committee. This is stipulated in Article 14 of Executive Decree No. 20-199: *"The Joint Administrative Committees are chaired by the authority established at their level or a representative thereof, and in the event of his absence or impediment, he is replaced by one of the permanent representatives of the administration in the same Joint Administrative Committee."*

Thus, the administration has a central role in directing the discussions and controlling the course of the sessions, in addition to its influence on the drafting of the committee's final opinion. This leads to the weakening of the role of the employees' representatives, especially in cases where the numerical balance is insufficient to ensure the neutrality of the decision.

Secondly: The Weakness of the Training of the Members of the Joint Administrative Committee and Its Negative Impact on Achieving Justice

The weakness of the training of the committee members constitutes a main reason for the limitation of its role in achieving justice in disciplinary accountability. Reviewing the existing legal texts, whether Executive Decree No. 20-199 or Ordinance No. 06-03, confirms the absence of any provision requiring the members of this committee to have specialized legal knowledge in the field of discipline. This negatively affects the ability of the members of this committee to properly legally classify the acts attributed to employees, whether they constitute disciplinary faults or not, as well as to accurately distinguish between minor and serious faults, and even to assess the proportionality of the sanction with the fault committed in accordance with the principles of justice and fairness.

This weakness in the training of the committee members results in the possibility of issuing arbitrary and unlawful disciplinary decisions that affect the rights of the employee under accountability, which increases the number of appeals before the administrative judiciary against these decisions, thereby undermining the effectiveness of the committee in achieving disciplinary justice.

Conclusion:

At the end of studying the issue of justice in disciplinary accountability between the requirements of administrative discipline and the imperatives of protecting the public employee, I have reached a set of results and proposals, which I present as follows:

1- Results:

- The principle of legality in the disciplinary field is limited to sanctions and not to faults, thereby granting the administration wide discretionary power due to the impossibility of legislatively enumerating all forms of professional misconduct. This opens the door to potential abuse unless judicial oversight is activated.
- The organization of the guarantee of administrative investigation by the Algerian legislator contains two loopholes. The first concerns the optional nature of conducting the investigation, which makes its implementation subject to the discretionary power of the administration, thus limiting the employee's benefit from this guarantee. The second relates to the concentration of both accusation and investigation tasks in the hands of the appointing authority, which undermines the principle of neutrality and weakens the integrity of the procedures, negatively affecting the effectiveness of the guarantee of administrative investigation.
- The legislator restricted the benefit of the guarantee of administrative grievance to the employee against whom a disciplinary decision has been issued concerning sanctions of the third and fourth degrees, thereby excluding employees affected by sanctions of the first and second degrees. This shortcoming may negatively affect the administrative situation of these employees, which limits the effectiveness of the

guarantee of administrative grievance and reduces the scope of legal protection granted to the public employee in facing disciplinary decisions.

- The existence of discrepancies in the deadlines set for administrative grievance, whether for initiating it or for deciding on it. The Algerian Code of Civil and Administrative Procedure set a period of four months for exercising the grievance starting from the date of personal notification of the administrative decision, while Ordinance No. 06-03 containing the General Statute of the Civil Service stipulated a period of only one month from the date of notification of the disciplinary decision. The legislator also granted the administration a period of two months to decide on the grievance according to the same article, whereas Executive Decree No. 20-199 set a period of forty-five days for the Appeals Committee to issue its reasoned decision starting from the date of its notification. This reflects a lack of legislative consistency in regulating the deadlines of administrative grievance.

- The legislator established reinstatement as an effective guarantee for the protection of the public employee, by obligating the administration to erase all the effects resulting from the disciplinary sanction from his administrative file. This results in the restoration of the employee's reputation and enables him to resume his professional career under normal conditions, away from the negative repercussions that the disciplinary sanction may leave on his professional situation and career future.

- Although the legislator has conferred upon the opinion of the Joint Administrative Committee the binding character in sanctions of the third and fourth degrees, this guarantee remains weak in practical reality. This is due to the absolute control of the administration over the disciplinary file from the beginning, as it alone collects the evidence and classifies the fault, and it presides over the committee's sessions and directs its discussions. This situation often makes the committee merely a means to endorse the administration's decisions and give them a legal character, instead of being a neutral supervisory body that protects the employee from abuse.

2- Recommendations:

- The legislator must intervene to restrict the discretionary power of the administration in classifying disciplinary faults by expanding the list of disciplinary faults, as well as by issuing codes of professional conduct specific to each corps. These codes should more thoroughly detail the professional duties and the acts that constitute breaches thereof, in a way that takes into account the particularities of each sector and achieves a greater degree of clarity and legal certainty.

- Amending Article 171 of Ordinance 06-03 to make the administrative investigation a mandatory procedure in all sanctions, rather than optional, while assigning the task of conducting it to an administrative body independent from the "appointing authority." This would separate the functions of accusation and investigation, thereby enshrining the principle of neutrality and objectivity.

- Expanding the scope of benefiting from the guarantee of administrative grievance before the Appeals Committees to include all degrees of sanctions without exception, especially those that affect the professional career of the employee, such as the sanction of removal from the qualification list, in order to ensure his right to administrative review of the decision before resorting to the judiciary.
- Unifying the legal deadlines and timeframes related to administrative grievance and its resolution, to eliminate the existing conflict between the Code of Civil and Administrative Procedure and the Civil Service Law, thereby ensuring the "legal security" of the employee and protecting him from losing his rights due to the dispersion of procedural deadlines.
- Reconsidering the composition of the Joint Administrative Committees when convened as a disciplinary council, so that their presidency is entrusted to a neutral legal figure. This would ensure their independence from the dominance of the administration and transform their role from merely "endorsing" the decisions of the supervisory authority into actual and fair oversight that safeguards the rights of the employee.
- Establishing a strict monitoring mechanism that ensures the administration actually destroys all documents related to erased sanctions from the employee's file upon reinstatement, while imposing administrative penalties on entities that fail to physically execute the erasure process, in order to guarantee the effectiveness of this safeguard.
- Adopting digital systems for managing disciplinary files, which would enhance transparency, ensure the tracking of procedures, and reduce formal errors that undermine the legality of sanctions.
- Working on assigning specialized administrative judges in disputes related to public service, to ensure deeper knowledge of the particularities of disciplinary authority and the balances of the public service. This would allow for more precise and effective judicial oversight of contested disciplinary decisions.
- Establishing specialized training and educational programs for the members of the Joint Administrative Committees in the legal and procedural aspects of discipline, enabling them to properly conduct the legal classification of the acts attributed to the employee and ensuring that the sanction is assessed in proportion to the seriousness of the fault.
- Adopting an "administrative prevention" strategy as an alternative to focusing entirely on the punitive aspect, through strengthening awareness programs and continuous training aimed at informing the employee of his rights and professional duties, and instilling a culture of self-discipline before resorting to disciplinary accountability.

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