

The Right To Silence In Disciplinary Disputes In French And Algerian Civil Service Law

الحق في الصمت في المنازعات التأديبية في قانون الوظيفة العامة الفرنسي والجزائري

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Abstract:

This scientific intervention presents a comparative analytical study of the concept of the Right to Silence in disciplinary disputes within the civil service laws of France and Algeria. The research aims to highlight recent legal and judicial developments, particularly the French Constitutional Council's decision No. 2024-1105 QPC, which established the right to silence as a constitutional guarantee for public officials derived from the principle of the presumption of innocence. Furthermore, the study examines the reality of the Algerian legal system under the 2026 Constitution and Ordinance 06-03, highlighting the legislative gap characterized by the absence of an explicit provision requiring the administration to inform the official of their right to silence. The study concludes with a set of recommendations aimed at strengthening the procedural guarantees for public officials to ensure a balance between the administration's disciplinary authority and the protection of individual rights and freedoms.

key words: Right to Silence, Disciplinary Disputes, Civil Service, French Law, Algerian Law, Presumption of Innocence, Council of State, Constitutional Council.

الملخص:

تناول هذه المدخلة العلمية دراسة تحليلية مقارنة لمفهوم الحق في الصمت في المنازعات التأديبية ضمن قانون الوظيفة العامة في كل من فرنسا والجزائر. يهدف البحث إلى تسليط الضوء على التطورات القانونية والقضائية الأخيرة، لاسيما قرار المجلس الدستوري الفرنسي رقم 2024-1105 QPC، الذي كرس الحق في الصمت كضمانة دستورية للموظف العام مستمدة من مبدأ قرينة البراءة. كما تستعرض الدراسة واقع المنظومة القانونية الجزائرية في ظل التعديل الدستور 2026 والأمر 06-03، مبرزة الضجوة التشريعية المتمثلة في غياب نص صريح يلزم الإدارة بإعلام الموظف بحقه في الصمت. تخلص الدراسة إلى مجموعة من التوصيات الرامية إلى تعزيز الضمانات الإجرائية للموظف العام بما يضمن التوازن بين سلطة الإدارة التأديبية وحماية الحقوق والحريات الفردية.

الكلمات المفتاحية: الحق في الصمت، المنازعات التأديبية، الوظيفة العامة، القانون الفرنسي، القانون الجزائري، قرينة البراءة، مجلس الدولة، المجلس الدستوري.

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Introduction:

The civil service is a fundamental pillar in the construction of the modern state, where public officials undertake significant tasks that serve the public interest. To ensure the proper functioning of public services, the administration is granted disciplinary authority, enabling it to hold accountable officials who are negligent or in violation of their professional duties. However, the exercise of this authority must occur within a legal framework that guarantees the rights of the official and protects their fundamental freedoms, especially given the increasing interest in procedural guarantees in disciplinary disputes. Among the most prominent of these guarantees is the Right to Silence, which serves as a vital mechanism to protect the official from being compelled to make statements that could be used against them.

The right to silence is defined as the right of an individual not to make any statements or provide information that could be used against them in the context of legal or disciplinary proceedings, without their silence being interpreted as a presumption of guilt. This right has gained increasing importance in modern legal systems, extending beyond the scope of criminal law to include other fields such as administrative and disciplinary law, in implementation of the principle of the presumption of innocence and the protection of defense rights.

This scientific intervention aims to analyze and clarify the concept of the right to silence in disciplinary disputes in civil service law, focusing on a comparative study between French and Algerian law. Special attention will be given to the evolution of French jurisprudence, particularly the decisions of the Council of State and the Constitutional Council, which have contributed to establishing this right and defining its scope and content. Furthermore, we will seek to explore the extent to which this right is enshrined in the Algerian legal system and the challenges facing its application.

This study relies on a comparative analytical methodology, where legal texts and judicial precedents in both legal systems will be analyzed, extracting similarities and differences, and providing practical examples to clarify concepts. The intervention will be structured according to the following plan:

- Section I: The Right to Silence in French Civil Service Law.
- Section II: The Right to Silence in Algerian Civil Service Law.

Section I:

The Right to Silence in French Civil Service Law

The right to remain silent in France has evolved from an incomplete principle into a fundamental constitutional and European guarantee, enshrining the right of the accused not to incriminate themselves before the investigating and prosecuting authorities. This right has transformed from a restricted judicial practice (the Court of Cassation previously ruled in 1849 to have limited effect) into an explicit right.

A) The Legal and Evolutionary Framework of the Right to Silence in France :

The right to remain silent in France is a cornerstone of the defense and the presumption of innocence. It has evolved from a customary practice into an explicit constitutional and legal right guaranteeing a suspect or accused person the right not to answer questions from the police and the judiciary without this being interpreted as an admission of guilt. This right has become legally binding thanks to recent legislation and the influence of the European Convention on Human Rights.

1-The Constitutional and Legal Basis of the Right to Silence:

The right to silence in French law finds its basis in established constitutional and legal principles, foremost among which is Article 9 of the Declaration of the Rights of Man and of the Citizen of 1789, which states that "every man is presumed innocent until he has been declared guilty." This principle is the cornerstone of fair trial guarantees and necessitates that no person be compelled to provide evidence against themselves ¹

Additionally, Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial, is an important source of the right to silence. The European Court of Human Rights has repeatedly emphasized that the right to silence and the right not to incriminate oneself are integral parts of the concept of a fair trial².

In the context of civil service law, French legislative texts, such as the Law of July 13, 1983, concerning the rights and obligations of officials, and the General Code of the Civil Service (Code général de la fonction publique - CGFP), guaranteed public officials several defense rights in disciplinary proceedings, such as the right to access the file and the right to the assistance of a defender. However, they did not explicitly provide for the right to silence or the obligation to inform the official of this right.³ This explicit absence raised many questions about the extent to which officials enjoy this right in disciplinary disputes, which prompted judicial intervention to clarify this aspect.

2- The Evolution of the Jurisprudence of the Council of State and the Constitutional Council:

The establishment of the right to silence in disciplinary disputes in France has witnessed significant development thanks to judicial intervention, particularly by the Council of State (Conseil d'État) and the Constitutional Council (Conseil Constitutionnel). Initially, the Council of State tended not to recognize the right to silence in an absolute manner in disciplinary proceedings, considering that these proceedings differ from criminal proceedings.⁴

However, this trend began to change gradually, leading to a decisive decision by the Constitutional Council, namely Decision No. 2024-1105 QPC issued on October 4, 2024. This landmark decision came in response to a Priority Preliminary Ruling on Constitutionality (Question Prioritaire de Constitutionnalité - QPC) regarding the constitutionality of Article 19 of the Law of July 13, 1983, and Article L. 532-4 of the General Code of the Civil Service, for failing to explicitly provide for informing the official of their right to silence.

Detailed Analysis of Constitutional Council Decision No. 2024-1105 QPC: In its decision, the Constitutional Council affirmed that the right to silence (*le droit de se taire*) applies to disciplinary proceedings for public officials, based on Article 9 of the Declaration of the Rights of Man and of the Citizen of 1789, which enshrines the principle of the presumption of innocence. The Council emphasized that disciplinary sanctions, by virtue of their punitive nature, require the official to enjoy fair trial guarantees, including not being compelled to contribute to their own incrimination.

Accordingly, the Constitutional Council declared certain provisions of Article L. 532-4 of the General Code of the Civil Service unconstitutional for failing to include the obligation to inform the official against whom disciplinary proceedings are taken of their right to remain silent regarding the facts alleged against them that could lead to a sanction. The decision clarified that this obligation to inform aims to ensure the effectiveness of the right to silence and the protection of defense rights.⁵

Impact of the Decision on Disciplinary Proceedings: This decision applies immediately to ongoing disciplinary proceedings in which a final decision has not been issued, meaning that the administration is now obliged to inform the official of their right to silence before any interrogation or investigation that could lead to a disciplinary sanction⁶. This decision was followed by several rulings from the Council of State that confirmed the application of this new principle, establishing the right to silence as a fundamental guarantee for public officials in France.⁷

B) Scope and Content of the Right to Silence in French Law:

After French judicial precedents established the right to silence as a fundamental guarantee for public officials in disciplinary disputes, it became necessary to define the scope and content of this right, the conditions governing its exercise, and the resulting effects.

1- Conditions for Applying the Right to Silence:

The right to silence is not an absolute right; it is subject to certain conditions to ensure a balance between protecting the official's rights and the necessity of public service operation. The primary condition for applying this right is that the disciplinary proceedings against the official could lead to a disciplinary sanction.⁸

This means that the right to silence does not necessarily apply to all stages of a preliminary administrative investigation or routine inquiries that do not directly aim to impose a sanction.

Furthermore, one of the most important conditions for applying the right to silence is the obligation to inform the official of their right to silence. Following Constitutional Council Decision No. 2024-1105 QPC, the administration is now explicitly required to inform the official being questioned in the context of disciplinary proceedings of their right to remain silent. This information must be clear and explicit and must be provided before any interrogation that could be the basis for a disciplinary sanction⁹. This obligation to inform aims to ensure that the official is fully aware of their rights, and thus their exercise of the right to silence is based on knowledge and choice.

2- Effects of Exercising the Right to Silence:

The exercise of the right to silence has important legal consequences, most notably the inadmissibility of inferring a presumption of guilt from silence. Neither the administration nor the disciplinary board may consider the official's silence as evidence of their guilt or an admission of the facts alleged against them. The right to silence is a constitutional and legal right, and its exercise cannot be interpreted as an evasion of responsibility or an attempt to hide the truth.¹⁰

However, the right to silence has limits, especially in the context of the civil service. Public officials have a duty to cooperate with the administration and provide information necessary for the operation of public services. This duty may sometimes conflict with the right to silence, particularly when the requested information does not directly relate to the facts that could lead to a disciplinary sanction against them but aims to uncover facts necessary to protect the public interest or the rights of others¹¹. In these cases, the administration must balance the official's right to silence with their professional duties and clearly define the nature of the interrogation and whether it falls within the disciplinary proceedings that require informing the official of their right to silence.

Practical Examples from French Jurisprudence:

- **Example 1:** In a case involving an official accused of embezzling public funds, the official refused to answer questions from the disciplinary investigation committee. The French Council of State emphasized that the official's silence could not be interpreted as an admission of guilt and that the administration must prove the facts alleged against them with other evidence independent of their silence.¹²

- **Example 2:** In another case, an official was questioned about information regarding mismanagement in their department, which was necessary to correct the situation and ensure service continuity. The official refused to provide any information, citing the right to silence. The Council of State ruled that the duty to cooperate with the administration requires providing non-incriminating information and that the right to silence does not prevent this, as long as this information is not used directly to incriminate the official in a disciplinary proceeding against them.¹³

These examples illustrate the delicate balance that French courts seek to achieve between protecting the individual rights of the official and the need to maintain the effectiveness of public administration.

Section II:

The Right to Silence in Algerian Civil Service Law

Like many legal systems, Algerian civil service law faces challenges in aligning fair trial principles, including the right to silence, with the specificity of disciplinary proceedings. Although the Algerian legislator has established important guarantees for public officials against disciplinary authority, the issue of the right to silence still requires further clarification and consolidation.

A) The Legal Framework of Disciplinary Guarantees in Algeria:

1-The Constitutional and Legal Basis:

The constitutional basis for public official guarantees in Algeria, including the right to defense and the presumption of innocence, is found in Article 41 of the 2020 Constitution, which states that "every person is presumed innocent until proven guilty by law, in a fair trial in which all legal guarantees are provided." This constitutional principle constitutes a general protection for individual rights against any accusation, whether criminal or disciplinary.¹⁴

On the legal level, Ordinance No. 06-03 of July 15, 2006, containing the General Statute of the Civil Service, is the primary reference regulating the rights and obligations of public officials and disciplinary proceedings. This law has dedicated chapters to official guarantees in the disciplinary field, emphasizing the need to respect them to ensure the legality of the disciplinary sanction.

2- Official Guarantees in Disciplinary Proceedings:

The Algerian legislator has established in the General Statute of the Civil Service a set of procedural guarantees for public officials when referred to a disciplinary board, which aim to protect defense rights and provide a fair disciplinary trial. Among the most prominent of these guarantees are:

- **Right to access the disciplinary file:** Article 166 of Ordinance 06-03 provides for the official's right to access their disciplinary file and all attached documents. This right is essential to enable the official to prepare their defense and respond to the charges against them.

- **Right to the assistance of a defender:** The official has the right to the assistance of a defender of their choice, whether a lawyer or a fellow official, to provide legal assistance and defend them before the disciplinary board. This guarantee enhances the principle of equality in defense means between the administration and the official.

- **Right to appear before the disciplinary board:** The official must be summoned to appear before the disciplinary board and is granted the right to present their statements and defenses orally or in writing and to present witnesses if any. This right ensures the principle of confrontation and orality in disciplinary proceedings.¹⁵

B) Absence of Explicit Provision for the Right to Silence and Application Challenges:

1- Absence of Explicit Provision for the Right to Silence:

By scrutinizing the texts of the Algerian General Statute of the Civil Service, it is clear that the legislator did not include an explicit provision requiring the administration to inform the official of their right to silence during a disciplinary investigation or before a disciplinary board. While the law guarantees the right to defense in general, the right to access the file, and the right to the assistance of a defender, it does not directly address the official's right to refrain from answering questions that might incriminate them¹⁶.

This absence raises questions about the extent of protection for Algerian officials from being compelled to make statements that could be used against them. The right to

silence differs from the general right to defense; the right to defense is a positive right consisting of presenting arguments and evidence, while the right to silence is a negative right consisting of refraining from speaking without this being interpreted negatively.¹⁷

2- Possibility of Drawing Inspiration from the French Experience and Application Challenges in Algeria:

Despite the absence of an explicit provision, it can be said that the principle of the presumption of innocence provided for in Article 41 of the Algerian Constitution opens the door to the possibility of establishing the right to silence in disciplinary disputes, by analogy with the development witnessed in French law. If the presumption of innocence is a general constitutional principle, it must extend to include all proceedings that could lead to the imposition of a sanction, including disciplinary sanctions.¹⁸

The Role of Algerian Jurisprudence (Council of State) in Developing this Right:

The Algerian Council of State, as the highest administrative judicial body, can play a pivotal role in establishing the right to silence through its judicial precedents. As its French counterpart did, the Algerian Council of State can draw inspiration from constitutional principles and fair trial rules to affirm the obligation to inform the official of their right to silence, especially since there is a convergence in the general principles of administrative law between the two countries.¹⁹

Practical and Legal Challenges to Establishing the Right to Silence in Algerian Disciplinary Disputes:

- **Absence of Explicit Legislative Provision:** The lack of a clear legal text requiring the administration to inform the official of their right to silence is a major challenge. Without this text, the administration may hesitate to apply this right, and officials may remain unaware of it.²⁰

- **Administrative Culture:** There may be resistance to applying this right by some administrations accustomed to traditional investigation methods that do not pay sufficient attention to the right to silence.

- **Need for Awareness and Training:** Establishing this right requires raising officials' awareness of their rights and training disciplinary board members and administrative officials on how to deal with and respect this right.²¹

Conclusion:

This comparative analytical study of the right to silence in disciplinary disputes in French and Algerian civil service law has shown a clear disparity in the level of establishment of this right. While French law has witnessed significant development, thanks to the judicial precedents of the Council of State and the Constitutional Council, which established the right to silence as a fundamental guarantee for public officials and obliged the administration to inform them of it, Algerian law still lacks an explicit provision establishing this right, despite the existence of general constitutional and legal principles that could form a basis for its application.

French Constitutional Council Decision No. 2024-1105 QPC is a fundamental turning point, as it confirmed that the right to silence stems from the principle of the presumption of innocence and applies to disciplinary proceedings of a punitive nature. This development reflects a global trend toward strengthening fair trial guarantees in all types of proceedings that could lead to the imposition of sanctions.

In Algeria, although the General Statute of the Civil Service guarantees important defense rights for officials, the absence of an explicit provision regarding the right to silence leaves a legal vacuum. However, Article 41 of the Algerian Constitution, which enshrines the presumption of innocence, provides a constitutional basis upon which the Algerian Council of State can rely to develop judicial precedents that establish this right, drawing inspiration from the pioneering French experience

Recommendations:

1. On the Legislative Level in Algeria: It is recommended to amend the General Statute of the Civil Service or issue regulatory texts that explicitly oblige the administration to inform the official of their right to silence before any interrogation or disciplinary investigation that could lead to a sanction.

2. On the Judicial Level in Algeria: The Algerian Council of State is called upon to activate its role in protecting public official rights by developing judicial precedents that establish the right to silence, based on constitutional principles and fair trial rules.

3. On the Administrative Level: Public administrations in both countries, especially in Algeria, should organize training courses and workshops to raise the awareness of administrative officials and disciplinary board members about the importance of the right to silence and how to deal with it in a way that guarantees the official's rights and the effectiveness of disciplinary proceedings.

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