

Administrative investigation in public life

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Abstract:

The administrative investigation is a critical precursor to disciplinary action within the Algerian public service. Empowered by the legislature, the competent appointing Authority undertakes this objective, impartial, and meticulous inquiry. The investigation functions as a fact-finding mission, meticulously examining and uncovering the truth to assess the legitimacy and proportionality of any potential disciplinary measures. The Algerian legislator has established a framework ensuring a procedurally sound, formal, and objective process, recognizing the importance of the appointing Authority's position and the employee's status. This emphasis on due process safeguards the rights of both parties while upholding the integrity of the public service.

Keywords: Administrative investigation; Public servant; Public life; Disciplinary responsibility.

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Introduction:

The public job is not just a duty but a responsibility for the public employee. It must be carried out in the best way to ensure the regularity and good functioning of the public facility. Public employees are a management tool for achieving the administrative body's goals. This job comes with rights and duties, known as functional burdens, which are essential in public service. The Algerian legislator has arranged for violating these duties, a set of disciplinary penalties that begin with disciplinary accountability. This underscores the importance of the public employee's role and the weight of their responsibilities in the administrative investigation process.

In the Algerian public service, an employee's commission of disciplinary offenses triggers a legal mechanism of administrative investigation. This mechanism serves the dual purpose of general and specific deterrence. General deterrence discourages misconduct by all public servants, while specific deterrence aims to correct the behavior of the individual employee involved. The investigation process ascertains the veracity of the accusations levied against the employee. This ensures that any subsequent decisions, whether acquittal or the imposition of proportionate sanctions are grounded in substantiated evidence. Recognizing the importance of due process, the Algerian legislator has established a framework for valid investigative procedures. As outlined in legal texts such as Public Service Law 06-03, this framework guarantees fairness and objectivity in the process. From this standpoint, the problem that comes to our mind regarding this topic is the following:

-What are the controls and foundations for conducting an administrative investigation in the life of public office?

To answer this problem, we will detail our topic as follows:

First: What is the nature of administrative investigation in public life?

1- The concept of administrative investigation:

A- Definition of administrative investigation:

The administrative investigation is a critical preliminary stage within Algerian public service disciplinary procedures. This legally mandated process, undertaken by the competent Authority, aims to uncover the truth surrounding allegations of employee misconduct (Ammar et al., 2014). A thorough and comprehensive investigation, adhering to all prescribed elements, conditions, and safeguards, is crucial for ensuring the legitimacy and legality of any subsequent decisions (Attia et al., 2021). This meticulous process allows the administration to reach a well-founded decision regarding the employee's alleged wrongdoing, whether acquittal or imposing a proportionate penalty. Conversely, any disciplinary action that violates these investigative guarantees, lacking a proper investigation or relying on an incomplete one, renders the decision null and void. Administrative investigation is the preferred management method for reaching the truth and determining disciplinary responsibility for any disciplinary offense (disciplinary error) committed by the employee. These investigations are of fundamental importance in cases where the facts are not established and in determining the appropriate penalty for the violations committed by the employee (**Hamad Muhammad Hamad Al-Salmari, 81**).

While Algerian legislation lacks an explicit definition of an administrative investigation, relevant procedures are outlined in Article 171 of Order 06/03 of July 2006, the fundamental law for public employment. This article empowers the competent administrative committee, acting as a disciplinary council, to request the initiation of an administrative investigation from the relevant Authority (**Official Gazette No. 46, 1996, p. 15**). This provision establishes a framework for a pre-disciplinary investigation, enabling the Authority to gather evidence and ascertain the facts before adjudicating the case.

A- Characteristics of administrative investigation:

Speed: While efficiency is a desirable attribute in administrative work, it should not come at the expense of thoroughness or adherence to established

procedures (**Aziza Al-Sharif, 1988**). The primary objective of administrative processes within a public service context should be to ensure the consistent and reliable functioning of the institution. This often necessitates a careful and considered approach to investigations instead of a solely speed-driven one (**Hussein et al., 1981**). **Its results do not affect the employee's life or freedom:** The administrative investigation does not produce results that affect the employee's life or freedom. The maximum penalty that can be imposed on the employee at fault for terminating his service is dismissal (**See Article 163 of the Order above No. 06/03, p15**).

- ✓ **The breadth of its legal basis:** Administrative investigation procedures are based on a combination of formal regulations and internal organizational decisions (**Mohamed et al., 2008**). In some instances, particularly where codified administrative law is lacking, customary practices may also shape these procedures.
- ✓ **Limiting its subject to the public employee:** The administrative investigation takes place exclusively with the public employee, who is considered the cornerstone of the career system, and therefore, it is not possible to imagine the existence of a job organization without it being coupled with a disciplinary system that monitors the public employee if he deviates from the duties or duties imposed on him by this system. Code of conduct(**Aziza Al-Sharif, previous reference, p 9**).
- ✓ **Its purpose is to reveal disciplinary violations:** The administrative investigation is a pivotal mechanism within the public service disciplinary framework (Mohammad et al.). The administration seeks to establish the truth surrounding alleged employee misconduct through a meticulous investigation. This process is critical in revealing wrongdoing and accurately assessing the employee's accountability. A well-conducted investigation ensures that disciplinary actions are grounded in verifiable evidence and applied fairly.
- ✓ **2- The legal basis for administrative investigation:**

–The foundations of administrative investigation are divided :into

Sources of administrative legitimacy as a basis for administrative investigation: Legitimacy means the state's submission of its rulers and

governed to the law and their restriction by its provisions (**Sami Jamal al-Din, p. 95**)This principle includes the administration's commitment and respect for constitutional rules, treaties, general principles of law, judicial principles, and court rulings (**Asim et al.,p 177**) ,(Accordingly, the principle of administrative legitimacy from the point of view of monitoring the performance of the administrative apparatus means that all units of that apparatus, when exercising their powers or the various aspects of the activities assigned to them, are subject to the rule of law in its general sense (**Fadi Naim Jamil Alawneh,2011, pp. 14-15**) .

Accordingly, the sources of administrative legitimacy are:

-Written sources: They include

The Constitution: The Constitution is the supreme law in the state that transcends all other legislation. Therefore, the state's authorities, bodies, and individuals must respect what the Constitution stipulates. Otherwise, their actions will be illegal and unconstitutional (**Tamiya Al-Jarf , 1970, p. 14**) .

Ordinary legislation: This is what is called "the law" and comes in second place after the Constitution in the pyramid of legislative hierarchy (**Sami Jamal al-Din, The Graduation of Laws and Islamic Principles, Office Machinery and Supplies Company Press, 1986, p. 42**).

Organizational decisions: When the administration carries out its activities, it issues administrative decisions, which may be in the form of individual decisions; that is, they address individuals as such, granting them acquired individual rights that may not be violated in general. They may be in the form of organizational or administrative decisions when they address individuals by their qualities, not by themselves, and are in the form of administrative decisions. The form objective rules are general and abstract, as they represent legal rules that must be followed and not violated(**Mohsen Khalil, 1982, p. 275**)

- **Unwritten sources of administrative legitimacy:** These are those that the legislator still needs to codify, which distinguishes them from other written sources that have been codified, making it easy to refer to them. The unwritten sources are

- **Custom:** Custom occupies an essential position in the hierarchy of legality, following written legislation in rank, completing what the latter lacks, and explaining its ambiguity (Maghawri et al., 1986, p. 32).

General principles of law: They are defined as unwritten principles, not explicitly stipulated in legal texts, but declared by the administrative judge as a primary and essential source of the principle of legality .(**Jacqueline, 1997, p 259- 260).**

Judicial rulings: The administrative judiciary is an essential source for administrative procedures in the absence of a text. Most procedural and substantive disciplinary guarantees find their source in judicial rulings. The reason for this is the inability of legislative texts to highlight disciplinary guarantees, especially procedural ones. The procedural texts that regulate disciplinary cases must be revised and brief. It does not fulfill the intended purpose (**Saad et al., pp69-70).**

-The basis of administrative investigation outside the sources of administrative legitimacy: These foundations are:

General principles of litigation procedures: Judicial procedures are generally based on general principles, the latter of which is one of the stable and well-established theories in the administrative judiciary, given its role in protecting individuals' rights and freedoms (**Resolution of the Council of State dated 07/27/1998, File No. 172994, Council of State, Issue 01, 2002, pp. 84-85) .**

Procedural laws: The Algerian legislator has regulated the investigation and its procedures in the Code of Civil and Administrative Procedures in Articles 838 to 873 and has stated the means of investigation represented by expertise in Article 858 thereof, where the provisions related to expertise stipulated in Articles 125 to 145 of Law 08/09 are applied before the Administrative courts, regulations for hearing witnesses in Article 859, inspection and transportation to places in Article 861, and matching lines in Article 862 of this law (See Law No. 08/09 of Safar 18, 1429, corresponding to February 25, 2008, which includes the Civil and Administrative Procedures Law.)

1– Judicial authorities competent for administrative investigation: The Algerian legislator granted the employing body or a similar entity licensed by law the right to indict and investigate the charges against the public employee (**eSee Article 03 of Decree No. 66-152, dated Safar 12, 1386, corresponding to June 2, 1966, relating to the disciplinary procedure, C.R.C.C. Issue No. 23, issued on Safar 18, 1386 AH, corresponding to June 6, 1966**).

Second: Administrative investigation guarantees and procedures

1Formal and substantive guarantees:

A- Formality:

- The documentation of the administrative investigation process serves as a cornerstone guarantee for its proper conduct (**Ahmed et al., 2011**). A written record allows all parties to refer to the facts and the circumstances surrounding the alleged misconduct. This transparency provides a basis for the administration's case against the employee and the employee's defense, fostering a fair and impartial process.
- Causation, or the rationale for a disciplinary decision, constitutes a fundamental principle within the framework of disciplinary accountability (**Ahmed et al., 2011**). This principle dictates that disciplinary sanctions must be grounded in a factual or legal foundation that compels the issuing Authority to take action. It is crucial to distinguish between a mere justification and a legitimate cause. Every disciplinary decision must be demonstrably supported by a valid rationale, not simply a stated reason. This rationale, outlined within the decision itself, serves as the justification for the imposed disciplinary penalty.
- Competent and impartial investigation is a critical safeguard within disciplinary procedures for public servants (Ali et al., 2003). This proficiency is generally achieved through two fundamental mechanisms. First, regulations establish clear lines of jurisdiction, ensuring a separation of powers. This prevents the entity

responsible for conducting the investigation and formulating accusations from wielding the Authority to impose disciplinary sanctions. Second, the process safeguards against investigator bias by identifying and addressing potential conflicts of interest. These conflicts can be personal, arising from pre-existing relationships, or objective, stemming from the investigator's professional role. Functional conflicts of interest may also arise, where the investigator's position within the organization creates an incentive to reach a predetermined outcome.

A- Objectivity: represented by:

Confronting the employee with what is accused of him: Confrontation generally enables the worker or employee whose rights and interests are exposed to an action to be informed so that he can present his defenses. Within the scope of disciplinary responsibility, confrontation means enabling the worker to be informed of the accusations attributed to him, notifying him of that, and informing him of his profile so he can prepare his defense.

-The right to defense: The right to defense occupies a distinguished position in the science of law, and nothing is surprising in that, as it is one of the principles enshrined in the Universal Declaration of Human Rights, in constitutions, and various laws. The Algerian legislator has enshrined it, and it is a natural right recognized for every accused person, even if it is not stipulated in it. The law relates to the highest principles of Justice, and it is considered one of the sacred rights that may not be violated or retaliated against in all civil, criminal, administrative, and disciplinary procedures (Amjad et al., 2007, p. 12)

-Neutrality in conducting a disciplinary investigation: The principle of neutrality is considered one of the essential guarantees in the field of discipline and is generally achieved by regulating the rules of jurisdiction in a way that prevents combining the work of investigation and accusation with the Authority to impose a penalty, as well as determining the incompetence of someone surrounded by personal, objective, or functional considerations that would cast doubt on In his neutrality (Ibid, p. 26).

-1Administrative investigation procedures: According to Articles 75 to 193 of the Civil and Administrative Procedures Law, these procedures are:

The stage of initiating the administrative investigation: Concerning the Algerian legislator, the stage of initiating the administrative investigation begins with submitting a request by the equal-member committee to open the investigation by the Authority that has the power to appoint before deciding on the issue(**See Article 2 of Order No. 06/03 mentioned above**).

- **The stage of conducting an administrative investigation:** It is divided into the following two stages:

-A preliminary stage to initiate the investigation with the public employee, which includes the following:

- 1) Informing the employee of the accusation against him:** The presidential disciplinary Authority, which has the right to appoint after notifying the Disciplinary Council of the error attributed to the disciplinary erring public employee, is also responsible for notifying him as the leading party concerned. Informing the employee of the accusations against him is considered one of the essential guarantees in the field of disciplinary accountability. This is because this information allows the employee to assess the seriousness of his situation and to work on preparing his defense regarding the subject of the accusation directed against **him** (**Nofan et al., 2007, p. 420**).
- 2) The right to view the file:** The accused employee can review the disciplinary case file with all its contents, including investigations, evidentiary evidence, and other documents. This review must be completed so the employee can determine his position on the case and prepare his defense (**Ibid., p. 421**).

-The stage of directing the administrative investigation: It is carried out in stages:

1) **Hearing witnesses:** The accused employee may discuss the witnesses who present the violation. The investigating Authority may also summon the witnesses requested by the accused employee to hear their statements and give him the right to discuss these statements, support them with similar evidence, and extend his legal and regulatory point of view in the case by referring to the legislation. Algerian, Article 129 of Decree 59/85 stipulates this.

2) **Conducting an inspection** is one of the investigative procedures, and given its extreme danger to the employee's person, affecting his freedom and dignity and violating the sanctity of his residence. Therefore, the constitutions and laws have surrounded it with guarantees that guarantee him the limits and controls that ensure that it is taken when necessary, as required by the interest of the investigation. It is not arbitrary. Therefore, the inspection is an act of investigation, and it is permissible to test it except by the investigating Authority.

3) **Seeking help from an expert:** The Algerian legislator has yet to regulate the issue of seeking help from an expert in functional legislation. However, this does not prevent seeking help from the texts of criminal procedures in this field, given the connection between disciplinary and penal procedures. The administrative investigator can seek the help of specialists and experienced people to clarify some technical issues. However, the text of the reports received from the experts is written in the investigation minutes book, and then the report itself is attached to the case files.

4) **Precautionary suspension:** Suspension from work is a legal procedure intended to remove the employee temporarily from the work of his job, either for the benefit of an investigation being conducted, whether the investigation is administrative or criminal, or to preserve the job, ensure its dignity, and preserve it from tampering and breaching it. The Algerian legislator

stipulated this procedure in Article 173 of Order 06/03 and Article 174 stipulated.

5)The stage of completing the administrative investigation: In Algeria, the completion of the investigation is considered by the committee formed to investigate under the supervision of the administration and in the presence of one or two members of the Disciplinary Council after its reconvening (**Darwish et al., previous reference, p. 122**).

Conclusion: In conclusion of our topic, we conclude that the employee may commit mistakes or professional violations while performing his job, which results in the right of his administration to hold him accountable by following a set of procedures that precede his referral to disciplinary accountability, and these procedures are represented in investigation procedures. Administrative and disciplinary procedures and the legal tool that enables a balance between the right to protect the guilty employee by hearing his statements and granting him the freedom to defend himself regarding the charges against him. The Algerian legislator has organized these procedures and made them procedures with legal guarantees so that he has a role in investigating Justice.

Through this proposition, we can reach a set of results that we present as follows:

1. Administrative investigation is the first procedure followed if an employee makes a mistake while performing his duties.

2. The administrative investigation has distinct characteristics from the criminal investigation.

3. The Algerian legislator surrounded the administrative investigation into public office with controls and guarantees that ensured the employees' rights and prevented the administration from abusing its rights.

.4The administrative investigation guarantee consists of formal and substantive guarantees.

Footnotes:

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