Legislative guarantees established to protect the employee from arbitrary dismissal in Algerian legislation

MOHAMED TAIEB AMOUR [*], YAGOUB BELBACHIR[**]

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Abstract: *To protect the proper functioning of the public facility, the administration may resort to dismissing the employee in the event of an unjustified absence from work for a period equal to or exceeding 15 consecutive days, as this behavior is considered a voluntary abandonment of the position, and this is what is specified in Article 184 of Law No. 06-03, which includes the basic law for the public service. However, in view of the serious legal consequence resulting from this procedure, which is the permanent dismissal of the employee and deprivation of him from joining the public service again, the law stipulates a set of legal and judicial guarantees that prevent the administration from misusing this right. However, this did not prevent the existence of many cases of suspected arbitrariness, which prompted the General Directorate of Public Employment to issue many correspondence and administrative instructions for the correct application of the law in a way that balances the proper functioning of the public facility on the one hand, and protecting the employee from arbitrary dismissal on the other hand.*

Keywords: Protection; Employee; Removal from employment; Demobilization

ملخص : *لحماية حسن سير المرفق العمومي، يجوز للإدارة أن تلجأ إلى فصل الموظف في حالة غياب1 غير المبرر عن العمل لمدة تساوي أو تتجاوز 15 يوما متتالية، حيث يعتبر هذا التصرف تركا طوعيا للوظيفة، وهذا ما نصت عليه المادة 184 من القانون رقم 06-03 المتضمن القانون الأساسي للوظيفة العمومية. لكن ونظراً للتبعات القانونية الخطيرة الناجمة عن هذا الإجراء والمتمثلة في فصل الموظف نهائياً وحرمانه من الالتحاق بالوظيفة العامة مرة أخرى، فقد نص القانون على مجموعة من الضمانات القانونية والقضائية التي تمنع الإدارة من إساءة استخدام هذا الحق. لكن ذلك لم يمنع من وجود العديد من حالات الاشتباه بالتعسف، مما دفع المديرية العامة للوظيفة العامة إلى إصدار العديد من المكاتبات والتعليمات الإدارية من أجل التطبيق الصحيح للقانون بما يوازن بين حسن سير المرفق العام من جهة، وحماية الموظف من الفصل التعسفي من جهة أخرى.*

الكلمات المفتاحية : الحماية، الموظف، العزل من الوظيفة، التسريح..

1.Introduction:

Removing an employee from his job is a unilateral measure taken by the administration at its sole discretion against the employee if he abandons or neglects his job within a period specified by law; The Algerian legislator stipulated this procedure in Article 184 of Law No. 06-03, which includes the Basic Law of the Job.

[*] HASSIBA BENBOUALI UNIVERSITY OF CHLEF, Algeria, Email: m.taiebamour@univ-chlef.dz

[**] HASSIBA BENBOUALI UNIVERSITY OF CHLEF, Algeria, Email y.belbachir@univ-chlef.dz

In view of the seriousness of this measure, which leads to the permanent removal of the employee from the job and the final denial of further employment in the public service, and in order to protect the employee from the arbitrariness of the administration and the errors committed by the administration in interpreting the above-mentioned article, several interpretative decrees have been issued to clarify the procedures to be followed by the administration before taking the dismissal measure, including Ministerial Circular No. 1024 of 23 December 1993. Correspondence No. 672 dated 01 July 2007, Correspondence No. 1227 dated 20 August 2013 and Correspondence No. 225 dated 19 March 2014, issued by the General Directorate of the Public Service. However, in view of the major issues raised by the above article and to clear the confusion in the interpretation of this article, Executive Decree No. 17-321 of 02 November 2017 was issued, which defines the modalities for dismissing an employee for negligence of office.

However, this legal arsenal raises several issues when applied, especially in interpreting the justifications for neglecting the position, issues of proof... Especially when it comes to dismissing, a large number of employees at once as a result of strikes that have been ruled illegal by the courts, such as the mass dismissal decisions taken by the Ministry of National Education in February 2018 due to the teachers' strike from 30 January 2018 to 18 February 2018.

This raises an issue related to the boundary between the balance between the administration's right to take a dismissal action to protect the proper functioning of the public service and the employee's right to protection from administrative arbitrariness. This is what we will try to study in this article.

2. First Requirement: The concept of removal from office:

The penalty of dismissal shall be imposed on an employee who abandons his/her position without excuse, or due to loss of civil rights, loss of nationality or deprivation of nationality:

First: Removal from employment due to loss of civil rights: Article 75 of Ordinance 06-03 defines the conditions for joining the public service, including the enjoyment of civil rights.

Second : Removal of an employee due to loss or stripping of Algerian nationality : An employee who loses or is stripped of his Algerian nationality shall be dismissed. According to Order 06-03, 75, an employee's possession of Algerian nationality is a condition for appointment to a public office, a condition that is supposed to remain in place in order to continue to hold this position, so an employee who loses or is stripped of his nationality shall be dismissed by force of law.

Third: Removal of the employee due to abandonment of office: This is the subject of our study.

2.1 Section I: Definition of dismissal of an employee:

Dismissal is the removal of an employee from the job permanently, with no possibility of re-entering the public service, due to his/her abandonment of work, without an acceptable justification, for a period determined by law.

Executive Decree No. 321-17, which defines how an employee can be dismissed for neglect of duty, defines dismissal as: ‘The unjustified abandonment of the position without justification, an administrative decision taken by a reasoned decision of the

authorities that have the power to appoint employees after warning, regardless of the basic disciplinary and legal safeguards. It is clear from this article that the decision to dismiss an employee is taken by the authority that has the power of appointment at its sole discretion, without taking the opinion of the equal-member administrative committee, if the employee is absent for fifteen consecutive days without an acceptable justification, and this is done only after the employee has been warned.

2.2 Section II: Similarities and differences between dismissal and demobilization

Given the similarity between impeachment and demobilization, it is important to compare and contrast them, and before that, it is important to define demobilization:

2.2.1 Definition of Demobilization:

Demobilization is a disciplinary sanction of the fourth degree, taken by the authority with the power of appointment, after taking the mandatory opinion of the equal-member administrative committee, meeting in a disciplinary council, and applied to an employee who has committed a serious professional error, or against whom a final criminal judgment has been issued. (Articles 163 and 181 of Ordinance 06-03 on the Public Service).

2.2.2 Difference between isolation and demobilization: Through our definition of isolation and demobilization, we can deduce the similarities and differences between them, as follows:

- Similarities between dismissal and demobilization:

-The legal effect of dismissal and demobilization is the same، which is the final removal from the public service and the prohibition in the future from joining any public job، if the employee is permanently tenured (Article 185 of Order 06-03)، while if the employee is in a state of internship، he is allowed to re-employment after three years of the action or penalty (Article 30 of Decree 17 that defines the provisions applicable to interns in public institutions and administrations).

-Any employee who has been subject to dismissal or demobilization can resort to the judiciary to annul the punishment or measure imposed on him or her.

-The difference between isolation and demobilization:

-Demobilization requires the approval of an equal-member administrative committee، While dismissal is a unilateral measure signed by the administration at its unilateral will without taking the opinion of the committee.

-The reason for dismissal is continuous absence for a period of time of fifteen (15) consecutive days، However، dismissal is a fourth-degree penalty، due to a major mistake made by the employee.

-The procedures followed in taking a dismissal from the job are different from the procedures followed in the penalty of expulsion.

2.3. Second Requirement: Grounds, conditions and effects of removal from office:

2.3.1. Second Requirement: Grounds, conditions and effects of removal from office:

Section I: Grounds for dismissal: Any employee who is absent from work without an acceptable justification or without prior authorization from the employing authority is subject to disciplinary penalties in addition to salary deduction. The degree of this penalty varies according to the duration of the absence. If the absence is less than fifteen consecutive days without an acceptable excuse, the employee is subject to one of the

legally prescribed penalties in addition to salary deduction, in accordance with Article 207 of Order 06-03 containing the Statute of the Public Service. However, if the period of absence is fifteen consecutive days without an acceptable justification, the employee is subject to the penalty of neglect of duty and dismissal from the job, according to Article 184 of Order 06-03. The justification for dismissal is that the employee suddenly severs the employment relationship with the administration without an acceptable justification, which may cause confusion in the proper functioning of the public facility.

Section II: Conditions for applying the penalty of dismissal: The following conditions are required for the application of the penalty of dismissal:

The first condition: The employee must be absent from work for fifteen consecutive days: Article 184 of Ordinance No. 06-03 containing the General Statute of the Public Service stipulates that in order to apply the penalty of dismissal for neglect of duty, the employee must be absent from work for fifteen consecutive days: 'If an employee is absent for at least fifteen (15) consecutive days, without an acceptable justification, the authority having the power of appointment shall take the measure of dismissal for neglect of duty, after a warning... Article 2 of Executive Decree No. 17-321, which determines how an employee can be dismissed for neglect of duty, stipulates that: 'Any employee in the service who is absent for at least fifteen consecutive days without acceptable justification shall be considered to be in a state of neglect of duty.

An employee whose official holiday, sick leave, leave of absence or placement period ends without him or her reporting to his or her place of work is also considered to be in a state of unlawful absence. If this absence continues for fifteen consecutive days without an acceptable excuse, a dismissal procedure may be taken against him or her for abandoning his or her position, and this is what was confirmed by the Council of State in the case of the legality of the dismissal taken by the Director of Vocational Training in Constantine. The Council of State confirmed the legality of the dismissal taken by the Director of Vocational Training in Constantine against an employee who refused to report to his workplace after the end of his holiday period, justifying his decision by stating that the employee was considered in a state of illegal absence (Decision issued by the Council of State, Second Chamber, under number 010497, dated 20/01/2004.

The same judgment applies to an employee who refuses to join the post to which he is transferred without an acceptable justification, as he is considered to have abandoned the post once he fails to report to his new duty station for fifteen consecutive days.

In the event of an employee's resignation, he may not interrupt his work as soon as he submits his resignation, but must continue to perform his job duties until the employing authority decides on the decision of the resignation, either explicitly accepting it within a period not exceeding four months, or implicitly accepting it after four months. The mere submission of the resignation does not break the employment relationship between the employee and the employing administration, as stipulated in Article 19 of Order No. 06-03, which states that: The employee sends his request to the authority authorized to appoint through the administrative ladder, and must perform the duties associated with his duties until a decision is issued by this authority.

If the employee is absent from work before the administration decides on the resignation request by explicit or implicit acceptance, he is considered to be in a state of unjustified absence, and a disciplinary sanction may be applied to him, depending on the duration of the absence. If the absence is less than fifteen days, the penalties prescribed in Article 207 of Order No. 06- 03 shall apply to him, consisting of salary deduction in addition to one of the penalties stipulated in Article 163 of the aforementioned Order, while if the absence from work reaches fifteen consecutive days, he is subject to the penalty of dismissal for neglect of duty, in accordance with Article 184 of the same Order.

This is in contrast to the Egyptian legislature, which considers an employee's absence from work for fifteen consecutive days without an acceptable excuse to be a tacit resignation. Article 98/1 of the Law on State Civil Servants stipulates that: 'A worker shall be deemed to have submitted his resignation in the following cases 1. If he is absent from work without permission for more than fifteen consecutive days, unless he submits within the next fifteen days proof that his absence was due to an acceptable excuse' (Law No. 47 of 1978 on State Civil Servants.(

The question arises: What is meant by neglecting a job position?

The term neglect of job post in Article 184 of Ordinance 06-03 has two meanings:

-The first is absence from the workplace and the second is refusal to perform work, and there is a big difference between the two, so which one does the Algerian legislator mean? In other words, when an employee comes to his workplace and refuses to perform the tasks assigned to him for 15 consecutive days, can he be dismissed because he is absent from work?

With reference to Article 184 of Ordinance No. 06- 03, we find that it does not give us a specific concept of neglect of duty, but only stipulates that 'if an employee is absent for fifteen (15) days without a valid excuse, the authority having the power of appointment shall be authorized to remove him/her for cause. With reference to the provisions of Executive Decree No. 17-321 of 2 November 2017, which determines the modalities of dismissal of an employee for neglect of duty, Article 2/1 states that Any employee who is in a position of neglect of duty who is absent for at least fifteen (15) consecutive days, without a valid excuse, shall be considered to be in a position of neglect of duty.

It is clear from this text that the concept of neglect of office is the employee's absence from the place of work, i.e. physical absence. Therefore, an employee who comes to his place of work and refuses to perform his duties is not considered in the case of neglect of office, as the dismissal is for absence and not for refusal to work, so this situation is not characterized as neglect of office within the meaning of Article 2 mentioned above, but rather as refusal to perform duties, because the fact of absence does not exist, as the employee is present at his workplace, and this requires judicial intervention to characterize the incident.

In the absence of Algerian jurisprudence explaining the meaning of neglect of duty, we can resort to comparative jurisprudence to characterize this fact, and the French administrative judiciary has addressed this issue and considered that the presence of an

employee at the workplace and his refusal to ensure the performance of the service does not constitute abandonment of the employee at the workplace and his refusal to ensure the performance of the service is not considered as abandonment of (. P. Gustave. 1981. P60).

It should be noted that if abstention from work occurs collectively, it is considered a legitimate strike if it occurs in accordance with the law relating to the prevention and settlement of collective conflicts at work and the exercise of the right to strike. However, if it occurs in violation of the legal provisions regulating the right to strike, it is considered an illegal strike, and is a serious professional error in accordance with Article 33 bis of Law No. 90-02 of February 6, 1990 relating to the prevention of collective conflicts at work and the exercise of the right to strike This article states:

The collective cessation of work resulting from a collective labor dispute, within the meaning of Article 2 above, which occurs in violation of the provisions of this law, constitutes a serious professional error committed by the workers who participated in it, and the responsibility is borne by the persons who contributed to it with their direct activity. In this case, the employee takes disciplinary measures towards the workers concerned, stipulated in the internal system, within the framework of the applicable legislation and regulation. This article explicitly states that collective cessation of work in violation of the provisions of the law is considered a serious professional error, which could be subject to a third or fourth degree penalty, and cannot in any way be considered an abandonment of the position, and therefore the penalty of dismissal cannot be applied to the employees participating in it.

2.3.2.The second condition: The absence must be unjustified: The absence that is described as neglect of the position must be an absence without an acceptable justification. A person who leaves his job for fifteen consecutive days suddenly and of his own free will is in the position of abandoning his job position, and this is what is stipulated in Article 184 of Order 06-03, which contains the phrase: If the employee is absent for a period of at least fifteen (15) consecutive days, without an acceptable justification.....

Article 03/02 of Decree No. 17-321 specified some acceptable justifications, as it stated: The term acceptable excuse means any impediment or force majeure situation beyond the control of the person concerned, proven by law, and related, in particular, to the following**:**

-natural disasters،

-Physical disability resulting from illness or serious accident،

- Criminal prosecutions that do not allow the person concerned to resume his work position.

It is clear that these cases were mentioned by the legislator as an example and not exclusively, so the justification is considered acceptable if it is the result of force majeure circumstances beyond the control of the person concerned, according to the text of the article, and here the burden falls on the employee to prove force majeure by all legally prescribed means of proof.

2.3.3.Third condition: The employee must be in actual service:

The employee relinquishing his position is required to be in a position of active service, and therefore the penalty of dismissal due to abandoning his position cannot be applied to an employee who is not in actual service. In application of this, the Second Chamber of the Council of State ruled in a decision issued on February 25, 2003, under No. 7462, in the case (S.R) against the Directorate of Education of the State of Setif. The latter dismissed an employee who was on fixed sick leave with medical documents indicated by the National Fund for Social Insurance. The court decided that the dismissal was invalid, and justified its decision by saying that dismissing the employee while on sick leave is a decision that violates the law, as it violates the provisions of Article 136 of Decree 85-59, so it must be cancelled (Journal of the State Council, Issue 5, 2005, p. 166).

It also ruled in another decision dated 11/12/2009 that: Since the respondent stopped practicing his work due to illness, and the medical certificates deposited in the file prove this, since the appellant issued the decision dated 05/17/2003 under No. 155 to dismiss the respondent from his work position while he was on sick leave, despite the fact that the relationship between the respondent and the respondent was at a standstill, since the contested decision to cancel the dismissal of the respondent came in violation of the law (Decision No. 048929, issued 11/12/2009, case of the governor of Ain Al-Defla v. (F.N).

These are some of the cases in which the employee is not considered to be in active service, according to Article 129 of Order 06-03 relating to the Basic Law of Public Service:

-The employee is on annual leave،

-The employee is on sick leave or a professional accident،

-maternity leave،

- The beneficiary of the leave of absence specified in Articles: 209 to 212, and Article 215 of Order No. 06-03،

- The employee who was called to follow the period of level improvement or maintenance within the framework of the reserve,

- The employee who was called up as a reserve,

- The employee who was accepted to continue the level improvement period.

- The employee placed at disposal in accordance with Article 130 and Article 131 of Order 06-03.

-The employee is in a secondment status، a position outside the framework، or a status on reserve (Articles 133 to 155 of Order 06-03).

2.3.4.Fourth condition: Jurisdiction: By jurisdiction we mean that the dismissal decision is issued by an objectively and temporally competent authority, and by objective jurisdiction we mean that imposing the dismissal penalty is within the jurisdiction of the

authority that has the powers of appointment to the position, as it is stated in Article 184 of Order 06-03 that: If the employee is absent for a period of 15 consecutive days... the authority that has the powers of appointment shall take the dismissal procedure due to negligence of the position. By temporal jurisdiction, we mean that the employee is in a position of actual service so that the administration can exercise its authority over him. The Algerian Council of State confirmed this position, which includes the necessity of adhering to the temporal jurisdiction of the disciplinary authority, through its decision issued on February 25, 2003 under No. 7462 in the case (S.R) against the Directorate of Education of the State of Setif, referred to previously.

If the employee is seconded, the authority competent to impose the penalty of dismissal on him is the original department to which the employee reports. Because it is the authority that has the authority to appoint, and the administration to which the employee is assigned must notify the original administration to which the employee belongs of every unjustified absence, so that the original administration can take all measures against the employee in the event of an unjustified absence.

2.4. Section Three: Effects of dismissing an employee:

Removal is considered the most dangerous procedure to which an employee is exposed, as it has some effects:

2.4.1. Terminating the employment relationship between the employee and the employing entity:

The dismissal of the employee results in the final termination of the employment relationship between the employee and the employing entity, and his removal from the list of employees. This is in implementation of Article 184 of Order No. 06-03 relating to the Basic Law of the Public Service.

2.4.2. The inability to be employed in the public office in the future:

The Algerian legislator stipulates that the dismissal procedure requires deprivation of employment in the future، as it prevents the dismissed employee from assuming public jobs، whatever their type، in the future. Accordingly, Article 185 of Order 06-03 states: The employee who was the subject of the penalty of dismissal or dismissal cannot be employed again in the public job. As stipulated in this Circular No. 05-2004 of February 10, 2004, issued by the Public Service, relating to re-joining public jobs, which states: Dismissed employees cannot run for a new job in the public job, as dismissal due to disengagement constitutes, in principle, a severance of the employment relationship unilaterally and without prior notice. However, if abandoning the position resulting in the dismissal is due to force majeure, the employee who was dismissed can nominate for a new job, after obtaining the approval of the central departments of the public service.

It should be noted that preventing a dismissed employee from assuming public jobs in the future is specific to registered employees, unlike a trainee employee who can be employed again in public jobs after three years from the date of dismissal, as Article 30 of Executive Decree No. 17-322 stipulates that: A trainee who was subject to the penalty of

dismissal or removal due to the position being degraded cannot be employed again in public office for a period of three (3) years.

2.4.3. Reimbursement of training expenses:

The trainee employee who is dismissed due to abandoning the position must return all the expenses that he benefited from within the framework of the position, and this is what is stipulated in Article 29/2 of Executive Decree No. 17-322: The trainee who benefited from a specialized training course to occupy a public position for the first time, and who was dismissed due to neglect of the position, must pay all the training expenses in accordance with the applicable regulations.

It is noted that the Algerian legislator was somewhat harsh when it prevented the dismissed employee from assuming public jobs in the future, especially since removal from the job due to abandoning the position is not due to considerations related to bad character, or the person's unfitness to hold public jobs, but rather it may sometimes be due to the employee's desire to change the job.

Especially if the employee obtains an academic qualification that allows him to practice a higher job, and the situation is that the job he currently holds does not value this obtained certificate. If he takes the legal path of submitting a resignation, he often encounters the procrastination of the employing body in accepting it, which causes him to lose the opportunity to occupy a higher position, which may push him to leave the current job and join the new position before the employing body approves the resignation, which puts him in a state of abandoning the position, and consequently removal procedures are taken against him, which deprives him of both the old job and the new job.

2.5. Third requirement: Removal procedures due to abandonment of the position:

Considering the seriousness of the impact of dismissal, namely permanent removal from the public service and future disqualification from holding any public , and considering the practical issues related to the application of Article 184 of Ordinance No. 06-03 of the Organic Law of the Public Service, and in order to put an end to the arbitrariness of the administration in taking the penalty of dismissal, Executive Decree No. 17-321 was issued defining the modalities of dismissing an employee for This decree outlines the procedures that must be taken to apply the dismissal, which can be summarized in the following points :

2.5.1. Proof of absence:

The administration must prove the employee's absence from work for a period of fifteen consecutive days with a written document to be included in his/her administrative file (Article 04 of Executive Decree 17-321) ,and this procedure is emphasized in correspondence no: 255 dated 19 March 2014 ,which stated that the dismissal procedure 'must be carried out by an official document It is deposited in the file of the person concerned (Correspondence no. 255 dated 19 March 2014), The administration must - according to Article 05 of Executive Decree 17-321 - when it notices an employee's absence during two (2) consecutive working days, it must issue a warning to him to join his work position immediately. If the employee does not join his work position after five

(5) working days have passed, starting from the date of the first warning, or does not provide a justification for his absence, the administration will issue a second warning to him.

2.5.2. Notifying the absent employee: The legislator، realizing that reporting mechanisms may be tainted by inability or intransigence، issued many publications and instructions related to how to notify the absent employee، the most recent of which is Executive Decree No. 17-321. According to this decree, the employee is notified to the last address registered in his administrative file (Article 5 of Executive Decree No. 17-321). The notice shall be communicated to the concerned employee personally by mail, in a registered envelope with acknowledgment of receipt, or by any legal means stipulated in the applicable legislation and regulation (Article 6 of Executive Decree 17-321) .Circular No. 1024, dated 12/21/1993, clarified the legal means that can be adopted for notification. In addition to notification by registered mail with notification of receipt, notification can be made via judicial notification or through security services (gendarmes or police) (Circular No. 1024, dated 12/21/1993).

The receipt of the notification of receipt from the postal services, or the report issued by the judicial clerk or the security services, is considered necessary to impose the penalty of dismissal on the employee, on pain of invalidity, as stated in Correspondence No. 893 dated October 13, 2015, in which it was stated: It should be noted that a warning is an essential procedure that cannot be dispensed with, and there is no alternative to it (Correspondence No. 893 dated 10/13/2015) .

In the event that the concerned employee refuses to receive the notification, or in the event of his absence from the address authorized by the administration, this is considered a legal notification. Article 7 of Executive Decree No. 17-321 enumerates the cases in which the warning is considered legal: as it states:

Notice is considered legal:

-If the concerned employee voluntarily refuses to receive notification of receipt of the notification،

-If he refrains from withdrawing the recommended letter containing the notification،

-When it is not possible to deliver the notification due to the absence of the employee concerned from his residence،

The note written by the Post Office on the postal envelope or acknowledgment of receipt returned to the administration in the above-mentioned cases shall be considered a notification.

Article n: 8 of the same decree also: When the notification is not received by the concerned party and the envelope is returned to the administration bearing a note, such as: Does not reside at the aforementioned address, or (Unknown address,) or the like, that note with the postmark is considered proof of notification.

In the event that notifications are sent through judicial notification or the security services, proof of rejection is made in a report prepared by these services, through which the administration takes isolation measures, according to Circular No. 1024 mentioned above.

2.6. Fourth requirement: Legislative guarantees enjoyed by the absent employee in the face of the dismissal procedure:

Given the seriousness of the dismissal procedure, and the fact that it is carried out by the sole will of the administration, and the fact that the legislator prohibited the employee from presenting his file to the administrative committee of equal members as a quasi-judicial guarantee, it, in return, provided the employee relinquishing his position with some legislative guarantees that limit the administration's arbitrariness in applying the dismissal procedure.

Many publications and instructions have been issued by the General Directorate of Public Service, clarifying the procedures that must be taken to implement the penalty of dismissal, under penalty of invalidation, such as Circular No. 1024 dated 12/21/1993, Correspondence No. 672 dated 07/01/2007 (Correspondence No. 672 dated 07/01/2007), and Correspondence No. 893 dated 07/01/2007. 10/13/2015, and other correspondence ، Finally, the decree was issued, Executive Decree No. 17-321, which specifies the methods for dismissing an employee due to the position being negligent. Among these legislative guarantees, we mention in particular:

2.6.1. Respect the legal procedures related to isolation under penalty of invalidity:

In order to protect the employee who relinquishes his position from the arbitrariness of the administration, the legislator stipulated all the measures that must be taken to impose the penalty of dismissal, without leaving much margin for the administration. It clarified the concept of relinquishing the position and defined it as absence from work for a period of fifteen consecutive days without acceptable justification. He also specified, but is not limited to, acceptable excuses, which include in particular cases stipulated by law, in addition to force majeure that prevents the employee from joining his workplace. He also detailed the procedures that must be taken to apply the dismissal penalty, and in particular the procedures related to how to prove the employee's absence, and the procedures related to how to notify him ،He considered that any violation of these procedures that must be taken exposes the decision to invalidity, and renders it without legal effect, as Article 15 of Executive Decree 17-321 stipulates that: Any dismissal decision for negligence of position shall be deemed void and without effect, in violation of the provisions of this decree.

2.6.2. Justification for the dismissal decision: Reasoning is the disclosure of the legal and factual reasons that justify the administrative decision, by disclosing the decision itself the reasons on which the decision-maker relied. Reasoning is the formal expression of the reasons for the decision.

Giving reasons for the dismissal decision is considered a guarantee to protect the employee from the arbitrariness of the administration, and if the rule is not to oblige the administrative authority to give reasons for its decisions based on the presumption of safety assumed in the administrative decision, however, the administrative judiciary has settled on the necessity of giving reasons for disciplinary decisions, which is the approach adopted by the Algerian legislator, to protect the employee from the tyranny and control of the administration.

Accordingly, the Algerian legislator required that the dismissal decision be given a justification, given the seriousness of this procedure, as Article 3 of the Executive Decree required that the dismissal decision be reasoned, as it stated: Removal due to negligence of position without acceptable justification is an administrative measure taken pursuant to a reasoned decision of The authority that has the powers of appointment after notification.

This is also stipulated in Article 11 of the same decree, which states: If the employee in question does not join his position at the end of the fifteenth (15) day of consecutive absence, despite the two excuses, the authority that has the powers of appointment shall dismiss him immediately, by a reasoned decision effective from the date of the first day of his absence.

The justification for the dismissal decision requires mentioning the period during which the employee was in an unjustified absence, along with mentioning the numbers and dates of the notices given to him to join his work, as well as the numbers and dates of the delivery receipts in the event that the employee receives them, or mentioning the numbers and dates of the notification reports, signed by the judicial reporting party or the security services in the event that he refuses to receive the notices or is not present at the known address. Failure to provide justification for the dismissal decision results in absolute invalidity according to the text of Article 15 of Decree 17-321 mentioned above.

2.6.3. Administrative grievance: The dismissed employee can appeal the dismissal decision before the authority that issued it within two months from the date of his notification of the dismissal decision, as Article 13 of Decree 17-321 stipulates that: The notification of the dismissal decision must necessarily include a note that the concerned employee knows that the dismissal decision may be the subject of a grievance before the administrative authority that issued it, within a period of two months, starting from the date of its notification.

If the employee is able to provide an acceptable justification for his absence during the two-month period following his notification of the dismissal decision, the administration will cancel the dismissal decision and reintegrate him, after studying the justification, ensuring the accuracy of the information and documents provided, and after taking the opinion of the equal-member Administrative Committee (Article 14 of Decree 17-321).

3. Conclusion:

Through our study of the legislative guarantees established by the law to protect the employee from arbitrary dismissal, we note the legislator's strictness in the measures that must be taken in the dismissal decision, to protect the employee from this measure, which has serious effects on his career, represented by final removal from the public job, in addition to being deprived of joining the public job in the future. Despite these guarantees that the legislator has established to ensure the employee's protection from this procedure, they remain insufficient, and in this regard we can record the following observations and suggestions:

-We note the Algerian legislator's strictness in preventing the dismissed employee from joining public employment in the future ،and we propose to the legislator to ease this procedure and allow the dismissed employee to be employed in the future after a period of time determined by the law ،in application of the provisions of the Constitution ، especially Article 66, which states: Work is a right and a duty. (Constitution 2020)

-We propose to consider the employee's abandonment of his work position for fifteen days without an acceptable justification as an implicit resignation, subject to the legal provisions for resignation, or at least to consider abandoning the position as a professional error to which one of the penalties stipulated in Articles 177-181 of Order No. 06-03 relating to the Basic Law of the Public Service applies, Giving the employee who relinquishes his position the same guarantees prescribed for disciplinary punishment, including the necessity of taking the opinion of the equal-member Administrative Committee before issuing the dismissal decision as a quasi-judicial guarantee, especially since neglecting the position is much less harmful than professional errors classified as third- and fourth-degree errors, the owners of which enjoy guarantees that far exceed those prescribed for the employee in the event of abandoning the position.

References:

- Circular No. 1024 dated 12/21/1993 issued by the General Directorate of Public Service ***(unpublished).***
- Correspondence No. 672 dated 01/07/2007, issued by the General Directorate of Public Service, addressed to the President of the Municipal People's Assembly of the Municipality of Algiers Kasbah ***(unpublished)***.
- Correspondence No. 255 dated March 19, 2014, issued by the General Directorate of Public Service, addressed to the President of the Municipal People's Assembly of the Municipality of Central Algiers ***(unpublished)***.
- Correspondence No. 893, dated 10/13/2015, issued by the General Directorate of Public Service, addressed to the Director of the National Higher School of Computer Science ***(unpublished)***.
- Executive Decree No. 17-321 dated November 2, 2017, specifying the methods for dismissing an employee due to negligence of the position. ***Official Gazette***, No. 66, dated November 12, 2017.
- Executive Decree No. 17-322 dated November 2, 2017, specifies the provisions applicable to those lurking in public institutions and administrations. ***Official Gazette***, No. 66, dated November 12, 2017.
- Order No. 70-86 dated Shawwal 17, 1390 corresponding to December 15, 1970, containing the Algerian Nationality Law, **amended and supplemented** .
- Order No. 06-03 of 1 July 15, 2006 covers the basic law for public employment. ***Official Gazette***, No. 46, issued July 16, 2006.
- State Council Journal، Issue 5, 2004.
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- PEISER Gustave, Civil service law, Publisher: Dalloz, 21st edition. 2012.
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