

Civil Service Disputes in Algeria

منازعات الوظيفة العمومية في الجزائر



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Date of transmission: 12/09/2025 date of acceptance: 09/11/2025 date of publication: 01/12/2025

Abstract:

In order to fulfill task, the obstacles that may come in the way of this task must be considered, perhaps the most important of which is the stability and safety of the public employee, which the legislator has sponsored with judicial mechanisms and surrounded him with special guarantees, these have been organized under the title of civil service disputes, and based on the problematic: How did the Algerian legislator organize civil service disputes?, we dealt with our topic in two sections, the first of which dealt with the disputes raised by the employee about financial rights, and the second dealt with public employee edisputes on Disciplinary Penalties.

Keywords: Civil service, Public employee, Promotion, Financial Disputes, Disciplinary Disputes, Public employee Evaluation, Public employee Discipline

الملخص:

على المسؤولية الثقيلة الملقاة على الموظف العمومي وعلى أمل الوفاء بهذا التكليف، وجب النظر إلى العقوبات التي قد تعترض ذلك، ولعل أهمها استقرار وأمان الموظف وهو ما رعاها المشرع بآليات قضائية وأحاطه بضمانات خاصة، انتظمت تحت عنوان منازعات الوظيفة العمومية، وانطلاقاً من إشكالية: كيف نظم المشرع الجزائري منازعات الوظيفة العمومية؟، تناولنا موضوعنا في قسمين تعرضنا في الأول إلى المنازعات التي يثيرها الموظف حول حقوق المالية وخصصنا القسم الثاني إلى منازعات الموظف العام حول العقوبات التأديبية.

الكلمات المفتاحية: الوظيفة العمومية، الموظف العمومي، الترقية، المنازعات المالية، المنازعات التأديبية، تقييم الموظف العمومي، تأديب الموظف العمومي

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Introduction:

The civil service is considered a tool of control with the planning, direction and implementation of programs, as it is of great importance. The view of the civil service varies from time to time, from one country to another, and from one legislation to another, because of the difference of countries in their cultures , political and administrative systems. The interest in the public employee and civil service has reached the extent that in some countries it has reached the point of allocating independent chapters in its constitutions for this purpose, and Algeria, like others, is trying to build solid foundations and rules for a structured and organized civil service.

As stated by the Muhammad Hamid Al-Jamal in his book "The Public Employee", "The presence of public employees has become a necessity of the public life in every country, as their presence in huge numbers and many categories has become a global phenomenon despite the political, social and economic differences that exist between the world 's countries".

After the appointment of a public employee and exhausting all legal and organizational methods in the field of selecting candidates for public office and joining their positions, a candidate who has been employed for a probation period shall be appointed to a rank of the civil service, and shall not acquire the status of an official in accordance with article 4 of the Basic Law of the Civil service of 2006 until he has been appointed to a permanent public post and appointed to a rank of the administrative hierarchy in accordance with the provisions of Article 83 of the Basic Law of the Civil Service. However, special statutes may provide for direct titularization in the rank in view of the high qualifications required for admission to certain ranks.

Considering the size of the responsibility placed on the public employee and the desired objectives from him being nominated, it was necessary for him to have guarantees for his stability, the security of his source of livelihood and to confront all threats, whether they are mistaken or arbitrary, which the legislator tried to address and clarify.

Hence, the following question can be raised: **How did the Algerian legislature regulate civil service edisputes ?**

On the basis of the vitality of the subject of disputes related to the civil service and its complexity at the same time, it is vital because it is a developed and emerging subject, while its complexity is shown through the difficulty of analyzing the relationship between the public employee and the administration,

the way it deals with him, and the possibility of extending judicial control, especially in terms of his rights, starting from his salary to his evaluation and promotion to his disciplinary decisions.

In order to answer this question, we address the issue in two points: the first analyzes disputes raised by the the public employee about financial rights and includes (disputes over salary and disputes raised by the public employee about his evaluation and promotion), the second topic is devoted to Public Employee Disputes about Disciplinary Sanctions

. 1- Disputes raised by public employees regarding financial rights :

The Egyptian administrative judiciary calls these disputes related to the financial rights of the public employee the settlement justice, where it considers that the position of the public employee in relation to his financial rights such as salary, pension, bonus, ...etc is a status derived directly from the law, i.e., it is one of the subjective positions that arise directly from any general organizational rule, which is the one to which the public employee is entitled, without the administration having any authority to grant or withhold, and as a result, all individual orders and actions issued by the administration in implementation of those rules are considered by the administrative judiciary to be merely executive acts aimed at applying the law to the employee's situation. In application of this reason, all disputes in grade and salary are considered disputes related to the settlement.

a- Salary disputes

After the inauguration of the public employee and his appointment to his position, the first rights prescribed for him after performing his service is his entitlement to a monthly salary which is defined as "the monetary consideration that the public employee receives periodically for being devoted to the service of the administration".¹

When define night salary, the Egyptian Administrative Court states that salary is not limited to the amount, which is originally determined for the public employee according to the grade of his job, but also includes all benefits related to the latter, whether material or moral, in kind or cash, as it is considered an appendix to the original salary. Its rulings are taken as additional salaries, travel allowance, food allowance, housing allowance, clothing, expatriation, accommodation allowance in remote areas, infection allowance for doctors, and

¹ Saeed Moghaddam, The Ethics of the Civil Service, An Applied Study, Unprinted, Dar Company for Printing, Translation and Distribution, Algeria, 1991, p. 75.

free travel by railway, or other means of transportation, decorations, and decorations, if they are prescribed for the job.¹

The Algerian legislator stipulated in the previous Basic Law No. 66/133 that salary should be based on rank and grade or according to the position held by the public employee, thus regulating the salaries of public employees and special grades with their minimum and maximum indicative numbers, as well as the salaries of groups outside the grades.

With the promulgation of Decree 85/59, which contains the Model Basic Law for Workers of Public Institutions and Administrations, and in article 16 thereof: "Workers shall enjoy the right to salary after the performance of service, within the framework of the legislation and regulation in force."

In the same context, the preliminary draft for the civil service stipulates the components of remuneration: "The wage stipulated in the above article shall include the salary, family payments and all compensation prescribed by decree, and the compensation system shall be considered as a complementary component that rewards the difficulties and characteristics associated with the jobs and develops according to these difficulties and characteristics."

Making the difference between salary and wages, Dr. Saeed Moghaddam says that there is no difference between these two concepts, as the distinction between them is nothing but a theoretical portrayal contrary to the article, according to which the salary is not granted until after the performance of service, just like wages.²

As mentioned above, the Egyptian judiciary calls these lawsuits settlement lawsuits, so the public employee has the right to challenge decisions related to these issues whenever he has an interest, and the Algerian judiciary has dealt with such disputes in many of its rulings

Among them is the case between Fattoush Abdel Nour against the Minister of Justice, in which the Council of State decided as follows:

"Decree No. 1174/98 dated 15/11/1998 containing the dismissal of the plaintiff and his re-inclusion in the rank of registrar with the payment of all his salaries

¹ Abdelghani Bassiouni Abdallah, *The Administrative Judiciary, The Judiciary of Cancellation*, without edition, Office of University Publications, Algeria, p. 358.

²Saeed Moghaddam, *Ethics of the Public Service*, op. cit., p. 80.

from 23/09/1997 until his actual return and the deletion of anything more than that."¹

If this decision has drawn several criticisms from the point of view of jurisprudence, where the revocable judgment should have been to sentence him to appropriate compensation for arbitrary dismissal instead of being sentenced to the salary that represents the salary that is for work in the absence of work, then it is not possible to talk about a salary.

Similarly, in the case between Abu Bakr bin Nour Eddine and the Minister of Foreign Affairs, the Algerian Council of State ruled as follows: "...It is evident from the documents submitted in the file that the appellant's salary was suspended in May 1993 and that he was unable to appear before the Disciplinary Committee until September 24, 1995, more than two years later. Furthermore, the dismissal decision, based on the Disciplinary Committee's opinion in 1993, was not communicated to the appellant until May 14, 1996. - It is inferred from Article 130 of Decree 85/59 dated May 23, 1985, that the employee's situation must be rectified within two months from the date of the suspension decision. Moreover, the decision must be communicated within the same timeframe. Failure to do so will result in reinstatement and the restoration of his rights." In the present case, the dismissal decision dated 09/27/1995 was taken in violation of the procedures stipulated within the framework of the guarantees established for the employee, as the appellant is based on the claim that the contested decision was taken in excess of authority and in violation of the law.....

The Egyptian administrative judiciary considers that the status of a public employee deals with his financial rights, such as salary, pension, remuneration, etc., a status derived directly from the law, which means that it is one of the autonomous positions arising from a general organizational rule, without the administration having any authority to grant or withhold.

As a result, all orders and actions issued by the administration in implementation of these rules are considered by the administrative judiciary to be mere executive acts aimed at applying the law to the public employee's situation, and in application of this theory, all disputes regarding promotion or salary are considered disputes related to settlement, and such judicial applications of this theory are the judgment of the Supreme Administrative Court on 27/11/1972, where it ruled: "The plaintiff's requests in the appeal are limited to the request to settle his pension on the basis of four-fifths of his last monthly salary pursuant to the text of the law of insurance and pensions, and the

¹ Council of State, Decision of 24/07/2000, Case Ben Fanouch Abdel Nour vs. Minister of Justice, Unpublished Decision.

lawsuit as such shall be considered as a settlement suit in which the plaintiff derives his right directly from the aforementioned law, and therefore the sixty days period stipulated in the Law of the Council of State shall not be made in respect thereof."

Through this ruling, we note that settlement cases do not adhere to the dates of the cancellation lawsuit, as the dates extend to the periods of limitation of the plaintiff's right or its termination, except in cases where a special provision is contained specifying the date of the termination of the lawsuit itself. In a decision of 20/10/1995 Minister of Budget C/ANTOH.

"Since the decision to annul is different from the decision to indemnify, this does not mean that the plaintiff must file two lawsuits, as in one case he can combine the two, the first by annulment and the second by repairing the damage caused by an unlawful decision."

As for the situation in Algeria, where the public employee, who is forced to file two lawsuits in the face of this thorny situation, had to intervene in 1969 by virtue of Decree 69/77 of September 18, 1969, to add a second clause.

Article 276, which stipulates: "The Administrative Chamber of the Supreme Court may, notwithstanding any contrary rulings, adjudicate on the related requests contained in the same petition or another petition related to the first for compensation for the damage attributed to the challenged decision, taking into account the provisions of the seventh paragraph."

Due to illegality, it may include applications aimed at compensating for the damage caused by the challenged decision, and the acceptance of these requests remains subject to the acceptance of the original claim and its fulfillment of the conditions set forth in articles 275, 278 and 279 of Civil Procedures Law, and this amendment does not prevent the litigant from being able to choose the full judicial action, knowing that the two claims cannot be combined¹.

Article 809 of the Code of Civil and Administrative Procedure has finally settled the case, stating as follows:

"When the Administrative Court notifies requests on the occasion of the consideration of a case that falls within its jurisdiction, and which are at the same time related to applications submitted in another case filed before the

¹Hashemi Kharfi, *The Civil Service in the Light of Algerian Legislation and Some Foreign Experiences*, Edition (03), Dar Houma, Algeria, 2013, p. 410.

Council of State and fall within its jurisdiction, the President of the Court shall refer those requests to the Council of State."¹

Article 805 of the Code of Civil and Administrative Procedure also recognizes the jurisdiction of the administrative courts competent in the region to consider the original applications within their jurisdiction as well as to consider interlocutory or counter-applications that fall within the jurisdiction of the administrative courts.²

b- Disputes raised by a public employee about his evaluation and promotion

The Civil Service Law and the sectoral statutes enable the public employee to receive incentives and bonuses during his career, and he may resort to the judiciary if they are violated, which can be explained as follows:

1-Publicemployee disputes about his evaluation

The field of performance evaluation in the civil service sector is known as a significant breakthrough dictated by the developments in modern labor relations, from the scoring system to the comprehensive evaluation that depends on the extent to which the goals set by the organization are achieved.

What once seemed to be a dream and a hope for the analysis of social psychologists who are always more concerned with the human at work, rather than with the institution, has taken on a significant dimension, due to the effects of the model of the development of international competition and the emergence of new patterns³.

In compliance with these visions, the legislator has mandated a process that is considered a criterion for the public employee's efficiency, and the importance of the process is not limited to the promotion of the public employee, but this importance extends to other aspects such as granting bonuses, transferring them, or determining material or moral incentives for them. The drip process includes two factors, the first is a sign and the second is a general observation⁴.

The legislator also stressed the need to develop an annual score card that includes the assessment of the employee's qualifications, professional

¹Article 809 of the Civil and Administrative Procedures Law 08/09, dated 18 Safar 1429 corresponding to February 25, 2008, including the Civil and Administrative Procedures Law, Official Gazette, No.21 issued on 23/04/2008.

² Hashemi Kharfi, op. cit., p. 411.

³Saeed Moghaddam, Ethics of the Public Service, op. cit., pp. 229-230.

⁴ Anas Jaafar, Principles of Public Service and Their Applications to Algerian Legislation, Unpublished, D, M, C, Algeria, 1982, p. 51.

knowledge and work style, and it has given the employee the right to view his points, and allowed him to submit his observations or request clarifications in this regard.

In this context, we find that the French legislature stipulated the drip process in the order issued on February 4, 1959, and the general conditions for the application of this article were referred to the regulation, stating: "Every year, every employee in the case of activity or in the case of assignment of a point followed by a general observation expressing his professional value, the authority of the authority to make a point shall be granted by the head of the authority", and this was further confirmed by Law 83/634 on the rights and duties of public officials in its article (17).¹

The Algerian legislator, in turn, did not overlook this matter, as we find that he went through several stages in it, as it stipulated the provisions of the scoring in Decree No. 85/59 in articles 83, 84, and 85, and article 84 stipulates that: "The annual point ranges between 0 and 10 and takes into account in determining the public employee's preparations, information, professional results, how he performs his service and his behavior in the interest."²

Article 97 of the Basic Law of the Civil service stipulates that "every employee shall undergo, during the course of his career, to a continuous and periodic evaluation aimed at assessing his professional qualifications in accordance with appropriate curricula."

Article 100 of the same law states that "public institutions and administrations, after consultation with the administrative committees of equal members and the approval of the central structure of the civil service, shall determine the evaluation methods that are appropriate to the nature of the activities of the relevant authorities. This results in a dotted evaluation accompanied by a general observation.

Executive Decree No. 10/134 establishing the compensation system for employees belonging to the common corps in public institutions and administrations stipulates the following:

¹ Majed Ragheb Al-Helou, Administrative Law, Unpublished, Dar Al-Fikr Al-Arabi, Alexandria , 1994, p. 305.

² Article 84Decree No. 85/59 , issued on 02 Rajab 1405 , corresponding to 23 March 1985 , containing the Model Basic Law for Workers of Public Institutions and Administrations, Official Gazette No. 13 , 1985, p. 333.

Article 02 stipulates that the employees mentioned in article 1 above shall benefit, as the case may be, from the following bonuses and compensation:

- Profitability Bonus.
- Compensation for common administrative services.
- Compensation for common technical services.

The payment of the royalty allowance shall be subject to a score according to the levies determined by a decision of the authority in charge of the civil service¹.

What can be observed in this regard is that states are unanimous in providing for the scoring provisions for a public official in the performance of his or her function, in a manner favourable to the country's functional system.

The scoring system can be considered as a kind of control over the employee during the performance of his job, and this evaluation process has sparked a debate about the publicity or confidentiality of the report, as some believe that by secrecy, it avoids provoking rivalries, hatreds, and quarrels between the employee and his boss, while the proponents of publicity say that the facts should appear in the light so that those with passive consciences do not find an opportunity to harm their subordinates for personal reasons, and so that the subordinates can fix their defects and discuss them after confronting them.

Considering and investigating the judicial rulings in this regard, we find the following from the decisions of the French Council of State:

- A decision dated 20/12/1937 in the case of Morel-Rec, which linked the drip process to the preparatory measures and therefore could not be appealed.
- Decision of 06/05/1960 in the Bragecase stipulating that the drip decisions cannot be appealed to the administrative judge even if the arbitrariness of the administration is evident in it.

However, with the decision of Calara, the matter was different, and that was on 23/11/1962, where the door was opened for appeals for exceeding authority in the decisions of the drip process, and this decision stated the following: "The points and observations that the public employee is the subject of the issue issued by the peaceful authority are administrative decisions that can be the subject of an appeal before the administrative court for exceeding authority."

¹Executive Decree No. 10/134, dated 28 Jumada Al-Awwal 1431, corresponding to 13/05/2010, establishes the compensatory system for employees belonging to the common corps of public institutions and administrations.

Therefore, the evaluation decision and the annual report are administrative decisions, just like ordinary administrative decisions, and are subject to the same conditions necessary for their issuance; otherwise, they are invalid.

2-Disputes raised by the public employee about his promotion

The public employee, after being appointed and ordained seeks the satisfaction of his superiors, and works hard to obtain a good score and a good report to be able to reach a promotion to a higher position, which results in great advantages for the benefit of the employee. Promotion is one of the rights of the employee, which he obtains under predetermined conditions.

Promotion is defined by Charles Debach as "improving one's career, which translates either into a mere increase in wages or, in addition to an increase in wages, a promotion in the higher ranks¹."

The Algerian legislature, like other countries, did not neglect this issue and did not go unnoticed, as it dealt with it in several places, including Decree No. 66/133, where it was stated in the conditions of promotion:

- 1/ The promotion should be done directly in the higher grade.
- 2/ The candidate's name must be registered in the list of promotions prepared by the administration and passed to the committee of equal members.
- 3/ The stipulated conditions such as point, duration, and competence must be met.

Article 4 of Decree No. 66/134, paragraph 3, stipulates the right of the employee to be promoted provided that the average or maximum period is available and he shall be granted the standard mark corresponding to the grade to which he was promoted.²

Similarly, in Decree No. 85/59, article 54 stipulates that promotion is joining a higher position in the rank of the corps itself, or by a change of rank. In deciding about promotion, the employee's preparations, information, professional results and behavior in the department is taken into consideration³.

Article 102 of the General Basic Law of the Civil service 06/03 states: "The evaluation point shall be communicated to the employee concerned, who may

¹Mustapha Cherif, State Agents and Their Employment for the Algerian Administration, Master's Degree, Institute of Law and Administrative Sciences, University of Algiers, 1977, pp. 142 ff.

² Article 4 Ordinance 66-154 of 08/06/1966, as amended and supplemented by the Code of Civil Procedure, c.T No.47

³ Article 54 of Decree No. 85/59 of 02 Rajab 1405 (23 March 1985) containing the Model Basic Law for Workers of Public Enterprises and Administrations, Official Gazette No. 13 of 1985

submit a grievance thereon to the administrative committee of equal members, which may be proposed to be reviewed, and the evaluation form shall be kept in the employee's file¹.

In Article 107, promotion in the ranks is represented in the progress of the employee in his career by moving from one rank to the rank of a higher position directly in the same corps or in the higher corps directly, according to the following procedures :

- On the basis of a qualification among the employees who have obtained the required certificates and qualifications during their career.
- After a specialized training.
- Through a professional exam or professional examination.
- By way of selection through registering in the qualification list after taking into account the opinion of the Equal Membership Committee, from among the employees who prove the required seniority.
- The employee does not benefit from promotion by registering in the qualification list twice in a row.

The special Basic Laws shall determine the modalities for the application of the provisions of this article².

Referring to Article 102 of Law 06/03, we find that it stipulates that it is possible to appeal to the Equal-Member Committee about the evaluation, and this can be pursued before the administrative court in case of arbitrariness or negligence. The employee can request cancellation, which was the case of the French Council of State in the case of Syndicat des Travailleurs de Recherche Extra Metropolitan in 1981.

Also, in the case of an employee from among the members of the committee concerned with promotion, this is a flawed decision and can be canceled. In general, every apparent interest between the members of the committee and the employees concerned with promotion, which is the decision of the Council of State of October 30, 1965, the case of Lehéne.³

The employee also has the right to appeal the promotion schedule, provided that the specified deadlines are met. The administration may refuse to register an employee, provided that this is based on illegitimate reasons. When preparing

¹ Articles 101 and 102 of Law 06/03, of 19 Jumada al-Thani 1427, corresponding to 15 July 2006, which contain the Basic Law of the Public Service.

² Article 107 of the aforementioned Law 06/03.

³ Saidai Samira, Public Service Disputes, Master's Thesis, Faculty of Law, University of Algiers, 2002/2003, p. 136.

the promotion schedule, seniority and the obtained certificate must be taken into consideration, otherwise the resulting decision is subject to cancellation, as is evident in the decision of the French Council of State dated 09/01/1970 in the Malézieux case.

- In the event that another employee is promoted at the expense of the public employee without taking the necessary measures, the Supreme Administrative Court ruled on 07/05/1994.

«.... Since it is established that the respondent administrative body does not dispute that the appellant is more advanced than the appellant on the date of graduation, the date of appointment or the date of occupancy of the second degree, as its submission dates back to 01/11/1970 while the appellant for promotion in this grade dates back to 31/12/1974, but they belong to one specific group, which is the group of arts jobs."

Therefore, the appellant's failure to be promoted to the first degree by someone who is more senior than him in occupying the second degree in the challenged decision is not based on fact and law¹.

The same was decided by the French Council of State on March 16, 1966 in the Marcantette case , which stated: "... The employee has an interest in filing a cancellation suit against appointments or promotions that occur either in his grade or in a higher grade in his service, and whether in a different corps, where his employees may compete with the appellant in the regular promotions of grades or higher posts, provided that the interest invoked by the employee is not related to the facility."²

II-Public employee's disputes on disciplinary penalties:

The issue of disciplinary action of a public official raises several issues, as it is necessary to clarify this mistake in detail and clarify the penalties prescribed for it and the guarantees that the employee can resort to so that his rights are not wasted.

a-The concept of a disciplinary error or crime and the authority to sign it:

In this regard, Dr. Suleiman Al-Tamawi says, "The subject of discipline is a combination of public administration and law together, and it is one of the topics

¹Saleh Mahmoud, Explanation of the Law of the Public employees System in the State, Everything Related to the Public Servant from His Entry into Service to Pension, 03rd Edition, Alexandria Knowledge Facility, 2000, p. 547.

²Abdel Salam Mukhlis, The Theory of Interest in the Cancellation Lawsuit, Unpublished, Dar Al-Fikr Al-Arabi, Egypt, 1999, p. 207.

in which a delicate balance must be established between the requirements of ensuring the law and the effectiveness of the public administration."¹

1- The Concept of disciplinary error :

Discipline in its usual form is a necessity and not an end in itself, because in fact it carries the meaning of discipline of morality and behavior, deterrence of disruptive acts, and the restoration of order and stability in public facilities , Dr. Suleiman Al-Tamawi says in this regard: "The subject of discipline is a combination of public administration and law together , it is one of the topics in which a delicate balance must be established between the requirements of the guarantee (the law) and the effectiveness of public administration....."²

A. Legislative definition of disciplinary error: The nature of this error makes most of the legislation refrain from giving a clear definition, so it cannot be taken into account and limited to it, unlike the criminal offense, and we take from the Egyptian law, article 78 of Law 47/1978, which states: "Any worker who deviates from the requirements of duty in professional work or appears in an appearance that would violate the dignity of the job shall be punished with a disgrace...". In article 111 of the Civil Service Law No. 19/1991, the Yemeni legislator states in this regard: "If an employee commits a violation of his duties stipulated or the laws, regulations and instructions in force in the civil service or in their application, one of the disciplinary penalties shall be imposed on him."

B. Judicial definition of disciplinary error: The judiciary has made attempts to define a career error, and we find this in the ruling of the Supreme Court of Egypt on 25/01/1968: "A disciplinary crime requires accountability and initiates punishment, and the worker must commit an act or acts that are considered a breach of the duties of his job or a violation of its requirements."

In another ruling, it was stated: "The reason for the disciplinary decision is the employee's breach of the duties of his job or the performance of one of the prohibited acts for him, as any employee who violates the duties stipulated by the laws, general regulations, or orders of superiors within the limits of the law, or deviates from the requirements of duty in the work of his job that he must perform himself, if this is entrusted to him and perform it accurately and honestly, commits an administrative sin that justifies his discipline, and the will of the administration is directed to impose a penalty on him, according to forms and conditions prescribed by law and within the prescribed quorum"

¹ - Suleiman Muhammad Al-Tamawi, Administrative Justice, op. cit., p. 26

² Suleiman Muhammad Al-Tamawi, Administrative Judiciary, op cit., p. 26

One of the great interests in this issue is the issuance of a legal opinion by the General Assembly in Egypt, which states that "disciplinary offences are not specified in the laws exclusively, and they are any act committed by an employee that would generate a disciplinary offence for which the administrative body is entitled to be held accountable and to impose the appropriate penalty.

The Algerian judiciary has not missed the definition of disciplinary error, as it stated in a case presented to it on 07/12/1985 (B.M.S.) v. the Minister of the Interior, in which it was stated:

"It is established by law that disciplinary errors include negligence in the exercise of office and acts committed outside the job which, by their nature, affect the honor and prestige of the employee or are capable of degrading the value of the category to which he belongs or indirectly harming the exercise of the job. The law and its decision to do so was correct. ..." ¹

C. Jurisprudential definition of disciplinary error: According to Duguit, "A disciplinary error is an act by which an employee violates the special duties imposed on him as an employee..." ²

Dr. Abdel Fattah Hassan said: "It is any behavior that is issued by a worker during or outside of his job and affects it in a way that may prevent the facility from carrying out its full activity."

Suleiman al-Tamawi said: "Every act or omission committed by a worker violates the duties of his job..." ³

2- Classification of disciplinary penalties and the authority to impose them:

Disciplinary penalties shall be classified in accordance with the provisions of article 163 of the Civil service Law according to the gravity of the mistakes committed, and shall be signed by the competent administrative authority in the event of their approval by the convicted employee..... ⁴

Disciplinary penalties are classified according to the severity of the mistakes committed into 4 degrees :

The first degree: (warning, written warning, reprimand)

¹ Judicial Journal, First Issue of 1990, p. 215

² Ammar Awabedi, The Basis of the Administration's Responsibility for the Actions of its Employees, Unprinted, National Company for Publishing and Distribution, 1982, p. 85.

³ Suleiman Muhammad Al-Tamawi Administrative Judiciary Previous Reference Page 86

⁴ Saeed Moghaddam, The Civil Service between Development and Transformation, op. cit., p. 434.

Second Degree: Suspension from work from one to three days , deletion from the rehabilitation list

Third Degree: Suspension from work from one to eight days , Removal from one to two degrees, Compulsory transfer

Fourth Degree: Direct Downgrading , Discharge.....¹

The authority to impose disciplinary sanctions is the authority that has the power to appoint, by a decision to justify the disciplinary penalties of the first and second degrees, after obtaining written clarifications from the concerned authority, and the same authority takes disciplinary sanctions of the third degree, and the fourth degree by a justified decision. After obtaining the binding opinion of the Equal Administrative Committee, the competent members assembled as a disciplinary council shall decide on the case before it within a period not exceeding 45 days from the date of its notification.

The opinion has remained stable in jurisprudence and the judiciary for a long time, that the authority that has the power to discipline has full freedom to choose the appropriate punishment for application, and the administrative judge did not monitor the evaluation of this authority in terms of the punishment it determines, the extent of its appropriateness, and the nature and gravity of the facts, and he considered this a deficiency that must be corrected.²

- The Algerian legislature has granted the body employed or its legally licensed representative the right to impose a disciplinary penalty on the offending employee, but it has not left the exercise of this right to the presidential authority alone. It has made another body to participate in its exercise, according to the importance of the punishment that the administration intends to impose on the employee. Effective for the employee on the other hand....³

With regard to the exercise of the right to discipline in the field of punishments of the first and second degree , the Algerian legislature has given the presidential authority alone to impose disciplinary penalties of the first degree, provided that its disciplinary decision is reasoned, where the authority that has the power to appoint by decision justifies the disciplinary penalties of the first and second degree shall be imposed after obtaining written clarifications from the concerned person.....⁴

¹Article 163 Public Service Law 06/03

² Saeed Moghaddam, *The Civil Service between Development and Transformation*, op. cit., p. 436.

³ Kamal Rahmaoui, op. cit., p. 137

⁴ Article 165 of the Civil Service Law 06/03, op. cit.

As for the exercise of the right of discipline in the field of punishments of the third and fourth degree, and due to the seriousness of this type of punishment, the legislator has made it the competence of the committees of equal members, which are convened as a disciplinary council, the presidential authority has no choice but to propose the punishment, and the aforementioned committees must either agree with the opinion of the administration or impose the disciplinary penalty that it deems appropriate for the crime committed.

- Formation of Joint Committees: These committees, at the central administration, provincial, and public establishment levels, consist of an equal number of employees representing workers and another representing administration. Employees representing administration at the central administration level are appointed by the relevant minister from among administrative officers, provided that the Directorate General of Public Service is consulted before their appointment. As for members representing administration at the decentralized level (provinces and public establishments), they are appointed under the same conditions mentioned above, by a decision of the governor or the relevant director.

- Powers of Joint Committees: Joint committees have advisory powers in the following matters: Second-degree sanctions, extension of the probationary period, automatic transfer, automatic secondment, placement on leave of absence for personal reasons, annual staff transfers. The supervisory authority is obligated to consult the joint committees regarding second-degree sanctions; otherwise, its disciplinary decisions will be subject to annulment, even if it is not bound by the opinion of this body. In addition to advisory powers, the legislator requires the approval of the disciplinary committees for third- and fourth-degree sanctions of a disciplinary nature.

Consequences of Imposing Disciplinary Sanctions: Disciplinary sanctions have different effects depending on their nature. For example: Sanctions of warning, reprimand, and admonition have purely moral effects, while the sanction of removal from the eligibility list results in the employee being deprived of promotion for the fiscal year and not being registered on the promotion list, thus preventing them from obtaining a legitimate promotion they had hoped to receive. Validity of the annual salary scale while retaining the right to register on subsequent scales.

- Reduction in seniority: This measure does not have immediate effects on salary, but only postpones the date on which the employee can obtain the higher index number, i.e., a higher salary (noting that the Algerian legislator does not recognize this type of disciplinary measure in

the Civil Service Law). - Demotion: This results in an immediate reduction in the employee's salary until they regain their previous grade through seniority. - Compulsory transfer: This is a disciplinary measure that leads to the transfer of the employee from their workplace to another location. This measure should not be confused with transfer in the interest of the service, which can be taken for non-disciplinary reasons. - Demotion to the next lower rank: This measure consists of appointing the employee to a rank immediately lower than their current rank. The application of this penalty presupposes the existence of such a rank. In reality, demotion cannot result in exclusion from the corps to which one belongs. - Dismissal: This is a measure that results in the loss of employee status and the suspension of the right to... Obtaining or enjoying the grant if it is determined as a result of misappropriating public or private funds, embezzlement related to the service, or resignation from employment in exchange for a financial sum... It is worth noting that the Algerian legislator was very harsh in drafting Articles 184 and 185 of the Civil Service Law concerning the effects of dismissal or removal, a provision that should be reviewed in accordance with the provisions of the Constitution. Article 185 of Civil Service Law 06/03 states: "An employee who has been subject to the penalty of dismissal or removal cannot be re-employed in the civil service."

2- Safeguards for employees in disciplinary matters :

Although the Algerian legislature did not deal in detail with the guarantees granted to employees in disciplinary matters in the General Basic Law of the Civil service, it stipulated in article 167 of this law the most basic guarantees, including:

A-The right of the employee to be notified of the violations attributed to him:

The employee who is being followed up must be informed of the disciplinary action against him and the mistake attributed to him within 15 days from the date of its initiation. The notification shall be made by telegram addressed to the president to deliver it to the offending employee, who must confirm that he has received the notice informing him of the administration's desire to punish him, thus avoiding the problem of the formality of the notification as proposed in France, which is the same direction which was followed by the Egyptian legislator, who stipulates the following: "Notices and announcements in disciplinary matters shall be by a recommended notice with the knowledge of arrival."

The burden of proving that the employee has been notified of the violations attributed to him lies with the administration, which obliges the public employee to give him sufficient time to review his disciplinary file.¹

B- The right to access the disciplinary file:

Article 167 of the Civil service Law stipulates that an employee who has been subjected to a disciplinary action has the right to be informed of the errors attributed to him and to review his entire disciplinary file within 13 days starting from the initiation of the public call.² Thus, this is a fundamental right enshrined by law....³

The judiciary has been keen to avoid punishing the employee for secret or unjustified reasons, especially for reasons of a political nature, since the French Council of State considered that the absence of memoranda from the file is not a sufficient reason for not reporting it, and that their notification is done according to certain conditions that are useful to the concerned assistant, and in all cases, the administration is obliged to report except for one hypothesis in which the administration is exempted from this formality, which is in the case of the person being subjected to a penalty of deprivation of liberty that prevents him from practicing a public function. In this case, the deprivation of service automatically makes the knowledge of the file documents useless, i.e., it does not provide any real guarantee.

C- The public employee's right to choose a defender and bring witnesses:

This is because the suspect employee does not have good access to the disciplinary file in most of the cases, due to his lack of culture in this area, and therefore it was necessary to enable him to use a lawyer during the confrontation process.⁴

This is the approach followed by the Algerian legislature in the second paragraph of article 129 of Decree 85/59, which stipulates the following: "... He may present before the Disciplinary Board or the Appeals Committee, if necessary, any written or oral explanation or call of witnesses, and he may use any defense attorney he chooses to defend him....."⁵

The legislature further emphasized this explicitly in article 162/2 of the provisions of the new Basic Law on the Civil service of 2006, which stipulates that the employee referred to the Disciplinary Board must be notified of the date

¹ - Kamal Rahmaoui, op. cit., pp. 149-150

² Kamal Rahmaoui, ibid., p. 150

³ Article 167 of the Public Service Law 06/03

⁴ Kamal Rahmawi, op. cit., p. 151.

⁵ Article 29 Executive Decree, operative 85/59

of his appearance at least 15 days in advance by the recommended mail, along with a receipt of receipt and enabling him to submit written or oral observations, or to be prepared as witnesses, and to be assisted by an authorized defender or an employee of his own choosing.....¹

It is worth noting that the presence of the employee who is the subject of disciplinary follow-up, while the disciplinary board is not necessary for the legitimacy of the procedure, and therefore, in case of impossibility, the concerned person can present his defense in writing. The Algerian legislator stipulates in this regard that in the event that an acceptable justification for his absence is presented, the employee may request from the equal committee of the competent members assembled as a disciplinary council to represent him by his defender.²

In an assessment of the functioning of the disciplinary system in Algeria, practice has shown that the Algerian disciplinary system lacks strictness towards the administration that does not adhere to the deadlines set for the benefit of the employee, i.e. enabling him to review his disciplinary file and prepare his defense, in addition to its lack of practical evidence to enlighten the managers and agents who are the subject of the disciplinary case, which must be remedied in the expected applied texts of the Algerian disciplinary system.

Conclusion :

The legislator, the jurist and the ruler realized that the public employee performs a mission that must be sanctified, because it is required, he is dedicating his life in the service of others, and this message can only be performed in an atmosphere full of tranquility and stability. For this purpose, we note this transformation that the judiciary has known towards this sect, which embraced its disputes with the administration, classified it and singled it out with rules that enhance its status after it did not pay any attention to it, but did not care about it at all, and thus the results were impressive, which increased. In this study, we tried to consider the developments of the administrative judiciary's jurisdiction in civil service disputes, which we noticed the legislator's attempt to simplify and bring the judicial facilities closer to the employees and his attempt to remove obstacles, as was the consideration of the subject of lawsuits that lie to be filed in the field of civil service and the legislator's effort in trying to state them, and the only thing that led to this development and

¹ Article 169 Public Service Law 06/03

² See Article 168/paragraph (3) of the Public Service Law 06/03

cannot be denied are the disputes raised by public employees. The dynamism that the judiciary is known today in its types and specializations according to the specificities of the parties that contradict the development of the services that have become necessary to provide to the society and of which the public employee is the means.

In this regard, we suggest:

1- In the field of legislation, the penalties should be reconsidered, especially the punishment of the second degree, which has a severe impact on the employee, with the sole authority of the administration to sign it without the participation of any other party, and we believe that it is an exaggerated punishment, which includes suspension from work from one to three days and deletion from the qualification list, and this must be reconsidered because this can harm the employee, and it should be noted that by returning to article 55 of the Civil service Law 66/133, the authority of the administration was limited to imposing the first class penalty only.

2- In addition to the need to expedite the consideration of cases related to the civil service, it is noted that the cases in broadcasting these cases take a long time, especially since the employee in his dispute is usually related to his life and the lives of his family members, who require a lot of expenses, and the slowness of the judiciary cannot be tolerated by the employee.

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