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Abstract :

The public employee exercises his duties in the public administration where he provides a public service within a public facility, his relation with the administration is regulatory not contractual unlike the laborer in the private sector who is recruited under a renewable contract. The public employee is appointed according to an administrative decision for an unlimited period, as the public function in Algeria follows a closed system. This relation begins from the day the public employee is nominated until the day of his retirement, however, there are other causes of the end of the relation between the public employee and his administration such as resignation, death, and revocation or dismissal.

The public employee enjoys a set of rights and obligations , He is also subject to a disciplinary system that guarantees the good running of the public service , as a set of disciplinary penalties are imposed on him in the event of committing a professional error in a way that the punishment is proportional to the professional error. The public employee enjoys a set of guarantees, including the right to appeal before the equal joint committee , he also has the right to access to his file and the right to judicial appeal .

Key words:

Public employee, public service , public facility , rights and obligations , disciplinary system , guarantees .

Introduction

Upon transitioning from second-year of law to third year, students embark on a new phase of acquiring legal knowledge about the state and its various constitutional and administrative institutions, encompassing all types and levels.

This includes centralized, decentralized, and regional/sectoral administrations, examining their organization, objectives, and activities. These activities are primarily focused on public service provision, which involves delivering public services to citizens, in addition to administrative police which entails restricting citizens' freedoms to maintain public order. This order encompasses both its traditional dimensions of public security, public health, and public tranquility, as well as its modern dimensions of public morality, ethics, and the overall aesthetic appeal of the city.

After mastering the administrative and financial aspects of public administration, students must not overlook a crucial and pivotal element: the public administration, as a public legal entity, requires a natural person to speak on its behalf and represent it in a tangible and concrete manner, this natural person is the public employee. Therefore, given the importance of the public employee as a representative of the public administration, national legislation must regulate their professional life at all stages and aspects, from his initial recruitment and transition to public function to their eventual return to private life.

The public employee differs from other laborers in the private and public economic sectors due to the unique nature of their relationship with the public administration, which is regulatory in nature and stems from the specific nature of their duties and responsibilities, namely providing a public service on behalf of the administration, or in other words, on behalf of the state. Therefore, it was imperative for the legislator to regulate the professional and even personal life of public employees when related to their functional performance ,and perhaps the strongest evidence of this is the Algerian legislator's commitment to regulating this matter through a legislative text, rather than a regulatory one. This is enshrined in Article 139, paragraph 26 of the Constitution, which stipulates that

Parliament legislates in the areas designated for it by the Constitution, as well as in the following areas:…

- *Fundamental guarantees for employees, and the general basic law for the civil service.*

This same paragraph has been adopted by successive Algerian constitutions since independence. Based on this, Presidential order No. 06/03, dated July 15, 2006, was issued, representing the most recent legislative text in effect to this day, and it has itself undergone several significant amendments. This legislative text has tried, as much as possible, to cover aspects of the professional life of the public employee, from how he joins the public function, the conditions and procedures for that, and the stages, starting from conducting the competition and reaching the decision to be appointed to the position. It also took care to stipulate all the guarantees, rights and duties for the employee and the administration, and to stipulate the various legal positions that the public employee may experience during his professional career for any reason or circumstance, in addition to defining the disciplinary system for the employee in all its parts, to conclude at the end with the part of the termination of the employee-administration relationship and its cases and conditions and procedures for each case separately.

Hence the third year of a student in Public Law is a pivotal stage in legal studies, during which students need to acquire a range of knowledge and skills that will help them lay the groundwork for their future specialization in the second phase, the Master's level , it should also be noted that in 2020, Executive Decree No. 373/20 was issued, explaining the basic legal position of public employees .Also in the field of public service, Law No. 22/22 was issued, which amended the provisions of Order 06/03 by granting employees the right to establish a company that is not subject to salary payments. This reflects one of the mechanisms for keeping pace with the state's transformations in this regard.

Based on the foregoing, we pose the following question: To what extent has the Algerian legislator, through the establishment of a distinctive legal system for the civil service, succeeded in regulating and protecting it, ensuring a balance between the interests of the continuous operation of the public service and the interests of the public employee?

This publication simplifies and clarifies the legal frame governing the civil service and its most important aspects in terms of organization, structuring, and

protection. This curriculum is designed for third-year public law students and addresses the following issue: Using an analytical and descriptive approach, this study will cover the following axes:

Axis 1: The concept of public employee

Axis 2: The evolution of the public function in Algeria

Axis 3: Joining the public function's posts

Axis 4: The central and local structures for framing the public function

Axis 5: Legal positions of the public employee

Axis 6: Guarantees, Rights and the Duties of the public employee

Axis 7: The disciplinary system of the public employee

Axis 8: Termination of relation public employee- administration

Axis 1: The concept of public employee

The term used to refer to a public employee varies across different countries, in Algeria, France, Egypt, and Belgium, the term is "public employee," while in Switzerland it is "permanent employee," and in Britain, "servant of the Crown."[1]

First requirement: Definition of the public employee

The definition of the public employee differs depending on the adopted criterion

A. Occidental doctrine and Arabic Jurisprudence:

The jurist Hauriou defined public employees as...name Employees, users, workers, or assistant workers who hold a position in the permanent staff of a public utility managed by the state or other public administrations.

Definition by Duguit: “Any worker who contributes in a permanent and regular manner to the operation of a public utility, whatever the nature of the work he performs, there is no difference between the utility being administrative or economic, or whether it is managed through direct exploitation or through concession.”

The Supreme Administrative Court of Egypt: "For a person to be considered a public employee, subject to the provisions of the public service, they must be appointed on a permanent and non-temporary basis to contribute through permanent work to the service of a public facility directly managed by the State."[2] That is, someone entrusted with "permanent work in the service of a public facility managed by the State or another public legal entity through their occupation of a position within the administrative organization of that facility."[3]

In Algeria we can hardly find a judicial ruling on this matter to define the public employee, or at least to define its concept in light of the criteria and principles

[1] Emanuel Aubin , Droit de la fonction publique ; 3eme Edition , Gualino éditeur , paris , 2007 , p 27.

[2] Boujemaa Chahrazad Lectures in Public Function ,Intended for 3rd Year Students – 5th Semester ,
Specialization: Public Law , Academic Year: 2022-2023 , University of Blida 2 , Law and Political sciences faculty , p 5 .

[3] Anas Jaafar, Public Service, Dar Al-Nahda Al-Arabiya, Egypt 2007, p. 11 .

established by administrative jurisprudence. However, administrative courts have not distinguished between permanent employees and contract employees.

B. Criteria for Defining the Meaning of Public Service and Public Employee:

If the public facility is a legal entity existing within the administration of the state, and it consists of a set of specific tasks, the person holding it is called The public employee and to arrive at the intended meanings in all their forms, we subject them to standards that help us in this.

1-According to the personal standard:

The current order came as a distinct system governing employees. “This order defines the basic rules applicable to employees and the guarantees granted to them within the frame of performing their duties in the service of the state [4]this embodies the idea of a closed system relying on continuity and exclusivity in carrying out this function without engaging in parallel professional activities except within the limits permitted by law. It is worth noting that this concept is prevalent in European countries such as France. Britain, Spain, and Germany are among the countries that have adopted this concept, which is why it is called the European concept of public service. Many Third World countries have also adopted it , this concept is based on the existence of a legal frame governing employees and the recognition of their professional or employment position.

2-According to the objective criterion:

The meaning The public service is defined as "a set of legal functions and activities carried out by a specialized employee in the administration, aiming for the public good, thus, the public service is defined as "a set of legal functions and public regulations pertaining to public employees in the state."[5] Therefore, in this sense, it is a specialized occupation, no different from working on projects, and not a profession to which the employee devotes all their professional activity. Regarding the concept of career progression through promotion where a change in this process necessitates a new appointment requiring the fulfillment of new and necessary conditions for joining [6]

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[4] Article 01/01 of Order No. 03/66.

[5] Emanuel Aubin ,op-cit , p59 .

[6] Said Mokadem, Public Service between Development and Transformation from the Perspective of Human Resource Management and Professional Ethics, 2nd ed.,, Algeria 1989, p. 18

3-According to the narrow criterion: (the administrative definition)

These are the employees to whom the definition of a public employee applies in the precise sense, despite this concept being influenced by various factors and developments in defining the concept of administrative law itself and its scope of application, thus the reflection of the criteria The application of administrative law has an impact on determining the concept of a public employee, that is, the extent to which every person employed by the administration is considered a public employee, meaning they acquire this position from the perspective that the administration is an authority or power and that this person is in the service of the public facility. Consequently, the application of the rules of administrative law is insufficient, and the position is negated in this case [7].

The following are considered public officials any person holding a legislative, executive, administrative, or judicial position, or a position in one of the elected local popular councils, whether appointed or elected, permanent or temporary.[8]

C -Characteristics of the public employee

From the preceding definitions, we can deduce the set of characteristics required to confer the position of a public employee from the legal definition found in Article 4 of Law 06/03, which states: "Any employee appointed to a permanent public position and assigned to a rank in the administrative hierarchy is considered a public employee." Therefore, we can conclude from the above that the elements of a public employee in the state that confer the position of a public employee are:

1- Joining a public service organization Legal (Decree, Resolution, or Decree).
2- Performing a function in a public facility in the interest of the public good.
3- The facility is managed by a public servant and is subject to public law.
4- Exercising physical or intellectual effort on a permanent basis after being officially appointed to a rank in the administrative hierarchy ; thus members of parliament, judges, and military personnel are excluded from this provision and workers in public facilities and establishments of an industrial or commercial nature since the employee differs from the wage earner in terms of the legal system to which they are subject. Each entity is subject to Order No. 06/03, and

[7] Mohamed Youssef El-Madaoui, A Study in the Public function, Comparative Systems and Algerian Legislation, 1st ed., 1984, n.d., p. 13.
[8] Gustave Peiser , Droit de la fonction publique , Dalloz , 19éme Edition , Paris , 2008 , p16 .

the second to Law 90-10 [9], which falls under labor legislation. They also differ in their scope of application, as the public sector employment of public law persons (public administrative institutions) is subject to the private sector (economic sectors), which is governed by the rules of private law. Furthermore, it serves as a legal instrument for establishing the relationship between the two parties in the field of public service, as for the field of work, it is a contractual relationship between the employer and the laborer. Furthermore, the handling of disputes differs between administrative and employment disputes and social disputes in the ordinary courts.

As for the difference between an employee and a contract worker, the difference lies in the instrument of joining the position. An employee is appointed by a legal instrument (administrative Decision) , while a contract worker is appointed by a contract. Furthermore, the procedures for regularization and confirmation also distinguish between them. the former, based on regularization, acquires the position of a permanent public employee, while confirmation pertains to the contract worker within the limits of their contract. This difference reflects the nature of the relationship governing each party; the first is regulatory while the second is contractual .

- As for the public employee and the probationary employee, they differ in definition, the probationary employee undergoes a probationary period as a path to acquiring the position of a public employee after successfully completing it through the regularization procedure. Thus, the probationary employee acquires the position of a candidate, while the position of a public employee follows that of a successful probationary employee, and the enjoyment of rights differs from that of a probationary employee who does not enjoy full rights, unlike the holder of the position of a public employee.

In addition to disciplinary guarantees, the public employee enjoys full guarantees, unlike the probationary employee who can be dismissed without prior notice and without Compensation[10], by providing assistance to the trainee in an unstable legal position during its period of stability for the holder of the title.

[9] Law No. 11/90, dated 04/21/1990, relating to employment relations, amended and supplemented, Official journal No. 1990/17

[10] Said Mokadem, àp-cit, p. 52.

D-Sources of public function Law:

Since public function law is an integral part of administrative law, its sources cannot be separated from those of administrative law, as they stem from its general principles. therefore, the sources of public function law are as follows:

1-The Constitution:

With the exception of the rules specifying the authority for appointments to public function positions between the President of the Republic and the Prime Minister or the head of government depending on the case , and the parliament authority in the field of public function, we did not find many constitutional provisions directly applicable to this field , while the provisions of the Constitution might initially suggest a deficiency in this area .The key factor is the constitutional value that public function law has acquired, aligning with the direct application of certain international conventions, including, but not limited to, Article 6 of the Declaration of the Rights of Man and of the Citizen, which establishes the principle of equality in access to positions.[11]

Among the most important constitutional principles that form a fundamental source for the public function Law are those included in the 2020 Constitutional Amendment, specifically Article 67, which stipulates the principle of equality in access to public function positions, and Articles 69 and 70, related to the right to unionize and the right to strike.

2- Ordinary Legislation:

Ordinary legislation occupies a very important place in the field of enacting laws, including the public function Law.

The current Algerian legal system subjects the public function sector to a unified general basic law, an approach followed since the issuance of the first basic law for the public function in 1966 under Ordinance 133-66, up to the new law for the public function issued under Ordinance 03-06.

The provisions of the general basic law for the public function of 2006 apply to all employees in the course of performing their duties in the service of the state, as stipulated in Article 2 of this law. However, judges, military and civilian employees of the National Defense, and parliamentary employees are exempted (Article 3/2) due to the specific nature of their activities. The legislator has also allocated special basic laws to other sectors, which may stipulate exceptional

[11] Gustave Peiser , op-cit , p 24 .

provisions for this ordinance in the areas of rights, duties, professional conduct, and discipline (Article 3).

3-Regulatory Texts:

Most provisions of the public function Law are prepared and issued by the public authorities that have the regulatory authority.

Regulation, regardless of its function whether it be implementing or regulatory texts is a primary source of public function law. The regulatory authority intervenes to put into effect the legislative provisions that define the guarantees and basic rights of employees, regulating the application of the general basic law of the public function in terms of the basic measures applicable to them, such as those relating to the organization of working hours, the method of appointing employee representatives to joint administrative committees, and the basic guarantees established for employees

Special statutes also define how the general statute of the public function is applied in fundamental regulatory areas (such as employment conditions, the organization of employees' professional lives, and the disciplinary procedures. It is worth noting that special statutes can stipulate that the regulatory authority has the power to make exceptional exceptions, with some reservations, to the established legal provisions. [12]

4- Judicial Interpretation:

Similar to administrative law, the public function law originated within the jurisprudence of the French Council of State as the credit for establishing its general rules law belongs to it drawing upon its experience. In light of addressing the numerous grievances of administrative public employees, the French Council of State has worked since the beginning of the twentieth century to define the concept of the public function and the public employee, and has extended to all the guarantees contained in the implementing texts established for only certain categories of employees.

Administrative courts have also contributed significantly to shaping the provisions of the public function Law, starting with the interpretation of complex legal texts and addressing the shortcomings identified in legislative and regulatory texts through the application of general legal principles, culminating in the unification, codification, and issuance of its the provisions in the early

[12] Roger Grégoire , La Fonction publique , Dalloz , Paris , 2005 , p 84 .

1980s. The public function Law, which is increasingly moving towards codifying its provisions, is essentially nothing more than a judicial law.[13]

Second requirement: Public function Systems

The public function system varies from one country to another, due to historical, political, and economic factors that govern each country's legal system. Two systems or approaches have emerged in this regard: the objective (American) approach and the subjective (European) approach.

A-The Objective System of Public function

The foundation of this approach is the principle of the job, which, in other words, is the work performed by the public employee, encompassing various duties and responsibilities that must be carried out by a qualified individual. Priority is given to the public service itself, not the public employee. It represents specialized work with a set of predefined characteristics and specifications executed by a specialist.[14] This system is called the objective, American, or open system, as it is prevalent in the United States and widespread in some Anglo-Saxon countries such as Switzerland, Brazil, Canada, Finland, and Sweden , according to this system, the state is a large institution that requires numerous employees to perform its tasks, it operates in the same way as the heads of commercial and industrial companies, where jobs are defined and then classified. According to required specialization with clarification of the qualifications that candidates must possess and the salaries granted to them. Under this system, the function is considered an ordinary profession no different from other professions. The employee does not remain in it for life; rather, it is a specialized job performed by the employee under similar conditions for activity in private projects [15] . Public administration is an institution like any other that employs its staff and manages their personal and collective situations according to conditions and procedures applicable in the world of work.

This system spread in Anglo-Saxon countries and drew its foundations from the circumstances that characterized the emergence of democracy in these countries and the position that administration occupies [16]

[13] Roger Grégoire , Ibid , p 105

[14] Belourna Ahcene The Public function in Algerian Legislation: Between Theory and Practice, Dar Houma, Algeria, 2019, p. 17.

[15] Anwar Ahmed Raslan, op. cit., p. 22.

[16] Kharfi Hashemi, The Public Service in Light of Algerian Legislation and Some Foreign Experiences, 3rd ed., Dar Houma for Printing, Publishing and Distribution, Algeria, 2013, pp. 17-18.

This system is concerned with the administrative function, which is considered a project, and in which positions are predetermined according to what the administrative organization requires in terms of duties imposed by the nature of the job. This is accompanied by privileges and rights granted
to employees, provided that it is not necessarily managed by the state, as it can be an independent and private project in which competent staff are employed and committed to carrying out their tasks ,the term "open system" means "the ability of the job to flow continuously and move between the sectors of the job (public and private sector), with flexibility in managing employees, as they exist in a free relationship with the employing administration, which selects the best candidates for vacant positions .
This system has several characteristics, the most important of which are:

A- Under this system, the public employee's relationship with the administration is temporary, not permanent, and is based on a contractual agreement. The administration can terminate the employee's services, thus ending the employment relationship, the employee, on the other hand, can also resign from the position at will whenever he desires.

B-This system may include legal rules aiming to maintain the proper management of public facilities, including prohibitions of the practice of striking, and the referral of disputes involving management to special courts.

C- The open system, in its provisions, is close to the principles of liberalism and the organization of private institutions, as it includes elements such us the existence of a labor market with the necessary fluidity for the movement of labor from one sector to another, because this system focuses on extreme specialization in the selection of employees, there is a close link between institutes and universities and the employment system, which is reflected in the American education system, where American universities have expanded into highly specialized fields.[17]

D- The absence of a promotion system in this system, where the employee is appointed to a position based on their qualifications, and their fate is tied to that position. If they wish to join another position, they are appointed to it if they

[17] Kharfi Hashemi, op. cit., pp. 18-19.

meet the required qualifications, not through promotion. An employee's position is governed by their compatibility with the administration. [18]

B-The personal (closed) system of the public function

It considers the public function a profession to which the employee dedicates their life, in exchange for rights and guarantees. It is based on the principle of the civil servant's personal rank which requires qualifications [19].

Under this system, public service is considered a profession or career path for citizens who wish to be employed and who meet the legal requirements for holding the position. Employees progress through promotion from one grade and rank to a higher one, based on seniority and their scientific and professional competence. as the employee is meant to serve the administration permanently and continuously the position they occupy can be changed according to the needs of the public interest. The employee's fate within the public sector is independent of the fate of the function itself, allowing the administration to use the employee's services in any suitable position. [20]

It includes rules specific to the public function, governing individuals who are distinct from other employees. This is because the job organization allows for promotion through seniority and competitive examination. Furthermore, they join the public function sector at a young age and leave it upon reaching at least 60 years of age.

Civil servants are not subject to labor law but rather to special rules that grant them rights and impose duties and responsibilities of a special nature, distinguishing them from salaried workers to whom labor law applies. Under this system, the employee occupies a legal and regulatory position that entails a special relationship between the employee and the administration, with significant implications, most notably:

- The employee is considered a representative of the state, working to ensure the smooth operation of public services.
- The employee's rights and duties are defined individually by texts.
- Disputes concerning employees fall under the jurisdiction of the administrative courts
- The Public function Law is the law through which the state guarantees the stability of the employee according to specific legal rules. The administration

[18] Anwar Ahmed Raslan, op. cit., pp. 22-23.

[19] . Kharfi Hashemi, op. cit., p. 13

[20] Essaid Taib , droit de la fonction publique , Editions HOUMA , Algeria , 2005 .

requires the employee to be prepared for the job, whether specialized or not; it is based on the premise that an employee enters the administration not merely to occupy a specific position, but to join a institution within the administrative hierarchy with the aim of attaining various positions through promotion.

This system assumes the following:

- Guaranteeing employee stability, protecting them from arbitrary dismissal decisions.

- Enjoying a sufficient salary throughout their career and a pension upon retirement.
- Public service is a regulated profession requiring full-time dedication: Public employees are required to devote their full time and effort to their jobs and refrain from engaging in any other activity except as permitted by law and in accordance with the public interest. [21]

- Since public service is a regulated profession aimed at serving the public interest, an employee cannot simply quit the job at will , he is subject to specific legal procedures, beginning with submitting a resignation to the relevant authority. The employment relationship is terminated upon legal acceptance of the resignation, and the employee cannot leave their position unless their resignation is accepted, whether explicitly or implicitly .

    - Career Advancement: In a closed system, an employee joins at a lower rank in the administrative hierarchy and is then promoted according to legally defined conditions. This promotion is based on acquiring the required experience and seniority, or obtaining the necessary academic qualifications. Promotion is considered an important right Public service is a regulated profession requiring full-time dedication: Public employees are required to devote their full time and effort to their jobs and refrain from engaging in any other activity except as permitted by law and in accordance with the public interest. [22]

[21] Blourneh Ahsan, op-cit., p. 21.
[22] Blourneh Ahsan, Ibid, p. 21.

Among the positive elements of this system is ensuring job security for the employee. thereby strengthening state structures and institutions , it also encourages the spirit of integrity and dedication due to their long tenure in their positions [23] in exchange It requires the administration to establish a precise and complex professional frame, making it difficult to reconcile the requirements of administrative interests with the desires of employees, which leads to bureaucracy and red tape this system is also characterized by its complexity compared to the open system, given the requirements of managing the public service, such as the development of legal texts. [24] Employees under this system suffer from low salaries compared to the private sector, leading to a poor standard of living. Consequently, they leave the public sector and move to the private sector to secure a better standard of living.

[23] Boutouba Mourad, The public function System in Algerian Law: An Analytical Study under Ordinance No. 06-03 and the Special Basic Laws Supported by Administrative Court Rulings, Dar Houma for Printing, Publishing and Distribution, Algeria, 2018 ,pp. 128-129.

[24] Hashemi Kharfi, op. cit., pp. 21-22.

Axis 2: The evolution of the public function in Algeria

The public function in Algeria knew different phases

A-The Transitional Phase (1962-1966):

In the aftermath of the country's independence, the Algerian administration faced numerous crises, primarily related to the lack of a legislative and regulatory frame compatible with the Algerian social context. Furthermore, it was necessary to resolve the organizational crisis resulting from the shortage of local personnel and expertise capable of managing all public services due to the emigration of French talent. During this period, the public authorities had no option but to continue operating under the laws inherited from French colonialism, consequently, it was difficult for Algerians to control and implement them given their lack of experience and qualifications.[25]

Faced with this situation, it was decided to recognize the extension of the application of French law in the post-independence period. This was enshrined in Law No. 157-62 of December 31, 1962, , it was necessary to retain the colonial state's legislation until texts suitable for the philosophy and orientation of the Algerian state could be drafted. Article 1 of the aforementioned law declared the extension of the application of all legislation in force before December 31, 1962, to remain in effect during the post-independence period, with the exception of matters related to national sovereignty [26]

This transitional period was characterized by several shortcomings, the most important of which was lack of balance And harmony in the structures of the public function and the severe shortage of qualified personnel due to the void left by French colonialism, and the difficulty of replacing them with qualified Algerian employees beside reorganizing and redrafting the legislative and regulatory texts pertaining to the public function and adapting them to the requirements of Algerian society among these texts :

- Ordinance No. 01-62 dated July 6, 1962, concerning the reintegration and review of the administrative position of certain employees and agents who

[25] Djebaili Sabrine, A Concise Guide to Public Service, Beit Al Afkar, Algeria, p. 19.
[26] Ammar Boudiaf, The Public function in Algerian Legislation, First Edition, Joussour Publishing and Distribution, Algeria, 2015, pp.

were dismissed from their positions as a result of their participation in the War of Liberation.

- Decree No. 502-62 dated July 19, 1962, specifying the conditions of appointment to certain senior positions.

- Decree No. 503-62 dated July 19, 1962, specifying the procedures to facilitate access to public function positions.

B- The Adaptation Phase (1966-1978):

This phase was marked by the issuance of the first legal text regulating the public function in Algeria after independence, through Ordinance No. 133-66 dated June 2, 1966, containing the Law for the Public function, which entered into force on January 1, 1967. In order to establish Algerian legislation regulating the public function, the Algerian government formed a ministerial committee in September 1965, composed of representatives from the Ministry of the Interior and the Ministry of Finance. Thus, the first Algerian legislation in the field of the public function for independent Algeria was issued on June 2, 1966. Ordinance 133-66, through its first article, defined its scope of application includes central administrations and external departments, local authorities, and public institutions and bodies, including public institutions of an industrial and commercial nature. However, its provisions do not apply to judges, members of the People's National Army, or those responsible for religious affairs, it also established of the High Council for the Public function, which enabled the expansion of information centers and provided guidance to governments in formulating and implementing public function policy beside the right of employees to participate in managing their professional affairs through their representation on equal mixed committees and technical committees.

The intended goal behind this law was to reform the Algerian administration by breaking with the French system after restoring sovereignty and political independence, however, its excessive focus on ideology, coupled with its influence by the nationalist spirit and the principles of the liberation revolution and the National Liberation Front party (FLN), which it adopted as a historical reference point, clearly shaped the fundamental rules of the public function law. This was achieved by promoting revolutionary principles and emphasizing the

need to guarantee equality for all Algerians, while neglecting crucial elements such as encouraging fair competition based on merit and individual initiative; this necessitated the development of a new alternative [27].

C- The Unification of the Labor Sector Phase (1978-1990):

This phase was characterized by the issuance of two laws regulating the public service sector: Issuance of the General Basic Law for Workers of 1978, this law contained 217 articles and remained in effect until 1990. Article 1 of this law defined the worker as any person who lives off the proceeds of their manual or intellectual labor and does not employ other workers for their own benefit while carrying out their professional activity.[28]

The legislator intended this legal text to serve as a frame law, a fundamental and unifying reference text for all sectors as it provided a broad definition of a worker derived from the National Charter, applicable to workers in the industrial and commercial sectors, as well as those in the administrative sector or the public service, since employees in this sector also live off the proceeds of their manual or intellectual labor. Furthermore, this law was issued at the height of the socialist era, so its unifying nature is clear for ideological reasons. As long as the state was socialist in its orientation [29]

This meant moving it, within this phase, from a stage of adaptation and harmonization to one of radical structural reform of the various inherited structures, making it a fundamental driver of comprehensive societal development and eliminating the phenomena of bureaucracy and closed circles associated with the public function sector. Work, according to Article 4 of the General Basic Law for Workers, was considered a fundamental condition for the country's development and a source of livelihood for the worker, ensuring their sustenance , the Algerian legislator granted the public sector specific provisions, recognizing its importance in society. Article 3/2 of the General Basic Law for Workers referred to this sector under a new name (Public Institutions and Administrations), and designated it as an independent sector with its own specific legal regulations and rules governing the career paths of its members. These regulations were issued in a separate text at a very late stage in the implementation of the General Basic Law for Workers, specifically in 1985 [30].

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[27] Amar Boudiaf, op. cit., pp. 41-42.
[28] Djebaili Sabrina , op-cit , p 20.
[29] Said Mokadem, op. cit., pp. 137-138.
[30] Decree No. 59/85 dated March 23, 1985, containing the Model Basic Law for Workers in Public Institutions and Administrations, Official journal, No. 13, issued on March 24, 1985.

The most important feature of the provisions of this decree is that it came as a mixture between the traditional basic principles of the public service and the new philosophy of the world of work based on the unity of the law applicable to the worker and the work, embodied in the General Basic Law for Workers. Despite this, it was unable to the model basic law for employees of public institutions and administrations, and the new work environment it created, definitively eliminated the most important fundamental principles of the public function established by Ordinance 133-66, particularly the closed system of the public function based on career paths at various stages. The model basic law for employees of public institutions and administrations, in terms of its scope of application, encompassed numerous public institutions and administrations, including state departments, local authorities, public institutions of an administrative nature, departments of the National People's Assembly, the Supreme Audit Court, and public bodies. It subjected their employees to the provisions of Decree 59-85, which applies to employees of the state's executive branch. This was due to the failure to establish the principle of separation of powers at this stage and the embodiment of the theory of a single occupation and its legal systems, which made the general basic law for the employee the core of its references.

The legislator specifically designated the employee working in public institutions and administrations as an employee in Article 5 and thus distinguished him from the worker who carries out his activity outside this frame, and placed him in a basic regulatory legal relationship, and within a specific professional path [31].

D-The Public Function Reform Phase (2006):

There were several attempts at reform and reorganization. Starting in 1990, the public authorities initiated more than one draft general basic law for the public function to Parliament.

What further emphasized the need to reform and reorganize the public service sector was the unconstitutionality of Decree 59-85 after the promulgation of the 1996 Constitution, as the fundamental guarantees for employees and the general basic law became subject to change. The civil service falls under the purview of legislation, not regulation [32]Therefore, to rectify the prevailing situation and align with the country's political, economic, and social changes, Order 03-06,

[31] Bouteba Mourad, op. cit., pp. 220-221
[32] Said Mokadem , op-cit , p 142 .

dated July 15, 2006, was issued, containing the General Basic Law for the public function.

It is noteworthy that this law introduced several reforms, primarily establishing a new contracting system that aligns with the diversity and evolution of the administration's tasks and enhancing the salary system by revising the salary scale and the compensation system for different categories in addition to reviewing the conditions and methods of promotion.

Axis 2 : Joining the public function's posts

In response to additional demands arising from the natural evolution of societal needs. it may also be linked to circumstantial factors that necessitate the recruitment of a significant number of candidates for public service positions, such as the creation of new departments.

First requirement: Recruitment

The Algerian legislator has subjected the recruitment process to numerous legal conditions and procedures, which are themselves governed by legal principles that regulate the process of joining the public service.

A-Principles of Recruitment:

The process of joining the public service is governed by two fundamental principles:

1-The Principle of Equality:

The principle of equality in joining the public service is one of the most prominent manifestations of the principle of equality in public rights and duties. It is a principle of universal human value recognized by international and regional human rights conventions, and of constitutional value, as it is enshrined in most constitutions of the world's countries. In its positive sense, it means providing every citizen who meets the legal requirements with the opportunity to compete for vacant public positions. In its negative sense, it means non-discrimination among citizens in assuming public positions, regardless of the justification for such discrimination, except in cases related to competence. The principle of equality, combining these two concepts, is the equalization of opportunities and legal possibilities for accessing employment [33].

[33] Hashemi Kharfi, op. cit., pp. 125-126

In addition to the principle of equality in access to public service enshrined in international conventions, it is also included in the constitutions of most countries worldwide, including Algeria, which has included it in all its constitutions, most recently in the 2020 constitutional amendment, which stipulates in Article 67: "All citizens are equal in assuming duties and positions within the state, with the exception of those related to national sovereignty and security."
At the level of legal texts, Ordinance 03-06 reinforced the principle of equality in access to public service positions, stipulating in Article 74: "Employment is subject to the principle of equality in access to public service positions."

To ensure the application of the principle of equality in access to public service positions and to obligate various public institutions and administrations to respect it, two fundamental guarantees were established:

* Publicity: Executive Decree No. 194-12, dated April 25, 2012, which specifies the procedures for organizing Competitions, examinations, and professional tests in public institutions and administrations, and their conduct, are governed in Article 12, which mandates the announcement of competitions within 7 days of obtaining the corresponding opinion from the authority responsible for the public function. This announcement must be made through the website, print media, posters, and any other means.

* Conducting the competition: To ensure the principle of equality in access to public service positions, candidates must be selected through a competitive process. This process must be organized on scientific and objective grounds, and it must be transparent and impartial to ensure the success of qualified candidates and their entry into the public function. This guarantee increases candidates' confidence and lends credibility to public institutions and administrations.

2-The principle of merit:
The principle of merit is defined as the system that guarantees the entry and retention of citizens in public service positions based on criteria of competence and suitability, excluding other criteria such as favoritism and nepotism. Merit, as a basis for selection for public service positions, is nothing more than a set of

qualifications consist of multiple elements, including those related to technical competence and readiness for work. [34]

The merit principle adds value within society to academic qualifications and personal abilities, which encourages a commitment to learning and training, and eliminates the scourge of employment based on favoritism, nepotism, influence, and rewards for loyalty—objective considerations that have dire repercussions on the public facility and the public interest[35].

The principle of merit is explicitly stipulated in Article 81 of Decree 03-06, which states:

"The success of candidates in a competitive examination, a competitive examination based on qualifications, or a professional examination is announced by a neutral committee that establishes a ranking list based on merit."

B- Employment Conditions:

Decree 03-06 subjects recruitment to a set of conditions that must be met by candidates for public service positions. These conditions are comprised of general and specific requirements.

1-General Conditions for Employment:

These conditions are stipulated in Article 75 of Ordinance 03-06 and are as follows:

*** Nationality:**

This is a political and legal bond signifying an individual's affiliation with a specific state, to which they owe allegiance and are subject to its laws in exchange for its protection. Most legislations worldwide require public sector employees to hold their nationality, out of concern for the integrity and security of the public service[36]. Consequently, foreigners are prohibited from holding these positions except in limited exceptional cases. The Algerian legislator followed this approach when stipulating in Article 75 that anyone assuming a public office must be of Algerian nationality whether it was original or acquired.

[34] Djebaili Sabrina , op-cit , p 35 .
[35] Bouteba Mourad, op. cit., p. 226.
[36] Emanuel Aubin , op.cit , p106 .

*** Enjoying Civil Rights:**

This refers to the rights guaranteed to citizens, which can only be revoked by law or by a court order. The right to vote is considered a civil right, and its loss renders a person ineligible for appointment to a public office. Therefore, depriving a person of their civil rights disqualifies them from holding public position[37].

The Algerian legislator classifies the deprivation of civil rights among the supplementary penalties stipulated in Article 9 bis 1 of Law No. 23-06 of December 20, 2006, amending and supplementing the Penal Code, which states: "Dismissal or exclusion from all public offices and positions related to the crime (3)."... To ensure that a candidate for public office enjoys their civil rights, they are required to submit a criminal record certificate when submitting their application. in any way, constitute a barrier to employment, unless the position or duties are incompatible with the offense committed by the candidate. For example, a citizen convicted of embezzlement or theft applying for a position related to the management of public funds.

*** Military service:**

To be in compliance with national service obligations , Article 7 of Law No. 06-14 of August 9, 2014, concerning national service, also stipulates it, stating: "Any citizen who has not justified their legal position with regard to national service cannot be employed in the public or private sector, or practice a profession or engage in liberal activities."

The legal position regarding national service, according to this law, is either performance of national service, exemption from it, or postponement for a legal reason. One of these cases is proven by a document issued by the competent military authorities .

It should be noted that Instruction No. 273, dated August 17, 2013, issued by the Prime Minister, eliminated the requirement to prove the settlement of one's national service position when applying for public service positions. Candidates for public service positions are permitted to participate in the competitive examination, and if successful, they are then obligated to provide proof of their settlement of their national service position.

[37] Amar Boudiaf, op. cit., p. 96.

* **Age requirement**:
Article 78 of Ordinance 03-06 stipulates that the minimum age for joining the public service is 18 full years. This is proven by the candidate submitting a birth certificate.

* **Physical and mental capacity**:
Meaning the stability of physical and mental well-being and the absence of any disability or impairment that would prevent the candidate from optimally fulfilling their duties, especially mental health. It also refers to physical fitness, meaning being physically healthy enough to perform the duties of the job regularly and consistently, given its importance, most legislations, including Algerian law, stipulate it. Therefore, every candidate for a public service position is required to provide the administration with a medical certificate of physical fitness made by general medicine, chest medicine, and ophthalmology.
It should be noted that physical disability does not prevent a person with a disability from applying for certain public sector jobs , this is what Article 24 of Law 09-02 of May 8, 2002, concerning the protection and promotion of persons with disabilities,

* **Qualification Requirement:**
Qualifications suitable for one position may not be suitable for another , therefore, the determination of qualifications is left to specific statutes as a general rule. The level of qualification is linked to the tasks and responsibilities specific to each corps or rank. In this regard, Article 79 of Ordinance 03-06 indicates that proof of qualification is established through certificates, licenses, or training levels.

2-Specific Conditions for Employment:
In addition to the general conditions for employment there are specific conditions included in certain special basic laws applicable to certain corps of employees due to their specific characteristics. These conditions include:

*** Administrative Investigation:**
This condition is stipulated in Article 2/77 of Ordinance 03-06: "It may also specify the corps to which appointment is contingent upon a prior administrative investigation." Returning to the specific statutes that adopted this condition, we find they differ in the timing of the investigation. For example the statute for

employees of the administration responsible for religious affairs stipulates that it takes place during the probationary period for graduates of specialized training programs. In practice, the security services conduct it at the request of the administration or institution concerned with the employment. The request is submitted to these services through the investigation office located in the province to which the institution or administration belongs. [38]

*** Medical Examination:**

This condition is stipulated in Article 76 of Ordinance 03-06, which states: "The administration may, when necessary, organize a medical examination for employment in certain public function categories."

It appears from the text of this article that the Algerian legislator did not rely solely on medical certificates attesting to physical fitness, but mandated a medical examination due to the specific nature of certain public function positions that require a high level of physical fitness. Any illness discovered that is incompatible with the high level of fitness and health required for the position renders the candidate medically unfit, and consequently, their application is rejected.

C-Recruitment procedures:

The Algerian legislator has subjected the recruitment process to a set of legal procedures that public institutions and administrations must adhere to and respect. Following the approval of the human resources management plan for the institution or administration concerned, the recruitment phase begins , this phase is subject to several procedures outlined in Executive Decree 194-12 of April 25, 2012, which defines the procedures for organizing and conducting competitions, examinations, and professional tests. These procedures include:

1-Opening Competitions, Examinations, and Professional Tests:

By a decision issued by the appointing authority ,this decision must include the following:

- The category or categories and ranks for which the competitions, examinations, or professional tests are being opened;
- The method of recruitment or promotion (competition based on qualifications, tests, examination, or professional test);

[38] Bounteba Mourad, op. cit., pp. 240-241.

- The number of financial positions open and allocated to each method of recruitment or promotion;
- The basic legal conditions for participation in competitions, examinations, and professional tests .

Subsequently, a copy of the decision or decree must be communicated to the central or local departments of the authority responsible for the public function, as applicable, within a maximum of 5 working days from the date of its signing, the latter must then issue its opinion on the conformity of the decision or decree with the applicable regulations within a maximum of 7 working days from the date of its receipt. [39]

2-Publicizing Competitions:

Competitions and professional examinations for recruitment in various ranks and grades of employees shall be published within a maximum of 7 working days from the date of obtaining the corresponding opinion on the website of the authority responsible for the public function, in print media, on posters, or by any other means. Candidate's files must be recorded in chronological order of receipt in a special numbered and initialed register. The application is opened at the relevant department, and the candidate is given a receipt for the file .

After the file submission phase is completed, a list of accepted and rejected candidates for participation in competitions, accepted and rejected candidates are then notified 10 days before the competition. Rejected candidates may appeal to the appointing authority, which must rule on the appeal and respond to the concerned parties at least 5 days before the date of the competition [40].

3-Conducting the competition and announcing the results:

It shall take place within a maximum period of 4 months from the date of obtaining the corresponding opinion from the authority responsible for the public function. This period may be extended in some cases. If the competition is not held within five months, the decision or decree to open the competition becomes invalid, and the candidates are notified accordingly .Tests are carried

[39] See Article 11 of Executive Decree 194-12 of April 25, 2012, which defines the procedures for organizing and conducting competitions, examinations, and professional tests .

[40] See Article 11 of Executive Decree 194-12.

out by public institutions that provide training in the specialization determined by a decision issued by the Direction General of the Public function [41].

After the examination and the correction of the papers, a committee composed of the head of the institution or their representative as chair, a representative of the appointing authority or the supervisory authority, as applicable, as a member, and two examination examiners as members, determines the list of successful candidates. A candidate is considered successful if they obtain an overall average of at least 10 out of 20 without receiving a failing grade of at least 5 out of 20. If the competition does not include an oral examination, this committee determines the final list of successful candidates. In the case of an oral examination, the relevant institution or department will summon candidates who have passed the entrance exams to take the oral exam within a period of no less than 10 working days from the date of the exam [42].

4-Preparation and publication of the final lists of successful candidates and reserve lists:

The final lists of successful candidates, as well as the reserve lists must be prepared and published and notified to the Direction General of the Public function [43] , every candidate who has passed a competition, examination, or professional test must report to their assigned post or training institution within one month from the date of being notified .

D- Recruitment Methods:

The recruitment system in the Algerian Public function Law recognizes two methods:

1-External Recruitment:

Competitive examinations must constitute the preferred method for selecting candidates for public service positions, it means that public institutions and administrations conduct tests for a number of candidates for public service positions, the competitive examination takes various forms, including written or oral tests.

[41] Djebaili Sabrina , op-cit , p 45 .
[42] See Articles 25, and 26 of Executive Decree 194-12.

[43] Article 28 of Executive Decree 194-12

2- Competition based on qualifications for certain public function categories:

The competition based on qualifications is considered one of the most important methods used in recruitment. The competent public authorities have adopted this method to regularize the employment of contract workers within the professional or social integration programs for young graduates to join certain ranks and positions in the public function. Article 3 of Executive Decree 194-12 stipulates in this regard:

"In addition to the recruitment methods stipulated in the specific statutes implementing the provisions of Order 03-06, recruitment to public service positions may be carried out through competitive examination based on qualifications. However, when the public institution or administration concerned employs, in accordance with the regulations in force, contract workers or workers within the professional or social integration assistance programs for young graduates who meet the required basic legal conditions, recruitment shall be carried out through competitive examination based on qualifications."

This was confirmed by Instruction No. 01 issued by the Direction General of the Public function on February 20, 2013, which stated that this procedure is dictated by the concern for prioritizing the recruitment of contract workers and supporting public integration policies, particularly those implemented through professional and social integration programs (2).

Successful candidates in this competition are selected based on a review of their application files and an interview, with a merit-based ranking system.

3- Professional Examination:

This refers to the professional competency test for candidates applying for vacant financial positions , its purpose is to select the best candidates capable of performing specific job duties, often related to control and implementation. Most positions subject to this type of recruitment belong to categories D.

The recruitment procedures adopted in the professional examination do not differ from those followed in the competitive examination based on tests, which were previously discussed in detail in Executive Decree 194-12.

4- Direct Recruitment:

Established the basic criteria for direct recruitment[44], which are:

- Direct recruitment is limited only to candidates who have successfully completed specialized training as stipulated in the relevant statutes.

- The specialized training must be conducted at qualified training institutions , therefore, this method necessitates the establishment of specialized institutes and schools to fill specific positions in accordance with the requirements of those positions. The duration of study in these institutes and schools varies according to the type and nature of the tasks and the level of the positions for which the training is being provided. [45]Training policy in Algeria has been a top priority for public authorities since independence. including:

- The National School of Administration.

- Training centers in the paramedical, agricultural, and public works fields.

- The National School of Prison Administration.

- Specialized schools for training customs officers.

- Specialized schools for training tax inspectors.

5- Internal Recruitment (Promotion in Rank):

Promotion in rank refers to any change in an employee's legal position that moves them from their current job category to a higher one. The promotion in rank system is considered a fundamental pillar of the recruitment system and a key incentive for employees to exert more effort to obtain the promotion that elevates them in the administrative hierarchy and leads to an increase in their authority. Each promotion is accompanied by a salary increase [46]. Given the importance of promotion in rank in the career path of a public employee, employment legislation has been careful to include provisions governing it, including the Algerian legislator , according to Article 107 of Ordinance 03-06, promotion in rank consists of an employee's advancement in their career path by moving from one rank to the next higher rank within the same corps or the next higher corps, according to the following methods:

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[44] Article 80 of Order 03-06
[45] Djebaili Sabrina , op-cit , p 46 .
[46] Gustave Peiser , op-cit , p 63

- Based on qualifications: This applies to employees who have obtained the required certificates and qualifications during their career.

- After Specialized training: This takes place at one of the specialized training centers or schools [47].

- Professional examination or assessment: This is for employees who have demonstrated either seniority in their rank or seniority in their rank combined with specialized legal training to benefit from promotion after passing the professional examination or assessment.

- Selection through registration on the eligibility list: This is for employees who demonstrate the required seniority to benefit from promotion in rank , in addition to the seniority requirement, the employee's promotion under this method depends on an employee evaluation process (Article 98 of Order 03-06), after consulting the equal mixed committee. An employee may not benefit from promotion under this method twice consecutively. [48]

Second requirement: Establishment of the employment

It starts with the appointment and probation stage to attain the confirmation stage or the permanent appointment.

A-Appointment and Probation stage:

After the candidate succeeds in the competitive examination for entry into public service positions, they are appointed by a decision issued by the appointing authority, after which the next stage begins, the probationary period.

According to the Article 83 of Ordinance 03-06 and Article 2 of Executive Decree 322-17 of November 2, 2017, which specifies the provisions applicable to probationary employees in public institutions and administrations, every candidate recruited to a public service position is appointed as a probationary employee .

Most legal researchers define probation as: "A trial period or preparatory training period, generally applicable to any newly employed individual before

[47] Belourna Ahsen, op. cit., pp. 164-165

[48] For the promotion of an employee from one group to the next higher group, Article 109 stipulates that this depends either on completing prior training stipulated in the specific basic laws or on obtaining the required certificate.

they acquire the position of a civil servant. This period begins from the date of appointment to the required rank and position and lasts for a specific duration as stipulated by law ."[49] Therefore, the probationary period is an evaluative test for a newly appointed public servant to ascertain their suitability and ability to assume the assigned duties on a permanent basis [50]

- Probationary Period: The legislator has set the probationary period at one year, as stipulated in Article 84 of Ordinance 03-06, which states: "The probationary employee, according to the nature of the duties assigned to their rank, must complete a probationary period of one year..." This was further confirmed by Article 17 of Executive Decree 322-17, which stipulated that the probationary period begins from the date of the trainee's appointment, stating: "Subject to the provisions of the relevant statutes and this decree, the period of optional probation is set at one continuous year of actual service, commencing immediately upon the trainee's appointment."

All periods of leave and absence stipulated in the Executive Decree are not counted towards the probationary period, with the exception of annual leave and legal rest days. The probationary period may be extended once for one year, after consultation with the competent equal mixed committee, if the trainee's evaluation does not warrant their permanent appointment at the end of the legally mandated probationary period .

After the probationary period has ended, the probationary, in accordance with Article 85 of Order 03-06 and Article 25 of Executive Decree 322-17, will be in one of the following situations:

* Either the probationary is confirmed in his position,

* Or he is subjected to another probationary period of the same duration, but only once: the appointing authority may decide, based on the opinion of the equal joint committee to extend the probationary period if it deems that the initial probationary period did not allow it to form a conviction regarding its suitability for the position.

Some have attributed the administration's justification for extending the probationary period to one of the following three reasons: as lack of understanding of the job duties by the probationary employee or the

[49] Ammar Boudiaf, op. cit., p. 104
[50] Anes Djaafer , op-cit , p 91 .

probationary employee's failure in the professional examination for their preparatory training, for certain ranks or dismissal without prior notice. The reason for dismissal, according to Article 27 of Executive Decree 322-17, may also be the trainee's exposure to a fourth-degree disciplinary penalty during the probationary period.

According to Article 90 of Order 03-06, the probationary period is considered actual service and is taken into account when calculating seniority for promotion in rank and grade, and for retirement.

B- Permanent Appointment (confirmation) :

Article 2/4 of Order 03-06 defines permanent appointment as: "The procedure by which an employee is confirmed in their rank." Therefore, permanent appointment is the procedure by which a probationary employee whose probationary period has been successful is confirmed in their rank. All public service legislation worldwide agrees that a person's acquisition of the position of a public employee and their entry into a fundamental legal and regulatory relationship with the employing administration is only achieved after the issuance of a permanent appointment decision. [51]

The trainee's file is presented to the equal joint committee, which convenes as a tenure committee according to Article 2/64 of Decree 03-06, on the date specified for deciding on tenure. The committee verifies the accuracy of the information contained therein. After discussion and appropriate amendments, the qualification list is signed with a positive note, signifying the trainee's tenure as an employee in their rank ,the tenure decision is issued by the appointing authority, upon issuance of the appointment decree, terminates the probationary position, transferring the employee to a protected legal position as a public employee. this appointment entails all its legal consequences, including the public employee's entitlement to all rights previously denied during the probationary period ..

Acquiring the position of a public employee necessitates, first and foremost, acquiring the position of a successful candidate and a successful trainee, passing through the acquisition of a temporary legal position, and finally... To ensure its eventual stability and the full realization of rights, which were previously incomplete at this stage, we will examine the procedures for initiating and

[51] Djebaili Sabrina , op-cit , p 51 .

establishing the organizational relationship between the administration and the employee at this stage.

1-Definition of Confirmation:

Contrary to the legislator's usual practice of not defining previous situations, confirmation is defined as follows: "Confirmation is the procedure by which an employee is confirmed in their rank." However, this definition is somewhat lacking in precision and accuracy in its terminology, as it should ideally be worded as follows: "Confirmation is the procedure undertaken by the legally authorized authority, by virtue of a decision or decree, by which the probationary employee is confirmed." The successful candidate advances in his rank and thereby acquires the position of a public employee, thus preserving the stability of his legal position.

The difference between formalization and appointment lies in the fact that the former is a legal act that produces its effect, while appointment is a physical act signifying acceptance of the assigned position. In appointment, the date is considered the starting point for commencing the duties of the position, and it is an act that involves acquiring the position of a candidate. Successful completion of the probationary period grants the trainee the position of a civil servant, while permanent appointment is a procedure that secures the trainee's legal position and ensures full rights and guarantees.

The difference between confirmation and appointment: While both are legal acts, appointment precedes confirmation , appointment, on the other hand, is an intermediate step between the position of a successful candidate and that of a probationary employee. Tenure, however, is an intermediate step between the position of a successful probationary employee and that of a civil servant. In terms of effects, tenure results in a stable and complete legal and regulatory position with full rights and guarantees, whereas appointment results in an unstable and incomplete legal position. Rights and Guarantees

The difference between formal appointment and permanent employment lies in the scope of their application. Formal appointment pertains to public service positions, while permanent appointment pertains to labor laws. Acquiring the position of a public employee has significant implications after formal appointment, whereas permanent appointment is less important. Furthermore, the two differ in their legal position: formal appointment is a legal position,

while permanent appointment is a personal position resulting from the employment contract between the employee and the employer.

2- Legal Effects of Confirmation:

Among the effects resulting from the regularization procedure are the following:

- Acquisition of the position of a public employee. After successfully completing the probationary period, the position of "probationary employee" resulting from the appointment procedure becomes "public employee" after regularization.

- The appointment procedure is incomplete because it is a legal act that does not produce all its legal effects, whereas official registration is a legal act that produces all its legal effects.

- It results in the fulfillment of all rights and guarantees, unlike the appointment decision where they are incomplete.

- It stabilizes and establishes the legal and regulatory position of the trainee, which was previously unstable.

- The decision or decree to carry out the appointment shall be effective from the date of the probationary period.

C- Evaluation

Article 97 of Order 03-06 mandates that public employees undergo continuous and periodic evaluation throughout their careers to assess their professional qualifications.

1-Definition of Evaluation:

The Algerian legislator did not define evaluation in either Order 03-06 or Executive Decree 165-19 of May 27, 2019, which specifies the procedures for evaluating employees. Instead, it merely outlined its provisions and regulations in Articles 97 to 103, based on the principles established by Order 03-06 in the field of evaluation, and guided by jurisprudential definitions, the evaluation process can be defined as: "A periodic and continuous administrative process carried out by the legally authorized authority, embodied in the assessment of employees' performance, conduct, and professional competence based on

objective criteria, with the aim of developing them and utilizing the results obtained from the process in managing their career path." [52]

Evaluation is a periodic and continuous process: the competent authority monitors employees to evaluate their performance periodically, i.e., in the year of promotion for general evaluation, and every 3 months in most sectors for evaluation related to performance bonuses and improvement. The evaluation process for public employees aims to achieve the following objectives:

- Promotion in grades,

- Promotion based on selection to higher ranks,

- Disbursement of bonuses and compensation related to performance improvement,

2- Procedures Followed in the Evaluation Process:

The employee evaluation process is subject to several legal procedures carried out by a legally competent authority according to predetermined criteria, after which the evaluation score is communicated to the public employee.

2.1-The Authority Competent to Conduct the Evaluation:

The authority to evaluate a public employee rests with the qualified hierarchical authority [53] the professional evaluation interview is conducted by the employee's immediate hierarchical supervisor and/or the higher-level supervisor , a report is then prepared and signed by the supervisor who conducted the interview." An annual evaluation form is prepared by the employee's immediate or higher-level supervisor, approved by the head of the department to which the employee belongs, and placed in their administrative file." This is the normal procedure. However, in cases where a public employee is on detachment or on leave, the evaluation process is carried out by the receiving institution, in accordance with Article 3 of Executive Decree 165-19 which stipulates that the employee's evaluation is carried out by the administration, institution, or institution to which they are detached.

[52] Ammar Boudiaf, op. cit., p. 109
[53] Article 1/101 of Order 03-06

2.2- Evaluation Criteria:

The evaluation process for public employees is governed by four fundamental criteria, as outlined in Article 1/99 of Order 03-06 and detailed in Article 5 of Executive Decree 165-19 [54]: Respect for public duties and obligations stipulated in the basic laws: demonstrated through punctuality and discipline, courteousness in interactions with superiors, colleagues, subordinates, and users of the public service in addition to professional Competence of the field of activity and related methodologies, techniques, and procedures, beside service Quality demonstrated through teamwork spirit and initiative and dynamism.

Article 100 of Ordinance 03-06 authorizes public institutions and administrations, after consulting with equal joint committee and obtaining the approval of the Direction General of the Public function, to define evaluation methodologies that align with the nature of the functions of the relevant departments.

This evaluation results in a score accompanied by general observations. The evaluation form is kept in the public employee's file [55] .

[54] referenced in Article 2/137 of Ordinance 03-06
[55] Article 2/101 of Ordinance 06-03

Axis 4: Central and local Structures for framing the public function

Many countries have established independent and impartial bodies to manage employee career as the idea of creating them is linked to an important principle: removing partisan and political influence from the public function.

The legislator usually adopts this approach by establishing bodies and structures specifically for the public function structured within the administrative departments that assumed responsibility for managing employee career .[56]

We will discuss both the General Direction of the Public function and the Supreme Council for the Public function at the central level, and we will also address the Public function Inspection at the local level, in addition to the Participation and Appeals Bodies and Technical Committees.

First requirement: The Central Bodies for the Public function

Among the bodies under the Central Bodies for the Public function, we find the General Direction of the Supreme Council for the Public function.

A- The General Direction of the Public function

Immediately after independence, a General Direction of the Public function was established in 1963 to manage the public function in Algeria and coordinate between the various departments [57], at the same period a Ministry of the Public function was created in 1965, but it did not last long, as the Ministry of Administrative Reform and the Public function was abolished at the same year .

In line with the reform processes, the General Direction of the Public function was attached to the First Ministry, which oversees all aspects related to the management of the careers of public sector employees .

The General Direction of the Public function is headed by the General Director of the Public function, it also includes specialized departments, which are considered Public function Corps

[56] Gustave Peiser , op-cit , p 33 .
[57] Decree No. 304/64, dated 10/15/1964

The Algerian legislator addressed the General Direction of the Public function in Articles 55 and 56 of Ordinance No. 06/03 the supervisory authority over it has changed several times, initially under the Ministry of the Interior, then the Prime Minister, and subsequently the President of the Republic.

B- The Supreme Council for the Public function

The High Council for the Public function in the Algeria is an advisory administrative institution in the field of the public function, and all matters related to it particularly aspects concerning employees in public administrations. It is composed of representatives from the central government, public institutions, regional authorities, the most representative union organizations of salaried workers at the national level, and competent figures in the field of the public function, with a range of responsibilities, which is considered a forum in which all of the following participate: Representatives of employees and representatives of the public administration are involved in studying general issues related to the public function. The Supreme Council for the Public function is chaired by the Head of Government or the Minister in charge of the public function, and any matter of a general nature and concerning employees may be referred to this institution.

The Council's jurisdiction consists of:

- The Council studies matters of a general nature related to employees subject to the general public function law. These matters are referred to the Council by one of its members or by the Minister responsible for the public function.

- The Council expresses its opinion on matters that are necessarily referred to it, particularly those related to violations of laws, especially those related to the general public function law. The Council provides recommendations on matters pertaining to the public function about issues related to public function policy , the salary system in addition to the social security system.

the Council also submits an annual report about the state of the public function to the President of the Republic.

Second requirement: Local Public function bodies

The General Direction is represented at the local level by the Public function Inspection, as stipulated in Article 62 of Decree 06/03, which states that, within the frame of employee participation in managing their professional lives, equal mixed committees, appeals committees, and technical committees are established.

A- Public Function Inspection

In accordance with the system of monitoring the legality of the professional lives of public sector employees, which has been in place in our country since independence on a centralized basis, particularly through the General Direction of the Public function, this system was not implemented at the local level through another institution, namely the Public function Inspections, until 1976, as part of the application of the decentralization policy in the field of managing professional careers within public sector , providing them with the most important supervisory authority, whether in the form of prior or subsequent administrative oversight.[58]

B- Equal joint committees

It is established by an administrative decision issued by the appointing authority within the administration to regulate a group or set of groups of employees whose qualification levels are equal to those within the administration. This committee includes equal representation from the administration and others elected by employees. It is chaired by the authority at whose level it is placed or their representatives. It decides on matters pertaining to the professional lives of employees, such as tenure, promotion, and disciplinary action...

C-Appeals Committees

These committees are established within each minister's office, or by any official of a public institution or department. They consist equally of representatives from the administration and elected employee representatives, who then elect members of the appeals committees from among themselves. These committees

[58] Ahmed Boudiaf , op-cit , p 62 .

are responsible for reviewing appeals submitted by sanctioned employees, specifically those facing third and fourth-degree disciplinary penalties.

D- Technical Committees

These committees are established within public administrations and institutions, and consist of an equal number of members representing the administration from among its elected employees. They are chaired by the relevant authority at the level of the administration or by a representative chosen from among the members concerned. Their mandate is to study issues related to working conditions, hygiene, and security within the public administrations and institutions under their jurisdiction.

Axis 5: Legal Positions of Public Employees

A public employee's career undergoes several changes, including legal positions which are regulated by the legislator under Ordinance No. 06-03 and Executive Decree No. 20-373, dated December 12, 2020, concerning the basic legal positions of public employees. These positions are outlined in Article 127 of Law 06-03.

First Requirement: The Position of Active Service

It was the first position mentioned in Articles 128 to 132 of Ordinance 06-03 and further detailed in Articles 3 to 18 of Executive Decree No. 20-373. The position of active service refers to the position of an employee who is actively performing duties corresponding to their rank within the public institution or administration to which they belong, or who is performing duties corresponding to their rank in another public institution or administration, or in a national association recognized as serving the public interest. [59]

Cases of Service Position are as follows:

1- The employee actually performing their duties in the institution to which they belong , this means that the employee performs the duties corresponding to their rank in the public institution to which they belong. This represents the normal and natural state of affairs, where the basic laws pertaining to the various ranks define the category or categories governing the duties specific to each employee's rank in exchange for their legally established rights.[60]

2- An Employee's Performance of the Duties of a High-Level Position or Senior Function

An employee who performs a high-level position or function within the state, and within the institution to which they belong, is considered to be in service. The institution or administration to which the employee belongs, who holds a high-level position or function, is responsible for managing their career path in terms of salary payment and both types of promotion. The term "high-level

[59] Ammar Boudiaf , op. cit., p. 139

[60] Essaid Taib , op-cit , p 167 .

position" refers to specific positions within the structural or substantive frame, i.e., functional frame, for the purpose of supervising and managing administrative and technical activities in public institutions and administrations, according to Article 10 of Law No. 06.03.

"Senior Function" refers, according to Article 15 of Law No. 06.03, to exercising responsibility on behalf of the state, the purpose of which is to contribute to the conception, preparation, and implementation of the state's general policy.

3- An employee performing their duties at another public institution or administration

It is the case stipulated in Article 130 of Law No. 06-03, where the employee performs duties related to their rank in another public institution , however, he is considered to be on active duty not on detachment, as this detachment position applies only to certain ranks and is subject to specific conditions and procedures outlined in the relevant basic laws. This is done by joint decision of the relevant ministers and the authority responsible for the public function, which specifies the list of relevant ranks. The institution or public administration to which they are assigned manages their career path, while they benefit from the right to promotion, training, and rewards, according to Articles 5, 6, and 7 of Executive Decree No. 20-2.373.

1- Placing an employee at the disposal of another administration

This refers to an employee being on active duty but being at the disposal of national associations whose activities are related to achieving the public interest or public benefit. This is in accordance with Article 131 of Order No. 06-03.3, and it is stipulated that this situation provides the following elements:

a) The employee must be placed at a national association, which must not be of a local or international nature.

b) The national association must be recognized as serving the public interest or the common good, as stipulated by regulatory texts. An example of this is the Algerian Muslim Scouts.

c) The employee must possess qualifications relevant to the association's activities, i.e., have the same specialization.

d) The period must not exceed two years and is renewable only once during the employee's professional career.

e) An agreement must exist between the employee's employing administration and the receiving association. This agreement must specify the nature of the employee's activities, the duration of the placement , the terms of service, and how their activities will be monitored and evaluated. The employee must review and agree to this agreement before signing. A decision or decree must then be issued by the appointing authority within the original institution.

A public employee is considered to be on duty even if they are not actively performing their duties. The legislator has limited these cases to those stipulated in Article 129 of Law No. 06-03, namely: annual leave, sick leave or leave due to a work-related accident, and maternity leave, as these are legally recognized social rights.

It also stipulates certain authorized absences, as outlined in Articles 208 to 212 and 215 of Order No. 06-03, which pertain to:

- Pursuing studies for up to 4 hours per week, participating in examinations and competitions, or performing teaching duties.

- Participating in sessions of elected councils.

- Undertaking union representation duties or union training courses.

- Participating in international sporting or cultural events.

- Participating in international or national conferences related to their position.

- Performing the Hajj pilgrimage, which is permitted for 30 consecutive days, once during their professional career.

- an employee is granted three days of paid leave in the event of their marriage, the birth or circumcision of a child, the marriage of a descendant, the death of the employee's spouse, or the death of a parent, child, spouse, or siblings.

It should be noted that an employee may benefit from exceptional leave of absence, which is unpaid.

This leave is granted in cases of extreme and justifiable necessity for a period not exceeding 10 days per year. The employee is granted this leave to address certain circumstances that arise in their personal life, such as:

- Family or personal matters of the employee or a family member.

- Caring for the health problems of the employee or a family member.

Second Requirement: Detachment Position

Detachment position is defined as "the situation of an employee temporarily outside their original department or administration in specific circumstances, while retaining certain rights within their original rank. Their career path is managed by the administration or public institution to which they are detached.[61]" This is stipulated in Articles 133 to 139 of Law No. 06-03 and Articles 19 to 32 of Decree No. 20-373. It is a temporary measure related to filling a specific position, during which the employee retains their rights to promotion, seniority, and retirement.[62]

A- Conditions and Cases of Assignment

The legislator, through the Public function Law No. 03-06 and the decree concerning the legal positions of public employees, has defined the conditions for benefiting from this position .

1- Conditions for Detachment

They can be summarized as following :

- The employee must belong to the same department from which they are being detached.
- The employee being detached must possess the position of a public employee.
- A decision must be issued by the legally authorized authority; this is an individual decision.
- The employee's qualifications must be suitable for the position to which they are being detached.
- The employee's duties in their original position must be compatible with the duties of the position to which they are being detached.

[61] Anas Djaafer , op-cit , p 201 .
[62] Bouteba Mourad, op. cit., p. 518

2- Cases of Detachment

The Algerian legislator has classified detachment into two categories:

2-1. Detachment as of right

These are cases established by law, and the appointing authority has no discretionary power to accept or reject placing an employee on detachment.

These cases are stipulated in Article 134 of Law No. 06-03 and are as follows:

1- Position of a member of the government: For example, if an employee is appointed as a minister, member of a ministry, secretary of state, or assigned to a mission, they are placed on detachment by law to enable them to perform their new duties.

2- Permanent electoral mandate in a national institution or regional institution: For example, an employee might be elected to a national representative institution such as the National People's Assembly, or a regional institution such as a municipal or provincial council.

3-Performing the duties of a senior position or high-ranking post in another institution or public administration: This is the situation in which the employee is detached by law. It differs from the employee's appointment to a senior position or post in the institution or public administration to which they belong.

The latter is considered a service-based position, where the employee is under the supervision and management of their original administration, which pays their salary. However, when an employee performs these duties in another public institution, it constitutes a detachment situation because managing their career path is a shared responsibility between the original institution and the institution to which they are detached, while their salary is paid by the latter[63].

4- Exercising a permanent union mandate: The employee exercises their union rights while in a detachment position, within a legally recognized union organization. They are detached to perform their duties and dedicate themselves to defending the interests of employees, given their union obligations. 5.

[63] Jeddou Fatima Zahra Zahra El Aidani Iman, Sekfali Sultana, supervised by: Didane Mouloud, The Legal System of the public function according to Order No. 06-03 containing the General Basic Law of the public function, Series: Studies in Law, Dar Belkacem, Algeria, 2019., p. 98

Pursuing training stipulated in the employee's statutes: This refers to the employee's statutes stipulating participation in training.

6. Representing the State in international organizations or bodies: these are organizations established by a group of states on a permanent basis to address a common international issue or concern, such as the United Nations.

7. Appointing an employee to pursue training or studies: this must be done by the institution or public administration to which the employee belongs, and the training or studies must be related to the public interest.

2-2- Detachment at the Employee's Request
This occurs when an employee requests detachment, as stipulated in Article 135 of Order 06-03. It includes:

1- Engaging in activities at another public institution or administration and/or in a position other than their original rank: This allows the employee to benefit from detachment to perform activities at another public institution or administration, whether:

in their original rank or a different rank. This is based on a request from the employee to their original department, which examines whether the employee meets the detachment requirements for this situation, as well as the legality of the detachment to the receiving entity. The employee must perform their duties at their original rank, or an equal or higher rank. The receiving department has discretionary power to accept or reject the request,

- Performing supervisory functions in institutions wholly or partially owned by the state: This supervisory function pertains to employees belonging to Group A, as per Article 26 of Executive Decree No. 20373, and must be performed in a public institution or one partially owned by the state, i.e., a mixed institution. Private institutions are excluded.

- Undertaking a mission within the frame of cooperation or with international institutions or bodies: This is a mission permitted for employees belonging to Group A, as per Article 26 of Decree No. 20373, upon their request and at their own initiative. It is subject to the discretion of the institution to which they belong.

The law stipulates that for an employee to be detached at their request, they must submit a request to the authority or administration to which they belong.

This authority has the discretion to accept or reject the request, and the request is subject to the legally prescribed quotas.

B-Managing the Career Path of the detached Employee

The detached employee is subject to the rules and regulations governing the position to which they are detached. The institution to which they are detached oversees their rights and duties, disciplinary procedures, performance evaluation, and salary payment, which is based on the index number of the detached position. This excludes employees detached for training or studies, whose salaries are paid by their original institution.

Regarding the detached employee's right to promotion, Article 136 of Law No. 06-03 stipulates that they benefit from seniority rights, with the detachment period being taken into account. They are also eligible for promotion based on the availability of the required qualifications.[64]

Legal conditions and retirement benefits apply, and the employee has the right to promotion in rank according to Article 24 of Decree-20-373.

1- Duration of Detachment

Detachment is established by an individual decision of the appointing authority, for a minimum period of 6 months and a maximum of 5 years during the employee's career, taking into account the legal retirement age. However, in cases of detachment by law, the duration is equal to the period of performing the assigned duties, responsibilities, or pursuing training or studies, as stipulated in Article 20 of Decree-20-373 and Article 136 of Law-06-03.

2- Termination of Detachment

Detachment ends in one of two ways:

1- Cancellation of Detachment: According to Article 133 of Law-06-03, detachment may be cancelled either at the request of the employee concerned or for reasons of public interest, before the end of the detachment period, or at the request of the original administration or the administration to which the detached employee is assigned

-2 Expiration of the detachment period: The detachment ends upon the expiration of its prescribed period. Upon termination of detachment, the employee is automatically reinstated to their original position, even if this

[64] Jeddou Fatima Zahra and others , op. cit., p. 100

exceeds the quota. The employee must submit a reinstatement request one month prior to the end of the detachment period, and reinstatement will be effected by a decision or decree.

Third Requirement: Outside the Frame position

This the situation is stipulated in Articles 140 to 144 of Law No. 06-03 and Articles 33 to 42 of Decree No. 20-373. It is the situation in which an employee belonging to Group A may be placed, upon his request, after exhausting their detachment rights to a position not governed by Order No. 06-1.03.

A- Conditions

1- Outside the frame position is determined upon the request of the employee concerned, given that this position pertains to voluntary detachment, whereby the employee continues their work with an institution wholly or partially owned by the State, or performs a task within the frame of cooperation with an international institution or institution, in accordance with Article 33 of Decree No. 20.373.

2- The employee has exhausted their right to voluntary detachment, meaning that an employee who has exhausted their detachment right by law cannot benefit from outside the frame position [65].

3- The outside the frame position is exercised in a position not subject to Order No. 06.03, and is limited to supervisory or cooperation functions.

4- The period of outside the frame position does not exceed 5 years and is not less than 6 months .

Placement outside the frame entails the institution paying the employee's salary and evaluating their performance. The employee is subject to the rules governing their assigned position and is not eligible for grade promotions, nor is this placement counted towards promotion to a higher rank or position, according to Article 36 of Decree No. 20373.

B- Termination of Outside the Frame Position

A public employee's benefit from outside the frame position ends in one of the following ways:

Expiration of the Outside the Frame Position Period: Upon the expiration of the legally prescribed period for this position, the employee's benefit from it ends,

[65]Emanuel Aubin , op.cit , p 164

and they are reinstated to their original rank, even if this results in exceeding the number of available positions.

Fourth Requirement: The Position of referral to reserve

This position consists of a temporary suspension of the employment relationship between the employee and the public institution to which he belongs. It is stipulated by the legislator in Articles 145 to 153 of Law 06.03 and Articles 43 to 51 of Decree 20.373.

A- Conditions

For a public employee to benefit from the position of referral to reserve, the following conditions must be met:

- The existence of a legal justification for referral to reserve.

- The employee must have two years of actual service to be eligible for referral to reserve upon request.

- Approval of the request for referral to reserve by the equal mixed committee.

- Compliance with the legally established quotas for referral to reserve upon request by the employee.

B- Cases of Referral to reserve

The cases in which a public employee may benefit from referral to reserve are divided into two types:

1- Referral to reserve as of right

These are the cases stipulated in Articles 146 and 147 of Law No. 06-03, and relate to the following:

- The employee's ascendants, spouse, or one of their dependent children suffers an accident, disability, or serious illness requiring special care.
- Permission granted to raise a child under five years of age.
- Permission granted to the employee to join their spouse if they are required to change their residence due to their profession, such as a transfer for the sake of the public interest.
- Enabling the employee to assume the duties of a leading member of a political party, such as being the party's secretary-general or a member of its political bureau, thereby managing the political party.
- Accompanying a spouse appointed to an Algerian mission abroad, an international institution or organization, or for a cooperation mission.

This is a case that applies to an employee who is not eligible for detachment.

2- Referral to reserve at the Employee's Request for personal reasons

This is stipulated in Article 148 of Law 06-03 and Article 46 of Decree No. 20-373, where the employee requests referral to reserve for personal reasons, namely:

- Conducting studies or research.
- Addressing personal circumstances requiring full-time dedication and exemption from professional obligations.

In this case, the administration reviews the employee's request, taking into account the administration's interests and the objective reasons presented by the employee, while also considering the opinion of the equal mixed committee.

C- Legal Effects of Referral to reserve

Placing an employee on referral to reserve results in the freezing of their career path by an individual decision of the competent authority until the end of its period , during this period, the employee loses some of his rights, as defined in Article 145 of Law 06-03, namely the right to salary , as he does not receive his salary during this period, in addition the period is not counted towards promotion, seniority, or retirement. However, they retain all rights acquired before being placed on referral to reserve.[66]

The duration of referral to reserve varies depending on the type and circumstances:

- Referral to reserve by law is for a period of six months, renewable up to a maximum of five years.
- Referral to reserve for personal reasons is for six months, renewable up to a maximum of two years.
- Referral to reserve related to the appointment of a spouse as a representative of Algerian nationals abroad, to an international organization, or assigned to a cooperation mission, is for a period equal to the duration of the spouse's assignment.

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[66] Jaddou Fatima Zahra and others , op. cit., p. 106.

- Furthermore, legal and voluntary referral to reserve can be combined for a total period of seven years during an employee's career, according to Article 47 of Decree No. 203.373.

D- Termination of Referral to reserve position

This position ends either upon the expiration of the referral to reserve period stipulated in the individual decision regarding the referral to reserve, or, if the employee has exhausted this period, they are not entitled to request it again, according to Article 149 of Law 06.03. This represents its natural termination. This position can be terminated by the appointing authority at the employee's request. The employee may request reinstatement before the end of the leave period, after half the period has elapsed and after consulting the equal mixed committee, as stipulated in Article 51 of Executive Decree No. 20-1.373, it may also end due to any of the reasons for termination of employment, such as death, dismissal due to combining employment with engaging in a profitable activity, or resignation, in which case the leave automatically terminates upon the expiration of the leave.

Upon termination of referral to reserve, the employee is automatically reinstated to his original rank, even if this results in excess of the permitted number. This reinstatement requires submitting a request for reinstatement or renewal of the referral to reserve at least two months before its expiry. Failure to comply will result in a formal notice to return to their post, indicating the expiry of this position.

Fifth Requirement: Military Service Position

Articles 154 to 155 of Law 06-03 and Articles 52 to 54 of Decree No. 20-373 address this position , national service is defined as "the participation of citizens in national defense and is a duty for every Algerian citizen who has reached the age of 19. It lasts for 12 months.

This position is also known as "the position of the legal position of an employee or trainee called up for national service is determined by an individual decision of the competent authority, during which they retain their right to promotion and seniority for retirement purposes.

A- Conditions and Regulating of Military Service Position

The Algerian legislator has regulated how a public employee can benefit from military service position as follows:

1- Conditions

- Receipt of the conscription summons for the employee, which is a document issued by the competent military administration.
- Issuance of a decision by the competent authority confirming the employee's referral to this position.

2- Regulating the Career Path of Employees on National Service

According to Article 67 of Law No. 14-06 concerning National Service, the employee's employment relationship with the administration is suspended during the national service period, regardless of their position, whether tenured, probationary, or holding a senior post. However, employees on national service retain their right to promotion and retirement benefits.

The period of national service performed is considered actual service, as stipulated in Articles 69 and 70 of Law No. 14-06 , while they are not entitled to a salary, as salaries are contingent upon service, they receive a monthly allowance from the military institution .

B-Termination of National Service Position

This position terminates upon completion of the military service period, which is the normal course of action after one full year, as per Article 5 of Law No. 14-06. Article 51 of the same law also stipulates that national service may end before the legal term expires due to termination of employment, such as death, loss of citizenship, or deprivation of citizenship, thus ending the national service obligation.

Upon completion of national service, the employee is automatically reinstated to his position, even if it exceeds the quota.

As for the probationary employee, they are reinstated to complete the remaining probationary period. If they are subsequently confirmed in their position, their national service period is counted towards their promotion.

Axis 6 : Guarantees, Rights, and Duties of the Public Employee

The public employee enjoys of numerous guarantees and rights, as well as bearing several duties. These are legally grounded in both Ordinance 03-06 and the fundamental laws governing public function categories.

First requirement: The guarantees

To enable public employees to enjoy all their rights and perform their duties to the best of their ability, the Algerian legislator has granted them several guarantees, which are included in Ordinance 03-06. It is noteworthy that these guarantees are constitutional, as stipulated in the Constitution. These include:

A-Freedom of Opinion:

This guarantee is stipulated in Article 26 of Ordinance 03-06. It should be noted that the Algerian legislator has qualified this guarantee with the duty of discretion, stating: "Freedom of opinion is guaranteed to the employee within the limits of respecting the duty of discretion imposed upon them." Freedom of opinion here refers to the right of a public employee to adopt ideas, opinions, and positions that align with their convictions in all fields and areas.

B-Equality and non-discrimination:

The principle of equality is among the most important legal principles and is addressed in international conventions and regional and domestic texts. In accordance with this principle, the administration may not discriminate between employees based on their opinions or classify them accordingly. Furthermore, it may not discriminate between them based on gender, origin, or any other personal or social circumstances. [67]

C- Membership in a political party, union, or association:

This shall not affect the professional life of a public employee, a public employee's membership in any political party, union, or association shall not affect their professional life. This is further emphasized in Articles 28 and 29 of Ordinance 03-06, subject to the prohibitions stipulated in applicable legislation.

[67] Ammar Boudiafpo-cit , p 119.

Second requirement: The Rights of the Public Employee

According to Order 03-06, the public employee enjoys a set of rights, including:

A-The Right to salary: A salary is the wages that a public employee receives monthly in return for the services rendered. A salary is only payable after the performance of service, and a public employee may not receive more than one salary, as established by comparative legislation, a public employee's entitlement to their salary is contingent upon their performance of duties. Conversely, any interruption or cessation of work results in salary deduction or suspension. except in cases of official leave and absence . [68]

The salary is determined by Presidential Decree 304-07, which establishes the salary scale and payment system for public employees. The administration cannot increase or decrease it. According to Article 119 of Ordinance 03-06, the salary consists of:

a) The basic salary: This is calculated by multiplying the lowest index number for the rank by the index number of the current grade and multiplying it by the value of the index point. This differs from the basic salary, which is calculated by multiplying the lowest reference number by the value of the reference point .

b) Allowances and Compensation: These are amounts added to the basic salary to compensate for specific responsibilities related to the performance of certain activities, the location of those activities, and the specific working conditions. Bonuses are also allocated to incentivize productivity and improve performance .

c) Family Allowances: Family allowances are considered part of the salary and are paid to public sector employees for their non-working spouse and for children, according to applicable regulations.

[68] Gustave Peiser , op-cit , p 93 .

B-The Right to legal Protection:

Affirmed in Articles 30 and 31 of Ordinance 03-06. According to these two articles, the right to protection manifests itself in two forms:

a) Protection from threats, insults, slander, defamation, and assault: According to Article 30 of Order 03-06, it is the duty of the State to provide protection to the public employee from any threats, insults, slander, defamation, or assault of any kind that may be directed at him during or in connection with the performance of his duties. The State must guarantee compensation to the public employee for any damages that may be incurred. The State acts on his behalf to obtain compensation from the person who caused the damage. In this case, the State may also file a lawsuit directly before the competent court by establishing itself as a civil party.
b) Protection from legal proceedings resulting from an administrative error: According to Article 31 of Ordinance 03-06, the State is required to protect an employee who, while performing their duties, may be subject to legal proceedings by a third party due to an error in service. This protection is manifested in the State's substitution for the employee with respect to the third party claiming compensation. The error attributed to the public employee must be an administrative error, not a personal one.[69]

C-The Right to Social Protection:

The public employee's right to social protection manifests in two forms:

a) The Right to Social Security: This right was stipulated in Article 33 of Ordinance 03-06. It stipulates that the public employee has the right to benefit from the social security system membership in which is mandatory for all employees and workers in all sectors. The social security fund guarantees the public employee a number of services (health insurance, maternity, disability insurance, death insurance, work-related accidents and occupational diseases, and retirement). The family members of the public employee also benefit from some of these rights, such as health insurance and a pension upon their death .

[69] Gustave Peiser , op-cit , p 104 .

c) The Right to Social Services: This right was stipulated in Article 34 of Ordinance 03-06. Employees, workers, retirees, and their families benefit from these services, which include all actions or achievements that contribute to improving the material and moral well-being of employees and workers by supplementing their salary in the form of services in the areas of health, housing, culture, and recreation, and generally all social measures targeting daily life and the family.

D-The Right to Retirement:

Article 34 of Ordinance 03-06 stipulates that public employees have the right to retirement benefits, which are considered A legal right, it is the natural end of an employee's career once they have served for a specified period and reached a legal age at which they are no longer able to fully perform their duties [70] The right to retirement is regulated by Law No. 12-83 of July 2, 1983, concerning retirement, as amended and supplemented ,this law stipulates that an employee's entitlement to this right is subject to the following conditions: reaching the legal retirement age of 60 for men and 57 for women in addition to completing the service period of at least 15 years.

E-The right to unionize is a collective right aimed at defending the professional interests of employees:

This right includes employees demanding improved working conditions or salary increases and specific allowances. The practice of union activity is considered a manifestation of democracy in the workplace and the public service, and it represents a form of collective expression of opinion. union rights enjoy international, regional, and national support due to their importance.[71]

The exercise of union rights is embodied in the following mechanisms by negotiation with employing institutions and administrations: This mechanism is stipulated in Article 38 of Law 14-90, whereby representative unions in each institution have the right to participate in negotiations for collective agreements or agreements, primarily concerning employee-related matters such as the basic law, salaries, and compensation.

[70] Belourna Ahsan, op. cit., p. 114.
[71] Bouteba Mourad, op. cit., p. 353

F-Resorting to strikes:

One of the most important legal mechanisms through which unions can achieve their demands is resorting to strikes. Article 38 of Law 14-90 recognizes the right of representative unions to participate in preventing and resolving workplace disputes and to exercise the right to strike. -6 The Right to Strike: The right to strike is a collective right guaranteed by Article 36 of Ordinance 03-06. It is regulated by specific legislation, namely Law 02-09 of February 6, 1990, as amended and supplemented, concerning the prevention and settlement of collective labor disputes and the exercise of the right to strike.

The exercise of the right to strike is subject to several legal controls, procedures, and restrictions stipulated in Law No. 02-90, namely:

- Exhaustion of conciliation and mediation procedures:

A strike may only be called after exhausting all conciliation and mediation procedures between employee representatives and the employing administration, as stipulated by law. Article 02-90 stipulates that if the dispute persists after exhausting these procedures, and in the absence of other means of resolution, a strike may be resorted to (1).

- Employee consent to resort to a strike:

Article 27 of Law 02-90 stipulates that a general assembly of the workers concerned by the strike must be convened, after informing the employing administration, to inform them of the ongoing points of contention and to discuss the possibility of resorting to a strike. Employee representatives are obligated to listen to the representatives of the employing institution or administration. Approval to resort to a strike is granted, according to Article 28 of Law 02-90, by secret ballot and with the consent of a majority of the employees present at the general assembly.

- Prior notice of the strike:

In accordance with Articles 29 and 30 of Law 02-90, employee representatives must notify both the employing administration and the territorially competent labor Inspection of the strike at least eight days in advance, starting from the date of its filing. Once the prior notice of a strike is submitted, Article 31 of Law 02-90 obliges the administration and employee representatives to take the

necessary measures to ensure the preservation and security of facilities and property.

- Guaranteeing a minimum level of service:

If a strike disrupts the principle of the continuity of public services, a minimum level of mandatory service must be guaranteed, particularly in the vital sectors defined by Article 38 of Law 02-90. These sectors include certain activities belonging to the public service, such as hospitals, emergency services, public radio and television, municipal services responsible for sanitation, burial and cemetery services, and court clerks' offices in councils and courts.

The complete prohibition of the right to strike for certain categories of employees: While both the Constitution and the law guarantee the right of employees and workers to strike, Article 43 of Law 02-90 prohibits this right for certain categories of employees belonging to essential sectors whose cessation could endanger the lives, security, or health of citizens. These categories include: judges, employees appointed by decree or those holding positions abroad, security personnel, and field agents: Employees of the Civil Protection and Customs services, agents of the National Signal Networks in the Ministries of the Interior and Foreign Affairs, and employees of the external services of the Prison Administration.

G-The Right to Rest, Holidays, and Legal Absences:

In the field of public service, rest refers to a public employee's temporary absence from work to rest and recharge, without this absence affecting their rights or legal position [72]. A holiday has a broader meaning than rest, as it may be for the purpose of resting the public employee or for another reason. A holiday is a temporary absence of the public employee from work for a reason stipulated by law, while they continue to enjoy their rights and maintain their legal position. [73]

This right was established by Article 39 of Ordinance 03-06, and detailed in Articles 191 to 215 as following:

1- The Right to Rest Days and Legal Holidays: Regarding legal rest days, Article 191 of Ordinance 03-06 stipulates that a public employee has the right to one full day of rest per week, and that the employee is entitled to compensatory

[72] Emanuel Aubin , op.cit , p 201 .
[73] Bouteba Mourad, op. cit., p. 339

rest for the same period, according to Article 193 of Ordinance 03-06. As for legal holidays, according to Ordinance 03-06, they consist of:

- Annual Leave: Article 194 of Ordinance 03-06 stipulates that a public employee has the right to paid annual leave, calculated on the basis of two and a half days per month of work, for a period of 30 days, according to Article 197. During this leave, according to Article 199, the public employee may be recalled if the urgent needs of the service so require.

During annual leave, the employee enjoys several guarantees, including the employing administration may not terminate or suspend the employment relationship during annual leave , also under no circumstances may annual leave be compensated with salary .

- Postponing all or part of annual leave from one year to the next is prohibited, however, the employing administration may, if the exigencies of the service so require, either reschedule, postpone, or divide the annual leave within a period of two years .[74]

- Official Holidays: Public employees benefit from official holidays during the performance of their duties, as stipulated in Law No. 278-63 of July 26, 1963, as amended and supplemented, which defines the list of official holidays. These include: religious Holidays: The first of Muharram (Islamic New Year), Ashura, and Mawlid (Prophet's Birthday), each lasting one day. Eid al-Fitr and Eid al-Adha, each lasting three days.

- National Holidays: November 1, July 5, and Amazigh New Year (January 12), each lasting one day.

- Universal Holidays: New Year's Day (January 1) and Labor Day (May 1), each lasting one day.

- Special Holidays: Special holidays are granted to employees in specific cases defined by Ordinance 03-06, including: Hajj Holiday: The right is granted once during his career, to a special paid leave of 30 days to perform the Hajj pilgrimage to the Holy Sites [75].

[74] See Article 206 of Order 03-06.
[75] See article 210 of Ordinance 03-06

- Sick Leave: Public employees are entitled to sick leave if two essential conditions are met: the occurrence of a justifiable illness or accident that prevents them from performing their duties, and the submission of a request to the employing administration or institution, along with the provision of a medical certificate proving the illness or accident. Sick leave may be short-term, not exceeding 6 months per year, or long-term, exceeding 6 months if the employee suffers from a serious illness. Whether the sick leave is short-term or long-term, the employee receives their monthly salary from the Social Security Fund , including maternity leave: as a female employees are entitled to 98 days of maternity leave during pregnancy and childbirth, according to Article 213 of Decree 03-06.

2- The Right to Legal Absences: Decree 03-06 grants employees the right to leave without pay in several cases, including:

* Employees have the right to leave without loss of salary, provided they submit prior justification, in the cases stipulated in Articles 208-209 stipulate the following: attending classes related to practical activities for a maximum of four (4) hours per week, in accordance with the needs of the department, or participating in examinations or competitions for a period equal to the duration of the activity, participating in meetings of councils where they hold an elected position, unless they are in a delegated position; or performing duties related to union representation, or participating in union training courses in accordance with applicable legislation, or participating in international sporting or cultural events.

* In consideration of the family life of public employees, Article 212 of Ordinance 03-06 grants them the right to three (3) days of paid leave on one of the following family occasions: the employee's marriage; the birth of a child; the circumcision of the employee's son; the marriage of a descendant of the employee; the death of the employee's spouse; the death of a descendant, ascendant, or direct relative of the employee or their spouse.

* According to Article 215 of Decree 03-06, a public employee may benefit from exceptional unpaid leave for reasons of extreme necessity, provided that it does not exceed 10 days per year.

H-The Right to Training, Professional Development:

This right is stipulated in Article 38 of Decree 03-06. Public employees are required to participate in training courses organized by their administration to improve their professional level and stay informed of job-related developments, thereby enhancing the quality of public service provided and enabling them to be promoted to higher ranks, which necessarily leads to an increase in their monthly salary .[76]

The Algerian legislator, pursuant to Article 104 of Ordinance 03-06, mandated that the administration organize and conduct permanent training courses to improve skills and update knowledge, with the aim of ensuring the enhancement of the public employee's qualifications, professional advancement, and preparation for new tasks. It should be noted that this is no longer merely an obligation of the administration, but has become one of the fundamental rights of the public employee (Article 38 of Order 03-06).

1-Definition of Training:

Returning to the various legislative and regulatory texts of the public function, we find no definition of training, leaving the field to legal researchers, who have defined training as: "A set of procedures followed to acquire and master a specific competence or ability. From this perspective, training seeks to teach the knowledge and skills necessary to perform specific functions or tasks." It has also been defined as: "A planned process that uses methods and tools to create, improve, and refine the skills and abilities of the individual, and to expand their knowledge for efficient performance through learning to raise their level of competence [77] Based on the above, training can be defined as: "A planned and continuous administrative process that includes a set of procedures, methods, and tools that equip employees with new skills, knowledge, and behavioral patterns. It is carried out by the competent authority to qualify and promote them professionally, adapt their qualifications and competence to new jobs, or to meet the development in the tasks of the administration or in its methods of operation." Within this definition, training is characterized by the following features:

[76] Djebaili Sabrina , op-cit , p 65 .

[77] Bouteba Mourad, op. cit., p. 445.

- Training is a planned process:

Training is subject to prior planning, whereby the institution or public administration develops a training plan that includes its needs for a year or several years. This planning falls within the concept of proactive human resource management, a new approach established by Order 03-06 in Article 111.

- Training is a continuous process:

The evolution of administrative tasks, advancements in work methods and techniques, and the necessity for employees to progress in their career paths necessitate continuous attention to their training, as stated in Article 104.

- Training is a competency management process:

Although training falls within the employee's career path, its importance has compelled the legislator to align with modern theories in the field of human resource management, which emphasize the need to invest in employee competencies through training, considering it independent of proactive career path management under the name proactive competency management.[78]

2-Types of Training:

Based on Order 03-06 and other regulatory texts, there are several types of training:[79]

a- Specialized Training: This prepares candidates for their first public service position, or for promotion to a higher rank or senior position for current employees, or for preparation for professional competitions and examinations.

b- Skills Enhancement: This aims to improve, enrich, deepen, and refine employees' basic knowledge and skills.

c- Information Update: This aims to enable public employees to adapt to a new job due to either the development of tools and technologies, or to significant changes in the organization, operation, and tasks of the department .

[78] Bouteba Mourad, op. cit., p. 446.

[79] Article 2 of Executive Decree 04-17, concerning the training, professional development, and skills updates of public employees, Official journal, No. 16, March 6, 2017 .

3-Training Conditions and Procedures:

These are included in Executive Decree 04-17, concerning the training, professional development, and skills refresher courses for public employees, addresses all aspects related to the conditions, procedures, and organization of these courses, most notably:

A joint ministerial decision issued by the relevant minister and the Directorate General of the public function for positions within the special corps in various public institutions and administrations

The aforementioned decision must be published at least one month before the start date of the training course, either through the press or by posting it in the workplaces of the institution or administration concerned .

It is worth noting that the maximum number of employees accepted into a training, professional development, or refresher course may not exceed 15% of the actual number of employees in the relevant rank or grade.

G-The right to promotion:

Article 106 of Order 03-06 defines it as: "Grade promotion consists of moving from one grade to the next higher grade, and is carried out continuously according to the rates and procedures determined by regulation."[80]

It is clear from the text of this two article that promotion is linked to the concept of permanence and continuity that characterizes the public service. A public employee, by virtue of dedicating his professional life to administration, is entitled to continuous salary increases, even if there is no change in the nature of the duties associated with their job position or any promotion in rank. Promotion is expressed through the concept of professional seniority that a public employee acquires over time.

[80] Article 12 of Presidential Decree 304-07 of September 29, 2007, which establishes the salary scale for public employees and their payment system, elaborates further, stating: "Grade promotion consists of moving from one grade to the next higher grade, continuously, within a limit of 12 grades, for a period ranging between 30 and 42 years."

1-Conditions for Promotion:

A public employee benefits from a grade promotion governed by a set of legal conditions, namely:

Seniority:

Seniority is the fundamental condition for promotion. The required seniority for promotion in each grade is determined according to Article 11 of Presidential Decree 304-07, with a maximum of three promotion periods: minimum, average, and maximum, estimated to 2.5 years , 3 years and 3.5 years accordingly .

The employee benefits from a grade promotion according to Article 13 of Presidential Decree 304-07, by force of law, for a maximum period of 3.5 years.

It should be noted that the required seniority period for grade promotion is reduced for employees working in certain southern provinces by between two and six months, provided that the reduction does not exceed one-fifth of the total period of service during the employee's career .

Evaluation:

The importance of this condition is evident in the ranking of employees on the promotion list according to their points. The overall evaluation is also considered in the event of a tie in points between employees.

Registration on the Promotion List:

Registration on the promotion list is a prerequisite for grade promotion. The employee must be registered on the promotion list, which is prepared in the last quarter of the year after the evaluation forms have been received. [81]

[81] Bouteba Mourad, op. cit., p. 494.

Third requirement: Duties of the Public Employee

In return for the guarantees and rights enjoyed by the public employee, they are subject to professional duties enshrined in Ordinance 03-06, in order to ensure the continuity of public services, achieve the public interest, and protect the rights of citizens dealing with public institutions and administrations. These duties are:

A-The duty of commitment to performing the service:

This is among the most important legal duties incumbent upon the employee, as stipulated in Article 43 of Ordinance 03-06, which states: "Employees shall dedicate all their professional activity to the tasks assigned to them."... This requires the public employee to personally and permanently perform all tasks related to their job position, meaning that they may not, under any circumstances, relinquish the performance of their duties except within the frame of the law, on the basis that this pertains to a legal obligation. Public employees are obligated to perform their duties with complete honesty and impartiality, as stipulated in Article 41 of Ordinance 03-06. To ensure their compliance and to encourage them to perform their duties in accordance with laws and regulations, Article 47 of Ordinance 03-06 stipulates that every employee, regardless of their rank in the administrative hierarchy, is responsible for executing the tasks assigned to them.

B-The Duty of Discretion:

While the Algerian legislator, in Article 26 of Ordinance 03-06, recognized the freedom of opinion for public employees he simultaneously imposed the duty of discretion as stipulated in Article 42 of Ordinance 03-06, discretion means that public employees must avoid any action incompatible with the nature of their duties, even outside of work hours, and must always maintain appropriate and respectful conduct.

As is evident from the text of this article, a public employee's obligation to maintain discretion may be during or outside the performance of their duties:

1-The Duty of Discretion During the Performance of Duties:

A public employee is obligated to maintain discretion while performing their duties, refraining from any statement or action that conflicts with the nature of

their position [82]. Order 03-06 does not specify a list of prohibited actions and statements for public employees, due to the varying nature of public service duties.

2-The Duty of Discretion Outside Duties:

A public employee is also obligated to maintain discretion in their private life, refraining from any action that conflicts with the nature of their official duties and conducting themselves in all circumstances with appropriate and respectful conduct. Actions that violate the duty of discretion are not limited. The administration defines them under the supervision of the administrative judge, relying on several criteria .[83]

C-The Duty to Respect State Authority:

Upon assuming their position, public employees perform a set of duties closely related to public service and the public interest, reflecting the image of the state. Therefore, they must respect state authority in all their actions, as they are agents of the state and operate under its authority, this is confirmed by Article 40 of Order 03-06, which stipulates: "In the course of performing their duties, employees must respect and enforce respect for state authority in accordance with applicable laws and regulations." According to this text, public employees, in the course of performing their duties, must respect and enforce respect for state authority, place its interests above all else, and refrain from anything that might harm it, whether during or because of their duties.[84]

Whether on or off duty, the public employee must conduct themselves in a manner befitting a public servant and refrain from any action that diminishes the dignity of the public office or reflects negatively upon it.

D-The Duty of Obedience to the hierarchy:

Every public employee, in the performance of their duties, is subject to obedience to a superior, ensuring harmony, coordination, and cooperation among the various levels of the hierarchical staff.[85] This can only be achieved through each employee's adherence to applicable laws and regulations, as well as to the instructions issued by superiors. These orders must be subject to the

[82] Anes Djaafer , op-cit , p 2015 .
[83] Bouteba Mourad, po-cit , p. 407
[84] Ammar Boudiaf, op. cit., p. 134

[85] Anes Djaafer , op-cit , p 220 .

principle of legality, because a subordinate's execution of an instruction that mandates an illegal act does not absolve them of responsibility [86] .

Therefore, a public employee is required to obey the orders issued to him by his direct superior. He should not disobey unless the orders are unlawful, by their nature cause serious harm to the public interest, and their implementation would seriously disrupt the proper functioning of the public service or would lead the subordinate employee to commit a criminal offense or act arbitrarily. A public employee's disobedience to his superior's orders is only permissible in such extreme cases [87].

It is noteworthy that the Algerian legislator's stance on obeying unlawful presidential orders is ambiguous. While Order 03-06 and some related legal texts, such as Article 126 of the Civil Code, which states: "Employees and public officials shall not be personally liable for their actions that harm others if they were carried out in execution of orders issued to them by a superior, provided that obedience to these orders was obligatory upon them," suggest a preponderance of the public employee's duty to refrain from executing unlawful orders and instructions if their violation of the law is clear, it would have been more appropriate for the Algerian legislator to follow the example of the French and Egyptian legislators by explicitly addressing the issue of obeying unlawful presidential orders in the Public function Law and establishing the legal conditions governing such obedience .[88]

E-The duty to refrain from engaging in profitable activity:

The legislator emphasized in Article 1/43 of Ordinance 03-06 that a public employee may not engage in any profitable activity whatsoever.

Furthermore, Article 46 of Ordinance 03-06 obliges the public employee to submit a declaration to their employing administration if their spouse engages in a private profitable activity, so that the competent authority can, if necessary, take all measures to protect the interests of the administration. In the same vein, and with the aim of protecting the interests of the employing institution, ensuring the independence of the public employee, and removing anything that might hinder the optimal performance of their duties, Article 45 of the Ordinance prohibits... 03-06 Every employee, regardless of their rank in the

[86] Emanuel Aubin , op.cit , p 241 .
[87] Said Mokkadem, op-cit , pp. 301-302
[88] Ammar Boudiaf, op-cit, p. 137

administrative hierarchy, must not possess, within or outside the national territory, either personally or through another person in any capacity.

Interests or assets that could affect their independence or hinder the normal performance of their duties within an institution subject to the oversight of the administration to which they belong or with which they are affiliated, under penalty of disciplinary sanctions. [89]

F-The Obligation to Maintain Professional Secrecy:

It is natural that a public employee, in the course of performing their duties, will access and obtain information related to the public service or individuals, particularly users of the service, however, disclosing this information could cause harm to either the public service or individuals ,therefore, Ordinance 03-06 obligates the public employee to maintain professional secrecy and not disclose it, stipulating: "The employee must adhere to professional secrecy and is prohibited from revealing the contents of any document in their possession or any event or information they have learned of or become aware of upon him in connection with the performance of his duties, except as required by the exigencies of the public interest, and the employee is not released from the duty of professional secrecy except by written authorization from the competent hierarchical authority. [90]

According to this article, the content of the duty to adhere to professional secrecy includes the content of every administrative document or events and information that the public employee learns of or becomes aware of in connection with the performance of his duties.

The disclosure of information to persons whose knowledge is required by the exigencies of the public interest is exempt from professional secrecy, as well as the issuance of written authorization from the competent hierarchical authority allowing the employee to disclose certain information to others. Under the influence of legal developments, public employees are now bound by this obligation, which includes information concerning or relating to private individuals during or in connection with the performance of their duties. The purpose of the obligation of professional secrecy is to safeguard the rights of both users of public facilities and state employees .[91]

[89] Anes Djaafer , op-cit , p 217 .
[90] Article 48 of Order 03-06
[91] Said Mokadem, op-cit, p. 309.

However, this obligation may be waived in the following cases:[92]

- An order issued by the competent superior to disclose the professional secret.

- If the exigencies of work and the interests of the public service necessitate it.

- If disclosing the professional secret serves the public interest, such as disclosing the secret to an entity legally entitled to access official secrets, like the Court of Accounts, administrative oversight bodies, and competent judicial and security authorities .

G-The Duty to Protect Administrative Documents:

This is the approach taken by the legislator in Ordinance 03-06, which stipulates: "The employee must ensure the protection and security of administrative documents.

Any concealment, transfer, or destruction of files, documents, or administrative records is prohibited, and the perpetrator shall be subject to disciplinary penalties without prejudice to criminal proceedings."[93]

The public employee is legally obligated to protect all administrative documents in their possession from any destruction or transfer, and is also obligated to keep them in a secure place. Furthermore, they are prohibited from retaining the original documents and papers for themselves, using them for purposes other than their intended use, or concealing or removing them from archived files, even if they pertain to work they were assigned to perform. In case of failure to comply with these prohibitions an administrative penalty imposed by the administrative authority and a criminal penalty imposed by the judicial authority.

H-The Duty to Preserve Public Administration Property:

The public employee is obligated to preserve all the financial and material assets and resources by which he performs his duties. These assets are numerous and varied, such as computers, vehicles, buildings, etc. The public employee is prohibited from using them for any reason whatsoever for personal purposes or purposes unrelated to the public interest [94].

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[92] Ammar Boudiaf, op-cit, p. 137

[93] Article 49 of Order 03-06

[94] Articles 50 and 51 of Order 03-06. Article 50 states: "The employee must preserve the administration's property in the course of performing their duties." Article 51 states: "The

This duty has both a positive and a negative aspect. The positive aspect is the obligation of the public employee to perform any action that contributes to the preservation and protection of administrative property. The negative aspect is the obligation to refrain from any action that could endanger administrative property and to avoid using it for personal purposes [95].

K-The Duty to Refrain from Soliciting Gifts, Favors, or Privileges:

To preserve the dignity of the public employee and the public's perception of him, it is not permissible for an employee, according to Article 54 of Ordinance 03-06, to solicit, require, or receive gifts, favors, or privileges of any kind, whether directly or through another person, in return for performing a service that falls within the core of his responsibilities.

If the employee is convicted with this act, his conduct constitutes a serious professional error warranting disciplinary action , disciplinary penalties will be imposed, in addition to criminal prosecution, as his act is classified as bribery according to Article 25 of Law No. 01-06 of February 20, 2006, concerning the prevention and combating of corruption.

employee must not, under any circumstances, use the premises, equipment, and resources of the administration for personal purposes or purposes unrelated to the public interest.

[95] Blourneh Ahsan, op. cit., p. 141

Axis 7: The disciplinary system of the public employee

In accordance with the principle of guarantee and as effects of the establishment of the employment relationship, we will begin by addressing disciplinary error and its surrounding elements, then the controls for disciplinary follow-up and the related guarantees, and finally, disciplinary penalties.

First requirement: The Concept of Employment Error:

This element includes the definition of employment error and its components, in addition to its classification. These functional errors will be addressed in turn.

A- Definition of the Professional Error:

The legislator was careful not to stipulate all disciplinary violations so as not to present them in a way that was exhaustive and exclusive. This resulted in the definition of disciplinary errors lacking a fundamental element (the nature of the constitutive act), however, the legislator overcame this by establishing a general rule under which all disciplinary violations fall, stating that: Any dereliction of professional duties or breach of discipline, and any error or violation by an employee during or in connection with the performance of their duties, constitutes professional error and subjects the perpetrator to disciplinary action, without prejudice to criminal proceedings where applicable criteria have been established for determining professional error against which potential professional errors in this case are measured.[96]

These criteria are:

- The employee's breach of his duties: which is defined by regulatory rules and orders, or by legitimate orders from superiors within the bounds of the law, either by failure to perform them or by negligence in their performance.

- Violation of discipline.

Thus granting broad discretionary power in determining whether an employee's action constitutes a violation or not , this explains the difficulty in defining professional error. Since most national legislation lacks a specific definition for it, this is due to the non-limited nature of disciplinary offenses .

[96] Essaid Taib , op-cit , p 324 .

Disciplinary error is defined in jurisprudence as: "Any act or omission committed by an employee, whether inside or outside of their function , that involves a breach of their duties or an infringement upon their dignity, a breach that is intentional and not..." "Refusal to exercise a right or perform a duty," [97]

B- Elements of Professional Error:

Disciplinary accountability is based on any breach by an employee of their professional duties, which must be performed honestly and accurately within a pre-defined system. This system is distinguished from other responsibility systems by its specific components, although it does not conform to other systems in the elements of the error or offense warranting disciplinary action.

Article 160 of Order No. 06/03, as we indicated, and given the difficulty of determining the legal element in this case, the legislator sufficed with setting controls within it as a general rule and mentioned some of them in classifying these errors according to their degree (by way of example, not limitation).

1-The material element:

The act described as a functional error (an act or omission) that moves from the realm of intentions to the realm of execution, whether the act is positive or negative on the part of the employee, such as carrying out a prohibited act or refusal to perform a duty or obey orders and instructions .

2-The moral element:

Any act constituting a violation, resulting from a deliberate and intentional act, whether positive or negative, is considered a professional error.[98]

Negligence and carelessness also fall under this category, as they are considered, in particular, second-degree errors: ...as well as being considered, in particular, Fourth-degree errors...: "Intentionally causing serious damage to the equipment and property of the institution or public administration."..... This excludes cases of dire necessity, force majeure [99].

The error need not be serious, whether the violation was intentional or negligent, because if the aforementioned intent does not exist, the moral element of disciplinary liability is absent therefore, there is no room for disciplinary action.

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[97] Boudjemaa Chahrazed , op-cit , p 113 .
[98] Anes Djaafer , op-cit , p 228 .
[99] Emanuel Aubin , op.cit , p 289 .

C-Distinguishing between Disciplinary Misdemeanors and Similar errors:
Disciplinary error is distinguished from both criminal and civil offenses.

1-Distinguishing between Disciplinary and Criminal Errors:
A criminal offense is an offense committed by any person, whether through acts or omissions, and entails a criminal penalty. Disciplinary errors, on the other hand, are offenses committed by a specific category of individuals, namely public employees. Despite the unique nature of disciplinary errors, as they can simultaneously constitute criminal offenses, they remain a separate and independent legal system. Among the most important points of difference between them are:

- In terms of the scope of the offense:

Criminal errors are specifically defined, while disciplinary errors are broad enough to encompass anything that deviates from the requirements of professional duty. This necessitates granting the administration the authority to assess and classify the actions of public employees. In contrast, in criminal errors, the judge does not possess discretionary power, in accordance with the principle of legality .[100]

- In terms of the purpose of the sanction:

The sanction for a disciplinary offense is characterized as an administrative penalty affecting the public employee's professional life.

Its purpose is to protect the continuity of public services. The sanction for a criminal offense, on the other hand, aims to combat crime, protect public order, and defend society; therefore, it is imposed in the name of the public.

- In terms of the nature of the punishment:

The punishment for a disciplinary offense is imposed through administrative decisions, while the punishment for a criminal offense is imposed by judicial rulings. The disciplinary punishment is the penalty prescribed for a disciplinary offense that affects the professional life of the public employee and may be material or moral. It does not extend to their private life or freedom, unlike a criminal punishment, which may affect their life in the case of the death penalty,

[100] Article 58 of the 2020 Algerian constitution.

or their freedom in the case of criminal penalties related to the deprivation of a person's liberty or property, as is the case with financial penalties.

2-Distinguishing between Disciplinary and Civil errors:

A civil offense is defined as any breach of a legal obligation that causes harm to a third party. This may result from one party to a contract violating its terms, in which case we are faced with contractual liability resulting from a breach of contract, we are then faced with tort liability.

In both cases, compensation is required, as stipulated in Article 124 of the Civil Code: "Any act, whatever its nature, committed by a person through their own fault, and causing harm to another, obligates the person who caused it to provide compensation."

Based on the definitions of both disciplinary and civil errors, they differ in the following points:

- In terms of the nature of the error:

A disciplinary error is based on a public employee's violation of their professional duties, while a civil error is based on a breach of a legal obligation that causes harm to another party.

- In terms of the nature of the sanction:

The sanction in a disciplinary error affects the rights of the public employee, while in a criminal error it pertains to the payment of compensation to the injured party.

- Regarding the purpose of the penalty:

The primary purpose of imposing a penalty in a disciplinary offense is to ensure the proper functioning of the public institution and to protect the public interest, while in a civil offense it is to redress the harm.

D- Classification of Professional Error:

The legislator established four degrees of professional error and attempted to define them, using terms that imply that they are not exhaustive, such as "in particular, are considered."

1- First-Degree errors

According to Article 178 of the 06/03 law, any breach of general discipline that could affect proper conduct is considered a first-degree error.

2- Second-degree errors:

According to Article 179 of the same law, the following acts by which an employee inadvertently or negligently compromises the safety of users or the administration's property are considered second-degree errors:

- Neglecting the security of users or the administration's property, whether through inadvertently or through negligence.

- Failure to fulfill basic legal duties other than those stipulated in Articles 180 and 181.

3- Third-degree errors:

According to Article 180 of the same law, third-degree error includes actions by which an employee engages in the following:

- Unlawful transfer of administrative documents.

- Concealment of professional information that they are obligated to provide during the performance of their duties.

- Refusal to implement instructions issued by the superior authority in the course of performing his duties without acceptable justification.

- Disclosure or attempted disclosure of professional secrets.

- Use of equipment or using the administration's property for personal purposes or for purposes unrelated to the administration's interests.

4- Fourth-Degree errors:

According to Article 181 of the same law, the following are specifically considered fourth-degree misdemeanors:

- Benefiting from any kind of privileges offered by a natural or legal person in exchange for performing a service within the scope of his duties.

- Committing acts of violence against any person in the administration .

- Intentionally causing serious material damage to equipment and property of the public institution or administration that may disrupt the proper functioning of the department.

- Destroying administrative documents with the intent to disrupt the proper functioning of the service .

- Forging certificates, qualifications, and any document that allowed him to be employed or promoted.

- Combining his official duties with an illicitly profitable activity as stipulated in Articles 43 and 44 of the 06/03 law.

Second requirement: The Disciplinary Action Proceedings

Discussing the authority empowered to impose disciplinary measures and the formal rules governing it whether procedural or related to deadlines, in addition to all the guarantees granted to the employee, constitute governing the disciplinary process. We will address these elements in turn:

A- The Authority Competent to Impose the disciplinary penalty

Adopting the system of hierarchical authority in the disciplinary system regarding the first and second-degree disciplinary penalties, where the appointing authority may issue a justified decision after receiving written explanations from the concerned party. Based on this granted authority, the penalty is expected to be of the same degree as the offense committed.

The specific authority in public institutions and administrations varies accordingly for sectoral ministries, the minister is considered the competent administrative head ,this applies to employees of the state at the local level, and also to the head of the People's Council, and to municipal employees and directors of public institutions of an administrative nature, and to every institution that falls within the scope of public service. Also included within this jurisdiction are the officials of interests in public institutions and administrations if they are granted the authority of appointment and administrative management of employees.

However, the disciplinary system for the third and fourth-degree penalties adopts a quasi-judicial system by involving the administrative authority, with equal representation of competent members, in making the disciplinary decision, alongside the appointing authority, within the frame of trying the employee and expressing a binding opinion in the disciplinary proceedings. This participation

in the disciplinary proceedings is considered a guarantee for the employee, given the seriousness of the penalties imposed. Thus, the authority that has the authority to impose disciplinary penalties of the third and fourth degrees by a justified decision, after obtaining the binding opinion of the competent equal mixed committee, convened as a disciplinary council...

B- Disciplinary Procedures:

The procedural rules governing the disciplinary action for public employees vary according to the severity of the penalties imposed, which differs from the nature of the hierarchical or quasi-judicial disciplinary system, as stipulated in Article 165, paragraphs one and two of the 06/03 law.

1- Disciplinary Procedures in the hierarchical System:

Based on the legal foundations of these procedural rules governing this disciplinary system for first and second-degree penalties, which can be summarized as follows:

- Identifying and classifying the professional error.

- Requesting written explanations from the employee who committed the error.

- The appointing authority shall issue a disciplinary decision that includes a penalty proportionate to the professional error, provided that it is justified.

- The disciplinary decision shall be communicated to the concerned employee within a period not exceeding 8 days from the date of its issuance.

2- Disciplinary Procedures in the Quasi-Judicial System:

This quasi-judicial system governs the third and fourth-degree penalties as following :

- Identifying and classifying the professional error after confirming its occurrence. If it is confirmed to be of the fourth degree, a precautionary suspension of the offending employee from performing their duties is imposed by decision.

- Disciplinary proceedings are initiated by the appointing authority through notification of the relevant equal joint committee by a justified decision.

- The employee is notified of the alleged error and given access to their disciplinary file within 15 days of the date the proceedings are initiated.

- The employee shall be summoned by registered mail requested to appear before the competent equal joint committee at least 15 days prior to its meeting as a disciplinary board.

The process includes hearing the accused employee and the evidence he presents in his defense, a closed deliberation takes place, the disciplinary decision is made by a majority vote of the members present. In the event of a tie, the chairman's vote prevails, unless the imposed penalty is less than the proposed penalty.

The committee also has the right to consider conducting an investigation if necessary, accordingly and based on the binding opinion of the disciplinary institution, the appointing authority shall issue a reasoned decision that includes the disciplinary penalty and shall notify the penalized employee within 8 days from the date of its issuance.[101]

C- Guarantees stipulated in disciplinary proceedings:

The legislator has established and enabled the accused employee with a set of guarantees to protect him against any administrative disciplinary decision whether these guarantees are classified as prior or subsequent to the imposition of the disciplinary penalty, or in administrative and judicial matters, or according to their connection to the degree of error and the penalty, such as relating to the presidential disciplinary system for first and second degree penalties and the quasi-judicial system for third and fourth degree penalties, and this last classification is what we will adopt, although all of them come together in a way that is considered a protective shield to protect the employee from any arbitrary decision of the administration against him.

1-Guarantees Stipulated in the hierarchical Disciplinary System:

An employee subject to disciplinary action for first and second-degree offenses enjoys a set of guarantees, including:

- The accused employee must provide written explanations regarding any inquiries about their disciplinary action.

- The disciplinary decision must be justified.

- The disciplinary decision must be communicated within 8 days of its issuance.

[101] Djebaili Sabrina , op-cit , p 95 .

2- Guarantees Stipulated in the quasi-judicial disciplinary system:

Given the severity of the penalties imposed on employees who commit offenses classified as third and fourth degree, it has been decided to provide the greatest possible safeguards against such offenses, including:

1- Notifying the employee of the offense attributed to them.

2- Granting the employee access to their disciplinary file within 15 days from the initiation of proceedings, this allows him to know the evidence available to the administration so that he can present his defense , the failure to comply with it renders the decision subject to annulment.[102]

3- The binding consultation of the competent equal joint committee in disciplinary proceedings and the obligation to adopt its opinion.

4 - Summoning the employee to appear before the committee convened as a disciplinary board , the employee's right to defense is guaranteed by enabling them to submit oral or written observations and to attend their hearing to defend themselves, with the right to call witnesses and be assisted by a lawyer or employee .

5 - Notifying the disciplinary decision within 8 days of date of issuance.

6 - The right to appeal the disciplinary decision is granted to the competent appeals committee within 30 days of the date the employee is notified of the disciplinary decision.

7 - The right to appeal before appeal committees and administrative courts which is a general right against any administrative decision flawed by illegality, remains valid until the deadlines for such appeals have passed.

[102] Essaid Taib , op-cit , p 372 .

Third requirement: Disciplinary Penalties

Disciplinary penalties are specific due to the impossibility to enumerate them all , therefore, we will address the definition and classification of disciplinary penalties as specified by the Algerian legislator through the 06/003 presidential order .

A- Definition of Disciplinary Penalties:

The legislator avoided providing a definition for disciplinary penalties; however, legal researchers have addressed it from various perspectives. Some define it by focusing on its context and nature, while others define it by considering the objectives hoped to be achieved through its signing.

Some view it as: "A moral and material penalty simultaneously, involving an element of harm that affects the worker in their professional position, leading to the deprivation of benefits and professional immunities they enjoy." Some have defined it as: a legally defined individual penalty imposed by the competent disciplinary authority against an employee who has committed a professional error. This penalty affects the moral entity; the aim is to maintain the proper functioning of the public facility and the public interest.[103]

Accordingly:

- The disciplinary penalty is an individual penalty against the offending employee.

- The disciplinary penalty affects the employee's moral standing or legal position.

- The disciplinary penalty Disciplinary action is a purposeful sanction aimed at ensuring the proper functioning of the public institution and preserving the public interest.

[103] Mustafa Afifi, The Philosophy of Disciplinary Penalty and its Objectives, A Comparative Study, Egyptian General Book Authority Press, 1st Edition, 1976, pp. 29.

B- Classification of Disciplinary Penalties:

Following the same pattern as the classification of professional errors , the legislator classified disciplinary sanctions according to the principle of proportionality ,we may find four levels as a general classification.

a) First degree penalties: It consist in

- Warning.
- Written reprimand.
- Reprimand.

b) Second Degree penalties: It consist in

- Suspension from duty for one to three days.
- Removal from the eligibility list.

c) Third Degree penalties: It consist in

- Suspension from duty for four to eight days.
- Demotion by one or two grades.
- Mandatory mutation.

d) Fourth Third Degree penalties: It consist in

- Demotion to the immediately lower rank.
- Dismissal.

C- Principles Governing Disciplinary Penalties:

The imposition of penalties is governed by a set of principles that act as constraints on the disciplinary authority within the frame of achieving disciplinary justice. These principles are as follows:

1-The Principle of Legality of the Penalty:

The penalty imposed on the offending employee must be one of the penalties that the legislator has listed exhaustively and that the authority is obligated to apply. Disciplinary action is defined by the type and duration of the prescribed

disciplinary penalty, however in the case of a violation, no penalty can be expected that is not explicitly stipulated.[104]

2- The Principle of Personal Disciplinary Action.

3- The Principle of Equality in Imposing Disciplinary Penalty:

It stipulates that disciplinary penalty should not differ based on the individuals or their positions in the social or class hierarchy, provided that all circumstances and conditions related to the type and severity of the offense committed, including any mitigating or aggravating factors, are met. It applies a general and abstract rule to all. 3. Employees

4-The Principle of Unity of Disciplinary Sanction: as stated by Articles 181 and 183 of Order 06/03.

5-The Principle of Proportionality between Disciplinary penalty and Professional error:

This principle requires balancing two principles (effectiveness and guarantee) in disciplinary sanctions. That is, while the administration has the right to use the disciplinary measure prescribed by the legislator, it is also its duty not to infringe upon any of the employee's rights. The employee should not be punished more severely than the offense committed .

The Algerian legislator stipulated the necessity of justifying all disciplinary decisions in general, regardless of the severity of the penalty imposed.[105], in Article 2/170 of Ordinance 03-06, requires the equal mixed committee convened as a disciplinary board to justify its opinion regarding third and fourth-degree penalties, stating: "The decisions of the disciplinary board must be justified." [106]

Justification is a crucial element in guaranteeing the right to defense. Furthermore, as an important guarantee for the employee, justification is linked to the principle of confrontation, especially with regard to disciplinary decisions.

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[104] Anes Djaafer , op-cit , p 252 .
[105] Article 165 of Order 03-06 states: "The appointing authority shall impose first and second-degree disciplinary penalties by a justified decision after obtaining written explanations from the concerned party. The appointing authority shall impose third and fourth-degree penalties by a justified decision, after obtaining the binding opinion of the competent equal joint committee convened as a disciplinary board.
[106] Djebaili Sabrina , op-cit , p 112 .

It is rare for the judiciary to address one without the other. In fact, when various legislations stipulate disciplinary guarantees, they stipulate the principle of confrontation and justification together without separating them. Accordingly, providing justification gives the employee the opportunity to mount their defense by understanding the reasons upon which the disciplinary authority based its decision imposing the disciplinary penalty. This, in turn, encourages the disciplinary authority to withdraw its decision if it is convinced by the employee's explanation. Administrative appeals against this decision .

On the other hand justification reveals whether the administration has taken all the required procedures in making the disciplinary decision, which motivates the administration to carefully consider the decision and avoid any flaws that might affect its validity.

In addition to its importance for the public employee and the administration, the justification of disciplinary decisions is also a crucial tool for the judge tasked with overseeing them. Through this justification, the reasons provided by the administration for its disciplinary decision are examined, and the judge then determines the validity of those reasons. Without this procedure, the judge's task would be difficult, therefore, providing justification grants the judiciary greater authority in overseeing the investigation, both in terms of legality and the appropriateness of the penalty. Furthermore, justification reduces the need to resort to the courts, especially if the public employee is satisfied with the reasons upon which the disciplinary decision was based .

D-Guarantees following the imposition of a disciplinary penalty:

The Algerian legislator, in Ordinance 03-06, granted public employees several guarantees after the issuance of the disciplinary penalty, including:

1-Administrative Appeal:

The Algerian legislator granted public employees against whom a disciplinary decision has been issued the possibility of appealing it by submitting an appeal to the competent authority for review or annulment of the disciplinary decision issued against them.

Some legal researchers define administrative appeals as: "A request submitted by the concerned party to the administration for the review of an administrative decision that they claim violates the law." It is also defined as: "A petition or complaint submitted by those with standing and an interest to the competent administrative authorities for the review of the administrative action in question,

either by withdrawing, annulling, or amending it to make it more consistent with the principles of appropriateness, effectiveness, and justice [107]

"The person concerned by the administrative decision may submit an appeal to the administrative institution that issued the decision within the period stipulated in Article 829 above." It is also stipulated in Article 175 of Ordinance 03-06, which states: "An employee who has been subject to a disciplinary sanction of the third or fourth degree may submit an appeal to the competent appeals committee within a maximum period of one month from the date of notification of the decision."

The employee requests a review of the decision, either by withdrawing it, amending it (given the broad discretionary power of the administrative institution), or even canceling it. The administrative authority may amend the decision partially or wholly, according to what it deems most consistent with the law and based on its conviction regarding the claims presented by the public employee, as well as the proper functioning of the public service.

The administrative institution may also choose not to respond to the employee's request at all, in which case its silence constitutes an implicit rejection of the appeal.

In Algeria, appeals are discretionary and only apply to first and second-degree penalties or what is known by presidential Appeal which is an appeal directed to the administrative authority exercising presidential power over the authority that issued the administrative decision. The presidential appeal is submitted to the head of the issuing authority, requesting the withdrawal, cancellation, or amendment of the disciplinary decision to bring it into compliance with the law. This type is considered more effective than the appeal to the administrative authority because of the principle of impartiality in the institution to which the appeal is submitted .

[107] Djebaili Sabrina , op-cit , p 104 .

2- Appeal before the Appeals Committee:

The Algerian legislator granted the public employee against whom a disciplinary decision has been issued the right to appeal before the Appeals Committee, including a third or fourth-degree disciplinary penalty, within a maximum period of one month from the date of notification of the decision [108]

In this regard, Article 65 of Order 03-06 stipulates: "An appeals committee shall be established within each ministerial office, each governor's office, and each competent official's office for certain public institutions or administrations.

These committees shall be composed equally of representatives of the administration and elected representatives of the employees , the committee shall be chaired by the authority at whose level it is subordinate, or by a representative chosen from among the members appointed by the administration , employee representatives on equal mixed committees shall elect their representatives to the appeals committees.

Article 175 stipulates the following conditions for an appeal to be submitted to the appeals committee, the appeal shall be submitted to the competent appeals committee within a maximum period of one month from the date the disciplinary decision was served on the employee. Furthermore, an appeal submitted to the Appeals Committee within the specified legal deadlines results in the suspension of the penalty until a decision is reached on the appeal. The Appeals Committee must issue its reasoned decision within a maximum of 45 days from the date of notification, either to overturn or uphold the disciplinary penalties.

3-Judicial Appeal:

Disciplinary decisions issued by disciplinary authorities are subject to the oversight of the administrative judiciary. The laws governing the administrative judiciary grant public employees the right to judicial appeal against disciplinary decisions issued against them this right is considered one of the most important guarantees they enjoy against the disciplinary authority. In addition to administrative guarantees, there is another guaranty namely the imposition of judicial oversight, including the annulment of annulment of the disciplinary penalty and the compensation of the employee .

[108] According to Articles 1 67 and 175 of order 03/06, the appeals committees are competent to review disciplinary sanctions of the third and fourth degrees.

The Algerian legislator has defined the competent judicial institution to adjudicate appeals against administrative decisions in Article 801 of the Code of Civil and Administrative Procedure. This refers to the Administrative Courts if the administrative decision is issued by local authorities (local collectivities, executive Directions, and public institutions of an administrative nature). Article 901 of the same Code designates the Council of State if the administrative decision is issued by central administrative authorities.

A number of formal and substantive conditions must be met for an action to be accepted to annul a disciplinary decision :

- The disciplinary decision must be final; preparatory actions cannot be appealed.

- The public employee must have a legitimate interest in filing the annulment action.

- The employee filing the action or the administration against which it is filed must have legal standing.

- The annulment action must be filed within the legal deadlines which is four months from the date of personal notification of the disciplinary decision. The action to annul a disciplinary decision must be based on one of the following grounds: Appealing administrative decisions based on: lack of jurisdiction, procedural defects, subject matter defects, abuse of power defects, and defects in cause .

D- Public employee rehabilitation:

Rehabilitation as mentioned in Order 03-06, lies in giving the offending employee an opportunity to reform his conduct , this removes all the negative effects of the disciplinary penalty on his file especially since the Algerian legislator stipulated in Article 172 of Order 03-06 that the decision imposing the penalty be kept in the employee's administrative file, thus establishing the penalty as a disciplinary precedent [109] .

In this regard, the Algerian legislator, in Article 1/176 of Order 03-06, granted an employee who had been subject to a first or second-degree disciplinary penalty the right to request rehabilitation from the appointing authority after one year from the date of the penalty decision. Moreover, according to the second

[109] Bouteba Mourad, op. cit., pp. 599-600.

paragraph of the same article, the employee benefits from automatic rehabilitation after the period of two years from the date the penalty was imposed, provided no new penalty is imposed during this period.[110]

Axis 8: Termination of relation employee- administration

The employment relationship is considered a term-based relationship; it is not permanent and ends upon the occurrence of one of the legally stipulated conditions, as defined in Article 216 of Law No. 03-06.

These conditions are exhaustive and are as follows:

First requirement: Involuntary Termination of the Employment Relationship

The involuntary termination of the employment relationship pertains to reasons that arise during the employee's career path and affect their relationship with the institution to which they belong. These reasons are beyond their will[111] .

A- Loss or Deprivation of the Algerian Nationality

Nationality refers to an individual's affiliation with a specific state, to which they owe allegiance and which protects them. It represents a political bond between the individual and the state, nationality is considered the most important and primary condition for employment in the public sector. Those who do not hold Algerian nationality cannot be employed in an Algerian public institution. The purpose of this condition is to provide function opportunities for Algerian citizens and give them priority in employment over foreigners, as well as to protect the security and integrity of national public institutions.[112]

An employee's continued employment is contingent upon their possession of Algerian nationality. Loss of nationality automatically terminates their service by law, whether due to the revocation of their original nationality (held since birth) or the withdrawal of nationality by the Algerian state from those who acquired it after birth. Loss of nationality, whether original or acquired, permanently severs the employee's connection with the public service. This

[110] Djebaili Sabrina , op-cit , p 106 .
[111] Jadou Fatima Zahra and others , op. cit., p. 126
[112] Djebaili Sabrina , op-cit , p 117 .

deprivation or loss results in the automatic termination of the public employee's service without any administrative intervention. The decision issued in this regard constitutes a record of the legal consequences of the loss or deprivation of nationality.[113]

Article 18 of the Algerian Nationality Law No. 05-01, dated February 27, 2005, specifies the cases of loss of Algerian nationality as follows:

1- An Algerian who voluntarily acquired a foreign nationality abroad and was authorized by decree to renounce Algerian nationality.

2- An Algerian, even if a minor, who possessed original foreign nationality and was authorized by decree to renounce Algerian nationality.

3- An Algerian woman married to a foreigner who acquired her husband's nationality through marriage and was authorized by decree to renounce Algerian nationality.

An Algerian who renounces Algerian nationality in the case stipulated in the second paragraph of Article 17 above, which concerns the renunciation of Algerian nationality by minor children of a naturalized citizen between the ages of 19 and 21, is subject to a certificate issued by the Minister of Justice.

Article 22 of Law No. 01-05 specifies the cases of deprivation of Algerian nationality as follows:

"Any person who has acquired Algerian nationality may be deprived of it:

1- If convicted of a felony or misdemeanor that harms the vital interests of Algeria.

2- If convicted in Algeria or abroad of a felony punishable by more than five years' imprisonment.

3- If, on behalf of a foreign entity, they engage in activities incompatible with their position as an Algerian or detrimental to the interests of the Algerian state.

Deprivation of nationality shall only apply if the acts attributed to the person concerned occurred within ten (10) years from the date of acquiring Algerian nationality." Deprivation of nationality can only be declared within a period of five (5) years from the date of committing those acts.

[113] Ammar Boudiaf , op. cit., p. 163

In the first three cases, the loss of Algerian nationality is subject to the discretion of the executive authority, which authorizes it by presidential decree. The last case, however, does not require authorization; rather, it is a right of the acquired Algerian national who submits a specific request to the legally authorized institution.

B- Loss of Civil Rights

Enjoying civil rights is a fundamental condition for employment, as stipulated in Article 75 of Law No. 06-03. If a person enjoys these rights and then loses them for a specific legal reason, he loses his position after being dismissed by the competent authority , thus terminating the employment relationship between the employee and the public administration.

The loss of civil rights is a supplementary penalty to the original penalty imposed on the offender for committing a felony or misdemeanor, according to Article 02/09 of the Penal Code. It entails imprisonment as a deprivation of liberty. An employee sentenced to this penalty cannot continue in his position, and the public institution to which he belongs terminates his employment to ensure the proper and regular functioning of the public service [114].

Deprivation of national, civil, and rights includes the dismissal or exclusion from all public positions and offices related to the crime in addition to the deprivation of the right to vote or run for office and to hold any decoration.[115]

The judge orders the deprivation of one or more of these rights for a period not exceeding 10 years, commencing from the date of completion of the original sentence or the release of the convicted person.

This is a judgment issued by a competent judicial authority, whether civilian or military, whose judgments are recognized as judicial in nature , the judgment must also be meaning it is not subject to ordinary appeals (opposition and appeal), either by its nature or because these methods have been exhausted.

The judgment must also explicitly stipulate the deprivation of civil rights: Deprivation of civil rights is a discretionary supplementary penalty that can be imposed in misdemeanors and is mandatory in felonies. The judge may choose the type of rights from which the convicted person is deprived. For this

[114] Bouteba Mourad, op-cit , p. 622

[115] According to Article 09 bis 01 of the Penal Code 156/ 66 dated June 8, 1966, containing the Penal Code, as amended and supplemented .

judgment to lead to the termination of the employment relationship between the employee and the administration, it must explicitly stipulate dismissal or exclusion from all public positions related to the crime.[116]

C- Death

Death is one of the causes that leads to the termination of the employment relationship between a public employee and the administration. In this regard, we distinguish between:

- Actual death, which is the cessation of brain cell function." Legally, it happens after halting of all bodily functions.

- Presumed death, which is based on a judicial judgement issued regarding a missing person whose whereabouts are unknown and whose life or death is uncertain. In wars and exceptional circumstances, it is issued after four years following investigation and inquiry. In cases where safety is deemed more likely, the judge may determine an appropriate period after the four-year period [117].

Regarding the termination of employment, the death referred to actual death, not presumed death. The latter requires a court judgement to determine the death of the missing person due to their disappearance and prolonged absence.

The appointing authority issues a decision or decree to remove the deceased employee from service. The beneficiaries receive a death grant, and an allowance for work-related accidents if the death occurred during or in connection with the performance of their duties, in addition to a retirement pension. Regarding the death grant, the beneficiaries of the deceased employee are entitled to it as stipulated in Insurance Law No. 11-83, dated July 2, 1983, as amended by Law No. 01-08. January 23, 2008, where the death grant is estimated at 12 times the salary of the last month in the position.

[116] According to Article 9 bis 1 of the Penal Code.
[117] 109 and 113 of Law No. 84-11, dated June 9, 1984, containing the Family Code.

Second requirement: Voluntary Termination of the Employment Relationship

The Algerian legislator has specified certain methods for terminating the employment relationship, and thus ending the career path, by the will of one of the parties to the employment relationship.

A- Retirement

Retirement is a natural end to the employment relationship between an employee and the administration, provided the legal requirements are met. This was previously discussed in the second section on the rights of public employees

B- Resignation

Resignation is also a natural way to end service and terminate the employment relationship between a public employee and the administration.

Resignation is a voluntary process , the first stage involves the employee submitting a written request expressing their free will to leave service before reaching retirement age, thus embodying one of the rights of the public employee. The second stage is regulated by law according to procedural rules that consider the interests of both parties ensuring the smooth and continuous operation of the institution. [118]

However, the termination of the employment relationship between the employee and the administration is only achieved through a decision issued by the administration , the administration is required to accept his resignation within two months, and is therefore granted the authority to respond , the employee must continue performing his duties until he receives the decision accepting or rejecting his resignation. The resignation request is sent to the appointing authority through the administrative hierarchy , the appointing authority may postpone approval of the resignation for two months from the date of expiry of the initial period, in cases of extreme necessity for the public interest ,upon expiry of the postponement period, the resignation becomes effective.

Therefore, for a resignation request to be effective and accepted by the administration, the following conditions must be met:

[118] Djebaili Sabrina , op-cit , p 120 .

- A written request must be submitted to the appointing authority through the proper administrative channels; verbal requests are not acceptable.

- The request must include an explicit and final declaration of terminating the employment relationship.

- The request must be made of a free will, free from any vitiating factors such as duress.

- The employee must continue to perform his duties continuously until a decision is issued regarding him .

C- Revocation

In addition to the codification of the most serious professional errors that a public employee may commit, and the stipulation of disciplinary penalties they may face for committing these errors, the Algerian legislator also stipulated the procedure for revocation due to neglect of duty in Article 185 of Ordinance 03-06. This is considered one of the most serious measures taken against a public employee who is absent from function for 15 consecutive days without an acceptable justification.

Definition of revocation:

Before addressing the Algerian legislator's definition of revocation procedure, some legal researchers have defined administrative revocation of the public employee as: "Terminating the professional relationship of a public employee and ending his relationship with the administration in which he carries out his duties which leads to the removal of his position as an employee."

It has also been defined as: "Dismissing an employee upon abandoning his function for a specific period.[119]

The Algerian legislator addressed the revocation procedure in Article 184 of Ordinance 03-06, which stipulates: “If an employee is absent for at least fifteen (15) consecutive days without acceptable justification, the appointing authority shall take revocation measures for neglect of duty, after issuing a warning, in accordance with procedures to be determined by regulation.”

In implementation of the provisions of this article, Executive Decree No. 321-17, dated November 2, 2017, was issued, specifying the procedures for dismissing an employee for neglect of duty. Article 3 of this decree defines the

[119] Djebaili Sabrina , op-cit , p 121 .

revocation procedure, stating: “Dismissal for neglect of duty without acceptable justification is an administrative measure taken by a reasoned decision of the appointing authority after issuing a warning, notwithstanding the fundamental disciplinary and legal safeguards .

To define the revocation procedure, it is first necessary to clarify the meaning of "neglect of duty" as stipulated in Article 2 of Executive Decree 321-17: "Any employee who is absent for at least fifteen (15) days without acceptable justification is considered to be neglecting their duty.

The term acceptable justification means any impediment or force majeure beyond the employee's control, legally established, and related in particular to the following:

- Natural disasters,

- Physical incapacity resulting from illness or a serious accident,

Based on the aforementioned legal texts, revocation can be defined as: "An administrative procedure issued by the appointing administrative authority, without following disciplinary procedures and safeguards, by which a public employee is dismissed and permanently barring them from employment in the public service, due to their neglect of their duties without an acceptable excuse for a period specified by law. [120]

2-Procedures for revocation:

Given the seriousness of dismissal procedures for public employees due to neglect of duty, the Algerian legislator, in Executive Decree 321-17, imposed a set of legal controls and procedures that must be adhered to by the appointing authority before implementing dismissal procedures. These procedures are:

- Recording Absence:

If the administration observes an employee's absence from work in cases other than those legally justified, it must record this absence. This is stipulated in Article 4 of Executive Decree 321-17, which states: "The administration must record the absence of an employee who is in a state of neglect of duty, with a written document placed in their administrative file."

[120] Gustave Peiser , op-cit , p 69 .

It is clear from the text of this article that the administration records absences with a written document, which is placed in the employee's administrative file as one of its components. B- Employee Notice: Article 5 of Executive Decree 321-17 mandates that, upon notifying an employee of their absence for two consecutive working days, the administration must send a notice to the employee at the last address registered in their administrative file, requiring them to return to their post immediately. If the employee fails to respond to this notice and return to their post within five working days from the date of the first notice, and does not provide a justification for their absence, the administration will issue a second notice.

The Executive Decree also specifies the form, content, and method of serving the notice. Article 6 stipulates that the notice must be personally served on the employee by mail in a registered envelope with return receipt requested, or by any other legal means stipulated in the applicable legislation and regulations. The notice must include the consequences the employee may face for failing to return to their post, namely, dismissal without disciplinary action. A formal notice of dismissal is considered legally valid, according to Article 7 of Executive Decree 321-17, in the following cases: - If the employee concerned voluntarily refuses to accept the notification of receipt of the notice;

- If the employee refuses to collect the registered letter containing the notice;

- If service of the notice is impossible due to the employee's absence from their residence.

Article 8 of Executive Decree 321-17 also stipulates that if the employee concerned does not receive the notice and the envelope is returned to the administration bearing the remark "Does not reside at the stated address" or "Address unknown," this remark, along with the postmark, constitutes proof of service.

After the administration has exhausted all legally permissible warning procedures, it will take the appropriate action. Here, a distinction must be made between the employee's return to work after two warnings and his failure to return:

* Employee Returns to duty after two warnings:

Article 9 of Executive Decree 321-17 [121]stipulates that if the employee returns to work after two warnings and provides a valid justification, the administration will deduct from their salary an amount equal to the number of days they were absent. However, if they fail to provide a valid justification for their absence, the administration, in addition to the salary deduction, will impose a disciplinary penalty in accordance with applicable procedures.

* Employee fails to return to work after two warnings:

If the employee fails to return to work after two warnings, the administration, according to Article 10 of Executive Decree 321-17, will suspend his salary and take all necessary measures to protect the interests of the public service and ensure its proper functioning.

- Issuance of the revocation decision:

If an employee fails to return to his post by the end of the fifteenth day of consecutive absence, despite two warnings, the appointing authority, pursuant to Article 11 of Executive Decree 321-17, shall revoke him immediately by a reasoned decision effective from the first day of their absence.

- Notification of the revocation decision:

Article 12 of Executive Decree 321-17 stipulates that the revocation decision must be notified to the employee concerned within a period not exceeding eight days from the date of its issuance, in accordance with the same procedures stipulated in Article 5 concerning the notification of warnings, and shall be kept in his administrative file.

According to Article 13 of the same decree, the notification of the revocation decision must include a note informing the employee concerned that they may appeal to the authority that issued the revocation decision within two months from the date of notification. Therefore, the vacant financial position cannot be

[121] Executive Decree 321-17 , dated November 2, 2017, specifying the procedures for dismissing an employee for neglect of duty.

filled during this period, in anticipation of the possibility that the revocation decision may be overturned and the employee reinstated.

If the employee submits a appeal with acceptable justification within the legal deadlines, the administration is obligated, according to Article 14 of Executive Decree 321-17, to rescind its decision after reviewing the justification and verifying the accuracy of the information and the validity of the submitted documents, following consultation with the relevant equal mixed committee.

The employee will then be reinstated without retroactive financial effect.

Finally, it should be noted that, an employee who has been dismissed for disciplinary reasons or revoked for abandoning his post, cannot be nominated again in the public function. [122] This approach was adopted by the Algerian legislator through the Article 185 of Order 06/03.

Third requirement: Effects of Termination of Employment

The termination of the employment relationship has consequences for both the employee and the administration.

A- Effects of Termination of Employment for the Employee

These effects are as follows:

1-Loss of Public Employee Position:

This is confirmed by Article 216, which states: "The complete termination of service, which leads to the loss of employee position, results from..." Thus, upon termination of the employment relationship, the employee's legal position is revoked, and they lose this position.

2-Eligibility to Reapply for Public Service Positions:

For an employee dismissed or discharged for disciplinary reasons, Article 185 definitively states that they are permanently barred from re-employment in the public sector. However, dismissal for non-disciplinary reasons allows for re-employment. Similarly, a resigning employee can reapply for a public service position. As for retirees, general rules stipulate that, despite the absence of an explicit provision prohibiting re-employment, they are eligible for re-employment, except for temporary positions in senior or advisory roles.

[122] Gustave Peiser , op-cit , p 70 .

An employee dismissed for abandoning their post may rejoin the public service by proving the legally acceptable reason or excuse that led them to abandon his duties, such as force majeure.

Those who have lost their Algerian nationality are prohibited from permanent public service employment, but they may be employed on a contractual or temporary basis. An employee who has lost their civil rights is prohibited from employment until their civil rights are restored.

B- Effects of Termination of Employment on the Administration

These effects are as follows:[123]

1-Cancellation of the Termination Decision:

A termination of service cannot be cancelled if it meets the legal requirements, unless it contains a defect of legality. In such cases, it can be withdrawn or annulled administratively or judicially.

2-Disciplinary Proceedings:

Algerian law does not address this situation, meaning that the basis for disciplinary action is the existence of the employment relationship. If this relationship ends, there is no basis for disciplinary action, such as in cases of death or loss of Algerian nationality. However, offenses of a criminal nature, such as embezzlement of public funds, can be prosecuted unless the statute of limitations has expired.

3-Vacancy of Position:

After the issuance of the termination decision between the public employee and the administration, the position becomes vacant and can be filled by other employers. The employee's name is removed from the official payroll.

4-Cessation of Salary Payments from the Administration's Budget:

Retired employees receive their pensions from the National Retirement Fund.

[123] Bouteba Mourad , po-cit , pp 671-672 .

Conclusion:

In conclusion, this paper demonstrates that the subject of public function is inextricably linked to that of public utilities; each nation has its own philosophy and doctrine regarding its view of public function, that is, its role in meeting the needs of its citizens.

Indeed, the public service and the public employee reflect the prestige and standing of the state in the eyes of its citizens. For this reason, all national legislation including Algerian legislation specifically Ordinance 06/03, which contains the Public function Law, has taken care to clarify the rules and procedures governing the professional life of an employee, from the date of the opening of the competition and their subsequent appointment to their position until the termination of his employment for any reason whatsoever.

It is certain that the Algerian legislator was influenced by the French system after more than 130 years of occupation. The striking similarity between the two systems is evident in the adoption of a closed system and the reinforcement of the regulatory relation between the employee and his administration. This closed system provided employees with a sense of security and the insurance of continued service, thus strengthening the stability of the Algerian administration and ensuring the continuity of its services. However, this closed system, rather than an open one, also revealed drawbacks such as the generation of bureaucracy, the stifling of employee creativity, and low wages.

Given the importance of the public function, the Algerian legislator has surrounded it with a set of principles governing how citizens may assume this honor, which is fundamentally considered a responsibility rather than a privilege due to the sanctity of the duties entrusted to public employees.

Foremost among these principles is the principle of equal opportunity for assuming positions in the public administration, provided all the conditions stipulated by law are met. Simultaneously, there is the principle of merit, which does not contradict the principle of equality but rather complements it, considering that some positions require specific competencies, qualifications, and skills to be filled. Most legislation pertaining to public function, including Algerian legislation, stipulates a set of general conditions for assuming this

position. Among the most important of these are nationality, age, enjoyment of civil rights, and physical and mental fitness.

Securing a public service position is achieved through one of the methods stipulated by law: competitive tests (the primary method), tests based on qualifications for certain ranks, and professional examination based on professional skills for lower ranks that do not require academic qualifications but only certain professional skills.

The employment relationship between the employee and the administration is then established, it begins with the issuance of an appointment decision by the appointing authority. Following this, the employee enters a one-year probationary period to assess his ability to perform the duties of the position, this period is renewable for one additional year only. If the employee fails the probationary period, he is dismissed for incompetence. However, if he successfully completes the probationary period, the appointing authority confirms the employee's position by issuing a decision confirming his appointment. This employment relationship should only end in one way: retirement or, in exceptional circumstances, such us death.

Given the importance of the public employee position, the legislator has surrounded it with a set of rights and guarantees that accompany the employee throughout his career. At the same time, the legislator has obligated the employee to a set of duties and responsibilities due to the sensitive and exceptional nature of the tasks entrusted to them, namely, serving the public on behalf of the state and the public administration.

As for rights, financial rights are paramount including salary in all its components, the right to promotion, the right to training, and the right to rest and vacation. Social and collective rights, such as the right to social protection, the right to strike, and the right to unionize, are also essential. These important rights are accompanied by a set of duties that align with the regulatory relation between the employee and the administration.

Foremost among these there are functional duties, such as the duty to obey the administrative superior, the duty to protect public property, and the duty to refrain from combining public function with other activities, in addition to ethical duties that include the duty to maintain professional confidentiality, the duty of discretion and impartiality, and the duty to respect and treat clients with courtesy.

And because a public employee, before being an employee, is a member of society with his own social and personal circumstances, or even own academic and entrepreneurial aspirations, Presidential order 06/03, which includes the public function Law, has enabled him to adapt to these circumstances by changing his professional status from the regular service position to various legal positions stipulated by law.

These legal positions include detachment, out of the frame position , leave of absence, and national service. It is also worth noting leave for the purpose of establishing a business. All these exceptional statuses allow the public employee to adapt to their personal and family circumstances on the one hand, and on the other hand, enable him to achieve his professional aspirations and economic projects.

To ensure the proper functioning of public services, the legislation, including the public function Law, established a disciplinary system for public employees in cases of professional error. Error, like penalties, ranges from the first to the most serious fourth degree, in accordance with the principle of proportionality between the professional error and the penalty, the penalty must correspond to the severity of the disciplinary error.

Furthermore, the Algerian legislator, in matters pertaining to the public function, ensured that the disciplinary system for public employee is surrounded by a set of safeguards designed to protect him from administrative abuse, whether substantive or procedural. Among the most important of these safeguards are the mandatory justification of administrative decisions imposing disciplinary penalties, the right to access the disciplinary file, the right to defend oneself, and the right to appeal to the administrative courts to file a lawsuit against the administrative decision imposing the disciplinary penalty or to seek compensation for any resulting damages. It is also worth noting the provision for appearing before a joint committee as another safeguard in cases of third and fourth-degree penalties.

The general rule is that a public employee's relationship with their administration ends only in one case: retirement or exceptionally, in the case of the employee's death, or upon his voluntary request to resign, several procedures and deadlines are observed to ensure the continuity of the public service.

However, there are a number of cases that lead to the termination of an employee's employment and the automatic dismissal, among the most important

are: administrative dismissal as a fourth-degree disciplinary penalty for a fourth-degree offense, as determined by a joint committee; administrative revocation after a public employee abandons his post for more than fifteen consecutive days without legitimate justification, and after the completion of the notice procedures and deadlines stipulated in Order 06/03; and cases where an employee is dismissed due to failure to meet one of the general conditions upon which their employment was based, such as loss of nationality , deprivation of civil rights, or physical incapacity that prevents him from performing their duties normally.

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