

## Disciplinary Guarantees For A Public Employee In Algerian Legislation

ضمانات تأديب الموظف العام في التشريع الجزائري

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### **Abstract:**

*If a disciplinary system is necessary in the field of public function, it does not mean that the Algerian legislature leaves the public administration all the authorities to impose it on the public employee. Disciplinary is a means to prevent negligence at work and to put an end to the violations and mistakes that the employee commits when exercising his duties or during it. For this reason, the Algerian legislator surrounded the public employee with serious guarantees that protect him from the arbitrariness of the administration in this field.*

### **key words:**

*Public employee - disciplinary authority- disciplinary guarantees - public function*

### **المخلص:**

إذا كان نظام التأديب من الأمور الضرورية في مجال الوظيفة العمومية، فإن هذا لا يعني أن يترك المشرع الجزائري للإدارة العامة جميع السلطات لتوقيعه على الموظف العام، فالتأديب هو وسيلة لمنع التهاون في العمل ولوضع حد للمخالفات والأخطاء التي يرتكبها الموظف عند ممارسته لمهامه أو اثناءها، وفي هذا السبيل أحاط المشرع الجزائري الموظف العام بضمانات جدية تحميه من تعسف الإدارة في هذا المجال.

### **الكلمات المفتاحية:**

موظف عام – السلطة المختصة بالتأديب – ضمانات التأديب – وظيفة عمومية.

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### **Introduction:**

If the disciplinary system is one of the necessary matters in the field of public service, this does not mean that the Algerian legislator leaves the public administration with all authorities to apply it on the public employee, the Discipline is a way to prevent complacency at work and to put an end to violations and errors committed by an employee when or while exercising his duties.

A debate has arisen regarding the correlation of discipline in violation of job duties for errors committed by the employee during the exercise of his job, Where jurisprudence, jurisdiction and legislation in this field distinguish between two types of errors: errors of interest and disciplinary errors, and the liability arrangement was limited to the second type, as they are errors unrelated to the activity attached, but occurred as a result of lack of precaution or with the intent to harm others .

The discussion also arose about the basis for disciplinary punishment as part of the public service; its topic is the criminalization and punishment of actions committed by employees that affect the proper and regular course of work, and a necessary means of reform and evaluation in the scope of the public service, where some believe that punishment On the basis of the commanding authority of the state, others believe that it is a right based on a contract linking the employee to the state, while a third party believes that this right is based on protecting the goals of the institution.

Whatever the basis for disciplinary punishment, the Algerian legislator like others, has surrounded the public employee with guarantees that protect him from the arbitrariness of the administration in this regard. The administration must abide in the practice of this by legal procedures; otherwise it is considered a deviation from the requirements of the principle of legality and subject to the supervision of the administrative judiciary,

The importance of this topic is highlighted in knowing the various procedures that the disciplinary penalty goes through from disciplinary follow-up to the imposition of this penalty, as well as the knowledge of the various guarantees provided by the Algerian legislator to the public employee from the beginning of the disciplinary follow-up to the time of this penalty, and from here the question arises about these guarantees are they sufficient and capable to provide the necessary protection to the public employee?

To study this topic, the analytical method was adopted, where this topic was divided into three chapters: the first chapter dealt with: guarantees prior to

the imposition of disciplinary punishment, and in the second chapter: contemporary guarantees for the imposition of disciplinary punishment, while the third chapter was about the subsequent guarantees of the punishment.

### **I: guarantees prior to the imposition of disciplinary punishment**

Disciplinary decisions are subject to formal rules that are collectively a real procedural system, starting with enabling the public employee subject of disciplinary follow-up to know the errors attributed to him and conducting an investigation into the subject of those errors that are subject to disciplinary follow-up, in addition to the right to defense, and these procedures in their entirety guarantee the employee not to be arbitrary and persecution by the disciplinary authority, and on the other hand, guarantees the administration's interest in detecting the crime chasing the Employee at fault, and punishing him in a way that ultimately investigates the proper functioning of the public facility<sup>1</sup>

#### **A - Guarantee of confrontation (face-to-face)**

This matter means the necessity of informing the employee of his disciplinary file in order for him to know the facts that were attributed to him in order to prepare his defense, with adequate briefing of all proofs and evidence if any that indicates that he committed a disciplinary violation, and confronting him with all this during the investigation phase, otherwise the accusation was broad and impossible to The employee to know what has been attributed to him, and thus determining what he must do, to respond to these allegations, so whenever the accusation with all its dimensions is determined and accurate, whenever possible, it can be answered through the available legal means, which is referred to in Article 167 of Ordinance 06-03 related to the Algerian public service,<sup>2</sup> where I Stipulated to inform the employee's of disciplinary follow-up by errors attributed to him, and must have access to his full file within 15 days from the date of initiation the disciplinary action against him.

The administrative judiciary in Algeria has gone in this field, as the Administrative Chamber of the Supreme Court ruled in its decision issued on April 08<sup>th</sup>, 1989 in the case of (S.A) against (Minister of Health and Higher Education): "It is established in the administrative judiciary that the employee must be informed in the event of Automatic transfer, even if the disciplinary measure was not acquired".<sup>3</sup>

The Algerian public service law did not require a specific form of notification. Rather, it was sufficient for the employee to be alerted about the

disciplinary action that would be taken against him, as he was satisfied with the term of notification without specifying the means of notification is it through a letter recommended with a notification of receipt or any other means? With regard to the time limit set for notification, Article 167 of the Public service Law stipulated a period of 15 days starting with the initiation of a disciplinary lawsuit, which is a reasonable and appropriate period that allows the public employee to prepare his defense and all means to clear him of the errors attributed to him.

Not only that, but the public employee is also entitled to see his disciplinary file as soon as the disciplinary case is initiated <sup>4</sup>, and therefore the disciplinary authority is obligated to allow the employee to view the case file and its reports when it initiates to take disciplinary measures otherwise its decision is subject to cancellation.<sup>5</sup>

This is what the Administrative Chamber of the Supreme Court of Algeria decided in its decision issued on April 21<sup>st</sup>, 1990 in the case of (F.M) v. (Minister of Justice), where it ruled: "It is legally established that every employee is entitled, who is referred to the Staff Committee that meets in the Disciplinary Council, to review his disciplinary file immediately after initiating the disciplinary case procedures." <sup>6</sup>...

### **B - investigation guarantee**

The investigation means investigating the truth in what is attributed to the employee by collecting information on the charges against him, through all the elements related to it, including the inevitability of investigating aspects of defense until the disciplinary decision is finally issued, based on correct and true basis and facts.<sup>7</sup>

And investigation in this concept constitutes the most important prescribed guarantee for the employee, as it protects him from untrue and false accusations, and therefore harms him with suspicions, and investigates on the other hand to protect the administration, and ensures confidence in its decisions, and does not abuse it by envisaging the interest alone and only with its decision, but when the investigation is effective a producer of its effects?

The investigation in order to be impartial and objective should not be carried out by the same party that launched the charges, and who is charged with imposing the punishment, but rather must be entrusted to another neutral party, if we really want to reach the truth about what was attributed to the employee, because assigning the same authority to it will affect the seriousness and impartiality of the investigation, as the administration stems from a postulate that the employee is guilty<sup>8</sup>, which can make the investigation incomplete for all of its

elements and is malfunctioning in its place or its purpose, as the investigation must be comprehensive of the incident subject to the accusation from all its angles and elements clearly and with certainty. In terms of the actions, time, place, people, and evidence because each element of these elements may affect the actions in the latter, if the investigation came in breach of one of these elements, the disciplinary decision issued on the basis of it came to be malfunctioning, and therefore subject to nullity and may be non-existent.

With regard to the public service law, the principle of investigation was adopted with regard to the actions attributed to the employee, whether those that call for a penalty of the first degree or the second degree, or those that call for penalties of the third and fourth degrees, and if the text regarding the second case did not come as a confirmation, where it leaves the option to request the investigation to be done by the disciplinary council.

Concerning the first case, Article 165 of Ordinance 06-03 states that: "The authority that has the powers of appointment shall be taken by a decision justifying disciplinary penalties of the first and second degrees after obtaining written clarifications from the person concerned." This is useful for the investigation.

As for the second case, Article 171 of the same ordinance stipulated: "The specialized equal administrative committee meeting members, as a disciplinary council, can request the opening of an administrative investigation from the authority that has the powers of appointment, before deciding on the issue raised."

What is evident from these two articles is that the public service law entrusted the task of investigating the actions attributed to the employee to the same body that accused him, and even who is charged with imposing the punishment, as it is the case with first and second degree penalties, this endeavor cannot provide an investigation with a guarantee of impartiality and seriousness<sup>9</sup>.

### **C - defense right guarantee**

It is not enough to investigate and confront charges against the employee. Rather, he must be enabled to express his defenses towards it and this is done by enabling him to respond and answer all that was attributed to him<sup>10</sup>, then verify the seriousness of the answers provided and then balance between the evidence of the accusation and the reasons that he has submitted, which was approved by the Public service Law in Article 168 of Ordinance No. 06-03 which stated that: "An employee who is referred to an equal administrative committee meeting members

as a disciplinary council must appear in person, unless a force majeure precludes it.

He shall be notified by the date of his appearance at least fifteen days in advance, by post, recommended with the receipt.

If the employee presents an acceptable justification, the employee can seek from the equal committee the competent members assembled as a disciplinary board to be represented by his defenders.

In case that the employee who was summoned in a legal manner does not attend, or if the justification submitted by him is rejected, the disciplinary follow-up continues, as Article 169 of the same law stipulates that: "The employee can provide written or oral notes or evoke witnesses and he has the right to seek the assistance of an authorized defender or an employee of his choice.

Through these two articles, the legislator authorized the public employee if he was subject to disciplinary follow-up to appoint an advocate for him, and it does not matter whether this defender is a lawyer or other, and the the evidence is in the second paragraph of the text of Article 169 above, and the Algerian legislator did well, sometimes the employee, especially if he is from the same profession of the The followed-up employee knows very well the administrative work affairs and has the experience and skill to be able to defend, noting that the Algerian legislator stipulated that the defender's representation of the employee being followed is provided that the latter personally attends the disciplinary session, and if this is not possible and his excuse is accepted by the equal members committee, then this latter That may allow This defender to represent the absent employee, as well as the Algerian legislator did well, because the disciplinary follow-up requires the presence of the employee in question personally because he may be asked him for clarifications or he may face evidence or persons, etc., and all these issues require personal attendance, that is, as if it is more like criminal matters.<sup>11</sup>

It is worth noting in this context that the issue of representation with a defender or another employee is limited only to the errors of the third and fourth degree. As for the errors of the first and second degree as long as the latter is not within the powers of the disciplinary council, it is sufficient only to obtain written clarifications from the person concerned, which is also acceptable<sup>12</sup>.

## **II: contemporary guarantees for the imposition of disciplinary punishment**

After indicting the accusation to the disciplinary followed up the employee the disciplinary administrative authority, informing and notifying him of the deadlines stipulated by law, and the administrative investigation of these errors and violations, and enabling the employee to have the right to respond and deny what was attributed to him and to use the defender he chooses to defend him, after completing all these procedures The disciplinary authority may reach the conviction that the disciplinary violation is fixed in the right of the followed up employee, and issued the disciplinary decision that includes the appropriate punishment, and during this phase also the Algerian legislator in the Public service Law No. 03-03 took into account the rights of the punished employee and This through a set of safeguards that guarantee either his innocence of the charges against him or at least impose a punishment consistent with those committed irregularities<sup>13</sup>, which we will cover these sections.

### **A - the impartial guarantee**

Impartiality is one of the most important disciplinary guarantees, so that the disciplinary followed up public employee reassures the neutrality of the disciplinary authority or body that will take the disciplinary decision towards him, the latter must be involved with other bodies in the conduct of investigation procedures and disciplinary decision-making.

In light of the presidential disciplinary system, we find a difficulty to provide a guarantee of impartiality, because this system does not differentiate between the power of accusation and conviction<sup>14</sup>, and by reference to the Algerian Public Service Law 06-03 which takes the presidential disciplinary system, stipulating that the authority that has the powers of appointment is the one who makes a decision Justification for disciplinary punishments of the first and second degrees after obtaining written clarifications from the concerned person.<sup>15</sup>

The Algerian legislator in the public service law has not adopted the impartial guarantee, which you do not find an imposition to it, of course, in the scope of presidential discipline, and this is not limited to only the first and second degree penalties, but in fact, even third and fourth degree penalties, which, although it appears that the authority that has appointment powers, take disciplinary penalties in it mutually in the form of an equal member committee that includes representatives of the concerned administration<sup>16</sup>, the administration participates in taking the punishment through its representatives in

the equal members committee, and it exercises a kind of psychological pressure on staff representatives within this committee, so it would be desirable, even if the composition of this committee of equal members is to be reconsidered by including representatives of the judiciary authority alongside staff and administration representatives.

**B - a guarantee of causing the disciplinary decision sufficiently**

All disciplinary penalties taken by the authority that has the powers of appointment must be issued in the form of a justified decision, which is clearly indicated in the Algerian Public service Law<sup>17</sup>.

The causing means the proportions of the material facts formed for the disciplinary violation of the employee and attributing them according to what is legally stipulated to the legal text that requires disciplinary punishment.

In case that the facts appear to constitute at the same time a criminal offense under the Penal Code, the notified judicial authority should issue its decision, which will have authority over the disciplinary decision to be taken by the disciplinary authority, which is obligated not to ignore it.

Otherwise, if the criminal judiciary decides that these actions are not physically based, then the administration cannot establish it for the imposition of the disciplinary punishment, and the cause of disciplinary decisions constitutes the most important guarantee for the public employee in the disciplinary area under penalty of being subjected to abolition, and this is so that the judicial authority can monitor This decision made well.<sup>18</sup>

**C - a guarantee of the consistency between the disciplinary error and the penalty**

It is one of the most important guarantees available to the public employee, Accordingly, it depends on it whether the disciplinary decision is valid or not, if the disciplinary authority has the freedom to choose the appropriate disciplinary punishment in the light of the error attributed to the employee, but this freedom is not absolute, as it is obliged to adhere to the principle of gradual punishment to achieve a between the actions attributed to the public employee and the punishment included in the disciplinary decision, and this is subject to judicial oversight. In this context, Article 161 of the Public service Law No. 06-03 states that: "The determination of the disciplinary punishment applied to the employee depends on the degree of gravity of the error, and circumstances In which it is committed and the responsibility of the employee concerned, and the consequences of the progress of the interest and the damage to the interest or of the beneficiaries of the facility. "



Through this text, the Algerian legislator has adopted the principle of consistency between disciplinary error and disciplinary punishment, where it has set out for the administration the elements and standards that should be taken into consideration when disciplinary punishment is imposed, and that the disciplinary authority, in accordance with the provisions of Article 163 of Ordinance No. 06-03 mentioned above, it has a number of disciplinary penalties classified according to the gravity of the mistakes committed, in addition to what the specific laws stipulate of the specific penalties, and no penalty can be applied outside those legally prescribed, just as two penalties cannot be applied to the same error<sup>19</sup>.

Since the disciplinary punishment must be commensurate with the error attributed to the public employee and determine its degree, the Algerian legislator, in order to achieve the principle of consistency between the degree of punishment and the degree of error committed by the employee, categories of third and fourth degree professional errors has been identified in Articles 180 and 181 of the Public service Law No. 06-03 This is done exclusively, so that the administration does not expand to adapt errors and their fit to the public employee within the third and fourth degrees, which entails severe disciplinary penalties with severe and major impact on the public employee,

So the Algerian legislator did not leave the disciplinary authority the freedom to include what it wants of the errors within the classes of errors of the third and fourth degrees, which is indicated by the term "in particular" contained in Articles 180 and 181 of the Public service Law, which states the inventory.

As for the errors of the second degree, which were included in Article 179 of the same law, which in turn contained the expression "in particular", which states the restriction of the errors of the second degree,

but the content of this article is inconsistent with the term "particular" that it contained, the second paragraph of the text of the article came As follows: "...breach of basic legal duties other than those stipulated in Articles 180 and 181 below."

This paragraph benefits the public, not the private one, and this means that everything that differs from the definition in which articles 180 and 181 of the Public service Law came into the concept of violation within the framework of the Second paragraph from the text of Article 179<sup>20</sup>, as it is in general, the basic legal duties in the field of public service cannot be limited.

As for the first-degree errors that were included in the text of Article 161, which came in a broad general formula that allows the administration to expand and arbitrarize the classification of errors committed by the public employee as

professional errors, if it was justified on the grounds that it is not possible to limit the professional errors on the one hand, and that restricting them restricts the authority of the administration in the management of the public utility, except that it is preferable, even if the penalties taken in relation to it, as previously mentioned, involve a judicial body in addition to the disciplinary authority, and this is so as to ensure an appropriate and consistante punishment for the mistake committed by the employee.

**D - The guarantee of the issuance of disciplinary decision of the competent authority According to legal procedures**

The disciplinary decision taken by the disciplinary authority against the disciplinary followed up public employee is to be issued in the end by the competent authority, and it was determined by the Algerian legislator in the Public Service Law No. 06-03 according to Articles 162 and 165 which is the authority that has the powers of appointment, even if it participates on it other bodies, such as the Equal Members Committee, according to the well-known principle: "Whoever has the power of appointment has the power of dismissal."

And it is not only here, but even the initiation of disciplinary procedures that must be by the authority that has the powers of appointment.

In addition, the Algerian legislator has given another guarantee to the public employee to ensure that the disciplinary decision against him is issued in a proper and legal manner.

The latter is represented in the necessity of respecting the legal procedures when imposing the disciplinary penalty, and these procedures are numerous and varied, guaranteed by the Public service Law No. 06-03 and are especially in a date initiating of disciplinary lawsuit<sup>21</sup>,

whereby the law set the administration under the fall of penalty of disciplinary follow-up to a specific period in which the disciplinary authority is notified, which is the disciplinary council, as Article 166 of Ordinance 06-03 states that: "The disciplinary council must be notified by a justified report from the authority that has appointment powers No than than forty-five days starting from the date of the error preview, The error attributable to the employee falls when time is exceeded."

The Algerian legislator has given the disciplinary council the same period starting from the date of its notification to decide on the violations attributed to the employee under the penalty of the illegality of the penalty taken after the deadline of this period, and this is stipulated in the second paragraph of Article 165 of the Public service Law.

### **III: the subsequent guarantees of the disciplinary punishment**

After confronting the disciplinary followed up employee with the disciplinary violations attributed to him and enabling him to defend himself, and then taking the disciplinary decision by the competent authority accordingly and according to the procedures in this framework, here the question arises about the guarantees granted to the employee in facing the disciplinary decision?

The Algerian legislator, through the Public service Law No. 06-03, acknowledges to the disciplinary employee to have the right to submit an administrative grievance, either to the party issuing the disciplinary decision or to a special appeals committee, and yet recourse to the judiciary remains the effective guarantee to confront the disciplinary authority, which we will address below:

#### **A - administrative grievance guarantee**

The grievance is: "It is a procedure that allows the employee to appeal against the administrative decision, with the intention of canceling it or changing it."<sup>22</sup> After issuing the disciplinary decision that includes the disciplinary penalty, the punished employee has the right to submit an administrative grievance to either the administrative authority that has the power to appoint and this considering the disciplinary decision is an Administrative decision like any other administrative decisions,

noting here that the administrative grievance here is a provision grievance, as Article 830 of the Civil and Administrative Procedures Law No. 08/09<sup>23</sup> stipulates that the

person concerned with the administrative decision submits a grievance to the administrative authority that issued the decision within the period stipulated in Article 829 of the same law which is 04 months from the date of personal notification with a copy of the individual administrative decision,

and the disciplinary decision in all cases is an individual decision, and the administrative authority kept silence without an answer after complainant within two months, this is considered a decision of rejection,

after which the administrative grievance employee submits his judicial appeal where he benefits from Two months which are valid from the date of the expiry of the two-month period referred to above, and in the case that the administrative authority responds within the period granted to it, the two-month period shall start to run from the date of notification of refusal<sup>24</sup>.

The disciplinary punished employee may also administratively complain before the competent appeals committee stipulated by the Algerian legislator in Article 65 of the Public service Law. In this context, Article 175 of Law 06-03 states that: “An employee who was subject to a disciplinary punishment of the third or Fourth degree, to file a grievance with the competent appeals committee within a maximum period of one month, starting from the date of notification of the decision.

What is noticed on this article is that it indicates to the possibility of appealing against the decisions of the Committee of Equal Members as a Disciplinary Board before the Appeals Committee with regard to penalties of the third and fourth degree, but it did not talk about this possibility with regard to the decisions issued regarding the first and second degree penalties, although These decisions are taken by the authority concerned with the appointment alone, with the possible arbitrariness or transgression of more than the third and fourth degree penalties that the representatives of the employees participate in issuing, so what path can the employee take in this case? Should it resort to the issuing authority and submit a province grievance, or will it resort to the judiciary?

Also, the possibility of a judicial appeal in the decisions of the appeal committee was not referred to by the law, which leads to wonder about this possibility or not?

But pursuant to the rule of origin in permissible things and pursuant to the constitutional provisions that make the jurisdiction of the administrative judiciary to consider the actions of administrative authorities, and given that the disciplinary decision is an administrative decision in the organic and physical concepts, it can be said that judicial appeals against these decisions may be made, according to what is stipulated in the Civil and administrative LawProcedures.

### **B - Judicial appeals guarantee**

Every employee against whom a disciplinary decision has been issued has the right to request the cancellation of this disciplinary decision, even though there are those who call for allowing any employee, even if a disciplinary decision has not been issued against him to request the cancellation of the disciplinary decision, because when the administration takes an arbitrary disciplinary decision, it has become accustomed, not only to the employee in fault But also on all the employees,<sup>25</sup> because it violated the rules of the proper functioning of the public facility regularly and steadily, in addition to this that the employee often avoids resorting to the judiciary for fear of various administrative

pressures for that and to protect the rights of employees, its better if the unions are allowed to request the cancellation of disciplinary decisions.

The disciplinary employee must respect the formal requirements for the cancellation of the disciplinary decision, and he must file the lawsuit within the time specified in Article 829 of the Civil and Administrative Procedures Law, which is four months effective from the date of personal notification with a copy of the individual administrative decision, or from the date of publishing the collective administrative decision This is either before the competent administrative court or the State Council, depending on the case, and the judiciary relies on several means in the cancellation process, namely:

-Ensure that the authority that took the disciplinary decision has jurisdiction, is it the same body that has the authority to appoint the employee or not.

- Respecting the formal conditions stipulated by the law that affect the legitimacy of the disciplinary decision, such as not taking the binding opinion of the equal members of the competent committee meeting as a disciplinary council in the third and fourth degree penalties, as well as indicating the date the disciplinary case was initiated against him, indicating his summons and enabling him to submit his observations and choosing Whoever defends him, and to respect the deadline for disciplinary and other punishment.

-A poor understanding of the law, as if the disciplinary authority punished the employee with penalties other than those listed in the public service law, or the imposition of a punishment that is not commensurate with the degree of error committed, or the employee is punished with two penalties for the same act, so the judge must make sure that there are errors attributed to the employee and that by referring to the disciplinary file, the reason for the decision of the disciplinary punishment, then studying it and determining whether the disciplinary penalty is appropriate for these actions and it is a difficult and accurate process.

Finally, we point out that in the case that the disciplinary decision is canceled by the judiciary in a final, non-appealable way, every trace of the penalty will be erased from the file of the punished employee and restore all his rights that were subject to the disciplinary decision,

and in the case of the contrary, the Algerian legislator authorized to the punished employee after a year of taking the The disciplinary punishment to request the reinstatement of the authority that has the powers of appointment,

and if he is not subjected to a new punishment, re-consideration shall be made by the force of law after the passage of two years from the date of taking

the penalty <sup>26</sup>and this applies only to first and second degree penalties, while the legislator did not provide for a re-consideration to the third And the fourth degree penalties.

**Conclusion:**

After examining the Standards for disciplining a public employee in Algerian legislation, it can be said that the Public Service Law No. 06-03 has surrounded the public employee with a set of guarantees in the face of the disciplinary authority that took the disciplinary decision, in which he took into account the rights of the employee on the one hand, as it is the weakest link in facing disciplinary authority that It has the power to punish the employee in fault and the administration's rights to operate the public facility in a way that enables it to achieve its goals.

However, many observations and results can be recorded in this framework, including:

1-The Public service Law stipulated that the disciplinary followed up employee was notified of the errors attributed to him within a period of 15 days after the disciplinary case was filed against him, but he did not clarify the form of this notification.

2-The Public service Law provided the possibility of conducting an investigation of disciplinary errors and violations at the request of the equal members committee meeting as a disciplinary council and this is in the errors of the third and fourth degrees, but in the errors of the first and second degrees after obtaining written clarifications from the person concerned, and he assigned the task of the investigation to the same party that launched the charges, and that is in charged of imposing the punishment.

3-That the Algerian legislator did not differentiate between the accusation authority and the punishment imposing authority, so the authority that has the powers of appointment is the one that takes the first and second degree penalties individually and participates in taking the third and fourth degree penalties.

4-The Public service Law provided for the consistency of the punishment with the error committed by the public employee, whereby it identified disciplinary power exclusively for the third and fourth degree errors, but it did not, in return, specify the errors of the second and first degree, which makes the arbitrariness of the administration in this type of error a large and likely Also, first and second degree penalties are taken by the authority that has the power to appoint alone individually.

5-That the Algerian legislator stipulated two types of administrative grievances, one before the same administrative authority that issued the disciplinary decision, and the other before the competent appeals committee, which makes the employee confused, and the appeal before the appeals committee is limited to only the third and fourth degree penalties.

6 -That the legislator stipulates the right of the punished employee to request reconsideration after a period of time has passed, but this right is restricted to only first and second degree penalties.

In light of these observations, we offer the following suggestions:

1 -The necessity of specifying the means by which the disciplinary employee is notified when the disciplinary case is filed against him, according to a letter recommended to him with a notice of receipt and this so that the administration is not arbitrary in this field.

2 -The necessity of making the administrative investigation into the errors of the public employee obligatory in all types of professional errors, and assigning the investigation to a neutral body, preferably if it is judicial.

3 -The necessity of differentiating between the accusation authority and the authority imposing the punishment, in all kinds of disciplinary punishments.

4 -The Algerian legislator must at least carefully control the errors of the second degree, and leave the field open only for the first degree errors, in order to ensure that the administration does not abuse this framework, in addition to the involvement of other bodies besides the administration in taking first and second degree penalties.

5- The Algerian legislator must specify the type of grievance that the employee can file and include all disciplinary penalties, regardless of their degree.

6 -Extending the issue of reinstatement to include third and fourth degree penalties after an appropriate period of time has passed. A person who is penally punished can be reinstated for a felony, misdemeanor or violation, let alone the matter related to administrative errors, regardless of their degree.

7 -Involving unions and representations in filing lawsuits aimed at canceling the disciplinary decision in addition to the public employee, because many pressures may be exerted on the employee in this field.

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- <sup>14</sup> - Salim Djedidi, *Op.Cit.*, p. 301.
- <sup>15</sup> - Article 165 of Ordinance No. 06-03 containing the Public service law, mentioned above.
- <sup>16</sup> - Rachid Habbani, *Employee and Public Service Handbook, An Analytical Study of the Provisions of Ordinance No. 06-03 of 15/07/2006 Containing the General Basic Law of the Public Service*, El-Najah Book house, Algeria, 2012, p. 134
- <sup>17</sup> - Articles 165 and 174 of Ordinance No. 06-03 mentioned above.
- <sup>18</sup> - Rachid Habbani, *Op. Cit.*, p. 135.
- <sup>19</sup> - This is explicitly referred to in Article 183 of the aforementioned Order 06-03.
- <sup>20</sup> - Mohamed Salah Fenish, *Op.Cit.*, p.94.
- <sup>21</sup> - Said Mokadam, *Op.Cit.*, p. 94.
- <sup>22</sup> - Kamal Rahmaoui, *Op.Cit.*, p.160.
- <sup>23</sup> - Law 08-09 of February 25<sup>th</sup>, 2008 containing the Civil and Administrative Procedures Law *Official Journal*, issue No. 21, dated April 23<sup>th</sup>, 2008.08
- <sup>24</sup> - Article 830 of Law No. 08-09, mentioned above.
- <sup>25</sup> - Kamal Rahmaoui, *Op.Cit.*, p. 166.
- <sup>26</sup> - Article 176 of the Public Service Law No. 06-03 mentioned above.