

The disciplinary guaranties in the Algerian public Function statute: a legal framework

Les garanties disciplinaires dans le statut de la fonction publique algérienne: le cadre juridique

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Abstract

At any public administration; public officials while they perform their duties may commit disciplinary faults, even though, they can't be judged without procedures, which may increase arbitrary rules, the Algerian general statute of public function stipulates the disciplinary procedures and guaranties in order to protect the public official's rights, these guaranties are so important, because they ensure the protection of public official from encroachment and abuse of the disciplinary authority while exercising the disciplinary procedures in accordance with the law, this research paper aimed at identify the disciplinary guaranties for the public official, their legal nature and sources, also their different types and stages, the public official has the right to defend himself before any procedure against him.

Key words: public official- disciplinary – fault- guarantee.

Résumé

Dans toute administration publique ; les fonctionnaires dans l'exercice de leurs fonctions peuvent commettre des fautes disciplinaires, même s'ils ne peuvent pas être jugés sans procédures, ce qui peut augmenter les règles arbitraires, le statut général algérien de la fonction publique stipule les procédures disciplinaires et les garanties afin de protéger les droits du

fonctionnaire public, ces garanties sont si importantes, parce qu'ils assurent la protection de l'agent public contre l'empiètement et l'abus de l'autorité disciplinaire dans l'exercice des procédures disciplinaires conformément à la loi, ce document de recherche visait à identifier les garanties disciplinaires pour l'agent public, leur nature juridique et leurs sources, ainsi que leurs différents types et étapes, le fonctionnaire public a le droit de se défendre devant toute procédure à son encontre.

Mots clés: fonctionnaire - disciplinaire – faute – garantie.

Introduction

The case law related to public officials involved in disciplinary proceedings is constantly being enriched. It focuses as much on the disciplinary procedures whose administrative investigation is the nodal point, as on the disciplinary sanction that could be rendered at the end of a process where the rights of the defense must be fully assured.

If a public official faces harassment charges, it is up to the administrative authority to initiate an administrative investigation, in order to seek, by gathering all the evidence considered necessary, the elements likely to establish the wrongdoing for its agent. For example, in the public function, prior for the implementation of the disciplinary procedure, the possibility of initiating an investigation falls to the community, since the agent can't require an investigation to be conducted.

Little formalized, the legal regime of the administrative investigation is more or less framed by the legislative and the regulatory texts, this is the reason why the judge intervened always for the aim of clarifying guaranteeing to the agents concerned by the disciplinary proceedings, as in the first place, the need to guarantee a separate hearing of witnesses. It therefore stated that there was no obligation to organize a confrontation between the concerned officials and

the witnesses. Nor may the staff require or attend the hearings of other staff or require that an adversarial debate be held. However, there is an obligation to hear all witnesses requested by the concerned official, at the risk that the administrative investigation is considered impartial.

As for the importance of the topic a problematic could be posed as follow:

What are the main disciplinary guarantees granted to the public official when he commits a disciplinary fault?

To answer this problematic we are going to introduce the following plan:

Section one: Guarantees before the disciplinary punishment

Sub-section 1: Guarantees prior to referral to the Council of discipline

Sub-section 2: Guarantees during the Council of discipline

Section two: Post-guarantees after the disciplinary punishment

Sub-section 1: administrative appeal

Sub-section 2: judicial appeal

Section one: Guarantees before the disciplinary punishment

After the observation of the disciplinary fault, the administration is obliged to respect procedural guarantees (the request for explanation and the formal notice) that are official's profit.

Sub-section 1: Guarantees prior to referral to the Council of discipline

Formal notice of disciplinary proceedings is an essential formality for the legality of the disciplinary action. In particular, in cases where it comes as a prelude a serious sanction. The administrative judge takes this into account in considering the application for excess of power, and does not hesitate to cancel the penalty under appeal for failure to comply remains, but this procedural guarantee is subject to a condition.

1- The referral to the disciplinary council

Formal notice is an administrative act intended to signal the delay or failure in the execution of an obligation to allow the official to regularize his situation. The formal notice process is not a common law process; it can only be used when its use has been provided for by a text, so the formal notice is provided for by Article 184 of the ordinance N° 06-03 about the general statute of public function¹.

Since it is provided for by a text, the formal notice is never optional; the judge enforces this rule strictly and includes it in the disciplinary guaranties, since the omission of the formal notice is considered a procedural violation².

Also, the formal notice is not reserved only for the administration; in fact, three categories of natural or legal persons may have to use it.

The administration frequently uses it as part of its hierarchical or supervisory power to draw the attention of its citizens, partners, contractors and civil servants to their obligations towards it. Also, the administration uses it in disciplinary cases involving officials

The request for an explanation consists of a letter addressed to the official, stating the facts alleged; their date, time and place, and the circumstances that led to them accompanied or surrounded, and asking him to produce in writing his explanations, his version, its reasons, on the one hand in order to clarify the administration on the materiality of the facts, and to provide the person concerned with a guarantee before the start of any disciplinary proceedings against him. It is thus up to him to recognize the facts or to deny them. Also, he can produce at his defense of any evidence (witnesses; documents) proving his statements. Indeed, the administration may be satisfied with the official's version and end the disciplinary process that could be generate this procedure.

Also, the request for explanation is addressed to the witness officials (if they exist) of the alleged act, so that they can give their versions of the facts. This version could support the person's version, as it may deny. This constitutes a confrontation of the different versions and testimonies in writing. The administration will thus be able to make its decision with full knowledge of the facts, which will ensure the required legality.

Thus, this procedure which aims to shed light on the wrongful act and its circumstances is a disciplinary guarantee for the employee who will be the subject of a possible sanction.

Article 165 of Ordinance N° 06-03 sets out the request for an explanation, but the limit tacitly to disciplinary sanctions of first and second degree "Disciplinary sanctions of the 1st and 2nd degree shall be imposed, by a reasoned decision of the appointing authority, after giving written explanations to the person concerned..."³

But paragraph 2 of this article, which concerns disciplinary sanctions of third and fourth degree does not specify whether they should be subject – *a priori* – to written explanations by the sanctioned official: "...Disciplinary sanctions of the 3rd and 4th degree shall be imposed by decision of the appointing authority, after obtaining the assent of the competent Joint Administrative Commission, sitting on the Disciplinary Board, who must make a decision within a period not exceeding forty-five (45) days from the date of the referral."⁴

How the official's appearance before the members of the Board of Directors discipline exempts the administration of the request for explanation procedure. On the other hand, Organic Law N° 04-11 (judges) limits the provocation of written explanations to serious errors involving a possible sanction of revocation or dismissal, and which must be preceded by an

administrative measure of suspension⁵, but this procedure (the suspension) is absent in case of warning addressed to the magistrate.

Thus, section 71 of the same Act authorizes the Minister of Justice and the presidents of the jurisdictions under the judicial and administrative order to impose the penalty of warning without having to send a request for an explanation to the magistrate concerned. Thus, the magistrate is "pushed" by article 71 to resign himself to request his rehabilitation after one (01) year from the date of this sanction, or to wait for its prescription after two (02) years⁶.

As for diplomatic and consular staff, Article 83 of their Statute requires a request for an explanation must be made to the officer who is the subject of an advance recall by the foreign national for serious misconduct. This request for an explanation must be appended to the reasoned report to be drawn up by his superior⁷.

Thus the fact of provoking the explanations of the official, the magistrate, the diplomat, consular or military officer is a proceeding handicapped by the degree of seriousness of the misconduct. But the texts do not prohibit the administration from making this procedural guarantee general⁸.

Indeed, there is no trace of a preliminary commission of inquiry initiation of the disciplinary procedure in the aforementioned texts. Even Order 06-03 does not provide for this preliminary inquiry, which is a guarantee in addition to the request for an explanation⁹, and which is different from the administrative commission of inquiry which comes after the suspension or before the pronouncement of the sanction on recommendation of the Joint Administrative Commission, sitting in disciplinary council¹⁰.

Sub-section 2: Guarantees during the Council of discipline

These guarantees concern, on one hand, the method of referral to the Joint Administrative Committee and, on the other, the obligation for the administration to give reasons for its decisions and proposals for sanctions. Indeed, the question of referral to the Joint Administrative Committee, especially when it sits in restricted training (Disciplinary Council) does not fully meet the requirements of disciplinary guarantees¹¹.

By its purpose, to bring together the members of the disciplinary council, this referral is restricted to members of the council and the administration. The aggrieved official cannot, in the current state of the texts, bring together the members of the Disciplinary Council, which remains a prerogative of the president of the council¹².

Also, the texts give the referral to the Disciplinary Council a scope limited to only some disciplinary sanctions. This is not without consequences for disciplinary guarantees.

Moreover, even if the question of the motivation of the opinions of the Disciplinary Council and the administrative decisions bearing disciplinary sanctions is properly governed by the text, on the other hand, it is treated in a mixed way by the Algerian administrative judge. In addition, the parity within the Disciplinary Council is seriously criticized, particularly in the case of the division of votes between the members of the council and, its impact on the treatment of the disciplinary case and the sanction imposed¹³.

Indeed, parity, which is an essential element in the block of disciplinary guarantees that carries and consolidates the rights of the defense of the official translated before the members of the Disciplinary Council, is called into question by the casting vote of the chairman of the board, who is none other than the representative of the administration, who has disciplinary power. Especially since new "recent" provisions show a clear desire to establish legally this preponderance for the benefit of the administration and to the detriment of

the official. One cannot be fair, impartial and just while being both judge and party at the same time¹⁴.

In the current state of the law, disciplinary guarantees result from different statutes, administrative jurisprudence, as well as from general principles of law¹⁵. Moreover, any evolution of civil service law must be marked by the search for a strengthening of the rights of civil servants, including disciplinary guarantees in the face of any abuse of hierarchical authority¹⁶.

The assistance of an advocate, and in particular of a lawyer of the official's choice, is often a first condition of the usefulness of the communication. For a civil servant «deprived of his means» because of his emotion, or because of syncope, cannot defend himself adequately.

Thus, the disclosure of the disciplinary file must be made to a public official physically and mentally able to take advantage of it.

This right of assistance is also closely linked to the principle of adversarial proceedings, which may lead to the summoning of witnesses and even to ordering an administrative investigation to further study the disciplinary file submitted by the administration to the Disciplinary Council.

This general principle is inspired by the adage "*Audi Alteram Partem*" (listen to the other part)¹⁷, that no measure having the character of a sanction may intervene without the person concerned having had the opportunity to defend his defense against the charges against him. Thus, the principle of adversarial means that the official has the right to make submissions freely, or any written or oral explanations to support his defense and contradict the allegations made against him by the administration or by the witnesses¹⁸.

He may thus question the truth of the facts alleged against him and their existence. As it can bring all useful elements to the breaking of the truth, if

necessary, he may, if he considers the merits of the disciplinary procedure, seek clemency from the members of the disciplinary council, citing his state of health, his family situation, his service history, or simply his regrets (in this case his choice will be to defend one of his colleagues representing the union)¹⁹.

Thus, the public official sued, summoned fifteen (15) days at least before appear, may make written or oral submissions and call witnesses, or may request confrontation with others (as the administration may also do). He may also be assisted by one or more defenders of his choice and in particular by a lawyer.

Thus, the official may request the summons of one or more witnesses before the Disciplinary council. As it may ask to be confronted with the prosecution witnesses to whom the administration refers. "An employee may make written or oral submissions and call witnesses..."²⁰.

The witnesses can confirm the official's version, as they can deny him. Also, the official can make the members of the Disciplinary Council doubt the validity of a testimony at the origin of a personal animosity or for fear of administrative reprisals²¹.

The principle of the adversarial also implies that witnesses must be heard in the presence of the worried official.

Finally, failing to prove his innocence, the official, or his lawyer, could cast doubt on the allegations brought against him (or his principal) by the administration.

This may lead the members of the Disciplinary Council to request the initiation of an administrative investigation²².

Section two: Post-guarantees after the disciplinary punishment

Disciplinary sanctions imposed against officials, magistrates and health professionals may be the subject of an informal or hierarchical recourse which

is always possible without text²³, or an appeal before a Commission of Appeal (at the level of the Wilaya or the Ministry) and finally a contentious appeal before the administrative judge.

Sub-section1: The graceful and hierarchical recourse.

An official who has been sanctioned may, under ordinary law, exercise an administrative appeal before the author of the sanction (*ex gratia*) or his superior (hierarchical appeal).

A – The *ex gratia* appeal.

It is sent by simple letter to the superior who signed the decision sanctioning disciplinary. The official seeks reconsideration of the penalty on the basis of explanations and clarifications (in particular if he has not received requests for explanations to substantiate his facts or explain them), or arguments denying the alleged facts, as he can ask his superior for forgiveness in reasons of humanitarian (family, social or health) considerations²⁴.

This type of recourse is often accompanied by support (pressure) from shop stewards. However, it is generally accepted in cases of minor offences without bearing on the position occupied, and which do not engage the responsibility of the superior in case of non-sanction.

In addition, an employee who has not received his or her *ex gratia* remedy may submit a written appeal to the superior of the offender.

B – Escalation

Like the appeal, this is also sent by mail. He must make the arguments which the person concerned considers necessary for the acceptance of his appeal. He may, for example, invoke the personal animosity shown to him by the perpetrator of the sanction, or the harassment of which he is the object of for not confessed rivalry, or because of a professional history relating to a refusal to execute an illegal order²⁵.

The authority seized may cancel the sanction for illegality. It may also confirm as necessary by substituting new grounds for those invoked; it may not, however, aggravate them following the concern's appeal.

This type of appeal is mandatory in administrative litigation. Section 275 of the C.P.C requires the hierarchical recourse before filing any judicial application the revocation of an administrative act²⁶.

C- The appeal before the appeal committee

In certain cases provided for in Article 67 of Order No. 06-03 (third and fourth degree sanction), the sanctioned official may refer the decision to the Commission to Recourse to which his body is attached²⁷.

Article 65 of the new S.G.F.P maintains the creation of this Appeal Commission which is placed with each Minister, Wali, as well as with each authorized head of certain institutions or public administrations²⁸.

D- The judicial disciplinary appeal

An official who has been dismissed by the administrative appeal bodies may bring an action before the competent administrative court (Administrative Chamber, Judicial Court, or the Council of State²⁹) with a view to obtaining either the annulment of the administrative decision imposing disciplinary sanctions (appeal for excess of power), or the allocation of an indemnity (recourse of full litigation).

But for it to be received as regular in form, Certain provisions of the Code of Civil Procedure required that, before bringing a legal action before the administrative judge, he must first have addressed an informal or hierarchical appeal before the person who imposed the sanction or before his superior. But this formalism was confined only to acts emanating from ministries and central bodies³⁰. These conditions were reduced to the appointment of a lawyer to plead the official's case before the Tribunal Administrative, the Administrative Chamber and the Council of State.

These actions shall be brought unless they fall within the competence of the Council of State in first and last resort, before the administrative chamber near the judicial court in whose jurisdiction is the place of employment of the official sanctioned.

Appeals brought against the opinions of the Disciplinary Council are not admissible before the Council of State, because the Disciplinary Council is only a consultation body³¹.

These opinions do not fall within the definition of administrative judgment, the administrative decision imposing disciplinary sanctions which comes after the opinion of the Disciplinary Council is the only one which can be challenged before the administrative judge³².

However, if the penalty is travel on its own initiative, the competent chamber is the one where the official's new residence is located. The appeal must be lodged within a period of four months from the date of notification or publication of the contested decision, if the administration refuses to notify the official of the penalty, he must submit a complaint within the four-month period mentioned above.

The silence kept by the central administrative authority seized, during two months, on a complaint, is worth decision of rejection. The person concerned has a period of two (2) months from the date of expiry of the two (2) month period, which is equivalent to the silence of the administration. In the event of a response to the complaint within the time limit set to the administrative authority, the two (2) month period shall begin to run only from the notification of the rejection. The filing of the claim with the administrative authority may be in writing and must be filed in support of the application³³.

E- Unlimited appeal

The officials are admissible to seek redress, by means of the appeal of The Court of Justice of the European Communities, in its sole discretion,

considers that they have suffered various damages as a result of a sanction. Such an appeal may be useful where the sanction has not been challenged by way of an appeal for excess of power and cannot be challenged further to the expiry of the time limit. Also, the judge can repair the moral damage (damage to reputation for example)³⁴.

Compensation for this damage can even be requested by the heirs of the entitled to resume the judicial proceedings against the disciplinary sanction imposed on their deceased. But for some bodies, the legislator has transferred disciplinary power to councils and commissions that have jurisdictional status³⁵.

Conclusion

As a conclusion, public official carries out his duties and tasks stemming from the nature of the service he performs, set by the legislature may cause a defect, delay or error in the implementation of those duties which leads him to be subject to disciplinary accountability.

We found that the disciplinary system in the Algerian legislation is based on a set of principles and guarantees that achieve social justice among the categories of public officials and achieve equilibrium between the right of the administrative apparatus to prosecute and acquit official, while granting the official with the right of confrontation with his violations, also the right to defend himself before the disciplinary council, the investigation elements must be legally correct and none of the guarantees can be breached, the statements must be heard and taken in consideration, versus to the witness statements, the official should be the opportunity to defend himself.

It's also required that the investigator must follow the impartiality and integrity principles while reaching his with objectivity without bias or extremism.

The public official disciplinary system requires justice and equality based on a principle in which the administration's right to accuse is balanced with its right to review, discipline and punishment.

For the purpose that the disciplinary has to be considered, it must have all the necessary basics and guarantees, including the guarantees of questioning the official, hearing his arguments, and granting him the right of confrontation (the adversarial process).

The guarantees stipulated in the Algerian disciplinary rules at the public function general statute are considered so presumed, because discipline within the framework of the public official aims at reform more than punishment, accountability in the administrative system is based on filling the gaps.

References

¹ Article 184 de l'ordonnance n°06-03.

² Essaid Taib, les garanties disciplinaires dans le statut e la fonction publique, Revue du Conseil d'Etat, séminaire international sur le contentieux de fonction publique, 2et 3 Juin 2007, p 108.

³ Article 165, al 1 of Ordinance No. 06-03.

⁴ Article 165, al 2 de l'ordonnance No. 06-03 relative au statut général de la fonction publique.

⁵ Sid Lakhar Fafa, le régime disciplinaire applicable aux fonctionnaires algériens, Revue du Conseil d'Etat, séminaire international sur le contentieux de fonction publique, 2et 3 Juin 2007, p 70.

⁶ Article 67 de la loi organique n° 04-11 du 6 septembre 2004 portant statut de la magistrature, J.O n° 57 du 08 septembre 2004.

⁷ Décret présidentiel n° 09-221 du 24 juin 2009 portant statut particulier des agents diplomatiques et consulaires, J.O n° 38 du 28 juin 2009.

⁸ Abdelkader khadir, les garanties disciplinaires dans la fonction publique algérienne réalité & perspectives, thèse de Doctorat en droit public, Faculté de droit Université d'Oran, 2010, p 229.

⁹ Sid Lakhar Fafa, Op.cit, p 74.

¹⁰ Idem.

¹¹ Arrêté du 19 juillet 2008 fixant la composition, les modalités de désignation des membres de la commission

paritaire consultative de discipline des agents contractuels et son fonctionnement. J.O.R.A.D.P, n°52 du 14 septembre 2008, p.50.

¹² Abdelkader khadir, Op.cit, p 230.

¹³ Essaid Taib, Op.cit, p 109.

¹⁴ RAHIMI. M. Le, Phénomène de la Consultation auprès de l'administration Algérienne, Thèse de Doctorat, Institut de Droit, Université d'Alger, 1982, p.190 et s

¹⁵ M. Letourneur; Les principes généraux du droit dans la jurisprudence du conseil d'Etat, in E.D.C.E. 1951, p 19 et s.

¹⁶ Essaid Taib, Op.cit, p 110.

¹⁷ The adversarial process, on the link : <https://legalanswers.sl.nsw.gov.au/hot-topics-courts-and-tribunals/adversarial-system>

¹⁸ Article 169 de l'ordonnance n°06-03 (S.G.F.P), et article 31 de la loi organique n°04-12 relative au Conseil Supérieur de la Magistrature.

¹⁹ Abdelkader khadir, Op.cit, p 258.

²⁰ Ibid, p 259.

²¹ Sid Lakhar Fafa, Op.cit, p 73.

²² Abdelkader khadir, Op.cit, p 260.

²³ C.E.A dans l'arrêt du 9/4/2001; Direction de l'Education de la Wilaya de Guelma c/B.T cité, in Revue du Conseil d'Etat, n°1. 2002, p.51 et s.

²⁴ Abdelkader khadir, Op.cit, p 274.

²⁵ Essaid Taib,op.cit, , p 111.

²⁶ Revue du Conseil d'Etat n°3 de 2002, page 151 et s.

²⁷ Article 67 de l'ordonnance 06-03, précité.

²⁸ Article 65 de l'ordonnance 06-03, précité.

²⁹ Revue du Conseil d'Etat n°5 de 2004,p.14.

³⁰ Art 169 bis du code de procédure civile.

³¹ Essaid Taib, Op.cit, p 116.

³² Revue Judiciaire n° 3 de 1993, page 222 et s.

³³ Revue Judiciaire n°3 de 1989, page 181 et s

³⁴ Sid Lakhar Fafa, Op.cit, p 79.

³⁵ Décret exécutif n°08-130 du 3 mai 2008 portant statut particulier de l'enseignant chercheur, in J.O.R.A.D.P n°23