

Title: The Legal Protection Granted to Public Employees against Dismissal Procedures: A Study of Ordinance 06/03 and Executive Decree 17/321

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Received: 22.01.2025 Accepted: 11.03.2025 Publishing: 13.05.2025 Doi: 10.56334/sci/8.4.30¹

Abstract

Dismissal of a public employee and the severance of their organizational relationship with the position represent the most serious administrative measures an employee may face, especially if they have neglected their duties. This is why the Algerian legislator has established both substantive and procedural regulations governing the dismissal of employees for neglecting their posts. These provisions are laid out in the General Statute of the Civil Service (Law No. 06-03) of 2006, alongside the relevant specific texts and Executive Decree No. 17-321. This decree defines the conditions of job abandonment, outlines the procedures for monitoring absenteeism, and provides guidelines for submitting justifications and the process for implementing dismissal. The same decree grants a range of legal safeguards to public employees to protect them against the unfair use of dismissal. These safeguards cover protections before the dismissal decision, those related to the decision itself, and those applicable after the dismissal is carried out.

Keywords: Public employee, dismissal, job abandonment, administrative procedure, employee absence

Introduction:

Public service is as ancient as the state itself. When a state is formed, the public service inevitably comes

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Citation. Derrar A. (2025). The Legal Protection Granted to Public Employees against Dismissal Procedures: A Study of Ordinance 06/03 and Executive Decree 17/321. *Science, Education and Innovations in the Context of Modern Problems*, 8(4), 250-260; doi: 10.56334/sci/8.4.30. <https://imcra-az.org/archive/362-science-education-and-innovations-in-the-context-of-modern-problems-issue-4-volvi-2025.html>

into being. Public authorities cannot meet the needs of individuals or implement the state's plans without the help of its administrative apparatus. The public employee is the key driver of this apparatus. They serve as the central link between the public institution they represent and the public interest they aim to serve. Therefore, laws have been enacted to govern the relationship between the employing administration and the public employee, with a particular emphasis on the stability of the employee's professional life.

The legislator has placed a set of mandatory professional duties on employees. These duties are necessary for the regular and continuous functioning of public services. Any failure to fulfill these duties may lead to disciplinary actions by the competent authority. The General Statute of the Civil Service (Law No. 06-03) classifies penalties into four levels, corresponding to four degrees of misconduct. Every violation or failure in the performance of professional duties is subject to disciplinary sanctions, ranging from a simple reprimand to dismissal.

However, beyond this disciplinary framework, there exists a separate and more severe penalty: dismissal due to job abandonment, as stipulated in Articles 184 and 185 of Law No. 06-03. In certain cases, the administration may abuse its power by issuing dismissal decisions outside the disciplinary process, thus violating the employee's rights. This prompted the introduction of regulations governing dismissal under Executive Decree No. 17-321. Consequently, the following question arises: **What legal protections has the Algerian legislator provided to safeguard public employees from administrative abuse when the dismissal decision is made?** This study aims to answer this question by analyzing the relevant provisions of the General Statute of the Civil Service and Executive Decree No. 17-321. The discussion will be structured as follows:

- **Section One:** The non-disciplinary path to dismissal
- **Section Two:** Legal protection for public employees against dismissal

Section One: The Non-Disciplinary Path to Dismissal

Dismissal of a public employee through the non-disciplinary route is an exceptional procedure that the administration resorts to, following specific legal guidelines. This represents an aspect of administrative authority, reflecting the principle of continuity in the operation of public services. However, there has been significant legal debate regarding the nature of dismissal. Some argue that it is an administrative action, while others consider it to be an administrative penalty. This issue will be addressed in the first section of the study.

Subsection One: The Meaning of Disciplinary Sanctions

Before delving into the nature of the dismissal process, it is important to understand the meaning of disciplinary sanctions themselves. This can be examined through legal opinions and relevant legislative texts, which will clarify their nature.

Branch One: Legal and Doctrinal Definition of Disciplinary Sanctions

First – Doctrinal Definition:

Doctrinal definitions of disciplinary sanctions vary depending on the perspective adopted by each scholar. Some define them based on their nature and scope, while others focus on the objectives they aim to achieve through their imposition. There are those who define them according to the individuals upon whom they are imposed, and others who define them based on the type of actions that lead to their application¹. However, the majority of scholars define a disciplinary sanction as "a penalty that affects the employee's professional status. It differs from criminal penalties in that, as a general rule, it does not impact the employee's life, freedom, or property. Instead, it solely affects their position and its associated benefits."²

Professor Al-Tamawi defined a disciplinary sanction as follows: "In various systems, the disciplinary penalty focuses on the deprivation of job benefits. It does not affect the employee's person, freedom, or even their private property. This seems to have become an accepted principle"³

Professor Abdel Fattah Hassan defined disciplinary sanctions as follows: "Disciplinary penalties are characterized by the fact that they only affect the employee's professional status. This applies whether the employee is in their original position (when the penalty is imposed while the employee is still in service) or in the position they hold after leaving service. Therefore, our legislation does not recognize disciplinary penalties that affect the employee's freedom or private property, unlike some other legislations, such as Soviet law" "Some legislations impose imprisonment as a disciplinary penalty, with a maximum duration of twenty days." While the general principle of disciplinary sanctions is that they affect the professional status of the employee, this does not preclude the inclusion of certain disciplinary penalties that impact the employee's freedom, but only in narrow circumstances and for specific categories. Examples include the penalties of detention at the workplace and confinement to a room, as stipulated in Article 64 of Law No. 68 of 1972 concerning Customs Guards⁵

"Khalil Khaled Taher viewed disciplinary punishment as: 'The penalties imposed on an employee due to violations or any failure in fulfilling their job duties, whether positive or negative'⁶

Meanwhile, Algerian administrative jurisprudence, led by Professor Ammar Aouabdi, defined disciplinary punishment as 'the administrative penalties imposed by the competent disciplinary authorities on an employee accused of committing disciplinary violations, in accordance with the established legal, regulatory, and procedural rules.'⁷

Disciplinary punishment is limited to punishing actions that are considered violations of public service duties. The disciplinary penalty does not affect the employee's freedom or property. However, the public employee may be punished both criminally and disciplinarily⁸.

Second: Definition of Legislation: Comparative legislations do not provide a definition of disciplinary punishment. What is mentioned in these legislations is a list of disciplinary penalties that may be imposed on public employees. It is notable that the legislator did not specify particular disciplinary penalties for specific violations, nor did it assign a disciplinary penalty for each disciplinary offense as is the case in criminal law. Instead, the legislator left it to the competent disciplinary authority to choose the appropriate penalty for the committed disciplinary offense from the list of penalties specified by law. This approach has been followed by many comparative legislations⁹.

In this regard, the Algerian legislator followed the approach of other countries' legislations. It did not define disciplinary punishment but instead organized and specified it. This is confirmed by Article 163 and Articles 177 to 185¹⁰.

Section Two: The Nature of Disciplinary Punishment

Disciplinary punishment is a means for the administration to ensure that its employees manage public facilities regularly and consistently." ¹¹ "In this regard, disciplinary punishment has an administrative nature. It is also considered a form of negative incentive in public service, as it includes a form of deterrence and reprimand. A punishment that causes an employee to fear repeating the mistake in order to avoid the penalty serves as an incentive to avoid errors and violations. Thus, disciplinary punishment serves a repressive function to suppress any misconduct at work. Therefore, disciplinary punishment has a functional nature in addition to its administrative nature. Above all, it is a legal penalty that can only be imposed or established in accordance with a provision in a law or regulation ¹²

Requirement Two: The Meaning of Dismissal as a Punishment

Dismissal from office is a penalty imposed by the appointing authority on an employee when they are absent for at least fifteen consecutive days without an acceptable excuse, after being formally warned. This penalty is based on the employee's neglect of their job duties, not on committing a professional error.

Section One: Definition of Dismissal as a Punishment

Dismissal from office has been one of the most commonly used terms from the earliest centuries to the present. However, its meaning and the circumstances surrounding it vary from one legislation to another and from one country to another ¹³.

Dismissal in Language:

In language, dismissal comes from the root word "عزل" (Azl), meaning to remove or distance someone. It is said that someone was dismissed from their position. To "withdraw" or "retire" from something means to distance oneself from it. Dismissal refers to removal or displacement ¹⁴.

Dismissal in Terminology:

Dismissal refers to the severance of the public employee's connection with their position, whether it is voluntary or involuntary ¹⁵

Section Two: Classification of the Dismissal Penalty

Regarding the classification of dismissal, the question arises whether it is a disciplinary procedure or a disciplinary penalty. Article (184) states that: "If an employee is absent for at least fifteen consecutive days without an acceptable excuse, the appointing authority shall take the dismissal action due to neglect of the position, after issuing a formal warning, in accordance with procedures defined by regulation." Meanwhile, Article (185) stipulates: "An employee who has been subject to dismissal or discharge cannot be re-employed in the public service."

Based on these two articles, dismissal can be seen as both a procedure and a disciplinary penalty. However, given the consequences it entails—such as the termination of the employment relationship and the prohibition from re-employment in the public service—it is more accurately classified as a penalty. This classification is further supported by the legislator's approach, which links dismissal with discharge due to similar consequences. The legislator took a strict stance to ensure that an employee who neglects their position or commits a serious professional error does not benefit from their negligence or misconduct.

This classification can also be supported by Article (207/2), which states that: "Any unjustified absence from work shall result in a salary deduction proportional to the duration of the absence, without prejudice to the disciplinary penalties specified in this basic law." It is noteworthy that the legislator used the term "penalty" in this article, referring to the disciplinary penalties, which undoubtedly include dismissal, as it is linked to absence rather than professional error¹⁶.

Section Two: Legal Protection of the Employee from Dismissal Penalty Given the seriousness of the dismissal penalty, which permanently severs the employment relationship between the employee and the administration and prevents them from applying for another administrative position, except for the exception regarding the dismissal of probationary employees under Executive Decree 17-322, the legislator had to provide legal safeguards for the dismissal decision to prevent the administration from acting arbitrarily against the employee¹⁷.

Requirement One: Legal Protection Prior to the Dismissal Penalty These safeguards include the necessity of proving the employee's absence, notifying the employee of the violations attributed to them, and thereby ensuring the employee's right to access their disciplinary file and to guarantee all defense rights.

Section One: Linking the Dismissal Decision to the Neglect of the Position In fact, the legislator defined the concept of neglect of position as the absence of an employee for fifteen (15) consecutive days without an acceptable excuse. The mentioned justifications remain broad in interpretation, and they include the following:

First – Natural Disasters:

The legislator did not specify the types of natural disasters, such as earthquakes, volcanoes, or even snow blocking roads, etc. Additionally, the legislator did not clarify how to prove the occurrence of a natural disaster or the employee's presence at the site. The authorized party to issue a certificate proving this could be, for example, the head of the local municipal council in the affected area.

Second – Physical Disability Resulting from Illness or a Serious Accident: Physical disability resulting from illness or a serious accident requires a medical certificate proving this condition. The certificate must be endorsed by social security. An example of this is the case of A.A. against the Director of Vocational Training and Apprenticeship and others, where the employee was dismissed for neglecting their position. However, the employee appealed the administrative court's decision, claiming a legal violation. The Council of State upheld the appealed decision¹⁸.

Third – Criminal Prosecutions that Prevent the Employee from Returning to Their Position:

This situation applies only to criminal prosecutions, not to criminal sentences involving deprivation of liberty. In general, proving such a case is straightforward, for example, by submitting a copy of the summons from the relevant authority.

In conclusion, it can be said that these cases are provided as examples, not an exhaustive list, according to Article 2 of Executive Decree 17-321. This opens the door for the administration to exercise its discretionary authority in other cases not covered by this decree.

Section Two: Proving the Employee's Absence

By "observing the employee's absence," we mean that the administration must confirm the neglect of the position by its occupant (the employee). As a safeguard for the employee, the administration is required to document the absence with a written document, which should be placed in the employee's administrative file.¹⁹

Section Three: Issuing a Warning to the Employee

The administration must notify the employee of the alleged mistakes attributed to them before taking any administrative decisions that may cause material or moral harm. The employee must be informed of the charges against them and the various evidence supporting these allegations²⁰

"Notifying the employee in advance and informing them of the allegations against them is one of the essential safeguards in the dismissal procedure. If the appointing authority imposes the penalty without notifying and informing the concerned employee, the decision is subject to annulment, even in the absence of a specific provision. However, the Algerian legislator did not mention this in Order 06-03, but it was explicitly stated in Executive Decree No. 17-321, dated November 2, 2017²¹ .

"This is done by personally notifying the concerned employee through mail, using a letter within an envelope sent via registered mail with a receipt acknowledgment, or by any other legal means stipulated in the legislation. The letter containing the warning must outline the consequences the employee will face, such as dismissal and removal from the employee roster, without any disciplinary guarantees, if they fail to resume their duties.

Requirement Two: Legal Protection Following the Dismissal Penalty

The legal protection afforded by the legislator against the dismissal decision is one of the most crucial safeguards established in favor of the employee. These safeguards protect the employee from potential abuse by the administration and ensure adherence to the principle of legality. Among the most important of these protections is the administrative appeal, or what is called the administrative grievance. Additionally, the employee may resort to the judiciary to file an annulment claim against the dismissal decision, as it is considered an administrative decision. At this stage, the reasoned dismissal decision must also be communicated to the employee in the same manner outlined in Article 5 of Executive Decree 17-321 .²²

Section One: Issuance of a Reasoned Dismissal Decision by the Competent Authority

Article 11 of Executive Decree 17-321 states: "The authority with the power to appoint shall immediately dismiss the employee by a reasoned decision." The competence in administrative decisions refers to the authority responsible for issuing them. A decision is considered invalid if issued by someone who does not have the legal authority to do so. In other words, this defect refers to the lack of legal capacity of the employee to issue the decision. It also refers to the "inability to perform a specific legal act," as the legislator has vested such authority in another body or individual.²³

Section Two: Notification of the Dismissal Decision

This refers to informing the employee of the termination of their employment relationship with the administration. The dismissal decision must be communicated to the concerned employee within a

period not exceeding eight (8) days from the date of its signing. Additionally, the decision must include a mandatory note informing the employee that the dismissal decision may be subject to appeal before the administrative authority that issued it, within two (2) months from the date of notification²⁴

Section Three: Appeal against the Dismissal Decision

First: Administrative Appeal

Since the administrative authority is the decision-making body in disciplinary matters, the employee has the right to file a grievance before it. This was a mandatory provision under Civil Procedure Law 66/154²⁵ However, it has become discretionary with the issuance of the new Civil and Administrative Procedure Law 08/09²⁶. The administrative grievance may be either hierarchical or executive.

1. Hierarchical Grievance:

This is the grievance submitted by the subordinate employee directly to the authority that issued the decision, requesting it to reconsider the decision in question, either by withdrawing, canceling, or modifying it. In other words, it is a petition made by the employee against a defective decision issued against them, asking the administration to review and reconsider the decision²⁷. The administration is not obligated to amend or respond to the employee's appeal. If it refuses to respond, this is considered an implied rejection. In such cases, the employee may appeal to the authority higher than the one that issued the decision. This is known as the **Executive Grievance**.

2. Executive Grievance:

This is the grievance raised before the administrative authority that holds superior authority over the body that issued the administrative or disciplinary decision being contested. The superior authority exercises its power by either canceling or modifying the disciplinary decision issued by the lower administrative authority. This power is exercised by law in accordance with the administrative hierarchy²⁸.

The public employee subject to the penalty may file an appeal before the competent appeal committee within a maximum period of one month from the notification of the disciplinary decision. The appeal committee is a body established by the legislator with the task of reviewing administrative decisions. It is set up in each ministerial sector and at each governorate level. The committee is chaired by the minister or their representative, or by the governor or their representative.

As for the composition of the appeal committees, they consist of administrative representatives, at least from the lower administrative ranks, and half of the members are employee representatives selected from among the elected members of equal representation, whether at the central level or within the governorate. The number of members in the appeal committees ranges from 5 to 7. The procedures followed by these committees are the same as those applied in committees with equal representation.

Second: Judicial Appeal

The final safeguard for a public employee to challenge the administration's decision is to direct the appeal to the judicial authority, specifically the administrative court. The goal is to establish judicial

oversight over the actions of the administrative authority in order to annul the decision and seek compensation for its consequences.

In general, the employee contests the decision for its illegitimacy, requesting its annulment as the primary objective. The claim for compensation for the harm caused by the disciplinary decision arises from the administration's responsibility for issuing a decision tainted with illegality or error that harmed the employee, who then seeks compensation.

The substantive grounds for judicial appeal, which form the conditions for assessing the legitimacy of the dismissal decision, are as follows:

The disciplinary decision is considered illegitimate if it is tainted by a defect that leads to its annulment. These defects include:

- **Procedural Defects:** Formal requirements serve as essential safeguards to protect employees from potential administrative abuse in the disciplinary process. These conditions were not intended, as some claim, to complicate administrative procedures.
- **Violation of the Law:** This occurs when the disciplinary authority punishes an employee with a penalty that does not align with the prescribed sanctions or imposes a penalty that does not match the alleged offense. It can also occur when two penalties, which the legislator has prohibited combining, are imposed on the employee.
- **Abuse of Power:** This is one of the most significant and frequent causes for the annulment of an administrative decision. It occurs when the disciplinary authority, vested with the legal power to discipline, uses that power for purposes other than those defined by the legislator, such as pursuing personal objectives or political goals, or to retaliate against the employee. The exercise of discretionary authority for purposes unrelated to the public interest, such as achieving personal or political goals, is considered an abuse of power.²⁹

Therefore, the judge must verify the errors attributed to the employee by reviewing their disciplinary file, the reasons for the dismissal decision, and any other elements that may reveal the truth..

Conclusion:

The legislator has regulated many aspects of an employee's professional life in order to ensure their stability and maintain the proper functioning of the public service. In addition, a set of disciplinary procedures has been established in case of administrative misconduct, with the least severe being a warning, and the most severe being dismissal, which severs the employment relationship between the employee and the administration. However, the penalty of dismissal remains the most severe administrative measure, as it is a decision outside the disciplinary system. This represents a clear violation of several rights, such as the right to defense. Given the severity of this measure, the legislator has surrounded it with legal protections that are, at best, weak and do not correspond to the gravity of the penalty of dismissal or removal from public service altogether.

Recommendations:

- Incorporating dismissal as a fourth-level penalty within the disciplinary framework, as it is inconceivable to impose a penalty outside the disciplinary system.

- It is essential to clarify the concepts of force majeure and prohibition, and outline how these two situations should be proven to prevent arbitrary interpretations by the administration.
- The decision to dismiss an employee should be annulled by the competent authority without the need for the opinion of the Equal Members' Administrative Committee, in cases where the dismissed employee provides a valid justification within the specified time frame, in accordance with the principle of legal equivalence.
- The regulation of electronic communications should be included in the General Civil Service Law to justify absenteeism.
- The scheduling of important dates must be clarified, as there are issues with how the 15-day period of continuous absence is calculated. For example, this includes situations where the employee's absence coincides with a weekly holiday or a national holiday, as well as cases where a university professor works only two days a week.
- The repeal of Article 185 is necessary, as it contradicts the spirit of the Constitution.

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