

## Improving the working environment for employees in Algerian Law

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Received: 23/10/2024 ; Accepted: 17/02/2025 ; Published: 07/03/2025

### Abstract:

Professional activity in Algeria after independence was divided into two areas, the first was represented in the economic sector while the second activity was represented in the public service sector, while the first activity knew interest on the part of specialists in terms of working to improve the work environment, the second sector related to the public service knew negligence with regard to this idea, i.e. improving the work environment for employees, especially from the legal and legislative side.

Therefore, I did this study to show the intention of the Algerian legislator with regard to this idea specifically, where we found that there is actually a trend for the Algerian legislator to improve the work environment within the public service sector through the various rights approved by Algerian law for several categories of employees, so we found general rights for all employees in addition to approving some exceptional rights related to some vulnerable groups, specifically the rights of women and people with special needs, and despite that, we found some shortcomings that this sector still suffers from compared to In the economic sector, it is necessary to work to correct them.

**Keywords:** employee, activity, sector, rights, wages.

With the end of the 19th century and the beginning of the twentieth century, several demands emerged regarding the improvement of work and its conditions, the main result of which was the emergence of labor blocs that worked to organize protest events known as trade union organizations, which worked hard at first to recognize the legitimate material and financial labor demands, and this

was actually achieved, even if relatively, then moved to work to provide other demands that are no less important than the first demands, which are improving the conditions and environment in which the worker exercises his job duties, and we mean the environment In its comprehensive sense, that is, everything related to or related to the worker, so that the matter is not limited to the element of income such as wage and salary only, despite the importance of this aforementioned element, but also goes beyond that to demand everything that improves the quality of life inside the workplace.

Especially with keeping pace with these demands in that period, the emergence of several psychological, social and even economic studies because this topic has different dimensions, and the results of the researchers supported the demands of workers regarding improving life within institutions, companies and departments because they affect the level of their efficiency and profitability in a direct way, and the result of this was the success of workers through their long struggles from the destruction of many of these elements that were actually embodied on the ground by stipulating them legally.

In Algeria, as is known, the employment sector is divided into two different areas representing two dysfunctional professional sectors that resulted in the existence of two different legal systems regulating labor relations in Algeria, as it is known that there is the first sector represented in the economic sector managed by the labor law,

While the second area is the public service sector, which proceeds according to legal principles distinct from the economic sector, represented in the Basic Law of the Public Service for the privacy of the tasks entrusted to the employees and workers of this sector, and this sector and for various considerations suffers from the neglect of specialists compared to workers of the economic sector in the field of interest in studying and improving the quality of life and well-being within the workplace

This negligence on the part of specialists, whether psychological or social, is due to objective and historical reasons, and this negligence was also reflected on the legal aspect of this issue, so we find that even legal studies did not address this idea specifically, i.e. carrying out studies related to improving the quality of life inside the workplace from the legal side.

The realization of the demands of workers in various physical, moral and psychological fields on the ground is of no importance except in one case, which is to drop them within the framework of

legal texts, specifically in the chapters, chapters and articles entitled " **rights**" guaranteed by the legislator to employees within the various laws.

In this particular area, i.e. the field of the public service sector, and in order to know the extent of the Algerian legislator's interest in this matter, i.e. welfare within the workplace, we decided to pose the following problem:

**Has the Algerian legislator been concerned in the legal texts of the civil service with improving the quality of life and achieving a kind of welfare for employees in the workplace?**

In order to clarify the intention of the legislator with regard to improving the quality and conditions of work or not, it is necessary to study the field of public service and the laws regulating it in Algeria, specifically to study what is known idiomatically in the section "rights" contained in the various laws on the public service, and for this I followed the comparative analytical method through the following answer plan:

In the first section, I touched on the legal basis of the public service through two requirements, in **the first requirement** dealt with the historical development of the legislation of the public service in Algeria, especially that this matter and by extrapolating the stages of this development discern the intention and reasons that prompted the legislator to amend the laws regulating this sector several times, which have to do with the continuous development of the rights of employees and workers, then in the second requirement I determined the scope of application of this law by defining the concept of public servant in Algeria.

While in the second section dealt with the study of the various types of rights given by the legislator to employees in the Constitution and more clearly in the Basic Law on the public service, because we find in the legal recognition of the rights of employees the intention to access to improve life within the workplace and achieve a kind of well-being at work for this included those rights in **two requirements** dealt with in **the first requirement** rights aimed at improving the quality of life for all employees, whether related to the recognition of rights Material, financial or the recognition of constitutional rights related to the general freedoms of employees, such as freedom of opinion and expression, union work, and others, which contribute to raising the employee's sense of value and job satisfaction, all of which contributes to achieving the principle of "luxury in the workplace".

As for the second demand, she touched on the legislator's approval of a set of rights for some vulnerable categories of employees that are characterized by weakness for various reasons, specifically the category of women as well as the category of people with needs.

### **The first topic: the legal system regulating the public service in Algeria**

Sometimes to know the direction of the legislator in a particular idea, the study of the historical development of legislation is an important role in knowing the reasons and justifications for the behavior adopted by the legislator towards the idea under study, and this is what I have done in this section with an attempt to determine the category to which the term employee applies in Algerian legislation.

### **The first requirement: the stages of development of public service legislation in Algeria**

The legal system regulating the public service in Algeria has known several developments since independence to the present day, as it went through two main stages that were a direct reflection of the political stages that Algeria has known, namely the stage of unilateralism and then followed by a second stage, the stage of party pluralism and economic openness, so that each stage was characterized by special principles translated on the ground in the provisions of the legal texts prevailing in each period of time, represented in the following:

#### **Subchapter I: Evolution of Public Service Legislation before 1989 "under unilateralism"**

After independence in 1962, Algeria adopted the system of the closed civil service structure that emerged from the legal provisions in force in the colonial era, such as the 1946 law and the 1959 order, like the majority of the countries of the Third World that were liberated from the emancipation of colonialism<sup>1</sup>, and therefore it was not possible for objective reasons to completely abandon the French legislation at one stage as the legislation that governed the Algerian administration during the colonial period. Therefore, it became necessary to recognize the extension of the application of French law in the post-independence phase, which was carried by Law No. 62-157 of December 31, 1962, which justified this law in a brief statement of reasons that "if on the one hand and under the independent state legislation should be issued that suits the aspirations of the people, on the other hand it is not possible to leave the state without a legal system." Therefore, it was imperative to retain the legislation of the colonial state until thinking about preparing texts that suit the philosophy and orientation of the Algerian state, and the first article of the above law came to announce the extension

of the validity of all legislation in force in the period before 31/12/1962 to remain in force in the stage of independence, except for what is related to national sovereignty, and Article 02 separated what is meant by sovereignty in the internal and external field<sup>2</sup>, then came the 1963 constitution, which is the first constitution known to independent Algeria until It was only implemented for a short period of time, but it recognized some workers' and employees' rights, such as the right to trade union.<sup>3</sup>

Then, in September 1965, the Algerian government formed a higher committee that included representatives of the Ministry of Finance and the Ministry of the Interior, with the aim of developing a basic law for the public service governing administrative institutions of an administrative nature, to be actually prepared and presented in January 1966 to various departments and ministries and discussed at the level of the Revolutionary<sup>4</sup>Council., to be then the issuance of the first legislation for the public service in Algeria independent under Order 66-133 of 02 June 1966 and included this order 79 articles, and set the date of entry into force on the first of January 1967 and followed the issuance of this order 19 decrees published all in the same Official Gazette in which the order 66-133 was published along with the issuance of a joint ministerial decision and instruction in the same issue, and some have considered that the issuance of the General Basic Law of the public service represents the most important event in the history of administrative institutions in Algeria and then that The category of employees in particular has often waited for the promulgation of this law at least to determine the scope of functional rights and duties.<sup>5</sup>

But this stage was characterized by the discrepancy and tangible difference between the systems applied to administrative and economic institutions, whether in the field of wages, promotion, social protection, retirement or other rights, in other words, there was a difference in the welfare of work between the two sectors, which resulted in a state of job instability and the transfer of labor from the administrative sector to the economic sector in search of a higher wage and better privilege<sup>6</sup>.

In order to remedy this in order to give an incentive to employees to remain in their jobs by improving the quality of work within public administrations by trying to extract the greatest amount of rights and privileges, Ordinance 66-133 established advisory bodies<sup>7</sup> in the field of public service, such as the Supreme Council of the Civil Service, and announced the issuance of a decree in the future regulating its provisions. The provisions of the 1976 Constitution The rights of employees and workers in more detail, due to the fact that it is a constitution with a socialist approach, and socialism, as it is known, always tries to improve the quality and conditions of work because of its great interest in the working and working classes mainly<sup>8</sup>

This was followed by the issuance of the Basic Law for the Worker in 1978 No. 78/12 of August 05, 1978, and its aim was to inaugurate a new phase and unify the world of work on the one hand, and work to reorganize and develop it on the other hand, especially the rights and duties of the worker in the various sectors of labor without discrimination between them, in a desperate attempt to respond to the requirements of society and the requirements of development.

Subsequently, in application of article 02 of the Model Basic Law<sup>9</sup> for Workers of Public Administrations and Institutions, Decree No. 85/59 of 23 March 1985 was issued, but under this decree economic institutions continued to live in a distinct situation and system, especially in the field of wages compared to public administrations.<sup>10</sup>

However, what cannot be overlooked is that Decree 85/59 laid the main foundations in the field of promotion of employees, whether in horizontal promotion, i.e. grades, or vertical promotion, i.e. in qualitative positions, all in order to remedy previous shortcomings and give motivation to employees and hope to improve their working or living lives.<sup>11</sup>

## **Section II: Evolution of Public Service Legislation after 1989 "in the Light of Pluralism"**

Algeria has known an economic crisis as a result of the decline in oil prices in 1986, followed by the events of October, which precipitated Algeria's entry into a phase of transformations with the 1989 constitution, this was reflected in Algeria's abandonment of the socialist system and its use of pluralistic political openness and a market economy, which greatly affected the purchasing power and the working conditions of the working class in particular. In the civil service sector.

It was also necessary to change the previously prevailing legal system with a legal system in line with the new economic and political principles, but perhaps the positive thing at this stage is the constitution of the rights of employees in the 1989 constitution, where it maintained equality in access to public jobs and talked about the right to work for every citizen.

He also touched on the quality of life and working conditions by emphasizing their right<sup>12</sup> during work to protection, security and cleanliness, as well as the right to trade union and the right to strike, and the constitutional legislator applied the same provisions of this constitution with the 1996 constitution<sup>13</sup>.

After that, the constitutional amendment of 2016 also confirmed these rights, as it spoke in turn on the right to equality in access to public jobs, the right to trade union, and the right to strike, and before that, the constitution talked about the right to work for all citizens in general, as Article 69 of it came in a way that we can include in the framework of protecting and improving the quality of life

within the workplace by emphasizing the guarantee of the law for employees in general during work, protection, security and cleanliness, as well as the right to Comfort within the limits determined by law and explicitly speaks of the right to social security, all of which are within the framework of improving the quality of life in the workplace <sup>14</sup>.

Finally, the amendment in force for the year 2020 also spoke of a set of rights for all workers, including, of course, employees through articles 66 to 70.<sup>15</sup>

As for the laws regulating this sector, they were also affected by these major transformations that the country witnessed, as the Basic Law of the Worker remained in force until 1990, when it was repealed by Law No. 90-11 and continued to apply to the public service sector, after which the public authorities took the initiative to propose more than one draft general law for the public service to the People's Assembly, the last of which was in 1999, which the legislator paid special attention to during its discussion at the level of the People's National Assembly. The deputies submitted 112 amendment requests that took 15 days to be studied at the level of the Legal Committee to be withdrawn before its final approval by the People's National Assembly, and the public service sector continues to swim in an unorganized framework that suffers mainly from a huge legal vacuum governed by a law repealed since 1990, and for this purpose, the government later submitted the draft general basic law for the public service to Parliament for approval after it won the initial approval of the various partners during the study in 2004<sup>16</sup>.

Finally, Ordinance 06/03 of July 15, 2008 containing the General Basic Law of the Public Service was <sup>17</sup>**issued**, and the first thing that calls attention is that the legislator will use in calling it the text the phrase "public basis" in a way that confirms that the Public Service Law is a framework law and carried Ordinance 06/03 224 articles distributed over eight chapters that we will study, especially the chapters and articles that showed the intention of the Algerian legislator to pay attention to the lives of employees inside the workplace and improve the quality of work, given that this law is which is mainly applied to the civil service sector in Algeria at present, namely the part related to rights.

### **Second Requirement: Scope of Application of the Civil Service Law**

To determine who is subject to the provisions of the Public Service Law, we must know the category targeted by this law, and as it is known that it concerns public officials, for this it was necessary for us first to know who is meant by public servant by addressing the jurisprudential and

judicial definition of a public servant in general, and then we address the definition of the Algerian legislator for this category.

### **Subchapter I: The Jurisprudential and Judicial Concept of the Public Servant**

Despite the importance of this element in the legal and organizational structure in the State, it is not contained in most legislations an organized definition that defines what is meant by a public official, due to the different legal status of the public servant from one State to another.

Article I of the French Staff Regulations stipulates that this regulation applies to officials appointed to the central administrations of the State, its subordinate services and public institutions of the State, and not to judges, military personnel and employees of public administrations, departments and institutions of an industrial and commercial nature.

It seems that the legislator has left the matter of the definition of public servant to jurisprudence and the judiciary, and this definition differs in the field of administrative law from other areas such as civil law, criminal law and political economy, as its meaning may be broader or narrower than its meaning in administrative law<sup>18</sup>.

At the level of jurisprudence and the judiciary, Professor << **Christian Showamon**>> in his book on employees and public service said that the concept of public servant was earlier in emergence than the concept of public service, contrary to what it should have been, because the public office in fact depicts in mind the meaning of the entire state, which is carried out by the public and private activity of the category of employees << servants of the state >> to the extent that it can be said that the public office is the vessel of power. Public servants, and that its immortality is the eternity of the sovereign state<sup>19</sup>, as << Doge >> defined public servants as "workers of public utilities who contribute in a public and ordinary way to its management".

Panama in the judiciary defined by the French Council of State as "an employee is any person entrusted with a permanent job in the service of the public utility" and the Council stipulated that the public facility be administrative, while industrial and commercial facilities differentiated between the occupants of administrative posts and less important posts, i.e. workers, in the first category of public posts servants and other posts were subject to private law.<sup>20</sup>

### **Section II: The concept of the public servant in Algerian legislation**

As we said earlier, the first attempt to organize work in the public service sector was through the issuance of the General Basic Law of the Public Service in 1966, which was not excluded from

the field of its application to economic institutions at first, but the process of unifying the field of labor relations failed, and the application of this law to workers of economic institutions was suspended, and then the field of discrimination continued in practice in the application of the rules and provisions regulating the world of work<sup>21</sup>.

This law of 1966 defined as the first legislation of the public service the public servant by saying << the employees of the persons concerned in a permanent position who have been drawn in the hierarchical grades in the central administrations of the State and the external services of these administrations and local authorities, as well as public institutions and bodies, according to the modalities determined by decree >><sup>22</sup>.

Hence, the text explicitly indicated that in order for the status of a public employee to apply, the following conditions must be met: the issuance of the appointment decision, as well as the appointment related to a permanent job, and finally the decision containing the delimitation of the appointed person in one of the administrative hierarchies is issued, so it is not enough to issue the appointment decision<sup>23</sup>.

The General Organic Law of the Civil Service, currently in force, defines it as follows: << any officer appointed to a permanent public service and drawn up in the administrative hierarchy shall be deemed to be an employee>><sup>24</sup>

Based on this definition, it is possible to derive four criteria on which the Algerian legislator relied to confer the status of employee on everyone who joins the public service: appointment, service in a public service, permanence of the job and ordination. <sup>25</sup>

It should be noted that admission to the public service is carried out through competition on the basis of tests and competition on the basis of certificates for some staff corps, professional examination and direct employment among candidates who have followed specialized training provided for in the basic laws of qualified training institutions. Executive Decree No. 12/194 of 25 April 2012 was issued, which lays down the modalities for organizing and conducting competitions, examinations and professional examinations. To clarify the application of the provisions of the decree, the General Directorate of the Public Service issued Instruction No. 01. Dated February 20, 2013, the aim of which is to dedicate the competition on the basis of the certificate as a

complementary recruitment pattern to the competitions on the basis of professional tests and examination provided for in the special organic laws<sup>26</sup>, the Algerian legislator has taken the organizational trend in determining the relationship of the public employee with the administration used as a public asset, with the exception of the recruitment procedure through contracting or the so-called contracting agents, and their relationship is subject to the controls specified in the contract<sup>27</sup>.

### **The second topic: the rights of employees to improve life in the workplace**

Perhaps one of the most important things that reflects to us the extent of the Algerian legislator's interest in improving the lives and well-being of employees is through studying the field of rights approved by law for the benefit of employees, as the will of the legislator appears through the quality of those rights approved by Ordinance 06/03 on the public service, as this law tried to remedy the shortcomings that were in the previous legal system by trying to approve it. For a set of rights that improve the quality and well-being of life, whether related to the rights of all employees that include everyone, whether rights of a material nature or rights related to some freedoms that make the employee feel his moral value, in addition to the rights related to some vulnerable and vulnerable groups that due to their privacy need to approve some of their rights in order to improve the quality of life and work for these groups, represented by the category of women in addition to the category of people with special needs.

### **The first requirement: rights aimed at improving the quality of life for all employees**

Ordinance 06/03 talks about these rights in Part II and specifically Chapter I, where we note that there are a variety of material rights, both for the employee himself and in the workplaces where he exercises his professional activity, namely:

#### **Subchapter I: Recognition of Material Rights**

They can be summarized in the following elements:

**A- Wage:** This capitalist material view of wage, which has long considered it just a price for work determined by the law of supply and demand, as is the case with determining the price of goods and various commodities, has changed, and thus the modern view of wages stems from social dimensions and goals, taking into account in addition to economic goals the needs of the worker and his general living conditions, and the term wage is usually used to express the compensation for work within the framework of labor law.

In the civil service, the term salary is used<sup>28</sup>, **and** it should be noted that the Algerian legislator enshrined in Decree No. 85/59 on the Model Organic Law for Workers of Public Institutions and Administrations and Ordinance 06/03 containing the General Organic Law of the Civil Service, the term salary, contrary to the provisions of the General Organic Law of the Civil Service of 1966, which used the term remuneration, which in fact expresses the salary earned by workers in the economic sector. General Assembly for the year 2006 << the employee the right after the performance of the service to the salary of >><sup>29</sup>, and the salary means the amount of money received by the employee monthly for carrying out the duties of his job, and includes within the meaning of the salary all other financial benefits attached to it, such as additional salary, travel and accommodation allowance, housing allowance and other allowances<sup>30</sup>.

In order to ensure the organization of the process of paying employees' salaries, Presidential Decree No. 07/304 of 09 September 2007 was issued specifying the evidentiary network for the salaries of employees and the system of paying their salaries, and it is worth noting that financial rights are one of the most important rights approved by law for the employee as its social and professional function, it makes the employee reassured of his future living, and on the other hand, it works to motivate him to perform well and develop his skills, which makes the violation of these financial rights without taking into account the guarantees determined by the law. For the benefit of the employee is a derogation from his legal status and financial position, and thus a breach of the management's obligations towards the employee<sup>31</sup>.

#### **B- The right to social protection:**

Social protection for the employee and his rights holders in accordance with the provisions of Articles 33 and 34 of Ordinance No. 06/03 shall appear in two forms: Social security and social services.<sup>32</sup>

#### **A- Social Security:**

Social security is defined as any compulsory insurance from the state aimed at providing material protection to the vulnerable classes of society in the event that they are exposed to risks that they cannot afford, such as illness, work accidents, disability, death or unemployment, and in Algeria Article 08 of Law No. 83/11 of July 02, 1983, as amended and supplemented, stipulates that social security funds (CNAS, CASNOS, CNR) covers the following risks maternity, disability, death, retirement<sup>33</sup>.

#### **B- Social Services:**

Social services benefiting workers, employees, retirees and their families are considered all works that contribute to the improvement and development of the lives of employees and workers materially and morally through a supplement to the wage or salary provided in the form of health services, social assistance, cultural and recreational activities, and the organization of social services is subject to the provisions of Decree No. 82-179 of May 15, 1980 specifying the content of services and how to finance them.<sup>34</sup>

### **C- Promotion and Training:**

Promotion is all that occurs to the employee from a change in his legal status that would advance and distinguish him from his peers<sup>35</sup> and promotion achieves material and moral advantages for the employee, as it allows the employee to reach senior positions, thus achieving his ambition to obtain a greater financial degree and more important specializations<sup>36</sup>, and training is those efforts aimed at providing the employee with information and knowledge that gives him skill in performing work or developing and developing his skills, knowledge and experience, which increases his efficiency. In the performance of the current work or to manage the work of higher levels in the future and aims to bring about changes in the individual and the group<sup>37</sup>.

### **D. Right to protection:<sup>38</sup>**

The right to protection is one of the most important conditions for working in a suitable and good environment for employees, so this right has a constitutional face in the text of the Constitution that the law guarantees during work the right to protection, which is also enshrined in many special laws, so that the public employee may be exposed during his career to threats, insults, insults, slander or assault during the exercise of his job or on its occasion, then the state must extend to him the necessary protection that guarantees his dignity and takes into account his capacity. This is considered<sup>39</sup> as a general rule and excludes what is known as acts committed by the employee deliberately or in violation of the requirements of his job, and the protection prescribed for the employee is divided into two types:

**- Protection for professional errors:** The latter includes the replacement of the employee by the State in the event that he commits a professional error that requires compensation.

**Protection from threats Attacks:** The law guarantees all employees, as well as those exercising senior positions, protection from acts that may be inflicted on them<sup>40</sup> as a result of the exercise of their duties, such as threats, insults, slander or any other acts that affect them or their reputation.

### **The right to favourable working conditions:**

A public servant shall spend long hours at the workplace per day<sup>41</sup>, which requires that reasonable and favorable conditions be created for him to perform his work away from all risks affecting his health and physical integrity and preserve his dignity and moral consideration<sup>42</sup>.

### **The right to rest, holidays and legal absences:**

Every employee must rest from the trouble of work to renew his activity, and his health and social conditions may force him to request vacation, and the public interest often requires giving the employee a period of rest to return after active and efficient to practice his work, and rest and holidays may take several forms as stated in Algerian legislation, summarized as follows:

- **Weekly rest:** The right to rest is one of the constitutional rights approved by contemporary legal systems, this right enables the employee to renew his energy and strength, take care of his own affairs and take care of his children and his family, which is thus considered a social and health necessity in the first place, so that the employee can carry out his work satisfactorily and effectively, and thus achieve profitability from it.

**Legal holidays and holidays:** includes religious and national holidays determined by special laws and annual holidays specified by thirty days (2.5 days for each working month).<sup>43</sup>

**Unpaid vacations and holidays:** These are exceptional leaves in which the worker may have to stop for several different reasons, such as studying<sup>44</sup>.

### **The right of employee participation in the conduct of his career:**

One of the main objectives of the new General Organic Law of the Civil Service is to strengthen the frameworks of consultation and dialogue within the public service sector, as stated in the statement of reasons, which changed the fact that the legislator wanted to emphasize once again that the civil service system in Algeria is a system based on democratic principles that depend on freedom of opinion, expression, consultation and dialogue, especially those related to the protection of their interests and the conduct of their careers within the framework of the bodies of the public service, which are mainly represented in the Supreme Council of the Function. Public and participation and appeal bodies<sup>45</sup>.

Perhaps the most important of these committees are the administrative committees of equal members<sup>46</sup>, and the composition of the committee it includes equally representatives of management and staff representatives, and undertakes its chairmanship of the authority placed at its level or a

representative of it, as for its mission is a consultative body regarding the professional life of employees in general and meets as a demarcation committee and as a disciplinary board<sup>47</sup> Instruction No. 20 of June 26, 1984 specified the modalities for the organization and functioning of administrative committees of equal members and appeal committees in application of Decree No. 84-10 of January 14, 1984 Concerning the competence of the formation of the organization and functioning of the administrative committees of equal members, as well as Decree No. 84-11 of January 14, 1984 laying down the modalities for the appointment of representatives of employees to the administrative committees of equal members <sup>48</sup>.

## **-Section II: Rights related to public freedoms**

Ordinance 06/03 approved a set of rights related to public freedoms because of the importance of these rights in improving the work environment through the employee's sense of value and importance, perhaps the most important of which are:

### **A- Freedom of opinion:**

Freedom of opinion is not enshrined in either the General Organic Law of the Civil Service of 1966, Act No. 78/12 or Decree No. 85-59 on the Model Organic Law on Workers, Public Institutions and Administrations.

Based on the foregoing, it can be said that the legal basis for this freedom is the 1989 Constitution, which constitutes an important turning point for freedoms, as it gave it a new concept consistent with the requirements of the liberal approach and what is required by the democratic edifice before the 1996 Constitution came, which supported the new trend and deepened the concept of freedoms in Algeria to include all freedoms established in constitutions and democratic systems, then the recent constitutional amendment came to confirm this matter, as it stipulated that freedom of belief and the crime of violating freedom of opinion <sup>49</sup>shall not be affected. Ordinance 06/03 has attempted to remedy the previous legal provisions regulating the public service by explicitly stipulating this order, while retaining the aspect of respecting the duty of reservation.

### **B- Freedom of political affiliation:**

The second paragraph of the provisions of Article 28 of Ordinance 06/03 containing the General Organic Law of the Civil Service stipulates that the political affiliations of employees shall not affect their professional lives, and by analogy, the same applies to the employee's affiliation to an

association, whatever its application, as emphasized in the first paragraph of the provisions of Article 28 of the General Organic Law of the Civil Service<sup>50</sup>.

### **C- The right to practice trade union activity:**

Trade union rights have become like other political and civil rights of citizens in various comparative legislations and constitutions, thanks to the sacrifices of workers who worked for the right of association and freedom of association to become part of the public rights and freedoms of all citizens.

In Algeria, the trade union right in the previous laws was not recognized except within the only union at the time, which is the General Union of Algerian Workers based on the principle of the one-party system, but after the adoption of the 1989 Constitution and the dedication of the principle of multi-party, this in turn was reflected on consecrating the principle of trade union pluralism so that the concept of the right to trade union expansion from the right to join the existing union to the right to form and establish new trade union organizations freely and independently and without any pressure and interference from the public authority<sup>51</sup>.

The last constitutional amendment of 2020 came to confirm this matter explicitly, recognizing this right for all citizens.

Ordinance 06/03 containing the General Organic Law of the Civil Service stipulates that the employee shall exercise the right of association and clearly stipulates that membership in trade unions cannot have any impact on the career of the employee<sup>52</sup>.

Trade union action is a collective right aimed at defending the professional interests of public servants, and this right includes demanding employees to improve their working conditions, demanding an increase in salaries or demanding certain compensation.<sup>53</sup>

### **D- Right to strike:**

This right, in turn, as one of the means of trade union work, was not recognized in the one-party stage, except for private sector workers, and was expanded starting from the adoption of the 1989 constitution to all workers in the public and private sectors, with the exception of some groups working in some strategic sectors<sup>54</sup>.

The strike is considered a collective cessation of work voluntarily, and by a decision orchestrated and prepared by workers and employees with the aim of pressuring employers or public authority, in order to force them to submit to meet their demands, or to find a solution to an existing dispute between them, which in this sense is considered a form of resistance, confrontation and confrontation that

enables them to stand in the face of employers or public authority, and a means of defending their interests and their professional, social, material and moral rights<sup>55</sup>, and various constitutional amendments have been approved. This is with the exception of certain strategic sectors in the fields of national defense, security, services or public works of vital public benefit to society.

Ordinance 06/03 containing the General Organic Law of the Civil Service recognizes this right of the civil servant as long as it is within the framework of the law and legislation<sup>56</sup>.

In order to regulate and frame the exercise of the right to strike, a set of legislative and regulatory texts were issued, most notably Law No. 90-02 of February 6, 1990, as amended and supplemented, where the previous law stipulated that strike can only be resorted to in the event that the dispute continues after the exhaustion of the reconciliation and mediation procedures stipulated in the provisions of this law, in which the right to strike finds the necessary legal protection as stated in the operative provisions of Article 32. From the same law, and based on the legality of the strike, the provisions of Law No. 90-02 on the prevention and settlement of collective disputes at work and the exercise of the right to strike affirmed that << no punishment can be imposed on workers because of their participation in a legal strike. Coercion or bargaining from any party, within the framework of a general assembly attended by at least half of the workers,<sup>57</sup> in addition to the requirement of prior notice of the strike, which cannot be less than 08 days starting from the date of its deposit with the employee<sup>58</sup>.

The strike stops the employment relationship and prevents the administration in accordance with Article 33 in order to protect the right to strike employment through succession, except for refusing to comply with the harnessing resulting from the provision of a minimum level of service, and no punishment can be imposed on the striking employee out of respect for the freedom of strike, and the law also prohibited the occupation of the work site and in the event of a judicial order to evacuate it, and the refusal to implement it by the employee after that, according to Article 36, a serious error that requires disciplinary responsibility without prejudice to criminal responsibility, and what is wrong in At the same time, Joint Ministerial Circular No. 07 of October 5, 2004 on the modalities for making salary deductions as a result of strike days in the civil service sector came to establish the rule that strike days do not entitle the right to claim any salary.<sup>59</sup>

**The second requirement: the establishment of exceptional rights for vulnerable categories of employees**

After talking about the general rights approved by the Algerian legislator for all categories of employees, we will now address his view of special categories of a nature that require consideration with compassion and compassion within the framework of social solidarity by approving a set of rights allocated to them in order to improve the quality of life and working conditions for them, and these categories are:

### **Section I: Provisions relating to the improvement of the working environment for women**

In terms of general principle, working women are subject to the same rights and obligations applicable to all workers in accordance with the principle adopted in recruitment and employment, which is summarized in non-discrimination between workers, on any grounds, whether on the basis of sex, age or union affiliation... etc., which is enshrined in various domestic laws and international conventions.

However, the nature of the physiological composition of women, on the one hand, and the requirements of customs, traditions and moral education imposed by the teachings of our true religion, on the other hand, have made the legislator concerned working women with special rules and provisions in the field of work relating to the nature and quality of work that women should not perform, as well as the prohibition of the employment of women in certain circumstances and endowments to protect them from various moral and moral<sup>60</sup> dangers.

It has already been stated that the Algerian Constitution enshrined a number of principles related to guaranteeing the right to work for all citizens alike, ensuring the right to rest, guaranteeing the right to trade union, social welfare and equality in access to public office between women and men. Article 75 also sets the conditions for employment in the public service, and does not discriminate between men and women, but only requires nationality as a political criterion for the imitator of public office under non-discriminatory conditions.

However, due to women's physiological training, the legislator distinguished them with some exceptional rights aimed at improving the quality of life and their working conditions, perhaps the most important of which are maternity leave and the right to receive breastfeeding hours. This is stipulated under Article 55, which recognizes women's right to maternity leave and to benefit from other facilities after the end of this leave<sup>61</sup>.

It is also forbidden to employ women in hard work, hazards to health, lack of hygiene and other work of the same nature or conditions, and it is also forbidden to employ women in night work except in special cases and with the authorization of the labour inspectorates, after the institution has

provided all guarantees that they are not exposed to any material or moral hazard, in accordance with article 29 of the Labour Relations Act<sup>62</sup>.

The social insurance legislation, in turn, did not move away from giving legal protection to working women, as Law 83/11 of 02 July 1983 recognized the right to compensation for maternity leave for a period of 14 weeks with pay at one hundred percent and to benefit from in-kind payments to cover the expenses resulting from pregnancy and childbirth<sup>63</sup>.

In order to protect women from some abuses, some penalties are determined when the provisions related to the working conditions of women are violated by employers, in addition to the civil penalty related to the invalidity of any employment relationship that is contrary to the provisions of the legislation in force, and the invalidity is absolute and without effect, except in terms of the wage due for the work that was carried out in accordance with Article 17 of Law 90/11 on labor relations, and for the purpose of respecting and applying this article, the legislator announced, in the same law, and under Article 142 thereof, a penalty It shall be borne by anyone who signs a collective agreement that includes provisions that discriminate between workers in the field of wages or working conditions ranging from 2000 to 1000 dinars, and in the case of recidivism, membership is increased from 2000 to 1000 and imprisonment for a period of 03 days<sup>64</sup>.

## **Section II: Provisions relating to improving the working environment for people with special needs**

The working class received special attention and treatment in Algerian legislation, especially at the beginning of the eighties, with the emergence of several advisory and labor bodies and several provisions and regulatory texts for this category of society, including the decree on the National Consultative Center for the Protection of the Disabled and the decree on the National Center for Vocational Training for the Physically Handicapped.

This law has also left the process of determining the provisions regulating the modalities of employing this category of workers as well as the development of arrangements and regulations for their working conditions, and the various provisions for them to regulatory texts, Decree 82-180 of 15 May 1982 on the terms and conditions for the employment and vocational rehabilitation of disabled workers was issued, while the Law on Labour Relations of 1990, as amended and supplemented, was issued. Article 16 stipulates that employing establishments must allocate

employment positions to persons with disabilities in accordance with the modalities determined by regulation, without the provision referred to in this article being promulgated. <sup>65</sup>

- Allocating jobs for the disabled within certain percentages that meet the required rehabilitation conditions.

- Achieving the principle of equality in the implementation of work among the various categories of workers, including disabled workers, with the possibility of granting them certain rights that are consistent with their special situation and professional status<sup>66</sup>.

- Allocating special working hours for this category of workers when necessary, especially for convalescent workers, who have not yet adapted to their work positions or whose disability does not allow them to work for a period equal to the legal duration of work.

- Granting absenteeism permits based on the opinion of the treating doctor, special holidays for the disabled for rehabilitation and physical education, conducting the necessary medical examinations on a permanent and periodic basis and other special procedures required by each case of disability or work position<sup>67</sup>.

Through what was stated in this study, we note that the Algerian legislator tried to actually pay attention to improving the lives of employees inside the workplace, similar to their counterparts workers in the economic sectors, and this trend is clearly evident through what we have addressed previously, and perhaps one of the most important indicators of this is that the main reason for the issuance of Order 66-133 is the desire of the Algerian legislator to remedy the shortcomings that were at the level of the public service after independence, which led to the flight of qualified labor, which "is on the few" in that At the time, I preferred to work in economic institutions because of the incentives, privileges and favorable working conditions enjoyed by workers compared to employees in the civil service sector, Especially wages.

For this reason, the Algerian legislator has worked to try to reduce the gap between the two sectors by including a good number of various rights in favor of employees similar to those in the economic sector.

The legislator, through the laws regulating the public service sector that followed Ordinance 66-133, tried to remedy the shortcomings suffered by employees by correcting and including many new rights for employees progressively with each amendment or the issuance of a new legal text, [www.psychologyandeducation.net](http://www.psychologyandeducation.net)

especially after Algeria's entry into the multiparty period with the help of social partners such as trade unions, but despite this good intention of the Algerian legislator, there are still several shortcomings in this area that affect this sensitive and important sector of the state as a whole. This is in the desire of many to work in the economic sector because of the advantages it provides them, both from the material side and even in terms of working conditions and well-being at work.

Therefore, we can come up with a set of proposals to confront the shortcomings suffered by the public service sector in terms of welfare and improve the working environment for employees, which may allow this to improve the work environment and create at least a minimum level of well-being in the workplace, even if relatively. This is done through the following suggestions:

- With regard to employee income, we note that there is injustice on two levels:
  - There is still a clear difference in the employee's salary compared to the wage received by his counterpart in the economic sector with the same certificate and the same scientific and academic level, but some workers with a limited educational level, such as a driver or guard in some public economic institutions, receive a wage that exceeds what the employee receives in the public service sector with a university scientific level and more This contradiction cannot be explained, especially at the level of public economic institutions and still, despite the passage of more than fifty years After independence, the feeling of injustice is still felt by the civil servant in the civil service.
  - At the internal level, this feeling of injustice increases for some categories, represented in tires, where we note that there is no significant difference in the salary of the average employee and the simple worker and between the salary of tires, which are in some departments charged with difficult and cumbersome tasks and bear great legal and penal responsibility, and we mean the category of tires with the rank of "administrator" or "inspectors", engineers and above, who are qualified to occupy qualitative positions such as heads of offices and heads of departments, but their salary does not reflect their efforts, which made them not They feel comfortable and safe in their workplaces, but fatigue affects their psychological and physical health, so it is better to reconsider this matter, i.e. adjusting the salary of this category because the framework employee feels inferior with his fellow employees, especially and by virtue of his rank, it requires him to appear in an external appearance worthy of his rank and their tasks, which makes him bear additional expenses These expenses are not covered in his salary.

- The growing arbitrariness by some heads of staff through the use of a loose term is "the necessity of interest", despite the legislator's approval of many rights for employees, but what is noted at the same time is that the legislator gave great powers of discretion in favor of the dismissal orders and managers within public administrations, and often the director or head of the administration uses that discretion to infringe on the rights of employees, and even to exploit this right by provoking employees who do not go along with them in the abuses prohibited by law. For example, by taking the procedure of compulsory transfer of the necessity of the interest without reason or logical reasoning, which in most cases is not originally an interest for work, but of **a vindictive nature**, so the legislator must reduce the discretionary power of the dismissal orders and the directors of public administrations by explicitly stipulating the rights of employees instead of using terms such as "may" in legal texts, which may be interpreted by the heads of public administrations as they see it, in order to reduce these abuses so that the employee feels safe, belonging and comfortable within the workplace. It is not constantly threatened under the guillotine of "necessity of interest" and obliging the administration to justify its decisions in accordance with the constitution.
- In many public administrations, many employees are subjected to threats and attacks without the administration intervening to protect them, despite the fact that the law imposes on them to do so, so the legislator must take measures to confront this phenomenon, such as increasing the current penal penalties in case of infringement or insulting employees.
- As for the category of people with special needs, we note that most public administrations do not respect the legal percentage set by the legislator to employ this category of citizens, and they do not have any of these administrations available on the means to facilitate the work of this category of workers, such as door entrances, although there is no denying that there is a noticeable improvement in this aspect compared to what was previously prevailing in addition to the absence or disruption of elevators at other times, so the supervisory bodies must force public administrations to provide means. Within the workplace, it facilitates the work of these groups because this is required by law.
- A complete absence of psychological follow-up of employees by specialists inside the workplace, but even that the employees, when they feel psychologically and physically tired, go to bring sick leave, doctors refuse to give them this leave so as not to be subjected to follow-ups by the Social Security Authority, which has become interfering in the work of doctors entitled non-payment of illness compensation, so does this employee only feel physical illness, so what about fatigue and

psychological pain, which if accumulated may eliminate the employee or lead him to madness, so it must be approved. This type of sick leave and work on continuous follow-up by these specialists to the employees and that the legislator imposes on the Social Security Authority to cover this type of holidays mentioned above, even for a specific number of days.

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<sup>1</sup>- Said Moghadam, *The public service between development and wandering from the perspective of human resources management and professional ethics*, University Press Office, second edition, Algeria 2013, p. 99.

<sup>2</sup> Ammar Boudiaf, *Public Service in Algerian Legislation*, Jusoor Publishing, First Edition, Algeria 2015, p. 38.

<sup>3</sup> Article 21 of the 1963 Constitution.

<sup>4</sup> Ammar Boudiaf, *Al-Wajeez in Administrative Law*, Jusoor Publishing, Third Edition 2015, p. 424.

<sup>5</sup> - Ammar Boudiaf, *Public Service in Algerian Legislation*, op. cit., p. 39.

<sup>6</sup> - Ammar Boudiaf, *Al-Wajeez in Administrative Law*, op. cit., p. 425.

<sup>7</sup> - Ammar Boudiaf, *Public Service in Algerian Legislation*, *ibid.*, p. 41.

<sup>8</sup> - Articles 59 to 63 of the 1976 Constitution.

<sup>9</sup> - Said Moghadam, previous reference, p. 139.

<sup>10</sup> - Ammar Boudiaf, *Public Service in Algerian Legislation*, previous reference, p. 430.

<sup>11</sup> - See article 59 of Decree 85-59 of March 23, 1985 on the Model Organic Law for Workers of Public Institutions and Administrations

<sup>12</sup> - Articles 48, 52, 53 and 54 of the 1989 Constitution

<sup>13</sup> - Article 51, 54, 55, 56 and 57 of the 1996 Constitution.

<sup>14</sup> - Articles 69, 70 and 71 of the 2016 Constitution.

<sup>15</sup> - Articles 66 to 70 of the 2020 constitutional amendment.

<sup>16</sup> - Said Moghadam, op. cit., p. 168.

<sup>17</sup> - Ammar Boudiaf, *Al-Wajeez in Administrative Law*, previous reference, p. 430.

<sup>18</sup> - Alaa Eddin Achi, *Introduction to Administrative Law*, Dar El Hoda, Algeria 2012, p. 107.

<sup>19</sup> - Rashid Habani, *Employee and Public Service Guide*, Dar An-Najah 2015, p. 15.

<sup>20</sup> - Alaa al-Din Ashi, previous reference, p. 108.

<sup>21</sup> - Bashir Hadfi, *Al-Wajeez fi Sharh Al-Labour, Individual Labor Relations*, Dar Josoor, Third Edition, Algeria 2013, p. 46.

<sup>22</sup> - See article 01 of Ordinance No. 06/133 of June 2, 1966 on the General Organic Law of the Civil Service, JR No. 46

<sup>23</sup> - Ammar Boudiaf, *Public Service in Algerian Legislation*, op. cit., p. 19.

<sup>24</sup> - See article 04 of Ordinance No. 06-03 of July 5, 2006 on the Organic Law of the Civil Service, JR No. 46 of 2006.

<sup>25</sup> - Rashid Habani, previous reference, p. 16.

<sup>26</sup> - Kamal Zemmour, *Practical Guide for the Management of Employees in Public Institutions and Administrations*, Dar Al-Qabas, p. 25.

- <sup>27</sup>- Alaa al-Din Ashi, op. cit., p. 17.
- <sup>28</sup> - Bashir Hadhafi, op. cit., p. 136.
- <sup>29</sup>- Rashid Habani, op. cit., 85.
- <sup>30</sup>- Aladdin Ashi, op. cit., p. 230.
- <sup>31</sup>- Rashid Habani, previous reference, p. 86.
- <sup>32</sup>Mourad Naamoni, Introduction to the Psychology of Work and Organization, Jusoor Publishing, First Edition, Algeria 2014, p. 113.
- <sup>33</sup>- Rashid Habani, *ibid.*, p. 87.
- <sup>34</sup> - Alaa al-Din Ashi, op. cit., p. 30.
- <sup>35</sup>See Article 38 of Ordinance 06/03.
- <sup>36</sup>- Alaa al-Din Ashi, *ibid.*, p. 30.
- <sup>37</sup>- Murad Naamoni, previous reference, p. 94.
- <sup>38</sup> - See article 30 of Ordinance 06-03 mentioned above.
- <sup>39</sup> - Ammar Boudiaf, Public Service in Algerian Legislation, op. cit., p. 122.
- <sup>40</sup>- Alaa al-Din Ashi, op. cit., p. 232..
- <sup>41</sup>- Article 37 of Ordinance 06/03. Previously mentioned.
- <sup>42</sup> - Ammar Boudiaf, Public Service in Algerian Legislation, op. cit., p. 128
- <sup>43</sup>- Alaa al-Din Ashi, previous reference, p. 231.
- <sup>44</sup>- Murad Naamoni, op. cit., p. 116.
- <sup>45</sup>- Rashid Habani, previous reference, p. 90.
- <sup>46</sup>-See Article 63 of Ordinance 06/03, cited above
- <sup>47</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, previous reference, p. 131.
- <sup>48</sup>- Kamal Zemmouri, previous reference, p. 240.
- <sup>49</sup>-See article 26 of Ordinance 06/03, cited above.
- <sup>50</sup>- Rashid Habani, previous reference, p. 96.
- <sup>51</sup>Ahmia Suleiman, Al-Wajeez in the Law of Labor Relations in Algerian Legislation, Diwan of University Publications, Second Edition, Algeria 2015, p. 371.
- <sup>52</sup>- See Article 35, 28 and 93 of Ordinance 06/03, mentioned above.
- <sup>53</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, previous center, p. 124.
- <sup>54</sup>- Ahmeya Suleiman, Legal Regulation of Labor Relations in Algerian Legislation, Individual Labor Relationship, Part II, *ibid.*, p. 168.
- <sup>55</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, p. 125.
- <sup>56</sup>See Article 35 of Ordinance 06/03, cited above.
- <sup>57</sup>- Ajmia Suleiman, Al-Wajeez in the Labor Relations Law in Algerian Legislation, previous reference, p. 374.
- <sup>58</sup>- Rashid Habani, previous reference, p. 100.
- <sup>59</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, *ibid.*, p. 127.

<sup>60</sup>- Ahmeya Suleiman, Legal Regulation of Labor Relations in Algerian Legislation - Individual Labor Relations -, Part Two, previous reference, p. 105.

<sup>61</sup>See Articles 213, 214 of Ordinance 06/03 mentioned above.

<sup>62</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, previous reference, p. 84.

<sup>63</sup>- Ammar Boudiaf, *ibid.*, p. 85.

<sup>64</sup>Bashir Hadhafi, *op. cit.*, p. 186.

<sup>65</sup>- Ammar Boudiaf, Public Service in Algerian Legislation, previous reference, p. 85.

<sup>66</sup>- Ahmeya Suleiman, Legal Regulation of Labor Relations in Algerian Legislation - Individual Labor Relations -, Part II, previous reference, p. 107.

<sup>67</sup>- Ahmia Suleiman, Legal Regulation of Labor Relations in Algerian Legislation - Individual Labor Relations -, Part II, *ibid.*, p. 109.

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- 18- Ordinance No. 06/133 of 02 June 1966 containing the General Organic Law of the Civil Service, JR, No. 46

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