

# Administrative Committees with Equal Members in Algeria: between the Interest of the Administration and the Defense of the Rights of Employees

Kanech Ahmed <sup>1</sup>, Hassan ben kadi <sup>2</sup>

1. University Kasdi Merbah Ourgla- Algeria , [kanechahmed@gmail.com](mailto:kanechahmed@gmail.com)

2. University Kasdi Merbah Ourgla- Algeria , [hassanbenkadi@gmail.com](mailto:hassanbenkadi@gmail.com)

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## Abstract:

In this study, we approached the role of Administrative committees with equal members, according to the closed administrative system of the civil service adopted in Algeria and the embarrassment of equating between the interest of the administration and the defense of the rights of the employees. Although the Algerian legislator has granted significant powers to these committees in order to devote administrative and legal protection to the public official, but this has not been accomplished as it should be, either at the legal level or at the level of practice. Consequently, the powers of the joint committee must be reviewed and balanced between the interest of the employee and that of the administration.

**Keywords:** Civil service, closed system, joint administrative commissions, rights of employees, Algeria.

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## 1. Introduction:

The civil service, according to the closed administrative system, depends on the dedication of the rights and duties of the public employee. Accordingly, the legislator has established several mechanisms to achieve this, including the creation of equal-member administrative committees that are balanced in their composition between representatives of the administration and representatives of employees and work to defend the rights of workers in matters related to the career path with the aim of achieving a balance between the interests of the administration and the interests of employees.

Accordingly, in this research, we will address the role of equal-member administrative committees in accordance with Order 06-03 dated July 15, 2006, related to the general basic law of the civil service, and Executive Decree No. 20-199 dated July 25, 2020, related to equal-member administrative committees, appeal committees, and technical committees in public institutions and administrations.

The importance of the subject lies in the fact that the closed administrative system is characterized by being a regulatory system, as everything related to the career path of the public

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employee is issued by the administrative authority and the employee has no role in it. Hence, this study highlights the role of equal-member administrative committees in terms of their composition, how they are established, and their assigned role, which is to defend the acquired rights of employees. The problem of the study appears through the controversy played by these committees in terms of the laws regulating their role or in terms of the public administration environment that affects their performance. From this, we can pose the following problem: On the occasion of equal-member administrative committees carrying out their tasks in defending the rights of employees, can we consider their existence a form of legitimizing the work of the administration?

Regarding the approaches used to answer the problem raised in this study, we used the legal approach, which is used to analyze various laws and regulations related to the civil service, such as legal articles, the general basic law for the civil service, and the decree related to the equal-member committee. In addition to the content analysis approach, which is used to analyze the content of some legal texts. To answer the aforementioned problem, we adopted the following elements:

- Definition of the equal-member administrative committee and the legal framework regulating it.
- Formation of the equal-member administrative committees and the provisions of membership in them.
- The powers of the equal-member administrative committee and the legal nature of its opinions.
- The legal effects of the absence or violation of the opinions of the equal-member administrative committee and oversight of its work.
- Practical problems when the committee exercises its duties.

Section One: Definition of the equal-member administrative committee and the legal framework regulating it:

Similar to the various legislations in the countries of the world, the Algerian legislator established equal-member administrative committees with the aim of creating a balance between the interests of the public administration and the interests of employees, which is what was indicated by Order 06-03 dated July 15, 2006, related to the general basic law of the civil service, with the aim of involving employees in organizing their career path through the decisions issued in these committees. On this basis, the Algerian legislator was satisfied with naming these committees without giving them a definition, leaving that to jurisprudence.

**The first requirement:** Definition of the equal-member administrative committee: Executive Decree 20-198 dated July 25, 2020 defined equal-member administrative committees in its second article, saying: Public institutions and administrations shall have equal-member administrative committees according to the case for each rank or group of ranks and branches whose qualification levels are equal to the nature of the tasks of these ranks or branches and their number, as well as the necessity of the interest and their organization.

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As for the jurisprudential definition, we find the definition of Professor Khalkhal Idir, who defined it as:) An advisory body created by the civil service system, the purpose of which is to involve the employee in managing his professional life and the proper application of legal texts.

Professor Amar Awadi defines it as follows:) This is the legal recognition of all employees to participate in a permanent and organized role in managing the civil service. It is an embodiment of the right of employees to participate in exercising the authority of the administrative function, i.e. in the authority to organize and manage their conditions and employment affairs. Therefore, the authority of participation and the authority of organization, administration and management decided upon for employees or representatives must be a real and effective authority And influential in the fate of organizing and managing the affairs of the civil service in public institutions and organizations.)

**Second requirement:** The legal framework regulating equal-member committees: With regard to the law governing them, similar to the previous laws of the civil service in Algeria, mainly related to Order 66-133 dated June 2, 1966, Law 78-12 dated August 5, 1978, Decree 85-59 dated March 23, 1985, up to Order 06-03 dated July 15, 2006 in force, we find that all of these laws approved equal-member administrative committees in line with the closed administrative system followed in Algeria.

On this basis, Order 06-03 of 2006 is the legal and reference framework for the current equal-member administrative committees, as they were stipulated in Chapter Three entitled the Central Structure and Public Service Bodies, and Article 55 thereof defined these structures as follows:

-The Central Structure of the Public Service./- The Supreme Council of the Public Service/.

-Participation and Appeal Bodies.

According to the text of Article 62 of Order 06-03 of 2006, these committees consist of the following:

-Equal-member administrative committees./- Appeal committees./- Technical committees.

The general framework for the equal-member committees has been established through Articles 63 and 64 of their organic scope, competencies and formation.

As for the current reference that regulates the work of these committees, we find Decree 20-199 dated July 25, 2020, relating to equal-member administrative committees, appeal committees and technical committees in public institutions, in particular Article 105 thereof.

**Section Two:** Formation of equal-member administrative committees and provisions for membership therein:

The equal-member administrative committees are established according to the case for each rank or group of ranks or for each corps or group of corps whose qualification levels are equal in public institutions and administrations. The nature of the tasks of these ranks or corps and their number, as well as the necessity of the interest and their organization, are taken into account in

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all ranks or corps whose qualification levels are equal, as well as the necessity of the interest and its organization.

First requirement: Establishing equal-member committees at the level of public facilities: Public facilities specifically mean: central administrations, local administrations, as well as public institutions.

1-Establishing equal-member administrative committees in central administrations: These committees are established for employees who work in central administrations and their various departments by a decision from the relevant minister after consulting the authority in charge of the civil service. The representatives of the administration in the permanent and additional equal-member central administrative committees are appointed by a decision from the authority that has the power to appoint within 15 days following the announcement of the results of the election of employee representatives.

2- Establishing equal-member administrative committees in local administrations: Equal-member administrative committees are established at each level of local public administration by a decision or decision, as the case may be, from the authority that has the power to appoint after the opinion of the authority in charge of the civil service.

3- Establishing equal-member administrative committees at the level of national public institutions: Special committees are established at the level of national public institutions for employees of the institution according to the corps or a group of corps whenever the number allows for that. In the event that there is not enough number to establish a special committee at the level of the institution, i.e. less than 10 employees at least, the jurisdiction to consider their affairs reverts to the committees that convene at the level of the central administration. The second requirement: Provisions for membership in the equal-member administrative committee: According to Article 08 of Executive Decree 20-199, the term of membership in the equal-member administrative committee is estimated at 03 years. It is noted that this term is considered somewhat short. The equal-member committees are composed of an equal number of members from representatives of the administration and representatives of elected employees. Any member can run for a new term, and the term of the term can be reduced or extended as required by the interest by a decision or resolution, as the case may be, from the authority that has the power to appoint or the relevant supervisory authority after taking the opinion of the interests of the authority in charge of the public service, provided that this reduction or extension does not exceed a period of 06 months.

The term of office of members of the equal-member administrative committees may also be terminated in the event of a change in the structure of a rank or corps without requiring a term by virtue of a decision or resolution of the appointing authority or the relevant supervisory authority.

It should be noted that when the equal-member administrative committee is determined, the new members shall assume their duties on the date on which the term of office of the members they succeed end.

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If the membership of a permanent member of the equal-member administrative committee ceases before the expiry of his term due to resignation, long-term leave, referral to deposit or for any other reason, the duties for which he was appointed or elected end, or he no longer meets the conditions required to be a permanent member until the renewal of this committee.

If a permanent employee representative changes the corps or rank, he shall be replaced by an additional member, and if there is no additional member, the person concerned shall continue to represent the rank for which he was appointed until the renewal of the committee. The equal-member administrative committee may be dissolved by the authority that has the power to appoint by virtue of a decision or resolution, as the case may be, after taking the opinion of the authority in charge of the civil service. It is noteworthy that the reasons for the dissolution are not exhaustively specified, as only some cases have been identified, including:

- Cancellation or reorganization of the institution or public administration concerned.
- The disappearance of the relevant corps or rank.
- Dissolution of the union or unions representing the equal-member committee.
- When the elected members and their deputies are unable to attend meetings for any reason, or when members refuse to attend the committee's meetings or refuse to sign its minutes.

The third requirement: Formation of the equal-member administrative committee: The equal-member administrative committees include an equal number of representatives of the administration and members elected by the employees, and this is done according to specific methods through Order 06-03 of 2006 and Executive Decree No. 20-199 of 2020. The number of members of the equal-member administrative committee is determined as follows:

-01For the representatives of the administration: The representatives of the administration are appointed according to Article 10 of the aforementioned Executive Decree 20-199 by a decision of the authority with the power to appoint, i.e. the minister concerned when it comes to the committees of the central administration or local public institutions, noting that the representatives of the central administration are the heads of departments who have hierarchical authority over the employees affiliated with the committee.

-02For the representatives of the employees: The representatives of the employees who wish to run for membership in the equal-member administrative committee are subject to a set of conditions, including:

-Voters must be on behalf of a committee of equal members designated for employees in service listed in the cadre of representation by the committee.

-Trainee employees who have the status of trainee employees and employees on secondment are entitled to participate in the elections in their original cadres.

-The list of voters invited to one of the electoral branches is determined by the head of the department where the election office is located, and the list is posted in administrative locations

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at least twenty days before the date set for the vote. Voters may, if necessary, review the registrations or submit registration requests or lodge a complaint against some registrations or omissions regarding the electoral lists within a period not exceeding 11 days from the date of publication of these lists. The minister or governor concerned must decide on these requests before the date set for the vote.

A table specifying the members of the equal members committee:

Number of employees involved i.e. representatives	Employee Representatives		Management representatives	
	Additional members	Permanent Members	Additional members	Permanent Members
Equal to or greater than 10 and less than 21 employees	02	02	02	02
Equal to 21 and less than 150 employees	03	03	03	03
Equal to 150 and less than 500 employees	04	04	04	04
Equal to or greater than 500 employees	05	05	05	05

Source: Article 07 of Executive Decree 20/199

### Section Three: Its powers and the consequences of violating it:

The powers of the equal-member administrative committee are divided into two types: powers of an advisory nature and powers of a disciplinary nature. The opinions of the equal-member administrative committee are sometimes binding and sometimes non-binding, i.e. advisory.

**First requirement:** Powers of the equal-member administrative committee and the legal nature of its opinions: According to Order 06-03 and Decree 20-199, the powers of the equal-member administrative committee are divided into two types: powers of an advisory nature and powers of a disciplinary nature.

1-Advisory powers: The law has authorized the equal-member administrative committees, pursuant to Article 64 of Order 06-03 of 2006, which includes the general basic law of the civil service, to carry out advisory tasks. It is well known that this consultation may be optional in

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-Cases requiring a concurring opinion:

Refer to the equal-member administrative committees to express a concurring opinion on matters related to regularization, promotion in grade and rank, integration into the secondment rank, compulsory transfer for the sake of interest, and reintegration of the dismissed employee due to neglect of the position in accordance with the applicable regulations.

-Cases requiring the advisory opinion of the equal-member administrative committees:

Refer to the equal-member administrative committees to express an advisory opinion on the following:

-Amending the legal percentages applied to various types of employment.

-Methods of evaluating employees.

-The numbered point objected to by the employee within the framework of his evaluation.

-Referring the employee to deposit for personal purposes.

-Promoting the employee in rank in an exceptional manner when the basic law to which he is subject stipulates this.

-Periodic movements for transferring employees stipulated in the basic laws to which they are subject.

2-Disciplinary powers: The equal-member administrative committee has an opinion in the disciplinary field, such that it is consulted in the event that the employee commits an error or serious violations for which the penalties prescribed are of the third and fourth degrees, and this is by the authority that has the power to appoint and can also cancel a penalty decided for the public employee by dismissing him due to neglect of the position resulting from his absence from the job for 15 consecutive days without legal justification.

3-The legal nature of the opinions of the equal-member administrative committee: The opinions of the equal-member administrative committee are sometimes characterized as binding and sometimes as non-binding, i.e. advisory, and this can be clarified through what was stated in Order 06-03 of 2006 related to the general basic law for the civil service.

The Algerian legislator stipulated that the opinion of the committee is binding when making a decision to transfer employees, according to what was stipulated in Article 15 of Order 06-03, even after the transfer of employees is completed, as stated in the text of the article as follows:) The opinion of the committee is considered binding on the authority that decided on this transfer. The same applies to disciplinary matters of the third and fourth degrees, as Article 163 thereof indicated the following:) The authority that has the power to appoint shall take a justified decision to impose disciplinary sanctions of the third and fourth degrees by a justified decision

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after taking the binding opinion from the competent equal-member administrative committee (the disciplinary council.

As for the advisory opinions, they came in accordance with Article 100 thereof, which stipulated the following: Public institutions and administrations, after consulting the equal-member administrative committees, find the approval of the central structure of the civil service for the evaluation methods that are carried out and the nature of the activities of the relevant interests. It allowed the employee to submit grievances to the equal-member administrative committee regarding the evaluation point that can be proposed for review, and the legislator did not specify the deadlines for that.

**Second requirement:** Legal effects of the absence or violation of the opinions of the equal-member administrative committee and oversight of its work:

1- Absence of the advisory opinion stipulated by law: If the administrative committee was not consulted due to the administration's deliberate failure to include the issue of the employee concerned or its inadvertent omission, and the reason for this failure is harm to the employee, then this matter is considered a defect from a formal point of view that leads to the possibility of invalidating the decision, even if it does not have a binding nature in its content, but from a formal point of view it must be respected.

2-Absence of a binding advisory opinion: In the event that the equal-member administrative committee is not consulted when its opinion is binding on some issues that concern the career path of the public employee, which were mentioned previously. The decision taken is considered illegitimate, considering that the administrative authority is not authorized to make an administrative decision except based on the content of the committee's opinion, its discretionary power is restricted by the binding opinion, and making a decision in this manner is considered a form of the presidential authority exceeding the powers granted to it by law, and as long as the defect relates to legitimacy, the administrative decisions related to the binding opinion are considered invalid.

3- Appealing the outputs of the equal-member committee:

-Administrative appeal: The administrative grievance is represented in three forms, either in the form of a state grievance, a presidential grievance, or a grievance before a specialized committee. The state grievance means that the concerned employee submits a complaint to the source of the decision itself, requesting that he reconsider the decision issued against him by withdrawing, canceling, or amending it.

As for the presidential grievance, it means that the employee submits his complaint to the head of the source of the disciplinary decision, who undertakes this by virtue of his presidential authority.

The grievance before a specialized committee means appealing the disciplinary decision before a special council or committee different from the authority that issued the decision, whose tasks include reviewing the disciplinary penalties that were appealed before it. According to the provisions of Order 06-03, especially Article 64 thereof, we find that the equal-member administrative committees convene as disciplinary councils and can also convene as advisory



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On this basis, according to the provisions of Article 175 of Order 06-03, the public employee has the right to appeal before the Appeal Committee against the disciplinary decision issued against him in the case of third-degree and fourth-degree errors and the penalties imposed on them. This right is considered a guarantee among the guarantees that the legislator has guaranteed to the public employee due to the severity of these penalties. The employee also has the right to be informed by the administration of his right to appeal, as well as the deadlines for filing it before the Appeal Committee. The latter must issue its decisions in writing within a maximum period of 45 days from the date of submission of the grievance to it by the employee concerned, in accordance with the provisions of Article 55 of the new Executive Decree 20-199. However, if the Appeal Committee does not meet or does not express its opinion within the specified deadlines for some reason, the employee's potential suspension may be terminated. In this case, the employee is reintegrated into his job and recovers all his rights, and the penalty imposed on him remains suspended until the Appeal Committee issues its decision in his case. However, the portion deducted from his salary cannot be recovered until the Appeal Committee's decision is issued. In the event that the Appeal Committee issues a decision on the grievance, if it is to confirm the penalty imposed by the disciplinary authority, the administration must confirm that penalty. If the decision of the appeal committee to annul the penalty imposed by the disciplinary authority is that the latter's decision is without legal basis and therefore as if it did not exist. It should be noted that the public employee may not resort to the state appeal committee because he is not obliged to submit this appeal, but rather files a direct lawsuit before the administrative judge.

**Judicial appeal:** After exhausting the administrative appeal, the employee may file an appeal with the competent judicial authorities, where the appeal is made for decisions issued by non-centralized interests and municipal and state interests before the administrative courts, as stipulated in Article 801 of the Code of Civil and Administrative Procedures. As for the appeal of decisions issued by the central administrative authorities, it is before the Council of State, as stipulated in Article 901 of the Code of Civil and Administrative Procedures.

A distinction can be made between advisory and binding issues as follows:

-\*Judicial oversight in advisory issues: In principle, the administrative judge cannot interfere in the discretionary power granted by the legislator to the administrative official, and therefore judicial oversight relates to the extent to which the administration's actions are consistent with administrative law. On this basis, the judge considers the existence of the facts, their classification, and the appropriateness of the penalty imposed. After the judge verifies the existence of the facts, he monitors the administration's classification of these facts and their legal status, as the administrative judge monitors the extent of the employee's responsibility for the actions attributed to him, the extent of the application of the procedures, the extent of respect for the corresponding material conformity, and whether there is a violation of the law. Is there a

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clear error in assessing the error if the employee is responsible for the actions attributed to him and was not under the influence of difficulties and pathological disorders? In general, the process of legally classifying the facts by the administration is subject to the supervision of the administrative judiciary.

-\*Administrative control in mandatory advisory matters: If the administration is obligated to respect formal administrative procedures in advisory matters, then it is all the more appropriate for the administrative judiciary to intervene when the administration does not abide by its obligations towards its employees regarding the tasks imposed on it by law. The judge considers these cases as one of the tributaries of the decision taken and its grounds (i.e. if the procedures are mandatory, then respecting them constitutes in principle illegality).

**Section Four:** Practical problems: Given the multiple tasks granted by the Algerian legislator to the equal-member administrative committee related to the career path of the public employee, we try to highlight the most important practical problems when dealing with the most important files presented to its members when performing their duties in the committee, whether these problems are legal or problems related to practice.

Problems related to the employee in terms of appointment, promotion and transfer: This can be highlighted as follows:

1-In the field of employee promotion or rather employee evaluation, we find that the equal-member administrative committee can view the numbered point and the employee's general assessment. The latter cannot view the general assessment, he can only submit A grievance is submitted to the committee and the committee may submit a request to reconsider the point only.

It is clear from this procedure that the role of this committee in this process is secondary and takes an advisory nature and does not have any obligation to the administration or to retract its decisions regarding the employee evaluation process.

Its role is also to monitor promotions through attendance or by reviewing the candidates' files and monitoring them and verifying their accuracy, as the committee must approve the final results in both the pedagogical and administrative aspects.

The qualification lists are announced temporarily and appeals are opened for 08 days, where a date is set to study the appeals, after which the final results are posted by the committee and sent to the concerned parties and to the financial services. However, in practice, the appeal deadlines are sometimes not respected.

The candidacy files are studied by a committee headed by the authority with the power to appoint, and it consists of representatives of the institution or public administration concerned and elected representatives of the equal-member administrative committee for the relevant corps or rank. It does so as soon as registrations are opened and this process is completed within a maximum period of ten 10 days following the closing date of registrations.

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As for promotion based on selection and in accordance with Clause 4 of Article 107 of Order No. 06-03, which states the following (Promotion based on selection is by registration in the qualification list, after taking the opinion of the equal-member committee from among the employees who prove the required seniority). It is clear to us that the equal-member committee has an important role in the matter of selecting the employees who are promoted. 02- As for the employee's regularization, the equal-member administrative committee is consulted before the regularization decision is made, and this committee considers the possibility of regularizing the trainee assistant in light of the final report on the internship. As for the procedures for appointment, the trainee performs, throughout his internship period, all the tasks assigned to the rank in which he seeks to be appointed, where he must spend a one-year internship period, and for some of these ranks and ranks, it may include preparatory training to occupy these ranks, as after the end of the one-year legally specified internship period, the qualified hierarchical authority proposes the appointment of the trainee, and this depends on registration in a list prepared by the hierarchical authority and submitted to the equal-member administrative committee, which is composed of representatives of employees belonging to the rank or hierarchy in which the trainee seeks to be appointed. But the question that always arises is: Who has the final say in appointment, the direct hierarchical authority or the equal-member administrative committee? Article 86 of Order No. 06-03 stipulates that the opinion of the direct authority remains merely a proposal and not a final decision, as stated in its text: The appointment of the trainee is proposed by the qualified hierarchical authority, and this is evidenced by the text of the second part of Article 86 of Order 06-03. Appointment depends on registration in the qualification list submitted to the equal-member administrative committee. The final word on the appointment decision is given to the equal-member administrative committee, given that the qualification list signed by the committee members constitutes the main document and reference within which appointment is made. In general, from a practical standpoint, the committee's opinion is often in agreement with the opinion of the direct supervisor, because the latter is the most knowledgeable about the trainee's capabilities and competence, given his direct relationship with him. However, if the direct supervisor refuses appointment and extends the internship period or dismisses him, and it becomes clear to the equal-member administrative committee that his opinion is arbitrary, and this is proven by official documents and papers, the committee can appoint the trainee. 03- As for the role of the equal-member administrative committee in transferring employees, employees can be transferred compulsorily without discipline, as the provisions of Article 158 of the General Basic Law of the Civil Service indicate that: "An employee can be transferred compulsorily when the interest requires it, and the opinion of the equal-member administrative committee is taken even after the transfer decision is taken, and the opinion of the committee is considered binding on the authority that approved this transfer".

Second requirement: Issues related to the equal-member administrative committee convened as a disciplinary council: Regarding issues related to the equal-member administrative committee convened as a disciplinary council, we find the following:

-Regarding the error related to combining jobs, the circular issued by the General Directorate of Public Service under No. 10 K.H. dated March 17, 2009 announced a fourth-degree error consisting of combining jobs, which imposes the penalty of demotion to the lower rank or dismissal. The same circular stated that if it is proven that the employee has combined two jobs

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based on confirmed documents, the employee concerned will be immediately suspended from his duties and his file will be submitted to the equal-member committee, and the original administration of the employee must inform the institution or administration in which the employee works, in order for the latter to cancel the appointment decision, starting from the date of employment.

-As for the deadlines for referring the disciplinary file to the equal-member administrative committee, Order 06-03, pursuant to Article 166 thereof, has imposed a negative effect or penalty in the event that the deadline for referring the disciplinary file to the equal-member administrative committee, which is 45 days, is not observed. - The precautionary suspension is a temporary preventive measure resorted to by the appointing authority to remove the employee from his job until his disciplinary file is referred to the equal-member administrative committee, which convenes in its capacity as a disciplinary council.

-The employee referred to the equal-member administrative committee is obligated to appear in person before it, except in the event of force majeure, according to the content of Article 168 of Order 06-03, and he is notified of the date of the session at least 15 days in advance, and the form of notification is specified by law, which is registered mail with a receipt of delivery, and nothing else.

-According to Article 163, paragraph 03, the employee may, after submitting his justification, request the committee to accept his representation by his lawyer.

-If the employee is absent from the equal-member administrative committee session despite being notified in the legal manner, the disciplinary follow-up continues, as it continues in the event that the employee's justification for absence is rejected by the committee. Also, in order to uphold the rights of the defense, the law allows the submission of oral or written comments or the summoning of witnesses to support his position, and he may seek the assistance of an authorized employee or lawyer.

-The committee deliberates in a secret session and its decisions are final in accordance with Article 170 to confirm the legitimacy of the penalty decision. The employee is notified within eight days from the date of taking the decision for a third and fourth degree penalty to file a grievance before the competent appeals committee within one month from the date of notification. In addition to the penalties stipulated in Order 06-03, there are other penalties stipulated in the special basic laws, such as the penalties for the prison administration corps, the civil protection corps, and others.

-It is necessary to prepare schedules of employee transfer movements periodically, the latter of which must be presented to the competent equal-member administrative committee in order to express its opinion thereon.

-In the event that the decision on the disciplinary case is postponed until the issuance of the final criminal judgment concerning the employee and the actions for which he was prosecuted do not allow him to remain in his position, the authority with the powers of appointment must

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suspend the employee as a precaution by virtue of a reasoned decision and notify him of this in writing on the one hand and take into account the necessary disciplinary procedures.

-An employee subject to a first or second degree disciplinary penalty may request rehabilitation from the appointing authority one year after the date of the penalty. If the employee is not subject to a new penalty, he/she shall benefit from rehabilitation by force of law two years after the date of the penalty. It is worth noting that in the event of rehabilitation, all traces of the penalty shall be erased from the employee's file. This procedure is new in Order 06-03 dated July 15, 2006, based on what is contained in the Code of Criminal Procedure. It is unreasonable for those convicted of a felony or misdemeanor to benefit from rehabilitation while an employee who was subject to a first or second degree disciplinary penalty does not. As for the final settlement of the administrative status of an employee under criminal prosecution, the employee's status in all cases remains suspended or postponed until the issuance of the final criminal judgment and it becomes final, i.e. after exhausting all legal appeals. The situation of the employee concerned shall then be submitted to the joint equal-member administrative committee as a disciplinary council to decide on it in light of the final judicial ruling on the one hand and the nature of the acts committed by the person concerned and the extent of their relationship or impact on his job or on the reputation of his employing administration on the other hand and in accordance with the disciplinary procedures stipulated in Articles 160 to 183 of Order 06-03. However, as an exception, the employee's criminal situation may be submitted to the disciplinary council to decide on it even if the criminal rulings are subject to an appeal before the Supreme Court, in the case where the ruling is issued at the second instance level (the judicial council) acquitting the person concerned of the charges against him, noting that the ruling of acquittal of the employee at this stage of the litigation does not necessarily mean his acquittal of the professional error he may have committed which was the cause of the criminal prosecution, as the employee may be subject to a disciplinary penalty on the basis of this professional error despite his criminal acquittal, in accordance with the principle of the independence of his professional responsibility from his criminal responsibility. It can be noted that the employing administration may, in the event that the employee concerned meets the specified legal conditions, refer him to retirement after presenting his situation to the disciplinary board, without prejudice, where necessary, to the criminal prosecution to which he is subject. It should be emphasized on another level that the disciplinary penalty in the event that the employee is convicted by a final judgment with a prison sentence or imprisonment with or without suspension of execution for the acts referred to, for example, in paragraph 2-1 or for other serious acts, even if they are not related to his job, shall in principle be dismissal after obtaining the opinion of the disciplinary board, on the one hand, and providing the employee concerned with the disciplinary guarantees stipulated in Order 06-03, noting that these procedures are essential and mandatory, and failure to comply with them by the employing administration may lead to the invalidity of the disciplinary measures taken against this employee. - Disciplinary dismissal is considered a disciplinary penalty that results in the termination of the service of a public employee after he commits a professional error of the fourth degree, as stipulated in Article 163 of Order No. 06-03. Therefore, dismissal is the maximum disciplinary penalty that an employee may be subjected to, and it only occurs after passing through the equal-member administrative committee that meets as a disciplinary council,

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### **Conclusion:**

Through our study of this topic, it became clear to us that the approval of equal-member administrative committees by the Algerian legislator came in line with the closed administrative system followed in Algeria, which is based on the regulatory relationship between the public employee and the administration, which requires several rights and duties, including the right to legal and administrative protection for the public employee. To evaluate the role of equal-member committees, we can conclude the following: - Although the Algerian legislator tried to create a balance between the interests of the administration and the interests of the employee by giving the equal-member administrative committee a regulatory role for the administration's dominance over the management of the public employee's career path within the framework of the closed administrative system followed in Algeria, which relies on regulations in management and relies on the presidential authority in issuing decisions related to the public employee, this matter falls within the scope of the legal and administrative protection of the public employee from the abuse of power and from the misuse of the powers granted to administrative officials in managing the public employee's career path. This role remains below the employees' aspirations and the desired balance has not been achieved in a prominent manner. Accordingly, we can present the following observations on the role of equal-member committees and their marginal role in Defending employees in the matter of employee evaluation:

-Meetings are chaired by a representative of the administration and not a representative of the workers.

-Committee meetings are confidential.

-Lack of experience of its members in managing meetings.

-Few committee meetings as it meets to study several issues and thus the request to reconsider the scoring becomes a marginal issue compared to other issues such as regularization and discipline.

Not to mention the influence of the administration on employees in choosing their representatives and the administration usually seeks to impose employees loyal to it or at least negative employees, and this matter is also linked to the awareness of employees and their exercise of this right as it is one of the most important acquired rights and a basic guarantee of the employee's guarantees that the legislator granted him with clear texts and precise powers.

We can note with regard to the classification of disciplinary penalties that the penalty of deletion from the qualification list, which is classified as a second-degree penalty according to the Algerian disciplinary system, especially since this type of penalty is effective without resorting to the disciplinary council, it is supposed and more appropriate to classify it as a third-degree penalty considering that deletion from the qualification list leads to deprivation of promotion and thus deprivation of a salary increase.

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Therefore, we propose to reconsider the powers of the equal-member committee and to balance the interests of the employee and the administration, and for its members to be serious in carrying out the supervisory tasks assigned to them. On this basis, involving employees in the operation of the various equal-member bodies helps them directly contribute to managing their administrative situations and developing a new type of relationship between them and the administration. What encourages this trend is the qualitative leap that contemporary administrative systems are experiencing in the field of democracy, decentralization and social dialogue.

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