

THE LEGAL REGIME OF THE FUNCTIONAL RELATIONSHIP CONTINUATION AND TEMPORARY SUSPENSION THROUGH ORDINANCE NO. 06-03 AND ITS APPLIED TEXT

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Abstract:

Ordinance No 06-03, which includes the general Status of public function, addresses the Statutory Positions in which an employee may find themselves throughout their professional career. Chapter six of this Ordinance, covering Articles 127 to 155, specifies these Positions. Article 127 outlines five distinct Positions: the normal service Positions, which applies to all employees, and four exceptional Positions statuses available to eligible employees. These exceptional Positions include detachment and out-of- outside the framework position, where the employee remains connected to the administration but performs their duties outside their original department or professional track. The Position of availability and national service result in a temporary suspension of the employment relationship, affecting the employee's access to professional rights in the case of availability. Chapter six's provisions refer to regulations that clarify the conditions and methods for applying each Statutory Positions. However, this regulatory text was delayed until 2020, when Executive Decree No. 20-373, dated December 12, 2020, was issued concerning Statutory Positions of public employees. These Positions were established within a framework of flexibility and adaptation characterizing the management system of public employment, which requires balancing the interests of the administration by promoting mobility within public function and adapting public function to a changing economic and social environment, as well as facilitating the exchange of skills and expertise between state institutions and departments while protecting the employee's interests by addressing their personal and family circumstances and responding to their professional and political ambitions.

Keywords: *Statutory Positions, Activity, public employee, detachment, availability, outside the framework, national service.*

INTRODUCTION

To achieve its objectives of meeting citizens' needs and maintaining public order in society, the administration resorts to using legal means aimed at influencing individuals' legal statuses. One of the most important of these means is the human resource, known in the context of public employment law as the public employee. This individual is the cornerstone of administrative activity; the state is only as effective as its public servants. They serve as the thinking mind and executing agent acting on behalf of the administration as a legal entity. Consequently, state employees are subject to a distinct legal system that governs their professional career from the moment they join the workforce until they exit it.

Among the key employment issues regulated by the general Status of public function are the Statutory Positions of public employees, defined as “the different legal situations of the employee in relation to the entity to which they belong or the position they hold.”¹

Ordinance 06-03 organizes these Positions in Chapter Six, Articles 127 to 155, across five sections. Article 127 specifies these statuses, which are limited to five: The activity position, detachment

¹- Jean-Marie AUBY et al., Public Service Law DALLOZ, Paris, 6th edition, 2009.

position, outside the framework position, availability, and national service¹. Chapter six's provisions refer to regulations that clarify the conditions and methods for applying each statutory Position. However, this regulatory text was delayed until 2020, when Executive Decree No. 20-373, dated December 12, 2020, was issued regarding the statutory Position of employees². These Positions were established to embody the goals of flexibility and adaptation that characterize the management system of public employment, emphasizing the need to balance the public interest of the administration by promoting mobility within public service, adapting public services to the changing economic and social environment, facilitating the exchange of skills and expertise, and protecting the employee's interests by addressing their personal and family circumstances while considering their political and professional aspirations³.

Importance of Studying the Statutory Positions of public Employees:

The study of the Statutory Positions of public Employees is of significant importance, highlighted from various theoretical and practical perspectives, which can be summarized as follows:

- **Motivation Tool:** These Positions serve as a means to motivate public employees by allowing them to join new administrations and undertake tasks that align with their aspirations, while maintaining their relationship with the administration. This positively impacts their performance and provides security and stability in their roles, ultimately leading to the success of the administration and the achievement of development and good governance across various domains.
- **Support for Mobility:** These Positions contribute to enhancing mobility and redistributing employees within the public sector. The unique nature of public employment permits the transfer of employees from one Position to another and from one institution to another, fostering employee mobility, which public employment legislation now allows and encourages to alleviate the financial burdens on the public sector.
- **Exchange of Skills:** These Positions facilitate the exchange of skills and expertise among the administrative and economic sectors of the state, as well as enabling employees to represent the state effectively in international institutions and organizations.

Objectives of the Study:

This study aims to achieve several objectives, which can be summarized as follows:

- Understanding the meaning and nature of each Statutory Positions of public Employees.
- Identifying the conditions, types, and cases of referral to these Statutory Positions.
- Recognizing the legal consequences of the Statutory Positions for both employees and the administration.
- Highlighting the updates and additions included in Executive Decree No. 20-373, concerning the Statutory Positions of public Employees.

¹- Ordinance No. 66-133 stipulates in Article 27 three Statutory Positions for public employees: the Position of normal activity, the Position of detachment, and the Position of availability. Decree 85-59, which contains the model basic law for workers in public institutions, added a fourth status: the Position of national service, in Article 66. Order 06-03, which contains the general Status of public function, added a fifth status: outside the framework position. See: Gerrouf Jamal, "The Positions of Public Employees Between the Innovations of Executive Decree 20-373 and the Correspondence with Ordinance 06-03," Algerian Journal of Rights and Political Science, No. 2, Volume 6, December 2021, p. 2.

²- the official journal, No. 77, issued on December 20, 2020.

³- Rabbouh Yassine, "Government Policy in the Field of Public function in Algeria," Doctoral Thesis in Political Science, specialty in Public Policy, 2015/2016, p. 413.

- Analyzing the legal framework regulating the Statutory Positions of public Employees, to identify its advantages and positive aspects, as well as to discover any shortcomings and flaws, proposing solutions for reform.

Research Problem:

Based on the above, the study's problem is framed as: **What does the legal regime of the Statutory Positions of public Employees entail through Ordinance 06-03 and Executive Decree 20-373? What are its effects on the Employee's professional career and the interests of the administration?**

Methodology:

To address this problem, we will employ **descriptive and analytical methodologies**. The descriptive method will be used to gather information, data, and ideas related to the Statutory Positions and study its legal framework, including the conditions and procedures for benefiting from them and the resulting effects. This information will then be analyzed and interpreted to extract relevant conclusions and facts. The analytical method will be utilized to interpret and analyze the legal and doctrinal framework concerning the Statutory Positions, revealing deficiencies in their legal treatment and proposing solutions for improvement.

Through examining the materials in Chapter Six of Ordinance 06-03 and Executive Decree No. 20-373, we find that there is one status applicable to all employees, which serves as the normal and standard condition for every employee. The other Statutory Positions are not necessarily available to all employees; they are conditional upon the fulfillment of specific criteria applicable to the concerned employee. Therefore, they are known as exceptional Statutory Positions.

The study plan is divided into two sections: the first section addresses the service status as the normal and standard condition in the Employee's professional career applicable to all public's employees, while the second section focuses on the exceptional Statutory Positions.

Chapter One: The Activity position as the ordinary situation in the Employee's Professional career

The activity position is the only Statutory Positions in the realm of ordinary legal Positions, representing the sole condition that encompasses all employees. Every employee passes through this status during their professional career, as it constitutes the most important duty of a public servant: the duty to perform their service and dedicate themselves to it. This requires the employee to carry out tasks corresponding to their rank personally and with utmost fidelity and precision¹. We will define the activity position and its cases, and then outline the conditions and methods for its realization, as well as the resulting effects, through Articles 128 to 132 of Ordinance 06-03 and Articles 3 to 18 of Executive Decree No. 20-373.

Section One: Definition of Activity position

Methodological guidelines necessitate the examination of conceptual frameworks for topics and ideas, followed by their legal framework. Therefore, we will begin with its legislative definition and then review some doctrinal attempts to define it.

Subsection One: Legislative Definition of Activity position

Legislatively, the activity position is defined in Article 128 of Ordinance 06-03, which states: "Activity is the position of the public employee who is actively performing in the public institution or administration to which he belongs, the tasks linked to his rank or to those of one of the jobs

¹- Soudani Nour al-Din, "The Statutory Positions of Public Employees - An Analytical Study in Light of Ordinance 06-03 and Executive Decree 20-373," Journal of Legal and Economic Studies, No. 3, Volume 5, University Center of Barika, Algeria, 2023, p. 516.

provided for in Articles 10 and 15 of this ordinance.” Article 129 adds that “the following employees are also considered to be in service status”:

- Employees on annual leave,
- Employees on sick leave or due to a work-related accident,
- Female employees on maternity leave,
- Employees benefiting from absence permits as defined in Articles 208 to 212 and 215 of this ordinance,
- Employees summoned for training or maintenance under reserve,
- Employees called under reserve,
- Employees accepted for training improvement.

It is noteworthy that the definition in this article is not comprehensive, as it does not include the cases specified in Articles 130 and 131 of ordinance 06-03. Article 130 allows for employees of certain ranks to be in activity position at other public institutions and administrations, while Article 131 allows for employees to be placed at the disposal of recognized national associations as being of general interest or public utility¹.

The legislator addressed this deficiency in Article 3 of Executive Decree No. 20-373, defining activity position as: “The activity position is that of an employee belonging to a rank who is actively performing in the public institution or administration to which they belong, tasks or functions related to their rank or tasks of positions specified in Articles 10 and 15 of ordinance 06-03. An employee is also considered to be in activity position if they are in one of the situations mentioned in Articles 129, 130, and 131 of the aforementioned order.”

The treatment of activity position in Executive Decree No. 20-373 divides it into two statuses rather than two cases. It considers both the activity position in Article 5 and the status of being at the disposal of others in Article 8 as separate statuses. However, it would be more accurate to classify them as cases within the single status of activity². This terminology may imply that being at the disposal constitutes a sixth independent Statutory Positions added to the five Statutory Positions specified in Article 127 of ordinance 06-03.

To prevent confusion and misunderstanding, the legislator should clarify in future amendments to Executive Decree No. 20-373 that “activity position” should be referred to as “actual activity position” or “active engagement within the institution or administration to which the employee belongs.” Article 5 should refer to the case of “activity status at another public institution or administration,” while Article 8 should refer to the case of “being at the disposal of national associations.” This inconsistency may violate the principle of the hierarchy of legal norms, as the regulatory text, represented by Executive Decree No. 20-373, should detail and implement the provisions of the legislative text, represented by ordinance 06-03, rather than introduce conflicting provisions.

Subsection Two: Doctrinal Definition of activity position

activity position is considered the ordinary condition of a public employee, during which they are in active service. Performing this service is an actual duty and a mandatory task for the public servant, involving responsibility for the assigned tasks and personal execution of those tasks. Thus, the obligation to perform the service is the primary condition stemming from the employee’s entry

¹- Soudani Nour al-Din, *op.cit.*, p. 315.

²- Gerrouf Jamal, *op.cit.*, p. 10.

into the position¹. It fundamentally consists of the necessity to fulfill the tasks associated with their designated position personally and adhere to the principles of public interest², while avoiding a combination of positions, except in cases where the law permits engaging in profitable private activities. Additionally, the public employee must carry out their duties within the scope of their defined competencies according to laws and regulations with diligence and accuracy, and must comply with working hours³. Violating these obligations may lead to severe legal and disciplinary penalties, including dismissal due to neglect of duty⁴.

Therefore, activity position is the principal position in which the public employee functions as an agent fulfilling their designated obligations and tasks. If they adhere to this daily⁵, they are considered to be in activity position. A good definition of activity position is: “the status of an employee who is actively performing in the public institution or administration to which they belong, tasks corresponding to their rank or tasks of a higher post or higher functions of the State, or who is effectively performing tasks corresponding to their rank in another public institution or national associations recognized as being of general interest or public utility.”⁶

Section Two: Cases of Service(Activity) position

According to Articles 128 to 131 of ordinance 06-03 and Articles 5 and 8 of Executive Decree No. 20-373, service position includes two cases, which can be summarized as follows:

Subsection One: actively or Considered actively Service position (Ordinary Case)

This category includes two situations: the case of the employee performing their duties actively within their employing administration, and the case of temporary absence from service, which is considered as being in service.

First: Cases of the Public Employee Actively Performing Their Duties within Their Employing Administration

The norm is that the employee is in Actively service in two scenarios:

1. Active Performance of Duties: The employee is engaged in their assigned responsibilities within the administration they belong to. This is the fundamental expectation of service status, where the employee fulfills their role in accordance with the requirements of their position and the regulations governing their work.
2. Temporary Absence Considered as Service^{**}: This includes circumstances where the employee is temporarily absent due to reasons such as annual leave, sick leave, or maternity leave, yet remains recognized as being in service due to the legal provisions that maintain their employment status during these absences.

In these cases, the employee is considered to retain their service position while ensuring that their responsibilities and obligations are respected, even in their absence from the workplace.

¹-Ghanes Habib Al-Rahman, "Lectures on Public Service and Human Resources," Directed to First-Year Master's Students in Local Government Law, Department of Law, Faculty of Law and Political Science, Djilali Bounaama University, Khemis Miliana, 2020-2021, p. 70.

²- Articles 43 and 44 of ordinance 06-03 stipulate exceptions that allow employees to engage in profitable private activities. Additionally, the legislator introduced a new right for employees under Law No. 22-22, amending ordinance 06-03, which consists of special leave for establishing a business.

³- Soudani Nour al-Din, op.cit., p. 517.

⁴-Mouqaddem Said, Public function Between Development and Transformation from the Perspective of Human Resource Management and Professional Ethics, University Publications Office, Algeria, 2010, pp. 277-278.

⁵- Ibid., p. 277.

⁶- Boutaba Mourad, "The Employee Regime Through ordinance No. 06-03," Doctoral Thesis in Public Law, Faculty of Law, University of Algiers 1, March 2017, p. 517.

First: Cases of the Public Employee Actively Performing Their Duties within Their Employing Administration

A. The employee actively performs tasks corresponding to their rank or position within the public institution or administration to which they belong. This is the primary normal status for every employee, as the administration aims to fill vacant positions. After successfully passing the employment competition, the employee is appointed as a trainee in a rank within the administrative hierarchy. By virtue of the appointment decision, a new legal status is created for them that includes a set of rights and obligations that the employee must fulfill personally according to specific regulations¹. The tasks corresponding to each rank are defined in the special Status law for each sector or group of sectors, and the employee thus benefits from all rights and is subject to all obligations stipulated in ordinance 06-03 and the applicable Status law².

B. An employee occupying a higher post or higher functions of the State³, as specified in Articles 10 and 15 of ordinance 06-03, is also considered to be in activity position.

The institution or administration to which the employee belongs manages their professional career, pays their salary, and they benefit from promotions in grades as specified by law⁴. Regarding individuals in high-ranking positions, the hierarchical authority of the administration or public institution they serve oversees their professional path, unless there are specific provisions to the contrary. They receive their salary unless the salary from their original rank is more beneficial. They maintain their affiliation to their original rank and benefit from promotions in grades as mandated by law. Additionally, they can be promoted in their original rank, provided the conditions are met, even if they exceed the required number or are outside the stipulated ratios. Upon the conclusion of their special leave or the end of their duties in the high-ranking position at their request, they are reintegrated into their original rank, even if they exceed the required number, and in this case, they benefit from classification in the rank immediately above the one they initially held⁵.

¹- Article 33 of Executive Decree No. 08-130, dated May 3, 2008, contains the specific status law for researcher professors, Official journal No. 23 of 2008, amended by Executive Decree No. 24-103, dated March 7, 2024, official journal No. 18, dated March 13, 2024, outlines the obligations of Assistant Professor, class B, which includes:

..... - without change,.....

- Evaluating and monitoring student knowledge,
- Supervising exams,
- Grading exam papers assigned to them,
- Participating in examination committee discussions,
- Participating in the work of their pedagogical team or committee,
- Supervising graduation projects and fieldwork,
- Contributing to promoting entrepreneurial spirit in the university environment,
- Assisting and supervising students with innovative and entrepreneurial projects,
- Assisting their institution in establishing subsidiary entities of an economic nature (study offices, startups, and small and medium enterprises...),
- Welcoming students for three (3) hours a week for counseling and guidance.

²- Boutaba Mourad, op.cit., p. 316.

³- Article 128 of ordinance 06-03.

⁴- Article 14 of Presidential Decree No. 07-304, dated 17 Ramadan 1428, corresponding to September 29, 2007, specifies the indicative network for employee salaries and their payment system, official journal No. 61, issued on September 30, 2007.

⁵- See Articles 26, 26, and 30 of Executive Decree No. 90-226, dated 03 Muharram 1411, corresponding to July 25, 1990, which defines the rights and obligations of workers in higher functions of the State, official journal No. 31, dated July 28, 1990.

Second: Cases of Temporary Absence from Work Considered as activity position

Exemptions are made for those in activity position in situations listed in Article 129 of Order 06-03:

1. Leaves: Employees on annual leave, sick leave, maternity leave, and other holidays (including national and religious holidays) are considered to be in service position despite their temporary absence from obligations. This is due to the recognition of leave as one of the essential social rights of employees¹.

2. Legally Authorized Absences: Employees benefiting from authorized absence permits, as defined in Articles 208 to 212 and 215 of ordinance 06-03, are considered to be in activity position and continue to receive their salaries. In contrast, unauthorized absences result in salary deductions for the duration of the absence. If the absence exceeds fifteen consecutive days without an acceptable justification, the authority vested with the power of appointment initiates the procedure for dismissal for abandonment of post, in addition to salary deductions for the days absent².

3. National Service Employees: Employees who have fulfilled their national service obligation and are called to follow a training or maintenance period within the military reserve, as well as those called into service during times of war, aggression, or disaster, are considered to be in activity position in their original post. Article 14 of ordinance 76-111 recognizes the period of call-up for reserve service as service position in the employee's original post, and the administration or institution to which the employee belongs continues to pay their salary³.

4. Employees Accepted for Training Improvement: These employees differ from those benefiting from training courses⁴, as the latter are placed in a secondment position according to Article 134 of ordinance 06-03⁵.

Subsection Two: Exceptional Cases of activity position

These two cases are considered exceptional for activity position within the employing administration, where some employees are regarded as being in activity position despite performing tasks outside their original administration:

1. Service at Another Public Institution or Administration: Article 130 of ordinance 06-03 and Articles 5, 6, and 7 of Executive Decree No. 20-373 allow employees of certain ranks to be placed in activity position at another public institution or administration, subject to conditions and methods defined by the specific statutes laws⁶. This is done through a joint decision by the relevant ministers and the authority responsible for public employment, which specifies for each public institution or administration the categories of staff involved and their numbers. For example, some staff in research support affiliated with the Ministry of Higher Education and Scientific Research may serve at the National Arabic Language Institute.

¹- The legislator discussed the leave regime in Chapter One of Title Nine of ordinance 06-03 in Articles 194 to 206.

²- The legislator addressed the absenteeism regime in Chapter Two of Title Nine of ordinance 06-03 in Articles 207 to 215.

³- See Articles 2, 4, 5, and 14 of ordinance No. 76-111, dated 09/09/1976, concerning reserve obligations and their organization, official journal No. 26 of 1977.

⁴- Improvement courses include: specialized training or studies, preparatory training for competitions and exams, knowledge renewal or seminars, or all other forms of skill enhancement, Article 10 of Executive Decree No. 20-194, dated 4 Dhul-Hijjah 1441, corresponding to July 25, 2020, concerning the training of public employees and enhancing their skills in public institutions and administrations, official journal No. 43, issued on July 28, 2020.

⁵- Boutaba Mourad, op.cit., p. 319.

⁶- It is noteworthy that Articles 99 and 100 of Decree No. 85-59 stipulated that employees carrying out duties related to their rank in another public institution are in a secondment, not an activity position.

and certain staff from the administration responsible for the environment may serve at the Presidency¹, For employees placed in service position at another public institution or administration², the institution or administration they are assigned to manages their professional career. This management is conducted according to the provisions governing their rank, ensuring that salaries are paid and that they benefit from rights such as promotions, training, honorary awards, and bonuses, in accordance with the regulations that govern their rank. Competitions, professional examinations, or training sessions for employees in service position are organized either by the employing administration³, if the number of employees permits, or in coordination with the administration managing the ranks of the relevant employees. This arrangement offers significant benefits to the public service by facilitating the mobility of employees between public administrations, allowing some to benefit from the services of employees in specific sectors to mitigate staff shortages or address special or temporary needs⁴.

Second: placed at the disposal of national associations recognized as being of general interest or public utility

Article 131 of ordinance 06-03 allows for the placement of employees at the disposal of national associations recognized of general interest or public utility. Articles 8 to 18 of Executive Decree No. 20-373 detail the conditions and methods for implementing this status, which include the following provisions:

1. Conditions for Placement at the Disposal of National Associations:

- The public employee must be a regular employee and in service position⁵.
- The association must be national, not local or international, and recognized of general interest or public utility in its founding law, according to the regulations defined in the law governing associations⁶, Examples include the Algerian Red Crescent and the Algerian Muslim Scouts⁷.

¹- See examples of placing certain specialized staff from various ministries in service position outside their original administrations:

- Joint ministerial decision dated 12/09/2013 placing certain specialized staff from the Ministry of Higher Education and Scientific Research in service with the Algerian Academy of the Arabic Language.
- Joint ministerial decision dated 27/02/2002 placing certain specialized staff from the health sector in service with the Vocational Training Administration.
- Joint ministerial decision dated 02/02/2016 placing certain semi-medical staff from the health administration in service with the Presidency of the Republic.
- Joint ministerial decision dated 13/06/2018 amending the joint ministerial decision dated 10/10/2010 concerning placing some staff from the Ministry of Industry and Investment Promotion in service with the Presidency of the Republic.

²- There have been recorded discrepancies in applying the service position in another public institution in some sectors of the public service, where certain regulatory texts referred to it as secondment instead of service position, which contradicts what was stipulated in ordinance No. 06-03. Among the texts that experienced this discrepancy is Presidential Decree No. 12-01, dated 04/01/2012, concerning the secondment of researcher professors from the Ministry of Higher Education and Scientific Research to the structures of the Ministry of National Defense, Official Journal No. 2 of 2012.

³- Articles 5, 6, and 7 of Executive Decree No. 20-373.

⁴- Boutaba Mourad, *op.cit.*, p. 317.

⁵- Abdel Hakim Ben Misbah Sawakir, *Comprehensive Guideline for Statutory position*, 01/11/2021, p. 17.

⁶- See: Decree No. 62-524 dated September 6, 1962, recognizing the Algerian Red Crescent as a national institution, amended by Executive Decree No. 08-59 dated 6 Safar 1429, corresponding to February 13, 2008, Official Journal No. 09, dated February 24, 2008.

⁷- The Algerian Muslim Scouts is a national association governed by Law No. 12-06, dated 12/01/2012, a humanitarian, educational, and voluntary organization with a public utility character, established under Presidential Decree No. 03-217, dated May 19, 2003, and Executive

- The employee placed at the association must possess qualifications relevant to the association's objectives and the tasks assigned to them, to achieve the desired goals of this exchange, such as placing doctors at the disposal of the Algerian Red Crescent.

- The employee must perform tasks at a level similar to those associated with their original rank and carry out their obligations under the authority of the association's responsible officer.

- The placement must not conflict with the specific nature of the sector or rank to which the employee belongs, as determined by the relevant Special statutes¹.

2. Administrative situation of the Employee Placed at the Disposal of a National Association:

The employee continues to receive their salary according to their rank from their original institution or administration. They also benefit from reimbursements for expenses incurred while performing duties at the association, according to applicable regulations. The employee's performance is evaluated by the responsible officer of the association, who sends an evaluation report to the employee's original institution or public administration².

3. Duration of Placement at the Disposal of a National Association: Without affecting the provisions of the relevant Special statutes, the placement can last for a maximum of two years, renewable once during the employee's professional career.

4. Implementing the Status of Employee Placement at the Disposal of a National Association:

The placement is formalized through a Convention between the employing institution or administration and the receiving association. This Convention must specify the nature of the activities the employee will engage in, the duration of the placement, service conditions, and how their activities will be monitored and evaluated. The Convention must be sent to the employee before it is signed, allowing them to express their consent regarding the nature of the assigned activities and service conditions. Like other Statutory Position, the placement at the disposal of a national association is established by a decision made by the authority with appointment powers in the original institution or administration, with the Convention of the employee and according to the conditions outlined in the placement Convention specified in Article 11 of Executive Decree 20-373.

5. Ending the Status of Placement at the Disposal of a National Association: This status may be terminated for the following reasons:

A. In Case the Employee Placed at Disposal Commits a Gross Professional fault: As stated in ordinance 06-03, if the internal regulations of the association prevent the employee from remaining active within the association, it is required that the association inform the employee and their original administration of its intention to terminate the placement before the expiration date.

B. Termination by the Original Institution or Administration:

The original institution or administration can suspend the placement for reasons of public interest, for legal proceedings against the employee, or for the conditions specified in Article 18 of Executive Decree 20-373. The receiving association must be informed of the decision to reintegrate the employee within no more than five (5) working days from the date of notification.

C. Termination by the Receiving Association

The association must notify the employee placed under its disposal and their original administration of its desire to renew or terminate the placement at least two (2) months before the expiration of the initial period. Upon the termination of the placement period or after the suspension, termination, or dissolution of the receiving association according to the provisions of Law No.12-06

Decree No. 05-247, dated July 7, 2005, accredited on November 7, 1989, under No. M.T.M.76/0091. [Source](https://www.scouts-dz.org/?page_id=155).

¹- Abdel Hakim Ben Misbah Sawakir, op.cit., p. 17.

²- Articles 09 and 14 of Executive Decree No. 20-373.

concerning associations¹, the employee must immediately return to their original administration². If the employee fails to return within the legal timeframe, the authority vested with the power of appointment initiates the procedure for dismissal for abandonment of post³.

Chapter Two: Special or Exceptional Statutory Positions in the Employee's Professional career

In addition to the ordinary Statutory Positions of the employee's professional career, which all employees undergo and is represented by the service or Activity position, employees may encounter personal circumstances that necessitate performing their obligations outside their original administration or original sector. Sometimes, they may be required to temporarily suspend or cease their duties within their original administration, which is known as exceptional Statutory Positions. These are incidental cases and not mandatory in the employee's professional life, and employees benefit from them upon request if they meet the conditions and situations specified by law.

The aim of establishing these exceptional Positions for public employees is to reconcile the rigidity that characterizes the legal rules governing public employment with the flexibility that should characterize the management of public employees' professional career. By reconciling these two ideas, it is possible to motivate employees, retain them, and prevent them from leaving public function for other sectors⁴.

These exceptional Statutory Positions are divided into two categories: those that do not terminate the employment relationship between the public employee and the administration, allowing them to continue while performing their duties outside their original administration and/or original sector, exemplified by the Position of secondment and outside the framework (Section One). Conversely, the Positions of Availability and national service result in a temporary cessation of the employment relationship, thus suspending the employee's duties within their employing administration (Section Two).

Section One: Positions of Employees Continuing to Perform Their Duties Outside Their Original Administration or Sector

In response to the need to balance the protection of the public interest in maintaining the employment relationship and respecting the guarantees and rights of public employees to engage in political or union activities, as well as the necessity of training and benefiting from the experience of employees in a higher post or higher functions of the State or in the public economic sector, employees are allowed to perform their duties outside their original administration or sector while maintaining their relationship with the administration and continuing to enjoy certain rights. This is achieved through their placement in a secondment Position, and after exhausting it, they may, at their request, be placed in an outside the framework.

Subsection One: Detachment Position

The legislator regulated its provisions in Articles 133 to 136 of ordinance 06-03, and the methods and conditions for its implementation are detailed in Articles 19 to 32 of Executive Decree No. 20-373. In this subsection, we will discuss the provisions related to secondment, starting with its

¹- The legislator addressed the suspension and dissolution of associations in Articles 39 to 46 of Law No. 12-06, dated 18 Safar 1433, corresponding to January 12, 2012, concerning associations, Official Journal No. 02, issued on January 15, 2012.

²- See Articles 15 to 18 of Executive Decree 22-373.

³- See: Executive Decree No. 17-321, dated 13 Safar 1439, corresponding to November 2, 2017, specifying the procedures for dismissing employees for abandonment of post, Official Journal No. 66, issued on November 12, 2017.

⁴- Hamdi Nour al-Din, "Managing Professional Career in the Algerian Public Function in Light of the Provisions of ordinance 06-03 Containing the general status of the function public," Journal of Political and Administrative Research, Volume 3, No. 2, Ziane Achour University, Djelfa, December 2014, p. 79.

definition and the conditions for referral to it, followed by an overview of its types, the administrative status of the seconded employee, and concluding with the methods for ending the Detachment position and its effects.

First: Definition of Detachment position

We will address the Algerian legislator's position on the definition of secondment and the efforts in this regard by legal doctrinal scholars.

1. Legislative Definition:

Article 133 of ordinance 06-03 defines Detachment as: "Detachment is the status of an employee who is placed outside their original sector and/or original administration while continuing to benefit in this sector from their rights regarding seniority, promotion in grades, and retirement in the public institution or administration to which they belong. Secondment is revocable"¹. This is nearly the same definition found in Article 19 of Executive Decree No. 20-373, which states: "Detachment is the status of an employee who is placed outside their original sector and/or original administration while continuing to benefit in their sector at the public institution or administration to which they belong from their rights regarding seniority, promotion, and retirement."

It is noted that these definitions are not comprehensive of the secondment position, as they lack precision. For instance, an employee placed in a service position at another public institution or administration according to the provisions in the definitions could be included in the Detachment position, leading to confusion between some status of service and Detachment. To address this ambiguity, Some Professor suggests defining Detachment as: "The status of an employee temporarily outside their original sector or administration in specific cases prescribed by law, while continuing to benefit from some rights in their original rank, with the management of their professional path undertaken by the administration or public institution to which they belong."²

2. Doctrinal Definition:

Many Jurists specializing in public service have attempted to define the Detachment status of public employees. Among these efforts, this position is defined as: "The temporary exemption of the employee from their original duties, with another task assigned to them, while retaining their right to receive their salary, and their right to progress, promotion, and retirement in their original administration. The seconded employee is subject to the disciplinary regulations of the administration to which they are seconded, while their position remains vacant in their original administration, and they return to it upon the end of the secondment period."³

Detachment has also been defined as: "The temporary performance by the employee, under a decision from the competent authority, of another job of the same rank or a directly higher position, whether in a different department or in another job within the same department, whether the employee performs these tasks alongside their original duties (partial Detachment) or dedicates themselves fully to the assigned work (full Detachment)."⁴ In Algerian administrative law,

¹- The concept of Detachment is defined in Article 41 of ordinance No. 66-133 under the title "Attachment" as: "the status in which an employee is outside their original framework but continues to benefit from their rights in this framework regarding promotion and retirement. "ordinance 66-133 used the term "attachment" and established this status as a general principle at the employee's request, decided automatically as an exception in cases of necessity regulated by the service, while Decree No. 85-59 omitted the definition of Secondment position.

²- Boutaba Mourad, *op.cit.*, pp. 320-321.

³- Mohieddine Qubaisi, *Principles of General Administrative Law*, Al-Halabi Legal Publications, Beirut, 1999, p. 220.

⁴- Nawwaf Kanaan, *Administrative Law*, Volume Two, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p. 78.

Professor Taib Essaid defines it as: “The position of a confirmed employee in their job who performs their duties outside their original sector.”¹

Second: Conditions for Referring a public Employee to Secondment position

The legislator has surrounded the employee’s benefit from Detachment position with several conditions, some related to the employee and others to the employing administration. These can be summarized as follows:

1. Conditions concerning to the Seconded Employee:

The employee must meet the following conditions:

- The applicant for Detachment must acquire the status of a permanent employee, as explicitly stated in Article 88 of Ordinance No. 06-03: “The trainee cannot be placed in a Detachment position²” Therefore, trainee employees are excluded because they have not yet been confirmed, which means they do not enjoy the status of an employee. Contractual agents are also excluded from the category of beneficiaries of Detachment, as they are not considered public employees in the narrow sense of public employees³.
- The employee must be in active service in their original position, meaning that employees who are on availability, those in national service, as well as those on long-term sick leave cannot be seconded⁴.
- The seconded employee must meet the conditions and qualifications required for the position to which they are being seconded, as stipulated in the specific status for that position. Article 27 of Executive Decree 20-373 states: “Without prejudice to the provisions of specific status, no employee can be seconded to a rank unless the conditions for joining and the level of qualification are equivalent to their original rank.” There must also be a similarity in the duties between the original position and the seconded position⁵. However, there is an exception for seconding employees to occupy higher function of the State, where they can hold ranks and levels higher than those they held in their original framework⁶.

2. Special conditions for the administration: These include the following conditions:

- The secondment must occur in one of the ten (10) cases specified in Articles 134 and 135 of ordinance 06-03, namely cases of Detachment by law and cases of secondment requested by the employee, with the requirement to attach supporting documents that justify the request for secondment.

¹- Essaid Taib, Public function Law, Editions Houma, Algiers, 2003, p. 168.

²- Article 15 of Executive Decree No. 17-322, dated November 2, 2017, specifies the provisions applicable to trainees in public institutions and administrations, which states: “A trainee cannot be Seconded or placed in availability,” Official Journal No. 66, issued on November 12, 2017.

³- Oumari Fatima Zahra, Ben Zita Abdel Hadi, “Detachment in Algerian Public function Legislation,” Journal of the Thinker for Legal and Political Studies, No. 1, Volume 4, Djilali Bounaama University, Khemis Miliana, Algeria, April 2021, p. 40.

⁴- Hashemi Kharfi, Public function in Light of Algerian Legislation and Some Foreign Experiences, Dar Houma, Algeria, 2010, p. 171.

⁵- Instruction No. 24, dated December 25, 2004, issued by the Director General of Public function, concerning the detachment of employees and how to achieve uniformity between ranks.

⁶- Belouarna Ahsen, Public function in Algerian Legislation Between Theory and Practice, Dar Houma for Printing and Publishing, Algeria, 2019, p. 148.

- The Detachment is for a temporary period to perform specific duties or tasks, which distinguishes it from transfer, as the latter is permanent to occupy a position in another public administration or institution¹.
- There must be a vacant financial position in the receiving administration to financially accommodate the Detachment process, as the seconded employee receives their salary from the receiving institution or administration.
- The Detachment must not exceed the maximum percentage specified in the specific status for the relevant categories regarding secondment at the employee's request, in order to balance the interests of the administration and the employee, avoiding the transfer of a large number of employees to this position, which could negatively impact the administration's operations².
- The Detachment is an individual administrative decision from the institution with the authority to appoint or the competent authorities specified by law; thus, Detachment cannot be verbal or issued by an unauthorized authority, nor can joint or collective Detachment decisions related to a group of employees be prepared.
- The mobility of Detachment must occur between public sectors and those equivalent to them, and therefore, it is inconceivable to second an employee to engage in activities in the private sector.

Thirdly - Types and Cases of Secondment position: Referring to Articles 134 and 135 of ordinance No. 06-03, we find that Detachment has two types: the first is by force of law, and the second is based on the employee's request.

1. Cases of Detachment by force of Law: These are outlined in Article 134 of ordinance 06-03, which specifies seven (7) cases exhaustively defined by the legislator. In these cases, Detachment is by force of law; if the employee meets the conditions and requests to benefit from it, the administration must comply with their request and cannot refuse on the grounds of necessity or discretionary power, as it is a right of the employee. The administration's authority is limited to the availability of one of the cases mentioned in Article 134 of ordinance 06-03. Generally, these cases relate to the employee's right to political or representative participation, the use of various state agents in the framework of higher function of the State or diplomatic function, and the pursuit of training or studies that benefit both the employee and the public facility³. We summarize these cases as follows:

A. Holding as a member of the Government: This refers to the selection of an employee to take on the role of Minister, Minister Delegate, or Secretary of State in the government. The selection of the employee in this case is based on their competence, level of qualification, or political affiliation. Thus, the appointed employee is placed in a Detachment position by force of law to allow them to dedicate themselves to the tasks assigned to them⁴.

¹- Debboub Hakim, "The Legal regime of Detachment in Public function, magister's These, Specialty in State and Public Institutions, Faculty of Law, University of Algiers 1, Academic Year 2012/2013, pp. 43-44.

²- Thus, most specific status set a maximum percentage of 5% for Detachment position at the employee's request, as stipulated in Article 18 of Executive Decree No. 08-129, dated May 3, 2008, concerning the specific status for university hospital professors, and Article 13 of Executive Decree No. 08-181, dated June 23, 2008, concerning the specific statute for employees belonging to specific bodies of the department of Fisheries, Official Journal No. 56 of 2008.

³- Oumari Fatima Zahra, Ben Zita Abdel Hadi, op.cit., p. 35.

⁴- The inclusion of this status under detachment cases by law applies the principle of the public employee's right to participate in political activity derived from their political rights that grant them the right to run for office, vote, and be appointed to positions that have a political nature.

B. Holding a permanent elective mandate in a national institution or a territorial community:

This involves the election of the employee to membership in one of the national elected councils, such as the National People's Assembly or the Council of the Nation—though it is noted that the text does not explicitly mention the national elected councils, as the legislator used the term “national institution”—or local councils such as the municipal and provincial people's councils, or their election to the Constitutional Court¹. It is required that local elected council membership be in permanent mandate, such as being elected as the council president, vice president, or head of one of the permanent committees².

C. Holding a higher function of the State or a High Position in a Public Institution or Administration Other than Their Own: This provision acts as a mechanism for fostering cooperation and exchanging competencies among various state services³. Employees are placed in secondment to benefit from their competencies and to ensure their reintegration into their original ranks upon completing their duties, smoothly and flexibly, without the ending of their responsibilities in positions of authority resulting in the loss of their original positions⁴.

D. Holding a Permanent Syndicate mandate According to the Conditions Specified by Applicable Legislation: As a permanent member or president of a Syndicate, they must dedicate themselves to conducting syndical activity under the best conditions⁵.

E. Pursuing Training Specified in Specific statutes: Such as specialized training or supplementary training for promotion, provided it is continuous and not alternating.

F. Representing the State in International Institutions or organizations: Such as the United Nations, the Arab League, the International Monetary Fund, etc. It is required for secondment by force of law in this case that the state appoints them to represent it, not in response to their personal request.

G. Pursuing Training or Studies Required by the Public Interest: If the employee is appointed for this purpose by the public institution or administration to which they belong.

2. Cases of Secondment Based on Employee Request (Voluntary Secondment): This relates to the three (3) cases specified in Article 135 of ordinance No. 06-03. In these cases, secondment is not considered a right of the employee but is subject to the discretionary authority of the relevant administration, with the possibility of consulting the joint administrative committee, whose opinion is advisory and not binding. An employee may be seconded upon their request to enable them to engage in:

A. Activities within Another Public Institution or Administration and/or in a Rank Different from Their Original Rank: Detachment may occur within the same administration but in a rank different

¹ This reinforces what Article 56 of the 2020 constitutional amendment stipulates: “Every citizen who meets the legal conditions has the right to vote and to be elected,” issued under Presidential Decree No. 20-442, dated 15 Jumada al-Awwal 1442, corresponding to December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, Official Journal No. 82, issued on December 30, 2020.

² See Executive Decree No. 13-91, dated February 25, 2013, defining the conditions for the delegation of local elected officials and the allowances granted to them, Official Journal No. 70, dated December 23, 2013.

³ Boudaif Ammar, Public function in Algerian Legislation (A Study Under ordinance 06-03 and Specific statutes Supported by State Council Jurisprudence), First Edition, Bridges for Publishing and Distribution, Algeria, 2015, p. 141.

⁴ Oumari Fatima Zahra, Ben Zita Abdel Hadi, op.cit., p. 35. It is noteworthy that this status differs from the appointment of an employee to perform higher function of the State or a senior position in the institution or public administration to which they belong, as in this case, they are considered in a service position and not in detachment position.

⁵ The current exercise of syndical rights is governed by Law No. 23-02, dated April 25, 2023, concerning the exercise of syndical rights, Official Journal No. 29, dated May 2, 2023.

from the original. This situation differs from being placed at the disposal of another public institution or administration in the framework of service, particularly in terms of procedures. In the latter case, the employee is placed based on a joint ministerial decision and is generally for an unspecified duration, unlike Detachment, where the employee performs duties in another public institution or administration based on their request for a legally specified period, and the approval or rejection of the request is at the discretion of the administration to which the employee belongs¹.

B. Holding management positions in institutions or establishments in which the State holds all or part of the capital: they must belong to Group “A,” which includes design, research, and study functions, and not other groups, as the functions pertain to management. Additionally, the secondment must be for work in institutions or establishments in which the State holds all or part of the capital, such as public economic institutions or public commercial and industrial institutions, or working in mixed institutions where the state owns part of the capital. This leads to the exclusion of work in the private sector from benefiting from secondment.

C. Carrying Out a Mission in the Framework of Cooperation or with international institutions or organizations: in this case, unlike the similar situation specified in item 6 of Article 134 of ordinance No. 06-03, the employee represents themselves and seeks to achieve their personal interest, not being tasked or appointed by the state to represent it. Therefore, this is at the employee’s request, and acceptance is subject to the discretion of the administration².

It is required for the employee to belong to a rank classified in Group “A” at least, as specified in Article 8 of ordinance No. 06-03, with a minimum of five (5) years of actual service in their original rank³.

Fourth- Duration of Detachment: ordinance 06-03 distinguishes the duration of voluntary Detachment cases, where the minimum duration is six (6) months and the maximum duration is five (5) years during the employee’s career, within the legal retirement age. However, in the cases specified in Article 134 of ordinance No. 06-03 (by force of law), the duration of the secondment is equal to the duration of the function, position, or training or studies for which the secondment was granted⁴.

Fifth- Administrative situation of the Seconded Employee: The public institution or administration to which the employee belongs shares the management of the career path of the seconded employee with the institution or administration to which they are seconded. The employee is subject to the rules governing the position to which they are seconded. Article 25 of Executive Decree 20-373 states: “Without prejudice to the duties specified in ordinance No. 06-03 and the specific statutes governing it, the seconded employee is subject to the rules governing the position to which they are seconded, as well as the internal regulations of the receiving institution or organization.” We will detail these rules below:

A. Evaluation of the Seconded Employee: During the secondment periods specified in points 3 and 6 of Article 134 and Article 135 of ordinance No. 06-03, the employee is evaluated by the institution or body to which they have been seconded, and their evaluation card is sent to their

¹- Boutaba Mourad, op.cit., p. 323.

²- Considering that diplomatic and consular staff are of particular interest, the specific statutes for this category of employees has recognized in Article 52 that the diplomatic or consular agent is placed at the disposal of a foreign organization according to the mission’s necessities, establishing a separate legal status in the professional path of diplomatic and consular agents under the title “placed at the disposal,” regulated in Articles 52 to 55, contrary to the general provisions in ordinance 06-03, which classified it as delegation. Presidential Decree No. 09-221, dated 1 Rajab 1430, corresponding to June 24, 2009, contains the specific statutes for diplomatic and consular agents, Official Journal No. 38, dated June 28, 2009.

³- Article 26 of Executive Decree No. 20-373.

original administration. If an employee's Detachment is terminated before the end of the designated period, the institution or organization to which they were seconded sends an evaluation card regarding how the employee served in their original administration¹. The Algerian legislator has wisely assigned the evaluation authority to the institution where the employee is seconded, as it is closer and better able to observe their performance and activity during the Detachment period².

B. Promotion of the Seconded Employee: We distinguish between Advancement and promotion in grade as follows:

- **Promotion in Grade(Advancement):** The duration of Advancement in grade varies according to the Detachment situation, as follows:

-Minimum Duration Promotion: The seconded employee is promoted in their original rank during the minimum duration specified for Detachment in points 1, 2, and 3 of Article 134 and point 2 of Article 135 of ordinance No. 06-03.

- Medium Duration Promotion: The seconded employee is promoted in their original rank during the medium duration specified for secondment in points 4, 5, 6, and 7 of Article 134 and points 1 and 3 of Article 135 of ordinance No. 06-03.

- **Promotion in Rank:** Article 133 of ordinance No. 06-03 does not stipulate that the seconded employee benefits from promotion in rank. However, Executive Decree 20-373 clarifies that the seconded employee, under the provisions of Article 134 of ordinance No. 06-03, has the right to promotion in rank according to the provisions of the Specific statutes governing them³, which applies to cases of secondment by force of law and not to cases based on employee requests. The effective date of promotion decisions in rank in this case starts from the date of signing and not from the date of appointment, as the individuals are performing their duties in other public institutions and administrations⁴.

C. Payment of the Seconded Employee's Salary: This is covered in Articles 28 to 30 of Executive Decree No. 20-373, as follows:

- The administration or institution to which the employee is seconded is responsible for paying their salary, except for employees seconded for training or studies, who receive their salary from the public institution to which they belong.

- The salary of the seconded employee and the contributions borne by the employer are paid according to the applicable legislation by the receiving institution or organisation. The salary of the employee seconded for training or studies may be paid by the public institution to which they belong, according to the applicable regulations, as the training or studies, as understood in public function law, are for the benefit of the employee and at the expense of their original administration, which will later benefit from that training or study⁵.

- The seconded employee in a rank different from their original rank receives their salary based on the classification corresponding to the classification of the receiving rank and the compensation

⁴- Article 20 of Executive Decree No. 20-373.

¹- Article 22 of Executive Decree No. 20-373.

²- Debbih Adel, "Evaluation of Public Employees," magister's These, Speciality in State and Public Institutions, Faculty of Law, University of Algiers, 2012, p. 81.

³- Articles 23 to 25 of Executive Decree No. 20-373.

⁴- Abdel Hakim Ben Misbah Sawakir, op.cit., p. 41.

⁵- Qarnash Jamal, "Statutory Position of Employees - A Reading of the Provisions of Executive Decree No. 20-373," Journal of Comparative Legal Studies, No. 2, Volume 7, Laboratory of Comparative Private Law, Faculty of Law and Political Science, Hassiba Ben Bouali University, Chlef, December 2021, p. 917.

system associated with it. The aim of this approach is for the employee to benefit from the financial advantages provided by the receiving rank.

Sixth - End of Detachment position: Detachment ends for the following reasons:

1. Expiration of the Designated Detachment Period: Secondment ends in the usual way, which is the expiration of the designated period in the administrative decision, whether related to Detachment by force of law or Detachment based on the employee's request.

2. The Revocation of Detachment: Article 133 of ordinance No. 06-03 states that Detachment ends when it is canceled by an administrative decision from the authority with appointing power, according to the principle of equivalence of forms. Detachment may be terminated before its expiration date either at the request of the original administration or the receiving administration, or at the request of the seconded employee after obtaining approval from both the original and receiving administrations¹. The cancellation decision must be adequately justified; otherwise, the administrative authority will be considered to have violated the employee's right to professional stability and acted abusively².

3. Termination of Secondment Due to General Reasons for Ending Employee Service: The Detachment situation ends when certain reasons for ending service occur, particularly: death, dismissal for abandonment of post, dismissal, or resignation.

Seventh - Effects of Secondment:

The end of Detachment, according to the aforementioned reasons, results in several effects summarized as follows:

1. Reintegration of the Employee into Their Original Rank: Upon the expiration of the secondment period, the employee is reintegrated by operation of law into their original rank in their original corps, even if there is an excess in numbers, and they are assigned to a position corresponding to their rank, with priority for appointment to the position they held before their Detachment if they were seconded by force of law. This is one of the most important guarantees granted to the seconded employee to ensure that after the end of the Detachment period, the administration cannot claim that the number of employees in their rank does not allow for their return to the same corps. However³, the reintegration of the employee does not prevent disciplinary proceedings regarding faults attributed to them during their Detachment⁴.

2. Possibility of Integrating the Seconded Employee into the Receiving Rank: The seconded employee, in a rank where the conditions for joining and the level of qualification are equivalent to their original rank, may be permanently integrated upon their request after a minimum period of two (2) years, with the approval of both the original and receiving administrations and obtaining a favorable opinion from the joint administrative committee regarding the receiving rank. The period of the employee's secondment in the rank into which they are integrated is taken into account for promotion or appointment to a high post⁵.

3. Possibility of Retiring the Seconded Employee: The employee in a Detachment situation according to the cases specified in points 2, 4, 5, and 7 of Article 134 of ordinance No. 06-03 and paragraphs 1 and 2 of Article 135, who meets the legal retirement conditions, is directly retired upon completion of the function, position, or training or studies for which they were seconded.

Second Branch: Position Outside the Framework

¹- Article 31 of Executive Decree No. 20-373.

²- Oumari Fatima Zahra, Ben Zita Abdel Hadi, op.cit., p. 41.

³- Boudaif Ammar, op.cit., p. 142.

⁴- Article 31 of Executive Decree No. 20-373.

⁵- Article 27/2 of Executive Decree No. 20-373.

This Position is addressed in ordinance No. 06-03 in Articles 140 to 144, and its provisions are detailed in Executive Decree 20-373 in Articles 33 to 42. We will discuss these provisions, starting with their definition, then the conditions for placing the employee in this Position, followed by the administrative status of the employee in this situation, and concluding with the effects of this status on the employee's career path, as follows:

First - Definition of Position Outside the Framework

The Position outside the framework is one of the newly introduced Position by ordinance No. 06-03 and emphasized by Executive Decree 20-373. However, the public function regime in Algeria previously recognized such a situation in one case only, which is when a governor is placed outside the framework, according to the provisions of Articles 16 to 20 of Executive Decree 90-230 dated June 25, 1990, which specifies the provisions of the specific statutes for higher positions and function in local administration¹.

Article 140 of the general status of the function public defines it as: "The situation in which an employee, at their request, after exhausting their rights to secondment, is placed in a position not governed by this general status." This legislative definition largely aligns with the definition found in French public function legislation, which is the source of this position, as well as some international legislations inspired by it². Despite this article setting important controls and conditions for the position outside the framework, this definition does not encompass all conditions and effects of the position outside the framework as stipulated in Article 141 of ordinance No. 06-03. This was rectified in Article 33 of Executive Decree 20-373, which provided a more detailed definition of this position by specifying the body or tasks for which the employee requests this position, related to exercising functions within an institution or organization wholly or partially owned by the state or a mission within an international institution or organization. The second paragraph also limits the benefit from this position to employees belonging to Group "A" only.

After reviewing the legislative definitions of the position outside the framework, it can be defined as: "The position in which an employee belonging to Group 'A' as defined in Article 8 of ordinance No. 06-03 may be placed, at their request, by an individual administrative decision issued by the competent authority for a period not exceeding five (5) years after exhausting their rights to Detachment, to enable them to continue their functions within institutions or bodies wholly or partially owned by the state, or to undertake a mission within the framework of cooperation or with international institutions or bodies." The employee in this position is subject to the rules governing the position to which they are seconded. This status is akin to an extension of Detachment, as a public employee whose Detachment period has ended and wishes to continue their duties in that administration or international organization cannot do so within the framework of Detachment due to the legally established maximum duration, but they can continue in that administration or international organization through the position outside the framework³.

Second - Conditions for Placing an Employee in position Outside the Framework

By examining the provisions of Articles 140 to 144 of ordinance No. 06-03 and Articles 33 and 34 of Executive Decree No. 20-373, the conditions for placing an employee in this status can be summarized as follows:

¹- Article 16 states: "The governor can be placed in an out-of-framework position in addition to other statuses stipulated in the applicable regulations for the benefit of the service to undertake a task with the interests or any other public institution or organization," Executive Decree No. 90-230, dated June 25, 1990, defining the provisions of the specific statuses for high positions and functions in local administration, Official Journal No. 31, issued on June 28, 1990.

²- Ben Zita Abdel Hadi, "The position of 'Out-of-Framework' in Algerian Public function Law," Critical Journal of Law and Political Science, No. 2, Volume 15, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, December 2020, p. 169.

³- Rabbouh Yassine, op.cit., p. 425.

1. The employee must be confirmed, as exhausting their rights to secondment is a requirement, since confirmation is a condition for secondment.
2. The employee must be placed in the position outside the framework of their own free will, meaning at their request, as it relates to voluntary secondment and not secondment by operation of law. Neither ordinance No. 06-03 nor Executive Decree 20-373 stipulates the necessity of consulting the joint administrative committee regarding the establishment of this position¹.
3. The employee must have exhausted all their rights to secondment in cases of voluntary Detachment. Therefore, this position is subsequent to voluntary secondment and the employee cannot directly benefit from it. It can be inferred that an employee who has exhausted their rights to secondment by operation of law under Article 134 cannot benefit from the position outside the framework.
4. The employee must be in the position outside the framework at an institution or establishment not governed by the general status of the function public², where its cases are limited to exercising supervisory functions within institutions and establishment wholly or partially owned by the state, specifically public economic institutions or public institutions of an industrial and commercial nature. An employee cannot be placed outside the framework in private companies or institutions, nor undertake a mission within the framework of cooperation with international institutions or organization.
5. Only employees belonging to Group “A” as specified in Article 8 of ordinance No. 06-03 can be placed in the position outside the framework, which includes all employees possessing the required qualifications to engage in design, research, and studies or any equivalent qualifications, that is, employees classified at least in grade 11. This indicates the legislator’s intention to restrict the benefit of this position to employees with high qualifications and competencies³.
6. The number of employees in the position outside the framework must not exceed the maximum percentage specified by the specific statuses governing the corps to which the employee belongs, which serves the interests of both the administration and the employee.
7. The position outside the framework must be established procedurally by an individual administrative decision issued by a competent authority.
8. The duration of the position outside the framework must not exceed five (5) years. Article 141 specifies the maximum duration of this position without stating the minimum duration or the number of times it can be granted, but it must not exceed five (5) years in total. However, Article 34 of Executive Decree 20-373 rectified this by setting a minimum duration of six (6) months and a maximum duration of five (5) years, including renewal periods, and within the legal retirement age.

Third -Administrative situation of the Employee Placed in position Outside the Framework

ordinance No. 06-03 briefly addressed the position outside the framework and referred the details of its implementation to regulations, as outlined in Articles 35 and 36 of Executive Decree No. 20-373. Here are the key provisions:

1. Subjection of the Employee to the Rules Governing the Position to Which They Are Seconded: The employee benefits from the rights included in the general status of the receiving institution and is subject to the specific duties of the new position, without affecting the obligations specified in ordinance No. 06-03, such as the duty to maintain professional secrecy and the duty of discretion. They are logically exempt only from the obligations related to the performance of the assigned function.

¹- Boutaba Mourad, *op.cit.*, p. 326.

²- The scope of application of the general status of the function public is defined in Articles 2 and 3 of ordinance 06-03.

³- Ben Zita Abdel Hadi, *op.cit.*, p. 170.

2. The Receiving Institution's Role in Evaluating the Employee and Paying Their Salary: Article 36 of Executive Decree 20-373 stipulates that the institution or administration to which the employee has transferred is responsible for paying their salary and evaluating them, in accordance with Articles 120 and 142 of ordinance No. 06-03.

3. Freezing the Employee's Rights to Seniority and Promotion: Article 36/1,2 states that placing an employee in the status outside the framework terminates their rights to promotion in grades in their original rank, and they cannot be promoted to a higher rank. Additionally, the employee is deprived of counting the duration of the status outside the framework as seniority for promotion in grade or rank, or for appointment to a high position. In this context, the position outside the framework is closer to an availability than to a secondment.

Fourth - End of the position Outside the Framework and Its Renewal

The provisions regarding this are outlined in Articles 37 to 42 of Executive Decree No. 20-373. Here are the main points:

1. **Expiration of the position Outside the Framework:** This position naturally ends with the expiration of the duration specified in Article 34 of Executive Decree 20-373, where a decision is issued according to the principle of equivalence of forms, including the reintegration of the employee into their original rank. It also ends due to the occurrence of any reasons for ending service between the employee and the administration, such as death or loss of nationality¹.

2. **Termination of the position Outside the Framework by the Employee:** The employee in the position outside the framework can request to be reintegrated into their original rank or renew this position. In this case, they must inform their original administration of their desire to reintegrate or renew their position at least one month before the expiration or interruption of their position outside the framework.

3. **Termination of the position Outside the Framework by the Receiving Institution:** The institution or body receiving the employee must inform them and their original administration of their desire to renew or terminate the status outside the framework at least two months before the expiration of this status.

4. **Termination of the position Outside the Framework by the Original Administration:** The original administration can reintegrate the employee for service necessity before the expiration of their position outside the framework, after consulting the receiving institution or establishment. They must inform the receiving institution at least one month before the specified date for reintegrating the concerned employee.

Fifth - Effects of the End of the position Outside the Framework

The expiration of this position results in several legal effects:

1. **Reintegration of the Employee into Their Original Rank:** Upon the expiration or suspension of the position outside the framework, the employee is reintegrated into their original rank by a decision from the appointing authority, even if there is an excess in numbers, meaning they can be integrated even in the absence of a vacant financial position². This is one of the guarantees provided to employees, highlighting the legislator's intention to preserve the legal status acquired by the employee³. After reintegration, the employee's career path returns to normal, and they regain their frozen rights.

¹- Boutaba Mourad, op.cit., p. 328.

²- Article 41 of Executive Decree No. 20-373.

³- Ziad Adel, Comprehensive Guide to Public function, Ibn Al-Nadim for Publishing and Distribution, Oran, Legal Book Foundation for Publishing and Distribution, Boumerdes, First Edition, 2025, pp. 61-62.

2. Possibility of Retiring the Employee: The employee in the position outside the framework who meets the legal retirement conditions can be retired by the receiving institution or establishment, which must inform their original administration¹.

3. situation of an Employee Who Commits a gross Professional fault: If an employee commits a gross Professional fault during their position outside the framework that prevents them from performing their duties in the institution or establishment to which they are assigned, they will be reintegrated into their original rank to be subject to the disciplinary procedures stipulated in ordinance No. 06-03².

Section Two: Situations of Interruption and Temporary Suspension of the Employment Relationship

The existence of the employment relationship requires the employee to continuously perform tasks corresponding to their rank until the end of their relationship with the administration, according to the methods and reasons for ending service specified in ordinance No. 06-03. This is in exchange for the social, professional, and political rights and guarantees they benefit from. However, circumstances and unforeseen reasons may arise during the course of the employment relationship that necessitate the employee's temporary disengagement from their duties. This can be framed within the situations of being placed on availability or temporarily interrupting their relationship with the administration to fulfill a constitutional national obligation, such as national service.

First Branch: position of availability

The position of availability leads to a temporary suspension of the employment relationship due to various circumstances and reasons that an employee may encounter during their career, compelling them to disengage and leave their job temporarily. The legislator has established a legal framework for this disengagement through the process of being placed on leave of absence³, which is addressed in ordinance No. 06-03 in Articles 145 to 153, with detailed provisions in Executive Decree 20-373 in Articles 43 to 51. This is outlined as follows:

First -Definition of availability: We will address both the legislative and doctrinal definitions.

1. Legislative Definition: Article 145 of ordinance No. 06-03 defines it as: "The availability represents a temporary suspension of the employment relationship. This position leads to the suspension of the employee's salary and their rights to seniority, promotion in grades, and retirement. However, the employee retains the rights they acquired in their original rank at the time of being placed on leave."⁴ This definition is consistent with Article 43 of Executive Decree 20-373, from which the following conclusions can be drawn:

- The position of availability results in the temporary suspension of the employment relationship, leading to the suspension of rights directly related to service performance, such as salary, seniority rights, promotion in grades, and retirement.
- The employee retains the rights acquired in their original rank at the time of being placed on leave.
- The position of availability does not lead to the termination of the employment relationship between the employee and the administration but temporarily suspends it. Therefore, the

¹- Article 42 of Executive Decree No. 20-373.

²- Article 39 of Executive Decree No. 20-373.

³- Boudaif Ammar, op.cit., p. 245.

⁴- It is noted that the text of Article 145 of ordinance 06-03 uses the term "employment relationship" to describe the legal bond between the employee and the administration. This term is known in legal and doctrinal contexts to apply to the relationship between a worker and the employing entity, governed by Labor Law No. 90-11, which pertains to employment relationships.

employee remains obligated to certain duties, such as maintaining professional confidentiality and the duty of discretion, and is prohibited from engaging in any profitable private activity. They also retain all rights not revoked by the legal regulations governing the leave of absence¹.

2. Doctrinal Definition: Given that the legislative definition does not encompass all conditions and effects of the availability, administrative doctrinal has attempted to define it, describing it as: “A system linking actual service and its cessation, as it temporarily deprives the employee of work and some of their benefits while allowing for their return.”² A good definition of the availability is: “availability is a temporary legal status of varying duration granted to the employee, either mandatorily or voluntarily, through an individual decision, leading to the suspension of the employment relationship with their employing administration, temporarily placing them outside the scope of its service to attend to personal life circumstances. This negatively impacts their career trajectory and financial status by freezing their salary rights and rights to seniority, promotion in grades, and retirement, while allowing them to retain the rights acquired in their original rank, with a prohibition on engaging in any profitable activity during this period.”³

Second - Conditions for Placing an Employee on availability

The legislator in ordinance No. 06-03 has specified the legal conditions that must be met for the legitimacy of the leave of absence process, summarized as follows:

1. **The Employee Must Be Permanent:** Article 88 of ordinance No. 06-03 explicitly states this requirement.
2. **For Voluntary availability:** The employee must have at least two (2) years of active service.
3. **Request by the Employee:** availability must be based on a request from the employee. In all cases of leave, whether mandated by law or at the employee's request, the employee cannot be placed in this position without their request.
4. **Accompanied by Documentation:** Requests for availability must be based on the situations specified in Articles 146, 147, and 148 of ordinance No. 06-03. These requests must be accompanied by documents justifying the request, and no expansions beyond these cases are allowed.
5. **Respect for Procedures:** The procedures and duration for availability specified in applicable laws and regulations must be followed, particularly the requirement to obtain prior approval from the relevant administrative committee before placing the employee on leave for personal reasons⁴.

Therefore, it is more accurate to use the term "functional relationship" to align with the terminology of public function law.

¹- Boutaba Mourad, *op.cit.*, p. 329.

²- Abdel Aziz Al-Sayed Al-Juhari, *Public function: A Comparative Study with a Focus on Algerian Legislation*, University Publications office, Algeria, 1994, p. 5.

³- Maawiyah Atiqa, Boussaadia Raouf, "Constraints of Necessity on the position of availability (A Comparative Study Between Algerian Public function Legislations)," *Judicial Precedent Journal*. No. 3, Volume 11, Laboratory of the Impact of Judicial Precedent on Legislation, Faculty of Law and Political Science, Mohamed Khider University, Biskra, October 2019, p. 1711.

⁴- Article 46/3 of Executive Decree No. 20-373 states: "The Availability is not established except after obtaining the opinion of the competent equal members' administrative committee," indicating that consulting this committee is a mandatory and essential procedure for issuing a decision on Availability for personal reasons at the employee's request. However, upon reviewing Article 13 of Executive Decree No. 20-199, it states that consulting the equal members' administrative committees for opinions regarding an employee's Availability for personal reasons is optional and only for advisory purposes, and does not require prior obligatory consultation for a matching opinion, unlike the cases outlined in Article 12. See Articles 12 and 13 of Executive Decree No. 20-199, dated 04 Dhul-Hijjah 1441, corresponding to July 25, 2020, concerning equal members'

6. Compliance with Maximum Limits: The availability must not exceed the maximum percentage set in the specific statutes for the relevant sector, particularly in voluntary availability, to ensure the continuous and regular functioning of the administration¹.

7. Administrative Decision: For the availability to be valid procedurally, an individual administrative decision must be issued by the competent authority in accordance with laws and regulations, including the employee's placement on availability. This decision is subject to post-legality oversight by the public service authority.

Third - Types and Cases of Availability

Based on the provisions of Articles 146 to 148 of ordinance No. 06-03 and Articles 44 to 47 of Executive Decree 20-373, the cases of leave of absence are divided into two types: it can either be mandated by law or based on the employee's request.

1. Obligatory Availability: This is outlined in Articles 146 and 147 of ordinance No. 06-03 and Articles 44 and 45 of Executive Decree No. 20-373. It includes:

- **in the event of an accident, disability or serious illness of an ascendant, spouse or dependent child:** If a parent, spouse, or dependent child of the employee suffers from an accident, disability, or serious illness, these cases are specified exhaustively to prevent expansion. This provision is based on humanitarian considerations, as a serious illness or accident can distract the employee and negatively impact their performance².

- **childcare for a Child Under Five:** This situation is also established for humanitarian reasons, recognizing the mother's role and the need for care for young children³. The employee's spouse can benefit from this after providing documents proving the legality of marriage and that the child is under five.

- **Relocation of Spouse:** The employee may be allowed to join their spouse if they are legally required to change their residence due to their profession⁴. This is based on social considerations to ensure family unity, with conditions that the relocation is mandatory and documented.

- **Political Party Duties:** Employees may be allowed to take a Availability to fulfill permanent duties as a managing member of a recognized political party. This is allowed for political reasons, provided the tasks are permanent and the political party is legally recognized.

- **Accompanying a Spouse is assigned an Algerian representation abroad, an institution or an international organization or is responsible for a cooperation mission:** Employees who cannot benefit from secondment may be placed on Availability due to their spouse's assignment abroad⁵, with the duration of the leave matching that of the spouse's assignment⁶. This is also socially motivated to maintain family unity⁷.

administrative committees, appeal committees, and technical committees in public institutions and administrations, Official Journal No. 44, issued on July 30, 2020.

¹- Article 21 of Executive Decree No. 08-409, dated December 24, 2008, concerning the specific statute for court clerks, sets the maximum percentage for employees' requests for Availability at 10% for each judicial body or administrative institution and for each category, Official Journal No. 73, issued on December 28, 2008.

²- Boudaif Ammar, op.cit., p. 146.

³- Ibid, p. 146.

⁴- Ibid, p. 146.

⁵- Article 147 of Order 06-03.

⁶- Article 149 of ordinance 06-03.

⁷- Qarnash Jamal, op.cit., p. 921.

Some scholars argue that the Algerian legislator's recognition of the Availability as a mandatory right imposed on the administration by law is primarily due to public interest, emphasizing the importance of the regular functioning of public function¹.

2. Voluntary Availability: Articles 148 of ordinance No. 06-03 and Article 46 of Executive Decree 20-373 specify the reasons for an employee's voluntary Availability, limiting them to personal purposes, such as conducting studies or research or facing personal circumstances requiring relief from professional obligations. This must be requested by the employee after two years of active service, with a minimum duration of six months, renewable for up to two years during the employee's career. The interests of the administration and the justifiable reasons presented by the employee must be considered², and the leave can only be granted after obtaining the opinion of the relevant administrative committee. Therefore, by extrapolating the text of Article 148 of ordinance 06-03 and Article 46 of executive decree 20-373, we record the following observations

A- Use of the Phrase “At the Request of the Employee”

The phrase “at the request of the employee” is incorrectly used, as the position Availability in all cases specified in Articles 146, 147, and 148 of ordinance No. 06-03 is initiated at the employee's request, and there is no automatic Availability³.

B- Use of the Phrase “For Personal Purposes”

The phrase “for personal purposes” is broad and also includes cases of mandatory leave outlined in Articles 146 and 147 of ordinance No. 06-03, as it serves the employee's personal interests. Additionally, Article 46 of Executive Decree 20-373 does not specify the nature of the studies or research the employee may undertake nor does it clarify the personal circumstances that require relief from professional obligations.

C- Discretionary Authority of the Administration

Although the administration has discretionary authority regarding whether to approve the employee's request for leave, certain elements restrict this authority. The legislator requires that the employee have completed two years of active service to be eligible to submit a request. Furthermore, the confirmation of the leave status must occur only after obtaining the opinion of the relevant administrative committee⁴.

Fourth - Duration of Availability

The Availability is granted within the legal retirement age for a minimum duration of six (6) months, renewable for a maximum of five (5) years for mandatory leave cases as specified in Article 146 of ordinance No. 06-03. For voluntary leave based on the employee's request, it is granted for a minimum of six (6) months, renewable for up to two (2) years during the employee's career. This indicates that the renewal of the leave can be continuous or separate. Article 47 of Executive Decree 20-373 introduces a new provision regarding the duration of leave, allowing the employee to combine the durations of mandatory Availability and voluntary Availability for a maximum of seven (7) years during their career.

It is important to note that the Algerian legislator's specification of the duration of leave serves the interests of both the administration and the employee. It allows the employee to manage personal matters while being assured of a known and legal framework. For the administration, it enables

¹- Maawiyah Atiqa, Boussaadia Raouf, op.cit., p. 1716.

²- Abdel Hakim Ben Misbah Sawakir, op.cit., p. 87.

³- Maawiyah Atiqa, Boussaadia Raouf, op.cit., p. 1734.

⁴- Qarnash Jamal, op.cit., p. 922.

appropriate decision-making within a legal framework, ensuring the continuous functioning and public interest of the service¹.

Fifth - Administrative situation of the Employee on Availability

This position involves the following provisions:

A- Freezing the Employee's Career Path and Loss of Certain Rights: Since being on leave leads to the temporary suspension of the employment relationship, this results in the cessation of the employee's salary and the freezing of their rights to seniority, promotion, and retirement. However, the employee retains the rights they acquired in their original rank at the time of being placed on leave.

B- prohibition on Engaging in Profitable Activities: The employee on leave is prohibited from engaging in any profitable activity. The administration can conduct an administrative investigation at any time to ensure compliance with this obligation and that the leave corresponds to its intended reasons. If the employee violates these rules, they will be immediately notified to return to their position and will be subject to disciplinary procedures. An employee who refuses to return may face dismissal for abandoning their post².

Sixth - End of Availability position

The position of Availability ends in the following ways:

A- Ordinary End: This occurs when the duration specified in the administrative decision issued by the competent authority expires, in accordance with Article 149 of ordinance No. 06-03.

B- Termination by the Administration: The appointing authority can end the leave before the stipulated duration if a legal reason exists.

C- Termination at the Employee's Request: The employee can request reinstatement from their administration after at least half of the leave duration has passed or upon the cessation of the reasons for which they were placed on leave, after obtaining the opinion of the relevant administrative committee³.

D- The employee on leave must request reinstatement or renewal of the leave at least two (2) months before its expiration. If the employee fails to submit a request within the specified time, they will be required to return to their position at the end of the current leave period. In case of refusal, dismissal procedures will commence according to the applicable regulations⁴.

E- The Availability position may also end automatically if the original employment relationship between the employee and the administration ends due to reasons such as dismissal, resignation, disciplinary termination, or death.

Seventh - Consequences of Ending Availability position

Upon the expiration of the leave period, the employee's right to reinstatement in their original rank is established by law, even if there is an excess in numbers⁵. The legislator ensures the employee's right to return to their original rank even in the absence of a vacant financial position, contrary to the previous situation under ordinance No. 66-133, which allowed for the possibility of retirement or dismissal after the leave status expired. After reinstatement, the employee resumes their career path and regains rights they had lost, while also being obligated to fulfill duties from which they were previously exempted due to the leave status.

¹- Maawiyah Atiqah, Boussaadia Raouf, op.cit., p. 1725.

²- Article 48 of Executive Decree No. 20-373.

³- Article 51 of Executive Decree No. 20-373.

⁴- Article 50 of Executive Decree No. 20-373.

⁵- Article 152 of Order 06-03 and Article 49 of Executive Decree No. 20-373.

Second Branch: position of National Service

Article 75/5 of ordinance No. 06-03 stipulates that a candidate for a public position must have a legal status regarding national service. Therefore, any candidate who has not completed national service may submit a document for deferment or postponement of enlistment in their employment application. Once employed and summoned for national service, the law allows the employee to benefit from the position of national service¹. This status is considered an exceptional legal situation that leads to the temporary suspension of the employment relationship between the employee and their administration. It is one of the new statuses introduced by ordinance No. 06-03 as an independent category, confirmed by Executive Decree 20-373. Notably, Order 66-133 did not mention it, while Decree No. 85-59 included it among the cases of suspension of the employment relationship but regarded it as a form of secondment².

First - Definition of National Service

The definition is provided in Article 1 of Law 14-06 concerning national service, which states: "National service is the participation of citizens in national defense. National service is designated to meet the needs of the People's National Army."³ National service is performed in a military capacity within the structures of the People's National Army. Article 2 of Law 14-06 clarifies the meaning of participation in national defense by stating: "Participation in national defense refers to the performance of tasks assigned to the People's National Army under the Constitution, which relate to preserving national independence, defending national sovereignty, and maintaining the integrity and territorial safety of the country."

Since national service involves the participation of citizens holding the nationality of the state in its defense, it is mandatory for all Algerian citizens aged nineteen (19) years and older and is to be performed continuously for a legally determined duration of twelve (12) months⁴.

Second - Definition of the position of National Service

ordinance No. 06-03 does not define the status of national service but regulates its provisions in Articles 154 and 155, with further details provided in Executive Decree 20-373 in Articles 52 to 54. Article 154 of Journal No. 06-03 states that an employee summoned to perform national service is placed in a status referred to as "national service," which is the same definition confirmed by Article 52 of Executive Decree 20-373. This article also outlines how to be placed in national service and how the employee is reinstated after its completion. However, Article 52/2 refers to the status of national service as "case of national service," which contradicts the terminology used in ordinance No. 06-03. Moreover, the status of national service does not encompass any sub-statuses similar to secondment or leave of absence.

From the legal framework regulating the status of national service, it can be defined as: "An exceptional legal status in which an employee or trainee summoned to fulfill their national service duty is placed. It is established by an individual administrative decision issued by the legally competent authority, resulting in the temporary suspension of their employment relationship with the administration while allowing the concerned employee to continue benefiting from promotions

¹- See the decision dated 21 Dhul-Qi'dah 1435, corresponding to September 16, 2014, which specifies various citizens' statuses regarding national service, Official Journal No. 56, issued on September 25, 2014.

²- Makrouf Mohamed, "The position of National Service in Algerian Legislation," Academic Journal of Legal and Political Research, No. 2, Volume 6, Faculty of Law and Political Science, Amar Thlijji University, Laghouat, September 2022.

³- Article 116 of Decree 85-59 states: "Employees called to serve their period in national service are placed in a detachment position and are reintegrated according to the conditions specified in the applicable legislation."

⁴- Law No. 14-06, dated August 9, 2014, concerning national service, Official Journal No. 48, issued on August 10, 2014.

in rank and grade, professional experience recognition, retirement, and appointments to higher positions during their period of national service, with a legal obligation to reinstate them in their original rank, even if there is an excess in numbers.”

From this definition, we can deduce that the position of national service combines some characteristics of Availability on one hand and some characteristics of secondment on the other hand. It aligns with Availability through the suspension of the employee’s salary, and it aligns with secondment by allowing the continued enjoyment of rights related to seniority and promotions in rank and grade, as well as retirement¹.

Third - Conditions for the position of National Service

To place an employee in this position, the following conditions must be met:

1. **Presence in Activity position:** The employee or trainee must be in service position active, and it is not required to be permanent, as trainees can also be placed in national service².
2. **Submission of Official Documentation:** The employee is placed in national service by submitting an official document proving their enlistment according to applicable legislation³. Candidates for national service receive summons orders from the relevant military administration, which they then submit to their administration to initiate the process of placing them in national service.
3. **Administrative Decision:** The position of national service is implemented through an individual administrative decision issued by the competent appointing authority, covering a national service period of “12” months, starting from the date of joining the recruitment unit.

Third - Administrative situation of the Employee in National Service

After the issuance of the decision placing the employee in national service, the following legal provisions apply to the employee’s career path:

1. **Temporary Suspension of the Employment Relationship:** The position of national service leads to the temporary suspension of the employment relationship, regardless of the legal system (permanent, trainee, or holding a senior position) between the public employee and the employing administration.
2. **No Salary Payment:** The employee performing national service does not receive a salary, except for what is allowed by the laws and regulations related to national service. In this case, the employee benefits from a monthly allowance according to Article 62 of Law 14-06, which states: “The national service soldier has the right to a monthly allowance.”
3. **Continued Benefits and Obligations:** During the periods of national service, the employee continues to benefit from promotions in rank and grade, recognition of professional experience, retirement, and appointments to higher positions⁴, as these periods are counted as active service years. The employee is also obligated to maintain certain duties during this time, such as preserving professional confidentiality and the duty of discretion.

Fourth - End of the position of National Service

The position of national service ends for the following reasons:

1. **Completion of the National Service Period:** This is the normal and natural reason for its conclusion, as its duration is set at a full year (12 months) according to Article 5 of Law 14-06 concerning national service.

¹- Chapter from Law No. 14-06, concerning national service, outlines the principles of national service in Articles 03 to 09.

²- Rabbouh Yassine, op.cit., p. 438.

³- Abdel Hakim Ben Misbah Sawakir, op.cit., p. 106.

⁴- Articles 154 of Order 06-03 and Article 52/2 of Executive Decree No. 20-373.

2. Early Termination of National Service: The employee may be released from the obligation to perform national service before the completion of the period for various reasons, such as obtaining an exemption. This requires the termination of the national service position and the reinstatement of the employee to their original rank¹.

3. End of National Service Due to Reasons for Ending Employment: Certain circumstances may lead to the simultaneous end of both the national service status and the employment relationship, such as the employee's death, loss of nationality, or revocation of it.

Fifth - Consequences of Ending the position of National Service

The end of the national service position has several consequences, summarized as follows:

1. Reinstatement in the Original Rank: Upon the expiration of the national service period or the employee's release from the obligation to perform it for any reason, the employee is reinstated by law in their original rank, even if there is an excess in numbers. They have priority for appointment to the position they held before enlistment, provided it remains vacant or to an equivalent position in the same professional category. The reinstatement decision is issued upon submitting official documentation proving their release from national service obligations², thus restoring their career path to its normal course. They regain their salary and benefit from all rights stipulated in public service law while adhering to the related duties.

It is important to note that the employee must submit a request for reinstatement within six (6) months after the end of national service. Failure to do so will result in the administration requiring them to return to their position, and if they refuse, dismissal procedures may be initiated due to neglecting their position³.

2. Special Provisions for Reinstating Trainees

The trainee employee who has completed national service before finishing their training period is reinstated to complete the remaining duration of the training. After the actual training period ends, they are confirmed in their position, and this confirmation takes effect from the date corresponding to the end of the legal training period. In the case of an extension of the training period, the confirmation takes effect from the date corresponding to the actual end of the new training period⁴. After confirmation, the period of national service performed by the trainee is counted as actual service for the purposes of seniority in promotions, rank, retirement, or appointment to a higher position⁵.

3. Retention of Rights During National Service

The employee retains the rights accrued at the time of their enlistment in national service, particularly professional seniority and any remaining annual leave they held prior to enlistment.

Sixth: Procedures for Recognizing National Service Periods in the Employee's Career Professional:

Law No. 14-06, dated August 9, 2014, concerning national service, stipulates the recognition of national service periods and retention beyond the legal duration of national service, as well as re-summoning in the context of mobilization within public institutions and administrations⁶. The recognition of these periods means they are considered as actual work periods and carry the same implications, as these periods are counted based on the actual time served by public institutions

¹- Article 53 of Executive Decree No. 20-373.

²- Article 54 of Executive Decree No. 20-373.

³- Articles 154 and 155 of ordinance 06-03 and Article 54 of Executive Decree No. 20-373.

⁴- Article 68 of Law No. 14-06 concerning national service.

⁵- Article 09 of Executive Decree No. 17-322.

⁶- Article 10 of Executive Decree No. 17-322.

and administrations¹, according to applicable legislation and regulations, through a decision or resolution from the competent appointing authority. This applies in the following cases:

1. **Recognition as Professional Experience:** These periods are counted once for recruitment competitions for various employee ranks, including competitive exams based on qualifications or professional tests, as well as for direct recruitment for certain ranks, and are also recognized for positions of contracted employees.
2. **Recognition as Professional Seniority:** These periods are taken into account once after confirmation in rank for the purposes of promotion in rank and grade, and for appointments to higher positions, by adding them to the seniority acquired in the employee's rank before or after serving these periods².
3. **Recognition for Professional Experience Valuation:** This applies to contracted employees³.
4. **Recognition of Periods for Retirement:** The periods of national service and retention beyond the legal duration of national service and re-summoning in the context of mobilization are counted and considered for establishing rights and/or calculating retirement pensions⁴.
5. **Recognition of Periods in Paid Leave** The periods of re-summoning in the context of mobilization are recognized for paid leave within the employing authority, according to applicable legislation and regulations⁵.
6. **Recognition of Periods in Terms of Social Protection Rights and Services:** The periods of re-summoning in the context of mobilization are recognized for social protection rights within the employing authority, in exchange for the transfer of contributions due for unemployment insurance, as determined according to applicable regulations.

RESULTS

Through the study of the legal framework for the Statutory Positions of employees, the following results were reached:

1. The Statutory Positions of employees were established to balance the interests of the employee and the administration. They contribute to enhancing mobility within the public service and adapting public services to the changing economic and social environment, as well as addressing the personal, family, and political matters of employees, meeting their professional aspirations, and facilitating the exchange of skills and professional experiences between institutions and international organizations.
2. The Statutory Positions that public employees in Algeria experience have undergone several amendments, as the Algerian legislator sought to align them with new developments and introduce flexibility. Initially, ordinance 66-133 limited them to three statuses: service, delegation, and leave of absence. Decree 85-59 added national service, considering the employee in a delegation status during this time. Order No. 06-03 expanded this to five (5) Positions: Activity position, detachment, out-of-framework, Availability, and national service. This expansion under ordinance 06-03 reflects

¹- Articles 59 and 70 of Law No. 14-06, dated August 9, 2014, concerning national service. Consequently, Presidential Decree No. 17-109, dated March 14, 2017, specifies the implementation methods for legislative provisions regarding the establishment of national service periods, retention, and re-invocation, related to employment, promotion, and retirement, amended by Presidential Decree No. 23-142, dated March 27, 2023, followed by the joint ministerial decision dated August 24, 2023, determining the methods for establishing periods of national service and retention beyond the legal duration of national service and re-invocation in the context of mobilization.

²- Article 2 of the joint ministerial decision dated August 24, 2023.

³- See Articles 7, 8, and 9 of the joint ministerial decision dated August 24, 2023.

⁴- See Articles 10 to 13 of the joint ministerial decision dated August 24, 2023.

⁵- See Articles 14 and 15 of the joint ministerial decision dated August 24, 2023.

the impact of the political, economic, and social developments introduced by the 1989 Constitution and deepened by the 1996 Constitution.

3. The legislator's regulation of the Statutory positions, along with the examination of their types and cases, shows a balance between a closed system that emphasizes the permanence of the job and the requirement for the employee to be fully dedicated to it within a regulatory framework, and an open system that allows employees to perform tasks in the public economic sector and even with international organizations.
4. These Statutory Positions for public employees are defined exhaustively rather than exemplarily. Therefore, no specific statutes can introduce new statuses not specified in ordinance 06-03, nor can an employee benefit from a status not mentioned in their specific statutes. Additionally, an employee cannot be placed in two Statutory Positions simultaneously.
5. The specific statutes for various sectors determine the percentages of employees who can be placed, at their request, in delegation, Availability, or out-of-framework statuses, to ensure that the administration is not depleted of employees and to maintain the principle of continuity in the regular operation of public facilities.
6. The legislator made the referral of an employee to one of the Statutory Positions, in its various forms, contingent upon the employee's request, thus abolishing the automatic referral to delegation status that was practiced under ordinance 06-03 and Decree 85-59.
7. The legislator recognized the employee's acquired right to ensure their position and administrative situations, stipulating the reinstatement of the employee to their original rank by law after the conclusion of the Statutory Positions, even if they exceed the number.
8. Despite the issuance of Executive Decree No. 20-373, it contains some linguistic errors, ambiguous phrases, instances of repetition, and contradictions, especially in its organization of the service status and the leave of absence based on the employee's request.

THE PROPOSALS

In light of the findings, we present a series of recommendations aimed at addressing the imbalances and deficiencies in the legal framework of the basic legal statuses:

1. It is necessary to revise the wording of Articles 02, 03, 05, and 08 of Executive Decree No. 20-373 to avoid ambiguity and repetition. The term "service position" should be replaced with "activity or actual service position," and both service within another public institution and placement at the disposal of national associations should be considered as types of service position rather than independent positions.
2. An administrative investigation should be activated to ensure that the case of the employee referred to Availability matches the reasons for their referral, particularly in cases of leaving the national territory or engaging in commercial activities.
3. For humanitarian considerations, it may be stipulated that an employee referred to Availability due to a serious incident affecting a relative, spouse, or dependent child may benefit from a portion of their salary for a specified duration.
4. The legal nature of the detachment and Availability statuses should be modified by replacing the phrase "by law" with "mandatory cases," and adopting "optional cases" instead of "at the employee's request," since the establishment of all exceptional legal statuses should be based on the employee's request.
5. The phrase "permanent electoral mandate and permanent union mandate" specified in Article 134 of ordinance 06-03 and Executive Decree 20-373 should be revised to "permanent position in a continuous electoral or union mandate."

6. The eligibility of employees for “out-of-framework position” should be expanded and not limited to employees belonging to group “A.”

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4. Law No. 14-06 dated August 9, 2014, concerning national service, official journal No. 48, issued on August 10, 2014.

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