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The Legal Status Of Interns In Algerian Employment Legislation

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Abstract:

This study aims to highlight the internship phase as a mandatory stage that every newly employed person goes through, by identifying the legal status of interns, which is characterized by its probabilistic and uncertain nature regarding their official appointment. An intern may be officially appointed in the designated position, thereby enjoying all the rights granted to any employee and legal protection against any dismissal issued by the administration, or they may be dismissed without any compensation or prior notice. The study reached several conclusions, the most important of which is that interns in Algerian employment legislation do not enjoy adequate legal protection compared to that of appointed employees.

Keywords: intern, legal status, employment legislation.**Introduction:**

The public employee occupies an important position within the administration and public institutions, given the responsibilities and duties assigned to them, as well as the authorities they possess. Therefore, the Algerian legislator is keen to establish specific criteria and foundations that must be followed to select the best and most qualified employees for positions that align with their qualifications and to represent them in the best possible way, through appointing employees in successive stages, in accordance with specific provisions and procedures for joining the public service. Moreover, the internship period serves as an opportunity for interns to prove themselves; it marks the beginning of their professional life. Their affiliation with the organization is a result of successfully completing this period, especially since some view it as a basic experience for the public administration, and failure in this phase will lead to dismissal without prior notice or compensation, thus ending their employment relationship with their hiring entity.

Research Problem:

This study aims to answer the following research problem: What is the legal status of interns under Algerian employment legislation?

To address this problem, it is necessary to pose a set of sub-questions:

- What is meant by an intern?
- What are the main rights and duties of an intern?
- What are the stages of the internship period?

Importance of the Study:

Based on the research problem, its importance can be highlighted through the significant role that the internship period plays, which is considered the most crucial stage for the intern. This period ensures their abilities and readiness to integrate into the job by exposing them to their rights and duties, as well as the conduct of the internship period.

Objectives of the Study:

Through our study, we primarily aim to:

- Provide a theoretical foundation for the internship and the intern.
- Identify the most important rights and duties of the intern.
- Attempt to present the stages of the internship period.

Research Methodology:

Due to the nature of the study and the aim to address the main problem, both descriptive and analytical methodologies were employed. The descriptive approach was used to describe the key concepts related to the definition of the intern, while the analytical approach was used to analyze the legal system governing interns under Algerian employment legislation, starting from the appointment stage to the official appointment stage, as they are suitable for the purposes of the study. Accordingly, the study is divided into three sections. In the first section, we address the concept of the intern; in the second section, we discuss the main rights and duties of the intern; and in the third section, we study the conduct of the internship period.

Section One: The Concept of the Intern in Public Institutions and Administrations

Subsection One: The Juridical Concept of the Intern

There are multiple concepts regarding the definition of an intern. Some view it as any employee who holds or is expected to hold a permanent public position, although they have not yet been officially appointed to a rank within the administrative ladder. This appointment depends on their successful completion of the internship period or on demonstrating their actual suitability for the tasks assigned to them at the designated position (1).

It is also defined as anyone appointed to a permanent public position without being officially recognized, although they are subject to all the rules of public employment law. However, their employment relationship may be terminated due to a lack of professional competence (2).

Additionally, it is defined as "any newly employed person in a public institution or administration who is generally required to complete an internship period before assuming any rank in the public service." (3)

Subsection Two: The Legislative Concept of the Intern:

The legislator has limited itself to organizing the legal status of the intern without providing any definition for it. Based on this, Article 83 of Order 06-03 states that any candidate employed in any rank of public employment must be appointed as an intern.

In the same vein, Article 02 of Executive Decree 17-322 stipulates that every employee appointed to any rank in public employment must be designated as an intern, provided they successfully complete the legally required internship period that precedes their official appointment.

However, exceptionally, due to the specific and high qualifications that may be required to join certain categories and ranks, employees may be appointed directly to their positions without undergoing the internship period if their specific governing law states so (4).

Section Two: Rights and Duties of the Intern:

During the internship period, interns enjoy the same rights and guarantees granted to employees, such as the right to a salary after performing services, the right to social protection, and the right to days off, holidays, and legal absences. They are also subject to the same duties imposed, such as the duty of neutrality, confidentiality, and professional secrecy, as well as the obligation to refrain from any profitable activity and to respect the authority of the state. However, the principle that an intern benefits from the same rights as employees is not absolute; there are exceptions primarily due to the unstable status of the intern, particularly regarding the possibility of being dismissed by the hiring entity without prior notice or compensation at the end of the internship period. This has led the legislator to deny interns certain rights enjoyed by employees, especially the right to membership in equal-member administrative committees, the right to transfer, leave of absence, and assignment, as well as being placed at the disposal of the administration.

Subsection One: Rights of the Intern and Exceptions Thereof

Branch One: Rights of the Intern During the Internship Period

First - The Right to Salary After Performing Services

The term "salary" refers to the monetary amount that the intern receives as a result of their actual performance of duties within the public institution or administration to which they belong (5). Similar to appointed employees, Algerian legislation, under Article 06 of Executive Decree No. 17-322, which sets the provisions applicable to interns in public institutions and administrations, affirms the intern's right to receive their salary during the internship period, provided they perform the required work. Article 04 of Presidential Decree No. 07-304 states that the salary consists of two elements:

- The fixed element: represented by the basic salary.
- The variable element: represented by allowances and compensations.

Thus, the basic salary compensates for the intern's fundamental legal obligations, while the allowances compensate for specific consequences associated with performing certain activities, as well as the location and conditions of work. The allowances are related to productivity and performance (6).

It is noteworthy that, according to the previous definition of salary, it is characterized by several principles, the most important of which is:

1. The Principle of Work Performed:

This means that the intern cannot benefit from the salary unless they perform the required work by adhering to the legal obligations imposed on them, even if they do not perform any service during the day. This principle is well known in public accounting texts, as employees are obliged to ensure the continuity of public service (7). In this context, any unjustified absence or interruption of the intern's work is considered an unpaid period, during which deductions from their salary will occur for that duration. Article 207 of Order 06-03 explicitly states that no employee, regardless of rank, can receive a salary for an unpaid period of work, and any intern who is absent without an acceptable

justification is penalized by deducting their salary for the days of absence, without prejudice to the disciplinary penalties prescribed in this area.

2. The Principle of Not Accumulating Salaries:

The essence of this principle is that an intern cannot combine two or more salaries, nor can they engage in any profitable activity, whether in a public institution or private administration, and receive a second salary. Therefore, every intern must dedicate their entire time to fulfilling the responsibilities of public service in accordance with Article 43 of Order 06-03, which stipulates that employees must devote their entire professional activities to the tasks assigned to them, and they cannot engage in any profitable activities in a private capacity, regardless of their nature, unless the law provides otherwise. Exceptions include training and educational activities, which are considered secondary activities subject to authorization from the public institution or administration to which the employee belongs.

Second - The Right to Social Protection:

Social protection refers to an integrated set of social services and measures that states take to provide a minimum level of protection against economic, social, and environmental risks faced by families or individuals, particularly vulnerable and weak groups, and to ensure access to basic social services for all, in line with the principles of equal opportunities and social justice (8).

In this context, interns benefit from a range of social insurances designed to protect and compensate them for the consequences of occupational hazards, such as the effects of illness, disability, death, work accidents, and occupational diseases, as well as maternity for female employees. This is achieved through the employer's responsibility to insure the intern with social security services against all diseases or accidents that occur while on duty, benefiting from all legally guaranteed social coverage advantages, such as free medical treatment and free access to medication, at least partially (9).

Third - The Right to Days Off, Holidays, and Legal Absences:

The Algerian legislator has affirmed the intern's right to benefit from legal rest days, whereby they are entitled to one full rest day each week, as well as paid holidays, in addition to the right to annual leave based on the work performed during the reference period from July 1 to June 30, at a rate of two and a half days for each month of service, provided that the total duration does not exceed thirty (30) days. However, exceptionally, for newly appointed employees, any work period exceeding fifteen (15) days is considered equivalent to one month of work (10).

In the same context, female interns benefit from maternity leave of (98) days and breastfeeding hours starting from the end of maternity leave, at a rate of two hours per day during the first six (6) months and one hour each day during the second six months, with the possibility of distributing this hour throughout the day according to the intern's preference and the necessity of the service (11).

Moreover, the intern is entitled to absences without loss of salary, provided they present prior justification to the hiring authority in the following cases:

- Pursuing studies related to their professional activity, where they benefit weekly from a maximum of four (4) hours, taking into consideration the necessity of service.
- Participating in international cultural or sports events.
- Participating in sessions of national and local councils where they hold an elected mandate.

Fourth - The Right to Be Called for National Service:

It is worth noting that if an intern is called to fulfill their national service obligation, they are placed in a status called "national service" by virtue of a decision or order issued by the hiring authority. They shall be reintegrated in the same manner and by force of law into their original rank, even if it exceeds the number, and in this case, they enjoy priority in appointment to the high position they held before their enlistment, should the position remain vacant. The duration of national service shall be counted for the intern's seniority for promotion in rank and grade, as well as for appointment to high positions, in accordance with the provisions of Article 10 of Order 06-03.

Branch Two: Exceptions to the Rights of the Intern During the Internship Period

Although the intern enjoys many rights compared to the employee, the unstable situation of the intern, resulting from the probabilistic nature of the end of the internship period—which can conclude either with their confirmation in the position and thus the acquisition of employee status or with their dismissal from the position without prior notice or compensation—has opened the door for the Algerian legislator to deprive them of a number of rights as well as the benefit of some fundamental legal situations, which can be summarized as follows:

First - Deprivation of Candidacy for Membership in Equal Administrative Committees:

The development of public service has contributed to the evolution of the concept of equal administrative committees, which has paralleled their historical development and affirmed their importance within the public service system. In this regard, equal administrative committees are considered one of the permanent advisory administrative bodies in the Algerian administrative system, established within the public service. They represent a commitment to the principle of administrative neutrality, as well as an application of the principle of participatory democracy in administration, particularly in making important decisions related to the career paths of employees. These committees are viewed as a fundamental guarantee

provided by the legislator to employees by involving them in making decisions that govern their professional lives and providing them with essential guarantees, especially the right to defense (12).

These advisory bodies for public service are established at each rank or group of ranks or category, corresponding to their qualification levels within public institutions and administrations, by a decision or order issued by the authority with appointing power (13).

The equal administrative committees are also defined as bodies composed of members who are equal in authority and influence. They are formed to make decisions and manage matters related to a specific field. These members are appointed according to the laws and regulations in force in Algeria, and they strive to address and study various issues concerning employees while ensuring the protection of their rights within the framework of public service (14).

The Algerian legislator adopted two methods in forming the equal administrative committees. The first method is through elections, which pertains to the category of representatives of the employees belonging to the relevant rank or category. The second method involves appointing representatives of the administration after the elections have taken place (15).

In this context, the Algerian legislator stipulated in Article 13 of Executive Decree No. 17-322, which sets out the provisions applicable to interns in public institutions and administrations, the possibility for the intern to run for membership in an equal administrative committee, an appeals committee, or a technical committee. However, they can participate in the election of representatives of the employees belonging to the rank or category in which they seek to be confirmed.

It is noteworthy that the aforementioned Article 13 prohibits the intern from running for membership in the equal administrative committee concerning employee representatives. Still, it does not clarify whether the intern can or cannot be appointed in the equal administrative committees as a representative of the administration, as it only prohibits the intern from running without mentioning the possibility of their appointment as a representative of the administration. This is based on the premise that the committee equally includes elected representatives from employees and appointed representatives from the administration. Therefore, it would have been more appropriate for the legislator to stipulate the intern's exclusion from membership regardless of the method, whether by election or by appointment.

The reason for preventing the intern from membership in the equal administrative committee may be attributed to their unstable legal status on one hand, and to ensure the neutrality and transparency of this committee, considering that it is the body responsible for reviewing the confirmation files of interns after receiving the relevant reports from the legally qualified administrative authority.

Secondly - Deprivation of the Right to Transfer, Leave, Delegation, and Being at Disposal: Article 88 of Ordinance 06-03 stipulates that an intern cannot be transferred, placed in a state of delegation, or on leave. Furthermore, Article 15, Paragraph 1 of Executive Decree 17-322 states that an intern cannot be placed at the disposal of another administration or institution. It is noted that while Article 88 prohibits the transfer of the intern entirely, the legislator, under Article 15, Paragraph 2 of Executive Decree 17-322, has contradicted this rule by allowing the possibility of transferring the intern for the sake of public interest. Therefore, the legislator's intention here may be to deprive the intern of voluntary transfer requested by them while maintaining the possibility of compulsory transfer decided by the employing administration for public interest (16).

Section Two - Duties of the Intern: Article 87 of Ordinance No. 06-03 states that the intern is subject to the same duties as the employee, which are represented in:

Subsection One: Duties Related to Professional Ethics First - Respect for the Authority of the State: Article 40 of Ordinance 06-03 emphasizes the necessity for the intern to perform their duties and be loyal to the state and its institutions, enforcing respect for them in accordance with applicable laws by refraining from any action that could undermine the state's dignity, aiming to achieve the public interest.

Second - Duty of Confidentiality: The legislator stipulated the need for the intern to perform their tasks with full integrity, where they must avoid any actions that could conflict with the assigned duties, whether the actions occur during the performance of their job or outside of it. Additionally, they should exhibit appropriate and respectful behavior towards all their colleagues, whether they are superiors, subordinates, or visiting citizens to the public facility (17).

Subsection Two: Duties Related to the Position: First – Duty to Preserve Administrative Documents and Property of the Administration: The intern must ensure the protection of all administrative documents related to their duties and refrain from any actions that may alter, conceal, or destroy these documents. They are also required to maintain the property of the administration and not to use it for purposes outside the administration, especially for personal purposes (18).

Second – Prohibition on Combining the Position with Private Profitable Activities: Article 43 of Ordinance 06-03 stipulates that the intern must dedicate all their time to their activities, particularly the assigned tasks. They are strictly prohibited from engaging in any profitable activity outside their employing administration, except for activities related to training, research, and education, which are considered secondary activities subject to a license issued by the authority with the power of appointment (19).

Chapter Three: Conducting the Internship Period: Section One: Confirmation of the Intern: Article Four of Ordinance No. 06-03 defines confirmation as the "procedure through which an employee is established in their position."

It also refers to the legal action taken by the competent authority through a decision that officially confirms the public servant in their appointed position, thereby granting them employee status and fully subjecting them to the legal system of public employment (20).

Accordingly, once the internship period ends, the appointing authority prepares a document called the "Intern Evaluation Card," which includes a summarized account of all the quarterly evaluation cards specific to the intern. These evaluations are prepared based on reports from the supervising official of the department to which the intern belongs.

The internship report must contain the following data: (21)

- Confirmation of the intern.
- Extension of the internship period once and for the same duration.
- Dismissal of the intern without prior notice or compensation.

When the basic law stipulates the necessity for the intern to undergo preparatory training during the internship period to occupy the position, the confirmation of the intern remains contingent upon the completion of this training or any other special procedure. However, the confirmation of the relevant intern is effective from the end date of the internship (22).

It should be noted that the confirmation of the intern after the internship period is the prevailing procedure and the natural conclusion in practice, especially when the intern has demonstrated their competence and entitlement to the position. This is legally expressed through the issuance of a decision or decree of confirmation by the administrative authority with the power of appointment, represented by the "Director of the Institution," with the decision taking effect from the end date of the legal internship period (23).

Section Two - Extension of the Internship Period: The authority with the power of appointment may decide, based on the opinion of the equal members administrative committee for the rank or category to which the intern belongs, to extend the internship period once and for an equal duration, if it finds that the evaluation results for the intern were negative and that this extension would provide a second opportunity for the intern to demonstrate their competence and review and correct their mistakes, whether related to functional or ethical standards. The intern must prove their competence during the opportunity granted to them; therefore, upon the expiration of the extension period, the intern will face two scenarios: either confirmation in their original rank in the case of receiving a positive evaluation, or dismissal without prior notice or compensation if they fail again.

Under no circumstances, when extending the internship period, may the duration exceed two (2) years as a maximum, and the confirmation decision, if approved, shall take effect from the actual end date of the new internship period for the intern (24).

It is noteworthy that the extension period for the intern is counted in estimating seniority when promoting ranks and grades, as well as for appointments to higher positions.

Conclusion:

The internship period is an important stage in the professional career, allowing the employing body to verify the intern's suitability for performing public service tasks, in addition to their ability to acquire skills that enable them to carry out their responsibilities effectively.

Through studying the legal texts governing the legal status of the intern, particularly Order 06-03 and Executive Decree 20-177, we find that although the legislator has stipulated that the intern benefits from numerous rights such as the right to a salary, social services, and referral to national service, it has placed the intern in an unstable position with less protection compared to a confirmed employee by depriving them of some fundamental rights of public service, such as the right to apply for membership in equal members' administrative committees and the right to benefit from referral for leave and delegation. This occurs despite the intern bearing all obligations stipulated in the general public service law, in addition to being deprived of all basic guarantees in the face of dismissal procedures by granting the employing administration the authority to directly dismiss the intern without prior notice or compensation in case of failure to perform the tasks assigned to them.

References:

1. Bashir Sharif Shamseddin, Samira L'Akabi, "The Legal System of the Intern in Public Service," Journal of Legal and Social Sciences, Zian Achour University, Djelfa, Algeria, Vol. 04, No. 04, December 2019, p. 240.
2. Mourad Boutaba, "The Employees' System According to Order 06-03," Doctoral Thesis in Public Law, Faculty of Law, University of Algiers 1, 2017, p. 193.
3. Jalloul Ben Sidra, Salima Massarati, "The Legal Status of the Intern in Public Institutions and Administrations," Journal of Legal and Political Sciences, Hamla Lakhdar University, El Oued, Algeria, Vol. 09, No. 03, December 2018, p. 35.
4. Article 02 of Executive Decree No. 17-322 dated November 2, 2017, setting the provisions applicable to interns in public institutions and administrations, Official Gazette No. 66, dated November 12, 2017.
5. Serge Salon and Jean Charles Savignac, "Public Service," Paris, Dalloz, 2nd edition, 1976, p. 125.
6. Articles 06-07 of Presidential Decree No. 07-304 dated September 29, 2007, setting the reference framework for employee salaries and their payment system, Official Gazette No. 61, dated September 30, 2007, amended and supplemented.
7. Jalloul Fissah, "The Employee's Right to Salary and the Principle of Paid Work," Horizons of Sciences Journal, University of Djelfa, Algeria, No. 09, September 2017, p. 77.
8. Yahya Ben Badr Al-Maouli, "The Relationship Between Insurance Coverage and Social Welfare Programs," Social Insurance and Retirement Conference, Muscat, Sultanate of Oman, 2007, p. 06.

9. Abdelmajid Salama, "The Legal Status of the Intern in the General Public Service Law," *Proceedings of University of Algiers 1*, Vol. 34, No. 03, 2020, p. 169.
10. Articles 194-198 of Order No. 06-03, dated July 15, 2006, which includes the general public service law, *Official Gazette* No. 46, dated July 16, 2006, amended and supplemented.
11. Article 06, Paragraph 03 of Executive Decree No. 17-322, previous source.
12. Ahsen Ghabi, "The Legal System of Equal Members' Administrative Committees in Algeria: A Study in Light of Executive Decree No. 20-199 dated July 25, 2020," *Journal of the Kuwait International Law School – Additional Periodic Issue - Ninth Year - No. 3 - Serial No. 35*, June 2021, p. 505.
13. Rachid Habani, "The Employee's Guide and Public Service: A Comparative Analytical Study of the Provisions of Order 06-03 dated July 15, 2006, which includes the general public service law," *Dar Al-Najah for Books*, Algeria, 2015, p. 135.
14. Soumya Ben Rmouqa, "The Legal System of Equal Members' Administrative Committees in Algeria," *Doctoral Thesis in Law*, Department of Law, Faculty of Law and Political Science, University of Arab Ben Mehidi Um El Bouaghi, Algeria, 2009, p. 48.
15. Article 07 of Executive Decree No. 20-199, dated July 25, 2020, concerning equal members' administrative committees, appeal committees, and technical committees in public institutions and administrations, *Official Gazette* No. 44, dated July 30, 2020.
16. Sid Ali Fadili, "The Legal Status of the Intern in Public Service," *Journal of Professor Research for Legal and Political Studies*, University of Mohamed Boudiaf M'Sila, Algeria, Vol. 08, No. 01, June 2023, p. 359.
17. Articles 41 and 42 of Order 06-03, previous source.
18. Articles 49, 50, 51 of the same order.
19. Article 43 of Order 06-03, previous source.
20. Mourad Boutaba, previous reference, p. 197.
21. Article 25 of Executive Decree 17-322, previous source.
22. Article 16 of Executive Decree 17-322, previous source.
23. Article 09, Paragraph 02 of the same decree.
24. Article 18 of the same decree.

Detailed references:

First: Legal Texts

1. Order No. 06-03 dated July 15, 2006, includes the general public service law, *Official Gazette* No. 46, dated July 16, 2006, amended and supplemented.
2. Presidential Decree No. 07-304 dated September 29, 2007, setting the reference framework for employee salaries and their payment system, *Official Gazette* No. 61, dated September 30, 2007, amended and supplemented.
3. Executive Decree No. 17-322 dated November 2, 2017, setting the provisions applicable to interns in public institutions and administrations, *Official Gazette* No. 66, dated November 12, 2017.
4. Executive Decree No. 20-199, dated July 25, 2020, concerning equal members' administrative committees, appeal committees, and technical committees in public institutions and administrations, *Official Gazette* No. 44, dated July 30, 2020.

Second: Books

1. Ben Badr Al-Maouli Yahya, "The Relationship Between Insurance Coverage and Social Welfare Programs," *Social Insurance and Retirement Conference*, Muscat, Oman, 2007.
2. Habani Rashid, "The Employee's Guide and Public Service: A Comparative Analytical Study of the Provisions of Order 06-03 dated July 15, 2006, which includes the general public service law," *Dar Al-Najah for Books*, Algeria, 2015.
3. Serge Salon and Jean Charles Savignac, "Public Service," Paris, Dalloz, 2nd edition, 1976.

Third: Doctoral Theses

1. Ben Rmouqa Soumya, "The Legal System of Equal Members' Administrative Committees in Algeria," *Doctoral Thesis in Law*, Department of Law, Faculty of Law and Political Science, University of Arab Ben Mehidi Um El Bouaghi, Algeria, 2009.
2. Boutaba Mourad, "The Employees' System According to Order 06-03," *Doctoral Thesis in Public Law*, Faculty of Law, University of Algiers 1, 2017.

Fourth: Articles

1. Bashir Sharif Shamseddin and L'Akabi Samira, "The Legal System of the Intern in Public Service," *Journal of Legal and Social Sciences*, Zian Achour University, Djelfa, Algeria, Vol. 04, No. 04, December 2019.
2. Ben Sidra Jalloul and Massarati Salima, "The Legal Status of the Intern in Public Institutions and Administrations," *Journal of Legal and Political Sciences*, Hamla Lakhdar University, El Oued, Algeria, Vol. 09, No. 03, December 2018.
3. Salama Abdelmajid, "The Legal Status of the Intern in the General Public Service Law," *Proceedings of University of Algiers 1*, Vol. 34, No. 03, 2020.
4. Ghabi Ahsen, "The Legal System of Equal Members' Administrative Committees in Algeria: A Study in Light of Executive Decree No. 20-199 dated July 25, 2020," *Journal of the Kuwait International Law School - Additional Periodic Issue - Ninth Year - No. 3 - Serial No. 35*, June 2021.

5. Fadili Sid Ali, "The Legal Status of the Intern in Public Service," Journal of Professor Research for Legal and Political Studies, University of Mohamed Boudiaf M'Sila, Algeria, Vol. 08, No. 01, June 2023.
6. Fissah Jalloul, "The Employee's Right to Salary and the Principle of Paid Work," Horizons of Sciences Journal, University of Djelfa, Algeria, No. 09, September 2017.