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The Legal Effects of the Precautionary Suspension of a Public Employee Due to Criminal Proceedings Against Them

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***Abstract*—**A public employee may, in the course of performing their duties or in connection with them, commit a professional misconduct of a particularly serious and grave nature that constitutes a criminal offence. The employee may also commit an act classified as a crime punishable by law, thereby becoming subject to criminal proceedings that prevent them from remaining in their position. In such circumstances, the employing administration may be compelled to take certain precautionary measures against the employee, such as precautionary suspension, whereby the public employee is removed from their position in the interest of the proper functioning of the public service until the criminal proceedings have been adjudicated. This places the employee in a special legal position, in which the exercise of their rights and compliance with their duties are subject to specific considerations in practice, making their situation somewhat different from that of a public employee under normal circumstances.

***Keywords*—**Criminal Proceedings, Precautionary Suspension, Public Employee, Rights, Duties.

Introduction

When a public employee commits an offence under ordinary criminal law, they may be subject to criminal proceedings that necessitate the adoption of precautionary measures, such as temporarily removing them from their position until their case is resolved, where the criminal proceedings in question do not allow them to remain in office pending the issuance of a final judgment. This measure is known as the precautionary suspension of a public employee and is considered the first measure taken by the authority vested with the power of appointment. However, despite being regarded as merely a precautionary measure, it carries significant implications, as its purpose is to temporarily remove the employee from their position, preventing them from performing their duties normally until the criminal proceedings are concluded. This leads to a change in the legal status of the public employee in view of the legal consequences it entails, namely the deprivation of certain fundamental rights affecting their administrative and financial status. These include, on the one hand, rights relating to the public employee's financial entitlements and, on the other hand, duties relating to the actual performance of service. Accordingly, when implementing this measure, the administration must comply with the applicable laws and regulations to ensure that it does not abuse its authority or depart from the principle of legality. In this context, the following research question arises: **To what extent does precautionary suspension imposed by the competent disciplinary authority affect the rights and duties of a public employee?**

Since answering this research question depends on the legal provisions and circulars issued by the Directorate General of the Civil Service and Administrative Reform that are relevant to the subject, as well as on the pertinent judicial decisions, it was necessary to adopt the analytical method, which is appropriate for analysing and interpreting the content of legal provisions and judicial decisions. Furthermore, given that the study draws on certain provisions of comparative legal systems, namely the French and Egyptian legal systems, as well as judicial

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decisions issued by the French Conseil d'État and the Egyptian Supreme Administrative Court, the comparative method was also required.

In order to answer the questions raised by the research problem, it was necessary to examine the rights and duties of public employees affected by precautionary suspension. Accordingly, this research paper is divided into two sections:

Section One: Rights of Public Employees Affected by Precautionary Suspension

Section Two: Duties of Public Employees Affected by Precautionary Suspension

Section One

Rights of Public Employees Affected by Precautionary Suspension

Although the employment relationship between the employing administration and an employee suspended on account of criminal proceedings against them has not been terminated but is merely subject to temporary suspension, the employee is deprived of certain rights they previously enjoyed, owing to the specific nature of these rights or their connection with the actual performance of duties. Accordingly, this section examines the rights from which a public employee is deprived when placed under precautionary suspension as a result of criminal proceedings, through three subsections: the first concerns the right to remuneration, the second concerns the right to promotion, and the third concerns the right to resign.

Subsection One

The Right to Remuneration

One of the most significant rights enjoyed by a public employee is the right to remuneration, which constitutes a direct financial entitlement. It is fundamental because remuneration is the consideration that encourages an individual to enter public employment, devote themselves to it, and perform their duties in order to receive an income that meets their daily needs. Accordingly, this subsection examines the extent to which the right to remuneration is affected by the precautionary suspension of a public employee.

A public employee or public agent is prohibited from performing the duties and exercising the powers assigned to them as soon as a suspension decision is issued and they are removed from their position. Indeed, removal from office and the prohibition on performing duties constitute the intended purpose of the suspension decision and its principal objective. Consequently, the employee ceases to perform their duties, although this does not terminate the employment relationship between them and the employing administration. This results in the suspension of remuneration payments, either wholly or partially, at the administration's discretion, on the grounds that the employee receives remuneration in return for performing the duties assigned to them in accordance with the applicable laws and legislation. Since the employee is no longer performing work for which remuneration is payable, their entitlement to it is consequently forfeited.

Nevertheless, given that the employee is prevented from performing their duties normally against their will and is removed from their position by order of the competent authority, most legislatures have sought to guarantee them a minimum level of subsistence until the outcome of the judicial investigations becomes clear. Accordingly, the legislature has granted employees the right to receive part of their remuneration during the period of suspension.

The Algerian legislature provided for this matter in the various civil service laws enacted over time. First, Article 59 of Ordinance No. 66-133 stipulates that the precautionary suspension decision issued by the competent authority must specify whether the suspended employee may continue to receive their full remuneration or only a portion thereof, not exceeding half, in addition to family allowances.[1] Similarly, in the second paragraph of Article 131 of Decree No. 85-59, the legislature provided that a public employee subject to criminal proceedings and placed under precautionary suspension from work may receive a portion of their basic salary not exceeding three-quarters thereof for a period of six months from the date on which the decision is issued.[2] As for Ordinance No. 06-03, as amended and supplemented, the second paragraph of Article 174 provides that, during the period of suspension resulting from criminal proceedings, the employee may receive a portion of their remuneration not exceeding half for a period not exceeding six months from the date of suspension and the issuance of the corresponding decision.[3]

An examination of these provisions reveals that the legislature has adopted the general rule of preventing a public employee placed under precautionary suspension from receiving remuneration throughout the suspension

period. By way of exception, however, the employee may receive a portion of their remuneration in addition to the full amount of family allowances. This interpretation is supported by the use of the word **"may"** in all the aforementioned legislative provisions. It can therefore be concluded that the legislature has granted the competent authority discretionary power to pay part of the public employee's remuneration. Consequently, the employee cannot claim an unconditional entitlement to remuneration throughout the suspension period. This interpretation is further supported by the various correspondence and circulars issued by the Directorate General of the Civil Service and Administrative Reform on this matter, whose contents confirm this position, including Instruction No. 10 of 2019.[4]

In one of its official communications, the Directorate General also stated that the period of precautionary suspension resulting from criminal proceedings does not constitute a period of service actually performed, in accordance with Article 32 of Ordinance No. 06-03, as amended and supplemented, which establishes the employee's entitlement to remuneration upon performing the service. Accordingly, since the suspension period is regarded as a period during which no service is performed, the employee is not entitled to remuneration for that period, except for the portion specified in the precautionary suspension decision, in addition to the family allowances to which they remain entitled[5].

The Directorate General of the Treasury further confirmed this position by sending a telegram to the Regional Director of the Treasury in the Province of Chlef to inquire about the case of an administrative assistant employed at the Paramedical Training Institute in Chettia, specifically regarding the legality of paying their salary during a period of suspension resulting from criminal proceedings that extended from 4 October 2009 to 20 February 2012.[6]

The Directorate General of the Budget likewise confirmed that remuneration is suspended in such cases. In one of its communications, it stated that the municipal treasurer's refusal to pay an employee's salary during a period of suspension resulting from criminal proceedings constituted a sound and well-founded position based on Article 32 of the General Statute of the Public Service.[7]

The Directorate General of the Civil Service also ruled that, where the competent authority decides, in the exercise of its discretionary powers, to pay part of the remuneration of a suspended employee, it must expressly provide for such payment in the suspension decision, for a period not exceeding six months from the date of suspension. The employee must, however, continue to receive the full amount of the family allowances to which they are entitled throughout the suspension period.[8]

The same Directorate further stated explicitly that, although an employee placed under precautionary suspension as a result of criminal proceedings may be reclassified under the new salary classification grid, they are not entitled to the additional amount resulting from such reclassification if the suspension period exceeds six months, since this period is regarded as one during which no service is performed and for which no remuneration is payable.[9]

In France, the French Conseil d'État, in its decision of 5 February 1958 in the *Millot* case, held that the imprisonment of a public employee facing criminal proceedings may relieve the administration of the need to initiate formal suspension proceedings against them; instead, it may simply suspend payment of their salary on the grounds that they are not performing their duties.[10]

The French legislature adopted a similar approach, addressing the issue of remuneration during a period of suspension resulting from criminal proceedings. It established that the general rule is that an employee's entitlement to remuneration is not suspended, while suspension of this entitlement constitutes an exception, under which the employee is prevented from receiving their full salary. Accordingly, the disciplinary authority is empowered to deduct a portion of the employee's remuneration, not exceeding half, upon the issuance of the suspension decision and until their legal status is finally resolved. The employee also retains the right to receive the residence allowance and all family allowances, pursuant to the third paragraph of Article 30 of Law No. 83-634, which provides as follows: "A public employee who, owing to criminal proceedings, has not been reinstated in their duties, has been provisionally assigned, or has been temporarily seconded to another administration may be subject to a deduction not exceeding half of the remuneration referred to in the second paragraph. Nevertheless, they shall continue to receive the full amount of family allowances." [11]

The French legislature reaffirmed this approach by providing for the deduction of a portion of the employee's remuneration not exceeding half, while preserving their entitlement to family allowances, in the fourth paragraph of Article 531 of the General Statute of the Public Service.[12]

As for the Egyptian legislature, it did not adopt the same approach as its French counterpart. Instead, it emphasised the need to suspend the remuneration of a public employee placed under suspension as a result of criminal proceedings from the date on which the suspension decision is issued. An examination of Article 64 of Egypt's Civil Service Law of 2016 reveals that the legislature distinguishes between cases in which an employee is held in pretrial detention and those in which the employee is imprisoned pursuant to a non-final criminal judgment. In the former case, payment of half the employee's remuneration is suspended, whereas in the latter case, payment of the employee's entire remuneration is suspended.

The Egyptian administrative judiciary has endorsed this approach. In one of its decisions, the Supreme Administrative Court held that suspension from work resulting from an employee's pretrial detention or from their commission of an offence under ordinary criminal law generally deprives the employee of remuneration throughout the suspension period. By way of exception, however, the employee may be paid all or part of their remuneration.[13]

In another decision, the Egyptian administrative judiciary ruled that an employee held in pretrial detention has their entitlement to remuneration suspended. The Administrative Court of Justice stated as follows: "Where an employee has been placed in pretrial detention by the Public Prosecution and is subsequently released without bail, they may report to resume their duties accompanied by a certificate from the Public Prosecution confirming their release and stating that there is no impediment to their return to work. In such circumstances, the suspension that took effect by operation of law shall likewise terminate as of the date of release, and the employee shall be entitled to remuneration from the date on which they present themselves to resume their duties. The administration may not prevent the employee from returning to work and subsequently invoke the fact that they have not performed work for which remuneration is payable, since the administration itself caused that situation, through no fault of the employee, particularly where it has not considered the allegations against them to warrant disciplinary liability."

It should be noted that a public employee placed under precautionary suspension as a result of criminal proceedings against them is not entitled to the performance-related bonus, which is withheld during the suspension period. This is because most civil service laws provide that a suspended employee may receive only a portion of their remuneration, together with family allowances, without expressly recognising their entitlement to the performance-related bonus. This position is illustrated by a communication issued by the Directorate General of the Civil Service in Algeria, which stated that entitlement to the performance-related bonus requires the employee to undergo an assessment of their job performance, in accordance with the provisions of Article 7 of Presidential Decree No. 07-304.[14] Accordingly, such an assessment can only be carried out when the employee is actively performing their duties. On the basis of the foregoing, a suspended employee who is not in active service cannot receive the performance-related bonus during the suspension period, since their performance cannot be assessed.[15]

The French legislature likewise provided for the withholding of the performance-related bonus from suspended employees. This can be inferred from its express limitation of the allowances and benefits available to such employees to family allowances and the residence allowance, as stipulated in the aforementioned Article 30. Since the legislature made no reference to the performance-related bonus, its silence on this matter implies that the employee is not entitled to receive it. This interpretation was confirmed by the French Conseil d'État in one of its decisions, in which it held that a public employee cannot claim bonuses and allowances linked to the actual performance of duties.[16]

In light of the foregoing, it may be concluded that the legislation governing the public service differs with regard to the remuneration payable to employees during the suspension period. The French legislature adopted a more protective approach towards employees by confirming their right to retain their full remuneration during the first four months following the suspension decision. Where the suspension exceeds four months and the employee has not been reinstated, a portion of their remuneration, not exceeding half, may be withheld, while family allowances continue to be paid. By contrast, the Egyptian and Algerian legislatures have established the suspension of the employee's entitlement to remuneration as the general rule, while allowing, by way of exception, the payment of a portion thereof.

What emerges from this comparison is that all the legal systems examined provide for the retention of at least part of the employee's remuneration, if not the whole amount, despite their removal from office. This departs from the principle that remuneration is payable only in return for services actually performed. Nevertheless, this

approach has been adopted for humanitarian and social reasons, with the aim of protecting all or part of the employee's remuneration from the effects of a precautionary measure. These legislative approaches reflect the influence of social protection considerations and recognise the extent to which the suspended employee's family depends on their salary to meet its needs, particularly since family allowances alone are insufficient.

Finally, it is important to emphasise the need for the Algerian legislature to reconsider the period during which a suspended employee may receive part of their remuneration. A period of six months is relatively short compared with the duration of criminal proceedings, which, in practice, may extend over several years owing to the complexity of judicial procedures. As for contractual employees, who are deprived of their entire remuneration from the date on which the suspension decision is issued, it would be advisable to reconsider their situation as well.

Subsection Two

The Right to Promotion

Promotion is one of the most important rights associated with the career of a public employee, as it enables them to advance through the administrative hierarchy, attain higher grades and positions, and assume greater responsibilities, on the one hand, while obtaining an increase in remuneration, on the other. The promotion system aims to provide employees with moral incentives and encourage them to continue making efforts and serving the public service to the highest possible standard. Promotion is subject to certain restrictions and procedures established by the applicable laws and regulations. However, an employee's entitlement to promotion may be restricted by certain impediments, including the precautionary suspension of an employee subject to criminal proceedings. Accordingly, this subsection examines the effects of precautionary suspension on the right to promotion.

Promotion constitutes recognition by the competent authority of the competence and trustworthiness of a public employee or public agent, and should therefore be accompanied by advancement to a higher position or grade. Nevertheless, promotion may be postponed or suspended as a result of criminal proceedings against the employee concerned and their placement under precautionary suspension. In this regard, legal systems differ in their approaches. The Egyptian legislature addressed this issue under the aforementioned Civil Service Law, affirming that a public employee who has been temporarily removed from their position because they have been referred for criminal trial may not be promoted. Accordingly, promotion is suspended throughout the suspension period, while the employee's position is reserved until their case has been resolved. In this respect, two situations may arise:

- **If the public employee is acquitted**, they must be promoted with effect from the date on which the promotion would ordinarily have taken place, as though they had never been placed under precautionary suspension. They must also receive the corresponding remuneration retroactively from that date.
- **If the public employee is convicted rather than acquitted**, they must not be promoted, and their entitlement to promotion is forfeited.

The foregoing indicates that the Egyptian legislature provides for the suspension of promotion during the suspension period where the applicable disciplinary penalty is more severe than a warning. The legislature has also stipulated that the suspension of promotion must not exceed two years. If this period is exceeded, the employee forfeits their entitlement to promotion, irrespective of the nature of the judgment subsequently rendered against them, whether acquittal or conviction, and promotion is granted to the employee who satisfies the relevant eligibility requirements.

In France, however, an examination of the aforementioned Law No. 83-634 reveals that the legislature did not expressly address the effect of precautionary suspension on the promotion of a public employee. The established position is that the suspension of an employee does not entail the suspension or postponement of their promotion. Accordingly, if the employee becomes eligible for promotion during the suspension period, they may benefit from it without their suspended status being taken into consideration. This is because precautionary suspension is regarded by the legislature as a preventive measure intended to remove the employee temporarily from their position until the competent court determines their case. Its purpose is to prevent the employee from influencing the course of the investigation, rather than to punish them. Furthermore, suspending or postponing promotion could effectively take the form of a disciplinary sanction.

This position is further supported by the fact that, in the aforementioned Article 30, the French legislature addressed only the effect of suspension on remuneration and expressly stated that the employee retains all their

rights throughout the suspension period. This implies that the right to promotion is neither affected nor restricted by this measure. The Conseil d'État confirmed this interpretation, holding in one of its judgments that the suspension period must be taken into account when determining a public employee's eligibility for promotion. It reaffirmed this position in another judgment, in which it ruled that postponing an employee's promotion on the grounds of precautionary suspension constitutes a disciplinary measure.[17]

Accordingly, it may be concluded that the French legislature has established that an employee retains their right to promotion throughout the suspension period, regardless of whether they become eligible for promotion at the beginning of the suspension or upon its termination, since the suspension does not affect that entitlement.

The Algerian legislature has likewise followed the same approach as its French counterpart, as it has not expressly addressed the fate of the right to promotion during the suspension period or the extent to which it may be affected. However, an examination of Article 174 of the aforementioned Ordinance No. 06-03 reveals that it provides for the possibility of granting a suspended employee a portion of their remuneration, as previously explained, without addressing any other rights. This may be interpreted as indicating that the legislature has specified the rights available to the employee during the suspension period.

This interpretation was confirmed by the Directorate General of the Civil Service in one of its communications, in which it expressly sought to clarify the ambiguity surrounding Article 174. It stated that a period of precautionary suspension resulting from criminal proceedings does not constitute a period of actual service and is therefore not taken into account for the purposes of remuneration or promotion.[18]

In another communication, the Directorate General further stated that consideration by the Joint Administrative Committee of a file concerning the promotion of a public employee placed under precautionary suspension constitutes an unlawful act, since the employee concerned cannot benefit from promotion during the suspension period. The communication expressly stated: **"Accordingly, the promotion of Mr. Massoudi Issa during his suspension period is contrary to the regulations in force."**[19]

It should be noted that the Algerian legislature has not clarified the implications of the judgment rendered against the public employee for their promotion prospects. It should therefore follow the example of its Egyptian counterpart by specifying the consequences for promotion where an employee is acquitted, including whether promotion should take effect retroactively. Treating precautionary suspension as an impediment to promotion may be regarded as somewhat excessive, since postponement of promotion may effectively become an additional disciplinary penalty imposed on the employee, alongside any sanction that may subsequently be imposed in disciplinary proceedings. The Egyptian and Algerian legislatures should therefore have followed the approach adopted by the French legislature and refrained from providing for the suspension of promotion. Promotion represents recognition of years of prior service and effort already made. For example, a suspended employee may obtain a higher qualification than the one held at the time of recruitment shortly after their suspension, or may satisfy all the requirements for promotion by selection, thereby placing them at the top of the eligibility ranking.

Subsection Three

The Right to Resign

Resignation is one of the rights enjoyed by a public employee or public servant, as no one may be compelled to perform duties and functions against their will when they do not wish to do so. On this basis, most public service systems have recognized and provided for the employee's right to resign. Accordingly, this subsection will examine the extent to which this right is affected by the precautionary suspension imposed on a public employee as a result of criminal proceedings.

As a general rule, resignation is a right of the public employee that may not be refused by the employing authority. However, public service legislation has restricted the employee's ability to exercise this right when they are placed under precautionary suspension, since submitting a resignation does not, in itself, terminate the employee's service or bring their duties to an end. Rather, the resignation must first be accepted by the employing authority. This cannot be done in the case of a suspended employee, who has already been removed from their position. Therefore, the resignation request is not considered until a decision has been rendered in the criminal proceedings brought against the employee, as the suspension prevents them from resigning. A review of the legislation governing the public service in Algeria reveals that it does not expressly provide for the suspension of the resignation process during the suspension period. Nevertheless, an examination of the administrative guidance issued on this matter reveals correspondence from the Directorate General of the Civil Service that addresses this

issue and clarifies the applicable position. It expressly states that the administration may not accept a resignation before a final judgment has been rendered in the proceedings brought against the employee. This is evident from the following statement: **“Given that the person concerned is under precautionary suspension as a result of criminal proceedings, their resignation request cannot be considered, since resignation requires the employee to be in active service.”**[20]

The Egyptian legislature, by contrast, expressly provides that resignation may not be accepted during the period of suspension, as the suspension precludes this possibility. Under Article 66 of the 2016 Civil Service Law, an employee subject to disciplinary proceedings may not have their service terminated for any reason, including resignation, except in the event of death, where the investigation commenced before the end of their service. Although this provision concerns an employee subject to disciplinary proceedings, and despite the absence of an explicit provision prohibiting the acceptance of the resignation of an employee facing judicial proceedings, the practice has been to defer consideration of resignation requests, particularly where the criminal proceedings concern an offence related to the employee’s position. This interpretation is further supported by the fact that criminal proceedings against a public employee are often followed by disciplinary proceedings. Consequently, if resignation cannot be accepted during the latter proceedings, it follows that it should likewise not be accepted during the former.

As for the French legislature, despite research into this matter, no provision has been identified that clarifies its position on whether a public employee placed under precautionary suspension as a result of criminal proceedings may exercise the right to resign.

Accordingly, the refusal to accept a resignation, or the postponement of its consideration until the criminal proceedings have been concluded, appears reasonable. This prevents the employee from evading accountability and escaping punishment, since the consequences arising from the conclusion of criminal proceedings followed by disciplinary proceedings differ from those resulting from resignation. The latter may enable the employee to avoid the consequences of proceedings, regardless of their nature.

Section Two

Duties of Public Employees Affected by Precautionary Suspension

The precautionary suspension of a public employee necessarily results in the temporary suspension of the employment relationship between the employee and the employing authority. This entails the suspension of certain duties imposed on the employee by virtue of the position they hold, as they are relieved of some of their prescribed obligations and are no longer required to fulfil them until their legal status has been resolved. Accordingly, this section examines these duties and is divided into two subsections: the first concerns the duty to perform actual service, while the second addresses the duty of hierarchical obedience.

Subsection One

The Duty to Perform Actual Service

This duty is intrinsically linked to one of the legal statuses applicable to public employees, namely the status of being in active service, since the obligation to exercise the powers associated with a position can only be fulfilled when the employee personally assumes their post. For this reason, it is also referred to as the duty to personally and effectively exercise the functions of the position. It is one of the principal duties incumbent upon a public employee, both because the employee’s personal involvement is essential and because this duty constitutes a prerequisite for the enjoyment of certain rights. An employee is not entitled to remuneration until the service has been performed. Since the purpose of precautionary suspension is to remove the employee from their position, it is necessary to examine the extent to which this duty is affected by such suspension.

One of the principal consequences arising immediately from the precautionary suspension of an employee is their removal from their position, whereby they are deprived of the authority to perform the duties assigned to them and prohibited from exercising their official functions. Consequently, the duty to perform service is suspended, as the employee may no longer attend the workplace on a daily basis or carry out the duties associated with their position. This prohibition constitutes the very purpose for which precautionary suspension was established. If the employee performs any act falling within the functions of the position, that act is considered an usurpation of authority, since it has been performed by a person who lacks the legal authority to do so. Accordingly, the act is vitiated by a defect of lack of competence, unless it is performed pursuant to an

authorization granted by the competent authority.

The purpose of removing the employee from their position is to ensure that, while criminal proceedings are pending, they remain away from the workplace so as not to influence the investigation, obstruct its progress, or impede those responsible for establishing the truth. Such interference might include influencing witnesses, concealing the features of the crime or eliminating its traces, or exerting pressure on fellow employees, particularly where the suspended employee holds an administrative supervisory position. Another reason for removing the employee during the suspension period is that, if dismissal is subsequently ordered, it may take effect from the date on which the suspension decision was issued, thereby producing retroactive effects. This illustrates the seriousness of precautionary suspension.

A review of Ordinance No. 06-03, as amended and supplemented, reveals that Article 174 requires the employee to be removed from their position and prohibited from exercising their official functions where the criminal proceedings so warrant. This is expressed in the wording **"the employee shall be immediately suspended..."** This interpretation was confirmed by Instruction No. 10 of 2019, referred to above, which addressed the consequences of precautionary suspension under Article 174 and stated that the employee concerned is prohibited from performing their duties, meaning that they must be removed from their position. [21]

Removing a public employee from their position requires the administration or employing authority to take a series of measures and comply with the relevant requirements. These measures include preventing the employee from using work-related resources, such as a vehicle, official uniform, or firearm where the employee belongs to the National Security services. The employee must also be prohibited from using their official capacity in dealings with third parties, including through the use of official seals and other means. Furthermore, any legal acts falling within the scope of the employee's official functions and relating to their position are considered invalid, since they are performed by a person who lacks the authority to do so. However, some legal scholars consider that the de facto public servant doctrine may be applied where its conditions are satisfied.[22]

Nevertheless, it may be argued that certain acts performed by a suspended employee should be considered valid rather than void, since the de facto public servant doctrine cannot automatically be applied in this situation. This doctrine presupposes that the act is performed by a person who is external to the administration and the public service. Moreover, the employment relationship is not terminated during the suspension period but merely suspended, and the appointment decision is not revoked and remains in force. Accordingly, the acts in question are performed by an employee who continues to occupy an established position within the staffing structure, rather than by a person merely regarded as a public employee.

This position is supported by the approach adopted by the French Conseil d'État, which has accepted the possibility of a suspended employee performing certain official duties. This means that the prohibition may be partial, applying to certain functions but not others, in the interests of the proper functioning of the public service. In addition, the Conseil d'État has permitted certain duties to be assigned to a suspended employee for performance without requiring them to attend the workplace, allowing them instead to carry out those duties from home.[23]

It should be noted that, although a public employee is removed from their position and prohibited from performing their official functions during the suspension period, they remain bound by certain professional duties previously mentioned, such as the duty to preserve professional confidentiality and the duty of discretion, among others. Any breach of these duties may result in disciplinary proceedings. At the same time, the employee continues to enjoy certain rights, including the right to protection.

Subsection Two

The Duty of Hierarchical Obedience

The hierarchical structure is one of the principal foundations of the public service, around which its organization is centered, as it plays an important role in distributing official activities across different levels. Administrative activities are allocated among employees according to their respective positions and grades within the administrative hierarchy. To ensure the proper functioning of the public service, the principle of hierarchical authority has been established, whereby every subordinate is subject to their administrative superior. This is known as the duty of obedience. Accordingly, this subsection examines the extent to which an employee placed under precautionary suspension remains bound by this duty.

A careful examination of the duty of hierarchical obedience reveals that it is closely linked to the duty to perform actual service. Compliance with the former is ordinarily achieved through the public employee's regular performance of their duties and functions, in accordance with the orders and instructions issued by their administrative superior.

Accordingly, it may be argued that this duty is suspended during the period in which an employee is placed under precautionary suspension as a result of criminal proceedings, since the employee does not perform their position or duties, having been removed from their post pending the resolution of the proceedings. As this is consistent with the purpose of precautionary suspension, the employee is relieved of the duty of hierarchical obedience during that period. This follows logically from the absence of actual service: once the employee has been removed from their position and is no longer performing their duties, there are ordinarily no hierarchical orders, instructions, or directives with which they must comply. As a general rule, acts performed by the suspended employee in connection with their official duties are considered invalid because they are performed by a person who lacks the authority to do so. The employee is therefore relieved of obligations associated with the exercise of those duties. They are not required to attend the workplace or to comply with the duty of hierarchical obedience in relation to the performance of their suspended functions.

Nevertheless, the effect of precautionary suspension on the duty of hierarchical obedience is not absolute, such that the employee is permanently released from this obligation. Rather, its effect is relative and depends on considerations of the public interest. A suspended employee may remain subject to certain duties despite having been removed from their position, where the public interest so requires. Consequently, the employee may be instructed by the competent authority to perform certain tasks and comply with particular obligations. In this regard, the French Conseil d'État has permitted suspended employees to perform certain duties from home without attending their workplace. This entails a corresponding obligation to comply with hierarchical instructions despite the suspension. This position is further illustrated by the fact that the Conseil d'État imposed an obligation on a suspended employee not to leave the city in which their workplace was located without the authorization of their superior; failure to comply with this requirement was treated as abandonment of post.[24]

Conclusion

At the conclusion of this scientific study entitled *The Legal Effects of the Precautionary Suspension of a Public Employee Due to Criminal Proceedings Against Them*, it may be stated that a public employee may become subject to judicial proceedings and incur criminal liability, in which case the competent judicial authorities initiate the legally prescribed procedures against them, just as they would against any other accused person.

The acts or offences that may give rise to criminal proceedings against a public employee are diverse and may be classified into two categories:

- Acts related to the employee's position and official duties.
- Criminal acts unrelated to the employee's position or official duties.

Both categories, whether involving acts related to the position and official duties, which may also be described as professional misconduct, or criminal acts unrelated to the position or official duties, may ultimately result in the precautionary suspension of the employee.

It should be noted that such proceedings give rise to several consequences that may affect the employment relationship between the public employee and the employing authority. The most significant of these is the precautionary suspension of the public employee, which this study has established to be an administrative measure issued by the competent authority as soon as it becomes aware that the public employee is subject to criminal proceedings or receives notification of such proceedings from the Public Prosecutor's Office. Through this measure, the employee is removed from their position until a final judgment is rendered in the criminal proceedings. During this period, the employee does not perform the functions and duties assigned to them, except where necessity requires otherwise.

Precautionary suspension also produces certain effects on the rights and duties of the public employee. It directly results in the suspension of certain duties on the one hand and certain rights on the other. Nevertheless, the suspended public employee continues to enjoy some rights and remains bound by certain duties despite the suspension.

The right to remuneration is among the principal rights affected, given that remuneration is one of the main reasons an individual enters the public service. The right to promotion is likewise one of the most important rights

in a public employee's career and is suspended during precautionary suspension. The right to resign is also subject to suspension. These effects are accompanied by the suspension of certain duties incumbent upon the public employee, such as the duty to perform assigned functions and exercise official powers, as well as the duty to attend the workplace on a daily basis.

In light of the foregoing discussion and the findings presented throughout this study, the following conclusions have been reached:

- The precautionary suspension of a public employee due to criminal proceedings places the employee in a special legal position that differs from their ordinary legal status, as it suspends the employment relationship between the employee and the administration or employing authority until their situation has been finally resolved.
- Precautionary suspension is merely an administrative measure and does not constitute a penalty in itself, as it is imposed when required by the public interest and the needs of the public service. Nevertheless, it may produce consequences more serious than those of a disciplinary penalty, since it affects the public employee's legal status and, in particular, their financial rights.
- The suspension of the employment relationship resulting from precautionary suspension leads to the suspension of most of the employee's rights, particularly the right to remuneration, with the exception of a portion of the basic salary and family allowances, as well as the rights to promotion and resignation. Conversely, certain duties are suspended, including the duty to perform the functions assigned to the suspended employee.

Despite the suspension of the employment relationship and the loss or suspension of certain rights and duties, the public employee continues to enjoy certain rights, such as the right to protection and social security, and remains bound by certain duties, including the prohibition on engaging in remunerated activities and the duty of discretion. Moreover, in exceptional circumstances, the employee may be called upon to perform certain duties where necessity so requires.

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[2] Decree No. 85-59 of 23 March 1985 establishing the Model Statute for Employees of Public Institutions and Administrations, Official Gazette No. 13, issued on 24 March 1985

[3] Ordinance No. 06-03 of 15 July 2006 establishing the General Statute of the Public Service, as amended and supplemented, Official Gazette No. 46, issued on 16 July 2006

[4] Instruction No. 10 of 16 January 2019, issued by the Directorate General of the Civil Service and Administrative Reform, concerning the procedures for implementing certain measures relating to the

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[6] Correspondence No. 556 of 19 January 2014, issued by the Directorate General of the Treasury, containing an inquiry addressed to the Regional Director of the Treasury in the Province of Chlef concerning the legality of paying the salary of an employee subject to criminal proceedings

[7] Correspondence No. 0001402 of 7 March 2016, issued by the Directorate General of the Budget at the Ministry of Finance

[8] Circular No. 09 of 4 February 2017, issued by the Directorate General of the Civil Service and Administrative Reform, concerning the implementation of the provisions of Article 174 of Ordinance No. 06-03 establishing the General Statute of the Public Service, p. 3

[9] Correspondence No. 6537 of 24 May 2022, concerning the measures to be taken regarding the situation of public employees, contractual agents, and holders of senior positions and high-level posts who have been placed under precautionary suspension as a result of criminal proceedings in cases that have not yet been adjudicated. Issued by the Directorate General of the Civil Service and Administrative Reform and addressed to the Head of the Civil Service Inspectorate of the Province of Béchar

[10] Bouadi Mustapha, *Guarantees of Public Employees in Disciplinary Matters: A Comparative Study*, 1st ed., Dar Al-Ayyam, Amman, 2017, p. 131

[11] Law No. 83-634 of 13 July 1983 laying down the rights and obligations of civil servants, as amended, Journal officiel de la République française (JORF), No. 0162, 14 July 1983

[12] Article 531-4 of Law No. 46-2294 of 19 October 1946 concerning the General Statute of Civil Servants, Journal officiel de la République française (JORF), No. 0246, 20 October 1946. “The civil servant who, owing to criminal proceedings, is not reinstated in their duties, provisionally assigned, or provisionally seconded to another position may be subject to a deduction not exceeding half of the remuneration referred to in the second paragraph of Article 531-1. Nevertheless, they shall continue to receive the full amount of family allowances.”

[13] Council of State, Technical Office, Collection of Legal Principles Established by the Supreme Administrative Court, Year One, Issue Three, covering the period from June 1956 to the end of September 1956, p. 835

[14] Presidential Decree No. 07-304 of 29 September 2007 establishing the salary index scale for public employees and the system for payment of their salaries, as amended and supplemented, Official Gazette No. 61, issued on 30 September 2007

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[16] Conseil d’État, 24 June 1988, Secrétaire d’État aux postes et télécommunications. See: Bouadi Mustapha, op. cit., p. 131.

[17] Alaa El-Din Mohamed Hamdan, *Impediments to Promotion in Public Employment: A Comparative Study*, 1st ed., Al-Wafaa Legal Library, Alexandria, 2017, p. 118

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[23] Muhannad Noah, “The Effects of Suspension from Duty,” Damascus University Journal of Economic and Legal Sciences, Vol. 31, No. 02, Damascus University, 2015, p. 12.

[24] Muhannad Noah, op. cit., p. 12