

**Fundamental legal status of public officer in light of legislation of UAE human
ressources (comparative study)**

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Abstract :

The law agreement adaptations act ,into an organizational relationship between the employer and their workers is to ensure that the employer is performing a sustainable , stable work permanently, However this conclusion is not about the procedure , but limited to some objectives variations,both for the employers and their employees,the following may collide with sudden emergency leaves in management positions like death or resignations,such circumstances has compiled the employers to apply traditional recruitment procedures , in order to ensure the continuo functioning of the public entity , But similar procedures are inadequate to fill these gaps due to emergency factor ,What leads the employers to resort to exceptional applications and solutions ,applicable particularly in work secondment , work transfer or work delegation,,All such implying the public worker status witch is the actual work putting for labour rights and duties .

Key words :

Active-Duty - Actual Staff-Exceptional circumstances -Work Delegation -Wok transfer
Work Secondment

Introduction:

Specialized researchers in the field of administrative law combined that the outcome and the tender of public authorities may not be interpreted from programs, and different functional planning, yet it should be estimated according to competency of the public servants who are contributing to the development in the right direction.¹ From this perspective, we point out that the new policy for development the country has encourage and supported individual initiative at the functional activity without analyzing the leading rule in designing public life² under which it aims to minimize its supremacy on the public facilities activity in order to make it more accurate and more flexible.³ This had paved the way for a new rule in which

¹Marcel Pinet (dir.), *Histoire de la fonction publique*. Tome I : Pierre Riché, Éric Bournazel, Françoise Autrand, *Des origines au XV^e siècle*. Tome II : Jean Imbert, Jean Nagle, Jean Meyer, Jacques Godechot, *Du XV^e au XVIII^e siècle*. Tome III : Michel Chabin, Jean-Noël Lallement, René Bidouze, Serge Salon, *De 1815 à nos jours*. Nouvelle Librairie de France, 1993

²Sur ce point d'analyse voir - Auby (J.M) et Auby (J.B) et Didier (J.P), *Droit de la fonction publique*, Dalloz, Paris, 2009, P 57 et s. Voir aussi – Bèze (P), *Gouverner l'administration, une sociologie des politiques de la réforme administrative en France*, Thèse de Doctorat en droit, PUF, Paris, 2009, P 17 et s

³Dr. SaeedMuqaddam, *Public Employment between revolution and transformation according to human resources perspective and the ethics of the provision*.

boarders scope have been created for decentralization⁴ of the job, therefore, the country is supported by natural person who worked under its name permanently and regularly.⁵

For these purpose, the process and strategy of the comprehensive development requires achievement of coordination and interaction between group of people in the state as well as individual wills therein.

This conclusion provides that the relationship between the rules and basis of employment attraction and between the public policy of the authority used first and second to the state, and finally, this process considered as very important knowing that the complete success depends on it as well as failure of these programs and plans which leads us to conclude that the employees of the state regardless of their possessions, grades and specialization, as well as regardless of legal characterization for their jobs, whether they were administrative, technical, advisors or government leaders, they represent true partners of the state in its operation, jobs, programs and objectives, for which the state pays more attention to recruitment process in order to enhance legal texts to address and regulate this matter.⁶

Jobs stability may be affected under this perspective as to those authorities utilizing basis element which is sudden emptiness or that regulating administrative positions which could be as permanent due to death, resignation, dismissal or retirement and could be temporary in light of what is known as the movement of the public servant or basic legal status of the public servant, wherein this issue has had great impact as to regulating the UAE Legislations or compared legislations in order to control its impacts concerning the professional career path of the public servant or as the authority that seeking continuity of the activity and in return inputs for the public facility temporarily. In this respect, we will talk about the

⁴Pour aller loin voir- Harald (G) , une approche théorique du service public ,Ed Sirey, 2émeédition, Paris, 2010,P 97 et s.

⁵In light of French legislation, the term Public Servant applies only to the permanent employees, wherein the employees on contract basis called as temporary employees and subject to exceptional legal system that grants them monetary and corporeal rights, compared to the permanent employees. Voir - Loi N°83 – 634 du 13 juillet 1983 portant droits et obligations des fonctionnaires (loi le Pors). Loi N°84 – 16 du 11 janvier 1984 portant dispositions statutaires relative à la fonction publique de l'Etat. Loi N°84 – 53 du 26 janvier 1984 portant dispositions statutaires relative à la fonction publique territoriale. «L'État, les collectivités locales, les hôpitaux publics et les établissements publics emploient par ailleurs des agents contractuels. Ces agents signent un contrat avec leur employeur. Selon les cas, le contrat peut être de droit public ou de droit privé, à durée déterminée ou indéterminée. La catégorie des agents contractuels est très variée puisqu'elle comprend les vacataires, les auxiliaires, les contrats-aidés et les contractuels qualifiés comme tels. Alors que le recours aux agents contractuels est censé être une exception, les administrations publiques recourent de plus en plus à cette catégorie d'agents, notamment dans une logique de diminution des dépenses publiques et de passer outre les rigidités statutaires». The above excludes the workers of parliament councils, judges, and the people working in Public Execution of industrial or commercial nature. Frédéric Minera, *La fonction publique territoriale en 20 leçons*, Ellipses, août 2008, 576 p. For certain gulf states, the scope of these discrimination is very limited owing to the fact that they are more often to foreign labors which the matter adopted by UAE, under Articles 12, 13, 14 of Cabinet Resolution No. 13 of 2012 concerning implementing regulations of the federal law degree No. 11 of 2008 concerning Human Resources in Federal Government as amended. Kindly refer to Dr. Ahmed AhsanRabeei, Legal Basis for Recruitment Models in light of UAE and French Legislations, Algerian Magazine for legal, economic and political science, First Issue, Page No. 2018 and afterwards.

⁶Dr. KanaanNawab, Administrative Law (Public Job, administrative Decisions, Administrative Contracts, Public Funds, First Edition, Fifth Issue, Culture Distribution and Publication, Amman, Pages 2007.

Voir également – Chevallier (J), science administrative, éd PUF, 5^{ème} édition, Paris, 2002, P 107 et s. voir aussi – Desmarais (C), «Renouveler l'encadrement pour transformer l'organisation ?», in RFAP (Revue Française d'administration publique, N° 4, Paris, 2003, P 617 – 631

administrative position of the public servant where he is practicing his work within his administration.⁷

As for the practicing other assignments in another department while still reporting thereto, retaining his original rights and finally, the status of the public servant that places him in an exceptional legal position, resulting from temporary suspension of work that results in discontinuation of his financial and in kind rights, while serving in the original department.⁸ All of the previously mentioned positions linked with the career path of the public servant which is registered compulsory in the charts of human resources, as well as we would like to point out that those are separated and independent positions, whereby the employee may not held more than one respectively, as such employee could not be seconded or hired in another department while he is under temporary suspension from work, or having long exceptional leave, therefore, and in order to execute the employee movement such process should be carried out under precise legal procedure, that observes not to link his legal positions and if such occurred, the employee should wait till the department regularized his current legal position before transferring him to a new legal position whether at his own request or at the request of the hiring authority.

First: the study

Controlling the rule and the basis of fundamental legal position as to public servant with those specified functional details, under the nominal list of human resources, which forms a complex process because we would be under the process for two duplicated functional details as shown in schedule No. 2 related to the number of employees suspended at the previous financial year or what could be called as the nominal list of the authority used in this regard. On the other hand, the temporary spaces related to functional positions whether permanent or temporary in this respect due to the movement and mobility of the employees required by the fundamental positions of the public servant regardless of the nature of each basic position, its term and legal impacts which puts great efforts on the human resources department that needs to reach to appropriate solutions without delay in order to cover such created job function, and as well as to ensure continuity and regularity of the public facility.

The fundamental question regarding this perspective revolves around the subject matter of the study to determine the fundamental legal positions of the public servant as provided for by the UAE legislator in parallel with compared studies and presenting the legal system for each position as to determining their concept, legal conditions, procedures and finally the legal impacts resulted there from whether for the authority or the public servant concerning their financial and in kind rights, and from other hand, concerning emergency amendments and changes for their career path.

From this main question, results in several ancillary questions of which we could summarized as follows:

1. What are the aspects of distinguishing ordinary legal positions from exceptional legal positions.

⁷Dr. Amar Budiya, Public Job in Algerian Legislation, Jozur Publication and Distribution 2015, Page 55.

⁸Previous Reference, Page No. 56

2. What are the legal impacts resulting from each of those ordinary legal positions, and specifically carrying out the service and the secondment for the employee.
3. What are legal impacts resulted from each of the exceptional legal positions, and particularly, the position of mobility and the last position is public service.

Second: the importance of the study:

The manpower in its different aspects such as administrative, technicians, advisors, political leaders, all of whom representing real partner for the state in its operations, functions, programs, and objectives under which the state, paying great importance to the fundamental positions of the public servant, knowing that enhancing the legal text addressed to regulate this issue, and asking the employee to cease the employment relationship temporary in respect to personal needs without prejudice to the principle of continuity of the public facility, that requires the authority to arrive at appropriate resolutions to avoid unfair distribution of employees.

Third: the objectives of the study:

This study aims to arrive at several theoretical results of which we could summarized in the following points:

1. Distinguishing temporary functional movement from final functional movement in light of UAE Human Resources Law and French Legislation.
2. Determining the concept and the impacts of ordinary legal positions as defined in the UAE human resources law, as well as the French legislations, notably the position of carrying out the service and mobility.
3. Determining the concept and the impacts of the legal positions as defined in the UAE Human Resources Law and the French Legislation.

Fourth: Difficulties of the study

According to the previously mentioned inputs, we could conclude that the grounds that contribute to complexity of the subject matter of the research are due to several points in addition to complexity for its flexibility and objectivity in comparison with lack of academic treatment related to this field, and even the academic works that addressed in this respect for the research were insufficient and do not provide more information, for which we believe that selecting this topic relates to our persistence to reveal its secrets and legal dimensions, by shedding light on the basis approved by those legislations including French Legislation compared to the UAE Legislator and on the other hand, it is worthwhile to mention that generality of certain legislation of the public service could enlarge the scope of discretion authority of the management concerning issuance of those decisions related to the public servant mobility which renders his scope and authority in this field threatened.

Therefore we believe that this research would shed light on many aspects that to be considered as well as, the extent of connection of the public servant mobility with his personal needs to which he refer as well as the legal conditions, in addition to the specialization of the authority of which it shall use as per its discretion authority.

The important of covering this point extended to include the UAE Legislator position of the fundamental uses and the positions of the public servant as to its concept, condition, legal impacts resulting therefrom concerning the public servant or the authority hiring him in light of the new amendments to the Federal Human Resources Law which requires us to elaborate in understanding the meaning as well as to understand the legislator position of such matter.

Fifth: Methodology followed:

To fulfill all the research elements, the dominant methodology in our study was descriptive analysis that requires us to compile legislation texts, opinions and jurisprudence, judgments and to analyze the same in order to explain the subjective and legal dimensions of the fundamental positions of the public servant. In addition, we have used other methodology in order to conclude certain results from in depth reading, in the legal text and we finally approved the comparative methodology in order to define the similarity and difference between the UAE Legislative System and the French Legislative System concerning controls of the basis and rules of public servant mobility.

Sixth: the plan of the study:

In order to cover the subject matter on the study, as much as possible, we have divided basic idea of the research into two main sections, we have tried through this chapter to explain the functional positions concerning the actual service status, as well as the functional mobility, wherein we also tried in the second chapter to understand the fundamental, functional positions that apply to this matter which relates to employees' secondment and finally the conclusion that included the results at which we have arrived throughout this study as well as recommendations thereof

Chapter (1)**Status of doing the service**

Through this chapter, we will try to define the legislative, jurisprudential and judicial dimensions of the basic classic or traditional job situations as some call them, and it is related to the status of doing the service delivery and the status of job transfer, and in this regard we will try to define their precise legal meaning, as well as the conditions and rules set by the legislator in the United Arab Emirates and the comparative legal regulations and systems in order to execute and perform these job processes/operations, and on this basis we have divided this chapter into two main topics: The first topic includes the status of doing the service/service delivery, while the second topic includes the status of job transfer.

We will deal with and discuss them as follows:

The first topic**Status of doing the service**

The status of carrying out/ doing the service is considered the normal job position where the public employee/ servant is in a regular legal position, so he is legitimately appointed in accordance with the conditions and legal procedures established for each job position separately, and a legitimate administrative decision is issued regarding the appointment to the position, and in this case the appointed employee enjoys all material and moral rights associated with his rank and position.⁹

⁹Selon le doyen De Laubadere «La fonction publique française, au sens strict, comprend l'ensemble des agents occupant les emplois permanents de l'État, des collectivités territoriales (commune, département ou région) et des [établissements publics de coopération intercommunale](#) (EPCI) ou de certains établissements publics hospitaliers. Parmi ces agents, tous ne sont pas fonctionnaires. En effet, le terme de fonctionnaire est polysémique. Dans le vocabulaire courant, il désigne toutes les personnes travaillant pour le [secteur public](#)». Voir son célèbre ouvrage intitulé De Laubadere (A), Traite de droit administrative, 8^{ème} édition, LGDJ, Paris, 1982, P 21

However, this legal solution is not absolute as only one job exception has been stipulated regarding it related to the case of the actual employee, as severe and compelling circumstances imposed by such exceptional case in challenging staying up late to ensure the continuous, permanent and stable progress of public service requires giving legal legitimate characterization to the employee who carries out duties under such circumstances which he has not been principally appoint to carry out and this is what is called the theory of actual employee adopted by the UAE legislator similar to the comparative legal systems.

In order to get familiar with all these thoughts/ ideas, we have opted for dividing this topic into to two basic requirements: the first requirement includes definition of the status of doing the service, while the second requirement includes the exceptions stated on the status of the actual service: the actual employee.

We will discuss them as under: -

The first requirement Definition of the status of doing the service

When an employer desires to appoint a new employee, the appointment/ recruitment process takes place through the following steps: the available jobs will be announced within the establishment stating the most important requirements needed for the job which usually include academic qualifications, year of experience, required age, type/ gender of employee whether male or female, level of language proficiency and computer literacy etc, and then the stage of receiving applications begins in the light of the available job vacancies and thereafter the company begins receiving applications via means of communications available and provided in the announcement whether via emails or normal post or through submitting applications to the company's head office or others.¹⁰ Following expiry of the deadline for submitting the applications, the company begins studying and reviewing all job applications sent to the company and when some applicants are chosen, the company nominates them to the job and sets a deadline for personal interviews and notifies them over phone calls or via

Il peut aussi comprendre tous les agents dont la rémunération est liée aux [deniers publics](#). Pour autant, seuls ceux soumis aux statuts sont des fonctionnaires stricto sensu. Dans la plupart des organismes de sécurité sociale, le personnel est entièrement de [droit privé](#) (sauf cas exceptionnels de fonctionnaires détachés). Toutefois, pour des raisons historiques, une partie des personnels de certains établissements publics à caractère industriel et commercial, voire d'entreprises maintenant privées, relève du corps des fonctionnaires de l'[État](#). La Poste et Orange embauchent désormais des personnels selon les règles du [droit privé](#). P. Sueur, *Histoire du droit public français (XV^e-XVIII^e siècles)*, Paris, PUF, 1998, tome I, p. 316

¹⁰Concernant la réglementation fonctionnelle Française a parfaitement clarifier ses procédure et dans ce sens le Professeur Georges Dupuis a commenté que; « du recrutement, un grand nombre d'éléments sont pris en compte dans le choix des candidats retenus (formation, expérience professionnelle, réussites professionnelles majeures, intérêt professionnel, personnalité, facteur général (G), valeurs...) et d'outils utilisés (entretiens structurés, entretiens non structurés, tests de capacités cognitives, tests de personnalité, tests de simulation...). Ces différents caractéristiques prédisent d'une façon plus ou moins importante la réussite des candidats dans leur futur poste. La [validité](#) réelle est à distinguer de la validité perçue. La première décrit la capacité d'une caractéristique à prédire significativement la réussite. La seconde décrit la croyance en la validité d'une caractéristique. La [personnalité](#) jouit d'une grande validité perçue (50 % des cadres en France ont subi un test de personnalité lors de leur dernier recrutement), mais la validité réelle de la personnalité comme prédicteur de la réussite est nulle ou faible». Pour aller loin voir - Georges Dupuis, Mari-JoséGuédon, Patrice Chrétien, *Droit administratif*, Paris, Dalloz, 2007, p. 344

emails. Here the most important stage comes which is personal interviews based on which a large number of factors and measurements rely resulting in either acceptance or rejection.

We have to differentiate here between the appointment decision and resumption of job/ work upon obtaining a new job with any of the governmental bodies as the employee is first issued an appointment decision then the decision of resuming the job follows, and regarding the appointment decision it means that the employee joins work for such governmental body by signing the appointment decision,¹¹ and it should also be clarified that meeting the required conditions by the employee and his success in the test, interview and his appointment, does not necessarily mean that the employee who has been chosen/ selected is of high competence and efficiency, because the reality of this competence and efficiency should be verified through actual practice. This makes most of the legislations adopt the probationary period during which the employee is subject to the control of the administrative body for which he works prior to being considered as a permanent/ full time employee in order to verify the competence, fitting and level of performance of such employee.¹²

By referring to the Human Resources Law in the Federal Government of the United Arab Emirates, especially, after the amendment made in 2016, except those appointed in the positions of the Ministry's Undersecretary or the Director General in independent entities/ bodies, employees appointed for the first time shall be subject to six month probationary period renewable for 3 months,¹³ which means the maximum limit for the probationary to which the public servant/ employee shall be subject is 9 months.

In this regard, the Executive Regulation of 2018 commits all employees of the Federal bodies to undertake to review the professional code of conduct document and the ethics of public job prepared by the Federal Authority for Human Resources issued under the Cabinet's Resolution No. 15 of 2010, failing which the employee shall be referred by the Department of Human Resources to the violations committee,¹⁴ and this what is intended by the status/ position of the employee in the condition/ status of actual service, i.e., the status of the employee who is in the condition/ status of joining work/ the post and actual resumption of his professional duties and obligations,¹⁵ and the legislator embodied this definition under article 23 bis-repeated of the law No. 483 of 2016 dated 20/04/2016 as amended and complementary to the above mentioned law No. 83 – 634 regarding Public Service Law in France.¹⁶

¹¹These steps and stages have been mentioned by Dr. MohdQadari Hassan – IBID, Page No. 176

¹²IBID Page No. 177

¹³The prescribed probation period in Federal Decree Law No. 11 of 2008, before amendment in 2016: was fixed for three months renewable for similar periods.

¹⁴ Vide Article No. 115 of the Cabinet Resolution No. 1 of 2018 regarding the executive regulation for the human resources law in the federal government.

¹⁵activité : le fonctionnaire occupe un emploi qui correspond à son grade, et perçoit une rémunération associée. Le fonctionnaire peut, avec son accord, être mis à disposition par son administration d'origine à une autre administration ou organisme poursuivant un but d'intérêt général, mais reste rémunéré et noté par son administration d'origine ; dans un tel cas, il reste en position d'activité

¹⁶[Article 23 bis](#) de la [LOI n°2016-483 du 20 avril 2016 modifiant la loi 83 – 634 op. cit stipule](#): I.-Sous réserve des nécessités du service, le fonctionnaire en position d'activité ou de détachement qui, pour l'exercice d'une activité syndicale, bénéficie d'une décharge d'activité de services ou est mis à la disposition d'une organisation syndicale, est réputé conserver sa position statutaire

In this regard, the UAE legislation considers that if an employee stops from work temporarily for the reasons stipulated under the law, this does not affect characterization of the status of such employee in the event of actual service, particularly, annual leave¹⁷, sick leave¹⁸, maternity leave¹⁹, exceptional leave²⁰, school vacation²¹ and finally unpaid leave.²²

The second requirement

Exceptions of the status of actual service: the actual employee

The public entity/ facility is established on a set of principles which include the principle of continuity, the principle of liability of the facility to continue and develop and finally the principle of equality among employees who work for the facility as to burdens and privileges of the facility, and that the most important principles for us in this regard is the first principle, i.e., the principle of continuity of the public facility, which means that the performance of service the purpose for which the facility has been established should always be permanent and regular, because individuals arrange their lives on the basis of the existence of the facility assuming continuity of its progress of work

A student or an employee or a worker who arranges his life on the basis of the existence of transport facility, and individuals who depend on water and electricity in their lives will suffer huge damage if such facilities stop performing and providing service out of a sudden,²³ and the principle of continuity and permanent progress of work of the facility several results

¹⁷In accordance with the federal legislation in the UAE, the employee appointed in the permanent position is entitled to annual leave as per total salary as per the following: Thirty (30) days for the holders of position on the special grade and above. “b” 22 (twenty two) working days for the remaining positions.

¹⁸The lawmaker permitted granting an employee a sick leave but according to a medical report and from accredited medical authority. The employee is entitled to a sick leave of no more than 5 working days consequently one time and with a maximum of 15 days per annum. To be granted as per a medical report approved from the official medical authority, and in case the period of sickness exceed the same, then the permit will be as per the same leave under a medical report issued by the medical committee at the Ministry of Health. [Création Ordonnance n°2017-53 du 19 janvier 2017 - art. 21 bis modifiant la loi N 83 – 634 op.cit stipule](#): I.-Le fonctionnaire en activité a droit à un congé pour invalidité temporaire imputable au service lorsque son incapacité temporaire de travail est consécutive à un accident reconnu imputable au service, à un accident de trajet ou à une maladie contractée en service définis aux II, III et IV du présent article. La durée du congé est assimilée à une période de service effectif

¹⁹The maternity leave used to be within the limits of sixty days before the amendment issued by Federal Decree Law No. 17 of 2016, wherein the latter was amended in the period and was prescribed for three months instead of 60 days in line with most comparative legislations like the Jordanian Civil Service Law of 2013 which fixed the period of the maternity leave of 90 days consecutively before and after child birth.

²⁰The exceptional leave includes three types which is a Holiday at large to represent UAE, Holiday for accompanying patient outside UAE, Holiday for accompanying a patient within UAE.

²¹[Article 22 du LOI n°2019-828 du 6 août 2019 modifiant la loi N 83 – 634 op. cit stipule](#) : Le droit à la formation professionnelle tout au long de la vie est reconnu aux fonctionnaires. Il favorise leur développement professionnel et personnel, facilite leur parcours professionnel, leur mobilité et leur promotion ainsi que l'accès aux différents niveaux de qualification professionnelle existants. Il permet l'adaptation aux évolutions prévisibles des métiers. Ils peuvent également bénéficier de périodes de professionnalisation comportant des actions de formation en alternance et leur permettant soit d'exercer de nouvelles fonctions au sein d'un même corps ou cadre d'emplois, soit d'accéder à un autre corps ou cadre d'emplois. Tout fonctionnaire peut bénéficier, à sa demande, d'un accompagnement personnalisé destiné à l'aider à élaborer et mettre en œuvre son projet professionnel, notamment dans le cadre du conseil en évolution professionnelle

²²The Chief of Federal Authority or his representative may grant an employee a leave without salary for a period of no more than 30 days per annum, provided that, the employee should satisfy serious reasons which necessitates granting him such leave in accordance to Article No. 121 of the executive regulation of the law of Federal Human Resources.

²³Dr. MohdAbdulhamidAbuzaid, the progress of duty of public utilities, Dar Alnahda Al Arabia, Cairo, 1976, Page 12.

which are: prohibition and criminalization of strike, regulation of resignation of the public servant and application of emergency conditions theory in administrative contracts, ban of imposition of conservatory attachments/ garnishments on the funds of the public facility, and finally, the theory of actual employee which is the core of our interest in this regard.

The actual or realistic employee is the employee who assumes a certain job without existence of a legitimate support and grounds for the same due to the absence of any decision stating his appointment or nomination or assignment to such job, and this concept also applies to a person who has been assigned to work beyond the scope of his original job, without the same being based on issuing an administrative decision by the competent authority containing this job modification/ amendment, or a person who has been appointed defectively based on an illegal reason and terminated after such person has resumed his post for a period of time.²⁴

This meaning corresponds to the legal employee who is the person appointed in a job legitimately in terms of conditions and procedures of his appointment, so that the legal conditions for assuming the job apply to him, and that the procedures prescribed by the law in his appointment have been respected, in terms of announcing the job vacancy, forming of a committee to study the files and asking the opinion of the special committee on the above mentioned etc, and finally, issuing of the appointment decision by the competent administrative body as long as such decision is proper, correct and meeting all the elements of its validity and correctness.²⁵

Pursuant to the public rules, no employee may intervene in and perform the tasks of a job for which he has not been appointed and which is not within the scope of his professional specialization, because this is considered as usurp and extortion of authority and that if the work performed by him has been defective, null and void to the absence of the element of specialization therein.

Under the challenges of exceptional circumstances, the French State Council accepted to act beyond such rules during the Second World War²⁶, because when Hitler invaded France, the majority of the French officials at the public facilities fled the country to the neighboring countries fearing the horrors of war. For this reason running of the facilities continued by employees not appointed and not specialized in the jobs they carried out in order to secure continuation of progress of work of such facilities even during war times.

Following the end of the Second World War, an essential question was raised about the legitimacy of the above mentioned works, as being carried out by persons not appointed to carry them out and not specialized to perform the same, and here, the French State Council issued a set of famous rules/ judgments stating the validity and soundness of the above mentioned administrative works in spite of being carried out by unspecialized individuals justifying the same by stating that the public interest under exceptional circumstances may

²⁴IBID, Page No. 27-28

²⁵[CE, 21 septembre 2015, requête numéro 382119, Uguen](#) (Rec. p. 311 ; AJDA 2015, p. 1935, concl. Dumortier. [CE, 24 septembre 2014, requête numéro 362472, Association Ban Public](#) (Rec. p. 493)

²⁶CE, 2 novembre 1923, Association des fonctionnaires de l'administration centre des postes et télégraphes : Rec. p.699.CEAss., 7 janvier 1944, Lecocq (Rec. p.5 ; JCP 1944, II, 2663, note Charlier ; RDP 1944, p.331, concl. Léonard, note Jèze.- V. également CE, 5 mars 1948, Marion : Rec. 1948, p. 113 ; D. 1949, p. 147 ; S. 1948, 3, p. 53, note Calon. Sur ce point d'analyse voir - Gaudemet Yves, Traité de droit administratif, tome 1, droit administratif général, LGDJ, 16^e édition, P 97 et s

require us to carry out illegitimate works/ jobs under normal circumstances,²⁷ and for this we say that the actual employee theory emerged in its turn from the theory of exceptional circumstances and both require securing of continuation of progress of work of the public facility in all cases using all the available legal solutions, and this is how it has continued until our present time in all comparative systems.²⁸

The above mentioned trend has been adopted by the Egyptian Administrative Supreme Court at the Egyptian State Council permanently and in a stable manner especially in one of its judgments by stating as follows: "... the actual employee theory shall only be established under pure exceptional circumstances under the urgency of the need for seeking assistance from those needed to run work in some jobs in order to secure regularity of the public facilities, and in order for such public facilities to provide their services to the public continuously and permanently".²⁹The Jordanian Supreme Court of Justice also adopted the theory of the actual or realistic employee pursuant to the principles of continuation and regularity of progress of work of the public facilities by several decisions, the most important of which is its decision issued in 1972 which stated as follows: "If the term of the village/ rural council expired upon issuing its decision on ownership/acquisition dated 16/03/1972, however, upon issuing such decision, the village council was exercising its responsibilities in continuation of the decision of its legal formation, as such, the village council cannot abandon its responsibilities as long as no decision was issued on appointing a new village council, as such, the ownership/acquisition decision shall apply to the actual employee and as if issued by such actual employee and as such it shall be considered legitimate and legal pursuant to the principles of administrative jurisprudence."³⁰

The second topic

The status of job transfer

In this topic, we will try to discuss and get familiar with the legal and objective dimensions of job transfer, particularly, through accurate and thorough discussion of its legal concept as well as its main divisions as stated by legislation, jurisprudence and administrative courts in the United Arab Emirates and the comparative systems, in addition to stating and clarifying the legal conditions prescribed for application and execution of this model in the field of the public servant movement/ transfer, and on this basis, we have opted for dividing this topic into two main requirements: the first requirement include determination of the essence of job transfer, while the second requirement includes the legal requirements for the execution of job transfer.

Which we will discuss and review ass under: -

²⁷In detailing this question vide Dr. AhsanRabahi, and Dr. Mustafa Al Nujaifi, IBID, Page No. 278 and thereafter.

²⁸[CE, 16 mai 2001](#), requête numéro 231717, [Préfet de police c. Mtimet](#) (AJDA 2001, chron. Guyomar et Collin, p. 643 et p.672, note Legrand ; Dr. adm. 2001, 178, note Laurent ; JCP G 2001, 344, obs. Aubin ; RDP 2001, p. 645, note Prétot ; AJFP janvier 2002, p. 27, étude Traoré ; Droit et Défense 2001, n° 3, p. 29, note de la Burgade. Requête numéro 296072 : Rec. p. 471 ; AJDA 2008, p. 368, concl. Guyomar; AJFP 2008, p. 172, note Gueguen

²⁹Dr. Suleiman Mohd Al Tamawi, the principles of administrative law, IBID, Page 11.

³⁰Amended, Aliya, Decision No. 102-72, Bar Association Magazine, Third and Fourth Edition, Year 1973, Page 362 and thereafter.

The first requirement

The essence of job transfer

In order to determine the essence of job transfer accurately, we believe it is necessary to identify the essence of its final legal essence before discussing the conditions of its job application, and too that end, we have opted for/ preferred to divide this requirement into two main subdivisions: as the first subdivision includes definition of job transfer, while the second subdivision includes the types of job transfer, which we will discuss as follows: -

Section (1)

Definition of Job Transfer

Similar to the French Legislator³¹, the UAE legislator has not defined job transfer but got satisfied with regulating its provisions under articles (35-37) of the Executive Regulation of Human Resources Law of the UAE Federal Government in accordance with the Cabinet's Resolution No. 1 of 2018, and this stance by the legislator cannot be hastily criticized by us as long as it is not within the powers of the legislator to provide certain objective definitions, but that the role of the legislator is limited to establishing certain and specific legal systems.³² At the judicial level, we can rely on some of the judgments, particularly, the comparative systems which referred in an unfocused manner to the concept of job transfer, the most important of which is the judgment passed by the Jordanian Supreme Court of Justice by stating as follows: "... the challenged decision is a decision related to an employee holding a position different from the position he used to hold in terms of qualifications and conditions of appointment which shall be considered an appointment and not a promotion, and the same shall be within the jurisdiction of the court ..."³³ On another occasion, the above mentioned court referred to the concept of job transfer by stating as follows: "Transfer in its legal sense is the employee's disengagement with the department from which such employee has been transferred, and engaging/ linking him with the department to which he has been transferred from where he receives his salary and the decisions related to him are issued from such department"³⁴.

At the jurisprudence level, we can review some of the definitions provided for job transfer at the Arab and French levels, and at the Arab jurisprudence level, we mention the definition provided by Mohammed FuadMahana which states as follows: "Job transfer is the transfer of an employee from one position/ job to another, whether being transfer of a public servant/

³¹Loi N° 2016 - 483 du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires

³²détachement : le fonctionnaire occupe un emploi en dehors de son administration d'origine, et il est rémunéré par l'organisme dans lequel il travaille effectivement, mais continue de bénéficier parallèlement de l'avancement et des droits à la retraite de son corps d'origine ; sa rémunération par l'organisme dans lequel il est détaché reste comparable à la rémunération qu'il est susceptible de percevoir dans son corps d'origine ; Bernard Letondu, *Fonctionnaire moyen. Un attaché d'administration ténuaire*, L'Harmattan, 2009, 142 p

³³The judgment of the Jordanian Supreme Court No. 6 November 1984, the Bar Association Magazine, 1985, Page No. 327, mentioned by Dr. Moza Mustafa Shahada, IBID: Page No. 50-51

³⁴Judgment of Jordanian Supreme Court in Jordan on 27/5/1967, a judgment taken from the magazine of the Jordanian Bar association, 1967, Page No. 14, mentioned by Dr. Ali KhatarShapnawi, IBID: Page 71

employee at the same grade, or from another grade, or whether being transfer of a public servant/ employee to a position at the same grade or to a position at a different grade”.³⁵

At the level of French jurisprudence, Jurist Plantey (A) defines job transfer as: “any change made to the administrative employee/ servant”³⁶, or his fellow citizen/ countryman jurist De Laubadere (A) who defines job transfer as “a kind of transferring an employee from the position he is holding to another position at the same or a higher level, and in this case, it is considered a promotion and transfer of an employee included in a system to another system may take place according to specific controls and conditions whether such transfer is within or outside of the entity/ department.

Transfer has a set of controls, the most important of which is the existence of a vacant job the conditions and requirements of which are applicable to the employee intended to be transferred to it and the absence of an employee in the entity/ department to which the employee is to be transferred who deserves or qualified to be promoted, as well as that a promoted employee may not be transferred from the position to which he has been promoted to another position prior to expiry of at least one year from the date of commencement of the tasks of the position he has been promoted to, and transfer has provisions and rules that should be observed upon application”.

Transfer of a public servant results in various effects which we can summarize as follows³⁷:

- 1- The transferred employee maintains/ enjoys his entitlements and his annual leave balances due from the employer/ department he has been transferred from³⁸.
- 2- The federal department to which the employee has been transferred takes responsibility for all costs and expenses resulting from such transfer including any differences in subscription premiums according to the pension laws applicable and prevailing in the United Arab Emirates³⁹.
- 3- An employee may be transferred to any other federal body/ department at the same grade and with the same financial allocations, and in case of transferring an employee during the fiscal year, such employee continues receiving his salaries and financial allocations from the department he has been transferred from until the end of the fiscal year provided such financial allocations should be added to the budget of the department he has been transferred to deducted from the department he has been transferred from in the fiscal year following his transfer⁴⁰.

³⁵ Dr. MohdFuadMohana, the concise in administrative law, Al Shaeer Printing Press, Alexandria, 1983, page No. 351.

³⁶ Dr. Ali Qatar Shaknawi, IBID : Page 70

³⁷In details of the same, vide Dr. AhsanRabei and Dr. Mustafa Al Nujaifi, IBID: Page No. 184 and after.

³⁸Article No. 36/ Clause 3, of the executive regulation of the Human resources Law in the Federal Government as per the decision of cabinet Resolution No. 1 of 2018 of UAE.

³⁹Article 36/ Clause 4 of the executive regulation of the Law of Human Resources in the Federal Government in accordance with resolution of Cabinet Resolution No. 1 of 2018 of UAE

⁴⁰ Article 36/ Clause 10 of the executive regulation of the Law of Human Resources in the Federal Government in accordance with resolution of Cabinet Resolution No. 1 of 2018 of UAE

Section (2) Types of job transfer

The Executive Regulations of the Human Resources Law of the Federal Government state as follows: “An employee may be transferred to a position at a higher vacant grade at the department he is transferred to provided such employee meets the requirements and conditions necessary for such position in accordance with the provisions of the decree by law, and pursuant to the decision, system of assessment and description of jobs, and according to the provisions and requirements of promotion”⁴¹, and further transfer of an employee can take place “from the federal department by approval of the department he has been transferred from and the department he has been transferred to”⁴².

Accordingly, we can take into consideration two main divisions of job transfer which are: spatial/ locative job transfer and qualitative job transfer, which we discuss as follows⁴³: -

First: Spatial/ locative job transfer: -

Spatial/ locative job transfer is defined as the transfer through which change to the location/ place of performing the job is made from one place to another.

This type of transfer does not – usually – lead to change of job type, but is limited to changing the location/ place of the employee’s work from one region/ governorate to another, or from the district of the governorate to the judiciary or township, and vice-versa, within the framework of formations of the administration/ department itself or to another department⁴⁴, or it is transferring of the employee from a position held by such employee to another similar position at another place, whether within the same administrative unit where such employee works or outside of it⁴⁵.

This means the transfer may take place within the administrative unit where the employee works and the objective of the transfer in this case is to redistribute work so that if there are too many employees in a specific place in the administrative unit, but suffers from understaffing in another place, the competent authority may exercise its right to redistribute work⁴⁶.

⁴¹Article 36/ Eighth Clause of the executive regulation of the Law of Human Resources in the Federal Government in accordance with resolution of Cabinet Resolution No. 1 of 2018 of UAE

⁴²Article 36/ Fifth Clause of the executive regulation of the Law of Human Resources in the Federal Government in accordance with resolution of Cabinet Resolution No. 1 of 2018 of UAE

⁴³Zoé Shepard, *le paradoxe du fonctionnaire*, Albin Michel, 2010, 304 p

⁴⁴The administrative supreme court held in a judgment that if it has been proven that the plaintiff was transferred as per the status and degree from subscriber’s account division of the television department to another position in the Central Division at the same department and this position is not different from the first position as regards the requirements of appointment thereof. Moreover, it is not less in terms of grade, therefore, the transfer is in terms of place which is necessitated by the interest of work and does not entail appointment or disciplinary action, in fact, it is no more than distribution of work between the employee of the same department, even it has been as per the reason attributed that the plaintiff and that even the work of the new job does not require training for some time, “mentioned by Dr. Sharif Yousif Hilmi Qatah, the Public Job” Comparative Study, Dar Al Nahda Al Arabia, Cairo, Page No. 82.

⁴⁵Dr. Nawaf Kanaan, IBID: Page No. 88

⁴⁶Dr. Mahmood Saleh, explanation of the law of the regulation of civil employees in the country, Dar Al Maarif, Alexandria, 2004, Page No. 151.

Second: Quantitative job transfer: -

Quantitative job transfer is the type of job transfer that leads to changing the type of the position held by the employee provided it should be at the same level of the position the employee has been transferred from and at the same administrative ladder and grade, and except the spatial/ locative job transfer, the quantitative job transfer may be due to promotion or dismissal/removal⁴⁷

In all cases, quantitative transfer is the transfer of an employee from his original job to another job other than the job has been appointed in, but within the same framework of the professional, technical or specialized quantitative group and at the same financial grade so that such employee suffers no damage,, and transfer may be within the unit of the administration or to another administration, but mostly quantitative transfer is made to another job/ position in another administrative unit, i.e., from a ministry to another ministry, or from a ministry to a local unit or a public authority or vice versa, but also quantitative transfer may be also to one of the public sector companies⁴⁸.

The UAE Legislator has enacted a provision for the quantitative job transfer by the Executive Regulations of the Human Resources Law of the Federal Government stating as follows: “An employee may be transferred to any of public authorities and institutions affiliated to the Federal Government or governmental bodies or authorities in one of the Emirates of the State provided without prejudice to the grade and total salary of the employee except allowances and bonuses related to the position/ job in accordance with the procedures of the Human Resources and electronic or digital systems approved by the Federal Government”⁴⁹.

The Human Resources Law of the Federal Government of the United Arab Emirates further refers this system stating as follows: “An employee may be transferred from his job/ position to any other vacant job whether within the federal body or to another federal body provided

⁴⁷An employee may be transferred from one position to another position within the same authority, after the administrative supervisor is convinced on the same, and the same will be referred to the authorized person for approval of transfer and to be sent to the personnel Department, which will request approval from the Ministry of Civil Service, in case it requires so, then the transfer decision will be prepared by the Personnel Department and to be signed by the authorized signatory and an employee may be transferred from Government Authority to another authority after initial approval by the authority which the employee to be transferred and there is a belief that the job to be filled by transfer after filling the parts related to the application of transfer by the employee and personnel department and the department where the job belongs to, at the place where the transfer is made, after which the authority requesting the transfer will take the approval of the authority where the employee works, after which the authority requesting the transfer will commence processing the approval of Ministry of Civil Service in case of difference of the category of the job or the Job Cadre in case the procedures requires so. After which, the transfer decision is prepared and to be signed by the signatory and the authority where the transfer is made and other authorities and the relevant authorities will be provided with copy of the decision.

Sur ce point d'analyse voir - Jérôme Morin, *On ne réveille pas un fonctionnaire qui dort*, L'Archipel, 2014, 200 p.

⁴⁸Dr. MohdRefaatAbdulwahab, Administrative Law, IBID: Page No. 239

⁴⁹Article No. 36 of the executive regulation of the Human resources law of the federal government in accordance with the decisions of Cabinet Resolution No. 1 of 2018 of UAE.

without prejudice to the grade and total salary of the employee”⁵⁰ and this is the trend which most of the comparative system have adopted, particularly, the Egyptian Civil Service Law⁵¹. One of the judicial applications is the one issued by the Jordanian Supreme Justice Court over a judgment stating as follows: “Transfer of the plaintiff from the position of “Director of Department of Income Taxes” to the position of “Legal Advisor and Treasury Advocate at the Ministry of Finance” is not a spatial/ locative transfer but a qualitative transfer similar to appointment, because the job/ position he has been transferred to is different in its specialization and nature from the job/ position he used to hold”⁵².

The court considered the quantitative transfer as an appointment which requires meeting of the following conditions: -

- a- The position/ job to which the employee is transferred should be different in its nature and specialization from the job held previously by such employee.
- b- The reference of appointment in the two jobs/ positions should be different.

***There are also other subdivision of job transfer less commonly deliberated in terms of jurisprudence, especially:**

*Dividing job transfer on the basis of the source of will: here we differentiate between the transfer by the will of the employee as it is done through an application to be submitted by the employee to the competent authority, requesting to be transferred to another place or to a similar job, and it goes without saying that this type of job transfer happens only by approval of the management and is subject to its absolute description based on the requirements of the public interest, while transfer by the will/ approval of the public administration is the prevailing type of the job transfers which happens at the will of the public administration even if the employee does not agree to the same, because approval by the employee to being transferred is not a condition on its validity.

Transfer due to cancellation of the job also takes place based on cancellation of the job of the employee at the will of the public administration, while the employee who holds such job has been granted the right under the Civil Service Law to move to another similar job of the same grade and salary, and if the job is of a lower grade, the employee is given a choice to accept or reject it⁵³.

⁵⁰Article No. 23 of Human resources Law of Federal government in accordance with the Federal Decree Law No. 11 of 2008 amended by Federal Decree Law No. 17 of 2016, UAE

⁵¹ Wherein Article No. 32 of the Egyptian Civil Service Law No. 81 of 2016 stipulates as follows: as per the decision of the competent authorities, an employee may be transferred from a unit to another, in case such transfer will not make the employee miss his role in promotion or at his request, and the transfer of the holders of the leading positions outside the unit will be as per the decision of the prime minister and employee may not be transferred from a position to another before upgrading its standard to the standard of his original position.

⁵² The judgment of Jordanian Supreme Court No. 147-73, Published in the magazine of the Bar magazine of 1973, Page No. 833, mentioned by Dr. NawabKanaan, IBID: Page No. 89.

⁵³ Dr. Mahmoud Saleh, IBID : Page No. 67 and thereafter.

a- Division of job transfer on the basis of the competent authority in charge of job transfer: -

We differentiate here between presidential job transfer and state/administrative job transfer, as the presidential job transfer happened through the presidential authority of the administration where the employee works, such the ministry at the level of universities and institutes, where a ministerial order is issued to transfer an employee working for a university or a college or an institute to another university or college or institute or to the ministry's court, while state/administrative job transfer upon issuance of an order by the competent authority at the public administration, whether in the capacity of a university Vice Chancellor/ President or Dean or Director General or by an authorized employee and others⁵⁴.

b- Division of job transfer based on financial grade: -

We differentiate here between job transfer with the financial grade and financial allocation, and job transfer without them, because job transfer with financial grade requires transfer of the financial grade and the financial allocation with the employee from the department from which the employee has been transferred to the department where the employee has been transferred, while job transfer without grade requires making available of the financial grade and the financial allocation from the resources of the department where the employee has been transferred or from the resources of the top management⁵⁵.

c- Division of job transfer on the basis of estimate of its legitimacy: -

We differentiate here between legitimate job transfer and illegitimate job transfer or disciplinary job transfer, as the legitimate job transfer is the job transfer that takes place for public interest through regulation of the work progress of a public facility and distribution of work among employees, while illegitimate of disciplinary job transfer is the type that takes the management as a means of revenge or punishment of the employee in order to achieve goals away from the public interest⁵⁶.

**The second requirement
Legal conditions for execution of job transfer**

In principle, the administrative authority enjoying the jurisdiction over transfer of a public employee/ servant, which the French Legislator identifies under article 25 bis- repeated and in accordance with the executive regulations thereof of the law No. 2016 – 583 dated 20/04/2016 as amended by the law No. 83 – 634 (above mentioned)⁵⁷ and as provided for

⁵⁴ IBID: Page 67 and thereafter.

⁵⁵Dr. Sharif YousifHilmi Qatar.IBID: Page No. 93.

⁵⁶IBID: Page No. 94

⁵⁷Article 25 bis de la LOI n°2016-483 du 20 avril 2016 modifiant la loi N 83 – 634 qui stipule: Il est interdit à tout fonctionnaire qui, placé en position de détachement, de disponibilité ou hors cadre et bénéficiant d'un contrat de droit privé, exerce en tant que cadre dirigeant dans un organisme public ou un organisme privé bénéficiant de concours financiers publics et qui réintègre son corps ou cadre d'emplois d'origine, de percevoir

under the Executive Regulations of the Federal Government Human Resources Law, as follows⁵⁸: -

- 1- Regarding the position of the Ministry's Undersecretary or Director General or Ministry's Assistant Undersecretary or Executive Director or other similar positions in the Federal body, this shall be by a decision to be issued by the head of the Federal body in case of job transfer within the Federal body, and by a decision of the appointment competent authority in case of job transfer to outside of the Federal body.
- 2- Regarding other positions/ jobs, this shall be according the table of powers and responsibilities in case of job transfer within the Federal body and by the approval of the heads of the body where the employee has been transferred from and where the employee has been transferred to in case of job transfer within the Federal body or to another body in accordance with the Human Resources procedures and Electronic Systems approved by the Federal Government.
- 3- Transfer of any employee may be made by a resolution of the Cabinet based on the requirements of the public interest from the place of work of such employee to any other Federal body at the same level of grade and with the same financial allocations.

***In this regard, the UAE Legislator restricts the administrative authority having the right to execute the job transfer to a number of conditions which can be summarized as under: -**

- 1- The transferred employee should meet the requirements of the job such employee is transferred to⁵⁹.
- 2- The job transfer should not result in delaying the seniority of the transferred employee and the service of the transferred employee shall be considered continuing regarding the effects resulting from the same⁶⁰.
- 3- Seconded employee may not be transferred during the period of secondment⁶¹.

des indemnités liées à la cessation de ses fonctions au sein de cet organisme, à l'exception de l'indemnité compensatrice de congés payés

⁵⁸Article 37 of executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE.

⁵⁹Article 36 of the first clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

⁶⁰Article 36 of the second clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

⁶¹Article 36 of the seventh clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

- 4- An employee may not be transferred outside of the Federal body during the probationary period⁶².
- 5- Transfer of the employee should not result in cutting down of his total salary unless he approves in writing to the same⁶³.
- 6- Save the provisions of paragraph 12 of article 36, transfer of the employee should not result in damages to his acquired rights⁶⁴.

In this regard, we should remind that job transfer is considered as one of the most important phenomena of authority enjoyed by the administration at any time it desires to exercise for the same of realizing the public interest without giving due consideration to employee's desire because it is commonly acceptable and known that the administration is the body in charge of achieving and regulating the public interest of the body and it has the right to exercise its discretionary over using such authority whenever necessary without being subject to any judicial control.

To that end, and for the job transfer order to be legitimate, such job transfer order should aim at achieving the interest of work and if the administration contradicts this aim, the administrative court shall cancel its defective decision regarding misuse of the authority, and it should be reassured that the relationship governing the employee and the administration is a regulatory relationship and the employee shall be subject to decisions and instructions issued by the administration regarding good performance and organization of work.

Practically, most often the administration resorts, in reprimanding the employee, to transferring the employee whether spatially or quantitatively arguing that the public interest requires the same while such transfer actually contains a padded hidden disciplinary punishment which the poor weak employee has no choice but to accept such job transfer or else such employee will be subject to disciplinary accountability⁶⁵.

In this regard, the French State Council considers that the expression public interest is very wide and cannot be restricted to certain controls in order to judge the management actions as being legitimate or not, and for this reason evidence of defect of deviation of the authority is considered to have been discovered by it because mostly matters which are difficult and related to the psychology of the issuer of the decision, lie inside the decision itself apart from other defects which are easy to discover, in addition to that the employee in this case is away from the course of events within the periphery of the administration that issued the decision s the administration usually reserves the reasons for issuing such decision⁶⁶.

⁶²Article 36 of the ninth clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

⁶³Article 36 of the Twelfth clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

⁶⁴Article 36 of the thirteenth clause of the executive regulation for law of human resources at Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE

⁶⁵Dr. HamdiNooruddin, making job track easier in Public Job in Algeria, in the light of the provisions of Article 06-03, of the Symposium magazine for legal status, First Edition, Page No. 2013, Page 112.

⁶⁶⁶⁶(CEAss., 10 juillet 1996, requête numéro 138536, Cayzeele : RFDA 1997, p. 89, note Delvolvé ; AJDA 1996, p. 732, chron. Chauvaux et Girardot ; CJEG 1996, p. 382, note Terneyre ; LPA 18 décembre 1996, note Viviano), ainsi que les contrats de recrutement des agents publics (CE Sect., 30 octobre 1998, requête numéro

149663, Ville de Lisieux: Rec. p.375 ; AJDA 1998, p. 969 et 977, chron. Raynaud et Fombeur ; JCP G 1999, II, 10445, note Haïm ; Dr. adm. 1998, 374 ; RFDA 1999, p.128, concl. Stahl et note Pouyaud ; AJFP 1999/1, p. 4)

Chapter (2)

Status of job mandate/ delegation and job secondment

The main job statuses/ situations prescribed under the legislations of Human Resources in the United Arab Emirates and the comparative systems, the status of job delegation/ mandate and the status of job secondment, which are listed under special or exceptional statuses/ situations because the legislator regulates them by quantitative and distinctive rules and provisions by virtue of the implications and effects resulting from the same whether regarding the public servant/ employee at the level of his professional career, or regarding the State in general represented in its user authorities concerned with this procedure, and here we mean the original user authorities and the future user authorities, and will try to get acquainted with all of these thoughts and ideas through the following division: the first topic – job secondment, and the second topic – job delegation/ mandate.

The first topic

Status of job delegation/ mandate

Sometimes, the administrative authority confronts a very big practical problem related to a case of existence of a sudden vacancy in one of the administrative positions due to death or sudden resignation with giving due respect to the deadlines for serving a notice, and at the same time the administrative authority is obliged to ensure the functioning of the public facility in a permanent and stable manner, under such circumstances the procedures of recruitment/appointment are inappropriate due to the factor of urgency, as such, the administrative authority resort to applying some exceptional job solutions, especially, job delegation/ mandate and job secondment, therefore, we will discuss this requirement through studying the following two ideas: the first requirement – the essence of job delegation/ mandate, and the second requirement- the legal conditions for executing job delegation/ mandate.

The first requirement

The essence of job delegation/ mandate

Article 26 of the Decree by the Federal Law No. (11) of 2008 regarding Human Resources in the Federal Government deals with job delegation/ mandate as under: “An employee may be delegated/ mandated, by a decision to be issued by the Minister or whoever he delegates/ authorizes, to perform the duties of a vacant job or whose holder is absent for a period not exceeding six month renewable for another period of three months provided the position to which the employee has been delegated should be equal to the grade of the delegated employee or a maximum of two grades higher, and upon expiry of the probationary period, the employee may be transferred or promoted to the position he has been delegated to in accordance with the provisions of transfer and promotion stipulated under the decree by the

law and the executive regulations thereof⁶⁷. The Executive Regulations of the Federal Government's Human Resources Law stipulate that: "An employee may be mandated/ delegated within the Federal body or outside of it to another federal body in accordance the procedures of Human Resources and the approved electronic or digital approvals for performing the duties of a vacant job or if a holder of the job is absent"⁶⁸. These legislative references may have defined to us some of the characteristics/ features of job delegation/ mandate but they remain insufficient in identifying this job procedure appropriately and this leads us to seek the efforts of jurists and the judiciary in order to correct the objective/ substantive dimensions thereof.

In this regard, the two jurists/ Mohammed Rifat Abdul Wahab and Hussein Osman Mohammed define job delegation as: "the issuance of a decision by the competent authority assigning the employee another job other than his original job and temporarily along with remaining of his rights with the body/ department from which such employee has been delegated"⁶⁹.

Advocate/ Sharif Yousif Helmi Khatir defines job delegation as: "A decision by the competent authority assigning the employee another job other than his original job temporarily within his administrative unit or in another unit, and that the other job should be at the same grade or higher along with remaining of such employee organically linked with his original employer by receiving his salary from the same"⁷⁰.

Advocate/ Khatir Shatanawi defines job delegation as: "A job situation allowing placing of the public servant outside the department where such employee belongs or carrying out another job other than his original job at the same department along with benefiting from the rights prescribed for his original job"⁷¹.

At the judicial level, we can depend on various job delegation indications stated in the body of the administrative court's judgments, the most important of which is the judgment passed by the administrative judiciary court in Egypt which stated that: "Delegation is a temporary assignment of the public servant to carry out the burdens of a job, and as such, it is a temporary matter in its nature in which the administrative authority may set/ go back from it at any time, and which results in no final legal position for the employee which may not be prejudiced ... etc"⁷².

The judgment passed by the Jordanian Supreme Justice Court further stated as follows: "We find out that what can be learned from the intentions of the legislator is that delegation is

⁶⁷In other legislations the applicable Egyptian Civil Service Law stipulates that as per the decision of competent authorities, an employee may be deputed to carry out other job of the same job standard or the immediate higher standard directly in the same unit where he works or in another unit in case the work requirement in the original job permits so, an employee may not be deputed outside the administrative unit only as per his request.

⁶⁸Article No. 38 of the executive regulation of the law of human resources in the Federal Government in accordance with resolution of Cabinet No. 1 of 2018, UAE.

⁶⁹Dr. Mohd Refaat Abdulwahab, Dr. Hussain Osman Mohd, the principles of administrative law. House of University Prince. Alexandria, 2001, Page 284.

⁷⁰Dr. Sharif Yousif Hilmi Qatar, Public Job, Comparative Study, Dar Al Nahdar Al Arabiya, Cairo, Page No. 20, it is the same definition mentioned by the Algerian Jurist, Hashim Harfi, in his book, the public job in the light of Algerian legislations and some foreign experiments, Dar Homa, Algeria, 2012, Page No. 84 and thereafter.

⁷¹Dr. Ali Qatar Shaknawi, IBID: Page 79

⁷²The judgment of administrative judiciary in Egypt No. 1139 of 2006, QF 26/11/1953.

fulfillment of work needs at the department to where the employee required to be delegated ... the decision to delegate the employee has not been issued in order to realize the purpose for which this procedure has been legislated and enacted which makes it defective in contradicting such purpose”⁷³.

*At the level of the types of job delegation, there are various divisions according to the angle from which we look at this job procedure: -

First: If we look at job delegation from the angle of relationship of the employee with his original job: -

We can differentiate between full delegation and partial delegation⁷⁴, as the full delegation is based on the idea of full dedication of the employee’s time and that the employee is fully free to perform the work of the job such employee has been delegated for, as such employee turns away from his original job assigned to him⁷⁵, while partial delegation is that the employee becomes free for some time to perform the job such employee has been delegated for along with his continuation in being assigned to perform his original job, as he does not depart from his original job but remains committed to it⁷⁶.

Second: If we look at it from the angle of the departments between which such employee has been delegated: -

In this case job delegation is divided into a delegation within the administrative unit itself and a delegation between different administrative units, and the administrative unit means the ministry or any governmental body/ authority having a special budget, and includes local administrative units⁷⁷.

The second requirement

Legal conditions for executing job delegation/ mandate

⁷³The judgment of the Jordanian Supreme Court in 15/12/1980, published in the magazine of Jordanian Bar Association 1981, Page No. 297, mentioned by Dr. Ali Qatar Shaknawi, IBID: Page No. 197

⁷⁴The department of Fatawa and legislation at Ministry of Justice, UAE, issued an EDICT, that it is clear from the meaning of preceding text that the deputation is made to carry out the burdens of a vacant job, for the public good, and not to hold the financial grade, in other words, deputation will be to practice responsibilities ..., the referred to department held that whenever it is confirmed that the competence of the director of technical department at the Ministry ... is absent from the department, as he has been transferred a way of the place of the practice, and Mr. ... who has been deputed to carry out the burdens and responsibilities of this job is actually carrying out the burdens of this job, and since his financial grade is less than the financial grade for the director of the referred to technical department, and since the period of deputation is more than three months, then Mr. ___ is entitled to the deputation allowance prescribed under article 37 as mentioned “a Fatawa published in the justice magazine, sixth edition, Ministry of Justice UAE, Page No. 122”

⁷⁵Viz a viz this double burden to the attributed employee, the lawmaker decided a deputation remuneration. Moreover the lawmaker prohibited deputation of an employee in such way to more than one authority, in accordance to article No. 38/ First Clause, of the executive regulation for the law of Human Resources in the Federal Government and in accordance with the decision of Cabinet No. 1 of 2018 UAE, the executive regulation of law of human resources of Federal Government, underscored the same provision set out in the law of human resources, Article 27 of law of human resources of Federal Government in accordance with the Decree Law No. 11 of 2008 amended under Federal Decree Law No. 17 of 2016, UAE.

⁷⁶Dr. Abdul Fatah Hassan, the principles of Kuwaiti Administrative Law, Dar Al Nahda Al Arabia, Cairo, 1981, Page No. 253

⁷⁷Dr. Abdul Ghani Basyouni Abdulla, the administrative Law, university House, Beirut, 1986, Page No. 253.

The UAE legislator controls and specifies the legal conditions for applying/ executing job delegation under the two articles 27 and 28 of the Federal Government's Human Resources Law, and in this regard: article 27 stipulates as follows: "An employee may not be delegated to carry out tasks of more than one job in addition to his original job", while article 28 provides for as follows: "1- An employee may be delegated to any other job in addition to the tasks of the original job, provided such employee shall be granted delegation allowance as of the date of commencing the tasks of the delegation at 25% of the basic salary for the beginning of the job delegated to only in cases in which the period of delegation is more than two month.

2- Delegation of the employee too perform the tasks of the job such employee has been delegated to only other than the tasks of his original job, shall be considered as an official assignment in order to develop his performance provided such employee shall not be entitled to delegation allowance provided for under the above mentioned clause".

Based on the above mentioned, we can summarize the legal conditions necessary for application/ execution of delegation as under⁷⁸: -

- 1- An employee may not be delegated to more than one job in addition to his original job, which means it is not permitted to assign the public servant to perform more than two categories of job burdens.
- 2- Job delegation will be as an addition or completion of the original work or as a volunteer.
- 3- The job to which the employee has been delegated should be equal to or a maximum two grades/ degrees higher than the grade of the delegated employee.
- 4- The duration of job delegation should not exceed a maximum of six months renewable.
- 5- A new/ junior employee may only be delegated after successfully passing the probationary period and confirmed as a full-time permanent employee.
- 6- An employee may not be delegated to a higher position if such employee has achieved a performance level result assessment that requires improvement for the previous year according to the performance system.

⁷⁸Article No. 38 of the executive regulation for the law of human resources of federal government in accordance to the resolution of Cabinet No. 1 of 2018, UAE, details of the same vide Dr. Abdulfatah Hassan, IBID, Page 255, vide also Dr. Abdul Ghani Basyouni Abdalla, the administrative Law, the university House, Beirut, 1986, Page No. 253.
Pour aller loin dans ce sens voir - Matheux (CH), la fonction publique en Europe, Ed Sirey, Paris, 2004, P 221 et s. Voir aussi - Olivier Dord – Droit de la fonction publique – PUF – collection Thémis Paris 2004, P 165 et s

- 7- The delegated employee is subject to all rules applicable by the body/department such employee is delegated to except periodic allowance, entertainment and termination of service.
- 8- The job delegation system may be terminated at any time prior to expiry of its duration.
- 9- Imposition of penalties on violations committed by the employee delegated outside of the Federal body/ department shall be under the jurisdiction of the department such employee has been delegated to if the delegation is full and in accordance with the applicable administrative penalties and procedures.

The second topic Status of job secondment

It may happen during the service of the public servant that such public servant is seconded to work outside of the administrative unit where such employee works and that such employee should free himself to work for the department he has been seconded, provided that the department where the employee has been seconded bears payment of the salary of such seconded employee while the seconded employee reserves some rights with the department he has been seconded from in a manner reflecting cooperation between countries and international organization, through which a big number of job vacancies are occupied in the emerging countries that have no enough qualified staff, in addition to providing international and regional organizations and institutions operating within the country with staff to meet work needs⁷⁹, as such, we will try discuss this topic through studying the two following requirements: the first requirement – the essence of job secondment, and the second requirement – the legal conditions for executing and implementing job secondment.

We will discuss the above mentioned two requirements as under: -

The first requirement The essence of job secondment

We will try, through this requirement, to get familiar with the essence of job secondment, particularly, in terms of explaining their accurate concept as specified by the legislator, the jurist and administrative courts/ judiciary, in addition to specifying its legal system, i.e., the conditions of its application/ execution from the legal viewpoint as determined by the legislator in the United Arab Emirates and the legislator in the comparative systems, and as such, we have opted for dividing this requirement into two main subdivisions: the first

⁷⁹In detailing this matter vide – MohdMohdBadrani, Public Job, study of the overriding principles, in a synthetic approach to the administrative law and public administration, First Part, Dar Al Nahdar Al Arabia, Cairo, year 1999, Page No. 71 and thereafter.
Voir également - Hauriou (M), Précis de droit administratif, éd Montchrestien, Paris, 1925, p 293 et s. Waline (M), Droit administratif, 15^{ème} édition, Dalloz, Paris, 1992, P 311 et s

subdivision includes a definition of the job secondment, while the second subdivision includes the legal conditions needed for executing the status of job secondment.

We will discuss the above mentioned as under: -

The first subdivision Definition of job secondment

Various definitions have been provided for the job secondment, the most important of which is the definition by the jurist, Mohammed Rifat Abdul Wahab which states that job secondment is the issuance of a decision by the competent authority, after getting express approval of the employee, whereby the seconded employee is assigned to work for a foreign body mostly at the expense of such foreign body usually, along with remaining of the relationship of the seconded employee with the body/department of his original job/ work in terms of calculation of allowances, seniority and promotions within specific limits specified by the law⁸⁰, or the definition by the jurist, NawafKanaan stating that job secondment means placing the employee temporarily – after obtaining his approval – in a position outside of the department where he originally works provided that such employee is subject to the rules applied to this job and obtaining a salary for the same, though such employee reserves some of his rights with the department/ body from where such employee has been seconded⁸¹.

On this basis, job secondment requires the public employee to free and dedicate himself for carrying out another job for another body/ department other than the body/ department where he works whether the department/ body to which the employee has been seconded is a public body/ department (not applying the civil service system) or a private one, internal or external⁸².

Secondment is to a foreign government or an international body⁸³, provided, in case of secondment to (a public body/ department) that such public body/ department should be subject to its own system, and in such away it is different from (assignment) outside of the work place or assignment to perform the work of another job for another body other than the body/ department where the employee works, as assignment is only made at a public body/ department that applies the civil service system⁸⁴, and secondment requires obtaining three approvals from certain bodies: submitting of application by the department requesting secondment, approval of the seconded employee and finally approval of the administrative body such employee belongs to.

Article 29 of the first paragraph of the Human Resources Law at the Federal Government in accordance with the decree by the Federal Law No. 11 of 2008 as amended by the decree by the Federal Law No. 17 of 2016 of the United Arab Emirates stipulates that: “An employee may be seconded by a decision to be issued by the competent authority concerned with

⁸⁰Dr. MohdRefaatAbdulwahab, the administrative Law, IBID: Page 252

⁸¹ Dr. NawafKanaan, IBID : Page 82

⁸²Benoît (F.P), Droit de la fonction publique en France, 19^{ème} édition, Dalloz, Paris, 2002, P 112

⁸³Sur ce point d’analyse voir - Louis Fougère, Fonction publique étude et choix de textes commentés, Institut International des sciences administratives, Bruxelles, UNESCO, 1966, p 123 et s

⁸⁴Ibid, P 113

appointment to a any federal or local body within the State for a period not exceeding one year, and such period may be extended for similar periods by a decision to be issued by the Cabinet, thereafter, the seconded employee shall be returned to the place of his work or transferred to the place where he has been seconded, and an employee may further be seconded by a decision of the Cabinet to any of the international bodies, Arab or foreign or regional organizations for a period not exceeding one year, and such period may be extended for similar periods by a decision to be issued by the Council of Ministers, and in all cases written approval of the employee on such secondment or extension should be obtained”⁸⁵.

*Application of the job secondment system entails in a number of results which we can summarize as under⁸⁶: -

- 1- The secondment shall be for a period of (one year), however, it may be extended by the concerned party for a period or period not exceeding one year each and in all cases.
- 2- An employee may not be seconded prior to expiry of at least “three years) from the date of previous secondment.
- 3- It shall be permissible to cancel the secondment decision before the expiry of the secondment period and the employee shall have no right to object to the same considering that the secondment decision falls within temporary decisions.
- 4- The seconded employee shall continue holding his post and grade throughout the period of the secondment and his employer may not occupy it originally through appointment or promotion or transfer, however, the job may be considered vacant (legally), and as such, it may be occupied by assignment according to the rules and conditions above mentioned.
- 5- The employee seconded to a federal or a local government body receives his total salary, leaves and other entitlements from the department/ body where he has been seconded to as of the date of commencement of the secondment until the date of the expiry thereof⁸⁷.

⁸⁵ Comparatively speaking, notably in the Egyptian legislation, the law of Egyptian civil service No. 81 of 2016, adopted the issue of Higher, under Article 35 which stipulates that, as per the decision of competent authorities, an employee may be hired to work internally or abroad, after his written approval, the decision of the hire details its period, the hire of holder of position of a job in needing jobs, or supervision administration, will determine the period of his occupation and the pay of the higher employee will be totally at the hiring authority. The period of the hire, will not fall within the period of his service, the hired employee will be promoted after he returns from hire and use the necessary period for occupation of the higher position directly. And the period of hire will not fall within necessary period for promotion. The period of hire will fall within the period of the participation of the employee in the law of social security and entitlement to allowance subject to provisions of social security law issued under law No. 79 of 1975 and the executive regulation will determine the rules of hire.

⁸⁶ In details of this matter, vide Dr. Ahmed Hassan Rabei, Dr. MosafaAlnasafi, the principles of administrative law and public job in UAE, Sharjah University, page 2020, Page 278 and thereafter.

⁸⁷Article 41 / Third Clause, Section A of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE.

- 6- The salary of the employee shall be ceased at the department where he works as of the date of leaving work until his return to it, and the seconding department/ body may, by a decision to be issued by the Prime Minister and according to the requirements of the public interest, bear all or some of the salary of the seconded employee, and also that in the event of secondment outside of the country, an employee may be paid a reward the amount of which to be estimated in advance⁸⁸.
- 7- The duration of the secondment shall be calculated in the service including calculation of the same for the purposes of retirement provided the seconded employee makes the pension deductions on his salary in his original job and any increments that take place⁸⁹.
- 8- The seconded employee may be promoted at his original place of work during the period of the secondment according to the procedures applicable at the seconding body/ department ... etc⁹⁰.
- 9- The secondment of the employee shall expire in the following cases⁹¹: -
 - a- Expiry of the duration of the secondment or expiry of the term of its renewal.
 - b- Based on a written request/ application to be submitted by the seconded employee and approval of the seconding department to the department that requested such secondment.
 - c- The secondment of the public employee shall expire at the request of the legally concerned authority to the seconding department/ body or the body requesting such secondment.
 - d- The seconded employee should return to the seconding department within 5 working days from the date of the expiry of the secondment if the secondment is within the country and within one month if the secondment is abroad.
 - e- The party desiring to terminate the secondment should address at least a two month written notice to the other party from the date of the expiry of the secondment.

The second requirement

⁸⁸Article 41 / Third Clause, Section B of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁸⁹Article 41 / Seventh Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹⁰Article 41 / Thirteenth Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹¹Article 42 of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

Legal conditions for executing job secondment

The UAE Legislator specifies the legal conditions for application/ execution of the job secondment under article 29 of the Decree by the Federal Law No. (11) of 2008 regarding Human Resources in the Federal Government⁹² as follows: “An employee may be seconded by a decision to be issued by the Cabinet to any federal or local body within the State for a period not exceeding one year, and such period may be extended for another one year, and an employee may further be seconded by a decision of the Cabinet to any of the international bodies, Arab or foreign or regional organizations for a period not exceeding one renewable year, and in all cases written approval of the employee on such secondment or extension should be obtained”.

The seconded employee shall receive his total salary, annual leaves and other entitlements from the department where he has been seconded, and in case of secondment to regional or international bodies abroad, the employee shall receive his total salary from the Ministry he works for in addition to any amounts or rewards/ privileges he obtains from the place where he has been seconded, and in all cases, the seconded employee shall not be entitled to any leaves from the Ministry he works for, and the duration of the secondment shall be calculated within the duration of the employee’s service, and his performance shall be assessed in coordination with the department where he has been seconded to, provided the employee shall be subject to the performance management system applied by the government, and the Ministry of fill/occupy the job which becomes vacant due to the secondment, and the Ministry should, upon return of such employee from the secondment, return the employee to his original job/ position or appointing him in another job which is equal to or higher his previous job. The Executive regulations specify the provisions and controls related to the secondment”.

In the light of the above mentioned, we can summarize the conditions of the job secondment as follows⁹³: -

- 1- The duration of the job secondment within the country to a federal or a local body should not exceed one year, and may be extended exceptionally for a similar period by a decision to be issued by the Cabinet⁹⁴.

⁹²In details of the conditions of job hire in the light of the French legislation vide :
Robineau (G), *Les Fonctionnaires de l’Etat*, Ed seuil, Paris, 2015, P 87 et s. Voir également - Lacroix (B),
Organisation Fonctionnelle de l’Etat, Ed Sirey, Paris, 2015, P 243 et s

⁹³In details of the condition of job hire in the light of French legislations vide:
Bernadette Groison, en collaboration avec la FSU, *En finir avec les idées fausses sur les fonctionnaires et la fonction publique*, Ivry-sur-Seine, éditions de l’Atelier, 2014 p 345 et s

⁹⁴Article 41 / Fourth Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

- 2- The duration of the job secondment to any Arab, regional or foreign bodies and organizations should not exceed one year, and may be extended exceptionally for a similar period by a decision to be issued by the Cabinet⁹⁵.
- 3- A new/ junior employee may only be seconded after successfully passing the probationary period and confirmed as a full-time permanent employee⁹⁶.
- 4- The job secondment shall be valid based on a written approval of the concerned employee, and the same shall be extended for other durations or periods in the same manner and in accordance with the same procedures⁹⁷.
- 5- The job secondment shall be approved based on the express approval of the original employer as well as the future employer⁹⁸.
- 6- The periodic or annual performance of the seconded employee shall be assessed in coordination with the body/ department that requested the secondment in accordance with the Federal Government employees' performance management system⁹⁹.
- 7- The employee returning from the secondment should be listed in a job/ a position to be specified by the original employer and without prejudice to his grade or total salary, and that the federal body should fill the job/ position that has become vacant due secondment within or outside of the country¹⁰⁰.

Conclusion: -

At the end of this study, we have concluded to the job relationship which is usually a continuous, permanent and regulatory relationship between the employer and the public

⁹⁵ Article 41 / Fifth Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹⁶ Article 41 / Ninth Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹⁷ Article 41 / Second Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹⁸ Article 41 / First Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

⁹⁹ Article 41 / Eleventh Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

¹⁰⁰ Article 41 / Sixth Clause of the executive regulation of the law of human resources of federal government in accordance of resolution of Cabinet No. 1 of 2018 UAE

servant/ employee, and this situation is dictated by the requirements of the public interest that requires ensuring of the progress of work at the public facility permanently and stably, and this extraction is not absolute as it is governed by some objective/ substantive changes whether regarding the public servant or the employer.

Regarding the latter, it may confront difficult practical problems related to a case of existence of a sudden vacancy in one of the administrative positions due to death or sudden resignation with giving due respect to the deadlines for serving a notice, and at the same time the administrative authority is obliged to ensure the functioning of the public facility in a permanent and stable manner, under such circumstances the procedures of traditional recruitment/appointment are inappropriate due to the factor of urgency, as such, the administrative authority resort to applying some exceptional job solutions, especially, job delegation/ mandate and job secondment, which all entail the basic situation of the public servant which is the status of the actual service whether regarding the professional rights or duties.

In general, this study has allowed us to identify a number of scientific results which we can summarize as under: -

- 1- Similar to the French Legislator, the UAE legislator considers that stopping by the public servant from performing his job temporarily for reasons prescribed by the law, especially, due to annual leave or sick leave or maternity leave or exceptional leave or school vacation or unpaid leave, does not affect characterization of the employee's status in the case of actual service, as such the rights of the public employee remain valid and the administrative body has no authority to estimate such rights as long as the mentioned cases fall within the special image/ picture of the actual service.
- 2- The UAE legislator and courts have concluded that the actual or realistic employee is found in a legal position upon commencing the tasks assigned to him upon his appointment, and this is due to the exceptional legitimacy that compensates the usual legitimacy under compelling and tough circumstances that require seeking all legal and realistic solutions in order to ensure continuation of the progress of work at the public facility even under exceptional circumstances, and based on the above mentioned, the actual employee is in a situation/ status of actual service and interruption of his effective work may not be argued at the legal positions of individuals due to the absence of the element of specialization.
- 3- The movement of the public employee due to job transfer or delegation or secondment, may affect such employee's basic status/ situation determined in the decision of appointment, due to the difference of his duties and tasks with his original employer compared with his future place of work, but this does not affect the legal characterization of the status of the employee in terms of considering him in a status/ a situation of actual service, as such, his material rights (especially the salary,, financial compensation and financial aid/ assistance) and his moral rights (especially

the annual leave, job promotion and job career) remain valid and effective through calculating the joint duration and assessment between holding of the original job/ position and the new one.

In the light of the above mentioned results, this study has allowed us to come out with a set of suggestions and recommendations which we summarize as under: -

1. Upon application/ execution of job processes related to internal appointment within the framework of the main situations/ statuses, especially, job transfer or job delegation or job secondment, we notice that the Human Resources Department takes a long time for various realistic and legal reasons, on one hand due to abundance of administrative procedures related to execution of the process whether at the level of the original employer/ body or the future employer.

On the other hand, due to delay in financial approvals related to the position/ job by the financial department regarding a new position/ job, and on the third and final hand, due to delay in the joint approval between the original employer and the future employer in executing one of the main/ basic situations/ statuses related to the public employee, which is referred to a number of factors, the most important of which the reservations expressed by the department of human resources at the local and central levels.

In order to solve this big problem, we recommend the necessity for cancellation of the annual plan system of the human resources and replace it with the five-year plan for running the human resources as is the case in most of the western systems, especially, in France and Germany.

2. Upon balancing between the original job problem and the solutions diagnosed in the main/ basic situations/ statuses related to the public employee, we conclude that there is a relative imbalance in the suitability of the problem and solutions provided for the problem, as the main/ basic situations system in the public service sector has found principally for filling the gap of the sudden vacancies in one of the job positions due to either death or resignation.

For this reason, the principle of ensuring the continuation of the progress of work at the public facility requires finding a quick and effective solution to the problem, and also that the applied solutions are not suitable in terms of time, as such, we recommend addressing such sudden and unexpected circumstances in the nominal list of employees by exceptional approvals to be issued by the Department of Human Resources to the future employer.

3. Regarding practical exercise, we notice that the original employer enjoys a wide discretionary authority in the field of estimating the nominal list of employees registered for executing one of the processes of the main situations, and may lack of substantive/ objective criteria applied to the selection process has affected the credibility of the entire process, which went out gradually of the framework of transparency and legitimacy and to fell into the grip of favoritism and nepotism.

Therefore, we recommend reduction of the scope of the discretionary authority of the administration through calling upon the UAE Legislator to enact specific substantive/objective criteria for assessment in order to transfer the authority enjoyed by the administration of the original employer from suitability framework to matching framework, provided these processes are subject to the control of the guardian, presidential and administrative authority in addition to the control of the administrative judge in his capacity as the judge of legitimacy and the protector of rights and freedoms.