

The Principle of Equality in Holding Public Office: A Comparative Study

Chaker Slimane

Lecturer (Class A), Faculty of Law, Ahmed Ben Yahia El-Wancharissi University,
Tissemsilt Algeria

Email: chaker.slimane@univ-tissemsilt.dz

Received: 12/12/2025

Accepted: 24/04/2026

Published: 15/05/2026

Introduction

All state institutions play an important role in serving society and citizens through the regular and continuous operation of public services. This is achieved by organizing work within institutions, bodies, and departments to serve the public interest. These institutions are managed by individuals known as public employees. The state, as a legal entity, is essentially a group of individuals working on its behalf, bearing its responsibilities, and carrying out its activities.

The state and its dependent institutions are considered public legal persons. The prosperity and effectiveness of a state depend on the efficiency, knowledge, and competence of its public employees. It is often said that when a nation is described as civilized and advanced, it is due to the quality of its public employees; when described as underdeveloped, it is likewise due to their inefficiency. In a vivid analogy, it has been said: "The public employee is nothing but a speaking law, while the law is but a silent employee." Holding a public position requires several general and specific conditions. Anyone who meets them has the right to be listed among candidates in accordance with the principle of equality.

This principle has been recognized by all legal systems because the expansion of state functions in various fields requires equal access to public office for all citizens—without discrimination based on political affiliation, opinion, or belief—so long as the legal requirements are met. The decisive factor must always be merit and competence.

From this perspective, the study raises the following problem:

To what extent is the process of appointment to public office in Algeria—and in comparative law—subject to the principle of equality? What are the legal foundations of this principle?

Before answering this question, we must first clarify the concept of equality and its different types.

1. The Nature of the Principle of Equality in Public Office

Equality is a cornerstone of every democratic system of rights and freedoms; it is the soul of democracy. Without it, democracy loses its meaning, and freedom collapses.

Equality in holding public office reflects the equality of individuals in rights and public duties. Historically, this principle traces back to the French Revolution, which declared in Article 6 of the 1789 Declaration of the Rights of Man and of the Citizen that “All citizens are equally eligible for all public dignities, places, and employments, according to their capacities.”

This principle was later enshrined in the 1958 French Constitution and has since become a constitutional norm worldwide.

In essence, equality means equal treatment of individuals before the state—without discrimination based on origin, gender, religion, language, or social status—in acquiring rights, exercising them, and fulfilling duties.

2. Types of Equality

a. Legal vs. Actual Equality

Legal equality means all individuals are subject to the same laws—both in protection and in punishment. Traditional Western liberal democracies emphasized this formal or negative equality, meaning the state merely refrains from enacting discriminatory laws.

b. Upward vs. Downward Equality

Sociologists distinguish between upward equality, which raises the less privileged to the level of the strong, and downward equality, which lowers the strong to the level of the weak. Most scholars reject downward equality as destructive and only seen during revolutionary upheavals.

c. Political vs. Social Equality

Political equality means equal participation in public affairs—voting, representation, holding public office, and managing state affairs—subject to reasonable legal conditions such as age or citizenship.

Thus, equality in public employment is part of these broader forms of equality, as it concerns the right of every qualified citizen to serve as a public employee.

Chapter One: The Principle of Equality in Public Office

As mentioned, equality is the foundation of rights and freedoms. In the context of public employment, it ensures that individuals are treated equally in accessing positions based on merit and ability alone.

Section One: Concepts and Characteristics of Public Employment

Two main concepts of public employment exist worldwide:

- The Functional (Objective) Concept – focuses on the job itself as a set of duties and responsibilities, regardless of who holds it (the “American model”).
- Positions are defined and described abstractly.
- Recruitment focuses on finding the most qualified individual for specific duties.
- The Personal (Subjective) Concept – focuses on the employee rather than the position.
- Employees are selected based on their qualifications and seniority.
- Promotion is often treated as a right after a certain period.

Characteristics of Public Employment

- The position exists independently of its holder and continues when vacated.
- Appointment is by official decision once conditions are met.
- It is linked to authority and responsibility.
- It is permanent and stable, unlike private-sector work.

Section Two: Legal Foundations of the Principle in Algerian Law

The 1966 Civil Service Law first codified the equality principle:

“The legal system of public employment is governed by an important principle: the equality of Algerians in access to public service.”

Later, Article 74 of Ordinance No. 06–03 (2006) reaffirmed:

“Recruitment shall be subject to the principle of equality in access to public employment.”

Article 27 further states:

“No discrimination shall be made between employees based on opinions, gender, origin, or any personal or social circumstance.”

Additionally, Article 41 provides:

“The employee shall perform his duties honestly and impartially.”

This ensures both equality and neutrality within the public administration.

Chapter Two: Rules for Entering Public Employment and Exceptions

Section One: Conditions and Rules for Entry

In Algerian Law:

- Article 74 of the 1985 Civil Service Model Law and the 2006 Civil Service Law both affirm equality in recruitment.
- Article 38 of Ordinance 03/06 grants every employee the right to training and

promotion throughout their career, ensuring equal professional development opportunities.

In French Law: Article 5 of the Law of July 13, 1983 outlines five basic conditions for appointment:

- French nationality (with limited exceptions for EU citizens).
- Full civil rights (no dishonorable criminal record).
- Compliance with military service laws.
- Good moral conduct.
- Physical fitness.

Recruitment is primarily done through competitive examinations to ensure merit and equality, though direct appointments exist for certain high-level or special posts (e.g., senior officials, newly created agencies).

New appointees undergo a probationary period before confirmation.

Section Two: Exceptions to Equality

Exceptions arise for humanitarian, social, or political reasons, creating what is known as “reserved positions.”

These are posts set aside for:

- War veterans and disabled soldiers,
- Widows and orphans of war victims,
- People with disabilities,
- Families of fallen soldiers.

In some countries (e.g., the United States), leadership positions are reserved for members of the ruling political party.

In Egypt, reserved employment also applies to certain social categories such as the disabled, soldiers’ families, or war widows.

Other exceptions include:

- Excluding women from military or combat roles,
- Excluding foreigners from public office unless naturalized.

Conclusion

From this comparative study, we find that constitutions and laws—whether Algerian, Egyptian, or French—all affirm equality in access to public employment.

As long as the legal conditions are met, no citizen should be discriminated against based on origin, religion, language, or social status.

Because public service represents the sovereignty and integrity of the state, ensuring

equality in access to it is essential for justice, efficiency, and national stability.

References

- Dr. Ashraf Mohamed Anas Jaafar, *The Constitutional Organization of Public Employment*, New University House, Setif, Algeria, 2011.
- Hussein Hamed Hassan Al-Hatemi, *The Principle of Equality in Holding Public Office in Iraqi and Comparative Law*, Master's Thesis, 2019.
- Dr. Khaled Mostafa Fahmy, *Legal Aspects of Public Employee Protection*, University Thought House, 2014.
- Dr. Samiha Laqabi Bashir Al-Sharif, *Public Law Professor*, University of Setif, New University House, 2014.
- Dr. Mohamed Rifaat Abdel Wahab, *The General System of Public Employment in France*, New University Publishing House, 2017.