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Legal Guarantees for Public Servants In The Face Of Disciplinary Penalties In Accordance With Iraqi Legislation

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Abstract:

The purpose of referring the offending public employee or accused of committing disciplinary offenses to the administrative investigation is to ensure the administration's right to reveal the truth about the charges attributed to the accused employee regarding his commission of disciplinary offenses affecting the public interest of the administration, and if those violations are proven then the administration has the right to punish the accused employee In accordance with the penalties stipulated in the Discipline Law of State and Public Sector Employees No. 14 of 1991 amended in accordance with Iraqi legislation, and at the same time, the legislator has provided many guarantees, including previous and contemporary, regarding disciplinary sanctions, including guarantees subsequent to imposing disciplinary penalties, and the purpose of these guarantees is not to abuse the administration in The use of the authority of punishment and that the penalties be proportional in terms of their material and moral effects to the size of the violations committed and that these guarantees are sufficient to achieve justice and reassurance for both parties, whether the administration or the employee is accused. Therefore, the study dealt with this topic according to a plan divided into two researches. Notifying the employee of the violations attributed to him, and then we dealt with contemporary guarantees And represented by the impartiality of the investigation authority, causing the punishment and guaranteeing the right of defense for the employee who is referred to the investigation. In the second section, we referred to guarantees subsequent to disciplinary punishment, represented by administrative grievance and judicial appeal against the disciplinary penalty decision in terms of the competent judicial authority to consider the appeal, procedures and reasons for appeal.

Keywords: *legal guarantees, disciplinary sanctions, administrative investigation, administrative grievance*

I. Introduction:

The disciplinary penalties prescribed in accordance with the administrative laws regarding disciplinary violations committed by the public servant differ from the rest of the penal laws, for example, the criminal law is

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restricted to the principle of legality, which states: (there is no crime and no punishment except with a text), while the matter is in administrative penal laws; it is only restricted to the second part of the principle above, which is (there is no punishment except by text), meaning that disciplinary violations are subject to the discretionary authority of the administration or the court.Therefore, they are included in the laws, for example but not limited to, which sometimes causes penalties to be inconsistent with the violations committed by the employee. This led the legislator to approve many previous and contemporary guarantees regarding disciplinary penalties, which contribute to the non-prejudice of the employee when the punishment is imposed against him.

The Importance of Study: The reason for choosing to study the subject of legal guarantees for the employee regarding disciplinary penalties in accordance with Iraqi legislation is embodied in the restrictions imposed by disciplinary sanctions against the public employee and the material and moral effects resulting from them, which requires the public employee to be aware of the legal and organizational aspects of all The previous and contemporary guarantees established by the legislator in order not to waste his legally stipulated right.

The Problem of Study: The problem of the study lies in the subject of legal guarantees for the employee regarding disciplinary penalties according to Iraqi legislation, in finding answers to a set of questions, including: Are there legal guarantees for the employee regarding disciplinary penalties in accordance with Iraqi legislation ?, And what are the legal and procedural rules that must be followed by those guarantees? Are these legal and procedural rules stipulated on the ground in practice when the violation occurs by the public employee? Do these guarantees contribute to reducing the arbitrariness of the administration? Are these guarantees sufficient? And do these guarantees ensure that the accused employee feels fair and reassured. Where all these questions in the research problem will be answered by a research method according to the Iraqi legislation.

The Objectives of Study: The study aims to address the issue of legal guarantees against disciplinary penalties according to Iraqi legislation, as it is one of the important topics in administrative law, and to identify the deficiencies and defects in the Iraqi disciplinary system and the extent to which the balance is achieved between the administration's interest embodied in the public interest and the individual's interest embodied In the private interest of the public servant in accordance with sound legal reason.

II. The methodology of Study:

A descriptive and analytical approach will be adopted by relying on the analysis of legal texts and indicating their effectiveness as legal guarantees established for disciplinary penalties in accordance with Iraqi legislation, and as an accurate scientific description.

The Division of Study: The dissertation will be divided into two topics. In the first topic, we will deal with past and contemporary guarantees for disciplinary penalties, and the second: for guarantees subsequent to disciplinary penalties. Then this study ended with a conclusion containing the most important conclusions and recommendations. And as follows:

The First Section

Previous and contemporary guarantees of the employee vis-à-vis disciplinary penalties

The employment laws in Iraq, disciplinary sanctions, have surrounded procedural rules that ensure that the employee has sufficient guarantees to face the disciplinary authority, and therefore failure to follow the procedures related to the determination of disciplinary penalties is a justification for requesting the abolition of those penalties, and accordingly we will discuss in this topic the guarantees prior to the imposition of disciplinary sanctions, This is in the first requirement of it, while the second requirement: is devoted to dealing with contemporary guarantees for the enforcement of disciplinary sanctions, and as follows:

The First Requirement:

Previous guarantees of the employee against disciplinary penalties

We will deal with the guarantees prior to the imposition of disciplinary penalties in two branches, the first of which is devoted to the principle of confronting and notifying the employee of the violation attributed to him, and the second branch for referral to the investigation and the authority concerned with it, as follows:

First Branch:

Facing and notifying the employee of the violations attributed to him:The confrontation consists in informing the accused employee of the charges against him by informing him of the offense he is accused of committing and informing him of the evidence indicating its commission with the statement that the intention of the administration is to impose one of the penalties stipulated in the law if it is proven that he committed that violation. The charges against him are to inform him of various evidence indicating that he committed the disciplinary offense, so that he can present his defense in the best way.

In order to fully achieve the guarantee of confrontation, certain procedures must be taken, represented by notifying the employee of the violation attributed to him, enabling him to view the case file, and giving him sufficient time to prepare his defense, and we will deal with these procedures briefly, as follows:

First - Notifying the employee of the violation attributed to him:

Notifying the accused employee of the disciplinary measures that will be taken against him is considered one of his essential guarantees. The notification means that the administration informs the violating employee of what it intends to take in confronting him before its occurrence, with the intention of remedying the situation and correcting the offending position in order to prevent its interference, by taking actions that would eliminate the causes of the violation, and in this case it is a warning against him being punished.()

Although the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended, did not provide for a guarantee that the employee is notified, it is inferred from the context of the assets that the investigative committees have settled on in most of their investigations .

On our part, we believe that not including a text in the law regarding notifying the employee accused of the violations attributed to him, is a legislative deficiency, which requires the legislator to avoid it through the amendment of the law on discipline of state employees and the public sector No. (14) for the year 1991, as amended and in force.

Second - Viewing the file:

The disciplinary case file means the investigations, documents and documents contained in the file related to the charges attributed to the employee. And the public sector No. (14) for the year 1991, amended and enforceable, there is no legal text requiring the administration to inform the accused employee of his personal file in order to prepare his defense kit and ward off the accusation against him, () but nevertheless the employee must be informed of all documents, papers, documents and evidence According to which he was referred for investigation, and that the breach of this right leads to a breach of the accused's right to defense, which may nullify the investigation and its decisions on the other hand. The employee has the right to view his personal file, which contains everything related to the employee, starting from the issuance of the decision appointing him until the moment of the investigation .

On our part, we believe that the failure of the legislator in the applicable law to stipulate the employee's right to view the disciplinary case file and the personal file is a legislative deficiency that the legislator should avoid, and it is an unjustified diminution of the employee's guarantees.

Second Branch

Referral to the investigation and its competent authority:

The investigation is of great importance in imposing disciplinary penalties on the violating employee, as it allows the employee to defend himself and deny the charges against him, and therefore the investigation is a fundamental procedure that results in its omission, the nullity of the decision issued for the disciplinary punishment, and therefore we must address the investigation in some detail and that as next one:

First - Referral to the investigation and its competent authority:

Disciplinary procedures begin with referring the accused employee to the investigation, where there is no penalty without investigation, and determining the competent authority to refer to the investigation is essential, because if the employee is referred to the investigation from a non-competent authority, then the administrative court will result in the nullity of the investigation and the effects that follow it. The most important of which is the defective penalty decision contested, and referring to the investigation is intended to announce the administration’s desire to take legal measures against the violating employee for committing a violation that requires his disciplinary questioning and instructing the investigative authorities to initiate investigation procedures and submit their final recommendations.

The State and Public Sector Employees Discipline Law No. (14) of 1991, as amended in effect, specified the competent authority to order the investigation of the employee in the administrative and financial violations attributed to him This authority is represented by the minister, with respect to any employee of his ministry, and the head of the department with regard to the employees of his department, and this is what was stipulated in Article (10) of the State and Public Sector Employees Discipline Law No. (14) for the year 1991, as amended and in force.

On the other hand, what is meant by the minister is the competent minister, and the head of the entity not affiliated with a ministry is considered a minister for the purposes of this law, and the head of the department is the deputy minister, and whoever is in his rank among those with special ranks, or any other employee authorized by the minister to impose the sanctions stipulated in Article (8) of the aforementioned Discipline

Law.

Second - The authority responsible for conducting the investigation:

With reference to the Iraqi legislation, it adopts the principle of the unity of administrative investigation, meaning that it is practiced

The administrative body without the participation of other bodies with it, as Paragraph (first) of Article (10) of the State and Public Sector Employees Discipline Law No. (14) of 1991 amended: "The minister or head of the department must form an investigation committee of a president and two members with experience on That one of them holds an initial university degree in law.

This text is considered public order, and it is not permissible for the administration to waste, bypass or amend it. On the other hand, the aforementioned text limited exclusively the members of the investigation committee to three employees, provided that one of them has a bachelor's degree in law. The State Council, in its discriminatory capacity, states: "The administration does not have the power to form an investigative committee, contrary to the provisions of the law.() "

Third: Writing an Administrative Inquiry:

The principle established in the field of administrative investigation is writing the investigation, meaning that the investigation committee with all its members conducts the investigation with the employee in writing and on paper after the name of the violating employee, his job address and his workplace is confirmed, and the law does not require a specific form of writing. With reference to the State Employees Discipline Law. And the public sector No. (14) for the year 1991, amended and enforceable, as Paragraph (second) of Article (10) of it stipulates: "The committee shall undertake the written investigation with the violating employee who is referred to ...." Thus, the investigation committee is obligated to have the investigation in writing.

On the other hand, the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended and enforceable, allowed for an oral investigation with the violating employee, as Article 10 stipulated in the fourth paragraph of it, that: "An exception to the provisions of the two paragraphs (first and second) Of this article, the minister or the head of the department, after questioning the violating employee, may directly impose any of the penalties stipulated in paragraphs (first, second, and third) of Article (8) of this law. "These penalties are attention, warning, and salary cutoff.

The Second Requirement

Contemporary employee safeguards against disciplinary penalties

It is the right of the employee to have legal guarantees available in the administrative investigation, and among these guarantees, a single guarantee of the investigation authority and a guarantee of the reasoning of the punishment, and accordingly we will deal in the first section of this requirement: a single guarantee of the investigation authority, while the second section is devoted to dealing with the guarantee of causing the disciplinary punishment. As follows:

First branch

The impartiality of the investigation and the causation of the punishment:

First, the impartiality of the investigation authority:

Impartiality is achieved through the regulation of jurisdiction rules in a way that prevents the combination of investigation and accusation work and the power to impose the penalty and the invalidity of someone surrounded by personal, functional or objective considerations that question his impartiality and impartiality, and then he may be rejected if he is a member of a disciplinary board (investigative committee) or a disciplinary court or Appealing the decision after its issuance due to the deviation in the use of authority with regard to the administrative head.

According to the Iraqi legislation, the impartiality guarantee is not fulfilled under the Discipline Law No. 14 of 1991, amended in effect, because the legislator did not separate the two powers of indictment and the enforcement of disciplinary punishment, and made it the competence of the presidential authority, and although the investigation with the accused employee is carried out by the investigation committees, but These committees work for the governing body and under its supervision, which may lead to the emergence of bias in favor of the governing body in some cases, which means impartiality cannot be achieved.

Second: Causing disciplinary punishment

The disciplinary punishment inflicted is not merely a contemporary formal guarantee for imposing a disciplinary (disciplinary) sanction, but rather means a method for self-restriction of the authority concerned with dismissal, because for it it means influencing the content of the decision, and it is obligated to search the legal and realistic elements of its decision, and this means its move away from control.

It must be shown that there is a difference between the cause and the causation in the administrative decision, the reason is the legal and realistic situation that drives the competent authority to take the decision, and the causation is the mention or explanation of the reasons on which the administrative decision is based, it is considered one of the important data in the decision or disciplinary judgment, as Especially in the written editor.

On the other hand, the importance of causing disciplinary punishment is that it is an important means of judicial control provisions over administrative decisions, as it is the basis of judicial oversight, as through it the administrative judge derives his information about the circumstances and circumstances of administrative decision-making, and thus can determine the validity or invalidity of the decision, Coronation is the best aid for the judge when he exercises control over the cause and abuse of procedures.

In order for the causation to be sufficient, it must be direct and contemporaneous with the issuance of the decision, and be detailed to the degree that is consistent with the nature of the decision, and announced to the person concerned, but it does not have to be issued in a specific form.

With reference to the State Employees Discipline Law No. (14) for the year 1991 as amended in effect, it has explicitly stipulated that some disciplinary sanctions must be inflicted, in accordance with the provisions of Article (8 / fourth, seventh, and eighth), which are penalties (reprimand, dismissal, and dismissal).

On our part, we believe that the Iraqi legislator should provide a general text requiring all disciplinary sanctions to be given.

The Second Branch

Ensure the right of defense for the employee who is referred to investigation

The guarantees of the right of defense for the employee who is referred to the investigation are evident in the presumption of presumption of innocence, meaning that the accused employee is treated as innocent until proven guilty by a final disciplinary decision in addition to his right to seek the assistance of a lawyer. Inadmissibility of the accused swearing an oath and his right to seek the assistance of defense witnesses and to discuss prosecution witnesses.

With reference to the 2005 constitution of Iraq, it explicitly states the right to defense, in paragraph (fourth) of Article (19), which states: "The right to defense is sacred and is guaranteed in all stages of investigation and trial".

Paragraph (Second) of Article (10) of the State and Public Sector Employees Discipline Law No. (14) of 1991, as amended and enforceable, stipulated that: "... and the (investigative committee) in order to perform its mission, may hear and record the statements of the employee and witnesses" .. .

As for the accused employee's right to remain silent, the State and Public Sector Employees Discipline Law No. (14) of 1991, amended and enforceable, did not include an explicit provision indicating the employee's right to remain silent, and thus referred the matter to the general rules contained in the Criminal Procedure Code No. (23) of the amended 1971 year, in which it was stated that: "The accused shall not be compelled to answer the questions directed to him".

In addition, the Law of Discipline of State and Public Sector Employees No. (14) for the year 1991 as amended in force did not refer to the permissibility of swearing the accused, but the Code of Criminal Procedure No. (23) for the year 1971 stated that the accused may not be sworn in.

With reference to the Law of Discipline of State and Public Sector Employees No. (14) of 1991 amended and enforced, it did not include a text allowing the violating employee to seek the assistance of a lawyer before the investigation committee. .

Whereas, Article (144) of the Criminal Procedure Code No. (23) of 1971, amended and enforceable, indicated that the President of the Criminal Court must appoint a lawyer to defend the accused in felonies, if he has not appointed a lawyer.

On our part, we believe that the failure to stipulate the right of the accused employee, especially in gross violations, to seek the assistance of a lawyer before the investigative committee is a legislative deficiency, and the legislator must avoid it in the nearest amendment to the law on discipline of state employees so that the accused employee is not subjected to abuse practiced by administrative heads under the pretext of preserving Job secrets and thus depriving the employee of his right to seek the assistance of a lawyer to defend him.

The Second Section

Post-disciplinary guarantees

The imposition of disciplinary punishment on the violating employee is not the end of the day, as the legislator created a set of subsequent guarantees that would protect the rights of the accused employee from the abuse of the administration against him and establish the principles of justice, and the subsequent guarantees are represented by administrative guarantees, which include administrative grievances, and judicial guarantees,

which include appeal Accordingly, we will divide this topic into two requests, in the first of which we will deal with: the administrative grievance, while we deal with the judicial appeal in the second request; From it, as follows:

The First Requirement

Administrative grievance

An administrative grievance is one of the means that enables the administration to impose control over the work of its employees. It is a procedural guarantee through which the employee can appeal the disciplinary punishment issued against him, in order to reconsider it, either by infringement or cancellation, and accordingly we will divide this requirement into two branches In the first we deal with the concept of grievance, and in the second we deal with grievance procedures and conditions, as follows:

First Branch

The concept of an administrative grievance:

In order to define the concept of disciplinary grievance, it must be defined first, and then its types are determined secondly, as follows:

First - Definition of Administrative Grievance:

The Iraqi legislator did not know the administrative grievance, leaving this task for jurisprudence and the judiciary. There are those who defined the grievance as the request or complaint filed by the aggrieved party to the competent administrative authority to settle a dispute or dispute stemming from a material or administrative legal act. A means guaranteed by law to the accused, to face the penalties issued by the administration against him, which he believes are unlawful, and in which he requests that the administration reconsider its decision, which affected his legal position by withdrawal or modification'.

In order to distinguish an administrative grievance from others, the grievance differs from the petition, because the grievance assumes the existence of a dispute or conflict at least between the administration and the concerned person, while the idea of a disagreement or dispute is excluded in the petition, and that the request of the petition and its lack of success or the realization of its effects does not preclude the submission of Grievance'.

On the other hand, the grievance represents an integrated and permanent control, through the administrative heads to follow up the work of their subordinates, as the grievance is not limited to examining the legality of administrative work, but extends to include the suitability of administrative work.

Second - Types of Administrative Grievance:

The grievance, in terms of the authority competent to consider it, shall be divided into a loyalty grievance and a presidential grievance, and in terms of its impact, it is divided into a mandatory grievance and a legal grievance:

A- Types of grievance in terms of the authority competent to consider it divided into:

1 -State grievance:

It is intended that the person concerned submits his request to the authority issuing the decision for the purpose of reconsidering it, either by canceling, amending, or replacing it with another, according to what the

administrative authority possesses of the powers in this regard. () This state grievance is one of the weakest types of grievances for many reasons, most notably, The lack of a description of impartiality, meeting the character of the opponent and the judgment in whoever receives the grievance, for the source of the disciplinary decision in many cases takes pride in sin and refuses to reconsider his decision, despite his knowledge of the deficiencies that characterize his decision.

2 -Presidential grievance:

It is intended for the person concerned to present to the presidential authority issuing the decision, which has the right to amend, withdraw or cancel the decisions issued by its affiliated bodies that do not comply with the law, pursuant to the principle of self-management oversight of its actions .

On our part, we believe that the grievance submitted by the concerned person to the governing body is more feasible than submitting it to the decision-making body, because there is impartiality in this aspect.

B- Types of grievance in terms of its impact, divided into:

1 -Optional (passport) grievance:

It is an optional method that the employee can resort to if he sees a way to do so, as he can wait for the administration's decision regarding his grievance or resort to appeal directly before the competent court, and the Iraqi legislator did not consider the State and Public Sector Employees Discipline Law No. 14 of 1991 amending this type of grievance.

2 -Mandatory grievance:

It is the grievance that must be submitted by the person concerned, in legally specific cases, as a procedural condition prior to filing the cancellation lawsuit () and mandatory grievance has a set of formal conditions, which is that the administrative grievance is not restricted in a specific way and the dates set in accordance with the law must be adhered to and the basic data must be available in it meaning That it be clear in its significance with what enables the administration to understand it, know the identity of the complainant, the decision grieved against, the reasons for the grievance, and what it aims to do behind submitting it.

By referring to the Law of Discipline of State and Public Sector Employees No. (14) for the year 1991 as amended in effect, the grievance was made compulsory according to the text of Article (15 / Second), which states: “Before submitting an appeal to the General Discipline Council (currently the employees' judiciary court), The decision to impose the penalty grievance against the decision with the authority that issued it...

On the other hand, the Iraqi State Council Law No. (65) of 1979 amended and enforced, in Clause (A) of Paragraph (Seven) of Article (7) thereof, that: “Before submitting the appeal to the Administrative Judiciary Court, the person who appeals must file a grievance with the authority. Competent administrative" ...

The Second Branch

Conditions for grievance:

The administrative grievance is subject to a set of conditions that must be followed, either by the complainant, or by the administrative body that is looking into it, and this is what we will address as follows:

First: Conditions for a disciplinary (disciplinary) grievance.

In order for a disciplinary grievance to produce its effects, some conditions must be met, and this is what we will address in turn, as follows:

1 -That the grievance is submitted within the legally determined deadline.

Failure to observe the legally prescribed periods leads to the loss of the right to appeal, meaning that by missing the deadline for grievance without submitting it, the administrative decision is protected from the appeal and settled, and takes the form of a sound administrative decision, and then the administration is not forced to reconsider it, neither through it nor by Judicial Road.

2 -That the grievance is meaningful.

The wisdom of disciplinary grievance (disciplinary) is to reduce disciplinary disputes, by ending those disputes which are in their early stages and in the easiest way, and therefore it is natural that the grievance does not achieve the intended wisdom, if the administration is not able to change its grievance's decision to withdraw, When it decided that the employee is right to file a grievance.

3 -That the disciplinary grievance (disciplinary) be clear and clear:

If the grievance is tainted with ambiguity, lack of clarity and formulated in general terms, including raising feelings of compassion and sympathy, without a precise definition of the grievance decision, and without decisive stating the purpose for which the grievance was submitted, then the description of a disciplinary grievance categorically cannot be applied to him.

Second: Effects of a Disciplinary Grievance:

The position of the administration or the governing body regarding the grievance submitted to it is either to reject it or accept it within the specified period, and this is what we will explain in turn:

1 -Rejection of the grievance

The refusal of the competent authority to hear the grievance is through one of the following methods:

A- implicit rejection

Whereas the Iraqi legislator stated () that the administration's silence during the time for responding to the grievance is an evidence for rejecting the grievance,

B- Outright rejection

The administration has the discretionary power to reject or accept the grievance, according to the data available to it and the evidence provided by the grievance employee'.

It is not required that the reasons be mentioned in the body of the decision, but it may be contained in a memorandum for examining the grievance, whereby the reasons mentioned in the memorandum ended with a proposal to reject the grievance, and the competent administrative head to decide on the grievance agreed to this memorandum. With reference to the position of the Iraqi legislator, He did not oblige the administration to explain its decision to reject the grievance, neither in the State Employees Discipline Law, or in the State Council Law.

2 -Grievance Acceptance:

If the administration answers within the legally specified period of time, in a way that the grievance is accepted explicitly or implicitly, in the legally specified cases, and so that the complainant responds to his request to withdraw or amend the disciplinary decision subject to the grievance, then the administration in this case will have ended the disciplinary dispute in the shortest way, and not The complainant shall have a need to resort to the courts through a lawsuit to demand the annulment of the decision as long as the administration has answered his request.

The Second Requirement

Judicial appeal of the disciplinary punishment decision:

In the event that the administrative grievance did not find any benefit, then the employee against whom the penalty was inflicted has the right to resort to the administrative judiciary as the last resort in order to cancel the penalty imposed against him and get rid of its effects, as resorting to the judiciary is a right guaranteed by the constitutional legislator and the ordinary legislator and its guarantee is considered basic and important in the face of authority Administration. () And with reference to the text of Article (100) of the Constitution of Iraq of 2005, which states: “It is prohibited to stipulate in the laws the immunization of any administrative act or decision from appeal“.

We will address in this request two branches, the first section: the competent authority to consider the appeal filed against the disciplinary penalty decisions and provisions and its dates, while the second section is devoted to dealing with the appeal procedures and its causes, as follows:

First Branch

The competent judicial authority to consider the appeal:

First: The authority competent to hear the appeal:

By referring to the Law of Discipline of State and Public Sector Employees No. (14) of 1991 amended and enforceable, the Iraqi legislator has adopted the presidential discipline system, whereby the disciplinary punishment is imposed by a decision of the Administrative President, as Article (15 / First) of the above law stipulates: General discipline (currently the employees' judicial court) in hearing objections to decisions to impose penalties stipulated in Article (8) of this law, after grieving them ... and he may decide to ratify the decision, reduce the penalty, or cancel it.

Article (5 / IX) of the Fifth Amendment Law No. 17 of 2013 of State Council Law No. (65) of 1979, as amended and enforceable, stipulates that: “The employee judiciary courts shall have jurisdiction over the following issues: Consideration of the lawsuits that the employee brings to the state departments And the public sector, to challenge the disciplinary penalties stipulated in the State and Public Sector Employees Discipline Law No. (14) of the amended year 1991.

Second: The deadline for appealing decisions of disciplinary penalties:

In order to accept the appeal against the disciplinary punishment decision, the case must be filed within certain times and with reference to the State Employees Discipline No. (14) of 1991 amended in force, as Article (15 / third) of it stipulates: “The appeal must be submitted to the General Discipline Council. (Currently the employees' judicial court), within (30) days from the date the employee was notified of the rejection of the

grievance, fact or judgment.

On the other hand, the decision that is not contested during the legally specified period is considered final, but if the appeal is submitted after the legally determined deadline has passed, this requires it to be rejected from the formal point of view in order to raise it after the deadline.

The second Branch

Procedures and reasons for appealing the disciplinary punishment

In order to understand the reasons and procedures for appealing against disciplinary punishment, we will address the procedures for appealing against disciplinary punishment, and then address the reasons for appealing against disciplinary punishment as follows:

First: Procedures for appealing against disciplinary punishment before the Employees' Judicial Court

The appeal petition must have evidence of the existence of a precedent for grievance against the contested decision, as well as its history and result, as mandatory grievance is a formal condition for accepting the appeal against the disciplinary decision, before the employees 'judicial court (), and the employees' judiciary court, according to the law Discipline of state employees and the public sector No. (14) for the year 1991, amended and enforceable, has broad powers defined by Article (15 / First), which stipulated: “The Employees Judiciary Court (formerly the Discipline Council) shall have the following duties: First ... and he may decide to ratify the decision or Reducing or abolishing the penalty" ...

Second: Procedures for challenging disciplinary punishment before the Supreme Administrative Court:

By referring to the text of Article (7 / IX / c) of the Iraqi State Council Law No. (65) of 1979, amended and enforceable, the date for appeal before the Supreme Administrative Court has been set, within thirty days starting from the date on which the employee is notified of the employee judiciary court’s decision or considered notified.

And after the case papers are checked, the Supreme Administrative Court may issue one of its following decisions:

1 -Rejecting the cassation appeal in terms of form: If the court finds that the appeal against the appellate judgment was not submitted within the specified period according to the law, then it is decided to dismiss it in form.

2 -Certification of the distinguished judgment: If the court finds that the employees ’judiciary court’s judgment came in accordance with the law, then it shall confirm it, whether it is ruling the employee’s conviction and his responsibility for the act attributed to him, or he is judging his innocence and lack of responsibility, and the court may reduce the penalty.

3 -Appealing the appellate judgment: If it becomes evident to the Supreme Administrative Court that the appellate judgment was issued contrary to the provisions of the law, such as if the employee was innocent and was convicted of the appellate judgment or was responsible and the discriminatory judgment acquitted him. Trial in whole or in part, or conduct an investigation again.()

Second: The reasons for appealing the decision issued for the disciplinary punishment before the employees' judicial court

The reasons for appeal mean those defects that afflict the decision or the disciplinary ruling and make it unlawful, which calls for a request to cancel it, or partially cancel it, or to amend it, or to request compensation for it if it has a requirement,. (65) of the amended and enforceable 1979 year, the reasons for appealing administrative decisions, including disciplinary decisions (disciplinary). Article (7/5) of the aforementioned law stipulates that:

1 - That the order or decision includes a breach of the law, regulations, instructions, or internal regulations.

2 -That the order or decision was issued contrary to the rules of jurisdiction or flawed in its form, in procedures, in its location or cause.

3 -That the order or decision contains an error in the application of laws, regulations, or instructions, or that it contains abuse or abuse of power or deviation from it.

B: The reasons for challenging the disciplinary punishment decision before the Supreme Administrative Court:

The Iraqi legislator did not stipulate the reasons for challenging the appeal before the Supreme Administrative Court, whether in State Council Law No. (65) of 1979, or in the Disciplinary Law of State and Public Sector Employees No. (14) of 1991, as amended and enforced, but the Fifth Amendment Law No. (17)) For the year 2013 of the State Council Law, which stipulated in Article (5 / eleven) thereof that: “The provisions of the Civil Procedure Law No. 83 of 1969, the Evidence Law No. 107 of 1979, and the Criminal Procedure Law No. 23 shall apply.) For the year 1971, and the Justice Fees Law No. (114) for the year 1981, regarding the procedures followed by the Supreme Administrative Court, the Administrative Court, and the Employees' Judiciary Court, while there is no special provision in this law.

On our part, we believe that it is more appropriate for the law to come up with clear and clear texts that define and address the reasons for the challenge in discrimination with the rulings of the employees' judicial court.

III. Conclusions:

At the conclusion of this research and after we finished preparing it with the grace of Allah and His grace and payment, we arrive at a set of conclusions and recommendations, which we will list consecutively as follows:

1 -The public employee’s breach of one of the duties of his job or his committing an act in violation of these duties, whether intentionally or negligently, which necessitates disciplinary punishment, and this is called disciplinary responsibility - which requires imposing one of the disciplinary punishments (disciplinary) against him and has material and moral effects.

2 -Disciplinary penalties, like the criminal sanction, may not be imposed without a text, meaning that the legislator determines a list of disciplinary penalties and leaves the competent disciplinary authority the

freedom to choose an appropriate punishment from among the prescribed punishments (i.e., a principle that there is no punishment without a text, without no crime).

3 -There are legal guarantees prior to imposing the disciplinary punishment, represented in (confronting the employee with the violations attributed to him, the guarantee of investigation with the employee, and the guarantee of the right of defense.

4 -The authority competent to conduct the administrative investigation with the public employee is the investigative committee that the administrative head orders to form.

5 -There are contemporary guarantees for the enforcement of the disciplinary punishment, represented by the impartiality of the competent authority to impose the disciplinary punishment, and the reasoning of the decision or judgment issued for the disciplinary punishment on the violating employee.

6 -The presidential disciplinary system in Iraq is distinguished by being individual, meaning that the separation between the indictment and judgment powers does not exist, so the investigator is subordinate to the administrative head, and if the administration collects in its hand the indictment and judgment powers, impartiality cannot be achieved in this system.

7 -There are guarantees subsequent to the disciplinary punishment, which is (administrative grievance) and is also represented in (judicial appeal(

8 -The authority competent to hear appeals against decisions and judgments of disciplinary punishment is the Employees' Judicial Court, and the Supreme Administrative Court has jurisdiction to hear appeals submitted by decisions of disciplinary punishment issued by the Personnel Judiciary Court in its discriminatory capacity.

9 -The procedures for appealing against disciplinary punishment, according to Iraqi legislation, have been referred to the Criminal Procedure Law No. 23 of 1971 under Article 15 of the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended and enforced.

IV. Recommendations:

1 -We recommend that the Iraqi legislator amending the State and Public Sector Employees Discipline Law No. 14 of 1991, amended and enforceable, by increasing the public employee’s guarantees in the face of the administration’s authority to impose disciplinary sanctions. Investigative, but only based on the questioning of the public servant without specifying the interrogation mechanism (written or oral(

2 -We recommend the Iraqi legislator to establish an administrative prosecution to undertake the investigation of the accused employee, and in particular there are serious and proven attempts to develop the administrative judiciary in Iraq, as the last of which was Law No. (71) of 2017 (Iraqi State Council Law), which considered the Iraqi State Council an independent, independent administrative judiciary. He was completely responsible for the executive authority, after it was linked to the Ministry of Justice from an administrative point of view.

3 -We recommend the Iraqi legislator to stipulate the employee’s right to access his personal file in the body of the law, even if this right is guaranteed according to the general principles of the law, so that we reach a

balance between the effectiveness of administrative work and the logic of security that must be available to all employees, in order to achieve the public interest, And the smooth running of public facilities regularly and steadily.

4 -We recommend the Iraqi legislator to include a legal text to generalize the causation, to include all the penalties contained in Article (8) of the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended and enforced.

5 -We recommend the Iraqi legislator to amend the text of Article (15) of the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended in effect, by submitting the grievance to a neutral body other than the one that imposed the penalty, meaning the formation of a specialized committee to look into the grievances, as submitting a grievance The authority that issued the decision to impose the penalty will make it an opponent and a ruling at the same time.

6- We recommend the Iraqi legislator to issue the Administrative Procedure Law, provided that it includes all the procedures and texts necessary for administrative disputes in general and disciplinary in particular in proportion to their nature, without referring to another law, such as the Law of Procedures or the Code of Criminal Procedure, due to the different legal nature of violations and disciplinary penalties.

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