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### **Oversight by the Employees Judiciary Court on exclusion decisions from public office-a comparative study**

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#### **Abstract**

Conclusion: The subject of the administrative judiciary and its control over the work of the administration occupies an important position among the subjects of administrative law. That is because the goal of the administrative judge is to evaluate the work of the administrative authority if it deviates from respecting the legal rules in its activity and work, which achieves good management with full protection of the rights of individuals from the arbitrariness of the administration. Therefore, the administrative judiciary was considered the sanctuary that individuals resort to to enforce the rule of law and its provisions, and the place that is achieved in maintaining the rights and duties of both the administrative authority and individuals, which ultimately leads to finding a center of balance between the public interest and the private interest. Just as judicial oversight in Iraq is practiced by the General Disciplinary Council, which derives its competence from two sources, the first of which is the amended Civil Service Law No. (24) of (1960) and the second is the amended Law of Disciplining State and Public Sector Employees No. (14) of (1991). Discipline of State and Public Sector Employees No. (14) of (1991), the effective amendment, reduced the competencies of the General Disciplinary Council in this field and made it an appeal body against penalties issued by the administrative head.

the introduction: The thesis is the disciplinary authority for each of the administration and the administrative judiciary towards public employees to whom the Civil Service Law applies, and what is stipulated in this law of the reasons for disciplining the public employee, the penalties that befall the employee in the event that the violation attributed to him is proven, and who has the right to impose these penalties If it is proven that the public employee breaches his job duties in an approved manner or due to negligence and negligence that leads to the violation of regulations, laws and instructions, then this requires the imposition of the appropriate disciplinary penalty as a penalty for the violation he committed, and the department or the authority concerned with discipline must take the disciplinary measures stipulated for it, which differ

according to legislation. Including those who took the name "disciplinary violations" ( ) In order to prevent the abuse of power, the constitutions-as well as the laws-approved many disciplinary guarantees for the public servant, which enable him to protect his rights and ensure that they are not violated by any party, in order to reach the truth and achieve justice. And those guarantees approved by the laws are only a means to protect the rights of the public employee during the investigation with him, and to provide him with a fair trial, and to achieve disciplinary justice and then the fairness of the punishment that will be imposed on this employee after the completion of the investigation, interrogation and trial procedures, and in the event of neglect or lack of these guarantees Respecting it, the disciplinary decision in this case will be defective, and then the law allows it to be challenged and invalidated. Some call it administrative guarantees, represented by administrative grievances and judicial guarantees. In fact, the imposition of punishment on a public employee if it is proven that he committed the criminal act does not end the disciplinary guarantees granted to him by law, which would strengthen the principles and rules of justice and protect the rights of the public employee. These guarantees are represented in Two important things are: the administrative grievance: it is a petition submitted by the public servant to the disciplinary authority that took over the issuance of the disciplinary decision that includes the punishment against him, in which he demands its cancellation, amendment or withdrawal; Because he believes that this decision was marred by a defect, and he must indicate the type of this defect in his request, and he also requests its cancellation in whole or in part, and the grievance should be submitted to the disciplinary authority, but if the decision was issued by the disciplinary councils, then its decisions are considered final and it is not permissible to appeal. Judicial appeal: It is also among the disciplinary guarantees following the imposition of punishment, and it is a right guaranteed by the constitution in many legal organizations, in which it is permissible to resort to the judiciary, and the law gives the right to the public employee if he is not satisfied with the outcome of the administrative grievance, and he is concerned about this decision to resort to the judiciary administration and to file an appeal against this decision. Research problem: The decisions taken by the disciplinary authority within the framework of the discretionary authority remained unchallenged for a long time, until the administrative judge exercised his control over these decisions. How was the Iraqi Disciplinary Council able to move from minimum control to maximum control after the aforementioned authority was in a fortified fortress that the judiciary could not storm? What is the technique or method used by the Iraqi State Council and the Lebanese State Shura Council to nullify unfair disciplinary decisions against employees? research importance The disciplinary decision may be an administrative decision or a judicial ruling, so a distinction should be made between disciplinary decisions and judicial rulings. In view of the effects that may result from the different nature of each of them and necessitate determining the competent authority to consider the judicial appeal in Iraq, the disciplinary authority in the Iraqi system is exercised through the administrative authorities-whether in the form of an individual (administrative head)-and this is called "presidential discipline" or In the image of a committee or council, and this image is called "disciplinary council".

### **Keywords**

Authority-Disciplinary-Administrative Courts- Discretionary -Presidential Authority-Employee Judicial Courts-Appeal-General Discipline Council

## **The first topic**

### Disciplinary administrative courts

The rules governing the disciplinary authority in the field of public office differ from one legislation to another, given that the disciplinary legislation is dependent on the environment in which it is born in order to apply its traditions. The creation of the disciplinary authority is similar to the creation of a quasi-judicial body.

The disciplinary system is considered an integral part of the job system, as the concept of disciplinary authority is determined by the competent disciplinary authority, which is legally empowered to impose disciplinary penalties included in the sanctions lists stipulated exclusively in the laws of the public office.

#### First: the Administrative Court

If the accused needs certain guarantees at the investigation stage, then he is in need of such guarantees at the trial stage in order to be able to prove his innocence. According to which it is submitted to the court, the first element of a disciplinary trial is for the accused to be informed of what is attributed to him. Therefore, the referral decision includes a statement of the violations attributed to the employee, and the president of the court sets a session to consider the case, and the court secretariat undertakes to notify the person concerned of the referral decision, and the date of the session within a week from the date of filing the papers, and the announcement is made by registered letter with acknowledgment of receipt.

Failure to notify the employee referred to the disciplinary trial of the case against him invalidates it and the judgment issued on its basis.

In Iraq, the General Discipline Council specializes in the judicial system, as the General Discipline Council has become a judicial body of the Shura Council of the State, and therefore its decisions and rulings are no longer subject to disagreement regarding their nature or adaptation, as its provisions under this law have become judicial rulings without a doubt, and the General Discipline Council has become a representative administrative judiciary in every sense of the word in everything related to disputes related to the rights of civil service between the employee and the administration. Judicial rulings according to the formal and substantive criteria

As the council decides a judicial dispute between the employee and the administration, and that the decision is issued by a body whose composition is dominated by the judicial element, in addition to the procedures followed by the council before the courts, and naming what is issued by the council decisions does not change the fact that they are judicial. words and buildings .

In fact, the debate about the status of the General Disciplinary Council and the nature of the decisions issued by it was before the issuance of Law No. (106) of 1986, when there were two criteria for separating between the administrative decision and the judicial decision. The jurisdiction of the judiciary, while the

objective criterion goes to the fact that the judicial decision is issued in a dispute to clarify the law in it .

Some supporters of the formal standard believe that what is issued by the Discipline Committees and the General Disciplinary Council are only administrative decisions, as the formation of these committees, as well as the formation of the Disciplinary Council, is done from purely administrative elements, while a part of the jurisprudence goes that the mandate of the General Disciplinary Council is in the disciplinary case He has a complete mandate, as he has the power to cancel the penalty decision, whatever its source, and restore the employee to the position he was in before the decision was issued. He also has the power to reduce the penalty or modify it with a more severe or lighter one. A disciplinary judicial body, as it is an appeal body against the decisions issued by a minister, the head of the department, or the Disciplinary Committee. In order to exercise its powers, the Council may work with the rules of civil and commercial pleadings, and it may issue a decision that has the authority of court rulings in the case.

Some others believe that the General Discipline Council is only an administrative body, but it has judicial jurisdiction, and despite the administrative nature of such a council, what it issues is not considered administrative decisions, but rather adapted as judicial rulings according to the objective criterion for distinguishing between administrative decisions and stable judicial rulings. In the jurisdiction of the State Council in both France and Egypt (). Others argued that the General Disciplinary Council is the highest disciplinary court, and as we know, disciplinary courts, like other courts, are judicial bodies that issue judicial decisions based on the formal criterion.

And Law No. (106) of 1989 made the Council a judicial body through which the State Shura Council exercises its judicial duties-in addition to the Administrative Court-as it is a disciplinary court, there is no doubt about that, and therefore the decisions issued by it are undoubtedly judicial decisions, so the issue of conditioning is not raised. The legal decisions of the General Disciplinary Council, and are they considered administrative or disciplinary decisions?

What is noted on the Disciplinary Law No. (14) of 1991 is that it limited the imposition of disciplinary penalties to the administration only, as it canceled the disciplinary committees, and made the imposition of the punishment by the minister, the head of the department, or the authorized employee who has the authority to impose a penalty, and therefore the right to appeal It is confined to the

employee without the administration, as it is illogical to grant the administration the right to appeal a penalty it chose and deemed appropriate as a penalty imposed on the violating employee.

When examining the appeals submitted before it, the council has the right to endorse the contested decision, as the council ruled that "...as the objector is supposed to set an example for the rest of the teachers who work with him and

refrain from such behaviors that harm the reputation of education, therefore the decision of the council is to ratify the decision." ..".

In addition, the council may reduce the punishment when it finds that there is a paradox and exaggeration in the type of punishment imposed on the employee compared to the act he committed, so that the punishment is not commensurate with that act, and here the role of the council emerges in monitoring the proportionality of the disciplinary punishment. As the control of proportionality under Law No. (14) of 1991 will remain a thread of hope to which the employee relates after the administration has unilaterally assessed the act and the penalty it imposes on the employee because of it . The Council ruled that: "...the punishment that is commensurate with the disrespect of subordinates to their superiors, taking into account gradualism, deterrence, and giving the employee an opportunity to improve his behavior and not exaggerate it to the mentioned limit, and he decided to amend the penalty by reducing it to a warning penalty..." ( ). The Council may cancel the penalty in the event that it finds that the decision to impose it is defective in a way that necessitates its cancellation by removing the effects of the decision and considering it as if it did not exist, as the Council decided: "...it decided to cancel this charge and release the objector and return him to his previous legal position..."( ).

In addition, the Council does not consider cases that do not involve an appeal against a penalty stipulated in the Disciplinary Law, as it ruled in this regard that: "...since seizure is not among the penalties mentioned in the State Employees Discipline Law... Therefore, the Council is not competent In the case of the case...".

In Egypt, Article 15 of State Council Law No. (47) of 1972 stipulates that: "Disciplinary courts are competent to hear disciplinary cases for financial and administrative violations committed by civil servants in the state's administrative apparatus in government ministries and departments, local government units, and employees of the public authority and public institutions.

These courts are also competent to hear the appeals stipulated in Items Nine and Thirteen of Article Ten. As stipulated in Article (17) of the same law, the jurisdiction of the disciplinary court is determined according to the job level of the worker at the time of the lawsuit, and if there are many workers presented to the court competent to try someone higher than them in the job level, it is competent to try all of them. However, the Disciplinary Court for employees of the first, second and third levels is competent to try all employees of associations, companies and private bodies stipulated in Article (15); The Supreme Administrative Court ruled, "The jurisdiction of the Disciplinary Court is determined according to the employee's job level at the time the lawsuit is filed, given that the worker submitted to the disciplinary trial is prevented from being promoted to a higher degree until the case is decided, and that the jurisdiction of the disciplinary courts of the senior management level is determined by the nature of the job that the worker actually occupies and whether it is From the

jobs of the senior management level or not, and this has nothing to do with the level of financial linkage to the job in the Civil Workers Law, and it has no effect on the jurisdiction of the disciplinary court for the level of senior management to try him as long as it is his job .

The role of the Registry of the Disciplinary Court is to receive the papers of the disciplinary case and present them to the president of the court to set a session.

The second and third paragraphs of Article (34) of Law No. (47) of 1972 on the State Council stipulate that "the case shall be considered in a session to be held within fifteen days," and that referral to the Disciplinary Court has a specific path drawn by the law; so that there is no prejudice and injustice among employees; In order not to use the referral to the Disciplinary Court in a wrong way that threatens the career of the employee; Especially since the decision to refer to the Disciplinary Court has serious effects on the career path of the employee.

The first paragraph of Article (65) of the Egyptian Civil Service Law No. (81) of 2016 stipulates that "an employee who is referred to the disciplinary or criminal court or suspended from work for the period of referral or suspension may not be promoted; in this case, the employee's job will be reserved." Hence, so that the decision to refer to the Disciplinary Court is not a double-edged sword that the presidential authority in the administrative authority to which the employee belongs may unfairly use to abuse or harm the employee;

The first paragraph of Article (34) of the Egyptian State Council Law No. (47) for the year 1972 stipulates that "the disciplinary action shall be instituted by the Administrative Prosecution by depositing the investigation papers and the referral decision with the clerks' office of the competent court, and the aforementioned decision must include a statement of the workers' names, their categories, and the alleged violations." and the applicable legal texts, and the Supreme Administrative Court ruled that "the absence of the referral decision from stating the articles of the applicable law does not invalidate the decision." The court may know the description of the charge, its adaptation, or the identification of violations.

Although the administrative authority to which the employee belongs or the head of the Central Auditing Organization, they have the right to refer the employee to the administrative prosecution for investigation with him regarding the administrative or financial violations attributed to him( ); However, the Administrative Prosecution has the sole and original jurisdiction to refer the employee to the competent disciplinary court. The Supreme Administrative Court recognized the right of the administration to request the Administrative Prosecution to file a disciplinary action based on an investigation conducted by it (i.e., the administration); In this case, the Administrative Prosecution is obligated to initiate the lawsuit procedures. And it has no choice but to complete the investigation or return it if it deems a reason for that. This is in accordance with

the provisions of Article (23) of the internal regulations of the Administrative Prosecution and Disciplinary Trials; The administration may insist on referring the worker to disciplinary trial, contrary to what the Administrative Prosecution may have recommended, whether to keep the investigation or suggest a reduced penalty. In this case, the Administrative Prosecution is obligated to initiate the disciplinary action procedures, regardless of the considerations of its conviction or not, in accordance with the provisions of Article (12) of the Law Organizing the Administrative Prosecution and Disciplinary Trials .

The date of his notification of the decisions issued by the administration in this regard; In this regard, the Administrative Prosecution is only obligated to initiate disciplinary action procedures. This is in accordance with the provisions of Article (13) of the Administrative Prosecution Law No. (117) of 1958 and Article (5) of Law No. (144) of 1988 concerning the Central Auditing Organization .

The Supreme Administrative Court ruled that litigation in disciplinary cases does not take place and the competent court does not contact them unless the referral takes place in accordance with the procedures stipulated by the law and from the authority it specified as the Administrative Prosecution as the authority competent to refer to the disciplinary courts and the administrative authority specified by the law with regard to the referral to disciplinary boards; Otherwise, the litigation does not take place and the disciplinary action does not take place in the first place. Therefore, the Disciplinary Court or the Disciplinary Council does not have the right to deal with a case that it did not contact with in accordance with proper legal procedures. It also ruled: "The competence to refer the authorized persons to disciplinary trial rests with the president of the first instance court in whose circuit the place of the authorized person is located.

## **Second: Employees Judicial Courts**

We have indicated that the Employees Judicial Courts have replaced the General Disciplinary Council, which was exercising its judicial jurisdiction before the issuance of the Fifth Amendment Law No. (17) of 2013 to the amended State Council Law No. (65) of 1979, according to previous laws, which are Civil Service Law No. (24) For the year 1960, as amended, and the Disciplinary Law for State and Public Sector Employees No. (14) for the year 1991, as amended, and after the issuance of the fifth amendment law above, the jurisdiction of the employees' judicial courts was determined according to the State Council Law, as it was stated in it: "The employees' judicial courts are specialized in adjudicating the following issues:

- Considering the lawsuits filed by the employee against the state departments and the public sector regarding the rights arising from the Civil Service Law or the laws and regulations governing the relationship between the employee and the entity in which he works.
- Considering lawsuits filed by the employee against state departments and the public sector to challenge the disciplinary penalties stipulated in the



Amended Law of Disciplining State and Public Sector Employees No. (14) of 1991.

Accordingly, the employee courts exercise their jurisdiction in two main areas, as follows:

The amended State and Public Sector Employees Disciplinary Law No. (14) of 1991 specified the duties of the employee, the penalties that may be imposed on him and their effects, the procedures for imposing them, and the methods for appealing against them.

Against the penalties imposed on them, which are drawing attention, warning, salary cuts, reprimand, salary reduction, grade demotion, dismissal and dismissal.

Article (10) of the Disciplinary Law requires the minister or the head of the department to form an investigative committee consisting of a chairman and two experienced members, provided that one of them has a preliminary university degree in law. It undertakes a written investigation with the violating employee referred to it, and in order to perform its task, it may hear and record the statements of the referred employee, witnesses, review all documents and data that it deems necessary to review, and write a report confirming the measures it has taken and what it has heard with its reasoning recommendations, either not Questioning the employee and closing the investigation or imposing one of the penalties stipulated in this law, and all of this is referred to the authority that referred the employee to it. If the committee finds that the act of the employee referred to it constitutes a crime that arose from his job or was committed by him in his official capacity, then it must recommend referring it to the competent courts. The Disciplinary Law grants the minister or department head, after questioning the violating employee, to directly impose penalties for drawing attention, warning, and cutting the salary, without referring him to an investigative committee.

On the other hand, Article (12) of the Disciplinary Law granted the Minister the authority to impose a penalty of drawing attention, warning, or cutting the salary on the employee who occupies the position of general manager or above when he performs an act that violates the provisions of this law, and if it appears to the Minister that the employee has committed an act that requires a penalty more severe than he is authorized to do, he must present the matter to the Council of Ministers, including a proposal to impose the penalty. The employee covered by the provisions of this article has the right to appeal the penalties imposed on him before the Employees Judicial Court.

Article (14) of the Disciplinary Law authorizes the President of the Republic or whoever he authorizes to impose any of the penalties stipulated in the Disciplinary Law of State and Public Sector Employees on his employees, and the law also authorizes the Prime Minister, Minister or Head of Department not linked to a ministry, the authority to impose a penalty (Reduction of salary, demotion, dismissal or dismissal) for employees affiliated with his ministry or department



and covered by the provisions of this law, and the employee has been granted the right to challenge the decision to impose the penalty before the employees' judicial courts.

The employee judicial courts, when examining the decisions to impose disciplinary penalties, may decide to approve the decision to impose the penalty, reduce it, or cancel it, as it is required before submitting an appeal before the employee judicial court against the decision to impose the penalty, to complain about the decision before the administrative authority that issued it, within (30) thirty days from the date of the decision. The date on which the employee is notified of the decision to impose the penalty, and the aforementioned authority must decide on this grievance within (30) thirty days from the date of its submission. If no decision is made on it despite the expiration of the period, it is considered a rejection of the grievance. It is required that the appeal be submitted to the Employees Judicial Court within (30) thirty days from the date of notifying the employee of the fact or de facto rejection of the grievance. The uncontested decision within the legal period specified by the legislator is considered final. The Employees Judiciary Court, when examining appeals, shall take into account the provisions of the Code of Criminal Procedure and in a manner consistent with the provisions of the Disciplinary Code, and its sessions shall be in camera. It is permissible to appeal in cassation before the Supreme Administrative Court against the decisions of the Employees Judicial Court within (30) thirty days from the date of being notified of them or considering them notified. The Supreme Administrative Court shall exercise the jurisdiction of the Court of Cassation stipulated in the Code of Criminal Procedure when examining the appeal submitted against the decisions of the Employees Judicial Court in accordance with the provisions of this law.

#### Third: Administrative Courts

Administrative courts are competent to adjudicate the validity of individual and organizational administrative orders and decisions issued by employees and agencies in ministries and entities not linked to a ministry and the public sector, in which no reference has been appointed to challenge them based on a request with a known interest, case and potential. Nevertheless, the potential interest is sufficient if there is a reason. To the fear of harming those concerned, and we will address this section in the following points:

First: The jurisdiction of the Administrative Court according to the amended State Council Law No. (65) of 1979:

Article (7/Fifth) of the law clarified the reasons for appealing to the Administrative Court regarding administrative orders and decisions, in particular the following:

- That the order or decision includes a breach or violation of the law, regulations, instructions or internal regulations.
- That the order or decision was issued contrary to the rules of jurisdiction or defective in its form, procedures, location or cause.

- That the order or decision includes an error in the application of laws, regulations, instructions, or internal regulations, or in their interpretation, or abuse or abuse of power or deviation from it.

The legislator has mentioned several descriptions of the administrative decision issued by the administrative authority in Iraq according to its legally defined competence, such as regulations, instructions, internal regulations, or internal publications. The refusal or abstention of the employee or the authority to take an order or decision that it was required to take by law is considered an order or decision. From that, we find that the legislator has followed in defining the jurisdiction of the Iraqi State Council courts the path of legislative determination exclusively, and thus their jurisdiction is very modest, and is not compatible with the development in the administrative organization of state agencies and institutions, in contrast to the development that occurred in defining the jurisdiction of the administrative judiciary of the comparative countries. He adopted the general criterion that made the Egyptian State Council the holder of general jurisdiction in all administrative disputes.

In recent years, several laws have been issued by which the legislator expanded the jurisdiction of the Administrative Judicial Court, in addition to those stipulated in the State Council Law, so they became as follows:

- Considering appeals related to the granting of citizenship.
- Consider appeals submitted by heads and members of provincial, district and sub-district councils and governors upon termination of their membership for any reason.
- Examining appeals related to decisions to dissolve provincial and other local councils.
- Considering appeals related to the conditions of accreditation of investment offices and laboratories in the field of environmental protection.
- Considering the appeals submitted against the decisions of the Victims' Compensation Committee for not appointing the Victims' Compensation Law No.

(5) for the year 2009. A reference for appealing against the decisions issued according to it, so the decision is subject to appeal before the Court of Administrative Judiciary....

- The jurisdiction of the Administrative Court in matters of service for police officers and internal security forces.
- Competence to consider violations that occur in sales transactions contrary to the real estate registration system if the registration does not acquire its final form.
- Considering the appeal against the decision to include the employee issued by the minister or the head of the entity not associated with a ministry or the governor.

State jurisdiction: The Administrative Judiciary Court is competent to issue state orders to suspend administrative decisions issued by administrative bodies

associated with and not linked to a ministry.

Since most of the administrative legislation stipulates that the administrative head is authorized to impose disciplinary sanctions on subordinates, that is, the presidential authority is the one competent to discipline. The Disciplinary Law of State and Public Sector Employees No. (14) of 1991 stipulates Article (11) that the minister, the head of the department, and the authorized employee may impose disciplinary penalties on the violating employee. The law (Article 1) considers the head of an entity that is not linked to a ministry to be a minister for the purposes of implementing the law. As for the head of the department, it is determined by Article (1) Paragraph (Second), and he is the deputy minister, the governor, the general manager, and any employee authorized by the minister to impose the penalties stipulated in the law.

And in the Iraqi Civil Service Law No. (24) of 1960, Article 2 of it indicated that the minister is intended for the prime minister with regard to the employees of the Cabinet Office and affiliated departments, and the competent minister with regard to the employees of his ministry. as a minister in respect of their constituencies.

Article (2) of the Civil Service Law indicated that the department head refers to the undersecretary, the general manager, the governor, and any other employee who is vested with the authority of a department head by a decision of the Council of Ministers. The department to which the employee and the senior chief belong, and is meant by the minister, undersecretary, or general manager.

As for the procedures for imposing punishment, they were stipulated in Article (10) of the State Employees Discipline Law, as it stipulated the formation of an investigative committee consisting of a chairperson and two members, one of whom holds a preliminary university degree in law. The Committee recommends that the employee not be held accountable or that one of the stipulated penalties be imposed

In the law, the legislator excluded the penalties of drawing attention, warnings, and cutting the salary for a period not exceeding ten days from this procedure, as it stipulated that the minister or the head of the department be granted the authority to impose these penalties without conducting an investigation. Rather, that was left to the competent presidential authority. By comparing this text with the text contained in the previous Disciplinary Law No. (69) of 1936, we note that the previous law stipulated the imposition of penalties for drawing attention, warning and cutting the salary, which were called disciplinary penalties by the minister, the head of the department, or the authorized employee Or by one of the disciplinary committees or the General Disciplinary Council ().

The previous law provided for the formation of disciplinary committees to investigate employees, but the current law abolished these committees and replaced them with investigative committees formed to investigate the employee and whose role ends with the completion of the investigation, while the

disciplinary committees were permanent and consisted of permanent members, and this development is a development that would enhance the role of Presidential power to impose disciplinary sanctions.

In another development, also in favor of strengthening the role of the presidential authority, the current law considered penalties (drawing attention, warning, cutting salary) as final penalties, i. Article (19) of the previous law was implemented according to Amendment No. (8) of 1940.

As for the other penalties stipulated in the current law, Article (11) clarifies the authority of the minister or the head of the department to impose any of the penalties stipulated in Article (8) of the Law. , demotion, dismissal, dismissal) Objection to the decision to impose the penalty with the General Disciplinary Council within (30) days from the date of his notification of the decision to impose the penalty, noting that the text contained an error within (30) days and the correct one is (90) days.

Article (12) of the current law also stipulates the authority of the minister to impose penalties for drawing attention, warning and cutting the salary on the employee who occupies the position of general manager and above, and the decision of the penalty is final. The matter is referred to the Council of Ministers, accompanied by a proposal to impose one of the penalties, and the decision of the Council of Ministers is final ( ).

Article (14) of the current law stipulates that the presidency or the Council of Ministers may impose any of the penalties stipulated in the law, and the imposed penalty shall be final.

In the light of the State Employees Discipline Law, the legislator assigned the authority to impose penalties (the disciplinary authority) to the presidential authority at various administrative levels, and it strengthened the role of the presidential authority by immunizing some of its decisions against judicial appeal, while the previous law permitted objection to decisions imposing these penalties with the Disciplinary Committee. On the other hand, the role of the presidential authority was strengthened with regard to imposing sanctions decisions on employees from the Director General and above, as the current law considered the competent authority to try department heads to be the Council of Ministers, while the previous law considered the General Disciplinary Council to be the competent authority to try them. In addition, the current law has fortified all disciplinary decisions issued by the Presidency or the Council of Ministers in accordance with the provisions of Article (14) of the current law.

Accordingly, the increasing role of the presidential authority in imposing sanctions decisions under the current law is evident in the manner referred to above, a development that may have been imposed by certain circumstances that necessitated strengthening the role of the presidential authority to carry out the duties and burdens entrusted to it. However, in any case, the question remains legitimate about the legal guarantees that must be available to the employee who is subject to punishment, and not to remain without guarantees that protect his

rights in the face of the decisions issued by the presidential authority.

The real guarantee for the employee in the field of discipline lies in the integrity of the procedures, whether in the task of investigation or in the trial stage, and that if there is a guarantee of the integrity of the procedures in an effective manner, then there is no fear while the discipline retains an administrative character and there is no fear of the control of the judiciary.

As for the administrative judiciary, it in turn defined the disciplinary offense or crime and highlighted its characteristics and elements. The Egyptian Administrative Judicial Court defined it as: "...a violation of the duties of a position or the performance of an act The case for annulment of the contested decision, due to the fact that these conditions represent an essential support for the foundations on which the appeal is based. Therefore, it has become recognized in jurisprudence and jurisprudence that the disciplinary court does not consider the subject matter of the case unless it decides on the subject of its jurisdiction, in addition to its verification of the availability of the conditions for accepting the case, otherwise it must Judgment not to accept it in form .

Jurisprudence and jurisprudence have agreed on the necessity of meeting basic conditions for instituting a claim for annulment in the disciplinary decision, which are the same conditions that must be met to challenge the annulment of the administrative decision in general, whether before the disciplinary courts or before the Supreme Administrative Court :

The decision must be administrative and final, as the action must be legal and issued by the administration's sole will, as the Supreme Administrative Court says in this regard "... and in terms of the subject matter of the annulment lawsuit is the decision on which the plaintiff's request for annulment is focused, and that it is a result of the lack of an administrative decision The subject matter of the lawsuit is the non-existence of litigation as one of its basic pillars, so the litigation does not take place without litigation, a place and a reason, which results in the absence of the administrative decision in question, the non-receipt of the lawsuit, which falls under the jurisdiction of the State Council courts, and then it is necessary to rule that this lawsuit is not accepted..." ( ), The Egyptian legislator stipulated in Article 10 of the current State Council Law that: The decision is finally contested by saying: "Requests for canceling administrative decisions are required to be final, as the decisions that may be subject to appeal before the Council..."

We support the view that the lesson in determining whether or not a decision is final is based on the effect generated by it. As ratification from another party, and so on, then the decision loses its final status, and then it is not subject to an annulment lawsuit .

And that the decision must be intended by the one who issued it to achieve its effect immediately after its issuance, as the Supreme Administrative Court went to this meaning by saying, "... and in terms of that with regard to the decision of deduction from the salary issued by the Deputy Director-General of

the Telecommunications Authority, which stipulates that the result of the authority's behavior must be presented In the papers of investigation of financial violations against the minister, the beneficiary of this situation in which the opponent's decision was issued is that the undersecretary when issuing it did not intend that its legal effect be achieved immediately and before presenting it to the minister, and therefore the final decision was not attached to him as soon as it was issued..." . For the decision to be implemented, it must not require ratification or approval from an authority higher than its issuing authority. Therefore, the Supreme Administrative Court decided not to accept the annulment lawsuit against a decision whose effect still needs to be ratified by a higher authority, and based its judgment on filing the lawsuit prematurely .

### **Conclusion**

One of the accepted rules in the field of disciplinary trials is the freedom of the judge to form his belief similar to his criminal counterpart, and thus the disciplinary judiciary is absolutely free to derive his belief from any evidence he is satisfied with from the evidence before him, as long as his derivation from it is justified and acceptable and is not restricted in forming his conviction with a specific evidence except If the law stipulates otherwise. This principle is considered one of the basics of the disciplinary trial, despite the fact that the texts regulating the trial rules are devoid of text on it, which was confirmed by the supreme administrative wisdom in a mutawatir judiciary that "... the disciplinary judiciary enjoys complete freedom in the field of evidence, and that the disciplinary judge is not bound by certain methods of proof. The one who determines the methods of proof that he accepts and his evidence according to the circumstances of each case, so he may rely on what he deems important and build his conviction upon, and discard what he deems doubtful about his matter and put forward it. Proof of the accusation or not, whatever the evidence derived from other elements.

### **Results**

1. The Iraqi legislator has specified the administrative authority that is competent to order an investigation with the employee regarding the disciplinary charges attributed to him, in order to reveal the truth of those charges, and determine his responsibility in preparation for referring him to the competent disciplinary authority to consider imposing a disciplinary penalty on him.

2. Disciplinary decisions can be appealed by way of cassation before the State Council in Lebanon, which is the administrative judiciary in Lebanon, so that this appeal is considered a "right" decided in the interest of the employee, and one of the most important guarantees provided by the legislation for employees, due to its characteristics and advantages as a judicial guarantee.

3. If the accused needs certain guarantees at the investigation stage, then

he is more in need of such guarantees at the trial stage in order to be able to prove his innocence, and the first of these guarantees is that the accused must be notified, as after the investigation ends, the employee is assigned a specific crime or crimes According to which the accused is brought to court, the first element of a disciplinary trial is that the accused is informed of what is attributed to him.

4. The referral decision includes a statement of the violations attributed to the employee, and the president of the court sets a session to consider the case, and the court secretariat undertakes to notify the person concerned of the referral decision, and the date of the session within a week from the date of depositing the papers, and the announcement is made by registered letter with acknowledgment of receipt. Failure to notify the employee referred to the disciplinary trial of the case against him invalidates it and the judgment issued on its basis, and if the accused attends the trial on the basis of his proper notification, and the session is adjourned before him, there is no room for notifying him of any adjournment.

5. The role of employee judicial courts is highlighted in supervising the proportionality of disciplinary punishment, as the Disciplinary Law No. (14) of 1991 limited the imposition of disciplinary punishments to the administration only, as it abolished the disciplinary committees, and made the imposition of the punishment by the minister, the head of the department, or the authorized employee who He has the right to impose a penalty, and therefore the right to appeal is confined to the employee without the administration, as it is illogical to grant the administration the right to appeal against a penalty it has chosen and deemed appropriate as a penalty imposed on the violating employee.

In addition, the employee judicial courts can reduce the penalty when it finds that there is a paradox and exaggeration. In the type of punishment imposed on the employee compared to the act he committed so that the punishment is disproportionate to that act,

6. The disciplinary authority governs two main directions in determining the authority competent to discipline: (1) The presidential approach and its supporters believe that discipline is a manifestation of the presidential authority over the employee, because the administrative head is responsible for the proper functioning of the public facility and for achieving the goals entrusted to the facility according to the rule where Responsibility creates power. And the Iraqi legislator took this direction. And (2) the judicial approach, the supporters of this approach see the need to set controls to ensure the prevention of tyranny of administrative heads and what this tyranny causes of unfairness to the rights of employees if they are left with the powers to impose penalties and punishments.

### **Recommendations**

1. We call on the Iraqi and Lebanese legislators to stipulate that the administrative investigation should be written in all job penalties as a fundamental procedure and is considered the most important procedure within



the procedures for imposing disciplinary punishment and is also one of the important guarantees for the employee, and the principle is that the employee is investigated in writing, and in this way the investigation documents what happened with the employee whether Was it in his favor or not, in addition to that writing the investigation facilitates the task of the judge in supervising the legality of the procedures and the disciplinary punishment that may result from the investigation.

2. We call on the Iraqi legislator to adopt the principle of the impermissibility of combining the function of accusation and the function of judgment, by introducing amendments to the system of forming investigative committees.

3. We call for the lesson in determining whether the decision is final or not to be based on the effect generated by it. If this effect is permissible to be arranged immediately without waiting for another procedure, then the decision is final, but if the arrangement of the effect of the decision depends on a subsequent procedure that is obligatory. It came as certification from another party, etc.

At that time, the decision loses its final status, and then it is not subject to an annulment lawsuit.

4. We call on the Iraqi and Lebanese legislators to define the disciplinary punishment as a procedure stipulated in the sanctions list imposed on the employee who breaches the duties of his job and affects the benefits of his job. It is a punitive measure specified by the text imposed by the competent disciplinary authority on the employee who violates his duties. Deprivation or diminishment of the privileges of the job and it is the effect of issuing the administrative decision with what it achieves of the purpose of reprimand and deterrence to prevent the commission of the violation.

5. We call on the Iraqi legislator to apply the law in force at the time of committing the disciplinary offence, not in force at the time of imposing the penalty unless the law in force at the time of imposing the penalty is the most appropriate for the accused, because there is nothing legally preventing the application of a principle settled by the criminal judiciary, which is the application of the law that is best for the accused to the violations Disciplinary requirements, the requirements of public order do not conflict with the imposition of the penalty prescribed at the time of committing the violation, and the application of the principle of the law best suited to the accused does not conflict with the principle of legitimacy.

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