



The role of Iraqi courts in protecting the Iraqi civil employee

دور المحاكم العراقية في حماية الموظف المدني العراقي

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Abstract

The Court of Justice is considered one of the best means of monitoring the work of the administration and its actions towards employees, as administrative actions and decisions may be subject to defects and oversights. From this point of view, and in order to protect the rights of public employees, the issue of the Civil Service Court is one of the most central issues that deserves focused, in-depth, and comprehensive research. The right to litigation is an inherent constitutional right, guaranteed by all constitutions and laws. It is a cornerstone of any sound democratic government and ensures that no one is hindered from reviewing the judicial authority. Administrative litigation procedures occupy a position no less important than other procedures in the judicial system of any country, as they are the necessary means for resolving disputes that arise between the administration and individuals. In addition, they aim to ensure the validity of legal litigation and facilitate the adjudication of cases to achieve justice, as the needs for justice increase. The fundamentals of society and the intertwined relationships among its members have led to direct state intervention in the economic and social spheres, which has placed an increased burden on administration and development. Society and the evolution of life's issues have required individuals to interact with management. This confrontation has led to the formation of direct and reciprocal relationships between management and its employees, and between management and individuals. Through its legal procedures, management attempts to regulate and manage employee affairs in accordance with the organizational status to which the employee is subject, depending on the function of the public institution and issues of public interest. On the other hand, management may sometimes make mistakes in regulating some of these



relationships, especially when it issues its decisions quickly and without haste or haste. Sometimes, management ignores certain legal rules that the legislator insists upon in order to preserve the interests of a large segment of society, namely workers. This leads to their recruitment, which harms them and their rights. Among the matters of achieving justice is that management is subject to the rule of law, and the law is the final decision and its word is supreme. Therefore, there must be judicial oversight of the work of management to ensure the principle of legitimacy and the rule of law on the one hand, and to protect the rights and interests of employees on the other. The descriptive analytical approach, theories of governance and judicial rulings were adopted, and thus this approach was adopted in our study. The existence of judicial supervision over the legitimacy of the administration's procedures against employees is an important guarantee of the rights and freedoms of employees, and this is due to the adoption of the legitimacy of the rule of law and justice. Finally, we conclude in our study the most important results that the right to litigation is one of the most important human rights guaranteed to people all over the world, as well as the basis for determining the salary of a public employee, two personal bases related to the employee himself, such as his education, skills and social status. The Iraqi legislator has also made the grievance mandatory and considered it a condition for accepting a judicial appeal before the Civil Service Court, and that determining the salary is based on two bases: personal bases related to the employee himself, such as his educational attainment and qualifications, and objective bases related to the type of job and its danger. As for the Egyptian legislator, he stipulated that there is no requirement for formality in the grievance and that the government is the one that determines the salary at its own will through a committee of senior employees. The thesis contained three chapters, the first of which included concepts and generalities, while the second dealt with the role of the Civil Service Court in protecting the rights of the public employee with regard to disciplinary penalties, while the third chapter included the role of the Civil Service Court in protecting the financial rights of the public employee.

Keywords: Public employee, employee rights, employee court, administrative lawsuit.



the introduction:

The existence of judicial oversight over the legality of administrative actions against employees is an important guarantee of employees' rights and freedoms. This is due to the adoption of the legitimacy of the rule of law and justice. The administrative judiciary bears the burden of striking a balance between the demands of the public interest that the administration seeks to achieve, and protecting the rights and freedoms of employees from administrative overreach in the event that these rights are infringed. The Labor Judicial Court is an important legal institution that plays an effective role in protecting employee rights arising from the application of the amended Civil Service Law No. (24) of 1960. It is also a qualified authority and a reference for appealing decisions that impose penalties on employees. Accordingly, the Labor Court is one of the administrative courts in Iraq, and it examines disputes that arise between the worker and the administration. It is one of the judicial bodies of the country's Shura Council, representing it alongside the Administrative Judiciary. The Court and the Supreme Court for Administrative Affairs are the administrative judicial authority in Iraq, which exercises its role in supervising the work of the administration, and the Labor Judicial Court represents a refuge. Who can an employee turn to if it becomes clear to him or her that the administration's decision to impose a disciplinary sanction against him or her is incorrect or inaccurate, or to appeal decisions arising from the application of the Civil Service Law? This must be an administrative appeal. Procedures to be followed when appealing disciplinary sanctions or civil service rights.

The first topic

Concepts

With reference to the research (The Role of the Civil Service Court in Protecting the Rights of Public Employees, a Comparative Study between Egyptian and Iraqi Law),



at the beginning of our research and before delving into our research, some concepts related to this topic must be explored and researched. Our research and our research, as they are the basic hypotheses of this research, define concepts as an essential and practical step in working to establish a mutual understanding and a common understanding of the topic or phenomenon under investigation. The research concepts must be known and explained, because the concept of the Civil Service Court and the concept of the administrative judge have dimensions that lead us to divide the discussion into two requirements:

The concept of the Civil Service Court

Iraq is one of the countries with a unified judicial system. This remained the case until 1989, when the Iraqi administrative judicial system was established in accordance with Law No. 106 of 1989. This judiciary performs its role in all its bodies: the Disciplinary Council, the Administrative Judiciary Court, and the General Authority of the State Shura Council, along with the Administrative Judiciary, which had jurisdiction over all cases, whether ordinary or administrative. However, the General Disciplinary Board has significant powers in the area of employment, as this board has exercised effective control over management decisions, whether in civil service rights or employee discipline.

Civil Service Employees Disciplinary Law No. (41) of 1929 AD is the first law under which the General Disciplinary Council (General Council) was established to consider cases filed by civil service employees against decisions issued by disciplinary committees.

After that, a second authority was added to the Council under Clause (34) of the Civil Service Law No. (103) of 1931 AD, so that the Council could discuss civil service rights claims submitted by employees arising from the scope of the agreement.. Civil Service Law.



After Law No. 49 of 1933 AD on the Legal Codification Court came into effect. The General Disciplinary Council carried out the tasks in accordance with the provisions of the Civil Service Employees Disciplinary Law No. (41) of 1929 AD, and there were many attempts to establish a special administrative judicial system in Iraq, the most important of which was the issuance of the Judicial System Reform Law No. (35) of 1977 AD, which indicated the necessity of establishing and establishing special courts and arbitration bodies to consider, study and discuss the cases of civil service employees, the public sector and professional organizations.. disputes in which ministries, public institutions or the public sector are parties.

Therefore, the legislator adopted the Administrative Affairs Courts Law No. (140) of 1977 AD, and took into consideration the important developments that occurred in all areas of life, including political, economic and social life after the issuance of the Legal Writing Law. This prompted the legislator to issue the State Council Law No. (65) of 1979 AD to exercise the powers of the Legal Codification Bureau as a legal advisor to the government in new and modern ways that are compatible with the aforementioned circumstances.

The General Disciplinary Council continued to exercise its powers and was part of the establishment of the State Shura Council, but after the decision of the Revolutionary Command Council that dissolved it on 12/21/1981 AD, the General Disciplinary Council became a body completely independent of the State Shura Council. The State Shura Council, but the General Disciplinary Council soon returned to the State Shura Council again and became one of its judicial bodies under the Second Amendment Law of the State Shura Council No. (106) of 1989 AD, by which Iraq became one of the countries that have a dual judicial system.

After the issuance of Law No. (106) of 1989, the State Shura Council exercised its powers in the field of administrative judiciary through its legal bodies, namely the



General Disciplinary Council, the Administrative Affairs Court, and the General Authority of the State. The Court. The State Shura Council.

However, a change occurred in the field of administrative jurisdiction in Iraq, with the issuance of Law No. (17) of 2013 AD - the fifth amendment to the State Shura Council Law No. (65) of 1979 AD, pursuant to which the courts. The Administrative Judiciary Authority and the General Staff were established in some administrative regions such as the North Al-Wasiti Region, the Middle Euphrates Region and the Southern Region in order to facilitate and simplify litigation procedures before the parties to the lawsuit. - Not to prolong the adjudication of cases even after increasing their number to reduce the burden on the State Shura Council.

1-1-1-1. The concept of the civil service court in language

The word (court) is considered a source for the verb (to rule), it is said: he ruled, he rules, he ruled, court, and the passive participle of it is: ruled, and it is said: the court ruled, meaning it summarized the decision and approved it, and deliberated on it without postponement. The court means the process of dealing with individuals and organizing public affairs. The concept of the judiciary in the language is the judiciary with a long vowel, its origin is (qadāy) because it is from the word qada, and the ya was replaced with a hamza because it comes after a silent alif, so it became qada.

Judicial authority has many meanings in Arabic, including instructions, completion, finalization, signing, ruling between two parties, adjudicating between two matters, fulfilling a need, fulfilling a need, ordering, and paying debts. The Holy Quran contains many verses that support these linguistic meanings we have mentioned:

1-The ruling, including the Almighty's saying: "And God judges with truth." That is, He rules.



Creation, including the Almighty's saying: "Then He completed them as seven heavens." That is, He created them. 2

Work, including the Almighty's saying: "Then decide what you will decide." That is, work. 3

Command and prohibition, such as the Almighty's saying: "And your Lord has decreed that you not worship except Him." That is, He has commanded and made it obligatory. 4

1. Killing. God Almighty said: "So Moses struck him and killed him." That is, he killed him. 5

Completion and completion. God Almighty said: (So when you have completed your rites), meaning you have completed them and finished them. 6

Media and notification. God Almighty said: "And We decreed that matter to him." That is, We conveyed it to him and informed him of it. As for the concept of employee, we will explain it in detail in the next section. 7

The concept of the Civil Service Court is a term

Court (singular) and its plural is courts and courts. It is a body that is responsible for ruling between groups and individuals. It has several types according to its powers and is affiliated with the judicial authority. It is also a body that is responsible for adjudicating in the judiciary. Thus, managing courts means: serving others, or performing a service through a specific device. There are several definitions of management, including:

Frederick Taylor defined it as: "The correct knowledge of what individuals are expected to do, and then ensuring that they do it in the best and cheapest way."

Holt defined it as: "The process of planning, organizing, leading, and controlling human, material, financial, and information resources in a specific organizational environment." (Wertisch and Konter) see management as: "the process of



designing and maintaining an environment in which individuals work together – as a team – efficiently to achieve selected goals.” Hence, it can be concluded that management means: a set of processes that seek to achieve the organization's goals with the least costs and effort, and in the shortest possible time, through planning, coordination, guidance, organization, and control.

Some scholars decided that the word “qadaa” has a first meaning, while another said: “The root of this word is nothing but judgment, and as for the other meanings, it is the word “qadaa” with care and permission.”

Judicial authority, in the terminology of arbitrators, refers to the jurisdiction of Sharia law, which allows those who are empowered to issue fatwas (religious edicts) on specific subjects, including establishing and enforcing rights for the beneficiary. Jurisdiction is also defined by law as resolving disputes and disagreements that arise between natural and legal entities, and imposing deterrent penalties on those proven to have committed misdemeanors, felonies, and serious crimes.

As we mentioned, the establishment of the Civil Service Court has gone through several stages of development, starting with the issuance of the Civil Service Employees Disciplinary Law in 1929 AD and ending in 2013 AD, pursuant to which Law No. (17) - the fifth amendment to the State Code was issued.. The Council Law of 1969 AD No. (1975) was issued. The Judicial Court for Workers was initially a council called (the General Council), which was first established pursuant to Law No. (41) of 1929 AD. To examine objections submitted to the decisions of the disciplinary committees, the General Council was formed by a decision of the Council of Ministers, and it consists of a chairman and four members chosen from the heads of departments, provided that a decision is issued by the Council. The Council of Ministers publishes it in the Official Gazette starting each year.



With the issuance of the Legal Notation Law No. (49) of 1933 AD, it was decided in Clause (6) that the Notifications Office shall assume the duties of the General Disciplinary Council and the President of the Court. The President shall be the Council by virtue of its position and the bloggers shall be its natural members, provided that two members from the heads of departments shall join it by a decision of the Council of Ministers, and the Council shall invite the President and two members.

The legislator then issued a law amending the Legal Documentation Office Law No. (12) of 1942, by which the General Disciplinary Council was reconstituted upon invitation from the Head of the Court and two members from the Office. The Council of Ministers may, by decision, appoint one or more heads of departments as additional members to replace the original members when they are absent or have an excuse.

It is clear from the above that all members of the General Disciplinary Board were public employees subject to the Civil Service Law, lacked judicial capacity, and therefore enjoyed no immunity from state control.

The formation of the General Disciplinary Council remained the same even after the issuance of Shura Council Law No. (65) of 1979, with the exception of the issuance of the dissolved Revolutionary Command Council Decision No. (1717) on 12/21/1981.

The General Disciplinary Board has been transformed into an independent body, consisting of a chairman and two members appointed by the Minister of Justice by decree. The chairman shall be a judge of the Criminal Court, a Court of Counsel at the State Council, or a first-instance judge. The two members shall be selected from among second-instance judges, judicial inspectors, assistant advisors, or general directors at the Ministry of Justice.



This council's composition appears to be better than before, allowing its members to devote themselves fully to its duties. Previously, members of the State Advisory Council were responsible for the work of the General Assembly, in addition to the work of the General Disciplinary Board.

After the issuance of Law No. (106) of 1989 AD - the second amendment to the State Shura Council Law No. (65) of 1979 AD, the General Disciplinary Council became part of the bodies and departments of the State Shura Council because it represents the administrative judicial authority in Iraq and consists of the President of the State Shura Council as Chairman. The members of the Council are natural members, and the General Disciplinary Council meets under the chairmanship of a President and two members of the State Council. The Council: The President may delegate one of his deputies or one of the Council members to act on his behalf.

The Personnel Adjudication Court was established, headed by the Deputy Chairman of the State Council for Administrative Legal Affairs or an advisor, and two members from among the advisors or assistant advisors in the following areas:

- 1- The northern region includes the districts of Nineveh, Kirkuk, and Salah al-Din, and is concentrated in the city of Mosul.
- 2- The central region, which includes the districts of Baghdad, Anbar, Diyala and Wasit, and is concentrated in the city of Baghdad.
- 3- The Middle Euphrates region, which includes the governorates of Karbala, Najaf, Babylon, and Qadisiyah, with its capital in Hillah.
- 4- The southern region includes the districts of Dhi Qar, Muthanna, Basra and Maysan, with its capital being the city of Basra.

The legislator did not stop there, but rather approved, when necessary, the establishment of additional courts for administrative and labor adjudication within



the jurisdictions, in a statement issued by the Minister of Justice, in accordance with his presidential proposal, and published in the Official Gazette.

The concept of public employee in language and terminology.A

The research requires the concept of the employee within the concepts of administrative law, its rules, and instructions. Therefore, in light of the multiple categories of employees in Iraq and the penal legislation, this research is limited to employees subject to employment and retirement laws. This includes public sector workers, with the exception of indirectly managed public industrial and commercial establishments. It also includes employees according to the Labor Law, except to the extent that it serves scientific necessity. Therefore, there is a need for a general approach to define the meaning of the public employee, specify the criteria that define his personality, and then detail the law that applies to him and subject him to the requirements of public office, which oblige him to more stringent duties than those usually imposed on private sector workers. Based on the above, this research is divided into two sections: the first section covers the linguistic meaning of the term "public employee," while the second deals with the meaning of the term in technical terms. Studying this topic requires defining what is meant by the term "public employee," clarifying his legal status, which regulates rights and duties, and the basic elements upon which it is based.

The concept of employee in the language

Derived from the verb "wazaffa" (to employ), "wazifan" (to employ), "wazaifan" (to employ), and "wazaif" (to appoint a position), which is the work, livelihood, or food assigned to a person. The plural is "wazaifs" (positions). It can mean a covenant or condition, or a specific position or service.

The concept of employee technically



In the terminology of jurists, it means: someone who deals with a matter related to Muslims in the affairs of the state.

Employee: A name for any state function in governance, security, or finance. If I estimate the work to be done on time this month, or work as a charity this year, or generally protect a specific area.

To give an idea about the public employee in jurisprudence and laws in Iraq and in comparative countries, we found it appropriate to discuss the subject in jurisprudence.

The court attempted to define a specific meaning for the term "factor," and consequently, opinions multiplied and diverged. However, it is sufficient to mention some of these as a conclusion. Given the importance of this topic, we will address in this section the definition of the term "factor" in both Egyptian jurisprudence and Iraqi law, respectively, and the general term "factor" in Egyptian jurisprudence.

Although there is no comprehensive definition of a public employee, Egyptian jurisprudence has addressed this issue, stating that a public employee is "any person appointed to a public service run by the state or a public body, and his appointment to it is a permanent position." This definition demonstrates that Egyptian jurisprudence sets basic conditions for public employees: the individual must be appointed to a permanent position—that is, the position held by the employee must be permanent and stable, not temporary, and must end at the end of a specific period. The employment must also be in a public service administered by the state.

The appointment is made by the competent authority. This condition appears to distinguish between a person usurping or impersonating a position and a public employee, with the legitimacy of their actions and behaviors aimed at protecting



the interests of the other party. Consequently, they are recognized as having some of the rights and duties of a public employee.

This definition seems to be consistent with what is stated in the Civil Service Law No. 24 of 1960 and its amendments in the second section where the definition of a public employee is “every person assigned to a permanent position included in the staff.” The description of an employee does not apply to someone appointed in a public institution in a temporary or occasional position on the one hand, and it differs from the definition stated in the State and Public Sector Discipline Law No. (14) of 1991, as amended, on the other hand. However, another aspect of the ruling defined a public employee with a broader and more flexible definition than the previous definition, where a public employee is defined as “a person who undertakes to provide a service in a public institution administered by the administration, a local authority or a department, i.e. whether the organization is centralized or decentralized to grant the status of an employee, i.e. those who perform occasional service to the state, the element of permanent service must be required in the employee.” Thus, it gave a broad concept of the employee after reviewing the various definitions of a public employee as in the past, we can define a public employee as “any person entrusted with a permanent position in a public service.”

Along with defining the meaning of a public employee in the judiciary, the judiciary has made numerous attempts to define the public employee as it exists in all jurisprudential matters. Therefore, in this section, we will deal with the judicial definition of the meaning of a public employee in Egypt and Iraq.

The Administrative Judiciary in Egypt has been engaged in a search for an appropriate definition of a public employee, due to the lack of a specific definition



of a public employee in Egyptian Labor Law, and despite numerous instructions issued by the Administrative Judiciary regarding the definition of a public employee. However, the administrative judiciary has been content with a specific definition, mentioned by the Supreme Administrative Court of the Egyptian Council of State in its rulings, which stated that "the basic elements upon which the concept of a public employee is based conclude that: the appointment of an employee is considered a legal instrument for performing permanent work in a public service administered by the state, and the judge accepts his or her position within the administrative organization of that establishment." It is worth noting that this definition of an employee by the aforementioned court found general agreement in the ruling. The aforementioned court stated in another ruling that "the qualifications of a public employee do not apply to a person and the provisions of public office do not apply to him unless he is appointed to a permanent position in the service of a government employee directly administered by the state or administrative authorities." In light of this definition, it is possible to derive the foundations for defining a public employee: - That the person is appointed to a permanent position. The work must be in the direct service of a public service run by the state or an administrative authority. The person's contribution stems from an appointment by the competent authority. However, the rulings of the administrative judiciary ultimately abandoned one of the elements that had been established in many of its rulings for a long time, which is the occupation of an employee in a permanent position. This is the same direction taken by the party from the Egyptian government. The statement or employee is "everyone who works in a public service run by a public legal person under direct management, whether one of the central administrative persons, decentralized regional administrative persons, or administrative employees of the service, i.e. (public bodies)." As for the



Iraqi judiciary, its position on the meaning of public employee has changed. The General Disciplinary Council for Public Employees established the same conditions stipulated in the Civil Service Law No. (24 of 1960 AD, as amended), b. Its Resolution No. (20/16) issued on February 1, 2005, which stipulated the following: "If the employee was not appointed in accordance with the provisions of the Civil Service Law, and did not receive a salary from the public treasury, he has no right to appeal before the Council." The State Shura Council had decided in this regard in its Resolution No. (62/005) dated 60/66/009, that "in terms of the basis for calculating service for the purposes of determining salary, bonuses, promotion and retirement, an employee appointed to a permanent position must meet the conditions stipulated in the Civil Service Law by the person appointed by Resolution No. (24) of 1960 AD. in a vacant position in a permanent position." Therefore, we conclude that some elements are necessary for a person to be considered a public employee, namely: appointment to a permanent position. Issuance of a legal instrument for appointment to a public position by the competent authority. The service must be in a public facility, and the employee receives a salary from the general or special budget. The provisions of the Retirement Law apply to the employee. Despite the requirement of permanent employment in previous decisions, the General Disciplinary Board decided in one of its decisions that "a temporary employee has the same legal status and organizational relationship with the state administration, except for the termination of his services after their completion. Whoever performs any work for the government or its affiliated departments without being bound by any compensation by name or position, unless this word is given a special definition for the purpose of the law in which it appears. It is clear from the above that the administrative judiciary system in Iraq has not made any effort to develop the



concept of the civil servant, and that it has currently declined legally, socially, and economically, due to the conditions Iraq is experiencing, especially after 2003.

The Egyptian Supreme Court attempted to define the concept of a public employee by stating that in order for a person to be considered a public employee, the following elements must be taken into account:

- 1_ Contributing to the provision of a public service run by the state through direct exploitation.
- 2_ Contribution to the management of public services is mainly done through appointment.
- 3_ Engage in a permanent job, and his participation in this job must be continuous and not occasional.

According to the above, a public employee can be defined as: "A person who works in a public administration, whether his position is permanent or temporary, with pay or regardless of his rank or seniority."

The concept of administrative judge

The concept of the administrative judge has many implications for the results and circumstances of the administration. Therefore, understanding the concept of the administrative judge leads us to divide this requirement into two branches.

Definition of administrative judge in language

Judge: The one who decides and rules on matters. He is the one who judges between people according to Islamic law. He is the one appointed by the state to consider disputes and lawsuits and issue the rulings he sees fit in accordance with the law. His official seat is one of the judicial houses. Plural: judges. It is also said: a judge is called a killer.

A judge is a person who is charged with deciding disputes.

Regarding knowledge of the concept of administrative justice in the language



The word “qadaa” with a long vowel is originally “qadaa” because it comes from “qadaa” and the “yaa” was replaced with a hamza because it comes after a silent “alif” and so it became “qadaa”.

Judicial authority has many meanings in Arabic, including instructions, completion, finalization, signing, ruling between opponents, adjudication, fulfillment of a need, fulfillment of a barrier, order, and payment of debts.

Definition of administrative judge technically

He rules between disputants according to the law and presides over the court. The powers, duties, appointment, discipline, and training of judges vary greatly across countries.

The authority and role of the judge in the administrative judiciary system are prominent, given their authority and positive role in monitoring the legitimacy of administrative decisions, respecting the rule of law, and achieving their objectives. The purpose of the judge is to legislate and prevent the administrative body from deviating from the norm of legitimacy.

Hence, administrative law and governance have called the administrative judge the "guardian of legitimacy." This concept is considered one of the most controversial judicial and legal concepts, as there was and still is no consensus on its definition, scope, and ruling. Studies continue to address it with different contents and titles, such as oversight of legitimacy and supervision of adequacy, especially since adequacy relates to the most important prerogative of administrative prerogatives, namely the prerogative of discretionary power. This prerogative is exercised by the administration according to its discretion and in accordance with its constitutionally assigned role.

If the need for judicial oversight of the administration's actions and functions is crucial, the jurisprudence definition of the judiciary: The judiciary is defined based



on the terminology of judges: This is the jurisdiction of legal rulings for those capable of issuing fatwas on parts of Sharia rulings on specific individuals related to establishing and enforcing rights for the beneficiary. The judiciary is also known from a legal perspective: it is concerned with settling disputes and conflicts arising between natural and legal entities and applying deterrent punishment against those proven to have committed criminal offenses.

The historical basis of the Civil Service Court

The judiciary is considered one of the references upon which a democratic state is based, as it preserves its existence and its existence from collapse. Its presence in every society is as essential as the law itself, as it is the instrument that ensures the state's status. Compliance with the law is essential, as there is no law without the judiciary. Specialization in any science, art, or industry is considered one of the best factors for success, as human energy is limited and incapable of acquiring everything. The proper administration of justice requires multiple judges, each specializing in a specific type of dispute. The multiplicity of courts in a country is inevitable, as a single judge or court is insufficient to adjudicate all disputes. Consequently, the administrative judiciary system has evolved as an independent body specializing in administrative disputes. The term "administrative judiciary" refers to the control of the judiciary over the actions of administrative authorities, whereby it has the authority to adjudicate cases falling under its jurisdiction and to which the administration, as a public authority, is a party. France is the cradle of administrative law, and from there it spread to other countries. The emergence of this law stems from historical factors, most notably the ideas introduced by the French Revolution in 1789, which was based on the separation of powers. Among its demands was the prohibition of the judicial courts that existed at the time, called parliaments, in resolving administrative disputes to preserve the independence of



the administration in the face of the judiciary. These courts exercised reactionary control over the government, interfered in its affairs, and opposed and obstructed any reform movement it sought to undertake. This prompted the French Revolutionaries to issue the law of August 16-24, 1790, which stipulated the abolition of the courts (parliaments) and the establishment of what is known as the judicial administration or the minister-judge, as a first step before the establishment of the French Council of State, so that the administration would be both the adversary and the judge. This was somewhat acceptable at the time due to parliaments' reputation for arbitrariness. In 1797, the French Council of State was established, laying the foundations of the French administrative judicial system. At the same time, regional courts and councils were established, issuing rulings that did not require the approval of a higher administrative body. However, their instructions were appealed to the Council of State and submitted to the consul. The Council of State's mandate was limited to considering administrative disputes, and the judiciary lacked the power to issue rulings. Therefore, it was called the limited or reserved judiciary. This phase continued until 1872, when the judiciary was abolished by a law issued on May 24, 1872, which granted the French Council of State the authority to settle administrative disputes. Throughout its long history, it has become the undisputed administrative judge. It has contributed to defining the principles and rules of administrative law, which differ from those of private law. In addition, the Courts of Appeal were established by Law No. 31 of 1987. Thus, for the first time, administrative cases in France are heard by three administrative judicial bodies: administrative courts, appeal courts, and the Council of State. Since French administrative judiciary is the primary source of inspiration for Arab administrative legislators, the latter has used the same French approach. Although it appears



externally and in a different form from the French model of existence, it does not differ from it in depth.

The legal basis of the Civil Service Court

In Egypt, the 1996 constitutional amendment on the legal basis of the Administrative Affairs Court introduced a dual legal system at the judicial level, with different legal structures and procedures prevalent for a long time in the judiciary. Article 152 of the International Criminal Court provides for the establishment of the Council of State to administer the work of the administrative judiciary. The constitution is important, as the administrative institution defines the concept of the administrative court and the duties imposed on it. Section 152 stipulates that the administrative court should rise to a lower level of litigation, resolving administrative disputes completely independently.

On May 30, 1998, the first law for administrative courts was issued under Law No. 98/20, which closed the way for all those calling for the unification of courts and the legal system. The legal basis for the Civil Service Court in Iraq has developed in several stages, starting with the State Employees Discipline Law No. 41 of 1929, pursuant to which the General Discipline (General Council) was established, until 1989, when the Council was transformed from an administrative body with judicial jurisdiction into an administrative judiciary for employees. After the issuance of the fifth amendment to the State Council Law No. 17 of 2013, the Civil Service Court was considered a judicial body in the full sense of the word, as it considers erroneous decisions related to civil service rights on the one hand, and on the other hand, it represents a disciplinary judiciary, as it is a court with disciplinary and civil jurisdiction in the field of administrative justice.

Formation and jurisdiction of the Civil Service Court



To clarify the topic, we have divided this section into two parts. The first section addresses the formation and authority of the labor court in Iraq. The second section addresses strengthening the scope of the court's work and jurisdiction in Egypt:

Formation of the Civil Service Court and its jurisdiction in Iraq

To establish the Court of Justice and convene the Court of Justice: A staff court shall be established, headed by the Vice President for Administrative Judiciary Affairs or an advisor and advisors or assistant advisors in the following areas:

A- The northern region includes the districts of Nineveh, Kirkuk, and Salah al-Din, and is concentrated in the city of Mosul.

In the central region, it includes the governorates of Baghdad, Anbar, Diyala and Wasit, and is concentrated in the city of Baghdad.

C- The Middle Euphrates region, which includes the governorates of Karbala, Najaf, Babylon, and Qadisiyah, with its capital in Hillah.

D- The Southern Region, which includes the districts of Dhi Qar, Muthanna, Basra and Maysan, and is concentrated in the city of Basra.

Additional courts may be established, if necessary, to try employees working in district centers, according to a declaration by the Minister of Justice, based on a proposal from the Presidency of the Republic, and published in the Official Gazette. Judges of the first or second category, upon their appointment by the Supreme Judicial Council, may be delegated to the Civil Service Court.

Formation and jurisdiction of the Civil Service Court in Egypt

There is no doubt that judicial supervision of administrative actions constitutes one of the basic guarantees for workers to specialize, be neutral, and impartial in the judiciary, which is beyond doubt. In Egypt, the system has recognized the administrative judiciary since 1946. Before this date, the regular courts had general jurisdiction to consider all disputes. Because the Egyptian Council of State was



established by Law No. 1 of 1946, Egypt followed this date with the dual legal system, and the Egyptian Council of State followed its path. A number of developments occurred until the issuance of the current Law No. (47) of 1972. The Council was not yet strong upon its establishment, as the regular judiciary had jurisdiction in light of Law No. (112) of 1946. The regular court was the only one that discussed lawsuits regarding the administration's liability for its substantive actions, as well as disputes related to administrative contracts, until the issuance of Law No. (9) of 1949, which granted the Council the authority to discuss disputes related to administrative contracts, but in partnership with the regular courts.

According to Laws (165) of 1955 and (55) of 1959, the regular judicial authority continued to examine lawsuits related to the administration's responsibility for its basic activity, while the Council of State was independent in considering disputes related to administrative compensation, decisions, and administrative contracts. With the issuance of Law No. (47) of 1972, the State Council became the authority with general jurisdiction to examine administrative disputes unless the law stipulates otherwise.

The second paragraph of Article 2 of State Council Law No. (47) of 1972 stipulates that "the Council shall consist of a President and a sufficient number of Vice Presidents, deputies, advisors, assistant advisors, deputies and representatives..

Assistants are subject to the provisions for representatives, except for the requirement to hold two master's degrees.

According to the wording of the previous article, it becomes clear to us that the State Shura Council is formed as follows:

1- The President of the Council: The President of the Egyptian Council of State shall be appointed by a decision of the President of the Republic from among the Vice-Presidents of the Council, after taking the opinion of a special general assembly



consisting of the President of the Council of State, his deputies, his deputies, and his advisors who have held the position of advisor for a period of two years. We learn from this text that the President of the Egyptian Council of State cannot be appointed from outside the Council's members. More precisely, the President of the Republic is obligated to select him from within the Council and from among its representatives.

The Council President assumes a number of judicial and administrative duties, including the presidency of the Administrative Affairs Court.

2- Deputies and Deputy Speakers of the Council: The position of Deputy Speakers was first established by Law No. (55) of 1959, and remained in this position until the current law. The Senior Deputy replaces the Speaker in his absence. As for the Deputy Speakers, they were established by Law No. (55) of 1959, but in the current State Council Law No. (47) of 1972, the text regarding the presence of deputies in the Council was deleted. After its issuance, Law No. 1972 was amended (17) As of 1976, this position was returned to the Council, and it appointed Deputy Speakers and Deputy Speakers of the President of the Republic based on a decision by the President of the Republic after the approval of the General Authority of the House of Representatives. State Council.

3- Advisors, Assistant Advisors, Deputies, and Representatives: They are appointed by a decision of the President of the Republic after approval by the Special Council for Administrative Affairs. These members work in various departments of the Council of State, with powers divided among them, each according to their competencies and the ranks they hold.

The Egyptian State Council consists of three sections: a judicial section, a fatwa section, and a legislative section.

Judicial Department



The Judicial Division consists of the Supreme Court for Administrative Affairs, the Judicial Court for Administrative Affairs, the Administrative Courts, the Civil Service Commission, and the Disciplinary Courts.

1- The Supreme Court for Administrative Affairs: It is the highest authority in the judiciary. It was first established under Law No. (165) of 1955 AD, and its headquarters are located in Cairo. The Supreme Court for Administrative Affairs is headed by the President of the Council of State, and its rulings are issued by chambers, each of which consists of five advisors, and one or more chambers designated for examining appeals, and consisting of three advisors.

The legislator assigned this court to issue a final comment on all rulings issued by the Administrative Judgment Court or the disciplinary courts, as well as the authority to consider appeals against rulings of the disciplinary courts that were added to it under Chapter (32) of Law No. (117) of 1958 regarding the reorganization of administrative prosecutions and disciplinary courts. After the legislator made the Administrative Matters Court a title of appeal before the administrative courts under Law No. (86) of 1969, the Supreme Court for Administrative Affairs had the authority to consider appeals against rulings of the Administrative Matters Court. The Disciplinary Court was limited. Therefore, the Supreme Court for Administrative Affairs is not primarily authorized to consider disputes. Rather, its mission is to ensure the proper implementation of the law and prevent conflicts between rulings through its role in examining the aforementioned appeals.

2- The Administrative Court: The headquarters of the Administrative Court is in Cairo, and it holds its sessions in this city. The Court may, by decision of the President of the Council if he deems it necessary, or upon the request of the President of the Republic, hold its sessions in other provinces.



The Administrative Court was formed under the chairmanship of the President of the Council of State, and its rulings were issued by five advisors in annulment cases and by three advisors in other cases. However, the 1955 law made its chambers, in all cases and for each type of dispute, composed of three advisors, and its president became the vice president in accordance with the aforementioned law.

The Administrative Court is competent to consider a series of administrative disputes as a court of first instance. The legislator has deliberately divided the burden of discussing these disputes between the Administrative Court and the administrative courts based on their type and importance.

3- Administrative Courts: As a result of the accumulation of cases before the Administrative Affairs Court, which made it difficult to adjudicate them, the legislator attempted to reduce the burden on this court by forming committees.

Administrative Affairs Courts are the judicial authority that hears labor disputes. However, workers' appeals of these committees' decisions to the Administrative Affairs Court have increased the court's burden, prompting the legislature to abolish the judicial committees and establish administrative courts instead, distributed among public offices or services.

It is clear from this that the administrative courts are not originally divided regionally, but are concentrated or semi-concentrated in the capital and the city of Alexandria. However, the legislator left the door open to the establishment of administrative courts in various regions. He stated that the administrative courts would be located in Cairo and Alexandria, and that administrative courts could be established in other regions based on a decision by the President of the Council. These courts would have a deputy to assist the President of the Council in their organization and smooth functioning. Their rulings would be issued by a three-member electoral district headed by at least one assistant advisor and including at



least two deputies. Courts specializing in administrative matters are authorized to hear disputes that fall outside the jurisdiction of the court in administrative matters—by virtue of their function as a court of first instance—such as those related to the affairs of second- and third-level employees, and disputes arising from administrative regions, if applicable. They do not reach a specific quorum.

State Commissioners Authority: The State Commissioners Authority was established by Law No. (165) of 1955, following the approach of the French legislator after the success of its experience in this regard. The committee consists of one of the Vice-Presidents of the Council as Chairman, advisors, assistant advisors, deputies, and representatives. State representatives in the Administrative Affairs Court and the Administrative Affairs Court must be at least of the rank of Assistant Advisor. The presence of a representative of the State Commissioners Authority is required, with the exception of disciplinary courts, for the validity of the sessions of administrative courts. The Authority is responsible for preparing cases and preparing them for pleading, and submitting reports or memoranda that clarify the facts of the case and the legal issues arising in the dispute, along with expressing a reasoned opinion.

The law grants the authority the right to propose a settlement of disputes by agreement based on legal principles established by the Supreme Court for Administrative Affairs. The authority's president is also empowered to appeal rulings issued by the Supreme Administrative Court or disciplinary courts before the Supreme Court for Administrative Affairs. He is also empowered to consider requests for exemption from court fees, assist the court president in organizing meetings, assigning cases to circuits, and conducting investigations into cases upon the court's mandate.



5- Disciplinary Courts: The disciplinary system in Egypt was transformed from a mixed system to a purely court system according to Law No. (47) of 1972 AD, whereby disciplinary courts were considered, according to Article 3, as one of its components: the Disciplinary Court, the judicial branch of the State Council, and then some components of the Administrative Judiciary.

The reasons that prompted the legislator in this direction were to avoid the defects inherent in the disciplinary laws system, according to which disciplinary councils are competent to discuss employee discipline issues, represented by several disciplinary councils that deal with disciplinary issues. Courts. - Slow procedures in the courts, and the emergence of the administrative component in the disciplinary councils. In Section (18) of Law No. (117) of 1958 AD, which introduced these courts, the Egyptian legislator organized two types of disciplinary courts. The first is the highest disciplinary courts that are competent to prosecute employees appointed to permanent positions of the first grade and above due to financial and administrative violations. The second type is the disciplinary courts, which are competent in labor law of the second level and below.

There are also at least two representatives in Cairo and Alexandria. Other disciplinary courts may be established in other governorates based on a decision from the President of the State Council. Members of the Administrative Prosecution Office handle trials before the disciplinary courts, and their rulings may be appealed before the Supreme Court for Administrative Affairs. Subsequently, the legislature established, by Law No. (19) of 1959, a disciplinary court with jurisdiction to try employees of companies, associations, and private entities designated by a decision issued by the President of the Republic. The government or public institutions and bodies contribute at least 25% of the capital, or guarantee a minimum profit. Therefore, the legislature decided to apply the provisions of Law



No. (117) of 1958 to employees of private entities. This court, similar to the disciplinary courts, consists of an advisor or assistant advisor on behalf of the State Council and at least two deputies.

If current legislation and the judiciary, in particular, have set limits for the administrative judge that he cannot cross in order to settle disputes brought before him, then he must, in return, use his full powers in matters in which he must intervene... in order to enforce respect for the law and protect citizens from abuses by the administration. One of the most important of these powers is to annul all controversial administrative decisions if he finds that there is a case of arbitrariness. B. Authority: For example, the administration issues a decision on a matter that the legislator has assigned to the judicial authorities. In the same ruling, it was also ruled that decisions regarding eviction from housing fall within the jurisdiction of the judicial authorities.

Therefore, the administrative decision ordering the appellant to keep and sell his furniture in his apartment is invalid.

The same applies to the demolition of a building. The Planning and Development Law requires the competent authority to file a lawsuit with the court to request demolition. The same applies to the acceptance of vacant properties. Article 51 of the National Property Law requires the governor to file a lawsuit with the court to establish the validity of the interpretative judgment. In these areas, only a judge is competent. Any interference by the administration in these powers requires annulment. The administrative judge also monitors whether the administration has used the powers of the public authority in areas authorized by law to achieve the public interest and ensure the smooth functioning and continuity of the public service or to protect public national property, either to protect its own property or to protect its own property. The misuse of the powers of the public authority is



prohibited. This principle was established by the French Council of State. In Egypt, the division of national property into public and private is newly stipulated in the National Property Law of 1990.

The administration is also obligated to respect the principle of equality among citizens before the public service headed by Natalio and to benefit from his services. The Supreme Court affirmed this principle, stating: According to the law, it is established that any allocation of state property is for the benefit of the citizen. Taking into account the publication rules to ensure equality of capital for candidates, therefore, the decision of the official who violates this principle is considered tainted by the defect of violation of the law. Since it has been established in the present case that the administration. The decision to grant the lottery without fulfilling the publication procedures, which are part of the public order, violated the law and ignored the principle of equality of citizens before the law. Likewise, if the administration insists for reasons related to security or public order, the judge must verify the validity of its defenses, and if it sets conditions in a particular area, it must respect them, otherwise its decision will be invalidated. Or rejected. To extend his term of office when he believes that moving abroad would harm public order without being obliged to justify the reasons for his refusal and without discussing this assessment before a judge exceeds his authority. However, if the administration causes his refusal to implement his instructions Section 11 of Order No. 01/77 must comply with the correct legal application of the wording of this article, otherwise its decision will be subject to revocation.

The current legal system also prevents the government from erasing acquired rights due to its own fault or subjecting it to limited jurisdiction.

These are some of the important cases I have reviewed, and I authorize the administrative judge to exercise his authority to annul administrative decisions



that violate the law, in addition to the annulment suit. What is called administrative liability without fault, whether in relation to public works or neighborhood hazards, as compensation. This is a consecration of the principle of equality between citizens before the burden of the public. The Supreme Court has affirmed in several decisions the principle of administrative liability in the absence of fault, and the administration has not decided liability except in the event of proof of force majeure or the fault of a third party, provided that this third party is one of its employees or someone who worked as part of the task assigned to him, regardless of the seriousness of the attached fault, provided that it is returned to the perpetrator in a private lawsuit. In Iraq, the Civil Service Court issues its decisions in accordance with the law relating to the Discipline Law for State Employees and the Public Sector and the Civil Service Law, as follows:

First: The Law of Discipline of State and Public Sector Employees

The Civil Service Disciplinary Law exercised judicial powers in accordance with the Civil Service Disciplinary Law No. 69 of 1936, which was repealed. It was a body that resisted the decisions of disciplinary committees and a disciplinary court with the authority to impose penalties on employees. The Council's powers regarding objections submitted to it under the aforementioned Disciplinary Law are to either confirm the administration's decision to impose, mitigate, or cancel the penalty and decide on it. It can also acquit the employee, cancel the acquittal, punish the employee, or increase the penalty.

Then, the Civil Service Employees and Public Discipline Law No. 14 of 1991 came into effect, reducing the Council's powers and making it resist decisions that impose disciplinary penalties only, thus favoring administrative efficiency over established guarantees. For the employee, the maximum powers enjoyed by the Council under this law is to consider objections submitted by the employee against



the penalty in one of the disciplinary penalties stipulated in Article (8) of the aforementioned law. The Council also has the right to support the administration's decision to impose, reduce, or cancel the penalty. The Council does not have the power to grant compensation for damages.

However, the injured employee may apply to the regular legal courts to claim compensation.

Second: Civil Service Law

The General Disciplinary Board shall consider the lawsuits filed by the employee against the government, claiming rights arising from the application of the effective Civil Service Law No. 24 of 1960 and the regulations established pursuant thereto, based on the wording of Section (1) of Clause Fifty-Nine of the aforementioned law.

The Council expanded the interpretation of the term "service rights" to include any violation of an employee's legal status. Furthermore, it is not sufficient to consider cases arising from the Civil Service Law; rather, it has expanded its powers to include additional cases arising from the implementation of decisions of the (dissolved) Revolutionary Command Council. Because the Civil Service Law is no longer the sole source of workers' rights, there are numerous pieces of legislation that include workers' rights that should not be left in the hands of workers. The government is unchecked.

It should be noted that lawsuits filed by employees subject to special laws, regulations, rules, and service instructions, such as members of the Internal Security Forces, military personnel, judges, and others, fall outside the Council's jurisdiction. This is because the legislation itself established a framework for appealing decisions issued pursuant to its provisions, and this constitutes a restriction on the Council's authority. The Legislature should have entrusted the



General Disciplinary Council with the authority to hear the claims of all employees, without discrimination.

Regarding the Administrative Affairs Court: Article 7/b/d of the Second Amendment to the State Council Law specifies the authority of the Administrative Affairs Court to discuss the validity of orders and decisions issued by state employees and entities, state ministries, and the public sector for which no appeal authority has been appointed. Section (e) of this section considers grounds for appeal before the Administrative Affairs Court, in particular the following: that the order or decision includes a violation or breach of the law, regulations, or instructions.

andThat the order or decision was issued in violation of the rules of authority or was defective in form andThat the order or decision contains an error in the application or interpretation of laws, regulations or instructions, or that there is an abuse or misuse of authority.

It is considered a ruling on decisions and orders that can be appealed, and the refusal or invalidation of an employee or authority in government departments and the public sector to accept a decision or order that must be accepted from a legal perspective.

As for Article Five of Section (7) of the Second Amendment to the State Shura Council Law, appeals relating to the following have been removed from the jurisdiction of the Administrative Affairs Court:

1. Acts of sovereignty: Orders and decisions issued by the President of the Republic are acts of sovereignty.
2. Administrative decisions issued in implementation of the directives of the President of the Republic in accordance with his constitutional powers.



3. Administrative decisions that are subject to challenge, opposition or appeal by law.

Discussing the jurisdiction of the Iraqi Administrative Court and comparing it with other countries.

Section (d) of the second part of Article 7 of the State Shura Council Law states that "The Administrative Court is authorized to discuss the validity of administrative orders and decisions issued by employees and bodies in state ministries and the socialist sector, after the entry into force of this law, for which no appeal authority has been appointed based on an appeal by a person with a known interest and potential position. However, potential interest is sufficient if there is reason to fear harm to the parties concerned." Through the above wording, it is noted that the legislator tends to limit the court's authority to administrative rulings exclusively, and thus we find that there are disputes outside the jurisdiction of the administrative authority, even if the administration is... In this context, our professor, Dr. Asam Al-Barzanji, continues by saying, "The jurisdiction of the Administrative Affairs Court, as defined in Article 7, is limited and modest." The legislator specified the exceptions stipulated in Article 7/Fifth, stating: "The Administrative Affairs Court has no right to hear appeals related to the following matters:

Sovereignty laws Sovereignty laws are decrees and decisions issued by the President of the Republic.

b. Administrative decisions issued in implementation of the directives of the President of the Republic in accordance with his constitutional powers.

C- Administrative decisions that are subject to appeal, challenge or opposition by law.

1.



Hence, we conclude that the Iraqi legislator has established a general rule for determining the court's authority in administrative matters by requiring the issuance of an administrative decision by an administrative body.

It should be noted here that the disputes brought before the Administrative Court are of a special nature. This nature requires dealing with substantive and procedural solutions that differ from those dealt with under private law. Among the Supreme Court's decisions on this issue are (that the obligations of private law differ fundamentally from those of public law, unless there is a special formula stipulating that, in the absence of such a formula, the administrative judiciary is not obligated to apply civil rules inevitably and as they are, but rather enjoys the freedom and independence to reach appropriate solutions for the legal relationships that arise in the field of public law, primarily between the administration of the public service and individuals. Therefore, it may apply civil rules that are compatible with them, and it may propose them if they do not agree with it, and it may also develop them in such a way as to achieve this compatibility. Thus, administrative law differs from civil law in that it is not merely an applying judicial authority, but a constructive authority. It should be noted that the preparatory work and requests are outside the jurisdiction of the Administrative Affairs Court, as they are preliminary procedures and procedures prior to the final decision. Among the requests of the Administrative Affairs Court in this regard is its decision issued by the Administrative Affairs Court on 9/29/1990. The facts of the case are summarized in the fact that the Ministry of Agriculture and Irrigation submitted a request in its letter No. 4731 dated 2/21/1990 to cancel the control rights in plots numbered 10/1, 10/4, 10/8, 10/10, 10/12, District 12, Al-Dahila Al-Dakhiliya in the Al-Shamiya Directorate of Al-Qadisiyah Oil, in accordance with the provisions of the State Land Unification Law No. 52 of 1976 AD, and two individuals



filed a lawsuit before the Administrative Court requesting that the Minister of Agriculture and Irrigation be obligated, in addition to his duties, to cancel the right to supervise spare parts. This is an administrative decision, but a request subject to the evaluation of the Fire Committee and the change of the Authority's rights in the Al-Qadisiyah neighborhood. The General Assembly of the State Shura Council approved the decision. In Egypt, the Administrative Court is the court with general and original authority to hear appeals against administrative decisions and disputes. All administrative disputes for which legislation has not provided a specific provision fall within the jurisdiction of administrative courts or disciplinary courts. In this, it was mentioned that (the authority of the Administrative Affairs Court to consider administrative disputes is not subject to the source, but rather deals with different types that are unique to each other, such as requests to cancel administrative decisions submitted by individuals - nationality. Lawsuits - are submitted as an appeal against final decisions issued by administrative bodies with judicial authority, and some of them are a partnership between them and the courts in administrative matters, such as labor disputes and administrative contract disputes, and it is considered an appeal court to review rulings. by administrative courts, and its rulings are issued by three advisors. Thus, the judicial system of the court revolves around a fundamental concept of administrative law concepts and theories, which is the decision.

Finally, it should be noted that Article (100) of the Constitution of the Republic of Iraq for the year 2005 AD, which is in effect, prohibits laws from stipulating immunity from any administrative procedure or decision from appeal. Therefore, decisions that were immune from appeal before the judiciary. The Administrative Judiciary Court includes Articles (a, b) Article (7 / Thursday) of the State Shura Council Law No. (65) of 1979 AD, amended by Law No. (106) of 1989 AD regarding



sovereignty procedures and decisions taken. During the implementation of the directives of the President of the Republic, it was cancelled pursuant to the aforementioned Article (100), and it is prohibited to immunize any administrative procedure or decision under appeal.

In addition, Article (101) stipulated the establishment of the State Council to exercise the duties of the administrative judiciary, issue fatwas, formulate and represent the state and all other public bodies before the judicial authorities, except for what is exempted from it by law.

Finally, it can be said that the establishment of the Judicial Court at headquarters has led to the completion of the levels of litigation, the unification of the appellate aspect of administrative rulings, and the alleviation of the burden on the General Assembly. The State Shura Council, to exercise its role in the field of codification and the provision of legal opinions and advice, as the Civil Service Bureau represents a disciplinary judicial authority in accordance with the provisions of the amended State and Public Employees Disciplinary Law, and hears cases arising from the imposition of disciplinary penalties. It also represents an administrative justice system that plays an important role in overseeing the work of administrative bodies by examining disputes that arise between employees and the government and that arise from civil service rights. Full judicial authority, which does not limit itself to annulling or correcting the administrative decision and compensating the plaintiff for damages, as the Iraqi and Egyptian legislators have improved the definition of the period for filing an administrative lawsuit. B. Days rather than months, given the accuracy and integrity of this definition.

The second topic

The role of the Civil Service Court in protecting the rights of public employees regarding disciplinary sanctions



The Civil Service Court is an effective legal tool for protecting employee rights, as litigation is an inherent constitutional right, a foundation for the fundamental freedoms required by the legal nature of the state, and a pillar of governance—that is, a proper democracy. The public rights and freedoms provided by any democratic system or guaranteed by a state's constitution are given legal status. Procedures for regulating litigation are of great importance in various legal systems, whether civil, administrative, or criminal. These procedures are a crucial step in arriving at the truth and the judge. Court procedures in administrative matters occupy a position no less important than others. The judicial system of each country is the method that must be followed to resolve disputes that arise between the administration and individuals. It also aims to protect opponents, ensure the integrity of litigation, and facilitate the adjudication of cases to achieve justice. The growing needs of society and the intertwined relationships among its members have led to increased state interference in the economic and social lives of individuals, which constitutes an increase in the burdens of administration, as the evolving needs of life have forced the individual to confront the administration. This dispute, in turn, has led to the formation of mutual relationships between the administration and its employees, and between the administration and individual employees, in accordance with the requirements of the public interest and ensuring the smooth running of the public body. However, the organization of these relationships can be flawed, especially if its decisions are made unintentionally or hastily, as the administration may ignore some legal provisions required by the legislator to protect the interests of employees, resulting in legitimate damage. Therefore, judicial oversight must be organized. The authority over the work of the administration must ensure the rule of law and the principle of legality on the one hand, and protect the interests and rights of employees on the other.



In this chapter, the role of the Civil Service Court in protecting the rights of public employees in the matter of disciplinary sanctions will be explained by dividing the chapter into two parts.

Disciplinary penalties for the employee

Disciplinary sanctions are a decision or ruling issued by the competent authority to deprive a civil servant of material or moral achievements in the workplace, or to terminate the material or moral employment relationship between him or her and the institution, due to a positive or negative action. An act that constitutes a violation of the duties and requirements of the workplace, taking into account procedures and guarantees. When the position is a trust that the employee must fully fulfill, as the employee is the person appointed by the authorized authority to a permanent position in a public service administered by the state or a public official, which is the administrative tool in the performance of its duties on a permanent basis; to ensure the regular and stable performance of public services. When he or she has committed a negative act or refrained from a positive act that constitutes a disciplinary violation, a criminal offense, or a crime affecting his or her honor or position, or when he or she is referred to the competent courts for committing any crime or crime affecting his or her honor. He or she is excluded, meaning he or she is forcibly prohibited from performing the duties of the position, and his or her connection with the work is severed until the end of the disciplinary or judicial proceedings in the lawsuit or complaint filed against him or her in the final judgment that granted him or her a final title. Or in some cases, his trial does not meet the legal requirements, so it is taken into account that the employee's employment relationship has not been terminated. Coexistence and experience in administrative work show that the practical problems surrounding disciplinary sanctions decisions arise for several reasons, the most important of which is the



lack of a theoretical basis for the concept of disciplinary sanctions, represented by the absence of an administrative ruling. This connection: The daily management of administrative work and the decision on disciplinary sanctions are legal matters that affect the relationship between management and employee due to their psychological and social impact, and often arise around them management-related problems... The body that activates the hand-tightening, its purpose, its duration, and its consequences. The effects on the employee's financial rights, represented by salary and the manner in which it is treated, as well as the moral effects of promotion and other matters. This requires research and study to clarify all legal aspects related to disciplinary sanctions for the working public, from their temporary work until the end of disciplinary or judicial proceedings in the lawsuit or complaint filed against them, in Iraqi and Egyptian labor legislation. Especially the Civil Service Law No. (24) of 1960 compared to the Civil Service Law No. 81 of 2016, which shows the results and effects that may result from it on the department, the employee and the community since its issuance, during its issuance and implementation until its completion, and because this topic is a virgin and has no previous studies. In order for the research to achieve its goal, it collected the scattered legislation, judicial decisions and various references. To reveal all its aspects, in an attempt to obtain the truth and get as close as possible to justice. In order to clarify the true concept of disciplinary sanctions, we must divide this issue into two requirements. The first part deals with the definition of disciplinary sanctions. The second part addresses the objectivity of disciplinary sanctions as follows:

Disciplinary sanctions and their types in Iraq and Egypt

There was no agreement on the name of the punishment that the employee carries out and imposes disciplinary penalties on. Sometimes he calls it (disciplinary



punishment), and sometimes Another time he calls it (disciplinary punishment), and the third time he calls it (administrative punishment). If the subject of our research is the definition of disciplinary punishment for a public employee. We will also discuss the definitions mentioned in relation to disciplinary punishment carried out by a public employee, because every employee has the necessary elements to be considered as such, as we will see later.

Here, we note the impact of penalties. Most legislation does not specifically define disciplinary penalties, but rather merely specifies certain work duties. This is due to their diversity and importance, as they are derived from the law. The employee's position and his or her decision affect management's efficiency, as he or she will face penalties for proven errors, while the regular and consistent operation of public services does not meet this requirement. It took both Iraq and Egypt.

We will divide the application into two parts. In the first, we will address the definition of disciplinary punishment in Iraq. In the second part, we will address the definition of disciplinary punishment in Egypt as follows:

Types of disciplinary sanctions in Iraq.

The State and Public Sector Employees Disciplinary Law No. (14) of 1991 stipulates that "any failure to perform an employee's duties, honor, integrity, or respect is considered a disciplinary error."

The Iraqi legislator has not defined disciplinary punishment, not in the three disciplinary laws (Law No. 41 of 1929, repealed), (Law No. 69 of 1936, repealed), and (Law No. 14 of 1991), which is sufficient to name it. Some duties that the employee must perform and actions that he must avoid are not included in any of them, including the definition of disciplinary punishment. Neither the Judicial Organization Law No. (160 of 1979-1979 with amendments) nor the Public Prosecution Law No. (159 of 1979-1979 with amendments) stipulated the duties of



judges and members of the Public Prosecution, without reference to defining their disciplinary punishment.

In Iraq, the ruling defined a disciplinary violation as: an employee's failure to perform duties stipulated by law. We find another definition for this, which is: "Any behavior resulting from an employee that violates one of the job duties defined by law, the violation may be positive or negative, or an act prohibited by him" or it is (any act or omission committed by the employee during the performance of the job or outside of it that violates the job, either harming his good reputation, undermining the dignity of the job, or affecting the smooth running of the public facility. Definitions also vary, with some defining it as "a positive or negative violation of work duties," or "any action or omission by an employee that conflicts with the duties of his position." Or yes (breach of the employee's legal duty as provided for in the Disciplinary Code). Or yes (punishment for any act or omission committed by an employee that conflicts with his job duties and job requirements). Or (the penalty of legal compliance with the phenomenon of employee negligence and failure to perform his duties during or because of service).

In this context, it appears that Iraqi legislation did not define the disciplinary violation. The Iraqi State and Public Sector Disciplinary Law No. (14) of 1991 did not include a definition of it. At the Egyptian level, the legislator provided a definition of behavioral harm that we find in the Egyptian Public Employees System, which was announced by Legislative Decree No. (112) of 1959 in Section (54). The Egyptian legislator defined it in the following terms: The employee is considered behaviorally responsible and is punished with disciplinary penalties if the violation was intentional or against both of you, which the French jurist (Leon Degui) defined as "punishment for an act in which the employee violates the private law. The duties imposed on him in his position as an employee."



As far as the type of disciplinary penalty is concerned, it is considered one of the administrative means used by the competent administrative authority, in accordance with the law, to deter violators from committing disciplinary violations within the working population and to maintain order within it. The impact of disciplinary sanctions varies with respect to the disciplinary penalty, which includes: the penalty taken against an employee for violating the employee's duties and resulting in dismissal from service; the professional penalty imposed on someone who violates or deviates from their duties, violates their demands, or violates their dignity; or the detailed action may take the form of a signature from the disciplinary authority authorized to the employee who violates the duties of the position and its benefits.

Based on the above, it can be said that the disciplinary penalty for a public employee is the same penalty detailed in the wording imposed by the competent authority on judges and prosecutors when they violate their duties. The Iraqi legislator did not refer to the Law Regulating Judges (No. 160 of 1979 and its amendments) and the Public Prosecution Law No. 159 of 1979 and its amendments to define the disciplinary penalty, but rather only specified the disciplinary penalties imposed on a public employee when he commits a disciplinary violation. Sanctions imposed for administrative law offenses, whether moral or financial, or resulting in temporary or permanent termination of employment, violate the principle of legality of punishment. The penalty imposed must be proportionate to the seriousness of the offense committed.

As for the strength of the administrative violation committed by the employee as follows:

First, attention should be drawn to Clause (8) Paragraph (a) which states that "the employee must be notified in writing of the violation he committed and ordered to



improve his behavior at work. This penalty will result in a delay in promotion or a raise for three months.” 1926 and 1939, which were repealed. This penalty is the first and easiest administrative penalty and must be written, binding and contain instructions so that the employee can improve his behavior at work over the coming months.

Second: Warning: Item (8) point (second) of Law No. 14 on disciplinary procedures for civil service employees since 1991 and its amendments states: He warns him against violating his duties at work in the future, and this penalty will result in postponement. Or an increase in promotion for a period of six months. This penalty was mentioned in the disciplinary laws of 1926 and 1939 that were repealed, and the first was in the list of penalties stipulated therein, and the second penalty stipulated in the Disciplinary Law of 1951 in force is this penalty (with suspension of execution). Promotion or increase for a period of six months).

Third: Deduction from salary: The third paragraph of Clause (8) of the aforementioned law states the following: “The daily wage shall be deducted from the employee’s salary for a period not exceeding ten days by written order for the violation committed by the employee.

Some lawyers criticized this penalty, saying that its effects extend to the employee's family and do not affect her, while some defended it because the administrative and moral penalties are not enough to blame the violating employee, and are not the only penalty. It affects the employee's family. The correct opinion is to keep the above-mentioned penalty as the treasury plays an important role among employees, and therefore it constitutes a strong deterrent for employees and they avoid violating work obligations. With the deduction of the employee's daily salary for a certain period not exceeding (10) days and not just the nominal salary).



Fourth: Reprimand: This penalty is stipulated in Article (4) of Article (8) of the State Discipline and Public Service Employees Law No. (14) 5591-1991 AD, amended by stating: His conduct at work. Its duration is one year. This penalty is not new in Iraqi legislation, as the disciplinary laws of 1929 AD and 1939 AD, which were repealed, had already been issued.

2-1-1-2. Types of disciplinary sanctions in Egypt

First: Disciplinary penalties in Egyptian legislation

According to the research presented by the researcher in a master's thesis entitled "Penalties that terminate the employment relationship", a comparative study conducted by the researcher Amer Ibrahim Al-Shammari and submitted to the College of Law, Al-Nahrain University, the Egyptian legislation did not do so. Set a specific definition for disciplinary penalties, as stipulated in Article (83) of the Civil Service Employees Law No. (210) of 2011: "Every employee who violates the duties stipulated in this law or exceeds the requirements of the duty in this law." Law. And his work in his position will be subject to a disciplinary penalty. The same was stated in Article (78) of the State Employees Law No. (47) of 2018, which stated that: "Every employee who exceeds the requirements of duty in the performance of his job or appears in the performance of his job to be infringing on the dignity of the position shall be subject to disciplinary punishment." In the same context, the wording of Article (80) of the Civil Service Law in the Public Sector in Egypt No. (48) of 1978 AD was reached.

Second: Disciplinary penalties in Egyptian jurisprudence

Egyptian jurisprudence has clarified disciplinary sanctions through several opinions, including Dr. Muhammad Raafat Abdel Wahab: "These sanctions are imposed by the competent disciplinary authority on employees who commit violations or disciplinary offenses...and are characterized by their financial nature,



such as salary deduction, salary reduction, or deprivation of half of the salary or periodic bonus. However, these sanctions also have a moral character, such as a warning penalty. Since financial sanctions are always accompanied by negative moral and professional repercussions for the erring employee. Sami Gamal El-Din also stated that: "The penalties prescribed by law to punish public employees who commit disciplinary violations for which they are held disciplinary accountable, which affect the employee's moral or economic status, or the termination of service, his work, or his relationship with the administrative authority."

Third: Disciplinary penalties in the Egyptian administrative judiciary

The Egyptian administrative judiciary system, through the Administrative Affairs Court, developed the concept of disciplinary sanctions. The court confirmed in its ruling in Appeal No. (3) dated 19 S S dated 11/19/1979 the following: "It is recognized that the basis of disciplinary liability is the employee's breach of his job duties, either positive or negative, or the commission of a prohibited act." Therefore, any employee who violates the obligations stipulated in laws, regulations, general organizational rules or higher orders issued within the limits of the law, or exceeds the requirements of his duty in performing his job, or fails to perform it with the required caution, accuracy and honesty, or violates the legitimate trust in this position, rather commits an administrative offense that justifies his discipline.

Conclusion

After we have finished, praise be to God Almighty, our thesis (The Role of the Civil Service Court in Protecting the Rights of Public Employees: A Comparative Study), which represents a fundamental need for countries that have since adopted the dual judicial system. It is inconceivable that an administrative judicial system exists



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The role of Iraqi courts in protecting the Iraqi civil employee - pp(175 - 220)

Mohamed Yasser Magdy



without a law regulating these litigation rules. The more precise the procedures in regulating these rules, the more civilized a aspect is considered for the purpose of advancing the administrative judicial system in those countries. Just as the current situation in the administrative judicial system in Iraq has witnessed great leaps, it has led to the emergence of new courts whose rulings are subject to the supervision of the Supreme Administrative Court.