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"Guarantees of Disciplinary Punishment on University Service Employee and
Mechanisms for their Cancellation"

Comparative study

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Abstract

The university Service employee is considered one of the categories of public employees, However, The academic and administrative tasks duties that undertakes have made him a special importance and a distinguished legal status, Therefore, we find That the Iraqi legislatures assigned this category a special Law, it is the university Service law No (23) of 2008 as amended who dealt with some aspects related to serving this category, such as duties, right, condition for appointment and award of academic titles, and financial allocation, such as university service allocation, academic title allocations, and some other Provisions leaving other matters to the general service laws and employee discipline, among the matters that the legislator neglected to deal with in the university service law was setting of a special disciplinary system it harmonizes with, nature of the activities of educational institution such as universities, colleges and institutes, taking in to account degrees an titles in a way that Preserves her dignity when referring her to administrative investigation and imposing disciplinary sanction on this category, This study focuses on the guarantees that the law is supposed to provide during the taking of disciplinary measures to increase the effectiveness of the constitutional text and the achievement of the university service employees defense in front of the disciplinary authority with the procedures to cancel the disciplinary Penalties imposed.

Keywords: university service employee, Guarantees, Disciplinary Punishment, Erase disciplinary punishment, Right of defense.

Introduction:

Some legislations assigned the university employees category with special disciplinary systems that included the duties, prohibitions and disciplinary penalties assigned with the classification of these penalties according to the functional and scientific degree, as well as the existence of a difference in the authority concerned with the accusation and the authority to impose disciplinary penalties with broader powers for the president of the university, the dean of the faculty and even the heads of scientific departments, and this would To enhance the independence of universities and the effectiveness of university administration, however, the Iraqi legislature did not allocate this category to a special disciplinary system, but referred them to the presidential disciplinary system that includes all state employees. The law does not include sufficient guarantees to achieve defense and fulfill its components in accordance with the spirit of the constitutional text that guaranteed this right and its sacred description in all stages of investigation and trial.

Research problem:

The research problem is represented in the absence of a legislative framework that regulates disciplinary issues for university service employees within the law that regulates this service. University service employees, despite the privacy of their work, are subject to the legal system for discipline by public employees and are subject to the same rules and procedures when disciplinary sanctions are imposed or eliminated. This last legal system itself suffers from a legislative deficiency that needs to be addressed to increase the effectiveness of the guarantees of disciplinary accountability for the public employee in the face of the disciplinary presidential system in Iraq in order to achieve a balance between effectiveness and guarantees in response to the principle of the constitutional right to defense.

Research aims:

The research aims to shed light on the most important guarantees of a university service employee when he is about to be held disciplinary accountable by the administration, whether in the stage of administrative investigation, at the stage of imposing disciplinary punishment, or in the stage of administrative grievance and judicial appeal and the mechanisms for erasing these penalties, along with the extent of legislative feasibility of Establish a disciplinary system for this category within the law that regulates university service.

Research methodology:

The deductive, analytical, and comparative approach was adopted, whether related to the texts or judicial applications, in France, Egypt, Jordan, the United Arab Emirates, Saudi Arabia and Iraq.

Research Plane:

The research was divided into two sections, the first was devoted to examining the guarantees of discipline of university service employees and divided into three demands, the first of which we devoted to studying the guarantees prior to imposing disciplinary punishment, the second to discuss contemporary guarantees for imposing disciplinary punishment, and the third to

discuss guarantees subsequent to imposing disciplinary punishment, while the second section devoted it to the topic of erasing Disciplinary punishment and its procedures, and we ended the research with an in-depth conclusion that includes the most important conclusions and recommendations.

The first topic

Discipline guarantees of university service employees

Most disciplinary systems usually stipulate guarantees that must be taken into account when commencing the accusation, investigation, and issuance of disciplinary penalties against the employee, including university service employees. Among these guarantees are those that precede the issuance of the punishment, some of which are contemporaneous with it, some of which are later to be issued, and this is what we will briefly address in The following demands:

The first requirement

Previous guarantees of disciplinary punishment

The university service employee, as one of the categories of public employees, enjoys legal guarantees aimed at ensuring the right of defense in the face of disciplinary violations directed at him by the administration, whether it is related to public office in general or what is related to it with his academic and scientific duties, and we will deal with this requirement in the previous guarantees in the following branches:

First branch

The right to confrontation and access to the investigation file

The right to confrontation: is to enable the university service employee to know the accusation directed against him and to know the nature of the violation committed by him, and this entails enabling him to view the investigation file and all the supporting documents that the administration relies on in directing the accusation in a manner that guarantees the achievement of his defense. This right is considered a fixed guarantee. The basic requirements guaranteed by the constitutions and disciplinary systems for employees in general, and the disciplinary judiciary has enshrined this principle in many of its provisions. One of the requirements for the employee's defense of himself is to inform him of the facts, charges and violations he is required to be held accountable for disciplinary, and the employee must review all evidence and documents That proves the occurrence of these facts or irregularities, as the Supreme Administrative Court in Egypt went to the confrontation in a way that the employee feels that the administration is on the way to take him if it is more likely that it has realistic evidence in order to be aware of the seriousness of his position and then he is active in his defense (1), In Iraq, we find that the university service employee is subject to the general Sharia law in disciplining the same as the rest of the public employees, which is the State and Public Sector Employees Discipline Law No. 14 of 1991 The amendment without the legislator singling out a special disciplinary system for university service employees, as we

note on the aforementioned Discipline Law that it is silent about the explicit provision of these guarantees, but that does not mean that he wasted these guarantees, as they are enforceable as it is one of the general legal principles and because it is a requirement of the right of defense and the right to defense is guaranteed With the provisions of the constitution (2) while the Egyptian Universities Organization Law No. (49) of 1972 as amended stipulated in Article (107) that the university president informs the faculty member referred to the disciplinary board of the charges against him and a copy of the investigation report, by a written letter He must be accompanied by a notification of his arrival at least twenty days before the hearing appointed for the trial. Article 108 of it stipulates that the faculty member referred to the Disciplinary Board has the right to peruse the investigations conducted on the days appointed by the university president. This right has been confirmed by the Supreme Administrative Court in Egypt. One of its decisions stated (... that Article (112) of Law No. (49) of 1972 amended regarding the organization of universities states that the president of the university may impose the penalties of warning and blame stipulated in Article (110) on members of the training authority those who violate their duties or the requirements of their jobs, after hearing their statements and realizing their defense, and his decision in that is both a cause and a final conclusion, and it is clear from this text that it echoes what is decided that every person has the right to defend himself, which is the right stipulated in Article (67) of the Constitution and so forth. Subdivided to this from general principles in the principles of investigations and disciplinary trials, including the imperative to confront the accused with what is attributed to him and hear his defense and achieve it. Himself...)().

In the United Arab Emirates: The university president or whoever is authorized by him must inform the faculty member who is referred to discipline by registered letter with a detailed statement of the charges against him and a copy of the investigator's report, at least 15 days before the disciplinary accountability session. The faculty member referred for investigation has the right to review the investigative papers (3).

Likewise, Saudi law provides such a guarantee as it requires the university president to inform the faculty member or his equivalent who is referred to the disciplinary committee of the charges against him and a copy of the investigation report by a registered letter at least fifteen days before the date of the session set for trial, as for the faculty member who is referred to Disciplinary Committee review the investigations carried out on the days specified by the university director (4).

From the foregoing, we can say that the university service employee in Iraq has a guarantee represented by informing him of the accusation directed against him and confronting him with it, as well as reviewing the investigation file in application of general principles and the right to defense guaranteed by the text of the constitution, even if this is not explicitly stipulated in the State and Public Sector Employees Discipline Law No. (14) for the year Amended 1991 and we call on the Iraqi legislator to avoid this legislative omission and explicitly stipulate the right of the public servant to confrontation and to see the investigation file to give the constitutional text that guaranteed the right to defense its effectiveness (5), as the law of discipline of state employees as it does not respond to the elements of the right of defense in the field of accusation and investigation Administrative with regard to the employee's right to

confront with what is attributed to him from job violations that constitute an administrative offense that is subject to disciplinary (disciplinary) accountability.

The second branch

Administrative investigation

The disciplinary authority shall conduct the administrative investigation of the violating university service employee before resorting to issuing its decision to impose the disciplinary punishment, considering the administrative investigation a substantive formality procedure aimed at reaching the facts that are taken after the occurrence of the disciplinary violation with the intention of uncovering the perpetrator and gathering evidence, documents and documents that incriminate the perpetrator. The exception to that verbal investigation or what is called in Iraqi law by interrogation must be written (6) Article (10) of the State and Public Sector Employees Discipline Law No. (14) of 1991 amending the principle of administrative investigation as a guarantee of the employee's guarantees before the disciplinary punishment is imposed Under this law, the university service employee is subject to him, as we explained earlier, as this article stipulated the formation of an investigative committee consisting of a chairperson and two experienced members, provided that one of them holds a preliminary university degree in law that conducts the investigation in writing with the violating employee who is referred to it and for that purpose she has a hearing And the recording of the statements of the employee and the witnesses, perusal of all documents and data that it deems necessary to review, and the writing of a report confirming the wages that you have taken Acknowledgments and the statements I heard with its justified recommendations, either not to hold the employee accountable and to close the investigation, or to impose one of the penalties stipulated in this law and to raise all of this to the authority to which the employee was referred. For a period not exceeding five days after questioning the violating employee (7).

Likewise, Egyptian law obligated the faculty member assigned by the university president to conduct the investigation with the offending faculty member to submit a written report to the university president, and the Minister of Higher Education may request to inform him of a copy of this report, and the university president has no right to impose the warning and blame penalties except after Hearing the statements of a faculty member who violates the duties and requirements of his job except after their defense is investigated. Among the requirements of the defense investigation is the written investigation. In the matter of investigation and referral before the Disciplinary Board, the same rules for accountability in the disciplinary courts stipulated in the Law of the State Council (8) must be investigated from The faculty member assigned to the investigation accepted, and it is required that his grade is not less than the degree of the person who is being investigated, and violating this rule results in the nullity of the investigation and the disciplinary decision issued on it, as the Supreme Administrative Court went in one of its decisions until (... it is not permissible for him to undertake the investigation with a member The university faculty, the legal advisor to the president of the university, the violation of this rule results in the invalidity of the investigation and the invalidity of the disciplinary decision issued on its basis, and this nullity may not be corrected by any measure Another issued by another authority, the basis for this is that the previous rule

is one of the peremptory rules that may not be deviated from. In addition, the provisions relating to discipline must be properly interpreted and it is not permissible to expand them or measure them ...) (9), and the principle in the administrative investigation is the necessity of the presence of a clerk. An investigation, but it does not prevent the editing of the administrative investigation by the faculty member conducting the investigation himself as long as he adheres to the principles of the investigation or if there is an imperative that requires it (10).

The UAE law also obligated the faculty member assigned to investigate the faculty member accused of incidents attributed to him by the university director or upon the college dean's request to conduct an investigation with him. The results of the investigation shall be submitted with a full report containing the final say on the matter to the university director (11).

In Saudi Arabia, the legislator obligated the dean of the faculty who is assigned by the university director to investigate the faculty member or those in their position and who believes that he violated his duties to submit to the university director a report on the outcome of the investigation and refer the university director who is investigating with him to the disciplinary committee if he deems it necessary. The university director cannot send a warning to a faculty member who breaches his duties, whether the warning is verbal or written, or the blame and warning penalties are imposed except after investigating him in writing and hearing his statements and realizing his defense, and his decision after that is justified and final. A guarantee to achieve the defense of the faculty member (12), for the written investigation achieves many advantages at one time, as it is in addition to its importance and value in evidence, as it is not allowed for the witnesses or experts who gave their statements to refer to their statements before the investigation authority, especially if these statements are in the interest of the employee subject to the disciplinary accusation in addition Because it represents an easy and disciplined method of emptying the investigation into a written text that is easy to refer to (13).

The third branch

Attain the defense

The right to defense is a group of activities that the accused undertakes himself or through his lawyer to confirm his point of view regarding the allegation against him (14), and the right of defense is based on the interest of the accused to receive fair, independent and impartial procedures and trial regarding the accusation against him and this applies to the measures taken by the administration against the violating employee Prior to imposing disciplinary punishment against him, and it is a natural right attached to a person, whether he is an ordinary individual or a government employee, and it is one of the established principles at the global level and at the level of the internal constitutions of countries. That affirms this right in Iraq, the current Discipline Law did not include a text explicitly referring to this right, and the legislator's silence about it does not mean a waste of that right. All stages of the investigation and trial. Therefore, the legislator's silence about its explicit stipulation does not mean wasting

it. Rather, general rules are used in defense, especially since Article (15 / Fifth) Of the State and Public Sector Employees Discipline Law No. (14) of 1991 amended stipulating that (the General Discipline Council, when considering the appeal, takes into account the provisions of the Code of Criminal Procedure and in accordance with the provisions of this law and its sessions are confidential). The investigation of the defense, as for the components of the right of defense, it includes a number of rights branching off the principle of freedom of defense, which is the freedom to resort to the employee accused of committing a violation to the various means and methods of defense to reject the charge against him in a manner that guarantees the achievement of his defense, such as the right to seek the assistance of a defender, the right to martyr defense witnesses and the right to silence And it is not permissible to take the violating employee the legal oath (15).

In Egypt: Article (112) of the Egyptian Universities Organization Law No. (49) for the year 1972 AD, as amended, obligated the president of the university before applying the warning or blame penalties to hear the statements of the faculty member who committed a violation and to fulfill his defense (16), as for the guarantees of the faculty member Referred to the Disciplinary Board, according to the text of Article (105) of the same law, the rules regarding trial before disciplinary courts are stipulated in the Law of the State Council, and this law includes all the guarantees of investigation, trial and defense, such as hearing the testimonies of witnesses, seeking the assistance of a defender, and not taking the legal oath of the accused. And the procedures for reporting and appealing the verdicts, however, the omission of one of these guarantees does not mean the nullification of the investigation if it took into account the guarantees of the defense, as the Supreme Administrative Court went in its decision until (... the principle is to swear witnesses to the oath that motivates them to mention the truth and not in the law organizing universities. This is necessary and the testimony is given without an oath that does not stigmatize the investigation as null or affect its integrity as long as its assessment is left to the disciplinary board according to what it extracts from the facts and papers of the indictment file, and it is also not invalidated. The investigation merely because the assignee was not confronted with the violations attributed to him as long as the investigation did not waste defense guarantees ..) (17).

As for teaching assistants and teaching assistants, the imposition of disciplinary penalties against them is subject to the controls of Article (79/1) of the Civil Workers Law No. (47) for the year 1978 AD which was replaced by Article (59) of the Civil Service Law No. (81) for the year 2016 (18) which prohibited Imposing the penalty on the worker except after investigating him, hearing his statements and investigating his defense, as Articles (130, 154 and 157) of the Universities Organization Law No. (49) of 1972 amended were not subjected to disciplining teaching assistants and teaching assistants except for the formation of the body to which they are asked about what is required in the area of determining Procedure and penalties imposed on them by referring to the provisions that apply to university employees other than faculty members, which are the provisions of Civil Service Law No. (81) for the year 2016 and the basis for this is the text of Article (157) of the Universities Organization Law, which indicated in the event that there is no text on determining penalties Which is imposed on non-faculty employees in university laws and regulations, it is necessary according to the text of Article (157) aforementioned to refer to the penalties contained in the Civil Workers Law in the

country (19), and the result is that the teaching assistants and assistant teachers have been treated Concerned about the treatment of employees who are not members of the faculty and thus the possibility of investigation with them by the Administrative Prosecution at the request of the President of the University or the Minister of Higher Education (20)

As for the Emirati legislator: We find that he has indicated in Article (45) of the faculty members list at the University of Sharjah the right of the faculty member referred to the disciplinary council to have access to the investigation and to seek the assistance of a lawyer or a faculty member to defend it before the Disciplinary Council and thus the legislator The Emirati has approved the right of defense and the components of the right to defense, and the same did the Saudi legislator when he obliged the university director when signing the warning and blame penalties on the faculty member to conduct the investigation with him in writing, hear his statements and investigate his defense, and he also obligated the disciplinary committee that examines the case referred to it to Its sessions are held in the presence of the investigator with him or his representative, and if he or his representative does not attend, the case may be examined, the investigation procedures and the consideration of the case are conducted in secrecy, and the committee has the right to hear the statements of witnesses when necessary (21). Finally, we call on the Iraqi legislator to remedy the legislative omission and veto in the Staff Discipline Act The State and Public Sector No. (14) for the year 1991 amended by expressly stipulating the right of the violating employee who is referred to the administrative investigation to seek the help of a lawyer in the investigation stage, especially if the employee is inexperienced He is new to the job and is not familiar with the administrative and financial violations, as the presence of a lawyer contributes to strengthening the principle of the right to defense and increasing the effectiveness of the constitutional text that guaranteed the right to defense in all stages of the investigation and trial, especially in administrative violations that have a penal component and the administrative investigation may lead to raising the responsibility of the disciplinary violating employee And the penalties and their referral to the criminal courts and the consequent disastrous effects.

The second requirement

Contemporary safeguards for disciplinary punishment

The impartiality and causation of the decision issued to impose disciplinary punishment is one of the most important guarantees established for the university service employee who is about to be disciplined. Impartiality is intended to strip the body legally competent to investigate all manifestations of prejudice, inclination and passion. It also implies another concept of an objective nature, which is the need to separate the powers of accusation and punishment The Supreme Administrative Court in Egypt considered the investigator's strictness when conducting the investigation by not impartiality, which would result in him making his decision null, as it ruled that (... is one of the principles required by justice without the need for a text determined by the necessity of having authority in the one who conducts the investigation, and the investigator if he is a judicial agent. On the authority of the university president, in the cases brought by the appellant, he is not fit to be investigated, because that contradicts the impartiality that must be met in the investigation authority ..) (22).

The Egyptian legislator stipulated in Article (105) of the Universities Organization Law No. (49) of 1972 amended that the degree of the person assigned to investigate should not be less than the degree of the person being investigated, and it follows that the university president assigns an investigator with a lower degree than the investigator's grade. A breach of this text and a breach of the principle of impartiality or objectivity as decided by the Supreme Administrative Court in its aforementioned decision that it is not fit for investigation, while we find the Iraqi legislator did not require when conducting the administrative investigation that the head of the investigation committee in charge of the investigation be in a position equal to or higher than the rank of a member The faculty who is investigated with him, and we find that the Iraqi legislator did not separate between the authority of accusation and punishment, as the authority competent with discipline is the one that directs the accusation and it is the one that imposes disciplinary punishment on the faculty member, and the role of the investigation committee is limited to issuing non-binding recommendations in terms of discipline and the reason for that. We have shown that the Iraqi legislator has adopted the presidential discipline system, while we find that the disciplinary system for university service employees in Egypt, the United Arab Emirates and Saudi Arabia has given the university service employee guarantees a It increased when the disciplinary authority was authorized to impose some disciplinary penalties and the authority to refer a faculty member to a disciplinary council or committee to impose other disciplinary penalties against him and this constitutes a separation between the charging authority and the disciplinary authority, which guarantees a kind of impartiality and objectivity for the university service employee (23).

As for causation: the decision to impose disciplinary punishment as an administrative decision must be reasoned with the necessity to distinguish between causing disciplinary punishment and the existence of a reason justifying its issuance, the latter being the failure of the service employee to the duties and requirements of his position. Most of the laws stipulated the necessity and mandatory reasoning of the administrative decision issued to impose disciplinary punishment (24).

The Supreme Administrative Court confirmed this principle, as it was stated in one of its decisions: (... that the decisions of the disciplinary boards of members of the university faculty must be deposited in their drafts that include their reasons and signed by their sources upon pronouncing them, otherwise they are null and the basis of that Article (43) of the State Council Law Without Article (312) of the Code of Criminal Procedure ...) (25).

Causation is one of the general principles of penal policy and is not limited to imposing disciplinary decisions, but extends to judicial rulings in the event that these decisions are challenged before the administrative judiciary (26).

And because the Iraqi legislator is concerned with the category of university service employees with a special disciplinary system that is consistent with the nature of their work, as we have previously explained they are subject to the State and Public Sector Employees Discipline Law No. (14) of 1991 as amended, and this law contains legislative deficiencies that violate the guarantees of impartial administrative investigation because it did not separate The accusation is on the authority of the disciplinary punishment, and it has not been explicitly

stated that the head of the investigation committee should have a higher job than the employee investigated with him, or at least equal to him.

Also, the aforementioned law did not include rules related to response and complaints from the head and members of the investigative committee, and that relying on the Iraqi Civil Procedure Law (27) to apply the texts of the judges' response and complaining about them does not correspond to the nature of the investigation committee's work and the positions of the committee's chairman and members, and this requires regulating this issue by the legislator because Response and complaint is one of the employee's contemporary guarantees to impose disciplinary punishment. However, the legislator stipulated a guarantee of causation of the investigative committee's recommendations when it obligated it to write a report in which it proves the measures it has taken and the statements it heard with its causative recommendations (28).

The third requirement

Subsequent guarantees on the imposition of disciplinary punishment

On university service employees

Administrative grievance (29), in both its state and presidential types, and the judicial appeal are among the most important guarantees established for the university service employee after the disciplinary punishment has been issued against him. The grievance is a means guaranteed by law to the university service employee that allows him to confront the decision by submitting a petition to the source of the decision or the higher governing body asking him to reconsider this The decision before going to court, as this is the last guarantee for the employee, and an administrative grievance allows the source of the decision to have wide flexibility in withdrawing, amending or canceling the decision that includes the imposition of a disciplinary punishment, as the Iraqi law permits the employee to grieve against the administrative decision issued to impose the disciplinary punishment at the authority that issued it within a period of (30) One day from the date the employee was notified of the decision to impose the penalty, and this authority must also decide on the grievance within a period of (30) days from the date of its submission. Rejection of the grievance is considered a fact or a ruling a condition for submitting the appeal before the employees' judicial court within a period of (30) days from the date the employee was notified of the fact that the grievance was rejected or Judgingly, decisions of the employees' judiciary court may be appealed before the Supreme Administrative Court within (30) days from the date of notification or considered notified, and its decision issued online. The appeal is categorically and binding, and in Egypt, the accountability of faculty members before their disciplinary council is subject to the same rules for trial before the disciplinary courts stipulated in the State Council Law, and the Disciplinary Council decision is subject to appeal before the Supreme Administrative Court by the employee against whom a judgment was issued From the disciplinary board, that the decisions of the disciplinary council are final decisions that are not subject to the provisions of administrative decisions - it is not permissible to grievance, withdraw or comment on them, as decisions of disciplinary boards are closer in nature to

disciplinary provisions than to administrative decisions and therefore they do not fall within the jurisdiction of the Administrative Court. Or the administrative courts, but are challenged directly before the Supreme Administrative Court (30).

In the United Arab Emirates: Article (48) of the faculty members list at the University of Sharjah permits the faculty member to appeal the decision issued by the head of the department to impose the warning penalty before the concerned dean within a period of (7) days from the date of his notification, but if the punishment is Imposed by the dean of the faculty, the faculty member may appeal the decision to the university president within (7) days from the date of its notification. As for the disciplinary council's decision, it is permissible to appeal to the president within two weeks from the date on which the punishment was communicated to the faculty member and the president's decision regarding it is final and cannot be appealed. In front of any side (31).

In Saudi Arabia, we notice that the university president's decisions to impose two punishments (warning and blame) on a faculty member are final and not subject to grievance or appeal, while we find the decisions of the disciplinary committee subject to appeal by a faculty member according to a letter he submits to the university director within (30) One day at the most from being informed of the committee's decision, otherwise it will be final. The decisions of the Disciplinary Committee, in case of insistence, are subject to scrutiny by the University Council, and the final decision of the Council shall be final (32).

The second topic

Erase the disciplinary punishment of the university service employee and its procedures

Disciplinary punishment erased: it is the removal of the disciplinary punishment after the lapse of a certain period if the employee's biography was straightened and he did not commit another violation in the course of it, because the remaining disciplinary punishments are evident in the employee's file, especially the university service employee, leaving bad effects in his employment service. A specific date for imposing the penalty, or upon the employee's request after ensuring that the legal conditions are met (33). The principle is that sound administrative decisions cannot be withdrawn if they entail rights to others, but if they are defective, they may be withdrawn during the period of judicial appeal with the exception of a null administrative decision or Decision issued on the basis of fraudulent interest (34).

The Iraqi legislator has given the competent minister the power to cancel certain disciplinary penalties (drawing attention, warning, cutting the salary, reprimanding) without the other penalties when three conditions are met:

A - One year has passed since the punishment was imposed.

B - Performing his duties in a manner distinct from his peers.

C- Not to be punished with any penalty during the period stipulated in Paragraph (A) above (35).

However, it is noted on the conduct of the Iraqi legislator the following:

1. Restricting the authority to cancel or wipe out the disciplinary punishment to the competent minister. This means that the abolition of disciplinary sanctions imposed on a member of the teaching staff in Iraqi universities is entrusted to the Minister of Higher Education and Scientific Research. This is a personal authority.
2. The erasure of disciplinary punishment is limited to some disciplinary penalties but not others, such as salary loss, demotion, dismissal, or dismissal. This means that these penalties remain in the file of the university service employee, which is reflected in the flexibility of work and good performance.
3. Cancellation of disciplinary punishment is based on a request from the sanctioned employee, and it is not automatically completed upon the lapse of a certain period. The cancellation request based on the availability of cancellation conditions does not arrange for the employee to have a right to cancel, as it is left to the discretion of the minister.
4. The legislator equated the period specified as a condition for abolishing the four penalties (attention, warning, cut-off, reprimand), while it was necessary to distinguish between these penalties in terms of the period required for the cancellation due to the different effects of each penalty and according to the severity of the act committed.
5. The legislator stipulated the fulfillment of three conditions simultaneously for the purpose of erasing the disciplinary punishment, as the penalty does not end automatically by the lapse of a year, except for what is stated in Article (21) of the law. Rather, the rest of the conditions must be fully fulfilled, that is, the conditions for erasing the disciplinary punishment and this is what I went To him, the Supreme Administrative Court in its decision issued in 2015 stated (... that punishing the employee with two penalties per year prevents him from being included in the provisions of Article (13 / First) of the State Employees Discipline Law ... In addition to that, the cancellation of the aforementioned penalties takes place. Within the discretionary power of the minister after fulfilling the conditions stipulated by law (36), and part of the jurisprudence considers that a period of one year expires in the form of actual and not rewarding service, as is the case in the study leave and others because good service can only be achieved with actual service (37).

In Egypt: The Egyptian Universities Organization Law No. (49) of 1972 amended did not regulate the provisions for erasing disciplinary penalties for members of the faculty in universities, and the General Assembly of the Fatwa and Legislation Sections in the Egyptian State Council ended the provisions for erasing disciplinary sanctions contained in Article 92. Of the Law of Civilian Workers in the State No. (47) of 1978 on faculty members in universities, as it was found that the disciplinary penalties contained in the aforementioned article are automatically canceled with the passage of the period specified in the aforementioned article and as some of the penalties stipulated in the aforementioned Civil Workers Law are identical to those That may be imposed on faculty members in universities as a warning and blame, it takes its judgment regarding the period that must elapse for the erasure. As for the other penalties that are mentioned in the Universities Organization Law and

differ from those mentioned in the General Law, they fall under the general text of Paragraph (4) of Article (92) They are considered among the other penalties, and the consequence of that is that three years must elapse to be erased as decided by paragraph (4) of Article (92) above, and the president of the university or the university council or The College Board has the competence to erase disciplinary punishment by analogy with the specializations entrusted to them, such as appointment, transfer, secondment, or punishment of a faculty member. These bodies exercise the competence of the Personnel Affairs Committee for those who do not hold high positions stipulated in the aforementioned Civil Workers Law, which undertakes the investigation of the behavior of the university service employee whether He was satisfactory by reviewing his service file and the reports of his superiors at work ... etc. (38), and after the issuance of the Civil Service Law No. (81) for the year 2016, the erasure of disciplinary sanctions is in accordance with the provisions of Article (67) thereof, which specified time periods for the expiration of disciplinary penalties according to type Punishment These periods range from one year for the penalty of warning, warning and deduction, to four years for other penalties except for the dismissal and referral penalties for the pension. The erasure periods are calculated from the date the penalty is imposed.

In the United Arab Emirates: We note that the faculty list at the University of Sharjah did not include a text dealing with the issue of erasing the disciplinary penalties imposed on faculty members, and this requires the application of the general Sharia law for employees in the United Arab Emirates, where the Civil Service Law in the Federal Government No. (21) For the year 2001 the periods that lead to the lapse of which the disciplinary sanctions will be erased, and this shall be by a decision of the competent minister if the proficiency reports submitted on the employee are of at least (good) grade.

Finally, it must be pointed out that the effect of erasing the disciplinary punishment is to terminate the effects of the decision to impose it in relation to the past and to prevent its effect in relation to the future (39) unless the penalty has exhausted its effects such as delaying the promotion of the university service employee and delaying the increment where these effects remain in effect in the future. It is his right and the matter is limited to erasing the effects of punishment for the future, and it does not apply to the past at all.

In Egypt, erasing the penalty entails that it is considered as if it was not for the future and does not affect the rights and compensation that resulted from that (40), and the removal of the disciplinary punishment shall be by a decision of the competent authority after the expiration of the periods specified in the law through the Human Resources Department without the need to submit a request From the employee (41).

Conclusion:

After we finished dealing with guarantees of imposing disciplinary punishment on university service employees and erasing disciplinary punishment in Iraqi law and comparative laws through objective research and systematic analysis of comparative texts, we reached an in-depth conclusion about what the disciplinary safeguards prescribed for this category of public employees are, and by that we mean - university service employees - This conclusion falls into

two main parts, the first part is the conclusions reached by the researcher, and the second part relates to proposals to amend the laws in force related to the topic of the research, as follows:

First: Conclusions (Results):

1. The university service employee is a category of public employees with his duties and tasks stemming from the nature of the service he performs, and the university service employee who is in the process of carrying out his duties set by the legislature may cause a defect, delay or error in the implementation of his duties, which makes him subject to disciplinary accountability, just like Any public servant.

2. Because of the privacy of the university service employee's work, most of the laws pertaining to university service in countries of the world, including Egypt, the United Arab Emirates, Jordan, and Saudi Arabia, have singled out special chapters or sections dealing with the discipline of the university service employee, including the provision of the most prominent guarantees of disciplinary accountability such as access to the disciplinary file, the citation of witnesses, and the use of defenders. And the guarantees of written investigation and appeals against decisions to impose disciplinary punishment and other guarantees, whether prior, contemporary, or subsequent to imposing the disciplinary punishment against the university service employee, while the University Service Law No. (23) of 2008 amended did not single out specific provisions to address the subject of discipline of university service employees in Iraq referred disciplinary measures to the general law in employee discipline in Iraq, which is the State and Public Sector Employees Discipline Law No. (14) for the year 1991 as amended, and with reference to the aforementioned law, we find that no provision has been made for the guarantees that must be provided in disciplinary accountability, leaving that to the general principles contained in The constitution includes the right to defense, the right to seek aid from defense, impartiality of the investigation, fairness and speed of procedures.

3. Based on the foregoing, we say that the university service employee in Iraq does not enjoy special disciplinary guarantees, but is subject to the same procedures and guarantees established for the public employee and is subject to the same elements of the right of defense in case of disciplinary accountability, and the latter, in turn, suffers from legislative deficiency.

Second: Recommendations:

1. We call on the Iraqi legislator to amend the University Service Law No. (23) of 2008 amended by singling out special provisions for disciplinary accountability of the university service employee, similar to the Egyptian, Emirati, Saudi, Jordanian and French laws, and removing this category of employees from the scope of the enforcement of the State and Public Sector Employees Discipline Law No. (14) for the year 1991 amended.

2. Increasing the guarantees of disciplinary accountability for the university service employee through the formation of investigative committees headed by a university service employee who holds a higher degree than the university service employee who is accountable with discipline or at least equal to him.

3. Granting the university president the power to hold the faculty members accountable in duties of an administrative, organizational and academic nature and to define his powers by imposing light disciplinary penalties without severe after the safeguards of investigation and defense have been exhausted, and these powers are derived from the law and not with a mandate issued by the Minister of Higher Education and Scientific Research, and this would enhance the independence Universities.

4. Subjecting the faculty member contracting with private universities and colleges to the aforementioned law and setting a disciplinary accountability mechanism for him.

5. We suggest that, in the case of individual texts dealing with the discipline of the university service employee, the necessity of stipulating the basic guarantees for disciplinary accountability, such as reviewing the investigation file and taking a copy of it, and setting up a mechanism to inform the university service employee who is referred to the administrative investigation, as well as that the administrative investigation should be in writing and the powers of the investigation authority to impose Severe disciplinary penalties that would terminate the employment relationship, as well as the right to seek assistance from defenders, to seek the assistance of evidence and exile witnesses, and other guarantees and elements of the defense investigation, and the right to administrative grievance and judicial appeal.

6. Setting special conditions for erasing disciplinary punishment commensurate with the nature of the service employee's work, such as setting conditions related to quality and competence in university performance or by adopting research and literature as a standard for erasing disciplinary punishment and not relying on the expiration of a certain period only.

7. Establishing a special classification of disciplinary penalties, material and moral, such as denying supervision of graduate students or participating in scientific discussions, or chairing scientific departments and committees for a limited period if the defect is related to the academic duties of the university service employee or financial penalties such as deprivation of university service allocations or scientific title allocations For a limited period or penalties terminating university service, such as transferring outside the Ministry of Higher Education and Scientific Research, or working in administrative aspects without the academic, dismissal or isolation according to the gravity of the sin committed by the teaching staff.

8. The academic title of the university service employee is taken into account when classifying disciplinary penalties. Each category is subject to certain penalties as individuals. Certain disciplinary penalties are imposed only on the assistant teacher and teacher, for instance.

Margins

1. See: Amjad Jihad Nafeh Ayyash, Guarantees of Disciplinary Accountability for Public Employees, Comparative Study, Master Thesis, An-Najah National University, Nablus, Nablus - Palestine, 2007, p. 4, and the text on this guarantee was mentioned in Article (58) of the Egyptian Civil Workers Law No. 210) for the year 1951 (repealed) while the Civil Service Law No. (81) for the year 2016 came free of this guarantee, as well as Article (140 / A / 1) of the Jordanian Civil Service Law No. (82) for the year 2013 and Article (25) of the Lebanese

- Legislative Decree No. (7236) of May 8, 1967 and Article (65) of Law No. (22) of the year 1905, which gave the employee the right to view the disciplinary file and obtain a copy of it.
2. Article (19 / fourth) of the Constitution of the Republic of Iraq for the year (2005) stipulates that (the right to defense is sacred and guaranteed in all stages of investigation and trial). For more details on the guarantees prior to imposing disciplinary punishment see Dr. Ali Jumaa Muhareb, *Administrative Discipline, Study Comparison in the Iraqi, Egyptian, French and English System*, 1st Edition, House of Culture for Publishing and Distribution, Amman, Jordan, 2004, p. 232 and beyond.
 3. Its judgment on appeal (2180) for the year (33 BC), session (1/29/1988), reported by Counselor Dr. Ragab Abdel Hakim Salim, *Encyclopedia of Egyptian Universities Organization*, explaining the provisions of the Egyptian Universities Organization Law No. 49 of 1972 and the Reorganization Law Al-Azhar No. 103 of 1961, Academic Institutions Law No. 69 of 1973, and Private Associations Law No. 101 of 1992, First Edition, Abu Amjad, Cairo, 2001, p. 661.
 4. Articles (44) and (45) of the bylaw of faculty members at the University of Sharjah issued in accordance with Article (17) of the executive regulations of Law No. (2) of 2001.
 5. Articles (86, 87) of the regulations governing the affairs of Saudi universities' employees, who are faculty members and the like.
 6. Article (19 / fourth) of the Constitution of the Republic of Iraq of 2005.
 7. See: Dr. Ahmed Talal Abdul Hamid Al-Badri, the administrative investigation is one of the employee's previous guarantees to impose disciplinary punishment, a study in Iraqi law, a research published in the *Journal of the Faculty of Law, Al-Nahrain University*, Vol (12), No. (1 / September / 2010), p. 287.
 8. Article (10 / fourth) of the State and Public Sector Employees Discipline Law No. 14 of 1991 as amended.
 9. Articles (105, 109, 112) of the Universities Organization Law No. 49 of 1972 as amended.
 10. Its judgment in Appeal No. (3008) for the year (33 BC), session (3/26/1988), reported by Counselor Dr. Rajab Abdel Hakim Salim, the previous source, p. 635.
 11. The ruling of the Supreme Administrative Court in Appeal No. (646) for the year (32) judicial session (11/23/1988), reported by Counselor Dr. Rajab Abdel Hakim Salim, the previous source, p. 635.
 12. Article (42) of the faculty members list in Sharjah issued in accordance with Article (17) of the executive regulations of Law No. (2) of 2001.
 13. Articles (83, 91) of the regulations governing the affairs of Saudi university employees, who are faculty members and the like.
 14. See: Dr. Ahmed Talal Abdul Hamid Al-Badri, the previous source, p. 306.
 15. See Dr. Hilali Abd Allah Ahmad, *Legal Center for the Accused in the Preliminary Investigation Phase*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1989, p. 138 and later.
 16. For more details on the components of the right of defense, see Dr. Saad Al-Shteivi, *The Administrative Investigation in the Domain of the Public Service*, Dar Al-Fikr Al-Jami', 2007, p. 126, also see Dr. Abdel-Aziz Abdel Moneim Khalifa, *Disciplinary Guarantees in the Public Service*, Previous Source, pg. 224, and Dr. Abdel-Ghani Bassiouni Abdullah, *Administrative Law*, Al-Maarif Establishment in Alexandria, 2003, p. 362 and later, also see Abdel Fattah Bayoumi Hegazy, *Principles of the Preliminary Investigation In front of the Administrative*

- Prosecution, Dar Al-Kotob Al-Dawli, Egypt, 2007, p. 18, p. 223, p. 224. Likewise, Dr. Hussam al-Din Muhammad Ahmad, *The Accused's Right to Silence, A Comparative Study*, 4th Edition, Dar Al-Nahda Al-Arabiya, 2006, pp. 15, p. 16, p. 18.
17. Article (69) of the Constitution of Egypt for the year 2014 stipulates that (the accused is innocent until proven guilty in a fair, legal trial in which the guarantees of his defense are guaranteed ...), and Article (98) of it stipulates that (The right to defend in person or by proxy is guaranteed. ...), Article (59) of the Egyptian Civil Service Law No. (81) of 2016 stipulates that (no penalty may be imposed on the employee except after investigating him in writing, hearing his statements and investigating his defense, and the decision issued to impose the penalty is justified) .
 18. Its judgment in Appeal No. (646) for the year (32), session (11/5/1988), reported by Counselor Dr. Rajab Abdel Hakim Salim, the previous source, p. 662.
 19. The Civil Service Law No. (81) of 2016 was published in the Official Gazette, issue (43 / bis / a) on (11/1/2016), where Article (2) of it stipulates: (The system of civil workers in the state promulgated by Law No. (47) for the year 1978 and every provision that contradicts the provisions of the attached law shall be repealed.
 20. The ruling of the Supreme Administrative Court in Appeal No. (229) for the year (35 BC), session (3/22/1994), was reported by Counselor Rajab Abdel Hakim Salim, the previous source, p. 1004 and after.
 21. Article (163) of the Egyptian Universities Organization Law No. 49 of 1972 as amended.
 22. Article (88/3) and Article (90) of the regulations governing the affairs of Saudi universities' faculty members.
 23. Its judgment in Appeal No. (3429) for the year (36 BC), session (1/6/1991), citing Dr. Abdul Aziz Abdel Moneim Khalifa, previous source, pp. 117 ff.
 24. See Article (105, 109, 110) of the Egyptian Universities Organization Law No. (49) of 1972 amended and articles (47 and 48) of the faculty members list at the University of Sharjah issued under Article (17) of the Executive Regulations of Law No. (2) of 2001 And articles (82 and 83) of the regulations governing the affairs of Saudi university faculty members.
 25. See Article (10 / Second) of the State and Public Sector Employees Discipline Law No. (14) of 1991 amended, which stipulates that the investigative committee formed under this article should issue justified recommendations. Also see Article (112) of the Egyptian Universities Organization Law No. 49) for the amended 1972 year which stipulated that the university president's decision to impose the punishment against a faculty member is justified and final, as well as Article (91) of the regulations governing the affairs of Saudi university employees from among the faculty members that ruled that the university president directs the two punishments of warning or censure and stipulating that it be His decision in that is both a cause and a final conclusion.
 26. Its judgment in Appeal No. (502) for the year (31 BC), session (6/28/1987), quoted by Counselor Dr. Rajab Abdel Hakim Salim, the previous source, p. 674.
 27. See: Dr. Samir Abdullah Saad, *Explanation of the provisions of the Civil Service Law promulgated by Law No. (81) of 2016*, Al Maarif Establishment, Alexandria, 2018, p. 375.
 28. The Civil Procedure Law No. (83) of 1969 amended regulates the issue of judges 'dismissal in Articles (91) and (93) and regulates the issue of litigating judges or complaining from them in Articles (286-292) thereof.

29. Article (10 / second) of the State and Public Sector Employees Discipline Law No. 14 of 1991 as amended.
30. An administrative grievance is a request submitted by the employee to the administration, whether it is issuing a decision or its presidential authority, in which the administration intends to cancel its decision, withdraw or amend it for violating the principle of legality, see: Dr. Ghazi Faisal Mahdi and Dr. Adnan Ajil Obaid, Administrative Court, 2nd Edition, Al-Nebras Establishment for Printing, Publishing and Distribution, Baghdad 2013, p.160.
31. Its judgment in Appeal No. (28) for the year (28) for the year (29), session (12/15/1985), cited by Dr. Rajab Abdel Hakim Salim, the previous source, p. 672, and for more details about the methods of appealing disciplinary penalties, both administrative and judicial, see Counselor Abdel-Wahab Al-Bandari, Methods of Appeal of Administrative and Judicial Disciplinary Punishments for Workers in the State, the Public Sector and Special Cadres, Judicial Jurisprudence Study in accordance with the latest legislation, jurisprudence opinions, administrative judiciary rulings and State Council Fatwas, Arab Thought House, without a year of publication, p. And beyond, as well as see d. Al-Tayyib Hussein Mahmoud, Legal Guarantees in Accountability of Personnel in Service, a Comparative Study in Sudanese, English, Egyptian and French Law, Dar Al-Nahda Al-Arabiya, without a year of printing, p. 465 onwards.
32. See Article (49) of the above regulation.
33. Articles (88, 91) of the regulations governing the affairs of Saudi universities' faculty members.
34. State Council Resolution No. (49/2000) of (10/29/2000) published in Justice Magazine, No. 2, of 2001, citing Prof. Dr.. Ghazi Faisal Mahdi, Comments and Articles in the Area of Public Law, Edition 1, The Legal Encyclopedia, Baghdad, 2004, p. 51.
35. See A. Dr.. Ghazi Faisal Mahdi, Explanation of Discipline Law of State and Public Sector Employees No. (14) of 1991 amended, without a publishing house, Baghdad, 2006, p.91.
36. See Article (13) of the Discipline Law for State and Public Sector Employees No. (14) of 1991 as amended.
37. Supreme Administrative Court Decision No. (599 / Employees Judiciary / Discrimination / 2015) on 2/23/2017.
38. See: Dr. Mossadegh Adel, Discipline of the Public Officer in Iraq, an analytical legal study reinforced with judicial and practical applications, Al-Sanhouri Library, Beirut, 2020, p.172.
39. Fatwa of the General Assembly of the Fatwa and Legislation Sections, dated (3/7/1996), File No. (1/2/1175), quoted by Counselor Dr. Rajab Abdel Hakim Salim, the previous source, pp. 706, p. 707.
40. Articles (86, 87) of the Federal Government Civil Service Law No. (21) for the year 2001, and also see Article (110) of the Civil Service Law of the Emirate of Sharjah No. (5) for the year 2001 which included a provision similar to the Federal Law, where the article was given The aforementioned authority to impose the penalty has the competence to issue a decision to remove the penalty after the expiry of the periods specified therein.
41. See Dr. Abdul Aziz Abdel Moneim Khalifa, the previous source, p. 297.
42. See Article (13 / Second) of the State and Public Sector Employees Discipline Law No. 14 of 1991 as amended.
43. Article (67) of the Egyptian Civil Service Law No. (81) of 2016.

44. Article (167) of the Executive Regulations for the Egyptian Civil Service Law issued by Resolution No. (1216) of 2017.

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