

## THE ROLE OF ADMINISTRATIVE COURTS IN IMPOSING OVERSIGHT ON DISCIPLINARY PENALTIES IN IRAQI, EGYPTIAN, AND IRANIAN LAW.

**Dr. Mohammad Nozari Ferdowsiyeh<sup>1</sup>,  
Ahmed Hamza Waheed Farhan Al-Laithi<sup>2</sup>**

<sup>1</sup>Associate Professor, Department of Jurisprudence and Principles of Islamic Law, University of  
Qom, Iran

<sup>2</sup>Department of Public Law / Faculty of Law / Qom State University

abasaleh.s@gmail.com<sup>1</sup>  
ahmed1990hamza2023@gmail.com<sup>2</sup>

### Abstract

This research aims to demonstrate the role of the administrative judiciary in overseeing disciplinary penalties, ensuring that the administration does not act arbitrarily in imposing these penalties and protecting employee rights. The administrative judiciary aims to ensure that disciplinary decisions are legitimate, based on sound legal grounds, and that the imposed penalty is proportionate to the violation committed. The role of the administrative judiciary in overseeing disciplinary penalties includes monitoring the legality of the penalty. The research reached the following conclusions:

1. The right to defense is a mechanism inherent in the nature of things and enshrined in law to enable the accused to prove the falsity of the accusations against them.
  2. Investigation safeguards are a set of procedures and controls that must be observed during the investigation of an employee accused of misconduct. These safeguards aim to reveal the truth and protect the employee's rights.
  3. While the amended State and Public Sector Employees Discipline Law No. 14 of 1991 does not explicitly stipulate the right of an accused public employee to access their investigation file or other related rights, this does not negate these rights, as they are established as general principles of law.
  4. The purpose of granting an accused employee the right to legal counsel is to prevent the potential loss of rights due to the employee's limited legal knowledge and lack of understanding of how to handle their situation.
  5. Iraqi law stipulates what is known as interrogation, which is the process of directing accusatory questions by the administrative head authorized to impose disciplinary penalties to the public employee accused of committing a disciplinary offense. The employee is then confronted orally with witnesses, evidence, and proof to arrive at the truth, which is the employee's conviction and the imposition of disciplinary penalties.
  6. Violations of the accused's right to defense encompass numerous forms, whether related to the accused's exercise of their rights to a defense or to the methods they use to refute the accusation.
  7. Iraqi, Egyptian, and Iranian legislation alike lack a comprehensive and inclusive definition of disciplinary and criminal liability for public employees. Legislators in Iraq, Egypt, and Iran have merely outlined the features of this liability without explicitly defining it.
- Keywords: Administrative judiciary, disciplinary sanctions, Iraq, Egypt, Iran

### Introduction

The administrative judiciary plays a crucial role in overseeing disciplinary penalties, ensuring that the administration does not act arbitrarily in imposing these penalties and protecting employees' rights. The administrative judiciary aims to ensure that disciplinary decisions are legitimate, based on sound legal grounds, and that the imposed penalty is proportionate to the offense committed. The administrative judiciary's role in overseeing disciplinary penalties includes:

Oversight of the legality of the penalty: The administrative judiciary monitors whether the disciplinary penalty was issued in accordance with the prescribed legal procedures and whether it is based on a sound legal foundation. Oversight of the proportionality of the penalty: The administrative judiciary examines the extent to which the penalty is proportionate to the offense committed, ensuring that the penalty is not excessive or disproportionate to the severity of the offense. Oversight of the administration's discretionary power: The administrative judiciary monitors the extent to which the administration uses its discretionary power in imposing penalties and ensures that it does not abuse this power by protecting employees' rights: Through this oversight, the administrative judiciary guarantees the protection of employees' rights from any arbitrary or illegal disciplinary decisions, thus strengthening the rule of law and contributing to achieving justice in the public service. While ensuring that disciplinary penalties are imposed only in cases that warrant them, and that they are proportionate to the violations, the administrative judiciary contributes to maintaining the prestige of the state by ensuring that the administration operates in accordance with the law, and that it does not exceed the limits of its powers.

**The first requirement: The scope of the Administrative Court's jurisdiction in reviewing disciplinary penalties:**

The Administrative Court has jurisdiction over disciplinary decisions issued by the administration against employees. Its aim is to verify the legality of these decisions and their appropriateness to the disciplinary violation attributed to the employee. The scope of this review includes verifying the availability of the legal elements of the disciplinary decision, verifying the accuracy of the facts upon which the decision is based, and the proportionality of the penalty to the violation. A detailed breakdown of the Administrative Court's jurisdiction:

Review of Legality: The Administrative Court verifies the extent to which the disciplinary decision conforms to the law, meaning it ensures that the competent administration made the decision in accordance with the prescribed legal procedures and that it did not exceed its authority in imposing the penalty.

Review of the Accuracy of the Facts: The Administrative Court examines whether the facts upon which the administration based the penalty are accurate and supported by evidence. If the facts are found to be incorrect or unsubstantiated, the disciplinary decision is subject to annulment. Appropriateness Review (Sensation of Punishment): The administrative judiciary verifies the proportionality of the disciplinary penalty to the severity of the offense committed. If the judiciary finds the penalty excessive and disproportionate to the offense,

it has the right to modify or cancel the penalty. Oversight of Abuse of Power: The administrative judiciary verifies that the administration has not used its disciplinary authority arbitrarily or for personal gain, and that it has not exceeded the limits of its delegated authority. If it is found that the administration has abused its authority, the decision is subject to annulment. Examples of Administrative Judiciary Review: If the administration decides to dismiss an employee for a minor infraction,

the employee can appeal the decision before the administrative judiciary and has the right to demand the annulment of the dismissal if the penalty is found to be excessive. If the administration decides to impose a penalty on an employee based on incorrect facts, the employee can appeal the decision before the administrative

judiciary and has the right to demand its annulment if the facts are proven false. If the administration decides to impose a penalty on an employee for an offense they did not commit,

**Professional misconduct and the penalties prescribed for issuing a disciplinary decision<sup>(6)</sup>:**

Professional misconduct is the foundation or cornerstone around which all disciplinary studies revolve. Once an employee's disciplinary responsibility for professional errors is established, as a public servant, it serves as a means for the administration to ensure adherence to the rules of public service and the smooth and efficient operation of public services. An employee's responsibility for errors committed during and in connection with the performance of their duties is based on the obligation to prove the error. This error is not presumed; rather, the public administration bears the responsibility of proving it.

1. The Legal Basis for Issuing a Disciplinary Decision (Professional Misconduct): Many disciplinary systems grant the administration the authority to prohibit an employee's actions. There is no exhaustive definition of disciplinary offenses, unlike what is usually found in penal codes. Professional misconduct, on the other hand, is characterized by a degree of flexibility and diversity, making it difficult to define in the same way as penalties with their well-established elements.
2. The Content of the Disciplinary Decision (Disciplinary Penalty): If a public employee's disciplinary misconduct is proven, the disciplinary authority is obligated to determine the nature of the offense. The selection process begins immediately, based on consensus, to prevent the employee from engaging in actions or behaviors that compromise or disrupt their professional duties. Note that disciplinary action is closely linked to the duties assigned to the public employee, while also constituting one of the tasks entrusted to the administration. This role is to implement the law protecting the employee's interests and the workflow, in addition to being the means by which the administration confronts an employee who has committed a professional error, with the aim of maintaining order. On the proper functioning of the public interest. Most legislation in the field of public service agrees on the necessity of establishing a scale of disciplinary penalties to prevent potential administrative abuse, considering punishment one of the most serious elements of discipline due to its negative impact on the employee's legal status. The authority competent to issue disciplinary decisions and its controls: The authority considered discipline a powerful tool in the hands of the administration to deter employees when they fall short in performing their duties. While the law grants the administration such serious authority regarding employee affairs to ensure the optimal functioning of the public service, it also ensures that the exercise of this right is subject to controls. The competent authority, when exercising disciplinary powers, is bound by controls that protect the employee from abuse. The legislator has taken care to define the disciplinary authority responsible for issuing disciplinary decisions, making it the sole entity authorized to carry out this task. This is despite the differences in national laws regarding the body competent to impose penalties, differences that

may be fundamental or limited to minor details, thus resulting in variations in disciplinary systems<sup>(ii)</sup>..

Civil service legislation varies in determining which body is responsible for disciplining employees, making it difficult to assert complete uniformity between disciplinary systems. Some systems assign disciplinary authority to a judicial body, while others delegate this power to two bodies, a hybrid system combining elements of the former, known as a quasi-judicial system. Therefore, despite the differences in disciplinary laws, they generally fall under one of three main systems. External review of the legality of disciplinary decisions: The administrative judge's review of the external legality of a disciplinary decision involves examining the jurisdictional aspect, which requires the decision to be issued by the legally competent authority, and the procedural aspects of the decision's issuance<sup>(iii)</sup>..

In Iran, judicial oversight of disciplinary sanctions is a crucial means of ensuring the protection of public employees' rights and addressing administrative abuses of power. Within the Iranian judicial system, the administrative judiciary plays a central role in overseeing administrative decisions,

including disciplinary sanctions imposed by administrative bodies on their employees.

The Iranian administrative judicial system is divided into two branches: the general judiciary and the administrative judiciary. Iranian administrative courts were established to adjudicate administrative disputes arising between individuals and the government. The Basic Law of Administrative Courts was issued in 1371 AH (1992 CE<sup>(iv)</sup>) It is the fundamental law that governs the work of the administrative judiciary. Administrative courts are responsible for reviewing appeals against administrative decisions, and their jurisdiction includes disciplinary cases issued by administrative bodies<sup>(v)</sup>.

The legal basis for the jurisdiction of administrative courts to review disciplinary penalties is stipulated in Article (5) of the Administrative Courts Law, which grants the administrative judiciary jurisdiction to consider appeals related to administrative decisions, including disciplinary penalties.

The Iranian Civil Service Law also stipulates the necessity of enabling employees to appeal disciplinary penalty decisions before the competent court. The scope of judicial review of disciplinary penalties includes legality review.

In Iran, the administrative judiciary verifies: the authority of the administrative body that issued the penalty; the extent to which legal procedures were followed, such as conducting an investigation and granting the employee the right to a defense; and whether the penalty is based on genuine and established grounds<sup>(vi)</sup>..

Proportionality Review: The Iranian judiciary exercises oversight to ensure the proportionality of the punishment to the offense committed. It has the right to reduce or cancel the punishment if it is found to be arbitrary or disproportionate.

Limits of Jurisdiction in Iranian Administrative Courts: The judiciary cannot modify the type of punishment without strong legal justification. If a procedural error or abuse of power is proven, the disciplinary decision is overturned. The courts do not interfere in the objective assessment of the punishment unless it exceeds legal limits.

Guarantees for Employees before Administrative Courts: These include the employee's right to access the investigation file, the right to legal counsel and to defend themselves, the right to public court hearings, and the right to appeal to a

higher court.

Regarding these Iranian judicial trends in disciplinary punishments, administrative courts tend to protect employees' rights in a balanced manner, while respecting the administration's authority to maintain discipline<sup>(vii)</sup>. The administrative judiciary emphasizes the need for the administration to adhere to the law and procedures before imposing penalties.

**The second requirement: The role of administrative courts in protecting employee rights and guaranteeing a fair trial.**

The administrative judiciary plays a vital role in protecting employee rights by overseeing administrative decisions and ensuring the application of the principles of justice and fairness in dealings with them. It guarantees employees their right to litigation, a fair trial, and the application of the principles of legality and the rule of law, in addition to protecting them from arbitrary and unjust treatment by the administration. The role of the administrative judiciary in protecting employee rights includes:

**Oversight of administrative decisions:** The administrative judiciary monitors decisions issued by the administration to ensure their legality and compliance with the law, guaranteeing that they do not violate the law or exceed the limits of authority. **Protection of employee rights in the public sector:** The administrative judiciary has jurisdiction over disputes related to public service, such as appointments, promotions, allowances, and disciplinary penalties, ensuring that employees' legitimate rights are not infringed upon.

**Guaranteeing a fair trial:** The administrative judiciary guarantees employees their rights to defend themselves, present arguments and evidence, and utilize means of proof, thus ensuring their right to a fair trial before the court. **Activating the Principle of Legality and the Rule of Law:**

The administrative judiciary contributes to consolidating the principle of legality and the rule of law by overseeing administrative decisions and ensuring their compliance with the law, thereby protecting the rights and freedoms of employees.

**Activating the Role of the Administrative Judiciary in Protecting Human Rights:** The role of the administrative judiciary extends to protecting human rights, as it monitors administrative decisions that may affect individual rights and ensures that the administration does not exceed its authority in this area. **Oversight of Administrative Actions:**

The administrative judiciary monitors administrative decisions to ensure their legality and compliance with legal boundaries, and protects employees' rights from arbitrariness and injustice. **Guaranteeing Employees' Rights in Disciplinary Disputes:** The administrative judiciary guarantees the employee's right to defend themselves, present arguments and evidence, and ensures the principle of confrontation and a fair trial before the court.

**Applying the Principle of Equality:** The administrative judiciary guarantees the principle of equality among employees, prevents any discrimination in treatment, and achieves justice in the application of the law. **Supporting the Independence of the Administrative Judiciary:** The independence of the administrative judiciary from the executive authority is a fundamental guarantee for protecting employees' rights, and this independence must be activated to ensure the judiciary's effectiveness in protecting rights and freedoms. **Examples of the role of administrative courts in protecting employee rights:** Annulment of unlawful

administrative decisions: If the administration issues an unlawful decision, such as an undeserved appointment or arbitrary dismissal, the affected employee can resort to the administrative courts to have this decision annulled. Awarding compensation for damages: If an employee suffers harm as a result of an unlawful administrative decision, the administrative courts can award compensation for this harm. Enforcing administrative decisions: If the administration refuses to implement an administrative decision issued in the employee's favor, the administrative courts can compel it to do so. In short, the administrative courts play a vital role in protecting employee rights and ensuring the application of the principles of justice and fairness in dealing with them. They represent a safeguard for protecting employee rights from any abuses or arbitrary actions by the administration. In Iraq: Protecting employee rights and ensuring a fair trial are among the fundamental principles that the administrative courts in Iraq aim to uphold. This is to guarantee the integrity and transparency of administrative decisions, especially in disciplinary and administrative matters that affect the career path of public employees. The administrative courts play an important oversight role in administrative decisions to ensure respect for employee rights and prevent them from being subjected to administrative abuse. The legal system of administrative justice in Iraq is governed by the Iraqi State Council Law No. 30 of 2005 and its amendments. The administrative judiciary comprises the Iraqi State Council and the specialized administrative courts. It is an independent body that adjudicates administrative disputes, including appeals related to disciplinary decisions against employees. It also provides training for administrative judges on the principles of human rights and fair trial, offers legal support to employees within government institutions, and promotes awareness of employee rights and legal defense mechanisms.

1. **The role of administrative courts in protecting the rights of public employees:** The annulment court is one of the most important tools that administrative courts possess to protect the rights of public employees, as it allows the employee to challenge administrative decisions that affect his rights and are tainted with illegality. The role of the annulment court is to annul administrative decisions that are considered arbitrary or illegal, such as disciplinary decisions that lack sound legal grounds or that violate the stipulated procedural controls. In this context, the administrative judiciary is committed to verifying the legality of administrative decisions through careful monitoring of the administration's compliance with legal texts, which ensures the protection of the employee from decisions that violate his functional or political rights. This type of judicial oversight is a fundamental guarantee for achieving administrative justice and protecting the public employee from administrative arbitrariness or its deviation from legal frameworks.
2. **Annulment proceedings as a means of protecting the rights of public employees:** Annulment proceedings are considered fundamental in the administrative judicial system. They are lawsuits filed by individuals before the competent administrative court, requesting the court to issue a ruling annulling an administrative decision issued by an administrative body in violation of applicable laws and regulations. The importance of this lawsuit lies in the fact that it is the primary means of challenging administrative decisions issued unlawfully, unless the law stipulates other means of appeal.

Therefore, annulment proceedings represent an important judicial safeguard that contributes to protecting the rights and interests of individuals and society in general, as they aim to verify the legality of administrative decisions and ensure the administrative authority's compliance with the law.<sup>(viii)</sup>

3. **Compensation and its role in redressing harm to public employees:** In light of this, the Iraqi Supreme Administrative Court ruled that the decision of the Civil Service Court was correct in principle, as the plaintiff's continued absence from service was due to the erroneous procedures taken by the defendants in considering the plaintiff to have resigned from her position, contrary to the provisions of the law. This necessitates compensating the plaintiff for this error. The amount of compensation is determined by the earnings she would have received had she been employed, and this amount is equivalent to her nominal salary during the period in which the administration removed her from her duties. Therefore, the court decided to uphold the appealed judgment, amending it to award the plaintiff compensation for the period claimed <sup>(ix)</sup>.
4. **The Role of Administrative Judiciary in Guaranteeing Employee Rights:** Administrative judiciary plays a pivotal role in protecting the employment rights of public employees, particularly during the investigation and disciplinary trial phases. The administration possesses disciplinary authority that enables it to take disciplinary measures against public employees at various job levels whenever necessary for the public interest. However, this authority is not absolute; rather, it is subject to the oversight of the administrative judiciary to ensure its use aligns with the principle of public interest and achieves a balance between correcting the conduct of the public employee and preserving their dignity and employment rights. In this context, the administrative judiciary is obligated to review disciplinary decisions to ensure the administration's adherence to procedural and substantive safeguards and to verify that the disciplinary action is proportionate to the alleged violation without exaggeration or leniency. This judicial oversight ensures the proper management of public facilities and personnel while achieving functional justice, thus preventing abuse of power or harm. The public employee begins<sup>(x)</sup>.
5. **Guarantees for Public Employees During the Administrative Investigation Phase: On the other hand,** in the Iraqi system, the administrative investigation phase is considered part of guaranteeing the rights of public employees. The law guarantees them a set of procedural and substantive guarantees, including protection from injustice or discrimination. Article (19) of the Iraqi Constitution stipulates that the right to defense is sacred and guaranteed at all stages of investigation and trial. Sixth: Every individual has the right to fair treatment in judicial and administrative proceedings. This reflects the importance of providing a clear legal framework for disciplinary procedures and ensuring that any administrative investigation complies with the law. In addition, the State Employees Discipline Law No. (14) of 1991 in Iraq guarantees several disciplinary safeguards, such as the employee's right to know the charges against them, the right to defend themselves, the written documentation of

the investigation, and the hearing of witness testimony. Paragraph two of Article No. (10) of the aforementioned law stipulates that <sup>(xi)</sup> ...

The committee shall conduct a written investigation with the employee referred to it for violating regulations. In order to perform its task, it may hear and record the statements of the employee and witnesses, and review all documents and data that it deems necessary to review. It shall prepare a report in which it establishes the procedures it has taken and the statements it has heard, along with its reasoned recommendations.

#### **Guarantees for public employees during disciplinary proceedings:**

In the Iraqi system, disciplinary trials are of paramount importance, serving as a means to regulate the conduct of public employees and protect them from any abuse in the application of penalties. The legal framework for these trials is based on the 2005 Iraqi Constitution, which stipulates in Article (19) the guarantee of the right to litigation for every individual, including public employees, and on the amended State and Public Sector Employees Discipline Law No. (14) of 1991 <sup>(xii)</sup>.

Accordingly, Iraqi law guarantees public employees the right to a defense during disciplinary proceedings, a constitutional right affirmed by Article 19 of the Constitution, which stipulates the guarantee of the right to a defense at all stages of investigation and trial. Furthermore, the State Employees' Discipline Law mandates that employees be given access to the charges against them and the opportunity to present their defenses and evidence, either in writing or orally. This right is considered a cornerstone of justice, ensuring that all parties are not subject to undue influence from administrative personnel. In this regard, the composition of disciplinary boards in Iraq should not be made public, subject to strict controls to guarantee impartiality. These boards must be independent of the administrative body to which the employee belongs. This structure aims to protect employees from any administrative influence that might compromise the integrity of the proceedings after the trial, aligning with the principle of the rule of law enshrined in Article 5 of the Iraqi Constitution. Similar to the Egyptian system, the Iraqi system requires disciplinary boards to make their decisions public.

**In Egypt**, the administrative judiciary plays a pivotal role in protecting the rights of public employees and ensuring their fair trial before the competent judicial authorities. The administrative judiciary represents the first line of defense against arbitrary administrative decisions, particularly those related to disciplinary penalties that may affect an employee's professional and social future. The legal system of the administrative judiciary in Egypt established the Egyptian State Council under Law No. 47 of 1972, which includes the Administrative Court and the Supreme Administrative Court. The administrative judiciary enjoys independence and jurisdiction to adjudicate administrative disputes, including appeals against disciplinary decisions. By protecting employee rights before the administrative judiciary and overseeing the legality of administrative decisions, the judiciary ensures that the administration adheres to legal regulations and procedures in its decision-making <sup>(xiii)</sup>. This includes verifying the jurisdiction, form, reason, and purpose of the administrative decision. Ensuring the right to defense: Administrative courts emphasize the employee's right to defend themselves during disciplinary investigations. This includes the right to legal counsel and the right to access the case file. Oversight of proportionality of punishment: Administrative courts not only oversee the legality of decisions but also monitor the proportionality

of the punishment to the offense committed. Among the guarantees of a fair trial in the Egyptian administrative judiciary are: Public hearings: This ensures the transparency of judicial procedures, with specific exceptions. Judicial independence: This guarantees the impartiality of judges and prevents administrative influence on their rulings. The right of appeal: This grants the employee the right to appeal to a higher court if the case is dismissed. Expeditious adjudication: Courts strive to resolve employee cases quickly to avoid delays in the fulfillment of rights. Clear legal procedures: These include hearing the employee's statement, ensuring that penalties are not retroactive, and providing a full opportunity for defense. Regarding the role of the administrative judiciary in protecting employees from arbitrary treatment, the judiciary prevents the upholding of arbitrary penalties that lack evidence or violate the principles of justice<sup>(xiv)</sup>. It supports the reinstatement of the employee to their position if the administrative decision is proven invalid. It also allows the court to impose appropriate compensation for damages resulting from a void administrative decision. Among these recent judicial trends is the expansion of the administrative judiciary's powers in Egypt to include oversight of the appropriateness of the penalty, not just the legality of the decision. The rulings clarify<sup>(xv)</sup> ...The courts take seriously the guarantee of employee rights and adherence to legal procedures, emphasizing the principle of graduated penalties and reducing their severity when justified<sup>(xvi)</sup>.. Regarding the challenges and future prospects, it is essential to raise legal awareness among employees regarding their rights and responsibilities. This includes developing more efficient and effective judicial adjudication mechanisms and enhancing legal training for administrative judges in the areas of human rights and fair trial.

1. The tools of administrative justice in protecting the rights of public employees: The annulment judiciary is one of the most important tools that the administrative judiciary possesses to protect the rights of public employees, as it allows the employee to challenge administrative decisions that affect his rights and are tainted with illegality. The role of the annulment judiciary is to annul administrative decisions that are considered arbitrary or illegal, such as disciplinary decisions that lack sound legal reasons or that violate the stipulated procedural controls. In this context, the administrative judiciary is committed to verifying the legality of administrative decisions through careful monitoring of the extent of the administration's compliance with legal texts, which ensures the protection of the employee from decisions that violate his functional or political rights. This type of judicial oversight is a fundamental guarantee for achieving administrative justice and protecting the public employee from the arbitrariness of the administration or its deviation from legal frameworks.
2. Compensation proceedings are an important tool of the administrative judiciary for protecting the rights of public employees who suffer harm as a result of unlawful or illegal administrative decisions. These proceedings enable employees to claim compensation for damages incurred due to administrative decisions that infringe upon their employment rights or negatively impact their job status. Compensation includes both financial and non-financial damages arising from the unlawful administrative decision, such as compensating an employee for damages resulting from arbitrary

dismissal or the imposition of an unlawful disciplinary penalty <sup>(xvii)</sup>  
Furthermore, compensation is an effective means of guaranteeing an employee's rights in the face of unlawful administrative decisions, and it improves the level of protection of their rights by compensating them for damages in proportion to the extent of the harm suffered..

### Results

Based on the foregoing research, the following conclusions can be drawn regarding Iraq, Egypt, and Iran:

1. The right to defense is a mechanism inherent in the nature of things and enshrined in law to enable the accused to prove the falsity of the accusations leveled against them.
2. Investigative safeguards are a set of procedures and controls that must be observed during the investigation of an employee accused of misconduct. These safeguards aim to reveal the truth and protect the employee's rights. Failure to adhere to them renders the disciplinary decision flawed and subject to appeal.
3. The amended State and Public Sector Employees Discipline Law No. 14 of 1991 does not explicitly stipulate the right of an accused public employee to access their investigation file or other related rights. However, this does not negate these rights, as they are established as general principles of law.
4. The purpose of granting an accused employee the right to legal counsel is to prevent the potential loss of rights due to the employee's limited legal knowledge and lack of understanding of how to handle their case. Such an employee may struggle to grasp all the details of their case and understand the evidence and documents involved.
5. Iraqi law stipulates what is known as interrogation. This is the process of directing accusatory questions by the administrative head authorized to impose disciplinary penalties to the public employee accused of committing a disciplinary offense. The employee is then confronted orally with witnesses, evidence, and proof to arrive at the truth, which may involve either the employee's conviction and the imposition of disciplinary penalties or their acquittal.
6. Violations of an accused person's right to a defense encompass various forms, whether related to the accused's exercise of their rights or to their methods of refuting the accusation.
7. The Iraqi, Egyptian, and Iranian legislations alike lack a comprehensive and inclusive concept of disciplinary and criminal responsibility for public employees. Legislators in Iraq, Egypt, and Iran have merely outlined the features of this responsibility without restricting it with a clear and explicit text.

### Recommendations:

1. The disciplinary legislation in the countries under study must be reformed to ensure its conformity with the fundamental principles of criminal law, both in form and substance.
2. The role of the administrative judiciary in overseeing the decisions of disciplinary bodies must be strengthened to guarantee justice and legality.
3. The committees and bodies responsible for disciplinary investigations

- should be retrained and provided with specialized legal expertise in criminal principles.
4. The Iraqi legislature should re-establish the link between the General Disciplinary Board and the judiciary, as is the case with the Administrative Court. Currently, the General Disciplinary Board is linked to the State Council, which in turn is linked to the Ministry of Justice. This creates a significant imbalance in the supposed balance between the accused and the administration.
  5. Unify disciplinary procedures and centralize them under a single authority so that employees are aware of their legal status and are not subject to blackmail by other entities to reopen their disciplinary files, even after their innocence has been proven. We suggest that the Iraqi legislature explicitly stipulate the invalidity of all procedures and their consequences in the event of any violation of the right to defense.
  6. We suggest that the legislature stipulate the right of an accused public employee to request a change in the investigative committee if they find bias or similar issues within it.
  7. It would have been more appropriate for the Iraqi legislature to limit the type of offense to felonies and misdemeanors only, and to exclude the offense of violation from the provisions of paragraph (7-B) of Article (8) of the State and Public Sector Employees' Discipline Law currently in force, due to its unfairness and severity.
  8. The Iraqi legislator should not have left the matter so broad regarding the first case mentioned in paragraph (8) of Article (8) of the State and Public Sector Employees Discipline Law, which warrants dismissal. Leaving it so broad grants the administration discretionary power (which may be far removed from the public interest) in determining what constitutes a serious act or one that is not detrimental to the public interest.
  9. Clause (c) of paragraph (8) of Article (8) of the State and Public Sector Employees Discipline Law does not stipulate a time limit between the first and second dismissal penalties, which would then be grounds for dismissing the employee. This is a shortcoming of the Iraqi legislator.
  10. We also call upon the Iraqi legislature to amend the wording of clause (b) of Article (8/Eighth) of the Iraqi State and Public Sector Employees' Discipline Law to read as follows: (b) If convicted of a non-political felony. Whenever an employee commits such a felony, whether it arises from their official duties or is committed in their official or personal capacity, they will be dismissed, as their actions demonstrate the danger their continued employment poses to the public interest and society.
  11. It is essential to unify the laws regulating employment relationships in Iraq and Iran, following the example of the Egyptian legislature, which enacted a single law encompassing all aspects of public service, from appointment to retirement, and including disciplinary procedures for public employees. Therefore, we urge the Iraqi and Iranian legislatures to enact this law and emulate the Egyptian example.
  12. The Iraqi, Egyptian, and Iranian legislatures must elaborate on the relationship between criminal and disciplinary liability, rather than leaving the matter to differing legal schools of thought and interpretations.

## footnotes

- 
- .(i)Yahya Qasim Ali Sahl, 2011, Dismissal of the Public Employee, PhD Thesis, Faculty of Law, University of Ben Aknoun, Algeria, p. 59.
- .(ii)Abdel Hafeez Ali Al-Shimi, 2014, Impediments to Disciplinary Responsibility for Public Employees, First Edition. Dar Al-Nahda Al-Arabiya, Cairo, pp. 151-152.
- .(iii)Nawaf Kanaan, 2007, Administrative Law Book Two, Dar Al-Thaqafa for Printing, Publishing and Distribution, Jordan, p. 251.
- .(iv)Iranian Administrative Courts Law, 1371 AH (1992 AD).
- .(v)Ahmadi Hussein, 2019, Judicial Oversight of Administrative Decisions in Iran, University Publishing House, Tehran, p. 122.
- .(vi)Ali Kazemi, 2020, Administrative Judiciary and the Protection of Employees' Rights, Journal of Law and Politics, p. 122.
- .(vii)Maryam Mansouri, 2018, The Role of Administrative Courts in Protecting Public Employees, University of Tehran, Department of Law, p. 89.
- .(viii)Najib Khalaf, the previous source, p. 29.
- .(ix)Decision No. 1348/2018 in the discriminatory file 1901/Distinctional Employees Judiciary/2018 dated 22/11/2018.
- .(x)Van Lang, previous source, pp. 169-170.
- .(xi)Refer to the text of Article (10) of the State and Public Sector Employees Discipline Law No. (14) of 1991.
- .(xii)See the ruling of the Supreme Administrative Court in Appeal No. 8207 of the 53rd Judicial Year, dated 3/7/2004.
- .(xiii)Fatima Shawqi, 2020, Guarantees of the Public Employee before the Administrative Judiciary, Journal of Legal Studies, p. 99.
- .(xiv)Ahmed Murad, 2021, Judicial Oversight of Disciplinary Decisions in Egypt, Dar Al Nahda Al Arabiya, Cairo, p. 124.
- .(xv)Rulings of the Egyptian Supreme Administrative Court (2018-2023).
- .(xvi)Mustafa Abdel Jalil, 2019, The Role of the State Council in Protecting Public Employees, Dar Al-Fikr Al-Qanuni, Beirut, p. 123.
- .(xvii)Mazen Lilo, 2016, Encyclopedia of Administrative Judiciary, Modern Book Foundation, Cairo, p. 36.

## Sources

1. Rulings of the Egyptian Supreme Administrative Court (2018-2023)
2. Ahmed Murad, 2021, Judicial Oversight of Disciplinary Decisions in Egypt, Dar Al-Nahda Al-Arabiya, Cairo.
3. Ahmadi Hussein, 2019, Judicial Oversight of Administrative Decisions in Iran, University Publishing House, Tehran.
4. Decision No. 1348/2018 in Cassation File 1901/Disciplinary Court for Civil Servants/2018, dated November 22, 2018.
5. See the ruling of the Supreme Administrative Court in Appeal No. 8207 of the 53rd Judicial Year, dated July 3, 2004.
6. Article (10) of the State and Public Sector Employees Discipline Law No. (14) of 1991.

- 
7. **Abdel-Hafiz** Ali Al-Shimi, 2014, Impediments to Disciplinary Liability for Public Employees, First Edition. Dar Al-Nahda Al-Arabiya, Cairo,
  8. Ali Kazemi, 2020, Administrative Judiciary and the Protection of Employees' Rights, Journal of Law and Politics,
  9. Fatima Shawqi, 2020, Guarantees for Public Employees before the Administrative Judiciary, Journal of Legal Studies.
  10. Iranian Administrative Courts Law, 1371 AH (1992 CE.)
  11. Mazen Lilo, 2016, Encyclopedia of Administrative Judiciary, Modern Book Foundation, Cairo.
  12. Muhammad Faraj, 2019, The Role of Administrative Judiciary in Protecting the Public Interest, Research paper published in the Third Scientific Conference of the Faculty of Sharia and Law.
  13. Maryam Mansouri, 2018, The Role of Administrative Courts in Protecting Public Employees, University of Tehran, Department of Law.
  14. Mustafa Abdel-Jalil, 2019, The Role of the State Council in Protecting Public Employees, Dar Al-Fikr Al-Qanuni, Beirut.
  15. Nawaf Kanaan, 2007, Administrative Law, Book Two, Dar Al-Thaqafa for Printing, Publishing and Distribution, Jordan.
  16. Yahya Qasim Ali Sahl, 2011, Dismissal of the Public Employee, PhD Thesis, Faculty of Law, University of Ben Aknoun, Algeria.