Previous and contemporary guarantees for the disciplinary punishment of a faculty member in private universities - a comparative study

Assist lecturer. Eman Haif Mohammed , Ali Abdulkadem Nighiesh AL-Zamili

University of AL-Qadisiyah,Iraq

Correspondin authors : imanalhaif@yahoo.com

Abstract

The majority of legislations recognized the establishment of a special disciplinary system for the faculty member to carry amongst its elements the most important guarantees that must be available when the university professor was held accountable. The National Higher Education Law did not provide for any disciplinary system for this category but rather referred to the application of the laws of the Ministry of Higher Education and Scientific Research, and did not single out these The last is a legal system for a member of the teaching staff, but the teacher is treated like an employee in terms of the necessity that he is subject to the State and Public Sector Discipline Law No. 14 of 1991 amended.

Introduction

Given the extreme seriousness of the disciplinary penalty and its legal implications, the legislator was keen to develop legal guarantees that the disciplinary authority must observe for the sake of the safety of access to the truth and these guarantees, including those stipulated in the labor law and apply to the appointed professors and contractors with private universities who are not appointed In the ministries of the state, the public sector, the official and semi-official departments who hold higher degrees / masters and doctorate degrees, including retired professors who hold scientific titles, including what is stipulated in the Law on the Discipline of State and Public Sector Employees No. (14) of 19 The rate that applies to professors affiliated with the Ministry of Higher Education and Scientific Research and the employees appointed to other state ministries who hold scientific titles and who lecture at private universities.

The importance of this research is demonstrated by the lack of research that dealt with guarantees for a faculty member in private universities when subjected to punishment and directing the Iraqi legislator to benefit from the experiences of comparative countries that have given importance to a faculty member in benefiting from previous and contemporary guarantees.

As for the problem of the study, it is centered on the following question: Did the Iraqi legislator put sufficient guarantees for the faculty member when he was subjected to legal accountability? , We will rely on the analytical method method comparing between the provisions of the Labor Law No. (37) for the year 2015 and the Discipline of State and Public Sector Law No. (14) for the year 1991 (amended), and the legal texts related to university professors in the comparative countries in France, Egypt and Jordan . That singled out a disciplinary system for the faculty member, and we will divide this research as follows: - The first requirement: guarantees prior to the disciplinary punishment, the second requirement: contemporary guarantees for the disciplinary punishment.

The first requirement

Guarantees prior to the disciplinary punishment

Before the disciplinary authorities start their disciplinary procedures in preparation for the signing of the disciplinary penalty on the university professor, they must take measures that precede the imposition of the penalty and these procedures provide him with a degree of security, and this what we explainin two branches, the first branch: confronting the faculty member with what is attributed to him, the second branch: the disciplinary investigation and its procedures

First branch

Facing the faculty member with the charges attributed to him

This guarantee is essential, whether in the investigation or trial stage, which means that the university professor is informed of the violations attributed to him, in order to prepare his defenses . and his evidence to return the accusation attributed to him and to defend himself ., this guarantee is represented by informing the faculty member In violation attributed to him and enabling him to view the indictment, and this is what we will explain in two intents.

The first destination

Informing the faculty member of the violation attributed to him

This guarantee is one of the fundamental guarantees that are decided in the interest of the accused professor, which means informing the university professor of the violations attributed to him ., as this media will alert the university professor of the charges against him so that he can prepare his defenses and defend himself..

The validity of this media is required to specify the violations attributed to the university professor in a clear and unambiguous manner, with an explanation of the reason for the summons and what the charges are ., and that the disciplinary authority is committed to the charges specified in the referral decision, it is not entitled to hold him accountable for charges other than referred to in the referral decision because the charges that are Referring to it to the investigation is the one that confronted him and expressed his defenses in relation to it. If the disciplinary authority desires to direct other charges, it must inform him of it and give him a sufficient period to express his defenses in relation to it, and his actions are invalid because they violated an important guarantee that is confrontation..

The majority of comparative legislations have confirmed this guarantee, but they have not explicitly provided for it, but they have obligated the disciplinary authority to inform the university professor of the violations attributed to him when referring to the Disciplinary Council, and has also specified the necessary period that enables him to express his defenses during it. As for the Iraqi legislator, it did not stipulate this guarantee in the Labor Law No. (37) for the year 2015, nor in the general principles in the Law of Discipline of State and Public Sector No. (14) for the year 1991 (amended) nor did it specify a time period during which the university professor could prepare his payments.

However, even if the text does not stipulate that, the disciplinary authority must adhere to this guarantee, as it is one of the general principles that do not need to be legally stipulated, as it is one of the rights inherent to any person accused of raising the threat of damage ., knowing that Iraq has joined Law No. (193) (For the year 1970 to the International Convention for Civil and Political Rights of 1966, which included several principles in the penal field that withdraw to the disciplinary field and therefore are considered a legal basis for adherence to this right.

However, due to the importance of this guarantee, we suggest that the university professor should be informed of the charges attributed to him, with a time limit of 7 (7) days in order to be able to prepare his payments during it.

As for the method of notification, the original is not specific, as it is sufficient to inform him in a clear and unambiguous manner .. It is worth noting that if the university professor was informed and did not attend or did not intentionally receive the notification, this guarantee becomes irrelevant to him, because it is a basis for his interest and by doing he misses the right Attending and defending himself and preparing his defenses..

The second destination

See the indictment

Access to the accusation file represents the other side of the confrontation principle, and means that the university professor is informed of all documents and papers related to the charges attributed to him . because this right is a complement to the defense principle that should not be suspended, and then the disciplinary authority must enable the university professor to view the accusation file, As it may contain evidence of usefulnessز The defendant must defend himself and refute everything that is against him ., and this right of the professor's personal rights is not permitted for others to view the file unless it is necessary for the right of defense ..

Comparative legislation was keen to emphasize this guarantee. In France, the French legislator stressed the need for the university professor to be informed of the report and papers of the investigation file, and this should be within ten days at least from the date of the session ..

In Egypt, the Egyptian Universities Regulation Law No. (49) of 1972 gave the university professor referred to the Disciplinary Board the right to see the investigation conducted on the days designated by the university president ..

In Jordan, the faculty system at the University of Jordan No. (58) of 2015 permitted this right ..

In Iraq, neither the text in the Labor Law No. (37) of 2015 nor the Law on Discipline of State and Public Sector Employees No. (14) for the year 1991 (amended) on the right of the university professor to see the investigation papers, and we support the opinion that there is no legal objection It prevents us from seeing ., because it is through this right that the university professor can repel the accusations against him and refute them ., this right is established in the interest of the accused and otherwise leads to the nullity of the disciplinary decision issued in a manner contrary to this right, and this is confirmed by the Iraqi judiciary ..

The second branch

Disciplinary investigation and record its procedures

We will address the guarantees provided by the investigation with the university professor, and these guarantees are the writing of the investigation and the right of defense, in two intents... .The first destination

Writing a tunable investigation

Writing is one of the most important guarantees of the investigation, which means voiding the investigation in written form . regardless of the formula in which the investigation is written, as it is expressed in written form, as long as the guarantees of the accused professor and his rights to defend himself are taken into account in what was attributed to him ((.

It is an important safeguard for both the university professor and the disciplinary authority responsible for the investigation. As for the accused professor, he can refer to the investigation records and procedures and see the evidence and testimonies presented against him, especially that that was conducted in his absence and thus can prepare his defenses ., but its importance for the disciplinary authority is evident in that The writing distances it from suspicion, given that no person can claim to be illegitimate after writing ..

The comparative legislation that organized the affairs of university professors varied in the text on the necessity of a written investigation with the university professor. In the French legislation it is concluded that the investigation report should be written ., and in Egypt it did not differ from the approach taken by the French legislator in the need to write the investigation ..

In Jordan, he did not provide a text that requires the investigation to be written and did not indicate the form in which the investigation is void .. Nevertheless, the Jordanian High Court of Justice is determined in its jurisprudence that the investigation must be in writing and otherwise, the investigation is considered void ..

In Iraq, the Labor Law No. (37) for the year 2015 did not provide for this right. As for the Law of Discipline of State and Public Sector Employees No. (14) for the year 1991 amending the investigation to be written based on Article (10) (As for the exception, it is the possibility of the Minister (Minister of Higher Education and Scientific Research) or the head of the department (President of the University, Assistant to the President of the University, Dean)) verbally questioning the employee (the university professor attributed the violation), and that if the penalty to be imposed does not exceed Attention, warning or salary cut ..

However, we agree with the opinion that the written form must be fulfilled, whether the violation is simple or gross because the procedures if they were not written are by virtue of non-implementation in accordance with the principle (unless written is not happened) ., and that writing its guarantee guarantees the university professor access to the evidence and papers and all that is attributed to him To be able to defend himself and to say otherwise leads to the loss of evidence and its concealment, and this is consistent with the procedural laws stated in general principles that writing is intended to preserve the interest of the accused or one of the opponents, as a consequence of its negligence ..

The second destination

Right of defense

The right of defense is considered the first guarantee in an administrative investigation, as the university professor can return the charges attributed to him ., and is considered one of the general principles of the law ., as most of the constitutions agreed to include it, including the 2005 Iraqi constitution ., and there are many means that can be held almost Unanimity over it so that the accused professor can defend himself through it, and these means are the right of the university professor accused of defending himself on the basis of originality or the use of a lawyer, his right to present a defense verbally or in writing, his right to silence, and his right not to take him to account for any of his incorrect statements And the prohibition of swearing an oath, and this is what we will cover in turn As follows: -

First: The right of the university professor to defend himself in person

One of the foundations of this right is to allow the university professor to attend and defend himself and refute the charges attributed to him and with complete freedom, even if the defenses that he demonstrates would raise the responsibility of senior administrative leaders and then expand the investigation department ((, and allow him to discuss the witnesses of evidence and hear those requesting their testimony from Negative witnesses ..

Legislation has ensured the university professor stipulating the right to attend trial and investigation sessions in all disciplinary procedures. In France, the university professor referred to the investigation is entitled to attend and defend himself in word or in writing ., as well as in Egypt ., and in Jordan ..

In Iraq, Labor Law No. (37) of 2015 stipulates this right by saying (disciplinary punishment may not be imposed on a worker unless after he has been given an opportunity to defend himself and in the presence of a worker's representative ...) ., and the Discipline Law for State and Public Sector Employees No. (14) for the year 1991 amended by a text that requires the university professor to attend and defend himself, but this right can be deduced from the content of the text of the tenth article of the same law, which states (the committee undertakes the investigation of the violating employee referred to it and for the sake of performing its mission hearing and writing statements Employee), as replaced by the words (employee sayings) instead of (employee defense) ..

Second: The right of a university professor to seek the assistance of a lawyer

This right represents an important necessity to exercise the right of defense, as the accused university professor may not be able to defend himself for many reasons due to his personal composition or as a result of fear and anxiety of appearing before the investigative committees ., and the presence of the lawyer in the investigation or trial stage is an important guarantee of safety Procedures and limiting the use of methods that may be unlawful with the accused professor, as he cultivates the same accused balance in response and calms him ..

This right is an important guarantee for the university professor to defend himself, whether at the investigation or trial stage .. In the investigation stage, the legislation that organized the provisions for accountability of university professors varied, as the French legislator stipulated the right of the university professor to seek the assistance of a lawyer at the investigative stage of his choice ., while it came Legislation in Egypt and Jordan is free from stipulating this right during the investigation stage ..In Iraq, Labor Law No. (37) of 2015 stipulates this right by saying (the worker has the right to be assisted by a worker representative or any person he chooses to defend himself against allegations regarding his behavior or performance that may lead to the termination of his work contract), and it is understood from this The text stipulates that the situation in which a professor is permitted to seek the assistance of a lawyer is the only case of violations that lead to the termination of his contract and not others.

Referring to the amended State and Public Sector Discipline Law No. (14) for the year 1991 amended, it did not include a text that requires this right, and this represents a legislative deficiency, so we call on the Iraqi legislator to explicitly block it, because the disciplinary system in Iraq, as we mentioned earlier, is a presidential system as the investigation Disciplinary is the only level of disciplinary accountability, as there are no post-investigation stages, as in comparative legislation enabling the university professor from his rights to defense ..

As for disciplinary councils in comparative legislation, most of them affirmed this right, as the French legislation guaranteed the right of the university professor with the assistance of a lawyer before the Disciplinary Council ., and in Egypt the legislation gave the right for the university professor to attend trial sessions or appoint a lawyer to defend him ., either in Jordan There was no text that allowed the university professor to seek the assistance of a lawyer, either during the investigation phase or in the trial phase before the Primary Disciplinary Council ..

Third: The university professor has the right to make his or her payments in writing or in writing

The university professor is in the process of defending himself to express his defenses in a written or oral form. The original disciplinary procedures are to present his defense in writing, but it is permissible to present him orally, provided that all of this is proven in the minutes of the investigation or the session according to the circumstances, and he may also express his defense in writing and recover itself Time as if his verbal defense is supported by written notes to dismiss the charge against him ..

Fourth: The right to silence

The university professor charged with the accusation has the right to remain silent if he finds his interest in this and no one has to compel him to answer .. The legal basis for this right is derived from two principles which are the principle of presumption of innocence because the accused is innocent until proven guilty and thus the accusation authority is responsible for proving the accusation . The second principle is the principle of the accused's freedom to defend himself and is one of the pillars of the principle of justice ..

In France, the defendant's silence was considered a disciplinary violation until the law was issued on 15 June 2000, when the defendant was granted the right to silence ., but in the Iraqi and Egyptian laws, it is not considered only a loss of the defendant's right to defense . and this is confirmed by the Supreme Administrative Court in Egypt . .

It is not permissible to use the silence of the accused professor as a presumption against him, on the condition that it is not an implicit admission of him to commit the violation attributed to him. The silence of the accused is only explained by his failure to use his right to defense and does not divert it from his accountability if his responsibility for the disciplinary violation is proven ..

Fifth: The professor made incorrect statements

This guarantee means that the accused university professor may not be held accountable for incorrect statements made by him, as it is not permissible to assign him without his will to make statements that would be used against him ., and this guarantee is conditional on two things, the first of which should be his requirements of the requirements of his right to defense, and the second is that The accused professor shall be well-intentioned when casting ..

Sixth: The oath was attended

It is not permissible to force the university professor to whom charges are attributed to swearing an oath, because it falls between two criticalities either to be subject to punishment if he tells the truth or violates his conscience and his religious belief by resorting to lies ., that all comparative legislation in France, Egypt and Jordan as well as Iraqi legislation did not address this issue by prohibition or leave , However, jurisprudence was unanimous on the prohibition of swearing an oath because it affects defense rights, and violating this rule results in the invalidation penalty ..Contemporary guarantees of disciplinary punishment

Contemporary guarantees come in the next stage of the investigation procedures, so as to transmit a spirit of reassurance to the accused university professor when his eyes are impartial to those who try him, and cause disciplinary decisions and rulings, and therefore the reassurance of the concerned party of the disciplinary authority's commitment to the legal considerations upon which the punishment is based, and therefore we will address in this requirement two guarantees . Neutrality and causation.

First branch

Neutrality

Neutrality means that whoever engages in any authority or jurisdiction characterized by justice, impartiality and fairness in the disciplinary field, whether in the stage of investigation or trial ., meaning that the person may not be an opponent and a judge at the same time ., and therefore we will divide this branch into two purposes first clarify the concept Neutrality, and the second shows the impartiality of the investigator and members of disciplinary boards.

The first destination

The concept of neutrality

There are two approaches that dealt with the concept of neutrality, the first being neutrality is not to combine the powers of investigation and judgment, and the second is considered an extension of the right of defense, and it is not possible to put a comprehensive definition that prevents the guarantee of neutrality because whatever effort has been made in formulating it will be inaccurate, and the reasons for neutrality are not specified exclusively in The disciplinary field, however this guarantee can be achieved by (organizing the rules of jurisdiction to prevent the combination of accusations and

investigations and the authority to impose the penalty, as well as by deciding the invalidity of those surrounded by personal, objective or functional considerations that may question his impartiality) ..

The principle of neutrality can be adopted even if the legislator did not stipulate it because it is one of the principles that do not need a text to endorse it because it is stable in the human conscience . and this is confirmed by the Supreme Administrative Court in Egypt as it ruled that (... the participation of the President of the Disciplinary Council as a member of the University Council In the recommendation to refer a member of the teaching staff to the Disciplinary Board that leads to the invalidity of the ruling for the nullity of the formation ., and the same discipline has been followed by the General Discipline Board (the Court of the Judicial Personnel currently) as he decides) and it is noted on this formation that the objector was a member of this committee, so how His investigative power is combined with his appearances before this authority M in the default function ..The second destination

The impartiality of the investigator and members of disciplinary boards

We must address the impartiality of both the investigator and the members of disciplinary councils, and accordingly we will divide this section into two paragraphs. In the first paragraph we show the impartiality of the investigator, and in the second paragraph we show the neutrality of the members of the disciplinary boards as follows: -

First: the impartiality of the investigator

The impartiality of the investigator means the independence of the investigator and his non-affiliation with the university administrative authority, and this can only be achieved by separating the investigative powers and disciplinary punishment ..

Legislations regulating the provisions of university professors in France, Egypt and Jordan did not mention the necessity of providing this guarantee to those who carry out the investigation task, but were limited to the necessity of providing it for members of disciplinary councils responsible for holding university professors accountable to the charges ., and this is what we will explain in the next point.

However, nonetheless it is necessary to have impartiality in the investigator, even if there is no text to be decided, and this was confirmed by the Supreme Administrative Court in Egypt despite the absence of the Egyptian Universities Law No. (49) for the year 1972 of any text that guarantees guaranteeing neutrality in the investigator with the university professor ..

As for Iraq, there is no actual application of the guarantee of neutrality, because Iraq, as previously discussed, takes presidential discipline, and for neutrality to be achieved, the investigator must be independent from the administration, and this cannot be achieved in Iraq, as there is no separation between the powers of accusation and the imposition of the penalty, because the administrative head is from He refers the university professor to the investigation committee, which he constitutes by order of him, and that the results of the committee and the recommendations that it recommends are not adhered to by the administrative chief, as he either endorses them or neglects them and decides what he deems appropriate ..

The legislator went further when he allowed the Minister of Higher Education or the dean of the college to impose penalties (striking, warning, cutting the salary (once interrogated)), and this is a combination of the powers of accusation and the investigation of the imposition of the punishment, which is contrary to guaranteeing impartiality.

Second: The impartiality of members of disciplinary councils

The comparative legislation governing disciplinary accountability provisions for university professors varied in the text on ensuring impartiality, as this guarantee is one of the general principles in all trial bodies, whether criminal or disciplinary ..

In France, the French legislator stressed the necessity of the neutrality of members of the disciplinary council responsible for holding university professors accountable, as it decided to nullify the decisions issued by the council if there was a relationship between one of its members and the university professor referred to the council, whether it was a parenting relationship or a relative to the fourth degree ..

As for the legislation in both Egypt and Jordan, it was devoid of any text guaranteeing the guarantee of neutrality, except that not referring to it does not mean that it is not applied in those legislations in accordance with the general rules in neutrality as it is one of the requirements of the principles of justice ., and this was confirmed by the Supreme Administrative Court in Egypt ( ).

It is worth noting that the reasons for impartiality are many, including what is personal that affects the emotions of a disciplinary council member as his accusation of a case similar to the case he is considering. He must step down, or it may be an objective reason, such as if the disciplinary council member has a position on the issue that the council is considering that would affect his impartiality as if It was he who carried out the accusation or investigation of the same case, and therefore it is not permissible for him to look into the case according to the general rules that it is not permissible for a person to be an opponent and a judge at the same time . and this is what the Administrative Court in Egypt ruled

The second branch

Causing disciplinary decisions and rulings

Causation is an important guarantee of contemporary punitive punishment, as it provides reassurance about the correctness of the facts that necessitated the disciplinary penalty through which the disciplinary authority formed its convictions in imposing the penalty, through the availability of the pillars of the disciplinary violation, and also allows the judiciary the possibility of supervision.Accordingly, we will divide this section into two purposes, in which we first clarify the concept of causation, and in the second we explain the position of legislation on causation.

The first destination

The concept of causation

We will explain the definition of causation, its importance, conditions and pillars in several paragraphs, as follows: -

First: the definition of causation

Several definitions of causation have been received, it has been known as (the disclosure of legal and factual reasons that justify the administrative decision, and therefore the decision is a cause if he discloses himself the reasons on which the decision was based, the reason is the formal expression of the reasons for the decision and then it belongs to the external legitimacy of the decision) ..

It was also known as (listing the factual and legal arguments on which the decision is based and producing it, such as a statement of what is the basis for summoning the case or the fact or the legal work in the matter of dependence, and clarifying the circumstances and circumstances of the case, and the reasons that led the party to settle the dispute to take this direction without others, and accepting evidence or Refusing it, the reasons for refusal and acceptance, and mentioning the legal article governing the incident in its ruling) ..

It must be pointed out that the reason differs from the cause, as the reason means the legal and realistic case that drives the decision-making and it is always present and is an objective pillar of the disciplinary decision. As for the reason, it means mentioning the reason for the disciplinary decision in its core as it is a formal procedure .. The administrative decision unless the law stipulates otherwise, but this rule cannot be applied in the field of disciplinary decisions because the latter is closer to the judicial rulings than it is to administrative decisions and this is confirmed by the Administrative Judicial Court in Egypt, and the General Discipline Council (the Court of the Judicial Personnel Currently) in one of the His decisions ..

Second: The importance of causation

Causation is of great importance, whether it is for the university professor, administration or the judiciary, because it is important for the university professor who is accused of the charges, because it gives reassurance to himself through his briefing on the reasons and facts on which the administration has formed its conviction to impose disciplinary punishment ., that it enables him to see the extent of taking the administration Taking into account his defense and informing him about the justice of the penalty and its suitability with the violation he committed ..

As for its importance for the administration, it is represented by the administration that will take care and caution when signing the penalty, as it will take deliberate and correct measures in order to describe its decisions fairly, otherwise it may avoid accuracy in the work and thus its decisions are unfair to the professor who is accused of the charges ..

With regard to its importance for the judiciary, it enables the judiciary to extend its control over the legitimacy of the disciplinary decision and its suitability with the legal text, as well as its suitability for the gravity of the violation ., and also reduces recourse to the judiciary if the accused professor is convinced of the reasons stated in the disciplinary decision ..

Third: Causes of causation

1- Determining the facts of the disciplinary violation committed by the accused professor, which are the facts that are required for the punishment and which have been proven to be committed by the means determined by the law ., with an indication of the time and place of the incident because of their importance, as history has an importance in the fall of the disciplinary lawsuit and the place has an impact on mitigation and stress in Punishment, and the incident must be described accurately ..

2- Mentioning the legal basis for causation, which is represented by everything considered to be an obligation to or derogation from job duties ., and the jurisprudence differed between the reason being limited to factual reasons or the addition of legal reasons, and the provisions of the French State Council differed in explaining the legal basis for the cause ..

3- Responding to the defense expressed by the accused university professor if his defense is related to the content of the decision or complementing its elements without there being any comment on the details and particles of each incident separately, and contentment with a comprehensive response supported by the arguments and foundations established by the disciplinary authority for the violation committed by the university professor with Noting the arguments and the evidence for the accused professor ., and this was confirmed by the Supreme Administrative Court in Egypt with one of its decisions ..

Fourth: Causes of causation

There are two conditions that must be fulfilled from the term to benefit from the wisdom of causation, namely: -

1- That the reason for the disciplinary decision be crucified: the disciplinary decision must include the driving reasons for the disciplinary decision, so that once viewed, the result (the penalty) . will be extracted and this is confirmed by the Supreme Administrative Court in Egypt ., but if it is sufficient to refer to the reasons Which was mentioned in another decision, the reason is not considered sufficient unless it is a guarantee to the accused professor of arbitrariness ..

2- The reasoning must be sufficient, clear, and consistent: the reasoning must be sufficiently justified for the disciplinary punishment, and not contain general expressions, and this is confirmed by the Supreme Administrative Court in Egypt ., and the reasoning must be productive and the reasoning is not productive if the result of the decision is inconsistent with Reasons for the decision, and this is confirmed by the General Assembly of the State Shura Council ..

The second destination

Legislation position on causation

Legislation regulating the provisions of accountability of university professors in universities, whether in France, Egypt or Jordan, came with legal texts affirming the necessity of causing decisions and disciplinary provisions.

In France, the French legislator stressed the necessity of causing the decision issued by disciplinary councils in the disciplinary procedures decree for members of French higher education No. 92-657 issued on July 13, 1992 as amended ..

And in Egypt, the legislator has stated that the decision of the university president when signing penalties to warn or blame the members of the university's teaching staff who have breached their duties or requirements of their jobs must be final and justified ., meaning that the reason is limited to these two penalties except that Article (105) of the Law regulating The effective Egyptian universities were obligated to refer to what was not mentioned in the text of the Egyptian State Council Law ..

According to the provisions of the Egyptian State Council Law No. (47) of 1972, the pronouncement of the ruling may not be postponed more than once, and upon issuance of the judgments, it issued a cause signed by the president and members ., and the Supreme Administrative Court in Egypt has rulings that affirm the cause ..

In Jordan, the teaching staff system No. (58) for the year 2015 came free of stipulations on the necessity of causation, whether the decision was issued by the presidential authority (university president, dean, head of department) or issued by the primary disciplinary council.

In Iraq, the Labor Law No. (37) for the year 2015 came without stipulating the necessity of causation, as well as the Law for the Discipline of State and Public Sector Employees No. (14) for the year 1991 amended. Nevertheless, we can discern the requirement to cause a disciplinary decision implicitly through the operative text of Article (15 / Second) of the Law of Discipline above, as it required the investigative committee to raise its recommendations, causing either not to hold the accused university professor and the investigation closed, or to impose one of the penalties mentioned in Article (8) of State and Public Sector Discipline Law No. (14) of In 1991 (revised) ., and since the procedures for imposing disciplinary punishment on professors working in private higher education institutions in terms of the necessity of forming an investigative committee in accordance with Article (15 / second) of the above discipline law, the investigative committee raises its recommendations, causing no accountability or signature of one of the The penalties mentioned in Article (138 / Second) of the Labor Law No. (37) of 2015.

Conclusion

After we finished our research tagged (previous and contemporary guarantees for the disciplinary punishment of a member of the teaching staff in private universities - a comparative study), we must have the most important results and proposals.

First: The results: -

1- It is clear to us that there are previous guarantees of disciplinary punishment in the form of confrontation and access to work, which was clearly stipulated in the comparative legislation in France, Egypt and Jordan, while Labor Law No. (37) for the year 2015 and the Law for Discipline of State and Public Sector Employees No. (14) For the revised 1991, a similar text. The same applies to the writing of the investigation. As for the right of defense, only the Labor Law stipulated above the possibility of hiring a defense lawyer either.
Investigation As far as the right of defense is concerned, the Labor Law mentioned above the possibility of using a defense lawyer, whereas the law of discipline did not include this despite the importance of that, because the investigation is the only level of disciplinary accountability.
2 - The accompanying guarantees represented by impartiality and causation, the Iraqi legislation did not stipulate the necessity of their existence, as there is no real application of the principle of impartiality in Iraq because there is no separation between the accusation and investigation powers, unlike the comparative countries that adopted judicial and quasi-judicial systems.
Second: - The proposals: -
1- We call on the Iraqi legislator to keep up with the comparative legislations and issue a disciplinary legislation for university professors in which he will explain the adequate guarantees for the faculty member upon accountability.
2- Providing explicitly in the Labor Law No. (37) for the year 2015 and the Law for Discipline of State and Public Sector Employees No. (14) for the year 1991 the necessity of facing the professor with the charges attributed to him within a period of (7) days, and access to the file of accusation, cause and grievance, as they are guarantees Personal.

2- The necessity of separating those who are accused and investigated so that there is a true application of the principle of life, and we suggest the introduction of a quasi-judicial system in universities.

References

First: general and specialized books
1- Dr. Ahmad Al-Muwafi, Disciplinary Councils System - Its Nature - Guarantees, Arab Renaissance House, 2001.
2- Dr. Irsheid Abdul-Hadi Al-Houry, Disciplining Civil and Military Positions - A Comparative Study between Egyptian and Kuwaiti Legislation, Dar Al-Nasr for Islamic Printing, No Place Printed, 2001.
3-. Anwar Ahmed Raslan, Al-Wajeez Administrative Law, Facility of Knowledge, Alexandria, 1999.
4- Chancellor Jalal Ahmed Al-Adham, Principles of Discipline Extracted from the Judgments of the Supreme Administrative Court, Dar Al-Kutub Al-Qanuni, Egypt, 2010.
5- Dr. Hussein Hamoudi Al Mahdawi, Explaining the Provisions of the Public Job, First Edition, The Public Establishment for Publishing, Distribution and Advertising, Tripoli, Libya, 1986.
6- Dr. Saad Al-Shtawi, Administrative Investigation in the Field of Public Employment, First Edition, Dar Al-Fikr Al-Jami'a, Alexandria, 2007
7- Dr. Sabry Mohamed El-Senousy Mohamed, Disciplinary System for Members of the Teaching Staff of the University - Comparative Study -, Arab Renaissance House, Third Edition, Cairo, 2013

8- Dr. Ali Gomaa Muhareb, Administrative Discipline in the Public Service, First Edition, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2004.
9- Dr. Abdel Aziz Abdel Moneim Khalifa, Comprehensive Administrative Encyclopedia of Revoking the Administrative Decision and Disciplinary of a Public Employee - Disciplinary Disciplines of a Public Employee, Mahmoud Publishing and Distribution House, Cairo, c 4, 2007
10- Dr. Abdel-Aziz Abdel-Moneim Khalifa, Procedural Legitimacy in the Presidential and Judicial Disciplinary of a Public Officer, Dar Al-Fikr Al-Jami'a, Alexandria, 1st floor, 2006.
11- Dr. Abdel Aziz Abdel Moneim Khalifa, Procedures for disciplining a public employee, first edition, National Center for Legal Issues, Egypt, 2008
12- Dr. Abdel Aziz Abdel Moneim Khalifa, Disciplinary Guarantees for Administrative Investigation and Disciplinary Trial, No Publishing House, 2003
13- Dr. Abdel-Fattah Abdel-Halim Abdel-Barr, Disciplinary Guarantees in the Public Service, Encyclopedia of the Judiciary and Jurisprudence of the Arab Countries, Vol. 126, The Arab Encyclopedia, Beirut - Lebanon, D.T.
14- Dr. Abdel-Ghani Basyouni Abdullah, stopping the implementation of the administrative decision in the rulings of the administrative judiciary - a comparative study, Al-Maaref Establishment, Alexandria, 3rd floor, 2006
15- Dr. Adnan Amr, Principles of Administrative Law - Management Activity and Means of it, Facility of Knowledge, Alexandria, 2nd edition, 2004.
16- Dr. Amr Fouad Barakat, The Disciplinary Authority (A Comparative Study), Dar Al-Nahda Al-Arabia, 1979
17- Prof. Dr. Ghazi Faisal Mahdi, Explanation of the Provisions of the State and Public Sector Discipline Law No. 14 of 1991 as amended, Without a Publishing House, 2006.
18- Dr. Muhammad Asfour, Punishment Authority that Does Not Belong to Discipline in the Field of Public Employment, Journal of Administrative Sciences, Fifth Year, Second Issue, December, 1963.
19- Muhammad Mahmoud Abdul-Jabbar al-Jubouri, Introduction to Psychology, University of Mosul Press, 1984
20- Dr. Maher Abdel-Hadi, Procedural Legitimacy in Disciplinary, Dar Al-Gharib for Printing, Cairo, Second Edition, 1986
21- Dr. Nawaf Kanaan, Jordanian Administrative Law, Book Two, First Edition, Al-Dustour Commercial Printing Press, 1996
22- Dr. Novan Al-Aqil Al-Ajarmeh, Disciplinary Authority for Public Employee (Comparative Study), Dar Al-Thaqafa for Publishing and Distribution, First Edition - First Edition - 2007.
23- Dr. Nasr al-Din Musbah al-Qadi, The General Theory of Discipline in the Public Service, Dar al-Fikr al-Arabi, Cairo, 3rd floor, 2010
Second: University theses and dissertations
24- Ahmed Mahmoud Ahmed Al-Rubaie, Administrative Investigation of the Public Service, MA, Thesis, University of Mosul, 2003
25- Thamer Muhammad Akif, Disciplinary Punishment and its Impact on Reducing Disciplinary Violation in Iraqi Universities - A Comparative Applied Study, Master Thesis, College of Law and Political Science, University of Kufa, 2012
26- Damen Hussein Al-Obaidi, Disciplinary Guarantees for the Public Official in Iraq, PhD thesis, College of Law, University of Baghdad, 1991
27- Mohamed Ould Mokhtar, The Legal System for Disciplining the Public Official in Mauritanian Law - A Comparative Study, Master Thesis, submitted to the Faculty of Law, University of Baghdad, 1996.
28- Hashem Hammadi Issa, The Legal System of Administrative Grievance - Comparative Study, Master Thesis, submitted to the College of Law, University of Baghdad, 1989.

29- Yahya Qasim Ali Suhail, Job Guarantees and Disciplinary Punishment in Right-wing Law, Master Thesis, submitted to the Faculty of Law, University of Babylon, 1998.
Fourth: Laws, instructions, decisions and regulations
30- State Employee Discipline Law No. (14) of 1991 amended.
31- The effective Iraqi Labor Law No. (37) of 2015
32- Private Higher Education Law No. 25 of 2016
33- French Higher Education Law No. (68-879) of June 12, 1968.
34- French Law 84-52 of 1984 amended by Law No. 90-578 of 4 June 1990.
35- Egyptian Universities Organization Law No. (49) of 1972
36- Private and Private Universities Law No. (12) of 2009 in Egypt.
37- The System of Teaching Staff at the University of Jordan and its amendments No. (58) for the year 2015.