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The independence of disciplinary responsibility from criminal responsibility of the public servant (A comparative study)

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Abstract

This paper explores the legal relationship that exists between disciplinary and criminal immunity of public officials emphasizing on legal provisions regulating the connection between disciplinary and criminal immunity. It also explains logical and logical connection of this legal structure of this framework, and the difference and similarities between disciplinary and criminal responsibility. Comparatively, the researcher compared Iraqi legislation with similar Egyptian legislation and determined the extent to which the two differ on some issues.

Keywords: Legal relationship, disciplinary immunity, criminal immunity, public officials

Introduction

The state's role has shifted considerably in the contemporary world and has affected the public service by raising its relevance and responsibilities. Government employees now wield jurisdictions and prerogatives, which are entrusted to them because of their positions in government. While performing these tasks, they can make mistakes and violations – actions that are due to the violation of the norms of official duties, damage to its interests, or degradation of its dignity. Such mistakes and violations cause disciplinary penalties prescribed by the respective authorities, which stresses legal justice that penalties stem from the type of offense. These penalties are used to ensure that such mistakes and crime instances do not reoccur again. They influence the holder of the office in his or her capacity in an organization, and in extreme cases, they can lead to the removal from the job or imprisonment for offenses of high levels of seriousness.

These actions attract disciplinary consequences and in most cases, accompany criminal accountability. Behavior that is unlawful according to penal law, which includes murder, theft, assault, bribery, treason and others, exposes the official to criminal penalty. At the same time, disciplinary responsibility remains possible for them as well. In addition, there is also civil legal responsibility when a disciplinary error is committed by the official.

Research Problem

The current research problem lies in the independence of disciplinary liability from criminal liability of public officials in Iraq, compared with Egyptian law. It aims to delineate the boundaries between disciplinary crime and criminal offense, exploring similarities and differences between these crimes in both countries. The main problem is encapsulated in the following primary question: What is the independence of disciplinary liability from criminal liability of public officials in Iraq?

Research Questions

Derived from the main question, the following subsidiary questions branch out

1. What is disciplinary liability for public officials in Iraq?
2. What are the disciplinary penalties, their types, and legitimacy?
3. What is criminal liability, its components, and elements?
4. What is the relationship between the independence of disciplinary liability and criminal liability?
5. Can a disciplinary board punish an official again for a crime for which a criminal court has already issued a verdict?
6. Can disciplinary authorities take disciplinary actions against an official who has been

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acquitted by a competent court?

Research Objectives

The current research aims to determine whether there is independence between disciplinary liability and criminal liability in Iraq, comparing it with Egyptian law. It also aims to elucidate the aspects of independence between disciplinary liability and criminal liability, as well as the extent of their mutual influence.

Significance of the Research

The current research derives its significance from both theoretical and practical perspectives:

Theoretical Significance

The theoretical significance of this research lies in its contribution to understanding the independence of disciplinary liability from criminal liability of public officials in Iraq (a comparative study with Egypt). Additionally, this research constitutes scholarly and literary material that enriches the Arabic library with theoretical and scientific content on the independence of disciplinary liability from criminal liability of public officials in Iraq in comparison with Egyptian law.

Applied Significance

The current research aims to explore the independence of disciplinary liability from criminal liability of public officials in Iraq, comparing it with Egyptian law. This study is one of the few that sheds light on the independence of disciplinary liability from criminal liability of public officials in Iraq within the researcher's scope of knowledge. It is hoped that this study will open up research opportunities for scholars to conduct similar studies, benefiting from them as precedent research.

Research Scope

This research focuses on examining the independence of disciplinary liability from criminal liability of public officials in Iraq. The researcher examines all Iraqi laws related to the independence of disciplinary and criminal liability of public officials, within a comparative framework with Egyptian legislation, and also includes analysis of legal texts from various legal systems.

Research Methodology

The researcher relied on a comparative methodology to prepare this research, studying Iraqi legal texts concerning the research topic and comparing them with relevant Egyptian legislation.

Research Terms

Disciplinary Liability

Suleiman Al-Tamawi (1979) defines it as any act or omission committed by the employee that violates the duties of their position.

Ramadan Batikh (1999) ^[3] defines it as any act or omission by the employee that negatively affects the regular and smooth operation of the public facility in which they work, or hinders the facility from fulfilling its duties completely.

Ahmed Bouadiyaf (1986) ^[1] describes it as a breach of legal commitment, encompassing all legal rules regardless of their source, including legislative, regulatory, and even ethical rules.

Kamal Rahmawi (2006) ^[12] defines it as any deliberate or unintentional act or omission by the employee during their service or private life that undermines the duties and rules of their position or compromises its dignity.

In Iraq, Yusuf Elias (1980) ^[18] defines disciplinary liability as the failure to fulfill duties necessary for the orderly operation and continuity of work within the establishment, and any action that harms its system. This breach includes both positive and negative aspects, not limited to violations prescribed by law and contract, but extending to anything detrimental to its interests.

Criminal Liability

According to Noufal Ali Safou (2020) ^[16], criminal liability is the legal consequences and responsibilities resulting from committing the elements of a crime. Criminal liability involves the imposition of punishment or precautionary measures defined by criminal legislation upon proving someone's responsibility. Criminal liability is also defined by the following criteria:

1. Holding a person accountable for the consequences of their actions, knowing them beforehand with premeditation and awareness of their meanings and implications.
2. Standards and conditions that guide specific blame against the perpetrator of the crime, setting legal boundaries on unacceptable actions.

Public Official

Defined by Gerard Conrow (1997) ^[3], a public official is a person employed by a public entity, characterized by their permanent status in the position to which they are appointed and ranked. This distinguishes them from officials who do not hold permanent positions and those in temporary roles. Public officials are subject to either a general system or a specific system of regulations.

Theoretical Framework and Previous Studies

Disciplinary error serves as the fundamental basis of disciplinary responsibility, representing its outward manifestation. It typically takes the form of an act or omission by the employee, whether positive-such as assaulting a colleague-or negative-like failing to fulfill duties prescribed by law, contract, regulations, or instructions. Such conduct may manifest actively, such as withholding an official document contrary to legal provisions, providing false information, or may involve multiple wrongful acts, such as collecting and not remitting excess funds.

The error requires a limited and tangible material aspect. Therefore, merely accusing an employee without specifying the actions committed does not constitute the material element of disciplinary responsibility. Criticizing the employee or describing their behavior as negligent without specifying such behavior does not meet this criterion. The employee's conduct must have an outward, tangible manifestation, not merely remain as internal thought or intentions without tangible external evidence.

In Egyptian Jurisprudence, some have defined disciplinary error as: "deviation in the behavior of the worker within their small community constituted by the enterprise, violating its established rules and disrupting its system."

In Iraq, disciplinary error is defined as: "the neglect of duties required for orderly conduct and continuous work within the institution, and refraining from anything that may harm its

system. This neglect of commitment, whether positive or negative, extends beyond violating the rules established by law and contract to encompass any action that undermines its interests."

Disciplinary Responsibility and the Principle of Legality (Legal Component)

One direct outcome of the French Revolution, which advocated individual freedom universally, was the establishment of the well-known principle: "No crime or punishment except by law or pursuant to law." This principle, reiterated in Article 8 of the Universal Declaration of Human Rights (1789), has been consistently interpreted in French jurisprudence to mean two things:

Firstly, that legislative authority alone has the competence to define crimes and establish appropriate penalties. This is based on the understanding that legislative authority fundamentally resides in the parliament, formed by the will of the electorate and serving as their true representative. Consequently, this exclusive jurisdiction necessitates that parliament itself undertake these responsibilities, without delegating them to any other authority.

Secondly, judicial authority alone is competent to apply penalties determined by legislative authority. Through these two principles, the rights of workers are safeguarded against the possibility of arbitrary actions by employers in the exercise of their disciplinary authority.

Thus, the principle of legality surrounds criminal offenses in all aspects, whether in terms of their elements, the correlation between the offense and the prescribed penalty, or the impossibility for judicial authority to create criminal descriptions. The law is the sole source of criminalization regarding criminal offenses. This definitively establishes the legal framework for the offense, whether in terms of its elements or the penalties prescribed through legal texts.

For disciplinary responsibility (employer), however, the meaning and scope of criminalization sources take on a different and distinct significance.

Criminal Responsibility

There is no doubt that the criminal judgment issued in criminal liability has an impact on the employment status of public employees. This impact may lead to the dismissal of the public employee, contingent upon the severity of the crime. The crime must be either a felony or an offense against honor or trust. Such crimes degrade the dignity of public office and indicate an individual unfit for public service. The establishment of a criminal offense against the public employee and the resulting appropriate criminal penalty will affect their position and future career by isolating them as a supplementary or complementary punishment.

Penalty for Refusal of Public Official to Execute Judgments

When a public official commits the crime of refusing to execute judgments, they must materially obstruct the execution of judgments. If the public official uses their authority without intending to obstruct the enforcement of judgments and their efforts fail due to reasons beyond their control, this constitutes an attempt to commit the crime. The judgment must be issued by a judicial authority, and it must possess enforceable characteristics.

Article 123 of the Egyptian Penal Code stipulates that "any public official who uses their authority to obstruct the

execution of orders issued by the government, laws, or regulations, or delays the collection of monies and fees, or suspends the execution of a judgment or order issued by the court or any competent authority shall be punished with imprisonment and isolation.

Likewise, every public employee who intentionally refrains from executing a judgment or order, as mentioned, after being warned by an official report for eight days, shall be punished with imprisonment if the execution of the judgment or order falls within the competence of the employee. Furthermore, if a public employee is proven to have committed such a crime, they shall be sentenced to imprisonment and dismissal according to the law. Dismissal here is a supplementary mandatory punishment if the sentence does not prescribe it as defective. Dismissal from a governmental position entails deprivation from the position itself and from the designated salary. Whether the convicted person was employed in the position at the time of the judgment or not, they shall not be appointed to a governmental position or receive any salary for a period determined by the judgment, which shall not exceed six years or be less than one year. This is in accordance with Article 26 of the Egyptian Penal Code.

Moreover, the Iraqi Penal Code stipulates that 'every public employee who abuses their authority to obstruct or delay the execution of laws, regulations, systems, government decisions, or orders issued by a competent judicial authority, or to delay the collection of money, taxes, or government fees, shall be punished with imprisonment or a fine.

The law also stipulates that the competent authority who deliberately refrains from executing judgments shall be punished with imprisonment or a fine, or both. The text of that article states, 'Every public employee or person entrusted with public service who deliberately and unlawfully refrains from executing a judgment or order issued by a court shall be punished with the penalty prescribed in the preceding article.' This penalty applies to anyone who commits, with intent, any act aimed at obstructing the execution of judgments on seized funds.

Previous Studies

1. Awad Bin Ali Al-Wathairy (2015) conducted a study on the independence of disciplinary responsibility from criminal liability of public employees in the general system. In this research, we clarified the concept of disciplinary responsibility for public employees in the introductory section. In the first chapter, we explained the elements of disciplinary responsibility, followed by an examination in the second chapter of the extent of independence of disciplinary responsibility from criminal liability for public employees regarding acts within the scope of public service, which is of scientific importance. According to Article 26 of the Regulations on the Discipline of Employees issued by Royal Decree No. 7 dated 1391/2/1 AH, which stipulates that in cases where the accused is referred to criminal trial, disciplinary proceedings are suspended until a verdict is reached in the criminal case, after which the files are returned to the Oversight and Investigation Authority to determine the necessary actions. Some may assume that disciplinary responsibility is independent from criminal liability and that the latter supersedes the former. Through a review and analysis of judicial rulings from the Saudi Grievances Board, principles affirming the independence of disciplinary responsibility from criminal liability were

confirmed, whether during administrative investigation or in the imposition of prescribed disciplinary penalties. The study concluded with several findings, notably that the independence of disciplinary responsibility from criminal liability for public employees is a principle established by regulatory texts and judicial decisions issued by disciplinary bodies and the Grievances Board. It does not mean suspending disciplinary proceedings pending resolution of criminal cases under Article 26 of the Employee Discipline Regulations, but rather halting them until resolution of criminal liability, after which proceedings continue to achieve their objective of protecting public service with its independent pillars and system-defined penalties. The study also provided recommendations, including granting disciplinary authorities more powers in cases of recurrence and serious disciplinary violations by employees, particularly those resulting in public detriment, and the necessity of adding a clause to Article 12 of the Regulations on Termination of Public Service upon a second criminal conviction for drug offenses (recidivism), which helps in preserving public facilities and combating drug crimes in this manner.

2. Firas Abdul Razzaq Hamza's study (2014) ^[4] on the objective boundaries of liability highlighted the lack of consensus in literature regarding disciplinary responsibility for supervisors (disciplinary violations). Some argue for disciplinary responsibility based on the presence of the first and second material elements, whether active or passive acts stemming from the worker. From an ethical perspective, issuing an act of will is considered a sin. Others advocate for disciplinary responsibility based on three pillars: firstly, the worker committing an error; secondly, the existence of an affirmative or negative act stemming from the third pillar, which is the mental element involving the issuance of the wrongful act of will.

Conclusion

Public service laws aim to strike a balance between the obligations and rights of both the public administration and public employees throughout their employment relationship, from appointment to termination through regular or exceptional means. This balance is clearly evident in disciplinary disputes, where the administration has the authority to hold public employees accountable for violations of public service regulations. Simultaneously, the legislator grants employees the right to defend themselves using due process rights during disciplinary proceedings to present evidence that may prove their innocence or mitigate their punishment. These guarantees have been established in various disciplinary systems and have become a general principle in disciplinary laws that surpass the old belief limiting defense rights solely to the realm of criminal proceedings.

Based on the findings presented in this study, the following conclusions can be drawn

1. The right to defense is a fundamental requirement inherent in the nature of things, enshrined in law to enable the accused to prove their innocence against accusations.
2. Some definitions attempt to narrow this principle without considering all stages of the disciplinary process,

particularly when the accused is referred to trial, where their rights are crucial. Defense rights take various forms, some codified in law and others still under administrative judiciary oversight, including access to files, the principle of confrontation, and the right to self-defense personally or through representation after sufficient notice to defend oneself.

3. All types of liability (civil, disciplinary, criminal) share a common denominator.
4. All types of liability sometimes share another common denominator regarding penalties, where compensation for damages may be required in certain instances.
5. Furthermore, all aforementioned types of liability sometimes do not require proof of harm to establish liability.
6. While error is a common factor across different types of liability, it's noted that a specific error may trigger liability of a different type, or even multiple types simultaneously. For instance, a disciplinary error may lead to criminal or civil liability, or encompass all types of liability together.

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