

# The Effect of Mitigating Circumstances Is Disciplinary Punishment :A Comparative Study

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## ABSTRACT

Although the law is static and reality is dynamic, the relationship between them is based on the principle of mutual influence that is based on the constant conflict between reality and the law, but in the end a kind of corruption occurs between them, and the control of the damage is the body competent to apply legal texts: the judiciary and the disciplinary authority the competent authority does not consider the act committed in isolation from the circumstances in which it was committed; this is because strict formal equality precludes taking into account the specific characteristics of each case and each person.

Although the disciplinary law did not pay special attention to the mitigating circumstances of the penalty, the requirements of punitive justice require that it take into account- when imposing the punishment – the circumstances that accompanied the act, so that the punishment is appropriate, drawing on both legal and realistic facts, in order to come consistent with the desired goals of Disciplinary punishment, represented by the regular functioning of public utility .

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## Introduction

The issue of disciplining employees in the public office occupies an important role in establishing the principle of public discipline to enable the administration to carry out its role to achieve the public good. The facts, causes, or mitigating circumstances surrounding the committed violation upon which its decisions are based, which necessitate them to be careful when determining the disciplinary (disciplinary) punishment imposed on the convicted employee, because the assessment of these facts and the considerations or mitigating circumstances that accompanied them should be subject to judicial oversight to prevent their abuse or deviation In the use of its discretion to ensure the rights of public officials.

### First: the importance of research

The issue of the effect of mitigating circumstances on disciplinary punishment in the disciplinary field occupies a great importance no less than its importance in the criminal field, as it affects the amount and quality of the disciplinary punishment (disciplinary) prescribed against the convicted employee.

### Second: The research problem

The problem with this topic is that the effect of mitigating circumstances on disciplinary punishment was not regulated by comparative administrative legislation in clear and explicit texts despite mentioning disciplinary (disciplinary) penalties in explicit texts, and this topic has not been thoroughly researched and has not taken the legal study it deserves. We discuss the following matters in our modest study, namely: What do mitigating circumstances mean and what are the characteristics that characterize them, what is the role of disciplinary and judicial authority when reducing disciplinary punishment, and finally, what is the effect of mitigating circumstances on the original and consequential disciplinary punishment?

### Third: the research hypothesis

The study assumes that a public employee is subject to punishment or disciplinary punishment in the event of his failure to perform his public duties, but if mitigating circumstances accompany him, they have the effect of reducing the

disciplinary punishment within the scope of the law and the judiciary.

#### **Fourth: Research methodology**

I have dealt with this topic according to a systematic plan based on the analytical and comparative method of jurisprudential opinions, judicial rulings and legal texts.

#### **Fifth: Research objectives**

The researcher seeks to achieve the greatest possible benefit to find out what the administrative legislation and judicial rulings have settled on in countries. We have the effect of making our study an analytical study compared to the position of Jordanian and Egyptian law.

#### **Fifth: Research structure**

The subject of the study was divided into two topics and four demands. In the first topic we will deal with the definition of mitigating circumstances for disciplinary punishment, which in turn is divided into two requirements: the first requirement we explain the topic of the meaning of mitigating circumstances, the second requirement is the types of mitigating circumstances. Disciplinary punishment and we divided it into two requirements: the first requirement, in which we detail the competent authorities to reduce disciplinary punishment, and the second requirement we deal with the effect of the mitigating circumstances on the original and dependent disciplinary punishment, and we have concluded the topic with conclusions and proposals.

#### **The first topic**

##### **Definition of extenuating circumstances for disciplinary punishment**

The mitigating circumstances of the disciplinary punishment are one of the reasons that affect the conviction of the competent disciplinary authority when it makes sure of its existence, which will have an impact on the disciplinary punishment itself, so we will divide this study into two requirements according to the following order:

#### **The first requirement**

The meaning of - and their characteristics - mitigating circumstances for disciplinary punishment

Since the mitigating circumstances of disciplinary punishment are of great importance in the field of proof, we will divide this requirement into three branches as follows:

#### **First branch**

Meaning of extenuating circumstances for disciplinary punishment

The mitigating circumstances of disciplinary punishment are defined based on their point of view. If the mitigating circumstances are viewed from the linguistic point of view, then the word adverbs is defined as the case, and the phrase whatever the circumstances, i.e. in any way, and the phrase according to the circumstances, means in the most difficult circumstances, that is, in times of distress, The circumstances of the crime are the circumstance that leads to the reduction of the sentence and its opposite is an aggravating circumstance (1).

As for the definition of mitigating circumstances for disciplinary punishment from the jurisprudential region, we resort to the definition of criminal law jurists. Its case is in the Penal Code, whereby it invokes clemency for the offender and allows its division according to the Penal Code in Articles 133,132 of the Penal Code (111) of 1969, as amended (2).

It also knew that it is ((a consequential incident that is added to the crime after completing its components, so it affects the amendment or exclusion of the most important consequences of the crime, which is the punishment)) (3), and finally it was known that it ((incidental facts that the judge determines in each crime separately and assesses its legal effect on the due punishment Applied))(4).

The administrative law did not define the extenuating circumstances in the administrative rules (we mean the General Penal Code), and that the general definition of mitigating circumstances did not differ much from its idea in the administrative field. The disciplinary authority settled in front of an employee who committed an administrative violation or if the Department of Land Affairs was outside it.

#### **The second branch**

Characteristics of extenuating circumstances for disciplinary punishment

The mitigating circumstances of disciplinary punishment have a range of characteristics as follows:

**First: Mitigating circumstances are an additional or a plus**

The mitigating circumstances are characterized as excessive circumstances, that is, they do not constitute the disciplinary (disciplinary) violation, as they may be found in a violation and not found in other administrative offenses (5). In composition; Because it is not a pillar of the disciplinary offense (6).

**Second: Mitigating circumstances do not affect the existence of a disciplinary violation**

It is meant that the mitigating circumstances do not affect the existence of the disciplinary violation itself, i.e. it remains in place and there is no change in the violation and remains present in its entirety, the availability of circumstances does not result in the disappearance of the violation (7), but the mitigating circumstances if they surround the violation, they generally affect the violation by making it Less serious as the violation is fixed to the act that the employee committed, whether it is a positive or negative act of violating job duties or carrying out prohibitions (8), so committing the violation itself does not change, but the variable is the severity of the violation, so that it becomes less serious or serious than the previous one.

**Third: The mitigating circumstances affect disciplinary punishment**

In the sense that the mitigating circumstance affects the punishment itself (9), as it results in the reduction of the penalty at the minimum legally established in some penalties, or it replaces a penalty in place of another punishment lighter than it. The original and subsidiary disciplinary punishment.

**The third branch**

The importance of extenuating circumstances for disciplinary punishment

The importance of mitigating circumstances lies in the fact that they enable the disciplinary authority to avoid cruelty in punishment and limit it to the

necessary capabilities to achieve justice, as extracting the circumstances, considerations and mitigating reasons helps in facing the reality of the disciplinary offense and thus providing justice and achieving the objectives of punishment by imposing the appropriate punishment (10), The purpose of reducing the penalty is to evaluate the negligent employee in order to ensure the proper functioning of the public facility regularly and steadily, not detracting or retribution, on the one hand, and on the other hand, discipline is a warning and warning to the rest of the other employees to think repeatedly before committing any violation, so it is an effective guarantee of the employee's respect for his job duties The glory is rewarded for his work with material and moral incentives, while the offender is punished for that.

**The second requirement**

Kinds of extenuating circumstances

The mitigating circumstances for disciplinary punishment are divided into two types: personal and objective circumstances, and this is what we will deal with in turn:

**First branch**

**Personal circumstances**

The personal circumstances relate to the public servant who committed the error or the administrative violation, and these circumstances are varied and are as follows:

**First: the purity of the employee's newspaper**

Disciplinary violation arises by virtue of logic if the employee refuses to perform one or more job duties or performs a prohibited act, then he has violated the employment law and then deserves punishment after being referred to administrative investigation by the presidential authority for him (11), then in order to reach the truth of the act attributed to him The employee and the certainty of his commitment by the available investigative means, the competent disciplinary authority, with its discretionary power, may resort to referring to the employee's job file (personal file), which documents his career path during the previous period, because the employee's file is the vessel through which to judge his good job behavior. (12), And this is what the Egyptian

State Council went to, that (the purity of the newspaper of the worker with the length of his service and his good behavior according to his annual reports would reduce his punishment) (13), He also ruled (... that, bearing in mind that the appellant at the beginning of his tenure in the public office did not prove from the papers that he had previously committed violations or imposed penalties on him that denote his inability to remain in the position and continue in it ...) (14). As for Iraq, the General Authority of the State Council has ruled that (... the administration has the right to assess the adequacy of its employees or not, but that this is one of the requirements for the proper functioning of the public facility entrusted with it. It is based on material facts confirmed in the personal file of the employee through his job service, and this estimate may not be based on sudden situations that have no basis in it) (15), The General Discipline Council also ruled that (it became clear from checking the personal file of the objector to determine her biography that she is of good conduct, as evidenced by her obtaining (10) letters of gratitude, and obtaining a grade of excellence for several years. This is honestly, so the penalty of final removal from the position is disproportionate to the act attributed to the objecting ...) (16). It is concluded that the purity of the employee's job status sheet, and the absence of disciplinary or criminal penalties prior to him, is evidence of the employee's integrity and sincerity in performing the work assigned to him.

### **Second: The good faith of the employee**

The motivator is intended as the reason that drives the perpetrator to commit the crime, except that the motive is not one of the elements of the crime, but it is earlier than the criminal intent in terms of the time of its investigation (17) this is in the criminal field, but in the disciplinary field the motivation to commit the disciplinary offense is not considered equal. The employee's intention or misfortune when determining the violation, because the employee's intention is not included in the elements of the disciplinary violation, because the law punishes acts not on the intentions and motives, meaning that the law does not take into account the

good will of the employee when questioning him, because it requires that the employee be aware of the instructions and duties of the job The public, and to be keen on performing the job well in the public interest in accordance with the law (18). If the employee commits a mistake or disciplinary violation, then he deserves accountability, but he may invoke that he is good faith, this does not exempt him from disciplinary responsibility, but it may be a mitigating circumstance, and this depends on the discretion of the disciplinary authority and the circumstances and circumstances surrounding the violation. She is not convinced that the employee has exercised the usual care in performing his duty, and was in good faith, that she seeks to reduce the punishment and considered it a mitigating circumstance (19), This is what was confirmed by the Supreme Administrative Court in Egypt that (it is sufficient to fulfill this responsibility that the worker has gone out by his action on the requirements of the job duty in the work of his job, or that he came up with a work that is legally prohibited without the need to prove his sinful intent or will ...) (20 ), And as the disciplinary court ruled that (the good faith of the employee is interceded for him in reducing the penalty he is entitled to from the violations attributed to him) (21). As for the Iraqi system, the employee is not disciplined if he committed the act or abstained from doing the act in good faith and did not harm the public service. The General Authority of the State Council (the current administrative court) went that (... when looking at the distinguished ruling, it was found that It is true and in accordance with the law, as the defendant (distinguished) added to his position issued Administrative Order No. (292) on 5/8/2008, And that includes imposing a warning penalty against the plaintiff as a result of submitting unofficial and incorrect information and since the plaintiff (the defendant) and through the course of the investigation, the pleading and the case's merits, it has been proven to the Disciplinary Board (currently the employee judiciary court) that the papers submitted to the salary calculation committee are papers without defects but not

Official and that the plaintiff (distinguished against him) is in good faith

His aforementioned behavior and that the act attributed to him did not result in harm that results in a legal violation that may serve as a reason for imposing the punishment, and in this case the defendant (the distinguished) has abused the use of power when imposing the warning penalty on the plaintiff (the appellant), so he decided, by agreement, to ratify the distinguished judgment and respond Discriminatory appeals and charging the discriminant the cassation fee) (22), The General Discipline Council has ruled in this regard also that (the intent must be proven to the employee for the act he committed, unlike him, he cannot be held accountable for the guilt attributed to him) (23). On the contrary, the disciplinary punishment (disciplinary) is aggravated if it is confirmed that the perpetrator of the administrative error has an element of willfulness, which confirms bad faith in the event of his commission. Shortening, i.e. unintentionally suggesting bad faith (24), This is what was confirmed by the Supreme Administrative Court in Egypt (that the gravity of the material act that constitutes a disciplinary offense, is related to the moral consideration accompanying its commission, so that the offense based on negligence and lack of insight is not equal to that based on intentionally aimed at an unlawful purpose, considering that the first violation is less serious than The second violation, and this should be included in the discretion of those who follow the disciplinary penalty (25). We deduced from that, if the employee did not commit the violation intentionally or intentionally, but rather as a result of good faith, this does not exempt him from punishment, but it is a reason to reduce the punishment for him.

### **Third: The new age of the job**

The newly appointed employee has little experience and insufficient familiarity with the burdens of the position he occupies, and is not experienced in the tasks assigned to him, so in this he is liable to commit a violation or disciplinary error, therefore the law stipulates that the employee

is new to the job under probation for a specified period (26), Hence, he will be excused if he commits a disciplinary offense, which necessitates a reduction in the punishment imposed on him, because the recency of the job is considered a mitigating circumstance for the penalty imposed on him. We note that at the beginning of the newly appointed employee carrying out the duties of the job, he must undergo training to perform those tasks, and be aware of the duties entrusted to him. If the employee commits a mistake or disciplinary offense, the disciplinary authority relies on the recency of the job as a mitigating circumstance for the disciplinary punishment, if it is proven to it that he committed For that violation, it does not indicate bad faith on his part to the extent that it indicates his lack of knowledge of the duties of that position due to his recent entrustment of the job, so the disciplinary authority suffices to evaluate and reform the employee to improve his job performance instead of dispensing with his services during the period of probation or dismissal from service if he is confirmed. Because the purpose of disciplinary punishment is to correct and correct and not abuse by employee (27), This is why the disciplinary authority considers the violating employee to use clemency against him and this is what was confirmed by the Supreme Administrative Court in Egypt that (the appellant is young and old at work, and based on the above, his dismissal from work and this situation is tinged with exaggeration by looking at what is proven against him from disciplinary sin in the circumstances that His commission was accompanied by what we see with him the court amending the appealed ruling, as it decided to impose a penalty of dismissal on the appellant to reduce his wages by an amount of an addition)(28), It also ruled that the disciplinary punishment should be reduced based on the newness of the job, even if the worker repeatedly committed it, as it ruled that the worker has not yet been active in order to master the work as long as he is not given sufficient time to learn (29). It follows from this, that the new job tenure does not prevent punishment for the offending employee, but rather

is one of the reasons for reducing the penalty for him, despite the fact that the new appointment to the job includes the newly appointed employee, and the employee transferred to a new job that differs in terms of its nature and how it is conducted from the previous job, and finally Includes employees who are hostile to public service or office.

#### **Fourth: The employee's admission of the disciplinary offense quickly**

That when an employee occupies a public position requires that he adhere to the job duties entrusted to him, and to estimate the size of the job responsibility entrusted to him, and if he commits a disciplinary mistake, whether it is a result of negligence or the circumstances of the person who was killed and led him to commit such a mistake, then stop continuing with that violation and terminate All the implications of it before the matter was discovered by the administration, and then hastened to admit that mistake, this behavior will strengthen the employee's position before the disciplinary authority. Accordingly, the disciplinary authority, when asking the violating employee, aims to achieve justice in the punishment and reform the employee's affairs if he makes a mistake, Therefore, there should be an application of the spirit of the law, which is taken into account when assessing the penalty. This is why the employee's hastening to admit his violation is a mitigating circumstance for the disciplinary punishment, and this is what the Supreme Administrative Court in Egypt ruled (when estimating the penalty to be inflicted on the erring employee, the court must consider what was The accused employee's haste to end his relationship with the business and his initiative to stop the effects of the violation by not continuing with it, which makes his behavior an intercessor for him in the measure of punishment )(30). The disciplinary court in Egypt also ruled in a case that an employee used in his personal travel the government travel forms designated for self-interest purposes, and the aforementioned employee confessed to the investigation authorities for his act and that he had to do so because of his

brother's sudden illness and his short hand, and for this the court used clemency with him to give him space To settle and not to return to that in the future (31).

It is deduced from this that if the employee was quick to report the error or administrative guilt he committed and ended all the consequences thereof, then this will be a mitigating circumstance when assessing the disciplinary punishment against him. Fifth: Existence of a physical or moral impediment to the employee or subordinate

The employee or the subordinate may be surrounded by circumstances that represent a restriction on his freedom, but they do not reach in their extent to the level of coercion, which compels him to accept the factual matter and comply with the implementation of the order in violation of the law issued to him by the boss or the manager, and these circumstances, if available, lead to a reduction in the disciplinary punishment ( Disciplinary). In principle, the employee must implement the orders and instructions issued to him by the boss if they are in the context of the law, but in some cases orders may be issued that violate the laws in force, so the employee or the subordinate who is obligated to implement such an order must orally alert the president of that violation, and if the latter insists According to him, his order must be written down, to avoid criminal and disciplinary responsibility (32), In other words, the disciplinary punishment prescribed for the violating employee is reduced if it is proven that there are circumstances surrounding him so that he was unable to convince his boss or alert him to his violation of the laws and instructions, because the latter insisted on his opinion. The issue (33). This is what the General Discipline Council went by with decisions that (the violation attributed to the objector, represented by not alerting the Director General to a violation of his approval of the instructions, does not rise to the level of the violation of the Director General who gave approval for the equipment without observing the instructions and the processing mechanism, and he is the first to follow and adhere to it as the administrative leader and responsible The first is

about imposing the law and monitoring its proper implementation, which makes the punishment imposed on the objector, with the limits of his administrative responsibility and its sequencing in positions of responsibility, severe and disproportionate to the offense attributed to him, so he decided to revoke the distinguished judgment and reduce the penalty to the penalty of downgrading and requires that the punishment imposed on the plaintiff be very appropriate and proportionate. And the act committed for the reasons and justifications mentioned therein (34). It is worth noting that the employee bears full disciplinary responsibility if he does not object to his boss's written order that involves violation of the law, and he also bears responsibility if he complies with a verbal order from his boss even though he believes that it is in violation of the law (35). It became clear to us, if it is proven that there is a material or moral impediment between the employee and his boss, so that he was unable to convince his boss that the order issued by him is contrary to the instructions and the employee is obliged to implement the order in violation of the law, then it is considered a mitigating circumstance for the disciplinary penalty when asked about it.

### **The second branch**

#### **Objective conditions**

The objective circumstances are what relate to the disciplinary offense itself, and they are as follows:

#### **First: poor distribution of work within the public facility (workload)**

The employee who fulfills the job conditions is required to perform the duties assigned to him with accuracy and honesty. Any breach of those duties generates administrative responsibility for him, because accuracy in work is required of him in all his work (36). Sometimes the employee may commit a mistake or a disciplinary violation and invoke the pressure of the work and its abundance or poor organization (37), but this does not justify him by not taking caution and caution at work, because this matter has other solutions than committing a disciplinary violation, so it is more appropriate for the employee to submit a complaint to his administrative head explaining his suffering

As a result of the poor distribution of work within the public facility and carrying a workload that exceeds the capacity of the ordinary employee in such a situation, he has the right to request an increase in the number of employees so that the work is evaluated according to a specific approach to achieve the desired goal of the work (38). It is deduced from this that if the employee is surrounded by circumstances as a result of work pressure or poor distribution and affected the will of the perpetrator of the disciplinary error without failing it, as in the case of the individual employee carrying burdens exceeding his capacity so that he is required to do more work than he can accomplish on time, then such justifications It is not taken or denied responsibility, but the disciplinary authority must consider the circumstances that surrounded the employee and pushed him to commit the mistake in terms of size, type and nature of the work before determining the punishment for him, that is, these circumstances must have an effect on the occurrence of the disciplinary violation so it is an excuse that mitigates the penalty and is not an excuse of which(39), This is what the Jordanian Supreme Administrative Court referred to in the case known as the (railway mission clerk) case by saying (If the large number of work entrusted to the employee does not exempt him from liability for what happened in terms of default, except that this shortcoming in the circumstances in which it occurred is not Raised to the level of gross negligence, and since the decision issued to dismiss the plaintiff was based on adapting the violation assigned to him to make it one of the grave administrative sins that fall under the third item of the first group offenses list, and he chose the most severe penalties for it, which is dismissal from service, he would have violated the law) (40), As for the position of the Egyptian legislator, it was not in a single context, as he considers that work pressure and misdistribution is an excuse that excuses the disciplinary responsibility of the employee when it is proven to the disciplinary authority that the large number of work entrusted to him exceeds the capacity of the ordinary employee, taking into account the nature of the

work and its circumstances sometimes (41), And at other times, work pressure and misdistribution is a justified excuse to reduce the punishment for the employee, and this is what the Supreme Administrative Court confirmed by saying (that the lack of good will by the presidential authority that supervises the employee

In a way that contributed to the occurrence of the violation, it is considered one of the objective circumstances surrounding the facts subject of the accusation, which must be taken into account when assessing the penalty (42).

### **Second: No harm resulted from the disciplinary violation**

The occurrence of the disciplinary violation by the employee constitutes in itself a breach of the administrative system decided by the legislator, as the disciplinary offense consists of an administrative error committed by the employee as a result of the latter's positive or negative breach of his job duties and then damage may result from that breach, but causing damage is not a condition for holding liability Disciplinary (43). If the disciplinary authority notices that no harm has occurred as a result of the disciplinary violation, then it is one of the mitigating circumstances for the disciplinary punishment prescribed for it (44), On the contrary, if the harm is serious, it is considered one of the aggravating circumstances of that punishment and the evidence for that is to note that the disciplinary penalties mentioned by the legislator are included in an exclusive and aggregate form so that the disciplinary authority can select from them what is commensurate with the severity of the harm or the offense committed and then subject to that Judicial oversight to ensure proportionality between the act committed by the employee and the penalty imposed by the disciplinary authority (45). As for the position of the Egyptian legislator, I consider that the non-occurrence of harm from the disciplinary violation is a reason for reducing the disciplinary penalty imposed as a penalty for the commission of the violation (46), and this is what the Supreme Administrative Court in Egypt went to say that (procrastinating in the implementation of

judgments issued against the state and delaying its execution by sin Administratively, with a degree of risk, because this undermines confidence in the state as a state of law, in which the administration is subject to the principle of legality and abides by the provisions of the law and respects the final judicial rulings issued by it and is committed to implementing them) (47). The Iraqi legislator also considered that no harm occurred from the administrative violation committed as one of the circumstances mitigating the disciplinary penalty. In the right of the plaintiff (the defendant), and through the course of the investigation, pleading and the justifications, it has been proven to the General Discipline Board that the papers submitted to the Salary Calculation Committee are papers free from defects but are not official and that the plaintiff (the distinguished one) has good faith in his aforementioned behavior And that the act attributed to him did not result in harm resulting in a legal violation that is suitable as a reason for imposing the punishment, and in this case the defendant (the discerning) has abused the use of power when imposing the warning penalty on the plaintiff (the appellant), so he decided to ratify the distinguished judgment (48) It became clear to us that the absence of harm from the violation committed is a reason for reducing the disciplinary punishment.

### **Third: Participation of the management and employee in committing the disciplinary violation**

The public administration, as a legal person, acts directly through natural persons who conduct legal acts, whether they are legal acts or material works in its name and for its account, and they are the employees, because these employees are linked to the administration or the administrative authority with an organizational relationship whose direct source is the legal texts (49). If the employee commits a mistake with which it is assumed that some damage has occurred to the state or individuals dealing with the administration because of him, and that error is represented by a positive or negative deviation in the behavior to be adhered

to or a departure from the requirements of the duty of the job, then this mistake is determined for him a disciplinary punishment, which is called the disciplinary violation (Disciplinary) (50). If it becomes clear to the competent disciplinary authority, according to its discretionary power granted to it, that the administration contributed to the commission of this mistake, represented by the president not following up with his subordinates and directing them to abide by the laws, instructions and regulations related to the organization of the public office, in order to avoid making such mistakes, the consequences of that disciplinary violation are borne by both parties together (Management and employee) and then it would be a mitigating circumstance for the disciplinary penalty imposed on the employee, and this is what the Supreme Administrative Court in Egypt ruled by saying that accusing the village bank manager of not following up on the bank's business resulted in the occurrence of the violations mentioned in the examination committee's report and his conviction based on that he is responsible for managing The business that he leads and thus holds responsibility for every mistake or deficiency proven by one of his subordinates (51).

### **The second topic**

Scope of application of mitigating circumstances for disciplinary punishment, It deals with different types of disciplinary tools.

#### **The first requirement**

Competent authorities to reduce disciplinary punishment

Disciplinary disciplinary punishment is imposed by different authorities according to the employment system, which are as follows:

#### **First branch**

The role of disciplinary authority in reducing disciplinary punishment

Knowing the role of the disciplinary authority is important because it plays a prominent role in setting it up as one of the main pillars on which the disciplinary system is right, as this system is an integral part of the job system, As a concept is determined

The disciplinary (disciplinary) authority of the disciplinary authority or the person legally authorized to inflict the disciplinary (disciplinary) punishment.

In terms of Jordanian legislation, jurisdiction in the field of discipline is divided between the presidential authority and the disciplinary councils, and the jurisdiction of the presidential authority (administration) has been defined to impose disciplinary penalties from (1-5) of Article (141) of the civil service system after the accused employee is questioned by the administration(52), In the event that the employee is referred to the Disciplinary Council, it shall be competent to impose severe penalties from (6-7) of Article (141) of the civil service system itself (53), and its goal is to verify the data and information received from the investigation committee, which conducts the investigation and interrogates the accused employee who is referred By confronting him with the behavioral violations attributed to him (54), if the disciplinary council confirms the circumstances and mitigating circumstances that the investigation committee has reached, this will be reflected on the type and quantity of the prescribed punishment (55). It is evident from this that the legislator applied the quasi-judicial system in addition to the presidential system and obligated the disciplinary authority, whether (the administration body or disciplinary councils), according to the discretionary power granted to it, to determine the amount of the penalty in proportion to the severity of the disciplinary violation in accordance with the mitigating circumstances found in the work environment, whether those circumstances were personal or objective. As for Egypt, the legislation regulating the disciplinary authority within the scope of the civil service did not differ much from the employment legislation in Jordan, as jurisdiction in the field of discipline was distributed between the presidential authority (56) and the disciplinary courts, as the presidential authority (administration) may impose simple penalties in the first paragraph of Clauses (1-5) of Article (61) (57), and the second paragraph of Clauses (1-2) of the same Article of the Civil Service Law No. (81)

of 2016 (58). As for the disciplinary courts, they are competent to impose the most severe penalties (59). From this it became clear to us that the legislator took the presidential system and the judicial system together, so that disciplinary bodies (administration, administrative prosecution, disciplinary courts), according to the discretionary power granted to them, investigate the violations attributed to the accused employee so that a penalty may not be imposed on the employee, except after hearing his statements and investigating his defense, may have reasons that may be mitigated by the type and amount of the prescribed punishment (60) it is not fair to strip the incident of any mitigating reasons or circumstances. With regard to the Iraqi legislator, he followed the conduct of comparative service and discipline laws, as he delegated the disciplinary authority to the presidential authority (administration) represented by (the head of the department or the authorized employee, the competent minister, the head of the entity not associated with a ministry, the prime minister, and the president of the republic). Because the administrative legislator has outweighed the effectiveness of the administration at the expense of the employees' guarantees, but it excludes some groups from its provisions, the above law does not apply to them (61). Recommendation from an investigative committee that is satisfied with the means of interrogation (62). As for severe penalties, an investigative committee must be formed to conduct the investigation in writing with the offending employee who is referred to, and in order to perform its task, it may record the statements of the employee and witnesses and review all documents and data in order to research and establish the truth of the act committed by the employee. Actually, it constitutes a violation and was surrounded by mitigating considerations or circumstances such as the good faith of the employee. Etc., this will be reflected on the conviction of the investigative committee that raises its recommendations to the presidential authority that referred the employee for investigation (head of the department) or the minister, and that it may suggest either not to hold

the employee accountable or to impose one of the penalties stipulated in the law (63). From this it appears that the Iraqi legislator applied the presidential system in addition to the quasi-judicial system in the distribution of disciplinary jurisdiction between the presidential authority (administration) and other parties. In sum, the position of the Iraqi legislator is somewhat close to that of the Jordanian legislator. Because both of them applied the presidential system and the quasi-judicial system when distributing disciplinary authority, unlike the Egyptian legislature, which differs from somewhat analog; Because it applied both the presidential and the judicial systems simultaneously, and the freedom granted to the administration represented by the disciplinary bodies is not absolute, rather it is governed by the principle of gradual penalties according to the severity of the disciplinary error, which is why it must choose the punishment that is proportional in type and amount to the degree and severity of the disciplinary violation committed (64) And to take into account any circumstances or mitigating circumstances when choosing one of the disciplinary sanctions.

### **The second branch**

#### **The role of the administrative judiciary in reducing disciplinary punishment**

The disciplinary authority has wide discretionary power when it issues disciplinary decisions, so if its decisions are left unpunished and without being subject to judicial oversight, this will enable it to arbitrarily use its authority and impose penalties that are not balanced or proportional to the degree of seriousness of the committed violation (65), so the administrative legislator provided guarantees The public employee has the right to confront the disciplinary authority through the right of judicial appeal against the disciplinary decisions signed on him, and the employee has the right, before submitting an appeal with those decisions, to appeal to the competent administrative authority to demand a review of its decisions in light of what he claims.

The Jordanian legislator subjected the final decisions issued by the disciplinary authorities to

challenge them before the Administrative Court (66), and the Supreme Administrative Court shall have jurisdiction to consider the appeals that are submitted to it in all the final judgments issued by the Administrative Court that are considered from the substantive and legal points of view (67). If the administrative judiciary proves that the employee's claim is correct and that the disciplinary authority did not take into account the employee's personal and objective aspects related to the error, which will be reflected in choosing a punishment that is not commensurate with its severity (68), then the administrative judge before him in the dispute may cancel the disciplinary decision so that its effects are removed retroactively (69). This is what was confirmed by the Supreme Administrative Court in Jordan in the case of (railway mission clerk), in which it stated: (If the large number of work entrusted to the employee does not exempt him from liability for what happened in the default, except that this failure in the circumstances in which it occurred does not amount To the level of gross negligence and in that the decision issued to dismiss the plaintiff was based on adapting the violation charged to him, making it one of the grave administrative sins that fall under the third item of the schedule Violations of the first group, and I chose the most severe penalties for it, which is dismissal from service, because he has violated the law. (70) Exaggeration and apparent inadequacy between the severity of the administrative guilt and the type and amount of the penalty (71), in addition to this, the legislator has empowered the administrative judiciary to rule for compensation for material and moral damages that may affect the employee as a result of inflicting the punishment on him, i.e. ruling for compensation according to the lawsuit to cancel the disciplinary decision (72). As for the Egyptian legislator, it followed the same approach as the Jordanian legislator, granting disciplinary courts the right to consider: requests submitted by public officials to cancel final decisions of disciplinary authorities (73), appeals to penalties imposed on public sector workers within the legally established limits (74), either the Supreme Administrative Court Final decisions on

disciplinary court rulings and in the cases specified by law (74). If it is proven to the judiciary that what the punished employee claims is correct and that the punishment involves some exaggeration or exaggeration, then he may cancel the decision based on a lawsuit to cancel the disciplinary decision that the punishment does not match the degree of the severity of the error (76), and this is what was confirmed by the Supreme Administrative Court in Egypt that (... The severity of the administrative offense is totally inconsistent with the type and amount of the penalty). (77), The Administrative Judicial Court ruled (... and one of the circumstances of the plaintiff's accusation in the two cases attributed to him was that this accusation did not justify his dismissal from the position, and when the contested decision was based on the reasons for dismissal on which the plaintiff was accused in these two cases This is an apparent inappropriateness in the decision, which makes it tainted by the defect of deviation in authority) (78). The judiciary also has the right to award compensation to the employee affected by the disciplinary decision, whether the request was submitted in an original or ancillary capacity. With regard to the Iraqi legislator, he followed the same path as the Jordanian and Egyptian legislator counterparts, as it granted (the Staff Judiciary Court) to adjudicate appeals with disciplinary penalties presented by employees In order to restrain the administration and compel it to respect the guarantees granted to employees during the investigation, the Supreme Administrative Court adjudicates appeals. With the final judicial rulings issued by the administrative courts of the judiciary (79), In order to restrain the administration and obligate it to respect the guarantees granted to employees during the investigation, the Supreme Administrative Court adjudicates the final judicial rulings issued by the administrative courts of the judiciary (80), and if the latter confirms the administration's excessive and excessive selection of a penalty that is not commensurate with the severity of the violation committed (81), He has the right to abolish, amend or reduce the disciplinary punishment, according to the circumstances and

facts of each case (82), and this is what came in the ruling of the General Disciplinary Council (that the downgrading penalty imposed against (the plaintiff) was due to an act that does not rise to the grave acts that deserve the punishment The imposed penalty and that penalty is inconsistent with the act, and the Council decided to reduce the penalty for demotion to a penalty for attention ..) (83), It also spent (it was found from checking the personal file of the objecting to find out that she is of good conduct, as evidenced by her obtaining (10) letters of gratitude and obtaining a grade of excellence for several years. Also, after the fall of the system, she was assigned to work that would collect maps and information. She did that honestly, so it is a penalty. Final dismissal from the position disproportionate to the act attributed to the objector, therefore, based on Article (15 / First) of the State Employees Discipline Law, the Council decided by agreement to reduce the penalty imposed on the objector from the final dismissal from the position to the downgrading penalty (84) It became clear to us that the administrative judiciary in Iraq has responded with boldness and courage to the administration's decisions to impose disciplinary punishment, so it has broad authority and absolute power to cancel or reduce the punishment or approve the decision to impose it if it finds it correct and in conformity with the law according to the case's circumstances and facts.

#### **The effect of mitigating circumstances on the original and dependent disciplinary punishment**

The legislation of the public service and the laws related to it within the countries under study did not include an explicit and clear text explaining the effect of mitigating circumstances on disciplinary punishment, although it specified disciplinary punishments exclusively in contrast to the disciplinary offenses that they listed for example (85), based on that The legislator is the disciplinary authority, freedom or wide discretion when determining the disciplinary punishment. However, these punishments are not of a single nature, some of them have two edges and others

have one limit, and this is what we will explain in the following two sections:

#### **First branch**

#### **The effect of mitigating circumstances on the original disciplinary punishment**

Reducing the disciplinary punishment leads to it being reduced to the minimum legally prescribed for it if the penalty is double-edged, either if the penalty has one limit, then the disciplinary authority is obligated to impose another penalty that replaces the original punishment, and this is what we will treat according to the following:

#### **First: Disciplinary (disciplinary) penalties are double-edged**

Some disciplinary penalties include a maximum and a minimum, despite their different names in the countries under study, namely:

#### **1- Punishment of salary deduction or salary cut**

The Jordanian legislator stipulated the penalty for deduction from the basic monthly salary of no more than seven days per month (86), and the Egyptian legislator also specified the penalty for deduction from the salary for a period not exceeding sixty days per year (87). As for the Iraqi legislator, the penalty for cutting the salary was mentioned by the installment deduction. The daily salary of the employee for a period not exceeding ten days by a written order mentioning the violation committed by the employee and necessitating the imposition of the punishment (88). It is clear from this that the Iraqi legislator differs from his Jordanian and Egyptian counterparts. Because the maximum number of times the salary deduction has not been determined, as it is possible that the employee's violation will be repeated and result in the repetition of the previous punishment, which harms the employee's career and financial position, so we hope that our legislator will follow the path of the Egyptian legislator that he specified that it does not exceed sixty days per year, Therefore, we propose to add the following statement on the disability of Clause (III / of Article (8) of the State Personnel Discipline Law No. (14) for the year 1991 as amended, which is that (... it does not exceed sixty days per year).

## **2- Punishment with withholding the annual increase for a certain period or decrease of the salary**

The Jordanian legislator mentioned the penalty for withholding the annual increase for a period of one year, and withholding the annual increase for a period of two years (89), while the Egyptian legislator referred to the penalty of suspension from work for a period not exceeding six months with the payment of half of the wage in full (90), as for the Iraqi law, it stipulated the penalty for reducing the salary. An amount of the employee's salary in a percentage not exceeding (10%) of his monthly salary for a period not less than six months and not exceeding two years (91). It is evident from this that the Egyptian and Iraqi legislators have explicitly and clearly stated the determination of the time period and the percentage of the deducted amount, unlike the Jordanian legislator, in that it neglected to clearly mention the percentage of the deducted amount, but was content to stipulate the time period.

## **3- The penalty of dismissal from service**

The Jordanian service law lacked this penalty, unlike the Egyptian legislator stipulated in it (92). As for the Iraqi legislator, it mentioned the penalty of dismissal from the service and it is to remove the employee from the job and remove him from it for a period determined by the dismissal decision, and that this punishment must be written and justified and it should not be imposed Cases provided for by law (93).

We realized that the Egyptian and Iraqi legislators provided for the separation penalty, and our legislator's position emerged in detailing that punishment more clearly than its counterparts, and the disciplinary authority may reduce the above penalties and apply them at a minimum level if the violation is accompanied by a mitigating circumstance that affected the amount of the prescribed penalty (94).

## **Second: Disciplinary (disciplinary) penalties of one limit**

Most disciplinary (disciplinary) penalties include one limit, in the case of an administrative violation committed by the employee, and then it is proven

to the competent disciplinary authority after examining the evidence, data and circumstantial evidence to prove or deny the existence of this incident or violation, but it was accompanied by several considerations or mitigating circumstances such as the absence of intent For whoever commits it that reduces the severity of the harm resulting from it (95), this requires the competent disciplinary authority to change or replace the original disciplinary punishment with another punishment lighter in type and amount from among the list of legally listed penalties, the purpose of reducing the penalty is to make its effect in terms of the material and moral side Have a positive impact that affects the future professionalism, behavior, and performance of the employee (96).

## **The second branch**

### **The effect of mitigating circumstances on ancillary disciplinary punishment**

Ancillary punishment - a penalty subordinate to the original punishment that it follows and takes place with it and is imposed with the force of law without the need to stipulate it in the judgment or disciplinary decision, that the effect of the mitigating circumstances on the ancillary punishment depends on its effect on the original punishment, and that is according to the following two tracks:

### **First: a change in the extent of the disciplinary punishment without changing its nature**

Change in the extent of the disciplinary punishment without changing its nature

The extent of the original disciplinary punishment may change without changing its nature due to the existence of mitigating reasons or circumstances that accompanied the occurrence of the violation, whether it was personal or objective, and then the penalty attached to the original disciplinary punishment would be enforceable by the rule of law (97), for example if the disciplinary authority in Egypt imposes a penalty Original for the violating employee, which is (deduction from the salary for a period exceeding 30 days as a maximum), the consequential effect or penalty resulting from it is delaying the promotion for a

year (98), but if this penalty (deduction from the salary) is reduced as a result of a reduced circumstance for a period of (10) days Instead of (30) days as a maximum of the convicted employee, the consequential effect or punishment is to delay promotion for a period of (6) months, Another example, if the presidential authority (administration) in Iraq determines a penalty (cutting the salary) as the original penalty against the convicted employee (99), then the effect or the consequential punishment resulting from it is delaying the promotion or increase for a maximum of ten months, but if this original prescribed penalty is reduced Legally, as a result of the existence of one of the mitigating reasons or circumstances and descending them at the minimum legally determined (cutting the salary for a period of one day), the effect or consequential punishment for it will be delaying the promotion or the increase of one month for each day of the salary cut.

It follows from this that ancillary disciplinary punishment is a direct effect of the power of law on the original punishment, that is, it is not unique to the account of the violating employee for his administrative error. Because that is one of the priorities of the original punishment due to its association with its presence and nothingness (100).

### **Second: Changing the nature of the disciplinary punishment itself**

The disciplinary authority may change the nature of the disciplinary (disciplinary) punishment itself, that is, replace another penalty from the same list of disciplinary sanctions Because it has only one limit, for example, if the original legally prescribed penalty is against the convicted employee (downgrading), and then this penalty was reduced due to the presence of a mitigating circumstance, which necessitated its replacement with another disciplinary punishment from the same list (such as the reprimand penalty) (101), the effect or punishment The consequence of the reprimand penalty is completely different from the effect of the downgrading penalty

**The end**

After we finished the topic of our research marked (The effect of mitigating circumstances on disciplinary punishment), we reached a number of conclusions and recommendations, the most important of which are:

### **First: the conclusions**

1- There was no specific and clear definition of mitigating circumstances for disciplinary punishment within the scope of the administrative law, and this prompted us to search for a definition of mitigating circumstances in the General Penal Code, and it was found that the definition of mitigating circumstances in the scope of the latter does not differ much from its idea in the private law.

2- The mitigating circumstances are characterized as an additional or extra element, because they are attached to the basic elements or elements that make up the disciplinary offense, that is, they do not enter into the formation of the disciplinary (disciplinary) violation itself, as it may be found in a violation and not found in other administrative offenses, on the contrary. We notice its effect on the quantity and quality of disciplinary punishment when one of these circumstances is available.

3- The extenuating circumstances that accompany the disciplinary offense are divided into two types: personal circumstances related to the offending employee and objective circumstances related to the offense committed.

4- The authority concerned with discipline differs in the countries under study. We note that the Jordanian and Iraqi legislators according to the quasi-judicial system along with the presidential system, because the Jordanian legislator has divided competence in the field of discipline between the presidential authority and disciplinary councils, while the Iraqi legislator has delegated the authority to discipline the presidential authority (administration) Basically, however, it excluded some groups from its rulings. As for the Egyptian legislator, it adopted the presidential system and the judicial system together, because it divided jurisdiction in the field of discipline between the presidential authority and the disciplinary courts.

5- Public employment legislation within the countries under study, disciplinary penalties (disciplinary) are specified exclusively according to the principle of progression, starting with the lightest punishment and ending with the most severe, while disciplinary offenses are listed by them as an example but not limited to, in light of this, the competent disciplinary authority has discretionary power. It is broad, but it is not absolute. Rather, it is governed by the principle of gradual penalties, as there is no regulation that defines for each violation the corresponding disciplinary penalties.

6- The Iraqi legislator outperformed the Jordanian and Egyptian legislators, when the administrative judiciary (the civil servants court and the supreme administrative court) was empowered to abolish, amend or reduce disciplinary punishment if the disciplinary punishment is not commensurate with the gravity and seriousness of the error committed, while the Jordanian and Egyptian legislators have authorized the judiciary. The administrative court (the Supreme Administrative Court) has the power to cancel the disciplinary decision and the ruling for compensation for material and moral damages suffered by the employee in the penalty of inflicting the penalty on him, but the Egyptian legislator allowed filing the compensation lawsuit in an original or ancillary manner, unlike the Jordanian legislator, as he registered it as a subsidiary for the lawsuit to cancel the disciplinary decision.

7 - The mitigating circumstances affect the original disciplinary punishment and its dependency. As for the original penalty, if it contains both upper and lower limits, the disciplinary authority may impose the penalty at the minimum set for it, but if the penalty has one limit, another penalty may be resolved than it is in type and amount of punishment. As for the effect of mitigating circumstances on ancillary punishment, it is determined in two directions: the first is a change in the extent of the disciplinary punishment without changing its nature, and the second is a change in the nature of the disciplinary punishment itself.

## Second: Recommendations

1- We call on the Iraqi legislator to set a specific definition of mitigating circumstances along the lines of the Iraqi Penal Code, and in a manner consistent with the nature of the disciplinary offense.

2- The application of mitigating circumstances requires that disciplinary penalties occur within two lower and higher limits, and for this we recommend the Iraqi legislator to set a higher and lower limit for each disciplinary punishment, and this is through the consequential effect of the punishment because most disciplinary punishments include the consequential effect of delaying promotion and increasing for a certain period. It is possible to set the minimum and the upper limit in this effect, so for example, the penalty for drawing attention will delay the promotion or increase from one month to three months.

3- Draw up the investigation committees' work mechanisms by issuing instructions, uncles, or controls issued by the competent authorities so that the committees can run over them while performing their work by investigating the violating employee.

4- That the Iraqi legislator differs from his Jordanian and Egyptian counterparts; Because it did not refer to the principle of proportionality between the violation and the disciplinary punishment within the provisions of the service law or the laws related to it, therefore we recommend that a paragraph or text be included within the texts of the State Personnel Discipline Law indicating the proportionality or compatibility between punishment and error in order to cut off the administration's intention to abuse the power.

5- We recommend the public administrations in our country to hold scientific courses, seminars and meetings on a regular basis because of an urgent need for all those who assume the functions of investigation and discipline, and maximum benefit in this field can be made through the sessions held by law colleges on a regular basis, and the presidential authority (administration) should encourage these employees to engage. With these scientific activities and provide detailed reports upon their return regarding the scientific

information and technical expertise that they obtained.

6- We call on the Iraqi legislator to set the time limit for the punishment of cutting the salary and to set a period not exceeding sixty days per year, as the Egyptian legislator did, so we suggest adding the following phrase on the disability of Clause (III / Article 8) of the State Employees Discipline Law No. 14 of 1991 The average is (... that it does not exceed sixty days per year ...).

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