

# Judicial Performance Of A Public Employee

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## Abstract

Whereas the implementation of the various functions of the state requires the use of natural persons who provide assistance with their technical expertise, performance and personal efforts in order to achieve the public good, as those in charge of these jobs may have actions and actions that raise administrative, civil and penal responsibility towards everyone to whom this responsibility applies, and we must examine In this responsibility a scientific research is clear to the elements and conditions of the public employee's responsibility, showing their implications and provisions, and in return the employee gives sufficient guarantees to defend himself (he is innocent until proven guilty).

The importance of the study emerges from the disclosure of the responsibility of the public servant for the performance of his job duties within the scope of the administrative law, in a set of fundamental elements that address the reality of this responsibility on the one hand, and the realistic importance of the actual implementation of the provisions of laws and regulations on the other hand.

The importance of this study also stems from considering the public employee as a form of responsibility, and this corresponds to the disciplinary guarantees granted to protect the public employee through the laws and regulations specified by the legislative and judicial authorities.

The current research will be divided into three chapters, the first chapter includes (the relationship of the public employee with the administration, and there are three branches out of it, and the second chapter deals with (the elements of determining the public employee), and the third chapter (the disciplinary guarantees for the public employee), then the research is concluded with the results and recommendations.

**Key words:** judicial oversight, discipline, public servant

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## Introduction

The public service occupies an important issue of administrative law, given the special importance of the personnel sector in the modern state, especially after the many tasks it has undertaken, by taking on the task of satisfying a large part of the public needs, and taking care of this important and vital sector of state workers needs to make a lot of effort and organization to get it to the best possible as a tool of the state in organizing its work.

The legislator also placed the public servant on a variety of functional duties that he must always abide by, and also restricted him to many prohibitions, which he too must take extreme care to avoid being caught, otherwise he would be subject to disciplinary accountability by the authorities.

The competent and since the public servant is subject to this issue has been surrounded by the street with a fence of guarantees in both the investigation and trial stages in line with and establishing the rules of legal justice that must always be tilted in the minds of energy and discipline in the public service an important role in establishing the principle of discipline, necessary to enable the department to play its role for the common good, it is a means of punishing the employee for acts that constitute disciplinary violations outside the requirements of the duty of employment, and the fact that the disciplinary penalty must be regulated,

diminished These controls are guarantees for discipline, which is respected, and the disciplinary bodies have broad powers to sign the sanction, which extends

The impact of depriving the staff member of many job benefits is that the staff member must be guaranteed guarantees in the face of those powers.

## Research problem

Since the implementation of the various functions of the state requires the assistance of natural persons who provide assistance with their technical expertise, performance and personal efforts in order to achieve the public interest, since those in charge of these functions may have behaviors and actions that raise administrative, civil and penal responsibility towards everyone to whom this responsibility applies, and we have to look In this responsibility, a scientific research that clarifies the elements and conditions of the responsibility of the public employee and shows its effects and provisions. In return, the employee gives sufficient guarantees to defend himself (he is innocent until proven guilty).

The problem of the study also appears from the increase in the size of the job burdens on employees, and the desire to clarify an important corner and an aspect that is indispensable for its vitality, which is the fear of responsibility resulting from the performance of daily work and the implementation of the orders of superiors, and this leads to the employee making mistakes and abuse of

responsibility, and from here gives full protection To defend himself through legally established guarantees.

### Research importance

The importance of the study appears from revealing the responsibility of the public employee for the performance of his job interest within the scope of administrative law, in a number of fundamental elements that expose the reality of this responsibility on the one hand, and the realistic importance of the actual application of the provisions of laws and regulations on the other hand.

The importance of this study also stems from the consideration of the public employee as one of the forms of responsibility, and this corresponds to the disciplinary guarantees granted to protect the public employee through laws and regulations defined by legislative and judicial procedures.

### Research aims

The research aims to:

- Identifying judicial control over employee discipline.
- Identify the nature of the public employee's relationship with the administration.

Search limits

Objective limits: Judicial control over employee discipline

Spatial boundaries: Iraq - Baghdad

Time limits: The research was conducted

in the 2021 academic year

## Chapter 1: Public Employee's Relationship with the Department

### First Topic: The Concept of the Public Employee

The public servant is defined as the person entrusted with permanent work in the creation of a state-run public facility or a person of public law, and the public servant is generally the one who holds a permanent job as a public utility, through direct exploitation by the State or its public units, and the civil service system defines the public servant as "anyone who holds a civil function of government agencies, regardless of the nature of his or her employment. The government has also established a national health service to provide health care to 100,000 people in the country.

- **The first condition:**

To hold a civil job regardless of whether it is a permanent or temporary job and whatever the main group it contains, whatever nationality of the occupant is Kuwaiti or non-Kuwaiti, whatever the tool of his employment by decision of whatever authority to issue it or to hold any kind, whether the appointment is under trial or without it, whether or not he is entitled after the end of his service to a pension or a bonus or not. Whatever the nature of his work or the name of his job.

- **The second condition:**

The post should be the function of a government agency, in the sense

specified by the legislator when the government body is defined in article 15 of 1979 referred to. This requirement is thus provided by reference to the functions of the various government agencies, regardless of the name they call them, whether they are a ministry, a public administration, a public body or others whose budget is within or attached to the State's general budget. ( )

### **Definition of the public servant in the Penal Code**

The Iraqi legislator defined the public official of the Penal Code as "an employee within the meaning of this section (the door of crimes against the public administration) every public official in the administrative or judicial corps, every officer of the civil or military authority or one of its members, and every worker or employee in the state or in a public administration. We note that the legislator in the Penal Code gave a broad concept to the public servant, which gave this status to anyone who works in any interest of the State, and the aim of the legislator is to protect public facilities and ensure that they run regularly and in the public interest.

### **Definition of public servant in the civil service system**

The Iraqi Civil Service System No. (30) of 2007 was defined in Article II of the employee by saying, "He is the person appointed by the competent authority in a position included in the schedule of job formations issued under the General Budget Act or the budget of a

department, including the employee appointed by contract and does not include the person who receives a daily wage."

The researcher notes that the Iraqi legislator's goal of defining the categories of employees subject to the provisions of the civil service system, but not the legislator's aim to develop a comprehensive definition that is contrary to the concept of public servant in the Iraqi state in general, because there are a large number of employees, not subject to the provisions of the civil service, yet no one can deny them the status of public servant. ( )

### **The second topic: The nature of the public servant's relationship with the administration**

The career of the public servant begins with the beginning of his accession to a public utility, providing services in exchange for moral advantages, within the scope of the association that regulates his relationship with that facility, and has sparked a long-standing doctrinal debate about determining the nature of the association governing the relationship of the public servant to the State or one of its facilities.

The relationship between management and public servant is of great importance as it is a regulatory relationship, so that it has become a general principle, agreed upon by the various legal systems in all countries, leaving room for the State to have its freedom to modify the legal conditions of the employee without causing any harm to him, and if this

occurs as a result of any conduct that harms the employee's rights and positions provided by law under the legal relationship with the administration, he can resort to the competent judiciary to correct his status and status, and return his rights, by challenging his or her rights. The administrative judiciary at the disposal of the administration, after it has exhausted all the means available to it to correct the imbalance that has affected its legal status. ( )

### **Contractual relationship**

The opinion initially tended to describe the relationship between the employee and the administration as a contractual relationship governed by private law and this theory is based on the time when civil law was the general law that applies to individuals and to the administration as well. ( )

Supporters of this theory believe that the relationship that binds the employee to the state is a contractual relationship, not different from its counterparts in private law, and this contract is described as a contract rented by people if the employee performs a material work and an agency contract if the work entrusted to him is a legal act, then this contract is Which determines the rights and obligations of each of the parties and thus the employee is in a personal contractual position like any other contractor in private law. Therefore, this theory has been criticized in terms of formality, that is, the employee's appointment in the state's service is

never done as a result of free discussions or bargaining between him and him. Between states, as this is imposed by the idea of contracting in civil law, and therefore it is impossible to say that there is an offer or free acceptance exchanged by the employee and the state, so the appointment of the employee and the determination of his legal status is based on the appointment decision alone and not based on the desire or will of the employee, and therefore there is no room for the existence of Bargains over the provisions of the position because these are all stipulated in the laws and regulations and all these rulings follow upon the issuance of the appointment decision. One of the results of the idea of the contract in civil law is the rule that the contract is the Shari'a of the contracting parties and this contradicts what is stipulated It includes the idea of the general approval, which dominates the public interest over the private interest, as the administration in this case will not be able to adjust the position of the employee except with his approval and consent as a contract with it under the idea of the civil contract, and the employee can terminate the contract, if the administration breaches the conditions The contract, which violates the rule of the ability of the general facility to be modified, changed and continuously developed by the administration alone.

In addition, this situation destroys a basic rule of administrative law, which is that the employee was found for the job,

not the other way around, because it is earlier than it exists, otherwise the state would not have needed it. ( )

The government has also taken measures to reduce the number of women in the public sector, including the employment of women, the number of women in the public sector, the number of women in the public sector and the number of women in the public sector.

### **Third topic: Public servant's duties**

In exchange for the rights enjoyed by the public servant, he must perform certain tasks to ensure the proper functioning of the public service, and the legislator has been subjected to the duties of the employees. ( )

It should be noted that these duties are not limited to specific, but are general duties resulting from the nature of the public service, and the legislator has provided for the basic ones, which we will show in turn:

- Performance of work.
- Obeying the presidents.
- Respect for laws and regulations.
- Failure to disclose the secrets of the job.
- Maintaining the honor and dignity of the job.
- It is not permissible to combine the job with any other work.
- Not doing political and anti-state actions.
- **First: Work performance**

The first and fundamental duty of the employee is to perform the work himself

and at the time and place assigned to it, and this duty of the public order is not permissible for the employee to waive it or to reprimand others in it for being attached to the rules of jurisdiction specified by law. It is part of this duty for the employee to do the work accurately and honestly, and to do his best in the interest of the public interest. ( )

### **- Second: obeying presidents**

The duty of obeying the subordinate to his superiors is one of the important duties of the public servant and the success of the administrative organization depends on how orders are received and how they are executed. The President's authority over his subordinates includes a range of terms of reference, some relating to the person of the subordinate and the other related to his actions. The President's authority over subordinates includes many terms of reference, including the right to appoint and choose, the president's right to allocate subordinates to certain acts, transfer, promotion and disciplinary sanctions. Therefore, the responsibility for the work of the Staff Member is to ensure that the staff member is not able to perform his duties in the field of work. The order must be issued by the employee by his immediate superiors in the same ministry, department or administration. The staff member may ignore the order issued to him by another staff member of a higher degree, but does not have any direct or indirect presidential connection to him. This is

confirmed by the French Council of State in many of its provisions and in any case the President does not have to assign one of his subordinates to commit a crime and not the subordinate to obey the order directed at him if he knows that it involves committing a crime and does not have to pay his ignorance of the law in this regard, it is the right of the President but his duty to refrain from carrying out orders that constitute a punishable crime, otherwise he is subjected to criminal responsibility as well as disciplinary responsibility. The employee must abide by the limits necessary to preserve the dignity of his superiors and the inviolability of the job when he finds himself forced to express his opinions and suggestions on a particular issue. "Obedience is a moral virtue, when it comes to asking for personal sacrifices, sometimes opinions and values must be compromised and will control training is sometimes done with cruelty," says Professor Catherine. ( )

- **Third: Respect for Laws and Regulations:**

The employee is bound by the duty to respect the law in its broad sense, which includes respecting the constitution, regulations, instructions, and presidential orders. As for the prohibitions on the public employee, it is prohibited for the employee himself or through an intermediary to perform any of the actions that are prohibited or forbidden according to the laws, regulations or regulations in force. If the employee

breaches this duty, he exposes himself to disciplinary and criminal liability if the conditions thereof are fulfilled. ( )

- **Fourth: Not to divulge job secrets.**

By virtue of his job, the employee is informed of matters and secrets, some of which are related to matters affecting the public interest of the state, such as military, economic and political secrets, and some of them are related to the interest of individuals and their private lives. This duty ceases to exist if the subject loses its confidentiality or becomes known by its nature, or to cancel the order that imposed this secrecy. Or the competent authorities allowed the disclosure of the secret, or the person who authorized the secret to disclose it, or if broadcasting the secret would prevent the commission of a crime. The employee's breach of this duty exposes him to disciplinary and criminal liability, as disclosing the job secrets constitutes a crime according to the Iraqi Penal Code. ( )

- **Fifth: Maintaining the honor and dignity of the job.**

The legislation made sure not to limit the responsibility of the employee to violating his duties within the scope of the job, but began to interfere in his behavior and behaviors in private and public life to prevent all that disturbs the honor and dignity of the public service.

- **Sixth: It is not permissible to combine the job with any other work.**

In order to preserve the employee's activity and the performance of his work accurately and efficiently, the legislator in the Civil Service Act prohibits the combination of the job and any work except in cases where those with professional and scientific qualifications may practice these professions in non-official working hours. ( )

## **Chapter 2: Elements of public employee identification**

There are certain elements and conditions underlying the idea of the public servant that it is necessary to identify and identify them in order to distinguish between the public servant and the other management workers that the department needs in the context of its duties, and we have found from the previous definitions of the public servant that there are a number of basic elements that require availability in the person for several employees, which are on the face of my machines:

- 1- Appointment by the competent authority.
- 2- Doing a permanent job.
- 3- Service in a public facility.

### **The first topic: Appointment by the competent authority.**

The status of public servant shall only be acquired by the appointee by law by an administrative decision of the competent authority. The career status of the employee subject to the legal system begins from the moment of the administrative decision to appoint him from the competent authority, and this

center remains standing and producing its effects towards the employee - rights and duties - until the functional relationship ends in one of the legitimate ways.

This is confirmed by the General Authority of the Iraqi State Shura Council as discriminatory in a ruling that states: ( ) The appointment of an employee must be in accordance with the rules of appointment provided by law and the appointment order shall be issued by a person with the power to appoint ( ) and the nomination of some individuals by the Administration for certain positions, and pledged to them to proceed with some of the duties of the post in fact does not give them the status of public servant and cannot be counted public officials even if they are paid for the work they have done, because the nomination is not binding on the administration because it is not binding on the administration because it You have to abandon it before the appointment is issued. ( )

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