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Solutions Related to Jurisdiction and the Investigation Process



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Abstract: - This study addresses the subject of guarantees for ensuring justice within quasi-judicial administrative authorities in Iraq, with a focus on the legal and procedural framework of administrative investigations. The study examines the legal and regulatory mechanisms that safeguard employees' rights while simultaneously enhancing the effectiveness of disciplinary procedures. The importance of this study lies in the pressing need to develop Iraq's administrative justice system, especially given the legal and procedural gaps in the functioning of quasi-judicial administrative authorities. The research aims to provide a comprehensive perspective on reinforcing justice guarantees and protecting employees' rights, thereby achieving a balance between public interest and individual rights. Study Objectives: 1 .Analyze the current legal framework for administrative investigations in Iraq.2 .Identify the gaps and challenges in the operation of quasi-judicial administrative authorities. 3 .Propose solutions and mechanisms to enhance justice guarantees in disciplinary procedures. Findings: 1 .the study revealed that referral is the first and essential step in administrative investigation procedures, serving as a key guarantee for justice. 2 .The findings uncovered deficiencies in Iraqi legislation regarding the specification of reasons for referral to investigation. 3 .The study highlighted the importance of the proper formation of investigative committees, as any defect in their composition could invalidate all undertaken procedures. Recommendations: 1 .the necessity to amend the laws governing quasi-judicial administrative authorities to address existing legal gaps. 2 .Establish effective oversight mechanisms over investigative procedures to ensure the fairness and integrity of disciplinary actions.

Keywords: Administrative Justice, Quasi-Judicial Authorities, Administrative Investigation, Fair Trial Guarantees, Iraqi Administrative Law.

I. INTRODUCTION

Administrative justice is a fundamental pillar in establishing a state of law and institutions, as it ensures the rights of employees and maintains the efficiency and integrity of public services. In this context, the importance of studying the guarantees of achieving justice within quasi-judicial administrative authorities emerges, particularly in the realm of administrative investigations and disciplinary procedures.

Statement of the Issue

This study addresses the legal and procedural framework of administrative investigations in Iraq, focusing on the role of quasi-judicial administrative authorities in ensuring justice and integrity in these procedures.

Problem Statement

The main issue lies in the existence of legal and procedural gaps in the functioning of quasi-judicial administrative authorities, which may negatively impact employees' rights and the effectiveness of disciplinary procedures. The central research question revolves around: What are the principles and solutions for ensuring justice in regulating the work of quasi-judicial administrative authorities?

Research Necessity

The importance of this study stems from the urgent need to develop the legal and regulatory framework for quasi-judicial administrative authorities in Iraq, ensuring a balance between the effectiveness of administrative procedures and the protection of employees' rights.

Research Objectives

- 1 .Analyze the current legal framework for administrative investigations in Iraq.
- 2 .Identify the gaps and challenges in the work of quasi-judicial administrative authorities.
- 3 .Propose solutions and mechanisms to enhance justice guarantees in disciplinary procedures.
- 4 .Explore ways to strengthen the independence and impartiality of quasi-judicial administrative authorities.

II. RESEARCH METHODOLOGY

The study adopts a descriptive, analytical, and critical approach, analyzing relevant legal texts and administrative practices, critiquing areas of deficiency, and proposing appropriate solutions.

Research Structure

Chapter One: Solutions Related to Jurisdiction and the Investigation Process

- Section One: Solutions Related to Jurisdiction
- Section Two: Solutions Related to the Investigation Process
 - Subsection One: Notification of the Employee of the Charges Against Them
 - Subsection Two: The Accused's Right to Access the File

Chapter Two: Guarantees of Justice in the Work of Quasi-Judicial Administrative Authorities

- Section One: Independence and Impartiality of Quasi-Judicial Administrative Authorities
- Section Two: Oversight of Investigation Procedures

Through this study, we aim to provide a comprehensive and in-depth perspective on developing the administrative justice system in Iraq, contributing to the enhancement of good governance and the protection of employees' rights.

Chapter One: Solutions Related to Jurisdiction and the Investigation Process

In this chapter, we will address the solutions related to jurisdiction and the investigation process, as follows:

Section One: Solutions Related to Jurisdiction

In some countries, after the government or members of parliament present draft laws, they are referred to the relevant quasi-judicial administrative committees for review and opinion, with a report prepared for submission to the parliament for discussion. This excludes financial draft laws, which are only discussed in the House of Commons.

Parliament discusses draft laws in stages, beginning with the reading of the text to inform members and distinguish between two draft laws presented by members or the government. The law is introduced by a member of parliament, followed by a first reading, printed, and distributed to members. If the proposal is from the government, the relevant minister explains and clarifies the objectives of the draft law¹.

Then comes the second reading stage, where the relevant minister explains and clarifies the objectives of the draft law. In the third stage, the draft is referred to one of the quasi-judicial administrative committees for amendments and report preparation. It is then referred to the House of Commons for discussion, and after approval, it goes to the House of Lords for consideration².

In the fourth stage, the House examines the report prepared by the relevant committee and discusses the proposed changes. In the fifth stage, the draft law is read, reviewed, final amendments are made, and the text of the draft law is read. The texts of the draft law are amended, and after the House's approval, it is sent back to the House of Lords for reconsideration. The House of Lords can delay ordinary draft laws for one year only, after which the law becomes effective. It can be passed without the House of Lords' approval.

In Britain, the legislative discussion stage is limited to parliament without government intervention. Although the government has the right to participate in proposing legislation in parliament, it has the right to intervene during the discussion stage. Once the discussion concludes, the draft law is put to a vote, and in Britain, laws are approved by a simple majority of members of parliament³.

¹. Mahmoud Khairy Issa, *Comparative Political Systems*, Anglo-Egyptian Library, 1963, p. 118.

². Mahmoud Khairy Issa, *Comparative Political Systems*, Anglo-Egyptian Library, 1963, p. 123.

³. Mahmoud Khairy Issa, *Comparative Political Systems*, Anglo-Egyptian Library, 1963, p. 118.

In Iraq, the Speaker of the House of Representatives refers draft laws submitted by the executive authority to the relevant quasi-judicial administrative committees for study, ensuring that the parliament is present to review and express opinions before presenting it to the council for discussion. Once a representative is appointed from the committee that presented the draft and the committee completes its work,⁴ the committee's report is registered on the council's agenda for presentation in one of its sessions prior to the council's meeting⁵.

When the draft law is presented to the council during the designated discussion session, the chair reads the committee's report and any opinions that may conflict with the majority opinion. In all cases, the discussion is based on the draft presented by the committee, and it begins with the discussion of the principles and general foundations of the draft⁶. In principle, disapproval of the draft is considered a rejection of the proposal by the majority of its members⁷.

If the House of Representatives approves the draft in principle, the discussion then proceeds on a clause-by-clause basis, and opinions are gathered for each clause separately before taking opinions on the draft as a whole⁸. After the complete reading of each clause and concluding the discussion⁹, opinions on the proposed amendments are first taken starting from the broadest scope, and opinions on the entire clause are collected, avoiding the original text. If the council decides to amend one of the clauses previously approved, it may renegotiate that clause; it may also renegotiate a clause already adopted if new justifications are provided before concluding negotiations on the draft at the request of the government, the committee chair, or fifty members of the council¹⁰.

After the draft is discussed in parliament, it is put to a vote. Since the draft law is read for the first time, voting on the draft can only occur at least four days after the discussion concludes. It is read and read again after at least two days, and actions are taken after receiving written proposals for amendments.

According to Article 59, Paragraph 2 of the Constitution, decisions are always made by a simple majority after achieving the quorum: "Decisions are made by a simple majority in sessions of the House of Representatives, after achieving the quorum, unless otherwise provided".

According to the internal regulations of the House of Representatives, decisions are made by the absolute majority of the present members, and in the event of a tie, the side favored by the president's vote prevails. A specific majority is required for certain matters specified in Articles 55, 60, Paragraph 6 (A, B), 60, Paragraph 8 (B, 3), 60, Paragraph 8 (H), 60, Paragraph 9 (A), 70, Paragraph 1, and 76, Paragraph 4 of the Constitution.

In Iran, the quasi-judicial administrative committees affiliated with the Islamic Council are groups of representatives formed to study plans and proposed draft laws in the Iranian parliament. According to Article 66 of the Constitution of the Islamic Republic of Iran, the number of quasi-judicial administrative committees and the duration of the representatives' terms will be determined in the internal regulations of the parliament¹¹.

Article 85 of the Constitution states :

..."The House of Representatives shall not delegate legislative power to an individual or council, but it may, in cases of necessity, delegate the authority to enact certain laws to its internal committees, applying the principle of Article 72. In this case, the laws will be enacted within the period determined by the House of Representatives, indicating that they will be implemented on a trial basis, and final approval will rest with the House of Representatives. The Islamic Council may also entrust permanent approval of the regulations of organizations, companies, or government or affiliated institutions to the relevant quasi-judicial administrative committees according to Article 72, or allow the government to approve them"¹²...

Typically, proposed laws and bills presented by the parliament are first examined by experts in the relevant quasi-judicial administrative committees, and when the proposal is presented in an open parliament session, the final opinion of the committee is requested and announced.

⁴ . Article (128) of the Internal System of the House of Representatives in Iraq.

⁵ . Article (37/First, Second, and Third) of the Internal System of the House of Representatives in Iraq.

⁶ . Article (131) of the Internal System of the House of Representatives in Iraq.

⁷ . Article (132) of the Internal System of the House of Representatives in Iraq.

⁸ . Article (133) of the Internal System of the House of Representatives in Iraq.

⁹ . Article (134) of the Internal System of the House of Representatives in Iraq.

¹⁰ . Article (135) of the Internal System of the House of Representatives in Iraq.

¹¹ . Article 66 of the Constitution of the Islamic Republic of Iran.

¹² . Article 85 of the Iranian Constitution.

The Iraqi Constitution of 2005 adopted a parliamentary system, as stated in Article 1: "The Republic of Iraq is an independent, sovereign state; its system of governance is republican parliamentary." In this system, the president and ministers are accountable to the House of Representatives.

The current Iraqi Constitution refers to three means of activating accountability and oversight over the quasi-judicial administrative committees, which are questioning, inquiry, and interrogation, but it does not regulate the subject of investigation, which is a criticism of it. However, the internal regulations of the House of Representatives addressed it in Article 32.

One of the most prominent mechanisms of oversight jurisdiction for permanent committees is as follows:

1 .Right to Question: This right allows any member of the permanent quasi-judicial administrative committees to question the executive authority or minister about a specific matter they are unaware of or wish to draw attention to. The question is often brief, focused on the matter being inquired about, and free from comments that provoke controversy or entail personal opinions that may harm the public interest or violate the constitution and existing laws .

Under Article 61, Paragraph 7 (A) of the Iraqi Constitution, the right to question is defined between the questioning deputy and the responsible minister, meaning that no one else may participate in discussing the question, which allows clarification of many obscure matters and directs the government's attention to some violations for remediation before they escalate¹³.

2 .Clarification: This is a right that ranks next to the right to ask questions. Like the right to ask questions, this right does not inherently imply an accusation against the executive authority or ministers, but rather seeks further clarification regarding the public policy of the ministry or one of its branches and the level of its performance .

It is clear that the right to clarification is more important and significant than the right to ask questions, as it comes at a later stage. This right is only invoked when the member is not satisfied with their question or seeks additional clarifications on the matter that was questioned, or if there are doubts among the council or some of its members regarding the minister's response .

Therefore, Article (61/Seventh/B) of the Constitution stipulates that the request for clarification must be submitted by no less than twenty-five members. If the question is directed specifically to the executive authority or the responsible minister, the clarification is first presented to the executive authority, which in turn refers it to the relevant authority or minister. Each will then set a date for appearing before the House of Representatives to present their response and engage in discussions. This implies that the matter being clarified often requires preparing a response by referring to certain documents and primary sources.¹⁴

It is noteworthy that the current Iraqi Constitution has unified the procedures for clarifications directed at the executive authority and the minister. In our opinion, it would have been preferable to differentiate in these procedures according to the importance and significance of the position held by the individual concerned. For instance, it could require that the clarification for the executive authority be submitted by a greater number of members than what is necessary for submitting a clarification for the minister. Additionally, presenting a clarification to the former should also require the approval of the council's presidency, in addition to the required number of members, considering the special status of the executive authority and the heavy responsibilities it bears. The council's presidency may not find the matter warrants clarification and may defer it before it is presented to the executive authority.

3 .Interrogation: The right of interrogation refers to the accountability of the government or one of its branches regarding certain actions or decisions. The interrogation inherently carries an accusation against the ministry; thus, this right is the most effective and serious means of confronting the executive authority and ministers, as it may lead to the dismissal of the entire government or one of its branches.

Given the seriousness of this right, comparative constitutions have surrounded it with many guarantees, and the current Iraqi Constitution has followed a similar direction. However, it is striking that the Iraqi Constitution has not tightened the procedures for requesting an interrogation; rather, it has outlined an easier path than that followed for clarification. It requires that the request be submitted by no less than twenty-five members directly to the concerned party without going through the council's president (a member of the House of Representatives, with the approval of twenty-five members, may direct an interrogation to the executive authority or ministers for accountability...). Discussion must take place at least seven days after the submission date .

¹³ . Article (61/Seventh/A) of the Iraqi Constitution.

¹⁴ . Article (61/Seventh/B) of the Iraqi Constitution.

In our opinion, what the Iraqi Constitution has outlined in this regard is questionable, as it should have specified more complex procedures than those required for submitting clarification and differentiated between the procedures to be followed in holding the executive authority accountable and those required for interrogating the minister. The first scenario may lead to the dismissal of the entire ministry, while the consequences in the second scenario are limited to the dismissal of the interrogated minister unless the ministry decides to resign entirely in solidarity with the dismissed minister.

It is evident that the Iraqi constitutional legislator recognized the serious implications of interrogation, but it limited the guarantees commensurate with the seriousness of this right to the subsequent stage of the interrogation only, when the interrogation results in a conviction of the executive authority or minister. At this stage, it mandated raising the issue of confidence in the executive authority or minister based on their request or based on a request from at least fifty members, with the council required to issue its decision at least seven days after the request is submitted.

Comparing the criminal accountability mechanisms that the executive authority has against the House of Representatives with those that the latter possesses against the former, it is evident that the council holds a more favorable position in this regard. Therefore, we see the necessity of restoring balance between the two authorities in this jurisdiction to approach the traditional parliamentary system¹⁵.

4 .Investigation: The Iraqi Constitution of 2005 does not address the issue of investigation; however, the internal regulations of the House of Representatives have rectified this omission by stipulating in Article (32 – Second) that investigations may be conducted with any officials regarding any incident that the council deems relevant to the public interest or the rights of citizens.

The Iraqi Constitution of 1970 referred to two means of initiating parliamentary investigations into the executive authority: clarification and interrogation¹⁶. Similarly, the National Council Law and the internal regulations of the National Assembly mentioned the rights of interrogation and questioning without clarification¹⁷. It is noteworthy that both the Constitution and the National Council Law utilized the term "clarification" instead of questioning, without exploring the differences in meaning between the two terms. This is evident from Article 47, Sixth of the National Council Law, which states, "to invite any member of the National Council to clarify or inquire." Here, the terms clarification and inquiry are made interchangeable or synonymous. However, clarification is a subsequent stage of inquiry that is, asking about something or a matter.

Regarding questioning, any member of the National Council may, through the president of the council, direct an oral or written question to any member of the Council of Ministers¹⁸. We believe that directing questions through the council's president is for organizational purposes and does not impede the representative's right to inquire. This is supported by the fact that the internal regulations do not grant the president discretionary power to decide whether to pose a question or not.

The internal regulations differentiate between oral and written questions in several respects. Initially, the question must be directed orally, and if the member is not satisfied with the president's answer¹⁹, they may submit a written question. Discussions regarding oral questions only occur if the questioning member requests it and the council approves this request. The internal regulations allow for discussions on written questions by both the questioning member and other members of the council. Furthermore, no more than five oral questions may be directed in a single session. In practice, however, the internal regulations do not specify a limit on the number of written questions that can be posed in a single session, indicating that the number of these questions is open and not constrained by a specific limit. Oral questions are answered immediately upon being posed²⁰. In contrast, the president has the option to respond to written questions either immediately upon their submission or defer them until the next session, or within a week of being informed of the question²¹.

The internal regulations state that written questions must be posed before a request for interrogation and prohibit requesting an interrogation immediately after posing an oral question²².

From this brief and rapid comparison between oral and written questions, it appears that written questions are more serious than oral questions. This is evident from the numerous guarantees surrounding written questions, as well as the

¹⁵. Dr. Ali Youssef Al-Shukri et al., *The Same Reference*, pp. 357–359.

¹⁶. Article (55/B) of the Iraqi Constitution of 1970.

¹⁷. Article (57/First) of the National Council Law No. 26 of 1995.

¹⁸. Article (94/First) of the Internal System of the National Council No. 26 of 1995..

¹⁹. Article (96/First) of the Internal System.

²⁰. Article (5/Second-Third) of the Internal System.

²¹. Article (96/Second) of the Internal System.

²². Article (96/First) of the Internal System.

stipulation that if a member is not satisfied with a written question, they have the right to request an interrogation. Each member of the National Council may submit a written interrogation to any member of the Council of Ministers through the president of the council. An investigation is only referred to the relevant president after it is supported by the approval of ten members, and the date for discussing the interrogation is determined by the presidency of the National Council in agreement with the relevant president within a maximum period of fifteen days from the date the president is informed of the interrogation²³.

The internal regulations do not require a special majority in the session during which the interrogation is discussed; however, it does require the presence of a majority supporting the interrogation. One of the National Council members supporting the interrogation presents the content of the interrogation, and then the president gives the executive authority an opportunity to respond²⁴.

After the president responds, a discussion and voting occur. If the vote results in the rejection of the interrogation, the matter is considered closed²⁵. However, if two-thirds of the council members support the interrogation, it will be regarded as a proposal to relieve the president from office. The executive authority has the final decision to dismiss the president or reject the proposal. The executive authority may request the National Council to summon the Prime Minister or any ministers for investigation regarding the matter referred to the council for investigation²⁶.

This indicates that the law does not permit summoning the Prime Minister or the executive authority before the House of Representatives for interrogation or questioning except upon a proposal from the executive authority.

Ministerial responsibility in the 2004 Iraqi Constitution is either collective or individual.

First: Collective Responsibility: Article (40) states:

1 .The Prime Minister and the ministers are accountable to the National Assembly, which has the right to withdraw confidence, either from the Prime Minister or from the ministers collectively or individually. In the event of a vote of no confidence in the Prime Minister, the entire ministry will be dissolved, and Article (b) below will take effect.

2 .If a vote of no confidence is passed against the entire Cabinet, the Prime Minister and ministers will lose their positions for a period not exceeding thirty days, until a new Cabinet is formed.

Second: Individual Responsibility

The ministerial responsibility is referenced in Articles 40 and 41. Article (40-a) states that the Prime Minister and the ministers are accountable to the National Assembly, which has the right to withdraw confidence, either from the Prime Minister or from the ministers collectively or individually. In the event of a vote of no confidence in the Prime Minister, the ministry is dissolved. As for Article (41), it states: "The Prime Minister shares his daily responsibilities in managing the government, and he may dismiss ministers with the approval of an absolute majority of the National Assembly. The Presidential Council may recommend to the Integrity Commission, after considering legal procedures, the dismissal of any member of the Council of Ministers, including the Prime Minister".

The term "supervisory jurisdiction" refers to the oversight of work or something specific²⁷. Dr. Jaafari Lankrudi states in his book on the classification of rights and laws regarding the term "supervisor" in semi-judicial administrative committees: "The term supervisor in semi-judicial administrative committees refers to someone who is concerned with the work or actions of a representative on behalf of a person or a group of people, to evaluate the validity of that work or those actions according to a certain standard of norms²⁸." He adds to this definition: "The supervisor's knowledge in semi-judicial administrative committees is a supervisory knowledge that requires the supervisor to be knowledgeable about the representative's work, and the lack of correction of that work does not detract from its validity²⁹".

From the perspective of the rights and fundamental laws concerning the legislative authority's oversight of the executive authority, this comes within the concept of "the means of controlling the political authority of the executive authority." Therefore, one of the main functions of Parliament – as is the case in legislation – is to oversee the executive authority;

²³. Article (97/First) of the Internal System.

²⁴. Article (97/Sixth) of the Internal System..

²⁵.Article (97/Seventh) of the Internal System.

²⁶. Article (95/First/B) of the National Council Law No. 26 of 1995..

²⁷. Ali Akbar Dehkhoda, Lexicon Dictionary, previous source, p. 54..

²⁸. Dr. Muhammad Jafari Lankrudi, Classification of Rights and Laws, Volume 4, Kanj Danesh, 1368 (1990), p. 706.

²⁹. Same source, p. 707..

one could even argue that the oversight function surpasses the legislative function. In this regard, John Stuart Mill states that the task of the House of Representatives is legislation, not governance; rather, the oversight of the government and scrutiny of its actions, especially if these actions are subject to opposition. Parliament must reprimand those government members who commit such actions or remove them from their positions, replacing them with others³⁰.

In a system of separation of powers, the executive authority, which possesses most capabilities, enjoys the highest form of governmental power, which allows the potential for exacerbating the dangers posed by such authority, which may violate the rights and freedoms of the people on a broad scale. For this reason, parliamentary systems provide means for the legislative authority to oversee the executive authority and scrutinize its actions.

The oversight of the legislative authority over the executive authority is of such importance that even in the presidential system of the United States, which is considered the most classic among presidential systems in the world, and which essentially operates under the principle of keeping the three powers separate, various types of congressional oversight over the federal government can be clearly observed. The necessity for the Senate to approve the appointment of senior government officials, as well as treaties and international agreements made by the U.S. administration, and the ongoing work of congressional investigative committees to evaluate the actions of the federal government are excellent examples of the oversight that the legislative authority exercises over the executive authority in the presidential system of the United States.

Thus, it can be observed that legislative oversight over the executive authority is not exclusive to parliamentary systems. There is also a necessity to control the political power of state officials and prevent potential abuse of their legal powers. Such oversight also exists in other political systems, such as the presidential system, albeit to a lesser degree than in parliamentary systems.

Although the term "oversight" is not explicitly mentioned in the Constitution of the Islamic Republic of Iran, this does not undermine the belief that the Iranian Constitution accepts the oversight of the legislative authority over the executive authority, encompassing all the meanings of the term oversight. The articles and provisions of the Constitution of the Islamic Republic of Iran clearly embody significant examples of the oversight that the legislative authority enjoys, particularly the credibility of oversight over the executive authority and political accountability before the legislative authority.

Article 89 of the Constitution explicitly addresses this issue, stipulating laws for the interrogation of executive authority officials, known as inquiries (interrogation) in the Iranian Constitution, which entails various examples of oversight exercised by the Islamic Consultative Assembly (Majlis) over the executive authority (known as "state" in Persian), including:

- Financial oversight laws of the Islamic Consultative Assembly as stipulated in Articles 52, 54, and 55 of the Constitution.
- Laws for prior oversight by the Islamic Consultative Assembly over the actions and decisions of the executive authority as mentioned in Articles 77, 78, 79, 80, 83, and 139 of the Constitution.

Laws concerning the political oversight of the Islamic Consultative Assembly as outlined in Articles 88, 89, 133, and 137 of the Constitution.

Now we address the nature of the role of the Islamic Consultative Assembly in exercising oversight and monitoring other authorities as well as governmental affairs through follow-up, research, and criticism:

The Islamic Consultative Assembly, which enacts and approves laws, has the right to continuous oversight of their implementation. It supervises the executive officials and monitors their actions and functions to ensure they proceed within the framework of the law. The Constitution grants the Assembly the right of oversight and specifies executive guarantees that allow it to carry out its mission effectively and minimize legal violations.

The methods and means established by the Constitution for exercising oversight, along with the actual oversight performed by the Islamic Consultative Assembly and the influence tools possessed by the legislative authority to impact the executive authority, are significant. In parliamentary systems, based on the nature of the relationships between authorities, the legislative authority exercises the highest degree of power over the executive authority. The various methods of legislative oversight over the executive authority indicate the existence of the aforementioned power, which includes:

³⁰. Marcel Berlofjan Bolo, Political Institutions and Basic Laws, Volume 11, p. 866...

1. Foundational oversight.
2. General oversight of actions.
3. Prior oversight (direct).
4. Financial oversight.
5. Political oversight.

As for practical and direct oversight, following the Leader, the executive authority in the Islamic Republic of Iran is considered a semi-presidential and parliamentary system simultaneously. The President is directly elected by the people, and the Assembly does not play a role in his appointment; however, the President selects members of his government to present them to the Assembly, and no government gains legitimacy unless it secures the Assembly's confidence (parliamentary system).³¹

Within the framework of the separation of powers system, the legal system of the Islamic Republic (Iranian constitutional law) relies on a relative separation of powers. Therefore, many articles of the Constitution provide the necessary foundation for members of the Islamic Consultative Assembly to oversee the actions of other authorities and all public issues concerning the affairs of the country, as stated in Article 76 of the Constitution, which affirms that the Islamic Consultative Assembly has the right to investigate and examine all matters of the country.

The Assembly, which exercises oversight in all its forms under legal authorization, practically monitors how the government is formed and any (ministerial) amendments that may occur according to the principles of foundational oversight.

Some commentators believe that one of the functions of the Islamic Consultative Assembly is to fully exercise its oversight duties, as the majority of the responsibilities of its members, particularly significant ones, consist of oversight functions. Therefore, if there are insufficient guarantees for the representatives to perform these duties, those who are being monitored may find any excuse to deter representatives from engaging in criticism, expressing viewpoints, or creating an environment that compels representatives to impose a form of self-censorship, at least, thereby limiting the potential for full exercise of the right to oversight, especially regarding the actions of influential government officials. Hence, there must be sufficient guarantees to provide reassurance for the representatives in this area, as well as to create an appropriate environment for criticism and oversight freely, without threat or fear of persecution. The Constitution indeed provides this foundation.

Based on this, and according to the Constitution, the President presents the ministers to the Assembly to gain confidence for the formation of his government. The Constitution and the Assembly's internal regulations establish specific rules and laws for overseeing the government formation process.

First – The Matter of Confidence for Ministers and the Cabinet

The first form of oversight exercised by the parliament involves its intervention when appointing members of the executive authority. The method and extent of this intervention vary depending on the nature of the relationship between the legislative and executive authorities.

In the Islamic Republic of Iran, as in other parliamentary systems, ministers, who are the primary actors in the political and executive process in the country, must obtain the confidence of the people's representatives in the legislative authority before they begin working in the executive authority. According to Article 133 of the Constitution, the President of the Republic, along with the ministers and their deputies, carries out the functions of the executive authority. The President selects the members of the Cabinet and presents them to the Islamic Consultative Assembly for confidence, with the purpose of forming the government³².

The law determines the number of ministers and the scope of their powers. The ministers and the government body selected in this manner will be politically accountable to the legislative authority, as the representatives of the people—

³¹. Dr. Sayyid Muhammad Hashimi, same previous source, p. 156.

³². The confidence granted to members of the Cabinet is done through a vote of confidence for each minister separately, and if the Council does not approve the confidence for any minister or any number of them, the President of the Republic will be obliged to observe Article 135 of the Constitution to present another person or persons for a confidence vote in the Council within a maximum period of three months (as stated in note 2 of Article 189 of the internal law of the council).

members of the Assembly—who approve the minister's appointment and grant him confidence from the beginning of his tenure, will maintain control over the minister throughout his term, requiring his continuous approval.

The parliamentary system is defined as the political system based on the cooperative relationship and mutual influence between the legislative and executive authorities, achieving a balance between powers. Since Montesquieu introduced this theory in his book "The Spirit of the Laws," it has formed a fundamental barrier against the tyranny or abuse of one of the constitutional authorities. The government's responsibility to the parliament is matched by its right to dissolve it. In this regard, referring to the people, who are the sovereign, is the ideal way to resolve any conflicts that may arise between the government and the parliament regarding any issues related to the state's public policy, which fundamentally requires "agreement between them"³³.

Based on this criterion of mutual influence, the minister assumes his position as a result of the cooperation between the President of the Republic and the members of the Islamic Consultative Assembly. This means that the President will select ministers from among those who are qualified and capable, and then refer them to the Assembly to gain their confidence. Article 137 of the Constitution states, "Each minister is responsible for his own functions before the Assembly." Ministers, who are members of the government, in addition to performing their individual duties, also play a joint role under the oversight of the presidency of the government, cooperating in decision-making within the framework of implementing the government's general programs. Therefore, the President will strive to choose ministers who can coordinate with him to enhance efforts and participation in his programs, and then present them to the Islamic Consultative Assembly, which must ensure their effectiveness in managing the affairs of the Cabinet in a way that secures the interests of society. Consequently, the first part of Article 87 of the Constitution stipulates that the President must obtain the Assembly's confidence for the members of his government before taking any further steps.

One commentator on the Constitution suggests³⁴ that the first part of Article 87 indicates that the Cabinet members receive confidence individually, thus forming the Council. Therefore, the formation of the government occurs through voting to obtain confidence for the group of government members before any other steps, as confirmed by the drafters of the Constitution, to emphasize the coordination previously mentioned through the Assembly granting confidence to the entire government. However, he adds that this legal arrangement appears somewhat unacceptable, as its implementation is not without issues. In this regard, let's assume that the ministers received the Assembly's confidence individually according to Article 133 of the Constitution, and collectively formed the Cabinet. What would happen if the Assembly refrained from granting confidence to the government as a whole through the vote referred to in Article 87, which aims to maintain coordination among the ministerial body? Certainly, this method is not logically acceptable. The correct approach is for the Assembly to first examine the coordinated program for the government's performance to approve it, and after adopting the program, assess the capabilities and competencies of each minister individually for a vote of confidence.

Second – The Issue of Changing Ministers

Among the issues addressed by the legislative authority within the framework of its oversight over the executive authority is the oversight of changing ministers and examining important issues and disputes that arise within the government. Article 136 of the Constitution stipulates that in the event of resignation by one or more ministers, or if the President of the Republic decides to dismiss them, he must present a request to the Islamic Consultative Assembly for confidence in the new minister or ministers. If half of the recognized Cabinet members resign, the President must submit a request to the Assembly for renewed confidence in the entire ministerial body. It can be inferred from the concept of Article 190 of the Assembly's internal regulations, which states the case of changing more than half of the government members, that the Assembly, after verifying the ministerial composition and reviewing the government program, will proceed to vote on granting confidence to the ministerial body. The approved ministerial body can also request the Assembly to vote on granting it confidence when necessary to discuss important issues or disputes that may arise within the government. Article 87 of the Constitution affirms that the ministerial body is responsible for determining the emergence of cases of necessity to discuss the important issues or disputes mentioned above³⁵.

Regarding constitutional oversight in other countries, we can refer to the United States, which adopts a complete separation of powers system, where Congress is not involved in the establishment and formation of the executive authority and does not intervene in forming the U.S. administration³⁶. However, the President's selection of ministers, ambassadors, judges, and a large number of federal employees requires the approval of the Senate³⁷. One of the well-

³³. Dr. Zahra Shakir, *Al-Wasīṭ fi Al-Qānūn Al-Dustūrī Al-Lubnānī*, previous reference, p.600.

³⁴. Dr. Sayyid Muhammad Hashimi – Professor of Constitutional Law at Shahid Beheshti University.

³⁵. Article 191 of the internal law of the council.

³⁶. Appendix Twelve of the United States Constitution, June 15, 1804.

³⁷. The American Constitution, Article 2, Clause 2.

known methods for Congress to oversee the actions of the federal government is through investigations conducted by committees of the House of Representatives and the Senate³⁸.

In Britain, the cradle of the parliamentary system, oversight is characterized by the presence of a parliamentary ombudsman. The existence of this position in the British parliament is unique among other parliamentary systems, as the ombudsman independently examines complaints regarding mismanagement by executive officials at the request of the House of Commons³⁹.

Section Two: Solutions Related to the Investigation Process

Legislators have established several substantive guarantees that must be followed in administrative investigations, including: the right of the accused employee to confront the charges against them, the right to defense, the impartiality of the investigator, the proportionality of disciplinary actions, the punishment for administrative violations, and the justification for administrative decisions imposing disciplinary penalties.

Confrontation entails informing the accused employee of the allegations against them, enabling them to prepare a defense and refute the accusations. They should be given sufficient time to present their remarks and must be fully informed of all matters pertaining to the case file, not just the accusations against them⁴⁰.

Subsection One: Notifying the Employee of the Charges Against Them

Informing the employee of the charges against them is a fundamental assumption of the right to defense. They must be made aware of all actions taken against them, the allegations made, and the supporting evidence so that they can respond effectively, with adequate time provided for them to prepare their defense. This preparation may require meticulous work, and the deadline granted to the accused employee is at the investigator's discretion⁴¹. However, the Iraqi legislator has not enshrined in the Disciplinary Law any provision mandating the administration to notify the employee of the allegations against them; rather, it includes a provision stating that the investigation committee shall conduct the investigation in writing with the accused employee and shall hear and record the statements of the employee and witnesses⁴².

Nonetheless, we believe that the investigation committee is obliged to notify the employee and inform them of the charges against them, because the Disciplinary Law for State and Public Sector Employees in Iraq has bound the general disciplinary council to refer to the provisions of the Iraqi Criminal Procedure Law No. (32) of 1971 in cases that do not respond to the provisions of the Employee Disciplinary Law. Referring to the fundamental provisions of the courts, we find that Iraqi legislation has mandated, in Article (123) of the aforementioned law, that those subject to investigation be informed of the charges against them.

In practice in Iraq, employees are notified to appear before the investigation committee to listen to their statements and defend themselves, provided they are informed of their attendance before the investigation committee. No specific period is set for attendance, which falls within the discretion of the administration. Since this is one of the constitutional principles, the administration is obliged to inform the employee of the charges against them, even if the Employee Disciplinary Law does not include a provision in this regard.

Thus, we propose that the Iraqi legislator explicitly stipulate in the Employee Disciplinary Law the necessity of notifying the employee of the charges against them within a timeframe determined by law. Typically, the focus on disciplinary laws should be more comprehensive than the laws governing investigation committees in administrative investigations with employees. This notification should eliminate ignorance of all matters related to the violation in terms of its nature and the evidence provided so that the employee can prepare their defense.

This was explicitly organized in this guarantee in Article (140/A) of the Civil Service Regulation, which states: "A- The following guarantees must be provided to the employee before any penalty is imposed on them, including informing the employee in writing of what is attributed to them, including the committed violation and the mechanism involved".

It is clear from this text that Syrian legislation has obligated every disciplinary authority in the system to notify the employee of the violation they committed through written notification. This, in the researcher's opinion, is a

³⁸. Bernard Schwartz, *The American Constitution*, New York 1969, p. 62.

³⁹. Dr. Muhammad Ali Khani, *Constitutional Law*, Dasatan Publishing, 1373 (1992), p. 320..

⁴⁰. Al-Ajarmah, Novan, *The Authority to Discipline Public Employees*, previous reference, p. 420.

⁴¹. Yaqout, Muhammad, *Explanation of Disciplinary Law*, previous reference, p. 835.

⁴². Text of Article (10) of the Iraqi State Employees Discipline Law.

commendable act by the Syrian legislator, as the principle of confrontation is considered one of the essential guarantees in administrative investigations.

Subsection Two: The Accused's Right to Access the Case File

The ability to view the case file is a fundamental disciplinary guarantee afforded to the accused employee by informing them of their file before any disciplinary action is taken regarding a disciplinary error .

The file in this context refers to the disciplinary case; thus, every disciplinary investigation concludes with the preparation of a file that contains all investigation papers, data, and related documents, organized and numbered sequentially. Informing the employee of the investigation file or case papers against them is considered a vital means to surround them with the specific charges and prepare evidence for their defense⁴³ .

This right to access the file entails informing the employee of all documents related to the disciplinary case, including investigations and documents concerning the charges against them, without concealing any relevant information that could aid in their defense. The reality is that the logic of prohibition and secrecy no longer aligns with the developments we witness today, especially with the philosophy of transparency that has begun to permeate administrative domains.

While the Iraqi Disciplinary Law for State and Public Sector Employees does not explicitly state the employee's right to view their personal file before any penalty is imposed, the lack of such a provision in the Disciplinary Law does not negate the disciplinary authorities' obligation to adhere to this procedure, which should be observed as an important guarantee in line with general principles of law. The researcher suggests that Iraqi legislation should enhance this guarantee by explicitly including it in the core law, thereby creating a balance in such cases by providing all guarantees to the employee, including allowing them to view their file, which contains all documents and papers related to the case, ensuring that the procedure does not harm the administration in any way nor jeopardizes the disciplinary actions taken against the employee.

Moreover, the Syrian legislator explicitly states this right in Article (145/B/1) of the Civil Service Regulation, which stipulates: "The following must be taken into account when conducting the following: 1- The accused employee must be provided with all documents related to the violation or complaint under examination, allowing them to present their defenses and objections in writing or orally, and to discuss the required witnesses and contact any person to testify, as they are permitted to include any relevant documents or other reports related to the investigation file, and the statements of any witness must not be heard until after taking the legal oath".

This provision establishes a fundamental guarantee for the objective rights of public employees in administrative investigations. It is not sufficient to merely inform the employee of the violation and the charges against them; they must also be enabled to express their defenses and objections effectively, which comes not only from being allowed to view the disciplinary case file .

To affirm this, the Syrian Supreme Court has ruled that: "One of the fundamental guarantees that the legislator was keen to observe in administrative investigations is confronting the defendant with the facts of the specific charges against them, informing them of the facts surrounding the violations attributed to them, indicating that they committed the violation, so they can prepare their defense, as they must be confronted with the evidence against them, which is made clear by the documents or the testimonies of witnesses, and they must be able to discuss this evidence"⁴⁴ .

III. CONCLUSION

Through the study of guarantees for achieving justice in quasi-judicial administrative authorities, we have been blessed with the opportunity to derive a set of results and recommendations, which are as follows:

IV. RESULTS

The study revealed that referral is the first and essential step in administrative investigation procedures and constitutes a fundamental guarantee of justice in the work of quasi-judicial administrative authorities.

The results uncovered a deficiency in Iraqi legislation regarding the determination of reasons for referral to investigation, which may affect the objectivity of administrative decisions.

⁴³ . Ahmad Al-Saddam, Administrative Investigation Procedures and Guarantees, previous reference, p.177.

⁴⁴ . Supreme Judicial Decision No. 466/2011, Al-Qistas Legal Center Publications, dated 14/4/2011..

The study indicated that Iraqi law restricts the authority to refer an employee to investigation to the minister or head of the department, ensuring a certain level of responsibility in the decision-making process.

The results demonstrated that the disciplinary system in Iraq is characterized by flexibility in defining disciplinary violations, as any breach of job duties is considered a potential reason for referral to investigation.

The study concluded that Iraqi law grants the investigative committee broad powers to collect evidence and hear witnesses, enhancing its ability to uncover the truth.

The results highlighted the importance of properly forming the investigative committee, as any flaws in its composition may invalidate all actions taken.

The study revealed the existence of a legal framework that guarantees the right of the accused employee to access the case file and the charges against them, thereby reinforcing the principle of fair trial.

The results showed that Iraqi legislation places significant importance on formality in investigation procedures, ensuring the integrity of the processes and protecting the rights of employees.

The study concluded that it is necessary to enhance the independence and neutrality of quasi-judicial administrative authorities to ensure the integrity of administrative investigations.

The results indicated the need to develop effective oversight mechanisms on investigation procedures to prevent the abuse of power against employees.

The study concluded with the importance of establishing clear legal controls that define the cases in which the administration may refrain from providing documents to the investigative committee, ensuring transparency and justice in the procedures.

Recommendations

There are real challenges in codifying disciplinary violations; however, efforts should be made to overcome the difficulties hindering this goal, which is achievable if various efforts in jurisprudence and legislation converge to achieve this aim. The challenges preventing the specification of disciplinary violations have not yet reached an absolute state of impossibility, as long as certain solutions that align with the majority of opinions exist, such as partial codification of some disciplinary violations that carry severe penalties like dismissal from service or removal from office. Such violations should not be left unregulated, as defining them acts as a strong barrier against their occurrence.

The investigation by quasi-judicial administrative authorities should be subject to actual oversight of the investigation procedures by the relevant administrative authority, so that it does not serve as a façade for targeting the employee, especially since administrative investigation may be conducted by a single individual. Therefore, the stance of the aforementioned Iraqi legislator and the Jordanian legislator in forming investigation committees is a sound approach and constitutes a guarantee among the guarantees for disciplining public employees.

The Iraqi legislator should address the legislative deficiencies in the next amendment to the Law of Discipline for State Employees and the Public Sector, by explicitly stating the location of the requested documents by the investigative committee, in addition to establishing controls that specify the circumstances under which the administration may refuse to provide documents to the investigative committee for review and to fulfill its mission. Otherwise, the refusal to present those documents requested by the investigative committee should be considered an administrative violation. It is suggested that the Iraqi legislator follow the approach of the Syrian legislator in this regard, according to the text of Article 140(b)(1) of the Civil Service System.

Despite the real challenges in discussing guarantees for achieving justice in quasi-judicial administrative authorities, it is necessary to overcome the issues that hinder this goal, which is feasible if various efforts in jurisprudence and legislation are combined to achieve it. The prevention of exposing disciplinary violations has not yet reached an absolute state of impossibility, provided that specific solutions that align with the majority voices exist, such as partial allocations, for instance, for certain disciplinary violations that necessitate strict penalties. Severe penalties like dismissal from service or removal from office should not be left unregulated under any circumstances, as the relevant legislation and defining violations act as a formidable barrier against their occurrence.

V. REFERENCES

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