



The role of Iraqi administrative courts in combating corruption and ensuring employee rights in the public sector

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Abstract

In accordance with the point of view worked out within the framework of traditional paradigm it is viewed as reflecting the work of socio-relations in society, as well as their supervision and adaptation to various negative processes in it, whether internal or external. Accordingly with the general up tempo of peoples lives with developmental processes a set of internal standards of country have emerged to regulate many spheres of their life in as much as the roles that they play it has include the public service as branches of public law because of the relation of the public service to people's life with the functions that deliver services to satisfy the communal needs within this sphere in the service arena. The public service is regarded as one of the tools of public administration which allows it to deliver these services as a legal body that performs work through its delegates, ordinary population (employees), and in the same right considered as the means of public administration and its representatives in this regard. However, the presence of these people alone does not allow public administration to deliver its services to citizens and perform its work as effectively and efficiently as possible, since it requires public funds that it uses to finance for public purposes. The various means of public administration, represented by public employees and public funds, make unlawful uses and applications in embezzlement and misappropriation of the public funds that have been allocated for the people's benefit through corruption and exploitation of this money, in addition to what was said, in addition to seeking for legal means through administrative courts to fight this administrative corruption in various state agencies by the administrative ruling for the purpose of responding to it and legally addressing.

Keywords: Ensuring employee rights, Iraqi administrative courts, public sector

Introduction

The law as a branch in general is an organizer of the work of social relations in society, as well as regulating and adapting to various negative phenomena arising in it, domestic or foreign. Thus, due to the developments and tempo of human life in general, a number of internal laws of countries exist which provide for different fields in terms of the roles they play; and of these, there is the public role which, by the reason of the impact it has on the lives of the people through the services rendered by such roles relating to the public need thereof, is a vital branch of public law. The public function is considered as the one of the forms used by means of public administration to provide the mentioned services, as it is a legal entity, performing its tasks through its officials from ordinary people are considered as the means of public administration and its figures in this sphere. But this presence of such individuals alone does not catalyse the public administration to deliver its services to citizens and perform its work in the most comprehensive and efficient manner. It requires government money which it uses to finance for sundry public endeavors in order to execute its various activities. Therefore, these means of the public administration enacted by public employees and from public funds in turn generate the illegality and applicability of the ineffectiveness of the public funds that are provided. This is corruption and misuse of this money for the benefit of the people through what was said, with what was mentioned needed with what has been said to seek the right legal means to fight the administrative and financial corruption in different states' institutions to stand and address it legally by the administrative governor for the purpose of the character and addressing it legally with

appropriate legislation raised by this topic to discuss this research tries to answer the questions that came.

The research problem

The basic research problem lies in trying to discuss and solve a set of questions, namely: The following question arises: what is to be understood by a public employee according to the provisions and rules of the administrative law? What significance does the job he does within the framework of this law make? What is its impact in the field of providing public service to citizens, with a statement of the rights he enjoys and the duties he is committed to in the field of administrative law, and what are the components of combating administrative financial corruption by the administrative governor according to the Iraqi legislation in force to limit the illegal exploitation of public funds in light of the provisions of Iraqi jurisprudence and administrative judiciary in order to achieve social justice in the field of services provided Along with the presentation of the trend of jurisprudence and judiciary regarding the advanced questions.

Research methodology

For the above reasons and due to the significance of the topic of the study, this study will be conducted analytically, deductively based on extrapolation and analysis of the various administrative legal texts with regard to the work of the various administrative courts in connection to the public function, when they intersect with the work of the various state departments or in their rulings concerning other judicial courts in the area of combating of administrative and financial corruption and the abuse of public as well as

based on the texts of the relevant legal legislation, in order to present to the researcher and the reader a clear, true picture of the components of combating administrative and financial corruption in the various state institutions, and in other cases, we have resorted to the historical method, which will enable us to follow the various stages of the reality of legal work in this field without being an independent method.

Scope of the research

The research refers to the position of the legal texts to define the rights and responsibilities of the employees of the various state departments under which these legal centres were established and the role of the legal texts of the system in defining the nature of their legal work in providing public services to the citizens, and the position of the national penal legislations, including its ability to state the legal reality in the field in fighting the administrative and financial corruption by the administrative courts through

Dividing the research plan

Due to the importance of stating the reality of the components of combating administrative and financial corruption in state institutions and proving the effects of this reality on the work of the public service, this topic has been studied in this research entitled: It will be divided into two sub-topics because the first sub-topic was named: (Employee rights and duties), while the second sub-topic is named: (Powers of administrative courts in combating administrative corruption) In addition it includes the introduction which includes the abstract of the research topic, and the conclusion in which there are the most important findings and recommendations resulting from the research in order to have a clear and complete picture about fighting against the administrative and

Employee rights and duties

The regulation on the employee of state departments is related mainly in administrative law and in addition to the legal and administrative rules and regulations that govern work in this area, since these rules and regulations was born from the womb of this law and exists and perishes with it, and therefore it is specific and does not accept adjusting its evidences

Employee rights

The job is the state's means of implementing its plans and programs that it wants to implement in the service of the public interest and in various fields, as the public employee was defined according to Iraqi legislation under the Civil Service Law No. (103) of 1931 (repealed) and under Article ^[2] thereof: (The employee ^[1]). The civil service laws in Iraq have also defined the public employee in order to clarify the legal rights of this segment of citizens, as they also included Article (2) of the repealed Iraqi Civil Service Law No. (64) of 1939; as well as what the Iraqi legislator settled on in the amended current Civil Service Law No. (24) of 1960 and under paragraph (1) of Article (One). in defining the public employee as (every person who has been assigned a job in the government in return for a salary he receives from the general budget or a special budget and is subject to the provisions of the Retirement Law) ^[2]. Thus, we conclude from the definitions mentioned above that the public employee in the state is the one who works in state

departments or the public sector on a permanent basis with the rights and duties that this status entails. We also conclude that workers in the public sector of the state as workers are employees who enjoy the same rights and privileges enjoyed by employees of state departments, and they are also subject to the same duties and obligations that The public employee in the state ^[3]. The most prominent legal rights of the public employee are the financial rights that include the salary, allowances and other incentives. The employee's salary is a monetary amount called the monthly salary in exchange for his work in his job in the public service, and this right is guaranteed under paragraph (1) of Article (16) of the Iraqi Civil Service Law No. (24) of 1960 (amended), as this article included that the public employee in the state departments is entitled to his salary upon appointment to a government job, starting from the date of his commencement of his job, and this salary is in exchange for the work that the employee performs in providing the public service ^[4].

The public employee also should be given bonus and promotion for job he performs, as, for example, the annual bonus is defined as a specific rise provided by the law added to the monthly salary of public employee. The employee also should have a promotion in his public job, which involves promotion of the employee from one job grade to a higher job grade, this most leads to an increase in the amount of his salary but this is on condition that the following controls and determinants are available these include the period the employee had spent in his previous job grade, availability of the vacant grade in the job cadre in the department that the employee is a member of. The employee also needs a promotion through a transfer through his entitlement which is a job that is higher than job which the employee occupies on the administrative ladder in the department where the employee belongs. Elevation of the employee in his job leads to growth of his responsibilities and legal authority in the new job, thus the relevant labour legislation provisions insist on the objective and legal foundations that has to precede choice of the employee as suitable for a higher job position. Therefore these objective bases make it possible to promote the public employee in government departments who has legal authority.

The public employee is also privileged a specific mode of leave in accordance with the Civil Service Law No. (24) of 1960. Among these leaves include the regular leave which were defined in compliance with law (Article 43) which defines the right of the public employee to annual leave with full pay where the rate of the leave is one day for every ten days of the employee's service period. These leaves upon the provision of law may be stacked in a way that gives the employee a total of (180) from this leave granted at any one time though the employee can be given (120) days with full pay. The administration also does not have to provide the public employee with regular leave at any time that the employee desires because the need to govern the public facility that delivers a public service to the people might necessitate the employee to keep on working. However, the public administration cannot continue to refuse to grant the public employee leave More about This The subject matter of this paper is one that cannot be overemphasized, particularly in regard to the obligation of the public administration to grant the public employee a leave. In any case the normal period exceeds ^[6] months and the employee is entitled in this case upon his referral to retirement to the

financial amount that will be earned from the accumulated leave for a maximum of (180) days and any excess of this period shall add to the service period of the retired employee upon his referral to retirement ^[6].

The female employee in the public service is also entitled to pregnancy and childbirth leave, which is (73) days and is with full salary, so it is possible for the pregnant employee to enjoy a period of (21) days of this period before giving birth, and it is possible for this leave to be repeated in the event of repeated pregnancy and childbirth, and the female employee in the public service is also entitled to maternity leave that is related to the childbirth process and because of it, as it is possible for maternity leave to be repeated four times throughout the service period, whereby the mother is entitled to a leave for a full year, whereby in this case she is entitled to a full salary for the first six months, while she is entitled to half a salary for the second six months, while the female employee who gives birth to twins is granted a full year with full salary. The public employee is also entitled to sick leave that he enjoys in the event that he is afflicted with an illness that prevents him from performing his work for different periods, as the Civil Service Law guarantees that the employee enjoys sick leave for a period of (30) days with full salary for every full year of service, as well as sick leave at half salary for a period of (45) days during the work year, while it is possible for the public employee's sick leave to accumulate, but on condition that the leave does not exceed (120) in one case ^[7].

Employee duties

Public employee if performing his work tasks in state public office does certain work which legal setting of work has coordinated objective preconditions for this work the employee in this case does not have personal right when exercising this work he cannot according to the legislation exercise any works which the legislation has allowed to practice in the personal capacity referring to the legislation of state and public offices include the Iraqi legislator and stated in the state and public sectors employees discipline law no(14)

Governing law make it the responsibility of the public employee to do the work of the job himself with integrity and accountability out of duty, as the employee's duty in this regard start from the time the employee accepts the job, corrupt employee must to his place of work and work regularly to do the work and duties that is bestowed on him in the public office during working hours and the law allows an employee to be assigned a public service from work However, what is raised is what are the factors that reveal the specifications of the job that the public employee is required to perform through public job that he has been entrusted with to serve the public interest. If these duties are prescribed and defined by the law or a regulating body there is no issue with this matter. However, where there is no detail for the above said case, the job description cannot be derive from the explicit or implicit texts and as one of the job work, it has to understand all the parts of the detailed job work of the employee which in this case is shared responsibility of both administration and employee to manage the public facility. The public employee is also obligated to obey his superiors, as this legal obligation is carried out in the public job in the state through the principle of legal gradation of job positions, i.e. what is called in the legal systems The administrative ladder, where in every

public department there is an administrative head who heads this institution, and the public employee has a duty to obey the orders and decisions issued by his superior in order to achieve the public interest in that, as this obedience has been approved and adhered to by all the functional laws that regulate the work of the public service, and thus the law has removed any responsibility that may be incurred by the public employee in the event that harm arises as a result of those decisions and orders, because the public employee is obligated by law to obey the orders of his superiors and implement them ^[9].

The public employee is also obligated to keep secrets of the job, as the employee, through the course of his work, learns many matters and secrets related to public institutions and various state departments, especially security and sensitive departments related to the country's security, which the employee must keep secret and not disclose by any means, because these secrets and information are not personal secrets of the employee and relate to him, if they have been seen by the employee due to his job and its work which he performs by virtue of the law, and thus he is not permitted to inform others of them and this is his duty by virtue of the law and instructions, and this duty of secrecy may continue after the end of the public employee's job duties in his department, i.e. after the end of the employee's service, if the Iraqi legislator has set, pursuant to the Iraqi Penal Code No. 111 of 1967 as amended in Article (437), which included that the public employee be punished in the event of disclosing job secrets, whether knowledge of these secrets was obtained by virtue of the job law, profession, industry or the nature of the work, with imprisonment for a period not exceeding two years, as well as a fine not exceeding Two hundred dinars or one of these two penalties ^[10].

The public employee is also obligated to preserve the state funds that are at his disposal or in his possession, and to use them in a rational manner and not to use them for his own purposes and interests. It also requires the public employee to be distinguished by good job conduct when treating his subordinates well, and to stay away from any behavior or method that offends their dignity. The law also imposes on the employee to refrain from exploiting his position, as well as refraining from carrying out some commercial transactions by establishing companies or membership in their boards of directors ^[11].

Second requirement

The powers of the administrative courts with regard to administrative corruption

Analyzing the ideas towards the topic addressing the concept of the notion public office and concerning the work of the employee in attaining the public interest that needs to exercise its wanted administrative role away from any political reality that might be imposed on it by a group of influential and influential people as per what has been stated in the system of this job and as per the instructions included as part of the administrative law; what is actually asked of it is to work for In any case, resolving this requirement, we will discuss the powers to apply disciplinary penalties against administrative and financial corruption in the first section, and the powers to initiate administrative and legal proceedings by the competent bodies against administrative and financial corruption in the second section.

The powers of the courts to impose disciplinary punishment

The inability of a public employee to perform his job duties while discharging the duty by reason of this job entails something which would enhance disciplinary liability and there is likelihood of enhancing criminal or civil liability as well. The Iraqi legislator has three laws for general discipline for employees in the public service, and the first legislation was No. (41) of 1929, and the second legislation was No. (69) of 1936 and the State and Public Sector Employees Discipline Law No. (14) of 1991 as amended which defines the duty of the employee in general during his working duties. By the provisions of this law, it is also tenable for the administrative authorities competent to impose disciplinary penalties to assess the behavior attributed to the public employee and then quantify what is fitting for them in regards to punishment due to violations committed by the public employee to diminish the violations that continue financial and administrative corruption found in state departments ^[12].

Thus, and under the provisions of the provisions of the State and Public Sector Employees Discipline Law No. (14) of 1991 as amended can impose penalties and specified in accordance with the provisions of this law and specified in accordance with Article (8) of this law, where administrative authorities can impose a penalty of drawing attention to the public employee by notifying him in writing of the violation he committed, with a request to improve his job behavior during the performance of his public job duties, and the imposition of a penalty of drawing attention results in delaying the promotion or increase for a period of three months, and the administrative and legal authorities in state departments have the right, after conducting the necessary legal investigations, to impose a warning penalty on the violating employee, which also consists of notifying the violating employee in writing of the violations committed by him, with a warning to this employee against breaching his job duties in the future, and the imposition of a warning penalty on the violating employee results in delaying the promotion or increase for a period of (6) months ^[13].

The administrative authorities can also deduct such amount from the salary of violating employee, where such penalty is on cutting the salary by deducting the daily installment from the salary of the violating employee for a period not exceeding (10) days Through a written order containing the violations committed by the violating employee that necessitated the imposition of a penalty of cutting the salary. In the case, where the violating employee also has serious job violations, a penalty of reprimand can also be annotated on him as this is notifying the violating employee in writing of the violations committed and the reasons that may have made his job behavior unsatisfactory, with a request that this employee should cease job violations and enhance his job conduct in future. The legal effect of this penalty is generally persuasive on the employee, this in turn leads to deferral of the promotion or the increase for one year. A penalty that maybe given to the employee is the deduction which is where the employer is allowed to cut a portion of the employees salary in a way that does not exceed 10% of the employee's monthly salary for a specified period which ranges from (6) months to two years. This penalty is also taken in form of a written order which informs the employee the different job violations that he committed to cause a

delay in the promotion or increase for at least two years. The violating employee can also is liable to demotion through a written order because of the violations committed by the employee. He can also be made to suffer dismissal from The public service which removes the employee from the job for a specified period depending on the dismissal decision against the employee or if the violating employee is punished with two of the penalties or with one of them twice, and on the third occasion and within five years from the date of imposing the first penalty, he commits a violating act that requires punishment with a reprimand, a penalty of a salary reduction or a Dismissing from the public service may also be imposed as a penalty to an employee who violates his/her duties or responsibilities as an employee, it is the terminal displeasure in the public service and the employee cannot be reinstated to other government jobs. This penalty is effected by a reasoned decision of the competent minister return to base in circumstances where the employee has conducted himself in a manner that makes his continued employment injurious to public interest. This penalty is also applied whether the employee is convicted of a felony related to his work or duty or committed in the course of his employment or the employee is punished with dismissal, then reemployed and commits a violating act that renders his dismissal from the public service necessary ^[14].

Additional sanctions resulting from the current powers of the courts to conduct administrative investigations

As among the legal powers of state departments to counter administrative and financial corruption is to carry out the necessary investigations to identify the mentioned corruption files and all the disciplinary laws have stressed on providing adequate safeguards for employees in the public service against the jurisdiction of the public administration in imposing disciplinary punishment, the predatory discretionariness of the administration in the use of the penalty on the employees will have a detrimental effect on the civil service and on the proper and regular functioning of

If the aforementioned law emphasized that the procedures to be followed before imposing disciplinary punishment have stipulated the formation of an investigative committee consisting of a chairman and two members, provided that they are experienced, provided that one of them holds a preliminary university degree in the field of law, as the investigative committee undertakes the investigation with the offending employee in writing, and in the event that the investigative committee finds that the act committed by the employee referred to it constitutes a crime that arose due to his job and he committed this act in the official capacity he enjoys, in this case the investigative committee will have to refer the offending employee to the courts The competent authority in order to complete the necessary legal investigations in order to hold the employee who violated the law accountable for the criminal act committed (15).

The law also permitted the Federal Public Integrity Commission, according to its Law No. (30) of 2011, to extend its supervision to the public governmental departments in other civil servants' cases to minimize cases of administrative and financial corruption and to shield public funds from misuse or embezzlement. This commission's primary purpose is to increase the standard of ethical behaviours; prevent wastage of public resources; and

curb corrupt practices within the departments. Therefore, monitoring of the public administration work is one of the key responsibilities of the Integrity Commission established according to the Law on Integrity Commission. To this end, the Integrity Commission has investigative powers and authorities, or some of the critical powers entrusted to it. The Federal Public Integrity Commission exercise of the powers of investigation directly by the competent investigators with ties with it, and the work of investigators at the Integrity Commission is directly supervised by a competent investigating judge, or the Integrity Commission indirectly exercise investigative work by following up on corruption cases concerning funds The Federal Integrity Commission has powers to investigate any form of corruption through its investigators under the direction of a competent investigating judge. Thus, all relative to detention and summons, and arrest warrants of the accused, is done by the Investigating Judge in integrity matters, using procedures and investigations provided and handled by the investigators of the Federal Integrity Commission.

On the other hand the law has endowed the Federal Integrity Commission the right to retain the news without presenting it to the investigating judge of integrity specialized in cases of integrity in case, the Integrity Commission has not found out that the news presented to it does not amount to a crime perpetrated by the employee or where the Integrity Commission has established that the news is false or is a lie. In exchange the law has allowed the investigating judge to ask any news that the Federal Integrity Commission has deemed fit to suppress this news ^[17]. On the other hand, the power to complete the investigation empowers the Commission to To request the investigating judge to refer any corruption case to enable a completion of the investigation by the investigators of the Federal Public Integrity Commission, and where the investigating judge declines a request of the Federal Public Integrity Commission, the decision of the investigating judge rejecting the request of the Federal Public Integrity Commission can be taken to the Court of Appeal in cassation, whose decision in this regard The law also provided preference for the investigative actions conducted by the Federal Public Integrity Commission over other investigative authorities including the military investigative authorities and investigative authorities of the Internal Security Forces – where the law provides for depositing all papers documents, documents and data with the Federal Public Integrity Commission where the Integrity Commission required to proceed to complete the investigation of the same. Therefore, it is said that the law has given the Integrity Commission the wide investigative power in all corruption cases in ministries and other bodies which are not ministries by providing the said law That ^[19] the Integrity Commission is the competent investigating agency in the matters.

The legal investigative processes performed by the Federal Public Integrity Commission do not interfere with the audit processes performed by the Federal General Financial Oversight Bureau, since Financial Oversight Bureau reveals acts of corruption, fraud, forgery, as well as the waste or misuse of public funds in the capacity of Financial Oversight Bureau as the ultimate authority for financial and accounting auditing while the competent ministerial bodies in ministries and departments other than the ministries continue the administrative investigation stage of the acts of

Then, the results of these investigative committees are presented to the competent minister or a head of an entity that is not a ministry. In case the competent minister ascertains that the act perpetrated by the violating employee constitutes a crime under the provisions of the laws applying to the case, he shall notify of the Integrity Commission as well as other investigative agencies. Subsequent thereto, the Integrity Commission carries out the criminal investigation into acts of fraud, corruption, waste, exploitation of public funds and mismanagement thereof by its investigators within the frame work of the Integrity commission as the body responsible for investigating procedures. Relevant sanctions relating to the crimes of financial and administrative corruption ^[21].

Conclusion

After the research has reached its end, praise be to God, it is necessary to point out the most important proposals and results that can be reached, which contribute to strengthening the legal efforts aimed at deepening the legal understanding of the role of state departments in combating financial and administrative corruption in light of national criminal and administrative legislation, and in order to avoid repetition or prolongation, we will proceed to summarize the most important results and proposals as follows:

1. The existence of the Federal General Audit Bureau and the Federal Public Integrity Commission constitutes a legal guarantee in order to prevent the misuse of public funds and bodies authorized by law in order to prevent the exploitation of public funds or exposure to them or commit acts of fraud or forgery due to what these bodies possess of professional investigative staff in uncovering financial and administrative corruption and in preserving public funds from waste and misuse.
2. Despite the efforts made by the Federal Public Integrity Commission and the Federal Financial Audit Bureau in uncovering acts of corruption, administrative and financial corruption still constitutes an obsession and a stumbling block to the development of various sectors in the country due to The spread of corruption, which requires intensive efforts to monitor and follow up on it by everyone in order to advance the country's reality and move it towards economic, social, cultural and historical progress and development.
3. Emphasizing the provisions of the law in dealing with all corruption cases that are revealed and the extent of their harm to public money, by holding accountable the perpetrators of financial and administrative corruption without discrimination or favoritism, in order for the law to have complete sovereignty in the country and in order to prevent the commission of corruption in the present and future, so that the accountability of the perpetrators of these acts is a lesson to anyone who dares to commit these acts, as they harm the country's reputation and hinder progress in all fields, especially the economic
4. It is possible to say that this modest research has revealed to us the legislative shortcomings in the texts of the law and in the legal texts that address corruption issues in general, as combating this type of issue requires that legal texts be legislated and that they be more severe in terms of their provisions of imprisonment or fines for the perpetrators of financial and administrative corruption in state departments in general.

5. The researcher recommends forming a legal committee whose mission is 6- To emphasize the exclusion of the political role of all parties in the state in order to hold accountable perpetrators of financial and administrative corruption, and not to duplicate the application of these standards among the accused who commit various corruption crimes. By excluding this role, the penalties stipulated in Iraqi laws and legislation can be applied without any political considerations or side effects, legally and equally, to all those convicted of committing these crimes, considering that they threaten the country's economy and sovereignty, in order to reveal the truth and social justice, despite the obstacles that we hope society will overcome in the near future, to ensure justice in general and the public interest in particular.
20. Text of Article (3) of the Federal General Financial Supervision Bureau Law No. (31) of 2012.
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