Indonesian Journal of Law and Economics Review
Vol 18 No 3 (2023): August
Article type: (Labor Law)

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ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

Indonesian Journal of Law and Economics Review
Vol 18 No 3 (2023): August
Article type: (Labor Law)

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

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Indonesian Journal of Law and Economics Review
Vol 18 No 3 (2023): August
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ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

Indonesian Journal of Law and Economics Review
Vol 18 No 3 (2023): August
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Article information

Check this article update (crossmark)

Check this article impact (*)

Save this article to Mendeley

(*) Time for indexing process is various, depends on indexing database platform

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

Indonesian Journal of Law and Economics Review
Vol 18 No 3 (2023): August
Article type: (Labor Law)

The Authority to Discipline the Public Employee between the Administration and the Judiciary

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Abstract

This article presents a comprehensive analysis of disciplinary authorities in public employment, focusing on the diverse factors influencing their establishment and functioning. The study examines the impact of social, political, and economic factors on the choice of disciplinary authority, ranging from administrative bodies to the judiciary. By analyzing various legislations and their associated disciplinary systems, the article highlights the advantages and disadvantages of each approach. The research emphasizes the importance of maintaining a balance between protecting employees' rights and ensuring effective disciplinary measures. Additionally, it stresses the significance of aligning the chosen disciplinary system with the prevailing social, economic, and political conditions. The study concludes by emphasizing the need for periodic evaluation of disciplinary systems to ensure their efficacy and the preservation of public job interests. The findings and implications presented in this article provide valuable insights for policymakers, legal experts, and professionals in the field of public employment, encouraging informed decision-making and promoting effective disciplinary practices.

Highlights :

- The article explores the factors influencing the establishment of disciplinary authorities in public employment, considering social, political, and economic factors.
- It analyzes the advantages and disadvantages of different disciplinary systems, including administrative bodies and the judiciary.
- The study emphasizes the importance of maintaining a balance between protecting employees' rights and ensuring effective disciplinary measures.

Keywords : Disciplinary Authorities, Public Employment, Administrative Bodies, Judiciary, Effective Disciplinary Practices

Published date: 2023-06-19 00:00:00

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

Introduction

Societies aim to seek leadership that exercises power in order to maintain order in society and enact laws for this, and to respect them under the threat of punishment.

Whereas the disciplinary system is inherent in the nature of every social system in order to preserve the social interests necessary for the stability of society, which leads to the need for cooperation between members of the social system, this is represented by the individual's respect for the legal rules that determine his duties, as the presence of harmful acts in society leads to a disruption of the job of its jobs and prejudice to the necessary social interests, this led to the need for a disciplinary authority in particular to punish illegal acts within the scope of public job in order to maintain the job of the public facility and protect the interests necessary for the sustainability of that facility.

The bodies granted the authority to discipline have differed according to the legal systems in the country, as the disciplinary authority is initially subject to the principle of absolute centralization in the hands of the minister or director, which is not subject to appeal, but the matter differed later so that the disciplinary sanctions are subject to appeal as issued by administrative decision, which means the difference in disciplinary powers between countries, which we will try to explain through our study to examine the development of the disciplinary authority, which oscillated between the administrative nature and the judicial nature by dividing our study into two sections looking at the first section the basics of public and the second is devoted to the research of disciplinary authority in comparative legislation

Research Importance

The public job is one of the main pillars on which the success of any country is based, so it was necessary to preserve it through the commitment of the individual to the functional duties that fall on his shoulders, and his exposure to punishment whenever he violates those duties to maintain the public job

Resea rch P roblem

The problem of research revolves around identifying the different systems for disciplining the public employee and how these authorities have taken them in order to maintain the public job and reach the best disciplinary system whether the disciplinary system is administrative or judicial, and from this problem the researcher starts with several questions in order to answer them, namely:

Is there a single disciplinary system in all countries?

If there is more than one system, who is better for them?

Research Plan:

We divided our study into two sections, looking at the first section the basics of public job and the second devoted to the examination of disciplinary authority in comparative legislation.

Methodology

In order to take note of the subject of our research in all its aspects, we decided that our study should be based on the analysis of legal texts and to identify the most important weaknesses and strengths in the legislation regulating disciplinary authorities and compare them based on the comparative approach between countries

Result and Discussion

The First Topic/ Basics in the Public Job

Before we discuss the development of disciplinary authority between the administration and the judiciary, we must present some of the basic principles governing the public job by identifying the nature of the public job and then the statement of the legal system that governs that job and addressing the basis of the right to disciplinary punishment by dividing the section into two requirements We discuss the first requirement what the public job and its legal system and then address in the second requirement to indicate the basis of the right to disciplinary punishment.

The first requirement: The N ature of the Public Job

The public service system is directly related to the development of the state job in the modern era, as the job has an

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

effective role in the battle for freedom, which is an evolving struggle as civilization progresses and life becomes more complicated, where the political, economic, social and intellectual systems differ from one country to another, so the idea of public job varies, the public job is the result of a slow and gradual development in the behavior and social ideas of society, so the public job must be stemming from the social and political conditions of the country, otherwise it was a beacon for many administrative problems, this is evident in the newly independent countries that have used administrative and functional systems from the countries that colonized them, with the suitability of those systems with their conditions, resources and needs, in order to identify the public job, it is necessary to identify the factors that affect the concept of public job as one of the important factors for the development of the state and the advancement of society in it in the first section and the statement of the legal system that governs it in the second section.

Section I – Factors affecting the concept of public job

A set of important and changing factors in the state affect the public job, which lead to changing the concept of public job accordingly, we try to identify them in the following statement:

First: The political system and its impact on the public job

The prevailing political system in the state affects the public job, as this system will have a major role in controlling the legislation that governs the public job, which makes this system enact administrative legislation that suits the ideology that serves it.

In the former Soviet Union, Marxist thought prevailed, so the most important characteristic of the functional system was the unity of this system, which is based on non-discrimination between employees, the public employee is merely a servant of the people and works to protect the political and economic system of the Marxist state[1].

As the idea of the political system overshadows the legal regulations of the public job, whether administrative or criminal, the employee has no preference over other classes of workers and may even be inferior to workers in the field of economic production.

In the United States of America, the public job is just a profession that does not differ from all other professions and does not have any advantage, this is done with the intention of controlling the employees who do not have a status that distinguishes them from members of society, while in France and most European and Third World countries, the concept of the job is linked to the concept of the state in general and the administration in particular, as the employee works in the service of the state and its administrative system and is fully linked to its legal systems, as he is in a regulatory and organizational position with the state governed by administrative legislation governing the public job[2].

Accordingly, we find that the job in those countries has certain characteristics, the most important:

1. The public job enjoys stability and regularity.
2. The public job shall be governed by the rules of administrative law.
3. The public job is based on the administrative hierarchy and career progression as subordinates are subject to the presidential authority and abide by its orders, which makes it characterized by a certain disciplinary system.

Second: The State's view of the public job

The state's view of the public job varies according to the social, political and economic conditions prevailing in the state, which makes this view vary from one country to another according to the different systems in the countries, and even the system differs from one period to another in the same country.

For example, in the United States of America, the job at the beginning of the nineteenth century represented only a small number of employees, so it did very little work, for example, under President Jackson, the public job was characterized by being of a political nature and subject to the trends of public opinion and is not characterized by permanence and continuity until it leads to serving the political goals of the American community at that time, in the former Soviet Union, according to the Marxist system that prevailed, the employees are divided into two categories, the first category carries out the orders, while the second category bears responsibility for issuing political orders, and between the two there is the category of administrative employees, which must serve the people and do not have any privileges over other working class[3].

The public job varies from one country to another and clearly according to the social structure of citizens, as the traditions, ethics and customs of society are among the basic factors for the development of any system of public job in the state, as the best functional systems are those that are consistent with societal concepts, and this results in the difference in the concept of public job in developed countries than in developing countries, the employee is linked to the extent of social and cultural progress of the State and the extent of its needs, and the expansion of the State's activity leads to an increase in the number of employees with the need for an organized administration that works to provide the necessary elements for the development of the public job[4].

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Third: Traditions and ethics of society

From the foregoing, it can be said that the factors that we referred to affect the concept of public job and directly affect the legal organization of it, which leads to the difference in disciplinary rules from one country to another according to the concept of public job in the state, and this is what leads to its impact on the disciplinary authority and this is what led to the difference in the assignment of disciplinary authority to a presidential, judicial or administrative authority, which we will show in the second topic.

Section II: The legal system of the public job

The legal system of the public job is a set of legal rules governing the relationship of employees with the state, and since these rules are abstract and general and apply to everyone who is in the same legal centers and to similar facts, although there are some details of employment systems in different countries depending on social, economic and political conditions, but the public job system does not depart from two basic systems, namely the specific job system and the career progression system (career system), which we are trying to explain as follows:

First: The system of the specific job

In this system, the administration, like public or private projects, is looking for a person to occupy a specific job that meets certain conditions and determines a specific wage for this job, this means that according to this system, the employee does not occupy his position continuously and permanently, but the job ends at the end of the period of agreement between him and the administration, which means that there is no need for certain regulations and regulations that determine the rights and duties of employees[5].

From the above, it can be said that this system has a set of disadvantages that stand on the following:

1. The job according to this system is temporary and the employee does not enjoy reassurance and stability on his work.
2. This system affects the job itself by not specifying the rights and duties of employees, which leads to lack of knowledge of the disciplinary crime that harms the public job.
3. The presidential authorities according to this system be broad powers and not restricted to certain limits as a result of the lack of determination of the rights of employees, do not restrict those powers only what is stated in the contract concluded between the employee and the administration, which is the only restriction on the disciplinary authority.

However, the defects that we have referred to do not mean that this system is devoid of some advantages, as this system is characterized by ease and simplicity due to the administration's lack of commitment to the application of administrative legislation related to public employment, including those related to bonuses, promotions, salaries and others, as a flexible system, the administration has the freedom to dispose and dispense with the employee if it finds it unsuitable for the position he occupies, as it is entitled to use a sufficient number of employees necessary for the proper performance of the work[6].

Second: Career Progression System (Career Corps System)

This system imposes the existence of general rules and a specific system for the job through which the employee enjoys certain rights and is committed to the duties imposed on him, where the public employee enjoys continuity and job stability, by the existence of administrative regulations governing the work of the public employee and include the provisions of the public job and be binding on both the employee and the administration.

Which means that this system provides stability and reassurance for the public employee, which makes him aspire and strive for gradation in various jobs to reach the highest administrative job, and leads to the arbitrariness of the presidential authorities being governed in their work by the presence of controls that determine the rights and duties of the public employee and provide them with adequate guarantees.

However, the guarantees granted to the public servant may sometimes impede the work of the administration in maintaining the continuity of the public facility regularly and steadily, as the administration is bound by the controls and procedures necessary to punish the employee, which may lead to obstruction of the work of the public facility, especially if the law requires a lot of procedures for the issue of the employee, and we believe that this defect can be overcome by making the discipline of the public employee in a way that does not prevent the continuation of the work of the public facility.

We find that the Iraqi legislator did this when he allowed the administration to withdraw the hand of the public job during the administrative investigation as long as this leads to damage to the interest of the public facility and obstructs the conduct of the investigation[7].

It is worth mentioning that whatever the legal system of the public job in different countries, this system is united by certain characteristics, namely:

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

1. The functional system is an order system whose rules relate to public order, since the public job is part of the legal organization of the state, it falls within the scope of administrative law.
2. A system independent of other legal systems in the State, such as the criminal system or the labor system[8].
3. The functional system must be characterized by flexibility, effectiveness and rapid development according to the economic, social and political changes of the state, as these factors have a clear impact on the functional system, as we referred to in the previous section.

The second requirement: The legal basis for the right to disciplinary punishment

The legal relationship between the public employee and the stages it went through and what was said in it of theories has a significant impact in determining the legal basis for the right to disciplinary punishment, as some believe that the relationship between the administration and the employee is a contractual relationship that derives its provisions from the civil law, while others believe that the employee is linked to the administration with an organizational relationship that determines his rights and duties through special legislation, which is the basis for determining the right to disciplinary punishment, which we will try to explain in the following sections:

Section I: Contractual Theory

The contractual theory is one of the oldest theories that have been put forward in connection with the interpretation of the employee's relationship with the State, according to which this theory is that the relationship between the employee and the State is governed by the contract concluded between the parties and therefore the disciplinary authority derives the basis of its work from that contract, if the employee committed a mistake, he is punished in accordance with the terms of the contract concluded between him and the State[9].

Which means that the contract is the basis for disciplining the employee, functional mistake s are considered a breach of that contract enables the other party to exercise his right to discipline, that is, the mutual obligations between the parties to the contract are the basis of disciplinary authority, but there is a difference that arose between jurisprudence about the nature of that contract, some of them believe that it is a contract of private law and some of them believe that it is a contract of public law, which we will try to explain as follows:

First: The theory of the private law contract

This theory is called the theory of civil law, which is one of the oldest contractual theories, due to the lack of crystallization of theories of administrative law and the content of this theory is based on the existence of a civil contract between the employee and the state, the employee is obligated according to that contract to provide his services to the state in exchange for the wage he receives, and the obligations between the parties are in accordance with the contract concluded between them, whereas, it is the duty of the employee according to the contract to provide the necessary services, provided that the State pays his wages for this, in order to achieve the public interest[10].

Some believe that the relationship between the employee and the state is governed by the agency contract if the employee performs legal work, and a lease contract or an employment contract if the employee performs material work, as the state appears in this relationship as an employer in a contractual relationship with individuals for his own account, the employee's breach of his written obligations within the contract is a departure from the contract and requires punishment because the disciplinary authority derives its rules from the contract concluded between the two parties.

This theory has been criticized and these criticisms that the nature of the relationship between the employee and the state does not include the necessary ingredients for contracting neither in terms of form nor in terms of subject matter, from a formal point of view, the contract requires that there be an offer and then match it with acceptance, and this is what we do not find in the relationship between the employee and the state, which arises with the issuance of the appointment decision without the employee's consent having a role in accepting it[11].

As for the objective aspect, the contract is the law of the contracting parties in accordance with the civil law, which means that any amendment to the contract must be made with the consent of the two parties, while this cannot be applied to the relationship between the employee and the state, as it is in the public interest that the administration has the right to amend the terms of employment without the employee has a role in that.

Second: The theory of the public law contract

This theory came as a result of the criticisms of the theory of civil law on the one hand and the development of public utilities on the other, the content of this theory is that the relationship between the employee and the state is a contractual relationship, but the contract concluded between them is subject to the provisions of public law, as a contract of public utility, which allows the state and in order to preserve the public interest to amend this contract to ensure the proper functioning of the public facility, the disciplinary authority enjoyed by the State arises from this contract, which gives the State the right to supervise and control the employee[12].

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Despite the broad powers that this theory gives to management, the state remains bound by the contract and the administration does not enjoy complete freedom accordingly to modify or terminate the legal status of the employee, it cannot be free from its obligations unless the circumstances of the contract change, for example, and the administration is obliged to respect the financial balance of the contract, and violating this exposes it to judicial control and authorizes the contractor to rescind[13].

From the foregoing, it can be said that the contractual theories that have been referred to have been criticized, forcing jurisprudence to abandon those theories and refuse to adapt the employee's relationship with the state as contractual of any kind, they are ambiguous theories and inadequate to explain the employee's relationship with the state because the relationship between the employee and the state is not limited only to mutual obligations between the parties, but also contains the disciplinary part, which is necessary for the proper functioning of the public facility.

Section II: Organizational Theory

This theory emerged as a result of the criticisms of the contractual theory and the content of this theory is based on the fact that the employee derives his rights and duties from the laws and regulations governing the public job, which means that the relationship between the employee and the state (administration) is governed by the law that regulates that relationship, which determines the rights and obligations of each, many legislations have adopted this theory, as the French legislator explicitly referred to it in the French Employment Law of 1983 by saying that "the employee is facing the administration in a regulatory position."

Then the judiciary supported this theory in many of its protections, as it was referred to by the Supreme Administrative Court in Egypt by its judgment no. (21 for the year 1s) first year group p. 41, as well as its judgment No. _161) for the year 3s second year group, the third issue, which showed that the employee is in an organizational position with the administration governed by the regulations governing the public job[14].

The organizational relationship of the employee with the management entails many results, the most important of which are:

1. The legal status of the employee arises with the issuance of the appointment decision and the employee's consent or acceptance shall not have any effect on its emergence
2. The duties and obligations of the employee are determined by laws and regulations regardless of the position he occupies.
3. The laws and regulations govern the relationship between the employee and the administration and from these laws the employee derives his rights and duties, and therefore every agreement between the employee and the administration contrary to the laws and regulations is void.
4. The administration, in accordance with the laws governing the public employee, has broad powers as it is the decision-maker with regard to the transfer, promotion and discipline of the employee when he breaches the job duties, this means that the laws and regulations governing the relationship between the employee and the management are the legal basis for the management to have the right to discipline.
5. In order to ensure the proper functioning of the public facility regularly and steadily and as a result of the development of public utilities, the administration has the right to amend the laws and regulations governing the public service to be consistent with the development of the public facility and the amendment shall have direct effect without the employee having the right to object to this.
6. The employee shall refrain from all that hinders the functioning of the public facility regularly and steadily, so employees shall not be entitled to strike or collective resignation.
7. As long as the employee continues in the public job, the relationship continues between him and the employee and this relationship is not interrupted except by accepting his resignation in accordance with the rules prescribed for service.

It is worth noting that with regard to the organizational theory of the employee's relationship with management, many points of view have been said, including the so-called institution theory, which is summarized in the existence of an authority that organizes the group in addition to the existence of an interest among the total citizens to achieve this idea, provided that this authority has a legal personality capable of acquiring rights and obligations, as well as the theory of presidential authority, which is a branch of the theory of the institution, which shows that the disability between the employee and his boss arises on the basis of presidential authority, which makes the basis of the right to discipline is the presidential authority, the disciplinary system is one of the means of presidential authority, since the content of the presidential authority is to supervise, issue orders and control their implementation, those who exercise it must be provided with sanctions that allow him to impose on his subordinates respect for orders and decisions[15], proponents of this theory believe that the link between the basis of the right to discipline and the presidential authority is considered a sound application of a basic principle of the Public Administration Law, which is the correlation between authority and responsibility.

One of the most prominent criticisms of this theory is that it works to consolidate the authority of the state, which may lead to the arbitrariness of the administration towards the employee, however, this criticism can be answered by the existence of several legal guarantees that limit the authority of the administration to discipline the public employee.

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The Second Topic / Disciplinary Authority in Comparative L egislation

We will devote this section to talk about the different systems of discipline, in terms of the trends in force to exercise the right of the authorities vested in the right to disciplinary punishment, by dividing this section into three demands, we devote the first requirement to the study of the controls governing the disciplinary authority, the second requirement is about the administrative direction of the disciplinary authority, and the last requirement will be devoted to the judicial direction of the disciplinary authority.

The first requirement / Controls Governing the Disciplinary A uthority

There is a set of principles that govern the disciplinary authority, which we will try to explain in this requirement, as we will address the disciplinary authority and the principle of legality, and then the disciplinary authority, the principle of unity of punishment, and finally the disciplinary authority, the principle of proportionality, the house of violation and disciplinary punishment, through the following sections:

Section I: Disciplinary Authority and the Principle of Legality

The principle of legality in the field of discipline is meant by the extent to which both the violation and the disciplinary sanction are subject to the principle of legality, as well as the disciplinary authority restricts this principle in relation to disciplinary proceedings[16].

Jurisprudence and the judiciary have established that the principle of legality in the criminal law does not apply to disciplinary offences, because it is not necessary for the competent department to issue rules adapting certain acts in advance in order for the staff member to be punished, but the staff member is punished if he commits an act or omits an act that is not in accordance with the requirements of his or her job, whether or not expressly stipulates[17], therefore, jurisprudence and the judiciary in the field of discipline tended not to limit disciplinary violations, in the sense that it is not subject to the principle of nullum crime or punishment except by a stipulation, because this contradicts the discretionary power of the administration in the field of disciplinary authority[18], and this principle entails many results, which we summarize as follows:

1. The absence of a provision prohibiting the work of a particular act does not necessarily mean that such an act is permissible for the employee.
2. The determination of acts that are considered a disciplinary violation is left to the discretion of the disciplinary authorities.
3. The assessment of the disciplinary authorities in this regard is the need to adhere to the controls of the public job because of the rights and duties it contains.
4. The principle of no crime and no punishment except by a text does not apply to disciplinary violations, and therefore this gives them a kind of flexibility[19]

Accordingly, most administrative law scholars tend to restrict disciplinary authority, whether this authority is administrative or judicial, they must abide by the principle of legality, as this is a safeguard for the staff member against the abuse of the administration's disciplinary powers[20].

Section II / Disciplinary Authority and the Principle of Unity of Punishment

One of the principles on which jurisprudence and the judiciary have settled is that the authority that exercises the right to discipline, whether administrative or judicial, is restricted in its competence to impose one penalty for one mistake.

The principle of unity of punishment is one of the most important results of the principle of legality of punishment, as it ensures that an employee who fails to commit the same act is not punished twice, because the authority imposing the first sanction will execute its authority by imposing punishment again for the same offence, because when two penalties are imposed for one offense, it is a deviation from the principle of legality, the duality of the penalty imposes a double mistake , but if the double penalty occurs towards a single mistake , the disciplinary authority reaches its most authoritarian character[21].

The principle of non-plurality is supported by considerations of justice and social and occupational interest that a single mistake should be punished only by one appropriate penalty, and failure to respect this principle constitutes an assault on the disciplinary sanctions imposed by the competent authority[22].

However, there are some cases outside the meaning of duplication with which the administration can use its disciplinary authority again, which can be summarized as follows:

First: If the employee continues to breach his duties, the penalty may be repeated on him, which means that the penalty is not for one act, but for repeating the act more than once.

Second: If new facts emerge that are known after the issuance of the first decision that would change the seriousness of the mistake.

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

Third: If the employee is at the same time subordinate to more than one disciplinary authority, each of them is entitled to impose a disciplinary sanction for the same mistake committed[23]

Fourth: If the act consists of a disciplinary mistake and a criminal mistake, a disciplinary and a criminal penalty may be imposed for that mistake[24]

Fifth: If the imposition of the penalty is contrary to the law, i.e. it is tainted by lack of jurisdiction, or if it is canceled due to a defect in form[25], there are other cases that we cannot mention in this brief research, and that these cases that have been mentioned, are not an exception to the principle of non-repetition of punishment, but the application of general rules.

Section III / Disciplinary authority and the principle of proportionality between crime and punishment

The general rules of discipline stipulate that the disciplinary authority enjoys discretion and appropriateness, and if the disciplinary authority, according to its correct understanding of the elements from which it deduced that the employee committed an administrative mistake, concludes with its conviction that the employee's conduct was defective, the act or omission committed by him was contrary to the law to be followed, in this regard, she was free to assess the gravity resulting from this and to assess the appropriate disciplinary sanction within the limits of the law without her conviction or assessment thereof being subject to judicial control.

The gravity of the punishment must be commensurate with the gravity of the mistake and it seems that this principle is necessary and fair, and this requires the existence of an objective list that clearly identifies disciplinary mistakes and at the same time corresponds to an objective list of sanctions, in summary, the existence of a link between punishment and violation achieves the justice of this principle the absence of this coherence may lead to the arbitrariness of disciplinary authorities, this implies that this principle is a restriction on the exercise of disciplinary rights by disciplinary authorities, as the principle of proportionality is in fact only a criterion for balancing between the principles of guarantee and effectiveness, which any disciplinary system oscillates between.

It is therefore recognized that disciplinary authorities, whether administrative or judicial, are used alone to assess the extent of this proportionality in accordance with the circumstances before them, and for this purpose they have the freedom of discretion in order to strike a balance between providing security to employees and ensuring the proper functioning of the facility regularly, while most disciplinary systems have recognized the legitimacy of punishment and the existence of a list of disciplinary sanctions, the non-applicability of the principle of legality of disciplinary offences to date has made the principle of proportionality between fault and punishment an urgent and just necessity in order to find the desired balance between effectiveness and guarantee[26]

The second requirement / the administrative direction of the disciplinary authority

In accordance with this trend, the administrative authority, of its own volition, has the right to impose disciplinary sanction, whether minor or serious[27].

The disciplinary sanction is a manifestation of the administrative authority over the employee, because the administrative authority is responsible for the proper functioning of public utilities and for achieving the objectives entrusted to this facility to achieve them, where responsibility exists, authority must exist, otherwise it is impossible for the administrative head to discharge the duties of his job[28].

According to this system, the administrative authority, of its own will, shall have the right to impose all disciplinary sanctions on employees, and the administrative authority shall not be bound in this system before imposing the disciplinary sanction by referendum or taking the opinion of a particular body, but it alone shall have the right to impose the penalty, regardless of its gravity.

The most logical way to use disciplinary authority by the governing body is the most logical way, this method was the only one used in the original, as the disciplinary system in its historical origin is a manifestation of administrative authority and that when the administrative authority exercises the power of discipline, it will inevitably be imbued with an administrative character.

This system initially led to an undeniable abuse of power, where employees for a long time did not enjoy any assurance in the procedures and it is no longer like this at the present time as there is no conflict between the exercise of disciplinary authority by the administrative bodies and the granting of effective guarantees to the employee to prevent abuse of authority, these guarantees are often achieved through subsequent judicial oversight of disciplinary decisions or by regulations.

According to this trend, the affairs of the public service in the States that adopt it are the sole prerogative of the administrative authorities, without being constrained by the effects of a legal or contractual bond linking them to those working in their service[29].

This system requires that there should be no inventory of administrative violations, and there is no limitation of disciplinary sanctions, and administrative bodies have the right to impose all minor penalties, however, the

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

sanction decision imposed by any of the superiors may be commented on by the higher administrative authorities, in other words it can be said that the disciplinary authority is exercised through the various administrative authorities to which the worker reports, provided that the competent minister alone has the final say in this regard, and if the minister is responsible, the principle is to be solely competent to issue all disciplinary decisions against them, this is regardless of the gravity of the penalty, even if it is dismissal from service, but this principle does not negate the fact that disciplinary authority may be given to a worker or body lower than the Minister, such as entrusted to the head of personnel affairs in the ministry or to the Personnel Affairs Committee[30].

This administrative nature of discipline is confirmed by the fact that it is at its historical origin a manifestation of the presidential authority - and the nature of the disciplinary crime confirms the administrative nature of discipline, this system was adopted by Egyptian, French and Iraqi jurisprudence and judiciary.

Based on the foregoing, it is clear that the disciplinary sanction is a manifestation of administrative authority, in addition to the nature of the administrative violation confirming the administrative nature of discipline.

The third requirement / the judicial direction of the disciplinary authority

This system is an advanced stage of discipline through the organic separation between the presidential body and the disciplinary authority, which means that the disciplinary authority is not subject to the authority of the presidential authority, that is, this system is based on the separation between the power of accusation and investigation, which brings the disciplinary case closer to the criminal case, as this system aims to provide the largest possible amount of disciplinary guarantees[31].

Many jurists have tended to say that formality in the disciplinary system is only a consequence of its affiliation to criminal law, proponents of this trend assert that the punitive character of the disciplinary system overshadows its rules in a way that changes its nature so that discipline is restored to a criminal basis, and that the power to discipline is essentially a criminal punishment, this is because disciplinary power can only be interpreted on the same notion as the State authority on which criminal law is based, although discipline differs from criminal law in many respects, disciplinary decisions are unlike criminal judgments, since the disciplinary system as a punishment system is not an objective system unlike the criminal system, in addition to disciplinary sanctions differing from criminal sanctions[32].

According to these ideas, the disciplinary authority has evolved in many countries and has taken a tendency to a judicial nature by making the disciplinary authority a judicial authority and not administrative, as the supporters of these developments believe that the function of discipline is in fact a criminal punishment, which is like a kind of judiciary and this is what requires limiting violations and disciplinary sanctions and the existence of a link between them with the need for a judiciary that adjudicates in disciplinary disputes and there are many countries that have taken this type of disciplinary system such as Germany and Lebanon and justified the introduction of this system that resorting to it leads to the independence of disciplinary authorities and determine the standards of regular behavior of all departments.

Accordingly, we will divide this requirement into three sections, the first of which will be devoted to limiting disciplinary violations, the second will be for the list of disciplinary sanctions, and the last will address the link between punishment and violation.

Section I / Limitation of Disciplinary Violations

The judicial nature of discipline necessitates the limitation of crimes, and many ancient and modern jurisprudence believes that there is nothing in the nature of disciplinary crimes that prevents their identification, which is possible despite the multiplicity of duties of public job and its moral nature, but it seems that this determination is necessary for more than one reason, including the achievement of security for workers against the risks of controlling criminalization, in addition, it introduces them to the duties of their jobs, so they avoid violating them, which means legitimizing disciplinary violations and the need to work on codifying them, and those who say this principle are based on the following arguments[33]:

1. The job duties are not defined, which made them the subject of constant disputes, and the duty to obey superiors revolves around many problems in practice, especially with regard to the limits of this duty.
2. Identifying disciplinary violations leads to the education and enlightenment of employees of the violations for which they are held accountable, instead of leaving this to completely uncontrolled perceptions and estimates, and it is the responsibility of the administration to inform the employee from entering the service of what he has and what he has clearly in order not to commit an act contrary to the law, any disciplinary sanction is nothing but meaningless cruelty if it is not known in advance the mistake that resulted from this sanction.
3. The logic of the guarantee requires the identification of disciplinary violations, the freedom of the administration to determine disciplinary violations may involve tyranny and arbitrariness.
4. Identifying disciplinary violations supports the effectiveness of discipline, as identification, with its clarity and unambiguity, is an important element of the system, encouraging and assisting management in taking appropriate action, the limitation does not restrict the freedom of disciplinary authority or limit disciplinary

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

authority, but rather makes disciplinary proceedings uncontrollable and authoritarian[34].

Section II / List of Disciplinary Sanctions

This condition requires the application of the principle of the legality of punishment in the disciplinary field, and it is noted that this condition is not limited to judicial systems in discipline, but also includes administrative systems, these systems apply the principle of no crime or punishment except by text, because this principle includes a guarantee for employees from the abuse of the disciplinary authorities of the administration, so the codification of disciplinary penalties was one of the most important guarantees in the field of disciplinary systems in general[35].

Whereas this principle requires the obligation of the disciplinary authorities to impose one of the penalties previously determined by the legislator, this content differs from that of the Penal Code, as there is no obligation in the disciplinary field of the disciplinary authority, whether administrative or judicial, to impose a specific penalty in itself for the disciplinary offense as long as the legislator does not specify this, in this case, the authority of the administration to choose the appropriate punishment disappears, and in this sense the Supreme Administrative Court in Egypt says that "the authorization of the disciplinary authority in the selection of punishment, provided that the legislator has not specified a specific penalty for a specific violation, then the prescribed penalty must be imposed."[36]

Section III / Link between Punishment and Violation

One of the conditions of the judicial nature of discipline is the need to find a link between crime and punishment has led the development of the disciplinary system towards the trend to the judicial nature to the need to achieve this condition, some disciplinary systems have already applied this linkage, but partially, in some departments and institutions, unlike the legal system of the public service, in which development has not been finalized in this regard, except for some exceptions provided by the legislator in the case of linking a certain penalty when a certain mistake is committed.

Therefore, the regulation of the exercise of the disciplinary right in the postal administration in France led to the establishment of a link between the crime and the penalty and provided for the list of penalties that can be imposed in the event of certain offences, similarly, in Italy, the same was provided for the establishment of a link between punishment and crime[37].

In Egypt, several sanctions regulations have been issued that include the link between crime and disciplinary punishment, as the Public Sector Employees Act No. 48 of 1978 stipulates that the Board of Directors shall draw up a regulation containing all types of violations and the penalties prescribed for them[38].

To achieve this link, there must be a comprehensive and accurate inventory of disciplinary violations, that codification of violations, provided that they are divided into grades according to both objective and personal criteria and according to the degree of seriousness and circumstances during which they were committed[39].

There should also be a list of sanctions, taking into account limiting them and reducing their list so that they can be imposed on employees in accordance with violations[40].

It is noticeable that this full correlation between punishment and disciplinary violation has not yet been found, this is linked to the rest of the elements of discipline, especially those related to the legality of the disciplinary offence and the possibility of codifying and limiting it in a manner that prevents any confusion or arbitrariness on the part of the disciplinary authorities empowered to impose disciplinary sanctions[41].

In Iraq, the Disciplinary Law in force has specified the job duties and penalties prescribed in the law without specifying for a dog a violation of a specific disciplinary penalty, rather, this is left to the discretionary authority of the administration, which decides the appropriate punishment according to the gravity of the violation committed, since the disciplinary authority in Iraq is of a presidential nature[42]

It is worth noting that there is a middle system between the two previous systems, which is the quasi-judicial system, in this system, the disciplinary authority remains vested in the presidential authority, but before imposing sanctions, this body must consult a specific body, among the countries that adopted it are France, Belgium and Italy, this system is based either through the establishment of an independent body besides the administration and the latter is bound by its opinion when imposing the penalty without its opinion being binding on the administration or through the establishment of an independent body next to the administration whose opinion is binding when imposing the penalty or that the penalties are divided according to their gravity between the administration and the disciplinary board[43].

Conclusion

Through our study, we conclude with a set of results and support them with some proposals

ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo

First: Results

1. The discipline is inherent in the nature of every social system as it extends its authority over every employee whose work falls under the framework of the public job.
2. The disciplinary authorities in the state are determined according to the concept of the state of public job and the extent to which it is affected by various factors and according to the political system as well as social and economic conditions, and the traditions and ethics of society of influences in the authority of discipline
3. The disciplinary authority of a punitive nature consistent with its own objectives and in general that the disciplinary system self-distinguish it from other punitive systems.
4. Despite the resignation of the disciplinary system, but there is a set of controls that govern it, for the effectiveness of this system and that these principles and controls apply to any disciplinary system regardless of its type and the powers granted to it.
5. It became clear to us through our study that the social, economic and political developments of the state led to the multiplicity of disciplinary systems in countries, which oscillated between the judicial system and the administrative system.
6. Each system of the disciplinary systems has its own advantages and disadvantages, which makes each of these systems of excellent effectiveness when the state adheres to the controls of each system, by supporting both the legal guarantees of the employee and the effectiveness of the chosen system in the country.

Second: Proposals

1. The fact that the disciplinary system is a punitive system subject to the principle of legality and in order to preserve the rights of the employee from the arbitrariness of the tool, it was necessary to classify disciplinary violations in a tab commensurate with the nature of the advanced administrative system with the classification of penalties.
2. In order to preserve the interest of the public facility and ensure its regular and steady functioning, it was necessary for all legislation regulating the discipline of the public employee to specify the job duties and prohibitions that the employee must refrain from until the employee becomes clear to the limits of his job, as the Iraqi legislator did in the law of discipline of state employees.
3. Before adopting a certain disciplinary system, the State shall take into account the surrounding social, economic and political conditions, and to adopt the system that leads to the preservation of the interest of the public job and not to hesitate to abandon its disciplinary system whenever it finds the ineffectiveness of that system by conducting many questionnaires in different departments and standing obstacles faced by the disciplinary authorities and identifying the effectiveness of the adopted system by seeing the effectiveness of this system in deterring job violations.

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ISSN 2598 9928 (online), https://ijler.umsida.ac.id, published by Universitas Muhammadiyah Sidoarjo