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Erase The Disciplinary Penalty as A Guarantee For Employees to Remove its Effects

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Abstract

This scientific article presents a comparative analysis of the erasure of disciplinary penalties for public employees in the context of organizational and statutory relationships with the state. The study explores the historical evolution of terminology used in Iraqi legislation, transitioning from "nullification" to "cancellation" in recent years. Despite variations in nomenclature, the essence of erasure remains consistent across legislations. Notably, the researched laws do not offer a legislative definition of erasure, relying instead on legal texts to regulate its application. Furthermore, the study highlights the role of administrative judiciary in handling erasure cases without providing a specific definition. By examining the goals, methods, and implications of erasure provisions, this research contributes valuable insights to the field of public employment law, aiming to foster stability in public utilities and ensure the efficient functioning of public services.

Highlights:

- Historical evolution of terminology in Iraqi legislation.
- Lack of a legislative definition for erasure in researched laws.
- Role of administrative judiciary in handling erasure cases.

Keywords: Erasure, Disciplinary Penalties, Public Employees, Organizational Relationships, Statutory Relationships

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Introduction

It is intended to erase the disciplinary penalty to remove the effects that resulted from it and consider it as if it was not for the future, while its effects remain on the rights and compensation that resulted from it in the past, in order to open the door of hope for them to get rid of the future effects of imposing disciplinary sanctions on them after the expiry of certain periods of their implementation and make sure of the good behavior of the employee through them[1]**,** and many labels are given to erasing the disciplinary penalties from it, reconsidering the penalty, rehabilitating or lifting the penalties [2]**,** and the research plan is embodied in three demands and as follows the following:

Method

The first requirement

The concept of erasing the disciplinary sanction

The concept of erasure differs according to the different systems of each country. In this section, we will discuss the concept of erasure by shedding light on the legislative, jurisprudential and judicial position, by knowing whether the text and jurisprudence and jurisprudence provided a definition of erasure or not.

Result and Discussion

First branch

Legislative position on the concept of erasure

Legislation differs from the concept of erasure that applies to penalties or disciplinary penalties, including reconsideration of the penalty, rehabilitation, or lifting of penalties, and it does not matter. Verbal difference as long as the meanings and denotations are the same.

In Egypt, the legislator did not take, when issuing the Law of the State employees system No. 210 of 1951, on the subject of disciplinary sanctions, and at 3/30/1957 The legislator issued Law No. 73 of 1957, according to which he went to amend the provisions of Law No. 210 of 1951 and added a fourth chapter that guarantees the articles from (141-144) under the title (Disciplinary Candida ion and its effects) [3]

As for the Law No. 46 of 1964 regarding the system of civil servants in the state, it regulated the provisions of erasure according to Articles 71 and 72), the first of which indicated the time periods required to expire to submit an application for erasure, and the second showed the effects of erasure [4]

The provisions for erasure were also mentioned in accordance with Article 67 of Law No. 58 of 1971. Finally, the provisions for erasure were mentioned in Article 92 of Law No. 47 of 1978 regarding civil servants in the state [5]

In Iraq, the legislator dealt with the subject of discipline in a stand-alone law independent of the law regulating other public office affairs. In addition to the civil service law, there is another law, which is the State Employees Discipline Law [6], as the Iraqi legislator issued three discipline laws. The first is the State Employees Disciplinary Law No. 41 of 1929. Article (9) of it stipulates that “the minister may, on the basis of a recommendation from the department head, order annulment of a warning, fine, or reprimand in the record of an employee who served at least three years after imposing the aforementioned penalty and did not During that time, they are punished with any other disciplinary punishment and they carry out their work in a manner that satisfies the head of the department with complete satisfaction, provided that this privilege is granted once during the period of service of the employee. As for the second law No. 69 of 1936, Article (14) of it gave the right to “the minister to nullify any disciplinary punishment imposed by other than the committees or the General Council on an employee who served at least one year after the imposition of the aforementioned punishment and was not punished during that with any other punishment and carried out their work satisfactorily.

As for the third law currently in force, the State and Public Sector Employees Disciplinary Law No. 14 of 1991, Article 13 of it stipulates that “First - the Minister may cancel any of the penalties imposed on the employee stipulated in paragraphs (first), (second), (third) and (fourth) of Article (8) of this law when the following conditions are met: A- One year has passed since the imposition of the penalty. Not to punish him with any penalty within the period stipulated in Clause (a) of this paragraph.Second: The decision to cancel the penalty shall result in the removal of its effects, if that has not been exhausted.

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In addition to the nullification system that Article (13) of the law discussed, there is a new type of nullity indicated by Article (21) of the law, which is the nullification as a result of thanking the employee and the thanks required for this purpose is thanks from the presidency, the cabinet, or the minister, or whoever authorizes it, as stipulated in the first paragraph of Article [7]**,** either the Civil Service Law No. 24 of 1960, so it is not mentioned in the folds of the law related to the law and this law Civil [8]**.**

Section two

The jurisprudential position on the concept of erasure

The jurisprudence of administrative law dealt with the issue of erasing the disciplinary punishment. In Egypt, some defined it as: "The erasure of disciplinary punishments means the removal of their effects after the passage of a certain period if the employee's morals improved during it, and he did not commit anything that exposes him to punishment" [9]**.**

Others defined it when talking about erasing it by saying: "It is intended to erase the penalties to remove the effects of it with regard to the future after a certain period has passed since its signature, if it becomes clear that the behavior of the employee from the time of imposing the penalty on him has become satisfactory and good, and the goal is to open the door of hope for the employee" [10]**.**

Part of the jurisprudence tended to define erasure: "The erasure of disciplinary sanctions is the annihilation of their effect and considering them as if they did not exist in the future, while their effects remain on the rights and compensations that resulted from them in the past "[11]

Others defined it as: "erasing the effects of the penalty after a certain period has passed if the morals of the public employee improved during it and he did not commit any other disciplinary violation, and this is to encourage him to be straightforward in performing his work because leaving the disciplinary penalty in his service file leaves bad effects on his career and that this affects the performance of his work" [12].

Much of the Egyptian jurisprudence approached the definitions referred to above [13], while another aspect of jurisprudence contented itself with dealing with the texts regulating erasing by explaining without giving a definition for it [14].

In Tunisia, it is meant by erasure in the terminology of the disciplinary system to remove the effects of the disciplinary decision after the lapse of a certain period of time in which the good behavior of the employee and his work has been proven [15].

In Iraq, he also dealt with the issue of erasure when talking about the termination of the punishment through the intervention of the administration. Dr. Shab Touma Mansour indicated that: "This termination is not permissible except in cases in which the punishment has been imposed by the administration and not by a judicial ruling." And when he talked about Article (14) of the Disciplinary Law of State Employees No. 69 of 1936, which gave the right to the minister to annul the disciplinary punishment, the doctor says: "Accordingly, the competent minister may cancel the disciplinary punishment imposed by him or by the head of the department either Regarding the effect of abolishing the penalty, the doctor says: "The logic requires that the disciplinary punishment not be canceled has any effect on the career of the employee in the future, but with regard to the effects in the past, they remain intact, and saying otherwise leads to closing the door of repentance and hope in the face of some employees [16].

On the same issue, Dr. Ghazi Faisal says that the Iraqi legislator, despite not using the term (erasing), adopted this topic: "As he adopted the system of erasing the penalty in the three laws of discipline, Article (13) of the Discipline Law in force stipulated that, and the Discipline Law of 1929 permitted the Minister to annul the penalties of warning, fine and reprimand according to specific conditions mentioned in Article Nine of the law. Specific conditions set forth in Article Fourteen" [17].

On the other hand, Dr. Abdul Qadir Al-Sheikhly believes: "The erasure of the disciplinary penalty is tantamount to rehabilitating the employee from the disciplinary point of view, and the terminology of annulment contained in the Iraqi legislation is inaccurate, because the annulment responds to an invalid act, while the punishment as a legal procedure is assumed to be not invalid if it fulfills its legal requirements. The correct terminology is erasure as adopted by the Egyptian legislator" [18].

Dr. Othman Salman Al-Aboudi also presented a definition of erasure, as he defined it by saying: By erasing the disciplinary punishment, it is intended to remove its effects after the passage of a certain period determined by the law if the employee's biography improves and he adheres to the limits of his job duties [19].

If we must provide a definition of erasure, we provide the following definition: Eradication is an administrative decision according to which a competent authority removes the penalty.

Section three

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The judicial position on the concept of erasure

The administrative judiciary dealt with many decisions issued on the issue of erasing the disciplinary penalty. In Egypt, the administrative judiciary contributed to the adoption of many judicial principles in the field of administrative law. As far as the matter relates to the subject of erasure, we found in some decisions issued by this judiciary what indicates the identification of many aspects related to this subject, as the Supreme Administrative Court went on to say: "... In terms of the erasure of a penalty, it takes place by a decision of the Personnel Affairs Committee after verifying that the worker fulfills the conditions prescribed for erasing this penalty in accordance with the provisions of Article (92) of Law No. 47 of the year 1978 aforementioned, which is the lapse of the necessary period for that, if it is found that the worker's behavior and work since the imposition of the penalty is satisfactory, based on his annual reports, his service file, and what the superiors show about him. There is a need for the worker to submit a request for that, and that the Personnel Affairs Department must take measures to erase the penalty if its conditions are met in accordance with the provisions of the law - and this is done without [20].

It also ruled that "... erasing the penalty has no effect except with regard to the future, and saying otherwise is required by the retroactive effect of the decision of erasure that would affect the legal positions that have settled for their owners, which was confirmed by the legislator by what he stated that the erasure does not affect the rights and compensation that resulted from the penalty" [21].

In Tunisia, jurisprudence has contributed to the adoption of many judicial principles in the field of erasing disciplinary penalties. The wisdom of erasure lies in the stipulation of most of the functional legislation on the procedure for erasing disciplinary penalties in opening the door to repentance before the guilty employee and encouraging him to be righteous in his behavior, thus removing all the bad effects left by the punishment in his career life, especially since the legislator stipulated in Chapter 57 of the general statute of the public office that he keeps the decision related to the disciplinary punishment in the employee's personal file to make One of the punishments is a disciplinary precedent that reflects negatively on the employee, whether on his morale or on his lack of productivity, as well as the lack of quality in his job duties. This is on the one hand, and on the other hand, so what is the reward for the employee who made every effort to reform himself and to be careful to be upright but erase the penalty so that he does not remain marked by deviation and not reformed because of the penalty that was previously imposed on him" [22].

In implementation of this, the Administrative Court affirmed in several decisions, including Case No. 212134, an appeal ruling dated February 28, 2020, which stipulated: "The removal of the penalty entails considering the penalty that occurred on the employee as if it was not for the future without prejudice to the effects he left behind in the past, which imposes with him the removal of any documents that explicitly or implicitly refer to that punishment from his administrative file [23].

In Iraq, the administrative judiciary represented by the State Shura Council, which exercises its competences in providing advice, fatwas, and administrative judiciary competencies through (the General Disciplinary Council, the Administrative Court, and the General Authority of the State Shura Council) as well as the rulings of the Federal Court when challenging the judgment of administrative courts before it, even if it did not provide a definition of erasure - in the issuance of many decisions and fatwas that tried to clarify the concepts used by the legislator represented by invalidation and annulment) as the Legal Notification Bureau went [24], in its decision issued on 5/27/1972, went on to say: "Article Fourteen of the State Employees Discipline Law clarified the minister's authority to annul the disciplinary punishment in the manner and restrictions contained therein. There is no doubt that this annulment is limited in its effect to the future and not to an effect that extends to the past, as the effects of the punishment remain intact It appears from the facts documented in the book of the Ministry of the Interior, the subject of the intended question is the minister's authority to withdraw the disciplinary punishment and not cancel it or nullify it, i.e. the authority to withdraw the administrative decision in this regard, and there is no doubt that the difference between nullification and nullification and between withdrawal is in a range of effects. Here is the penalty of legality, provided that Employees Discipline Law that includes such a prohibition, therefore it is the power of the minister to withdraw the disciplinary punishment issued by him if it is proven that it was imposed in error and because of the facts on which it was based are not based on a correct basis [25].

And in another decision, the State Shura Council went on to define the scope of erasure to say: "The right of the competent minister to invalidate the disciplinary punishment in the event that the punished employee spent a period of no less than in satisfactory service goes exclusively to the disciplinary punishment imposed by competent authorities other than the Disciplinary Committees or the General Disciplinary Council, and there is no legal scope for invalidating the disciplinary punishment that has acquired the peremptory degree [26].

The second requirement

Conditions for erasing the disciplinary sanction

To make sure that in order for the competent authority to exercise its legal powers in approving the erasure, the necessary conditions must be met for that, and from observing the legislative texts regulating the erasure, it becomes clear to us that there are two conditions for acknowledging the erasure, the first of which is related to the condition of the period that must lapse, and the second is related to the condition of behavior and good conduct

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from the moment of imposing the penalty to be erased on him and not imposing any disciplinary penalty on him during the period required to expire for the issuance of the erasure, but the Iraqi law, despite its approval of the above two conditions, put another condition, which is the condition that the employee not be punished with any other punishment during the period The year specified by the law, and the legislation in the relevant countries organized the subject of the authority entrusted with erasing the penalty and worked to define it with legal texts that regulate its work when its conditions are met. We will address the conditions for erasing the disciplinary penalty, represented by the term condition and the behavior condition, as follows:

First branch

Duration clause

The issuance of the erasure decision requires the expiry of a specified period in the law between the approval of the penalty and the issuance of the decision to erase it. This period may be covered by issues that need to be addressed related to determining the date of the beginning of the period and the case of overlapping periods and their adequacy, as the legislator required the passage of a period of time after the imposition of the disciplinary punishment, which would result in missing the penalty.

In Egypt, the erasure system was not known when Law No. 210 of 1951 was issued, because it was decided, for the first time, according to Law No. 73 of 1957 amending the first job law, to which the legislator added a fourth chapter entitled (On erasing disciplinary penalties and their effects according to Articles (141) - (143). Two years as a minimum and fifteen years as a maximum, with the penalties of dismissal and referral to pension not being included in the subject of erasure, and in the next legislative stage that began with the issuance of Law No. 46 of 1964, the provisions related to erasure were re-texted in Articles (71 and 72)of this law, as the first of them indicated the time periods required to expire to submit the erasure request, which were set at two years as a minimum and Six years as a maximum, except for the penalties of dismissal and retirement (4). The provisions of erasure were also mentioned in Article (67) of Law No. 58 of 1971 regarding civil servants in the state, and the terms were specified (one year as a minimum and four years as a maximum). Provided that the disciplinary penalties imposed on the worker shall be erased by the expiry of the following periods: The penalty of warning, censure, warning, and deduction from the wage for a period not exceeding five days shall be erased with the lapse of six months from the signing of any of them, and the penalty with deduction from the wage for a period of more than five days shall be erased with the passage of one year from its signature [27].

All other penalties, except for dismissal and referral to pension, by judgment or disciplinary decision, shall be erased three years after the imposition of any other disciplinary penalty except for dismissal or referral to pension, and the aforementioned periods shall be calculated from the date of issuance of the disciplinary decision or judgment and not from the date of execution of the penalty [8], As for the Civil Service Law No. 81 of 2016, Article (67) specifies that a longer period of time has passed since the imposition of the disciplinary penalty, missing which would erase the disciplinary penalties, as the disciplinary penalties imposed on the employee will be erased with the expiry of the following periods: “One year in the case of warning, warning, and deduction from wages for a period not exceeding five days, two years in the case of blame and deduction from wages for a period of more than five days and up to fifteen days, three years in the case of deduction from wages for a period of more than fifteen days and up to thirty days, four years in relation to other penalties, except for the penalties of dismissal and referral to retirement.

In Tunisia, as we mentioned previously, the provisions of erasure were mentioned in accordance with Law No. 112 of 1983 dated December 12, 1983, Chapter 58 of which states: “The employee who has received a disciplinary punishment other than dismissal, and after a period of five years for penalties of the first degree and ten years for penalties of the second degree, may submit to the head of administration a request aimed at erasing from his file all traces of the punishment he received. And if it turns out that the general behavior of the person concerned has become satisfactory since infiltration If he is punished, he responds to his request, and then his personal file is reconfigured according to his new status. The employee who has been dismissed following a criminal penalty and who has regained his civil rights with a general amnesty or with a special legislative amnesty can request that he be reinstated to work during the year following the recovery of rights, and in this case the administration can reintegrate him with his original rank and the degree he obtains on the date of dismissal” [29].

Law No. 112 of 1983 dated December 12, 1983, Chapter 51 of it specified the disciplinary penalties that may be imposed on employees: “Penalties of the first degree, which are: warning - reprimand. Penalties of the second degree, which are delays in the apprenticeship for a period ranging between 3 months and a year at the latest - obligatory transfer with a change of residence - temporary dismissal for a period of up to six months with deprivation of salary - dismissal without suspension of the right to retirement pension. The penalties of the first degree are taken after hearing. Penalties of the second degree are not taken except after consulting the Disciplinary Council.The equitable administrative committees in this case assume the role of the Disciplinary Council, and then their composition is changed in accordance with the provisions of Chapter Thirty Four of this law, and the employee is referred to the Disciplinary Council according to a written report issued by the authority that has the right to disciplinary or the supreme framework that has a mandate to exercise disciplinary power and to sign referral reports to the Disciplinary Council.The referral report to the Disciplinary Council clearly shows the acts committed Attribute to the employee and, if necessary, the circumstances in which they were

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committed.Punishments are taken by a reasoned decision from the authority that has the right to discipline or the supreme framework that has a mandate to exercise disciplinary authority or to impose disciplinary penalties, but the dismissal penalty is not taken except by the authority that has the right to discipline exclusively [30].

In Iraq, the laws related to the discipline of state employees issued in Iraq specified the penalties that are subject to the subject of annulment or cancellation (elimination) The three disciplinary laws issued in Iraq dealt with the subject of annulment of the disciplinary punishment after a specified period had passed in the law, due to the legal texts regulating this subject. The First Disciplinary Law of State Employees No. 41 of 1929 specified in Article (9) thereof the period required by the text "The minister, based on a recommendation from the head of the department, may order annulment of a warning, fine, or reprimand in the record of an employee who has served at least three years After imposing the aforementioned penalty... As for the second Law No. 69 of 1936, Article 14 of it gave the minister the right to nullify any disciplinary penalty imposed by other than the committees or the General Council on an employee who served at least one year after the imposition of the aforementioned penalty. It cancels any of the penalties imposed on the employee stipulated in paragraphs (first), (second), (third) and (fourth) of Article (8) of this law. This article specified the law for the period required for this, saying, "One year has passed since the imposition of the penalty from 11An aspect of jurisprudence indicates when it talks about this text that "it is noted on the legal text that it did not take into account the seriousness of the punishment when determining the period that must expire to nullify the punishment, in contrast to what other laws did, such as Al-Masry [31].

regard to calculating the aforementioned period, the penalties for invalidation are imposed by an administrative decision by the competent authority in that regard, which requires the application of the general rules related to the enforcement of the administrative decision to know the date of the beginning of the period. 2), and if this is the case, from which of the two dates does the calculation of the period start from the date of its issuance by the administration, or from the date of the employee's knowledge of it? To answer this question, we say: The purpose of informing the employee of the decision is to ensure that he obtains the rights stipulated by the law, such as his right to grievance and challenge the decision. Those rights that he must exercise when he learns of the decision issued against him[32], With their knowledge of it, and if this is the case, from which of the two dates does the calculation of the period start from the date of its issuance by the administration, or from the date of the employee's knowledge of it? To answer this question, we say: The purpose of informing the employee of the decision is to ensure that he obtains the rights stipulated by the law, such as his right to grievance and appeal against the decision, those rights that he must exercise when he is aware of the decision issued against him, by inflicting the penalty, either to nullify the penalty against the employee, because it involves an apparent benefit for the employee, and it may happen that the decision is issued. The penalty is not notified to the employee until after a period of time, so saying that the period is valid from the moment of notification means that the employee loses that period of time that passed between issuance and notification, so justice is required. In order to ensure that the administration does not abuse its powers, it is considered that the beginning of determining the period for erasing the punishment starts from the date of issuance of the decision to punish the administration and not from the date of the employee's knowledge of it. To say: "The logical solution is that publication is considered a means for those concerned to be aware of the existence of the decision, in addition to that the rule requires that payment is not permissible (by ignorance of the law), so it is not permissible for the administration to invoke its ignorance of its actions" [33].

Section two

conditions of behavior

In addition to the expiry of a specified period in the law, the issuance of the erasure decision requires another condition related to the employee's good behavior and satisfactory work, that is, if the employee's behavior and work are satisfactory during the period required to include the erasure condition through the legal texts regulating it, and this is determined In Egypt, the State Employees System Law No. 210 of 1951 at the time of its issuance did not include special provisions for erasure, but this law was amended by Law No. 73 of 1957 and a fourth chapter was added to the law that included Articles 1412-144 (under the heading of erasing disciplinary penalties and their effects). The imposition of the penalty was satisfactory." This condition was re-examined in Article (71) of Law No. 46 of 1964, which stipulated that in these cases, a decision of the Personnel Affairs Committee should be made, if it was found from the reports submitted on the worker that his behavior and work since the imposition of the penalty were satisfactory and the erasure is done [34], Reference to this condition was made in accordance with Article (67) of Law No. 58 of 1971, as the article stipulated that the penalty be erased, in addition to the period condition, that "... the worker's behavior and work since the imposition of the penalty were satisfactory, based on his annual reports and file his service and what the chiefs show about him" [35].

This is from and according to Article (92) of the Law of Civil Servants in the State No. 47 of 1978, the Egyptian legislator listed the conditions that must be met to erase the disciplinary punishment, and they were limited to two conditions: the first is the time condition, and the other is related to the behavior of the employee, and with regard to the behavior condition, it is related to the behavior and work of the employee if it is satisfactory during the erasure period, and the reality of the workers' confidential reports, their service files, and the observations made by their superiors is confirmed, and this is what Article (92) stipulates by saying: "... that The behavior of the worker and his work since the imposition of the penalty is satisfactory, based on his annual reports, his service file[36] , and what the superiors show about him. Dr. Sulaiman Al-Tamawy comments on this condition and says:

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The least of these conditions is that a new disciplinary penalty is not issued to the worker, otherwise another period begins, and his reports are not of a weak degree, otherwise the bosses deposit notes in his service file that offend him, so erasing the penalty is not authorized automatically. Supporting the request[37].

In Tunisia, Law No. 112 of 1983 dated December 12, 1983, Chapter 58 of it referred to this condition by saying: "If it appears that the general behavior of the person concerned has become satisfactory since the punishment was imposed on him, then his request is granted, and his personal file is then reconfigured according to his new status" [38].

In Iraq, Article (9) of the Disciplinary Law of State Employees No. 41 of 1929 referred to the conditions for annulment of disciplinary punishment and the condition of behavior required for annulment by saying: "The minister, based on the recommendation of the head of the department, may order annulment of a warning, fine, or reprimand in the record of an employee who served at least three years after the imposition of the aforementioned penalty and was not punished during that with any other disciplinary penalty, and they carried out their work in a manner that fully satisfied the head of the department, provided that this privilege be granted once during the employee's service period, and it is noted that The legislator requires that the employee perform his job service without being punished by any other penalty, and that his work has completely satisfied the head of the department [39].

As for the second Disciplinary Law No. 69 of 1936, Article (14) of it dealt with the provisions of annulment of punishment and the condition of behavior required for annulment by saying: The Minister may annul any disciplinary punishment imposed by other than the committees or the General Council on an employee who served at least one year after the imposition of the aforementioned punishment and was not punished during that with any other punishment and carried out their work in a satisfactory manner.

Dr. Abdul-Qader Al-Sheikhly comments on this article by saying, "The law requires that the employee not have been punished with any other penalty or that he has performed his work in a satisfactory manner" [40].

As for the enforceable Disciplinary Law No. 14 of 1991, Article (13) of it dealt with the conditions for annulment of the penalty, and those conditions included a reference to the behavior condition, as the article stipulated: "First - the Minister may cancel any of the penalties imposed on the employee if the following conditions are met: A- One year has passed since the imposition of the penalty. with his peers cIt is noted that the legal text stipulated in the behavior of the employee who achieves the nullification or cancellation of the penalty that the work of the employee be distinct from his peers, without punishing him with another punishment.

Dr. Ghazi Faisal Mahdi comments on this by saying, "This condition is new in the discipline law in force, as the two canceled discipline laws of 1929 and 1936 stipulated that the employee perform his work in a satisfactory manner during the period stipulated by it, and this is more than the condition set by the law of discipline in force, because we are in the process of revoking a penalty for the employee to give him a promotion or promotion, so it is sufficient in this regard that his service is satisfactory in all aspects and there is no more accuracy in that" [41].

Based on this, the State Consultative Council went in one of its decisions to say: "... the assessment of service in terms of being satisfactory is one of the discretionary matters that go back to the conviction of the head of the department, and it is inferred through good reports or obtaining thanks and appreciation, or considering the head of the department's request from the minister to annul the penalty itself as an indication of conviction that the employee's service during the year that followed the imposition of the disciplinary penalty on him was satisfactory..." [42].

The third requirement

Effects of acknowledgment of erasure

The decision to erase the disciplinary punishment after the issuance of the administrative decision has two effects, one of which is the removal of all punishment papers from the employee's service file, as well as considering them as if they were not for the future, and for the purpose of shedding light on these effects, we will search for them according to the following detail:

First branch

Remove all penalty papers from the employee's service file

Removing penalty or punishment papers from the employee's service file is one of the guarantees that lead the employee to work seriously and actively and not be afraid of the future in order to appreciate the importance of his work No disciplinary offense in the future.

In Egypt, the legislator has dealt with the laws regulating the public office, specifically the articles regulating the provisions of erasing punishment or punishment, the effects of approving that erasure. The State Employees System Law No. 210 of 1951 at the time of its issuance was devoid of provisions for erasing disciplinary penalties.

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However, on 30/3/1957 Law No. 73 of 1957 was issued amending the provisions of Law No. 210 of 1951 and added a fourth chapter to the law that included articles in this section From 141 - (144) under the heading (Erasure of Disciplinary Penalties and Their Effects)[43] and according to the provision of Article (143), the acceptance of the request for erasure entails the erasure of the penalty and considering it as if it was not for the future without affecting the rights or compensation that may have been incurred. Articles (71-72), as Article (72) stipulates that "the removal of the penalty shall result in considering it as if it did not exist with respect to the future, and this does not affect the rights and compensation that resulted as a result of it, and the penalty papers are removed from the worker's service file [44].

Law No. 58 of 1971 regarding civil workers in the state did not deviate from this, as it also adopted the provisions of erasure as well, as Article (67) stipulated the effects of the enforcement of erasure by saying: "The erasure of the penalty results in considering it as if it was not in the future and does not affect the rights and compensation that resulted as a result of it[45]

As for the currently in force Law No. 47 of 1978 concerning civil servants in the state, the provisions related to erasure were mentioned in Article (92) of the law, which stipulated at the end of it the effects of erasure by saying: "The erasure of the penalty entails considering it as if it did not exist for the future and does not affect the rights and compensation that resulted as a result of it[46] .

And when and in Iraq, the legislator has regulated the provisions related to annulment or abolition of disciplinary punishment (erasing the punishment) under the three laws of discipline. Refer to this legislative regulation of annulment or abolition, and as far as the matter relates to the effects of approving the erasure, we find that the Iraqi legislator, under the Disciplinary Law of State Employees No. 41 of 1929 referred in Article (9) thereof to the provisions of annulment of punishment, as that article stipulates that: "The minister may, upon a recommendation from the head of the department, order the annulment of a warning transaction Or a fine or reprimand in the record of an employee who served at least three years after the imposition of the aforementioned penalty and was not punished during that with any other disciplinary penalty and carried out their work in a manner that fully satisfied the head of the department, provided that this privilege is granted once in the employee's service period.

As for the second Disciplinary Law No. 69 of 1936, it dealt with the provisions of erasure in Article (14) of it, which stipulated that: "The Minister may annul any disciplinary punishment imposed by other than the committees or the General Council on an employee who served at least one year after the imposition of the aforementioned punishment and was not punished during that with any other punishment and carried out their work in a manner.

And in the third law No. 14 of 1991 currently in force, Article (13) of it stipulates that: First - The Minister may cancel any of the penalties imposed on the employee stipulated in paragraphs (first), (second), (third) and (fourth) of Article (8) of this law when the following conditions are met: A- One year has passed since the imposition of the penalty. B- Carrying out his work in a distinct manner from his peers. C- Not to punish him with any penalty during the period stipulated in item (a) of this paragraph. Second: The decision to abolish the penalty shall result in the removal of its effects, if this has not been exhausted.

It is noted here that the Iraqi legislator in this law dealt with the second paragraph of Article (13) the effects of the enforcement of the erasure decision when he stipulated that by saying: The decision to abolish the penalty entails the removal of its effects if that has not been exhausted [47]

Section two

The demise of the effect of the penalty for the future

The disappearance of the effect of the penalty or disciplinary punishment for the future is to stop the effect of the effects of this penalty from the date of issuance of the competent authority's decision to accept the erasure, meaning that these penalties do not affect the future of the sanctioned employee.

In Egypt, the legislator limited the effect of erasing disciplinary penalties and removing all their effects to the future only, with the exception of the penalties of dismissal from service and referral to retirement, without prejudice to the rights and compensations that resulted from the punishment in the past, whether as an original or consequential punishment [48]

We have stated above, and thus the page of the guilty employee is included and the penalty papers and all references to it are removed from his service file as well. Therefore, the administrative authority may not consider the penalty imposed on the guilty employee since the date of its erasure, or consider it present in the decisions it takes regarding the employee, or consider it as an element of the evaluation for him in the future.

This was confirmed by the Supreme Administrative Court in this regard, by saying, "When the penalty is erased, and its papers are removed from the service file as an effect of the erasure, then this penalty has no effect, and it is not permissible to take it into account when considering the promotion of the worker…" [49], and this means that the erasure of the disciplinary penalty does not have any effect in relation to the past, and saying otherwise necessitates the retroactive effect of the erasure decision, and this would prejudice the legal positions that have

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settled for their families, as the legislator stated that the pain It does not affect the rights and compensations resulting from the penalty [50]

The system of erasing disciplinary penalties does not apply to the two penalties of dismissal from service and referral to pension, so the sanctioned employee will not return to his work with either of them until after a certain period has passed, as an effect of erasing this or that penalty, because they are not subject to the erasure system. Rather, this employee may be appointed a new appointment after the lapse of at least four years after his dismissal or referral to the pension and according to the text of Article (20) of the Civil Workers Law in the current state [51]

And in Iraq, as we mentioned previously by presenting the texts of the first Disciplinary Law No. 41 of 1929, and the second No. 69 of 1936, which were repealed, which did not address the effects of the enforcement of the erasure decision, as neither of them contained a legal text dealing with those effects, although they had taken up the issue of annulment of the disciplinary punishment.

As for Law No. (14) of 1991 regarding the discipline of state and public sector employees currently in force, it referred to the effects of annulment of the disciplinary penalty, as it stipulated in Paragraph (Second) of Article (13) thereof that “the decision to annul the penalty shall result in the removal of its effects, if you have not exhausted that.”

From the aforementioned text, it is clear that the effects of nullification are limited to the future, not the past, as the requirement of the law not to exhaust the effects of punishment leads us to the fact that nullification from a practical point of view extends only to the effects that may result in the future, and does not result from them in the past touches what[52]

It is clear to us through the above presentation that the abolition of the penalty leads to the removal of its future effects and has no effect on the past at all, meaning that the effects that occurred in the past remain intact and are not affected by nullification.

Conclusion

After we finished researching the topic (erasing the disciplinary penalty as a guarantee for employees to remove its effects), we came to a number of conclusions and recommendations.

First: Conclusions :

1. Most of the legislations adopted the term (erasure) on the subject of ending the disciplinary penalty and its implications, while the Iraqi legislator adopted the term nullification since the issuance of the first discipline law in 1929, through the second disciplinary law of 1936, ending with the third discipline law of 1991 until it was recently amended by Law No. 5 of 2008, to be replaced by the Iraqi legislator from the term (nullification) to the term (cancellation). In spite of the different designations and terminology adopted by these legislations, they do not differ in terms of the content or the topic that they deal with, except for the disposal of the disciplinary punishment imposed on the employee, which is one of.
2. In terms of the legislative definition of erasure: The legislations under comparison agreed not to provide a legislative definition of erasure, as those legislations regulated the provisions of erasure with legal texts that regulated the cases of its approval, conditions, the competent authority and other related matters, without providing a definition for it.
3. In terms of the judicial definition of erasure: the administrative judiciary, whether in Egypt, Tunisia or Iraq, did not provide us with a definition of erasure, but the judiciary had an important role in dealing with erasure, and this is what we have noticed in many decisions related to that.

Second: Recommendations :

1. The researcher recommends to the Iraqi legislator that they take different periods to erase disciplinary penalties according to the type and severity of the penalty, without dealing with those penalties in one way, despite the difference effect each.
2. The researcher recommends the Iraqi legislator to assign the power to erase disciplinary sanctions to a committee formed and independent of the disciplinary authorities for the purpose of providing more guarantee for the employee for considerations related to impartiality and not meeting the capacity of the competent person to discipline and erase in one hand.
3. The researcher recommends to the Iraqi legislator that the disciplinary sanctions be erased by the force of law as soon as the conditions necessary to achieve it are fulfilled.
4. The researcher recommends the Iraqi legislator to add an effect to erasing the disciplinary penalties, by destroying the penalty papers and removing them directly from the employee's file, so that these papers do not remain a reason for chasing the employee throughout his career.

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