



Disciplinary Responsibility of the Internal Security Forces

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Abstract

Legal responsibility is closely linked to the process of reforming the reality of responsibility for the Internal Security Forces, as this is linked to the legislation that works to clarify the disciplinary punishment that falls on the Internal Security Forces for the responsibility or error they bear while performing their job duties. Therefore, we find that positive legislation sets texts that aim to correct the error issued by members of the Internal Security Forces as a public employee. It is not a vengeful process as much as it aims to reform the public function and the public employee. The disciplinary responsibility process is surrounded by a set of controls and guarantees established in favor of the guilty employee.

It is also known as the employee's commitment to bear the consequences of his failure to fulfill his job duties that are regulated by law, and this is the basis of disciplinary responsibility, which is the failure to fulfill a job duty, whether positive or negative, to ensure good working conditions and its continuity through the penalty issued by the administrative head.

The most important elements on which disciplinary responsibility is based is the state of disciplinary violation, as it is not possible to punish and discipline members of the internal security forces without committing an act that is punishable, and as we noted in the previous research, the naming of the disciplinary violation is one of the sources of difference in jurisprudence, as it was called a disciplinary crime, which is the most common in jurisprudence and the judiciary, and some called it an administrative sin, and some called it a disciplinary violation, while the Supreme Administrative Court in Egypt used the term disciplinary violation.

Keywords: Disciplinary Responsibility, Internal Security, Disciplinary Penalties, Legal Violations.

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Introduction

Legal responsibility is closely linked to the process of reforming the reality of responsibility for the internal security forces, as this is linked to the legislation that works to clarify the disciplinary punishment that falls on the internal security forces for the responsibility or error they bear while performing their job duties. Therefore, we find that positive legislation sets texts that aim to reform the error issued by members of the internal security forces as a public employee, and it is not a process of revenge as much as it aims to reform the public function and the public employee, so the process of disciplinary responsibility is surrounded by a set of controls and guarantees established in favor of the guilty employee (Al-Sayed, 1999).

Disciplinary responsibility is nothing but a disciplinary violation if he violates or commits a disciplinary error such as repeated absence or disobedience to the direct supervisor or practicing a profitable activity. Any violating behavior carried out by a member of the Internal Security Forces is considered a violation

of the regulations and the laws impose a disciplinary penalty on him from the administration on the one

hand. On the other hand, the disciplinary system means providing basic guarantees for the Internal Security Forces man. Since this study is concerned with disciplinary responsibility or disciplinary violations of the Internal Security Forces man, most legislations do not refer to the definition of disciplinary or disciplinary violation, including the Iraqi Internal Security Forces Criminal Procedure Code No. 17 of 2008, as well as the Egyptian Police Authority Law No. 109 of 1971 as amended. However, jurisprudence and the judiciary have indicated a statement of the concept of disciplinary violation (Mazloun, 2020).

It is worth noting that responsibility is "the state of being held accountable or bearing the consequences" (Awabdi, 2012), and the employee's responsibility depends on the situation he commits, as it may be disciplinary, criminal, or civil.

So, disciplinary responsibility is defined in the language as: "discipline and education on good morals, i.e. reform, as it means punishment or retribution, and in terminology it means punishing a person for abuse and misconduct" (Zaher, 2016).

Disciplinary responsibility is known from what was previously stated as being based on error, while harm is not a necessary basis for its establishment. Disciplinary responsibility was characterized by relativity or class, and job duties differed from one job system to another, so this applied to one category rather than another. Disciplinary responsibility is defined in Sharia as the responsibility arising from an employee's failure to fulfill his positive or negative job duties (Al-Shahrani, 1991).

The employee is subject to disciplinary responsibility if the employee fails to perform his job duties and commits prohibited acts, which may include this responsibility on the person while holding his job, and this occurs from the date of his appointment, so that he is not held accountable for his mistakes prior to holding the job. As for his mistakes after leaving the service, the law exempts some acts for which he is held accountable, such as the act of disclosing a professional secret (Othman, 2010) or for financial crimes that require a period of time to discover them, where the employee who committed the violation left his position or was referred to retirement with the aim of protecting the public interest (Tamawi, 1987).

It is worth noting that jurisprudence and the judiciary in France have settled on considering disciplinary responsibility to be based on two elements, one of which is the employee subject to disciplinary accountability, and the other is the functional error as the basis of that responsibility. This is what the Egyptian judiciary and jurisprudence have gone to, where it came to say that disciplinary responsibility is "every act or omission committed by the worker that deviates from the duties of his position." This definition is based on the employee element and the administrative error element (Tamawi, 1987). The Egyptian judiciary came with a ruling by the Supreme Administrative Court, "The basis for establishing disciplinary responsibility is that a positive or negative act is attributed to the worker with certainty, which is considered his contribution to the occurrence of the administrative violation..." (Supreme Administrative Court, 2012).

To further research what is related to the disciplinary responsibility of the internal security forces, we will divide this requirement into two sections. Section one examines the disciplinary responsibility of the internal security forces in Iraq, while the section two is devoted to the disciplinary responsibility of the internal security forces in Egypt.

Section One

Disciplinary Responsibility of the Internal Security Forces in Iraq

Members of the Internal Security Forces are subject to a special system of penalties that asks them about disciplinary responsibility or disciplinary violations, which is the Iraqi Military Penal Code (Military Penal Code, no year), while others mentioned in Article (39) of the Iraqi Code of Criminal Procedure, employees or those charged with public service, are subject to the Law of Discipline of State and Public Sector Employees and are subject to the disciplinary penalties contained in Article (8) of the same law.

As is known, the Internal Security Forces are a special system and have their own organization, so we find the issuance of legislation that regulates its work and is independent and has its objective provisions that criminalize the violating acts issued by its members, which differ from the general rules established in criminal laws. These special laws have been approved, as is the case in the Criminal Law of the Internal Security Forces, which is a special law with its two branches: the Internal Security Forces Penal Code No. 14 of 2008, and the Criminal Procedure Law of the Internal Security Forces No. 17 of 2008, compared to the general criminal legislation, it is a set of texts that define crimes that violate the system and security of the Internal Security Forces and any force affiliated with it, and what it includes of legal formulas that work to achieve general and special deterrence while guaranteeing the rights of members of the Internal Security Forces to perform the tasks assigned to them with honesty and impartiality. The importance of this law lies in the nature of the special relationship with members of the Internal Security Forces of various ranks, which requires consistency in work, accuracy and complete discipline.

It also requires the enactment of special penal legislation for the Internal Security Forces, whose provisions are specific to place and time, and this goes beyond the subject and persons, and its function is not limited to extracting facts and applying the law only, but rather to understanding the personality of the accused and the reasons that led to the commission of the crime to achieve a "broad" understanding of the work requirements for members of the Internal Security Forces.

Upon the disciplinary responsibility of the Internal Security Forces in Iraq, we find that the Court of Disciplinary Order is the one that has the jurisdiction to consider violations and disciplinary penalties according to what is stipulated in the Internal Security Forces Penal Code No. 14 of 2008. The jurisdiction of this court has been determined according to the law on the principles of criminal trials of the Internal Security Forces in Article (18) thereof. However, if we look at Articles (46 and 47) of the Internal Security Forces Penal Code, we see that the violations and disciplinary penalties are included in the Penal Code of the Internal Security Forces and not as stated in the Law on the Principles of Criminal Trials of the Internal Security Forces No. 17 of 2008, which is considered a legislative defect that must be avoided. What we should mention in the subject of disciplinary responsibility is the violations on the one hand and on the other hand the disciplinary penalties imposed on the Internal Security Forces, and this is through the following:

First: Violations

Jurisprudence has not agreed on a single name for the error committed by a member of the Internal Security Forces that leads to him being subject to disciplinary sanctions. It is one of the names mentioned due to an error committed by a public employee or one of the influential internal security personnel. It is (disciplinary crime, disciplinary violation, disciplinary error, administrative sin, behavioral violation, disciplinary violation). All of these terms express a single meaning that refers to the error that occurs in the action of a public employee or member of the Internal Security Forces while performing his duty and job duties, and leads to harm to the public facility in which he serves (Kanaan, 2008).

With this, we support the jurisprudential trend that uses the term disciplinary crime over the rest of the names, and this is what administrative jurisprudence has settled on. They have used this term in most of their research (Al-Malt, 1997). Violation is defined in the language as "violation: its source is to violate. Violation of the law: committing an act against the law. Violate the order: deviate from the order. He contradicted it in opinion, i.e. came up with an opinion that is opposite to his opinion, opposed him" (Maalouf, 2010). "Disciplinary: its source is discipline, disciplined: adhered to the law, complied with it. Military discipline: regularity and submission to military orders" (Ibn Manzur, 1997). =====

In terminology, we find that the legislator in the Iraqi Internal Security Forces Criminal Procedure Code No. 17 of 2008 did not define the disciplinary violation and the instructions did not mention its definition as shown in the definition of the disciplinary violation, but rather only discussed the most important duties and prohibitions of the Internal Security Forces man and presented them as a general rule (Al-Malt, 1997).

We also find that the legislator did not specify the disciplinary violations exclusively, and this matter is due to the difficulty of that and the difficulty of defining the duties of the Internal Security Forces, and the administrative law adopted the rule (no punishment except by text), i.e. the principle of the legitimacy of the disciplinary penalty (Kanaan, 2007).

As the administrative legislator did not do in the public service and provide a specific definition of disciplinary actions and violations, which leads to determining the responsibility of the Internal Security Forces man, and the disciplinary law has prohibited a number of actions that restrict him and prevent him from deviating from the duties of the job or its requirements or violating the dignity of the job, without specifying this departure or the cases of this defect or mentioning those actions. It is important to note that the Internal Security Forces Penal Code No. 14 of 2008, as amended, states that the disciplinary penalty is imposed on the Internal Security Forces when he commits a disciplinary violation.

While the same law has implicitly referred to the disciplinary violation by stating that "the Internal Security Forces man shall be punished with the disciplinary penalties stipulated in this law for every violation he commits that includes deviating from the requirements of his job duties." These phrases that the legislator included in the legal texts can only be due to actions committed by a member of the Internal Security Forces, and its legal classification as being outside of job duties and a violation of job dignity requires disciplinary accountability (Al-Din, 2004).

Second: Disciplinary Penalties

We would like to point out that the disciplinary penalties that may be imposed on officers and members pursuant to Articles (47 and 48) of the Internal Security Forces Penal Code No. 14 of 2008 were free of imprisonment as a disciplinary penalty, while the highest order of discipline authorized the Minister of Interior, according to the table attached to Article (20/First) of the Iraqi Internal Security Forces Criminal Procedure Code No. 17 of 2008, to punish members only with imprisonment for a period not exceeding (30) thirty days, and did not authorize the Minister to punish officers or students with imprisonment pursuant to the above article, while the law stipulated that the police officer be punished by the highest order of discipline or whoever he authorizes (Article (7), 2008).

Section Two

Disciplinary Responsibility of the Internal Security Forces in Egypt

As we have shown, disciplinary responsibility is regulated according to special legal frameworks, so we find that the legislator in Egypt regulated the police function through Police Law No. (109) of 1971, and this law regulates the relationship between the security forces and the agency responsible for them on the one hand, as well as regulating mutual obligations and rights, which is imposed by the requirements of the job in order to carry out its duties, and the laws of the internal security forces include rules that confront deviant behavior and punish those proven to have deviated, which is known as disciplinary responsibility (Al-Bamahi, 2019).

This matter does not affect the content of the concept of crime in jurisprudence and judiciary (Al-Hawri, 2001). What is worth mentioning in this regard is the definition of disciplinary violation from the Egyptian legislation, as it did not set a definition for disciplinary violation in either criminal or administrative legislation, which prompted jurisprudence to intervene through multiple and varied definitions with the aim of confronting setting a definition for disciplinary violation and its elements, in addition to what the administrative judiciary has drawn up as a definition for disciplinary violation and distinguishing it from others.

In disciplinary violation, if the officer or employee fails to fulfill his job duties, he is subject to disciplinary punishment, and in view of the effects that imposing the penalty leaves on the material and moral life of the employee, many systems have surrounded the imposition of disciplinary punishment with some controls that the competent authority must take into account, otherwise its decision becomes flawed and may be appealed (Al-Saroukh, 1983).

What is clear to us from the texts and legislation of the civil service is that they do not include a definition of the disciplinary crime, and perhaps this is due to the difficulty of establishing a comprehensive and comprehensive definition of the disciplinary violation. In addition to that, it is difficult to limit the disciplinary violations, considering that they represent a breach of various and diverse job duties that differ from one facility to another (Al-Bandari, 1971). The matter was limited to the fact that these laws stipulated the most important job duties and prohibitions that the employee is prohibited from performing, and deviation from which constitutes a crime or disciplinary violation that requires holding its perpetrators accountable (Al-Saeedi, 2006).

In Egyptian legislation, the law states that "any employee who deviates from the requirements of duty in the work of his job, or appears in a manner that would undermine the dignity of the job, shall be subject to disciplinary punishment" (Article (58/, 2016).

Some jurists have expressed their approval of the legislative approach and the lack of definition of the disciplinary crime because, in their view, it is consistent with the traditional trend of legislators in some countries, such as Egypt, which does not care about setting legal definitions, but rather cares about setting legal regulation and organizing the subject, and leaving the legal definitions to jurisprudence and the judiciary (Al-Shimi, 2006). It is important to know that the disciplinary crime does not accept definition or limitation, due to its association with multiple groups of employees, and variable duties that follow the prevailing political and social values in society, while the criminal crime addresses everyone in an abstract manner without any discrimination between one group and another (Battikh, 1999).

It is worth noting that the police laws in Egypt have stipulated that "any officer who violates the duties stipulated in This law or the decisions issued by the Minister of Interior or deviates from the requirements of duty in the work of his job or behaves in a manner or appears in a manner that would undermine the dignity of the job shall be punished disciplinary, without prejudice to filing a civil or criminal lawsuit when necessary." This text, while confirming that violating the texts that define job duties is a disciplinary crime, is the direction of the Egyptian administrative judiciary, in addition to emphasizing the importance of the decisions issued by the Minister of Interior, and that violating them is a disciplinary crime.

Therefore, the deviation of an employee or police officer from the behavior that he must adhere to makes that behavior outside the requirements of the job. If a mistake or violation occurs, the matter requires disciplinary punishment for it, without considering that the violation is negligence or dereliction on his part. The mistake for which a disciplinary penalty is imposed is called a disciplinary violation or crime, which is divided into violating laws, regulations and decisions, the other is going beyond the requirements of the job, and the third and last is engaging in behavior that would undermine the dignity of the job (Yaqout, 2007).

There are many jurisprudential efforts in defining disciplinary violations, and this goes back to its origin due to the difference in opinions on the permissibility of codifying disciplinary violations, as well as the difference in jurisprudential opinions on the pillars of disciplinary violations, and each party attempts to include a definition of what it sees in the areas of legitimacy of disciplinary violations and their pillars. The violation was defined as the actions that require a disciplinary violation, which is any failure to perform a duty or violation of good conduct and morals that would lead to disrespect for the profession and undermine its dignity, or deviation from the negative obligations imposed on employees (Zaki, 1986).

It is clear from the above definitions that they agree that disciplinary responsibility or disciplinary crime revolves around a positive action or abstention from an action issued by a public employee during or outside the job that violates the requirements of the job. It seems that there is a difference in the view of some regarding the legitimacy of the disciplinary violation and the violation of the act of a legal text, or the extent of the existence of a will or wrong intention or not, and whether there is a condition for the existence of harm or not (Saleem, 2002).

A disciplinary violation in the police force is also known as any positive or negative behavior, whether an act or a fact, that occurs in violation of the police force law, military rulings, ministerial decisions, or orders issued by superiors within the police force, within the limits of the law, whether explicitly stated or can be inferred from these laws, rulings, decisions, and orders (Hamad, 1989).

Conclusions

1. The employee's responsibility depends on the situation he commits, as it may be disciplinary, criminal, or civil.
2. The employee is subject to disciplinary responsibility if the employee fails to perform his job duties and commits prohibited acts.
3. It is necessary to enact special penal legislation for the Internal Security Forces, whose provisions are specific to place and time, and this goes beyond the subject and persons, and his job is not limited to extracting facts and applying the law only, but to understanding the personality of the accused and the reasons that led to the commission of the crime to achieve a "broad" understanding of the work requirements for members of the Internal Security Forces.
4. The deviation of the employee or police officer in the behavior that he must adhere to makes that behavior outside the requirements of the job, so if an error or violation occurs, the matter requires disciplinary punishment for it.
5. However, disciplinary responsibility or disciplinary crime revolves around a positive act or omission issued by a public employee during or outside the job that violates the requirements of the job.

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