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THE LEGAL NATURE OF MANDATORY RETIREMENT OF HIGHER GRADES OCCUPANTS AT TO A LOWER RANK AND ITS LEGAL BASIS

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Abstract:

First of all, it is unreasonable for the employee's relationship with the administration to be an eternal relationship, but rather it must end either with a natural or unnatural end, and perhaps retirement stands at the forefront of the natural reasons for the termination of the functional bond, but the situation is different from what it is with regard to the referral to retirement at a lower degree, as the referral is considered To retire below the functional grade and by the sole will of the administration is one of the unusual methods for severing the functional bond; Accordingly, the difference in the legal nature of it has a special importance, and this is what prompted us to choose the topic for research and study, however, the compulsory referral to retirement without reaching the legal age and in cases other than the case of health disability is an exceptional case, but it is also characterized by its uncommonness and spread compared to what is common It is one of the types of functional retirement, and therefore its contact with the holders of senior and leadership positions in the state gives it special importance, noting that the problems surrounding the issue revolve around the difference in legal nature according to different jurisprudential points of view, after the legislator neglected to develop legal provisions according to which he gives a legal description of compulsory retirement Before reaching the legal age, legal studies do not start from scratch. Rather, the legislator must put in place the legal texts that establish a specific legal ruling, provided that this legal foundation may not be characterized by accuracy and completeness, but it is often deficient, and to reach the circle of completing the deficiency in the texts. These texts must be analyzed with an explanation of the legislator's philosophy behind this legislative option.

keyword: legal conditioning, referral to retirement, the lowest job grade, legal basis.

There are multiple reasons for the dissociation of the employment relationship between the employee and the administration. These reasons include natural causes, disciplinary factors, and those subject to the assessment and authority of the administration. However, terminating the employment relationship has attracted the attention of the legislator in laws regulating civil service and related special legislation. Since retirement is a form of terminating the employment relationship, it is incumbent upon us to clarify the nature of this administrative termination of the employee-administration relationship and to articulate the legal nature of any legal action. This serves as the starting point for delving into its study and analysis, as every legal action has a foundation from which it derives its legitimacy and existence. Through our examination of the

foundations of retiring employees at a minimum rank, we find two fundamental bases. The first is legal, which reveals the legitimacy of the action and unveils its legal underpinning. The second is a philosophical foundation, through which we can elucidate the legislator's intent in granting this authority to the administration and the philosophical principles behind this legislative choice. The legislator aims to employ these principles in the service of both the state and society.

- **Legal Conditioning for Mandatory Retirement Referral to a Lower Rank**

Firstly, it is necessary to mention that attaching a specific legal description to the concept of mandatory retirement referral requires the examination of the legal description attributed by jurisprudence and the judiciary to the decision of the administration. This involves terminating the service of individuals occupying senior and specialized positions due to their failure to perform their official duties as mandated by law. We must also note that the views on this matter have oscillated between two considerations: either considering it a disciplinary penalty or an attached decision for public institution regulation. Since the matter of retirement referral to a lower rank is related to the military, we will proceed to explore its legal adaptation in light of legal provisions. We will discuss these theories, attempting to present deeper, closer, and more comprehensive insights into the concept.

- **Mandatory Retirement Referral to lower rank (Disciplinary Penalty)**

The administration's authority to exempt its senior employees is considered one of the most prominent aspects of power vested in the administration[(i)]. Accordingly, it can regulate the functioning of the public institution in accordance with the requirements of administrative efficiency[(ii)]. If we intend to adapt the retirement referral to a lower rank, it is necessary to indicate that retirement referral – as a measure to sever the employment relationship between the employee and the position – would result in a final administrative decision with legal consequences[(iii)]. However, the situation differs with regard to retirement referral to a lower rank – as an exceptional method – driven by the principal reason (incompetence and job failure) or reasons solely at the discretion of the administration.

It can be argued that retirement referral to a lower rank takes on the character of a disciplinary penalty, not specified in the Law of Discipline for State Employees and the Public Sector.[(iv)] The rationale for this can be traced to the fact that this type of retirement referral serves as a cause for terminating the employment relationship[(v)]. However, the civil servant has not reached the legal retirement age and is not suffering from an illness, disability, or similar circumstances that would prevent them from continuing in service. The opinion here tends to consider it a convincing disciplinary penalty, as it carries the nature of a penalty or punishment resulting from the failure to perform job duties. It somewhat resembles penalties leading to termination of the employment relationship, which affect employment rights, as stipulated in Article 8 of the Law of Discipline for State Employees and the Public Sector.

It is evident from the matter that adopting the formal criterion for considering the retirement referral decision (procedure-measure) as a disciplinary penalty or otherwise (textual inclusion or absence of textual inclusion in the list of disciplinary penalties) is certain, and it is clear that the retirement referral to a lower rank is not explicitly mentioned within the Law of Discipline for State Employees and the Public Sector. However, adhering to this absolute criterion serves no purpose, as it is necessary to understand the essence of the concept.

Furthermore, it should be noted that adopting retirement referral to a lower rank as an inferred penalty from the legal text, the Iraqi legislator indicated that "an employee at the level of director general and above shall be referred to retirement at a lower rank if their failure to perform job duties is determined, except for those subjected to a more severe penalty." It can be understood from the aforementioned text that the legislator's inclination towards considering retirement referral to a lower rank as a disciplinary penalty is based on the phrase "except for those subjected to a more severe penalty."[(vi)] However, the legislator did not explicitly specify the more severe penalties. Nevertheless, we can infer that the legislator intended the penalty of dismissal stipulated in the Law of Discipline, as the most severe. The criterion here is the consequences resulting from each penalty; retirement referral to a lower rank and dismissal both terminate the employment, yet the former does not prevent future reappointment or contracting with the employee, unlike the latter, which explicitly prohibits it according to Article 8 of the Law of Discipline for State Employees and the Public Sector.[(vii)] Hence, legal reasoning considers retirement referral to a lower rank as a penalty lying between dismissal and isolation. Islamic jurisprudence also notes that retirement referral is one of the most severe penalties, similar to dismissal in terms of its consequences while being more respectful of the dignity of the position and the individuals occupying senior and specialized positions.[viii]

What might undermine all that has been mentioned is the justification provided by the legislator in various decisions (job failure) or (ministerial failure), as it is commonly understood that disciplinary punishment corresponds to professional misconduct. Thus, it is logical to consider the hypothesis that job failure could be regarded as an administrative offence warranting punishment and censure.[ix] This is because job failure manifests in an employee's incapacity, professional deficiencies, and inadequate job performance. Confusion may arise between disciplinary errors (job-related errors occurring during or due to employment) that warrant immediate punishment and job failure, which is characterized by a recurrent pattern of deficiencies and incapacity in performing professional and job duties. Since the requirements of job failure are not explicitly considered administrative offences, it cannot be unquestionably deemed that retirement referral to a lower rank is a disciplinary penalty, even though the Law of Discipline for State Employees and the Public Sector has stipulated the duties of public employees, including responsibilities, attendance, safeguarding state funds, and the like. Any deviation from these duties is deemed an administrative offence, and such job-related errors may concurrently lead to job failure.[x] In a certain context, this might justify considering retirement referral to a lower rank as a penalty resulting from non-compliance with legislated obligations imposed on public employees. The Iraqi

administrative judiciary may have endorsed this approach in one of its decisions, wherein it approved the administration's decision to retire a senior employee to a lower rank based on their involvement in administrative and financial corruption violations.[xi]

In another context, we cannot readily concede that retirement referral to a lower rank is a convincing disciplinary penalty due to several reasons. Firstly, not every action emanating from the administrative authority (higher management) can be considered a compelling punishment.[xii] Secondly, the legitimacy of the justifications for retirement referral to a lower rank. Determining this requires judicial discretion based on the personal criterion of discerning the true intention of the administration in order to ascertain the legal description of the undertaken procedure.[xiii] The absence of a specific legal provision does not equate to acquiescence with the administration's justifications under the guise of legitimate actions. The judicial approach involves scrutinizing the logical adaptation of the facts upon which the administration's decision was based.[xiv]

We observe that the Iraqi legislator has adopted a distinct approach in its regulations concerning retirement referral to a lower rank, whereby it followed the path of linking the cause with the effect, known in the realm of disciplinary penalties as "linking the violation with the disciplinary punishment." Thus, if we acknowledge that retirement referral to a lower rank is indeed a disciplinary penalty specific to high-ranking and specialized positions within the state, we cannot, however, consider it a compelling punishment.[xv] The legislator aimed to merge the benefits of codifying the cause (retirement referral to a lower rank) and the underlying reason (job failure, ministerial failure) on one hand, and the benefits of granting the administration a degree of discretionary authority on the other.[xvi] On another note, some have considered retirement referral to a lower rank due to professional incompetence as nothing more than a non-disciplinary form of dismissal in Iraqi legislation. It serves as the legislator's means to part ways with the inadequately competent employee in leadership positions within the state.[xvii]

However, adapting retirement referral to a lower rank as a non-disciplinary dismissal is a debatable proposition, for two reasons. Firstly, non-disciplinary dismissal is not deemed legitimate unless explicitly stipulated by the law. Secondly, despite the seriousness of this approach, non-disciplinary dismissal is often linked to reasons of state interest or loss of confidence and authority, rather than mere administrative and technical incompetence.

In sum, after presenting the legal arguments to elucidate the nature of the administration's jurisdiction to terminate the service of its administrative leaders, it becomes evident to us that we should elucidate our findings. It is well known that jurisdiction exists only through the law's provision, and since the law grants the administration the authority to terminate the service of holders of high-ranking and specialized positions without reaching the legal retirement age by referring them to retirement, we cannot deny the disciplinary aspect of this decision. Particularly, since the referral only occurs after demoting the job rank, thus reinforcing the disciplinary aspect. Nevertheless, we cannot conclusively assert the inherent punitive nature of retirement referral to a lower rank in an absolute sense. The reason for this is the outcome sought by both the legislator

and the administration from implementing this measure, which is more of an organizational goal than a punitive one. Our support for this notion is based on the designation of this measure for leadership positions due to their management of public facilities. Any failure in their performance directly impacts the functioning of these public facilities.

Regarding the issue of military personnel's retirement referral to a lower rank, it may be clearer than the referral of high-ranking job holders to early retirement without their job rank. The reason being, the legislator grants this authority exclusively to the military personnel upon their conviction by a final judgment from a competent court. The adaptation of retirement referral without military rank designation as a punishment, combined with the silence regarding the nature of the punishment, leads us to incomplete legal conclusions. The law provides no explicit authority to the military administration to refer personnel to retirement or withhold such a referral; rather, it imposes this provision. The administration is vested with the discretion to demote one or two ranks.[xviii]

Drawing on criminal laws and the types of penalties they encompass, the trajectory of the research has led us to consider the concept of consequential penalties, where retirement referral of military personnel without their military rank could be considered a consequential penalty. As commonly understood, a consequential penalty "is one that follows a person as a result of a legal judgment, without needing to be explicitly mentioned in the judgment"[xix] Perhaps the retirement referral of military personnel following a judicial verdict is nothing more than a consequential penalty imposed by law.

- **Mandatory Retirement Referral to a lower rank (Regulatory Resolution)**

The higher authorities take specific measures and decisions for the purpose of regulating public facilities, and their effects are confined within the scope of the public facility. These measures bind the employees working within the facility, although the nature of these actions has been subject to debate in administrative jurisprudence.[xx]

It is important to note that the regulation of public facilities is at the heart of the work of public administration and constitutes a fundamental principle underlying organizational administrative functions. It is essential for ensuring the proper functioning of public facilities.[xxi] The administration possesses discretionary authority in this realm, and its means to achieve this are through facility-specific administrative decisions. If we attempt to adapt retirement referral to a lower rank as a facility-specific administrative decision targeted at high-ranking or specialized officials, as some have referred to it, despite the legal dismissal of this categorization, it becomes evident that responsibility corresponds to the extent of authority.[xxii]

Therefore, senior officials must bear the consequences of assuming high-ranking positions. If the higher authorities, represented by the Council of Ministers, issue-specific decisions or measures aimed at organizing a public facility based on their granted powers, affecting the status of senior officials, it is not then feasible to invoke specific rights against the authority of the administration.

This is because occupying high-ranking positions is not considered an acquired right; rather, it falls within the discretionary authority of the administration, especially when considering that internal procedures governing the public facility cannot be contested before the judiciary.[xxiii]

Sound legal reasoning necessitates a careful examination of general concepts before applying the description of a facility-specific administrative decision to retirement referral to a lower rank. To begin, we must clarify the concept of a facility-specific administrative decision. Some aspects of administrative jurisprudence have referred to it as the internal procedure governing the operation of a public facility. Internal procedures are defined as "measures taken by administrative authorities not related to disciplinary matters and not based on specific regulations or legal provisions, for the normal operation and organization of the facility, to ensure the best service performance".[xxiv]

From the aforementioned definition, we observe the application of the term "procedure" to the administrative decision regulating the operation of the public facility. However, this alignment may not be legally tenable. The reason lies in the fact that an administrative procedure is merely a means required by the law to achieve a defined purpose. The procedure itself is not inherently capable of producing a legal effect; rather, it is a process that may precede the issuance of an administrative decision or may serve as a conduit for it.[xxv]

Considering we are discussing "mid-level positions," which lie between administrative and political roles, their responsibilities differ from those of other employees.[xxvi] They are tasked with managing the facility they oversee, and any failure in the performance of the chief administrative officer reflects on the operation of the public facility.[xxvii]

Given that the performance of the chief administrative officer has both positive and negative repercussions on the public facility, does this imply that every decision affecting the position of the highest-ranking official within the facility is solely an organizational decision made for the benefit of the public facility?

In another scenario, the philosophy of disciplinary sanctions in itself stems from the aim of the organization and the desire to improve work behavior while avoiding violations in all their forms.[xxviii] This, in turn, positively affects the operation of the public facility, ultimately serving the greater good. Does this mean that all disciplinary sanctions are purely facility-specific decisions?

It is important to highlight that retirement referral according to French law, based on professional incompetence, does not carry a disciplinary attribute. Instead, it is a decision made in favor of the public facility and the common good. Similarly, a segment of Iraqi administrative jurisprudence has held that professional incompetence is not considered a disciplinary offense, and therefore, the employee cannot be held accountable under the Law of Discipline for State Employees and the Public Sector. Disciplinary infractions involve a breach of job duties and requirements, whereas

competence among public employees varies, is relative, and depends on numerous technical and operational factors.[xxix]

In the face of the uncertainty surrounding the legal description of the concept, an unequivocal adaptation of retirement referral to a lower rank cannot be inferred without considering the opinions of the administrative judiciary.

- **Reasonableness is a standard for balancing elements of administrative judgment**

In its legal sense, reasonableness constitutes one of the standards concerned with monitoring the discretionary authority granted to the relevant administration regarding a specific administrative procedure or action. It is an objective criterion that the judge resorts to in an attempt to establish his oversight over the aim of the administrative action.[xxx]

Therefore, if the administration makes a decision of referral based on the failure of senior employees to fulfil their duties and responsibilities, its purpose cannot be divorced from the public interest, whether the legal action is a disciplinary or non-disciplinary penalty, or merely an opposing administrative decision taken by the higher authorities under their discretionary power as stipulated by the law. Through this opposing decision, the appointment to the position is revoked, and its effect extends to the annulment of the appointment and the referral to retirement at a rank lower than the one previously held.

- **The Legal Basis for Mandatory Retirement Referral to a Lower Rank**

The administrative organization must derive its legitimacy from legal foundations that disclose the legitimacy of its existence. These foundations can take various forms, such as a law issued by the legislative authority or a decree issued by the head of the executive authority. From here, we will attempt to delve into explaining the legal nature of referral to retirement. If we aim to elucidate the legal bases for the administrative decision to terminate the service of senior and specialized positions within the state by referring them to retirement at a lower rank, we will first turn to elucidate its constitutional basis. Subsequently, we will attempt to outline its foundations in ordinary legislation, addressing each step sequentially:

- **The Constitutional Basis**

The constitution, which defines and establishes the prevailing legal concept in the state, its political and social philosophy, and its legal system, delineates the legal framework for the state's activities and its authorities, specifying the jurisdiction of each one, which is elevated above the entirety of legal rules.[xxxi] In essence, any authority cannot exercise its jurisdiction beyond the framework of the valid constitution or in a manner contrary to its philosophy.

When we turn to examine the constitutional basis of the administrative authority to refer individuals holding senior and specialized positions to retirement before the legal age and at a lower rank, we find ourselves confronted with two foundations, one preceding and the other subsequent. The first foundation (preceding) is represented by what was stipulated in the

Constitution of the Republic of Iraq for the year 1970, which has been annulled. It defined public office as "A - Public office is a sacred trust and a social service.[xxxii] Its essence is a sincere and conscious commitment to the interests and rights of the masses in accordance with the provisions of the Constitution and the law." In other words, the Constitution referred to the law for the regulation of public office. Furthermore, it stated, "The Revolutionary Command Council exercises the following powers: A - Issuing laws and decisions that have the force of law..." Thus, the mentioned constitution operated on the principle of legislative monopoly and blurred the distinction between the authority of the Revolutionary Command Council to issue laws and the authority of the administration to issue decisions and regulations. The Council was granted the authority to issue decisions - originally reserved for the administration - that carry the force of law. This implied an overlap between the legislative and executive authorities. As a result, the decisions of the Council gained legal force equivalent to ordinary legislation, effectively granting them immunity from challenge and annulment. Therefore, the dissolved Revolutionary Command Council relied on the aforementioned constitutional provisions and issued Resolution No. (880) and other resolutions that outlined the relationship between employees and the public facility. The second foundation (subsequent) is embodied in the Constitution of the Republic of Iraq for the year 2005, which is currently in force.[xxxiii] This constitution indicated that "existing laws shall remain in effect, unless they are annulled or amended, in accordance with the provisions of this Constitution." As the Iraqi Parliament did not repeal the legislative resolutions related to early retirement, this implies that the provisions of those resolutions are in alignment with the current constitution. Otherwise, the Parliament would have annulled them, similar to its explicit annulment of other resolutions. Furthermore, the government presented a "Council of Ministers Bill" that included a reference to referring employees to retirement at a lower rank. Without a constitutional basis and authorization for such referral, the government would not have included it in its laws.

The law, in its broad sense, is not confined to written statutes alone; it extends to encompass what is established in the collective consciousness in the form of legal customs, general legal principles, directed constitutional entities, or prevailing legal concepts and the like. Therefore, if we intend to elucidate the legal foundations of the administrative decision to refer individuals holding specialized positions to early retirement at a lower rank, it is embodied in what is known as "constitutional value objectives." As previously explained, the administrative decision to refer to retirement is made in the interest of the administration itself, aiming to improve the functioning of the public facility and achieve the common good.[xxxiv]

Although the Iraqi constitutional judiciary has not explicitly addressed these so-called constitutional value objectives in its rulings, they are considered unwritten legal principles guiding the legislator toward a specific legislative option to achieve the common good.

- **The Legislative Basis (Ordinary Legislation)**

Successive retirement laws have lacked provisions for referring individuals to retirement at a lower rank; they have been limited to mandatory retirement based on reaching the legal age or for health

reasons, as well as optional retirement based on the request of the public employee and in accordance with the provisions of the law.[xxxv]

Furthermore, successive disciplinary and regulatory laws have also omitted explicit provisions for early retirement as a disciplinary penalty; however, they have been considered as part of the additional disciplinary sanctions alongside the penalties outlined in regulatory laws.[xxxvi]

Yet, the legislator included such provisions in the Military Service and Retirement Law No. (3) of 2010. According to this legal provision, military personnel can be referred to retirement with a reduction in rank or ranks if a final judgment is issued against them for betraying the country.[xxxvii]

However, the legislator has regulated retirement at a lower rank and without reaching the legal age through resolutions issued by the dissolved Revolutionary Command Council, which dealt with this type of retirement referral. The legislator defined various scenarios for retirement referral and diversified cases of early retirement, encompassing various categories of employees, based on decisions by the dissolved Revolutionary Command Council. The initial legal foundation for retirement referral before reaching the legal age is reflected in several resolutions, which we will examine in the following:

- Revolutionary Command Council Resolution No. (1131) of the year 1981, by which the General Secretary of the Council was authorized to sign decisions related to dismissal and retirement for workers and employees below the rank of General Manager. This resolution granted the administration the power to refer to retirement as a disciplinary penalty specifically for all state employees who do not hold special or higher ranks.[xxxviii]

- Revolutionary Command Council Resolution No. (1316) of the year 1983, which stipulated, "Granting the President of the Republic the authority to impose disciplinary and regulatory penalties (including the penalty of dismissal from service), as well as the authority to refer civilian state employees below the rank of General Manager to retirement." Subsequently, the aforementioned resolution was amended by Revolutionary Command Council Resolution No. (1453) of the year 1983, which added the provision: "Also granting the power to impose retirement upon members of the internal security forces (non-officers)."[xxxix]

- Revolutionary Command Council Resolution No. (880) of the year 1988, which stipulated, "Any employee at the level of General Manager or above shall be referred to retirement at a lower rank. It is decided to refer them to retirement due to their failure in performing their duties... at a lower rank." The legislator limited the scope of this aforementioned resolution to the higher and special ranks, which extend from the rank of General Manager to Deputy Minister and those equivalent to it.[xl]
  Furthermore, it is worth noting that this resolution remains in effect until now and has not been explicitly or implicitly repealed based on what was ruled by the General Assembly of

the State Consultative Council (currently the Council of State), as confirmed in the case of the second respondent (in addition to his position) through investigative committees that concluded that he committed various offences related to financial and administrative corruption. Following the approval of the second respondent, the Prime Minister (in addition to his position) issued a Diwani order to refer him to retirement based on Revolutionary Command Council Resolution No. (880) of the year 1988...[xli]

However, it should be criticized that the Diwani order issued against the second respondent considers the retirement referral as a disciplinary penalty applied by the administration for financial and administrative corruption crimes. Another criticism lies in the close connection to the decision of the General Disciplinary Council and the General Assembly of the State Consultative Council (currently the Council of State) as a discriminatory entity, considering that the decision explicitly cites its cause as job failure. However, the violations related to financial and administrative corruption cannot be considered job failure but rather severe breaches of public duty, deserving disciplinary, criminal, and civil accountability.

In one of its decisions, the General Disciplinary Council (currently the Employees' Judiciary Court) stated, "The Council found, based on what was presented, that Revolutionary Command Council Resolution No. (880) issued on 7/12/1988 states the following (Any employee at the level of General Manager shall be referred to retirement at a lower rank. It is decided to refer them to retirement due to their failure in performing their duties...) This implies the possibility of referring an employee with the title (General Manager) or above to retirement before reaching the required legal age for retirement due to their failure in performing their duties, using the mechanism established for this purpose. The implementation of this resolution requires proving the case of the General Manager's failure... It is not valid for the claimant to argue that the mentioned resolution is annulled due to a violation of the Constitution. The truth is that the resolution has not been repealed explicitly or implicitly. Therefore, it remains in effect and is applicable in accordance with Article (130) of the constitution."[xlii]

- Revolutionary Command Council Decree No. (170) of the year 1988, which was dedicated to referring a Minister or an individual of Ministerial rank to retirement with a salary one grade lower than that of their peers among the employees, in the event that their failure to achieve their responsibilities within their ministry is proven. This decree granted the authority to the head of the executive authority to determine whether the Minister has failed or not.

There is no impediment to resorting to the aforementioned decree, as long as its legal existence persists. Furthermore, it constitutes a suitable legislative option given the practical reality of ministerial performance that may not align with the evolving principles of effective administration. Consequently, there is nothing preventing the referral of

Ministers to retirement at a lower rank, provided there is a proposal from the Prime Minister and approval from the Council of Representatives.

([i])The exemption of the holders of high and special positions "is nothing but the termination of assigning the occupants of the leadership positions from exercising the duties of the position they occupied by an order issued by a higher authority based on the legal conditions that it deems appropriate, and this does not mean the termination of his job service." The justifications may be at a high level of The similarity between referral to retirement at a lower degree and release from office. Consider this: D. Mahmoud Abd Ali Hamid, Legal Regulation for Assigning and Exempting Administrative Positions, Journal of Al-Israa University College for Social and Human Sciences, Volume One, Issue One, 2019, p. 30.

(ii). Ahmed Raad Muhammad, The End of the Functional Association with Retirement, a research published in the Journal of the University of Kufa for Legal and Political Sciences, Volume 13, Issue 45, 2020 AD, p. 238.

([iii]).Sari Harith Abdel-Karim, The Legal System for University Service Employees (Comparative Legal Study), Master Thesis submitted to the Faculty of Law, Al-Nahrain University, 2012, p. 176 and beyond.

([iv])See: Article (8) of the Law on Disciplining State and Public Sector Employees No. (14) of 1991 in force and amended.

([v])Article 8 of the State and Public Sector Employees Discipline Law No. 14 of 1991, in force and amended, referred to disciplinary penalties

In a hierarchical order (attention, warning, salary cuts, reprimand, salary reduction, demotion, dismissal, dismissal).

([vi])Article 1 of the dissolved Revolutionary Command Council Resolution No. (880) of 1988 AD.

([vii])Article (8/Eighth) of the State and Public Sector Employees Discipline Law No. (14) of 1991 AD stipulates: "Removal: The employee is permanently removed from the job and may not be re-employed in state departments…".

([viii]).Dr. Yahya Qassem Ali Sahel, chapter of the public employee - a comparative study - Dar al-Kutub, Sana'a, 1st edition, 2006 AD, p. 114.

([ix])The criterion of functional failure, functional incompetence, or functional disability, as it is called in French jurisprudence, is a flexible and variable criterion, as it is often subject to the judgment of the judiciary, according to the reasons for the decision-making administration. Dr.. Musa Mustafa Shehadeh, Professional incompetence as a reason for dismissal from a job other than by the disciplinary route: a study in the judgments issued by the Council of State and the Administrative Courts of Appeal in France, Journal of Administrative Judiciary, Volume Two, Issue Three, 2013AD, p. 50.

([x]) See: Article (4) of the Law on Disciplining State and Public Sector Employees No. (14) of 1991, in force and amended.

([xi]) See: Decision of the General Authority of the State Council in its discriminatory capacity No. (111/Discipline/2010) dated 3/24/2010, published in the Guide to Public Service Legislation issued by the Ministry of Justice, State Shura Council, Modern Waqf Press, 2012, p. 221 .

([xii]) See: Nabila Siddiqui, transferring the employee between the disguised disciplinary punishment and the internal organizational procedure, Journal of Law and Society, Fifth Issue, Algeria, 2015, p. 57.

([xiii]) Dr. Saad Muhammad Saeed Al-Anbaki, Disguised Penalties and Judicial Oversight of Employees, Al-Qadisiyah Journal of Law and Political Science, Volume 12, Issue 1, Al-Qadisiyah, 2021 AD, p. 23.

([xiv])( )) Dr. Mazen Lilo Radi, The Disciplinary System, Dar Al-Masala for Printing, Publishing and Distribution, Baghdad, 1st edition, 2020 AD, p. 516.

([xv])The principle of linking the violation and the penalty corresponds to another principle, which is (not singling out the penalty), that is, not specifying a specific sin in exchange for a specific penalty. Dr.. Mahmoud Reda

Mohamed, Violation, Disciplinary Sanction, and the Principle of Legality - A Comparative Study - The Arab Center for Publishing and Distribution, Cairo, 1st edition, 2017, p. 107 and beyond..

([xvi]) Dr. Khaled Rashid Ali, dismissal and isolation of the public employee and their impact on his re-employment between prohibition and permissibility, research published in Tikrit University Journal of Legal Sciences, Volume One, Issue Twenty-eighth, 2015, p. 125 and beyond.

([xvii]) Muhammad Anas Jaafar and d. Hussain Obaid Abdullah and Ghadir Salem Mahdi, Dismissal of the public employee without the disciplinary method, a comparative study, Journal
Culture and Development, Cairo, Volume 20, Number 161, 2021 AD, p. 113..

([xviii]) The text of the Military Service and Retirement Law No. (3) for the year 2010 CE, in Article (86/First), stipulates: "The soldier shall be referred to retirement by one or two ranks lower than his rank when his disloyalty to Iraq is proven by a conclusive judicial ruling."

([xix])The text of Article (95) of the Penal Code No. (111) of 1969 AD, as amended.

([xx]) Dr. Muhammad Fouad Muhanna, The Administrative Decision in Egyptian and French Administrative Law - A Study in Determining the Nature of Administrative Decisions and Their Legal System - Journal of the Faculty of Law for Legal and Economic Research, Alexandria, Volume VII, Number Four, 1958 AD, p. 18 and beyond.

([xxi]) Dr. Ali Muhammad Badir, Types of Administrative Decisions, research published in the Journal of Law and Economics, University of Basra, Volume Two, Number Four, 1970, p. 391.

([xxii])The administrative leadership is considered to have a technical and political meaning, not a legal one. Perhaps this is due to the task of leadership in setting general policies and broad frameworks (planning, organization, control) according to its concept in the science of public administration, and leadership in management science corresponds to power as a legal meaning, and perhaps we do not agree with the aforementioned, because the administrative leader cannot To exercise his competencies except in accordance with the law, however, the Iraqi legislator mentioned this term in many of his legislations, which documents the legality of this expression, and among these legislations, the dissolved Revolutionary Command Council Resolution No. 380 of 1987 AD, as the legislator used the term leadership positions to express the higher positions. Consider: d. Burhan Zureik, The Administrative Decision and its Distinction from the Administration Decision, Ministry of Information, Damascus, 1st edition, 2016, p. 216.

([xxiii])Nabila Siddiqui, transferring the employee between the disguised punishment and the internal organizational procedure, previous source, p. 65.

([xxiv])Dr. Salman Al-Tamawy, The General Theory of Administrative Decisions, a comparative study, Dar Al-Fikr Al-Arabi, Cairo, 1957, p. 305.

([xxv]) Dr. Ghazi Faisal Mahdi, Articles in the Field of Public and Private Law, Library of Law and Judiciary, Baghdad, 1st Edition, Part 1, 2020 AD, p. 52. .

([xxvi]) Nora Adnan Jihad, The Legal Center for the Holders of Higher Administrative Positions - A Comparative Study - Master's Thesis submitted to the Faculty of Law, Al-Nahrain University, 2018. , p. 6.

([xxvii]) Dr. Anwar Ahmed Raslan, Mediator of Administrative Law, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, 1st edition, 1998 AD, p. 56.

([xxviii]) Taya Idris, The Philosophy of Discipline in Achieving Administrative Effectiveness, Al-Manara Journal for Legal and Administrative Studies, special issue, Rabat, 2018 AD, p. 151.

([xxix]) Dr. Hamed Mustafa, Principles of Iraqi Administrative Law, Al-Ahlia for Printing and Publishing, Baghdad, 1986 AD, p. 217. And Dr. Ghazi Faisal Mahdi, Commentaries on the provisions of the administrative judiciary in Iraq, Library of Law and Judiciary, Baghdad, 1st edition, 2013 AD, p. 55.

([xxx]).We must point out that the criterion of reasonableness differs from the criterion of proportionality, in that the control of reasonableness is broader and more comprehensive than the control of proportionality. legislator. Consider this: D. Ibrahim Mohamed Abdel-Al, Judicial control over the reasonableness of the actions of the

administrative authority - a comparative study - Journal of the Faculty of Law for Legal and Economic Research, first issue, 2019 AD, pp. 369 and 375.

([xxxi])Dr. Hamid Hanoun Khaled, Constitutional Law and the Development of the Political System in Iraq, Dar Al-Sanhouri, Beirut, 2015, p. 148.

([xxxii]) The text of Article (30) of the temporary and canceled Constitution of the Republic of Iraq for the year 1970 AD.

([xxxiii]) The text of Article (130) of the Iraqi constitution for the year 2005 AD.

([xxxiv]) The term (goals of constitutional value) is considered a creation of the French Council of State judiciary, expressing according to it that they are goals and not constitutional rules, but rather they are linked to the constitutional rule and principle, and they are directed to the legislator through a specific legislative path, and are not directed to the administration. Dr.. Hajjajji Muhammad, Objectives of Constitutional Value, Concept, Basis, and Functions, research published in the Journal of Scientific Readings in Legal and Administrative Research and Studies, Issue 3, Morocco, 2021 AD, p. 15 and beyond.

([xxxv]) The legislator did not provide for this legislative option, neither in the unified retirement law in force No. (9) of 2014 as amended, nor in the previous canceled Law No. (27) of 2006 AD. Also, it was not provided for by the previous canceled Law No. (33) of 1966 AD.

([xxxvi])Dr. Ali Gomaa Muhareb, Administrative Discipline in the Public Office (a comparative study), PhD thesis submitted to the Faculty of Law, Ain Al-Shams University, Egypt, 1986 AD, p. 252.

([xxxvii]) See: Article (86) of the Military Service and Retirement Law No. (3) of 2010 AD, and perhaps the historical rooting of this penalty is due to the legislative decision issued by the (dissolved) Revolutionary Command Council No. (1453) of 1983 AD, according to which the President of the Republic was granted competence Referring the employees of the Internal Security Forces to retirement, in addition to the individual decisions issued by the Council to refer employees of the category referred to above, to retirement two grades lower than their job grades, as will be detailed in the coming pages.

([xxxviii])Decision No. (294) dated 20/2/1981 AD referred an employee at the Rafidain Bank to retirement; Based on the decision of the dissolved Revolutionary Command Council No. (1131) for the year 1981 AD, published in Al-Waqea' Al-Iraqiya, Issue (2874) on 3/8/1982 AD. Resolution No. (295) dated 20/2/1982 AD referred an employee in Maysan Governorate - the local administration to retirement, based on the aforementioned decision, published in the Iraqi Gazette with the number and date referred to above.

([xxxix])See: Article 2 of the dissolved Revolutionary Command Council Resolution No. (1435) dated 12/27/1983 AD, published in Al-Waqea' Al-Iraqiya Issue (2975) dated 1/9/1984 AD.

([xl])Dr. Mosaddeq Adel Talib and Malik Mansi Al-Husseini, The Legal System for People with Special Degrees in Iraq, Al-Safaa Publications Foundation, Beirut, 2011. p. 16.

([xli]) See: Decision of the General Authority of the State Shura Council in its discriminatory capacity No. (111/Discipline-Discrimination/2010) dated 3/24/2010, published in the Guide to Public Service Legislation issued by the Ministry of Justice, State Shura Council, Modern Waqf Press, 2012, pg. 221.

([xlii]) See the decision of the Disciplinary Council previously - the Staff Judiciary Court currently - in its decision No. (722 / A / 2008) dated 12/28/2009 AD (unpublished decision) referred to by: Dr. Othman Salman Ghaylan Al-Aboudi, Explanation of the provisions of the Law of Discipline of State and Public Sector Employees No. (14) of 1991 AD, amended (comparative analytical study), Dar Al-Kutub and Documents, Baghdad, 2nd edition, 2012 AD. p. 226.