

THE POSITION OF IRAQI LAW ON THE EFFECT OF THE CRIMINAL RULING ON THE JOB ASSOCIATION RELATED TO THE RULING ISSUED IN A FELONY AND THE RULING FOR A MISDEMEANOR INVOLVING DISHONOR

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ABSTRACT

The research aims to explain the impact that a penal ruling can cause on the public job, as a penal ruling is the decision issued by a body entrusted by law with the task of adjudicating a dispute whenever it resolves disputes that have arisen over a specific legal status after inviting its parties to express their opinion on it, where the collection is done. He between the objective and formal criteria in determining the ruling by the authority that issues it, which is the court, and pointed out the dispute that could arise around a specific legal center and the topic that it addresses, which is resolving all or part of the dispute. The research is based on the basic hypothesis that the penal ruling has a positive impact on the public function in Iraqi legislation. The descriptive and analytical approach was relied upon when writing this research by defining the topic to be researched and describing the topic through the available information. The research reached a set of conclusions, the most important of which was that the penal ruling is a written decision issued by the public authority represented by the judiciary in the dispute presented before it with the aim of respecting the law and giving everyone his right. This ruling also affects the public function, which is described as the relationship that links a group of people. They are public employees and the state in which they work, and this relationship is regulated in accordance with the relevant laws to achieve the public good.

INTRODUCTION

The public job is one of the important topics in administrative law as it is a means of public administration, which carries out its tasks and activities through natural persons who represent it and work for it. The centers of these persons have organized the laws and regulations related to the public job. The function of the state has developed greatly in the modern era, and this development has been reflected in the public function, increasing its importance and increasing its role in society. As a result of this development, the public employee has a very important role, considering that he is the implementer of the state's policy, and responsible for achieving its goals in social and economic development, and who is entrusted with it.

One must ask: What is the point of convergence between the subject of the criminal ruling and the subject of public service? The answer is that the point of convergence is that one of the

reasons for the end of the job association is its end as an effect of the penal ruling, whether obligatory or permissible. This is the effect of the penal ruling on the public job, which will be the subject of our research, because of which many problems have been raised, including the weakness of the guarantees granted to the employee when issuing a decision. Termination of his employment relationship, temporarily or permanently, as a result of the criminal ruling. The amended Iraqi State and Public Sector Employees Discipline Law No. (14) of 1991 equated the effect of the criminal ruling issued against the employee as a punishment for a felony or misdemeanor crime, represented by the dismissal or dismissal of the employee as an effect of this ruling, with the effect of the criminal ruling issued against the employee as a punishment for a crime of the type of violation. The period of imprisonment shall not exceed three months. What was included in the absolutely effective Iraqi State and Public Sector Employees' Discipline Law when arranging the impact of the penal ruling on the job association, ignoring the classification adopted by the amended Iraqi Penal Code No. (111) of 1969, which is dividing crimes in terms of their seriousness into a felony, a misdemeanor, and a violation with regard to dismissing an employee. Or remove him when he is sentenced for a crime not prejudicial to honor.

Is it fair to make the criminal ruling issued for a crime of the type of felony, the penalty of which may reach the death penalty, similar to the effect of the criminal ruling issued for a crime of the type of violation, the penalty for which is imprisonment for a period of twenty-four hours and not exceeding three months? It would have been better for the legislator to stipulate that the employee be withdrawn from his job instead of dismissing him. The reason for this is due to the lack of seriousness of the crime committed by that employee, represented by the violation if the period of imprisonment does not exceed sixty days, and issuing the dismissal decision beyond this period.

The first section: Research Methodology

1-1- Research problem:

The laws that regulate public employment have given great importance to the public employee, and the reason for this is that the success of the administration in carrying out its duties towards the public depends on the competence of its employees and their sense of responsibility and the necessity of achieving the public interest. The public employee, as is known, is responsible for his actions in all criminal, civil and administrative aspects. If we wanted to know the extent of the legality of the actions issued by him, we would return to the Penal Code, which operates according to the rule that there is no crime and no punishment except by a text. provided that what he is prohibited from is determined by the ruling decision and that the decision is with sufficient reason and for a period not exceeding two years starting from the date of completion of the execution of the penalty or from the date of its expiry for any reason whatsoever. As for the functional mistakes that come from it, they are not limited to the legal text regulating the public job, but rather their matter is due to the relevant bodies that determine actions that violate the duties of a person. Public employment or violation of public order is under the supervision of the administrative judiciary.

1-2- Research importance:

This topic is of great importance, as it addresses several very important questions, namely the extent of the impact of the criminal ruling on the job bond. In other words, this research is an answer to the following question: Does the criminal ruling of conviction have an impact on the job bond? In addition to that, When the Iraqi State and Public Sector Employees Discipline Law stipulated the penalty of removal from public office, it did not mention in the reasons for removal from public office the case if the employee was convicted of a crime against honor. Rather, it came in absolute terms, such as the phrase that his stay would be harmful to the public interest and the phrase that the crime resulted from His job or committed it in his official capacity, what will be done in this regard?, What is the ruling on crimes he committed in his personal capacity that required impeachment and the responsible authority .

1-3- Research objectives:

The research aims to explain the impact that a penal ruling can have on the public job, as a penal ruling is the decision issued by a body entrusted by law with the task of adjudicating a dispute whenever it resolves disputes that have arisen over a specific legal status after inviting its parties to express their opinion on it. Combining the objective and formal criteria in determining the ruling by the authority that issues it, which is the court. He pointed out the dispute that could arise around a specific legal center and the topic that it deals with, which is resolving all or part of the dispute. This has a relationship with the public job, which is considered one of the important topics in administrative law as it is a means of public administration, and its tasks and activities are carried out by natural persons who represent it and work on its behalf. The centers of these persons have regulated the laws and regulations related to the public job.

1-4- Research hypothesis:

The research is based on the following basic hypothesis: The penal ruling has a positive impact on the public function in Iraqi legislation.

1-5- Research methodology:

The descriptive and analytical approach was relied upon when writing this research by defining the topic to be researched, describing the topic through the available information, developing questions and hypotheses, then delving into the study and identifying the causes of the problem, and finally analyzing the results and developing solutions. The descriptive analytical approach is one of the scientific research methods capable of accurately analyzing the problem or phenomenon of scientific research, and identifying the reasons for its occurrence, which helps to reach accurate conclusions, results, and solutions to it.

The second section: The conceptual framework of the criminal ruling and the public function:**2-1- The concept of penal judgment:**

The penal ruling is viewed as a decision issued by a body entrusted by law with the task of adjudicating a dispute whenever it resolves disputes that have arisen over a specific legal status after inviting its parties to express their opinion on it. This concept combines both

objective and formal standards in its definition of the ruling, and it is also correct in its definition of the ruling. By the authority from which it issues, which is the court. He referred to the dispute that could arise around a specific legal position and the topic it deals with, which is resolving all or part of the dispute (Al-Kik, 2008: 118).

Thus, the criminal ruling is every decision issued by the court that decides a specific dispute, whether that is through a criminal dispute or to put an end to it. This dispute may be objective or formal, and there are those who define it as a necessary and public pronouncement issued by the judge to decide a dispute before him. There is no dispute over it (Abdul Tawab, 1988: 13).

The judicial decision is what is issued in a criminal case as a preparatory procedure for the ruling without expressing the opinion of the court before deciding the dispute, or as a preliminary decision whose goal is to take certain measures upon which the ruling on the matter depends, or as decisions at the time If it includes a temporary measure required by the subsidiary defenses, then the consequent result In both the preparatory decision and the preliminary decision, the court is not restricted while deciding the case. Others have defined the ruling as the solution announced by the judge within the scope of a judicial dispute, following a certain formality, with the intention of resolving a controversial situation resulting from the application of the law in practical life (Saad, 2012: 189).

A criminal ruling is also defined as every announcement of the judge's thoughts regarding his use of his judicial authority, regardless of the court that issued the ruling and whatever its content. Some have defined it as the decision issued by the court in a dispute in the form specified by the law for rulings, whether at the end or during their course, and whether it was issued on the subject of the dispute. Or in a procedural matter, the need for the dispute in which the judge ruled to be before him and within his jurisdiction. Also, what they pointed out that the judge expresses his thought is incorrect, as he expresses the thought and will of the law. The final observation is that a phrase at the end or during its course confuses Judgment and decision. We will not discuss the difference between judgment and decision because it has been previously researched (Al-Azmazi, 2009: 305).

2-2- The concept of public function:

It is necessary to define the concept of the public job and the public employee, clarify the criteria that determine his character, and then determine the law applied to him. A number of jurists have tried to define the public job. There are those who defined it as the set of legal powers that the employee exercises to achieve the public interest, not the private one. There are those who said that it is Functions exercised in accordance with the authorization granted by public authority (Garraud, 2018:651).

While some have defined it as jobs that grant its holder the authority to command and prohibit, it is also known as every job that entitles its holder to participate, whatever he may be, in the management of public authority. It is defined as (a legal position occupied by an employee that existed before the latter occupied it. Therefore, it is independent in its existence with its rights and duties from whoever occupies it. It remains standing even if it is vacant (Al-Qaisi, 2008: 193).

It is also known as the set of legal and technical conditions and regulations for public employees, whether those related to their future employment and their relationship with the administration or those related to their performance of public administration tasks in a good and effective manner (Hashish, 1997: 5).

The public job in the final sense will not be separated from the political, economic or social environment that surrounds it, which ultimately leads to an impact on the job performance of the public employee. The role in defining the public job was not limited to jurists only, but rather the judiciary tried to define the public job, as The French judiciary defined the public function as the functions exercised by an agent of public authority (Crime, 2015:167).

The Alexandria Criminal Court defined the public job in one of its rulings as the public job under the rule of law, with any participation in the management of public authority, because the purpose of the law is to ensure the progress of interests, while during our humble research, the Iraqi judiciary did not find a ruling that addressed the definition of public job, but the attempts of the judiciary It was unable to develop a comprehensive and comprehensive definition that would include all public functions (Shatnawi, 2004: 157).

The public job has an independent entity that is not based on precise specialization or precise job descriptions, but rather is based on the general description, such as technical jobs, administrative jobs, and so on. Employees enjoy a set of guarantees and privileges towards the administration, an example of which is the employee's right to promotion and bonus whenever necessary. The necessary conditions for this are met, and he will not be dismissed from service except for reasons specified by law. In return, the employee is obligated to ensure the proper functioning of public facilities regularly and steadily, and there are many obligations associated with that, such as not leaving their work except with the approval of the management body to which he is affiliated. The body also has the right Management changes the job tasks assigned to its employee at its own volition (Saad, 2012: 189).

The third section: The position of Iraqi law on the impact of the criminal ruling on the job association:

3-1- The ruling issued in the felony:

In Article (25) of the amended Iraqi Penal Code No. (111) of 1969, the Iraqi legislator referred to the crime of felony as the crime punishable by the death penalty, life imprisonment, or imprisonment for more than five to fifteen years. It is clear from the definition above and through the penalties prescribed for this crime, how dangerous the perpetrator is to society, which means that whoever commits this type of crime is not fit to hold any job position, as the employee must be of good character and behavior (Al-Sunaidi, 1990: 61). .

The Iraqi legislator has identified crimes that affect the public job, and has prepared original and consequential penal penalties for them, and complementary penalties, to protect the public job, such as the penalty of dismissal from the job. The administrative legislator has also identified cases that result in the dismissal of the employee by force of law. The question that arises here is whether the association ends. Functionality as an effect of the penal ruling occurs by force of law, or does the matter require an administrative decision to do so (Ibrahim, 2018: 466).

The opinions that have been expressed regarding the answer to this question have differed. There are those who said that dismissal as a result of a penal ruling is not considered a disciplinary measure, and therefore there is nothing preventing it from combining it with the imposition of a disciplinary penalty without this being a violation of the principle of prohibiting multiple penalties for a single act. There is another opinion that considers the dismissal of the employee as a consequential or complementary punishment as a result of the issuance of the criminal ruling convicting him, is a disciplinary punishment whose nature is not changed by the fact that it is stipulated in the criminal law. That is, it is the same as any disciplinary punishment that befalls the employee during his career, unlike the penal punishments that befall the employee in his body, freedom, reputation, or reputation. Therefore, after dismissing the employee as a result of the penal ruling, it is not permissible to punish him with any other penalty for the same act that he committed. He was criminally convicted, unless this constituted a prohibited repetition of disciplinary punishment (Al-Bendarin, 2019: 28).

The most likely opinion is the one that believes that the dismissal of an employee as a result of being sentenced to a felony penalty is carried out by force of law, because the legislator is the one who arranged this outcome and not the will of the administration to which he is subordinate. Also, the penal ruling ruling out dismissal as a consequential or complementary punishment has reached the maximum extent that can be ruled disciplinary. The convicted employee lost this capacity, so the penal ruling also removed the administration's authority to assess punishment. The amended Iraqi Penal Code No. (111) of 1969 stipulates in Article (96) that anyone who has been sentenced to life or temporary imprisonment be deprived of the jobs and services that he held from the day the ruling was issued until his release.

However, it should be noted, as is clear above, that the Iraqi legislator did not refer to the phrase "final judgment," but rather merely included the word "judgment." However, leaving the matter as it is will create confusion in implementing the dismissal penalty, as it would have been more appropriate for the Iraqi legislator to refer to the phrase "judgment." The final term so that he has an argument before everyone based on the provisions of Article (227/A) of the Code of Criminal Procedure in force. In addition, the deadline set by the Iraqi legislator for applying the penalty of deprivation of the jobs and services that the convict used to assume is limited to the date of issuance of the criminal judgment against him and until he is evacuated. His way, That is, the dismissal of the convicted employee from his job here is a temporary consequential punishment. The Iraqi legislator was not satisfied with dismissing the employee as a consequential penalty during the period of execution of the penalty, but rather indicated in Article (98) of the aforementioned Iraqi Penal Code that every penal judgment that includes the death penalty entails, by law, depriving the convict of the jobs and services that he was assuming, before the issuance of the judgment. his right from the day of its issuance until the time of its implementation.

Since the result of the death penalty is death, which is considered one of the causes that permanently terminate the job relationship, this would make the dismissal penalty mentioned in the above article a life-long accessory penalty, in addition to what was indicated in Article (100) of the Iraqi Penal Code No. (111) of 1969 as amended, which gave the criminal court, upon sentencing life imprisonment or temporary imprisonment or imprisonment for a period exceeding one year, discretionary authority to rule depriving the convict from assuming

certain jobs and services, provided that what he is prohibited from is determined by the ruling decision and that the decision is with sufficient reason and for a period not exceeding two years starting from the date of completion of the execution of the penalty or from the date of its expiry for any reason whatsoever.

Regarding what is stated in Article (100), we have more than one observation. The first is that what this article began with, which is represented by the court's statement, indicates that the criminal court has discretionary authority to rule that the convicted employee be deprived of assuming the jobs that he held before the issuance of the ruling as a permissible complementary punishment. Or not to sentence him to this punishment, and this is a matter of debate, as it would have been better for the Iraqi legislator to follow what other laws followed, which made dismissal from the job after the end of the implementation of the punishment or its removal for any reason a complementary and obligatory punishment.

As for the second observation, it is that the Iraqi legislator would have been better not to make the effect of a sentence for more than one year, such as a sentence for two years, three years, or four years, equal to the effect of a sentence of life imprisonment or temporary imprisonment. Rather, it would have been better not to stipulate a penalty of imprisonment for more than one year here, due to the seriousness of the first and second and their smallness. Third danger. Finally, it would have been better for the Iraqi legislator to make the penalty of deprivation from assuming public office, as an effect of the penal ruling issued against the convicted employee, a supplementary life sentence, not temporary, for two reasons. The first is that the convicted employee loses one of the conditions for assuming public office, which is good reputation and behavior, and is not convicted of non-political bias. As for the second reason, It is represented that keeping this employee, whom the criminal ruling has proven to be dangerous and unfit to hold public office, in his job poses a threat to the public interest.

Article (114) of the aforementioned Iraqi law also indicates the deprivation of whoever commits a felony or misdemeanor in violation of the duties of his profession, craft, or activity, and for which he is sentenced to a custodial penalty of no less than (6) months. The court may, at the time of issuing the conviction ruling, prohibit him from He may practice his work for a period not exceeding one year. If he returns to the same crime as his first during the five years following the issuance of the final ban ruling, the court may order the ban for a period not exceeding three years as a precautionary measure, provided that the ban begins to take effect from the date on which the sentence ends.

3-2- Judgment for a misdemeanor that violates honor:

Crimes against honor are considered crimes that reveal disgraceful behavior by the perpetrator, which makes him fear that this will be reflected in his job behavior, and the danger that this may pose to the public job and to the reputation of the entity in which he works in general. The Iraqi legislator has stipulated that through what he stipulates In Article (7/4) of the Civil Service Law No. (24) of 1960 as amended, a candidate for public office must have a good reputation and conduct and not be convicted of a non-political felony or a misdemeanor affecting honor such as theft, embezzlement, forgery, and fraud.

Article (8/Seventh-B) of the amended Law on Discipline of State and Public Sector Employees No. (14) of 1991 also indicates that the convicted employee will be dismissed from his job for

the period of his stay in prison, if he is sentenced to imprisonment for a crime that is not prejudicial to honor.

Although the Iraqi legislator referred to this crime, even if the names he gave to it differed, as he called it at times misdemeanors against honor and at other times he called it misdemeanors against honor, he did not define it but merely pointed to some examples of it. However, these examples do not represent a fixed standard that can be resorted to. To distinguish these crimes from other crimes. Several attempts have appeared to define this type of crime. There are those who say that it is the actions committed by a person that people know lead to a weakness in morals, a deviation of course, or any disgraceful behavior that causes the person to be despised and abhorred, and it is not permissible for him to be appointed to any public position (Al-Jarish, 2014: 226).

It is clear from this statement that the standard that can be used to identify and distinguish these crimes from others is the prevailing traditions and customs in every society. However, this standard cannot be considered a fixed standard for distinguishing these crimes because these traditions and customs differ from one society to another. Some others from jurisprudence have argued that a crime against honor is one that is viewed by society as humiliating, and the perpetrator is deviant, has bad morals, lacks chivalry, and is not qualified to hold public office (Al-Bendari, 2000: 45).

While a third trend went to say that a crime against honor is the crime that must be considered for each case separately, and according to the circumstances in which it was committed and the personality of its perpetrator, it may be a crime against honor in certain circumstances, and it may be otherwise in other circumstances (Hassan, 2008: 256).

There are those who define them as crimes that are due to weakness in morals or a deviation in character and submission to desires, which degrades a person and requires him to be despised and stripped of every noble meaning so that he is not worthy of trust. Determining their description in this way is one of the objective issues that the judge assesses, guided in this by what he is accustomed to. The conscience of the group and the moral law that prevails among its members leads to contempt for those who commit certain acts that violate that conscience and violate the provisions of this law (Shahin, 1986: 638).

However, the definitions mentioned above, despite their differences in expression, are consistent in content, and they do not include a specific and conclusive standard that can be used in all cases, which explains the difference in views regarding some crimes, and the Iraqi State Shura Council believes that there is no specific definition. For crimes against honor in criminal laws.

In a subsequent fatwa, the aforementioned office confirmed the loss of the legislative definition of these crimes and defined them as those crimes that undermine the reputation and reputation of the perpetrator in the social system and make him an outcast among his citizens. It considered the following crimes to be dishonorable, and these crimes are assaulting, by any means of publication and media, one of the religions that performs its rituals, and seducing a girl. He entered prostitution when she had reached the age of majority, promising her marriage and then refusing to marry her.

Despite the difficulty of defining crimes against honor exclusively, the Iraqi legislator has settled on counting some of these crimes as crimes against honor. These crimes are theft, embezzlement, breach of trust, fraud, bribery, and indecent assault.

Then the scope of these crimes was expanded to include escaping and neglecting military service, illegally removing medicines, medical supplies and other spare materials and tools from private official health institutions and public benefit associations, falsifying their official records and documents, and possessing these medicines, supplies, devices and tools.

The Public Discipline Council indicated in one of its decisions that the crimes that the Iraqi legislator listed as crimes against honor are crimes after which the judge must commit to crimes against honor and stipulate them in the rulings he rules. As for other crimes, the judge has discretionary authority to count them as crimes against honor. Honorable or not, subject to the supervision of the Court of Cassation, while the administration does not have any discretionary authority in this regard, but must adhere to what the law stipulates as an effect of this crime or what is included in the criminal ruling in this regard. It does not have the right to consider an act to be dishonorable at a time when the law or the criminal ruling did not describe it as such, or vice versa. That is, the act described as such by the law or the criminal ruling does not have the character of a breach of honor.

It is noted that the Iraqi legislator has used the term misdemeanor, restricting it to describing a crime of honor in the amended Civil Service Law No. (24) of 1960, without any consideration of the amount or type of punishment prescribed for it.

Section Four: Conclusions and Recommendations:

4-1- Conclusions:

1. A penal ruling is a written decision issued by the public authority represented by the judiciary in the dispute brought before it with the aim of respecting the law and giving everyone his right.
2. Every criminal ruling that includes the death penalty entails, by law, depriving the convict of the jobs and services that he held before the ruling was issued against him, from the day of its issuance until the time of its implementation.
3. It gave the criminal court, when sentencing life imprisonment or temporary imprisonment or imprisonment for a period exceeding one year, discretionary authority to rule depriving the convict from assuming some jobs and services, provided that what he is forbidden from is determined by the ruling decision and that the decision is sufficiently justified, and for a period not More than two years starting from the date of completion of the execution of the penalty or from the date of its expiry for any reason whatsoever.
4. Public service is the relationship that links a group of people, namely public employees, and the state in which they work. This relationship is regulated under the relevant laws to achieve the public good.
5. The effective Iraqi Penal Code stipulates, in Article (96) thereof, that anyone who has been sentenced to life or temporary imprisonment be deprived of the jobs and services that he held from the day the ruling was issued until his release.

4-2- Recommendations:

1. It would have been better for the Iraqi legislator not to leave the matter as it is regarding the first case referred to in Paragraph (Eighth) of Article (8) of the effective Discipline of State and Public Sector Employees Law that requires dismissal, as keeping it as it is would give the administration discretionary authority that may be remote. It is far from the public interest in determining what is or is not considered a dangerous act that is harmful to the public interest, which means that if the employee is sentenced to be imprisoned for a period not exceeding (24) hours, and the administration, represented by the Minister, decides that the act committed by the employee represents a danger to the public interest, the order Which needs to be removed.
2. It would have been better for the Iraqi legislator to define the type of crime as a felony and misdemeanor only, and to remove the crime of violation from the provisions of Paragraph (Seventh - B) of Article (8) of the applicable State and Public Sector Employees Discipline Law, due to the unfairness and cruelty it contains, and to stipulate that the hand of the convicted employee be withdrawn. If a ruling is issued against him requiring his imprisonment for a period not exceeding (60) days, and his dismissal if the period exceeds this limit, because imprisoning the employee for the crime of violation will lead to his dismissal and then removal from his job if this employee had previously been dismissed from the job based on According to the text of Paragraph (C) of Article (8/8) of the Iraqi State and Public Sector Employees Discipline Law No. (14) of 1991, as amended.
3. The necessity of not equating the effect of a sentence for more than one year, such as a sentence for two years, three years, or four years, with the effect of a sentence of life imprisonment or temporary imprisonment, according to what is stated in Article (100) of the effective Penal Code. Rather, it would have been better not to stipulate a prison sentence. For more than a year here, due to the seriousness of the first and second and the lack of seriousness of the third.
4. We call on the Iraqi legislator to make the penalty of deprivation from holding public jobs stipulated in Article (100) of the Penal Code in force as an effect of the penal ruling issued against the convicted employee, a complementary life sentence, not a temporary one, for two reasons. The first is that the convicted employee loses one of the conditions for assuming public office, which is good conduct. Reputation and conduct and not judged with non-political bias.
5. What begins with Article (100) of the Iraqi Penal Code in force, which is represented by the phrase "the court," indicates that the criminal court has discretionary authority to rule that the convicted employee be deprived of assuming the jobs that he held before the issuance of the ruling as a supplementary punishment for his permissibility, or not to sentence him to this punishment.

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