



Journal of Arts & Humanities

Volume 12, Issue 05, 2023: 24-30

Article Received: 24-06-2023

Accepted: 17-07-2023

Available Online: 30-07-2023

ISSN: 2167-9045 (Print), 2167-9053 (Online)

DOI: <https://doi.org/10.18533/jah.v12i05.2374>

The Objective Safeguards for Administrative Investigation in Jordanian Legislation

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ABSTRACT

The study aimed to clarify the extent to which the Jordanian legislator is able to provide objective guarantees related to the administrative investigation, from the time the employee is accused until the issuance of the disciplinary punishment or acquittal, and to prove the importance of impartiality in the administrative investigation. And the importance of separating the accusing party from the investigation team and separating the investigation team from the trial panel.

The study concluded with several results, the most important of which are: The employee's right to view his investigation file is a basic guarantee enjoyed by the accused employee before taking any disciplinary action against him due to a disciplinary error. The Jordanian legislator did not mention the legal texts that stipulate the separation between the indictment body, the investigation body, the investigation body, and the authority that issued the ruling, and this issue is a basic guarantee in the procedures for imposing the disciplinary punishment.

The study came out with several recommendations, including: We want the Jordanian legislator to explicitly stipulate legal texts and legislation regarding the separation between the investigation and prosecution bodies, the investigation body and the judgment-issuing body.

Keywords: Administrative investigation, impartiality, investigation file, Objective guarantees, right of defense.

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1. Introduction

The administration in which the public employee works while assuming the duties of the public office can attribute some administrative violations that require discipline, and that the disciplinary regime is not accidental or arbitrary, but according to special legal texts. And the inclusion of the legislator in the laws and regulations of the civil service and defining its procedures accurately, and the legislator did not forget to inform the employee accused of a disciplinary violation of the basic guarantees that guarantee his right to prove his innocence, and the administrative investigation is the most important and sublime of these guarantees.

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Among the most important and prominent guarantees in the disciplinary field is conducting an investigation with the employee to listen to his statements and investigate his defense regarding the charge against him, as the investigation is the first step in the disciplinary procedures, and the investigation in general means examination, investigation, and objective, impartial and impartial investigation in order to identify the real evidence and clarify it with regard to The validity of the occurrence of specific facts and their attribution to specific people in order to prove the truth.

The investigation aims to reveal the true relationship between the suspected employee and the job attributed to him, and it is an official procedure followed after the occurrence of the violation with the intention of revealing its owner, or confirming the validity of its attribution to a specific employee, and its aim is to reach and discover the truth, and the administrative investigation is the most important guarantee of the public employee At the same time, it is the most important management tool in controlling the behavior of the administrative employee.

2. Research problem

The problem of the study is to answer the following main question: Was the Jordanian legislator able to provide sufficient objective guarantees to protect the public employee in the stages of the administrative investigation?

3. Research questions

- What is the result of confronting the employee with what is attributed to him?
- What is the meaning of the investigation file and its importance for the employee referred to the disciplinary case?
- What is the importance of giving the worker the right of defense?
- What are the legal guarantees enjoyed by the public employee before and during the administrative investigation?

4. Research importance

The importance of the administrative investigation is evident from the statement of the legal guarantees granted by the legislator to the public employee in disciplinary matters, and the extent of their adequacy to achieve job stability for the public employee in the performance of his job duties.

4.1 Confronting the employee with what is attributed to him

Confronting the public employee accused of the disciplinary violations attributed to him constitutes the minimum guarantee that must be guaranteed to the accused in the investigation phase, and at the same time it constitutes a necessary issue that requires conducting the investigation. Knowing the investigation file differs from the right of the public employee to confront the disciplinary violation attributed to him².

The guarantee of confrontation is based on two elements: informing the worker of the disciplinary offense attributed to him, and the right of the public employee to refer to the file, and this is what we will discuss in this topic.

4.1.1 Informing the employee of the disciplinary violation attributed to him

Informing the employee of the charges against him is one of the basic premises of the right to defense, as he must be informed of all actions taken against him, the charges against him and the evidence supporting them for this. So that he can respond to them, while allowing the public employee enough time to prepare his defence, because some aspects of the defense require careful preparation, and the time limit given to the accused employee is a matter of discretion for the investigator³.

The Jordanian legislator has expressly stipulated this guarantee in Article (141 / A / 1) of the Civil Service Law, which stipulates the following: "A- Providing the following guarantees to the employee

² Asmar, Alaa. (2012). Administrative Investigation in the Palestinian Civil Service Sector (Comparative Study), Master Thesis, An-Najah University, Nablus, Palestine, p. 50.

³ Yaqoot, Muhammad. (2006). Explanation of the Disciplinary Law for Public Service, Mansha'at al-Ma'arif, Alexandria, Egypt, p. 835.

before imposing any penalty: 1- Notifying the employee in writing of what has been attributed to him, so that he understands The disciplinary offense committed by the perpetrator and the charges against him"⁴.

It is clear from this text that the Jordanian legislator obligated every disciplinary authority to notify the employee of the violation he committed through a written notification, and this, in the opinion of the researcher, is a good path for the Jordanian legislator, as the principle of confrontation is considered one of the basic guarantees in the administrative investigation.

Similarly, with regard to the penalty imposed on the employee, the employee must be notified in writing of this, and the Administrative Court ruled in one of its rulings the following: warning the summoner but he did not empty the warning by a notification letter to the summoner in accordance with the rules, as the employee has the right to be notified of any penalty issued against him and the reason for the penalty in accordance with According to Article (141 / A / 6) of the Civil Service Law, and the applicant was not notified of the penalty issued against him within ten days of its occurrence in accordance with the previous article of the system until the applicant is fully aware of the merits of the punishment and the nature of the punishment so that he presents his defense for that punishment considering that the punishment A warning penalty was issued against him, meaning that the appealed decision was issued in a manner that violates the provisions of that system, given that informing the employee in writing of what is attributed to him and the defendant's reasoning for his decision is one of the basic guarantees required by the civil service system, and it is one of the basic procedures that must be followed and must be taken into consideration when the defendant issues the appealed decision, which necessitates the annulment of the appealed decision.⁵

4.1.2 Seeing the contents of the disciplinary file

As a principle in job work, every employee should have a file in which various documents related to his personal, professional and job status are placed, and the administrative authority for the employee creates a file containing this data, and the employee's political and ideological opinion should not be mentioned in the file, and in this regard what is meant by the employee's right In view of the file is the file of the investigations that were conducted in connection with the charges against him, so that he can see the procedures that took place until the investigation reached this stage, and in order for him to be able to prepare his defence.

Examining the disciplinary file in the context of this matter means enabling the public official to access the investigation file, by granting him the right to study it appropriately and sufficiently, or by giving him a true copy of it with all his papers and evidence, starting with a statement of the alleged violation and the decision to refer it to the investigation. And everything related to that, this review is a basic guarantee that the public employee enjoys before the investigation begins with him. as a prelude to defend himself ⁶.

Likewise, what is meant by the file here is the disciplinary case file. Each disciplinary investigation ends with the preparation of a file for it, and this file contains all the investigation papers, data and documents related to it, divided and arranged by serial numbers, and the employee's review of the investigation file or the case papers filed against him. It is considered an essential source for informing him of the accusation against him and its evidence, in preparation for his defense⁷.

The right to access the file consists in informing the employee of all the papers and documents contained in his job file and not withholding them from him. Given its importance in achieving his defense, the logic of blocking and confidentiality is no longer consistent with administrative developments with

4 Civil Service System No. (9) of 2020, Article No. (141/A/1).

5 Administrative Court, Judgment No. 497 of 2020, dated 4/13/2021, Your Decision Program.

6 Al-Dhafiri, Muhammad Hassan.(2022) .Guarantees of the public employee referred for administrative investigation (comparative study), Master Thesis, Middle East University, Jordan, p. 59.

7 Al-Saddam, Ahmed.(2014). Administrative Investigation Procedures and Guarantees, Master Thesis, Alexandria University, Alexandria University, Egypt, p. 177.

the philosophy of clarity and transparency that began to visit the administrative fields, and as a result a lot of legislation went to allow the employee subject to disciplinary accountability to see his file⁸.

The right to view the file consists in informing the employee of the contents of the disciplinary case file, including investigations, documents and documents related to the charges against him, and not withholding them from him due to their importance in achieving his defense. And the emergence of the philosophy of clarity and transparency, which began to invade the administrative fields⁹.

In this regard, the Jordanian legislator expressly stipulated in Article (146 / b / 1) of the Jordanian civil service system the right of the public employee to review the disciplinary file before initiating an investigation with him as a legislative guarantee prescribed for him. And to enable him to defend himself, as it was stated in it: "To show the employee referred for investigation all the papers related to the violation or complaint that is being investigated, and to allow him to present his defenses and symptoms in writing or orally and discuss the required witnesses and summon any person to testify, in addition to that he is allowed to include any documents Or other reports related to the investigation file, and it is stipulated that the statements of any witness were not heard until after taking the legal oath¹⁰.

With this text, the Jordanian legislator established a basic guarantee for the objective guarantees of the public employee in the administrative investigation, as it is not sufficient to inform the employee of the violation and the charges against him, but rather he must be empowered. Express his defense and objections in a restricted manner, by enabling him to view the file of the disciplinary case.

In this regard, the Supreme Court of Justice (previously) ruled that the public servant has the right to review the disciplinary file before initiating the investigation, and considered this his right during the investigation and a firm guarantee in his favour. In one of its decisions, it was stated that: "One of the essential guarantees that the legislator was keen to take into account in the administrative investigation is the confrontation, whereby the accused is informed of the truth of the charge attributed to him, and he is informed of the facts that involve the violation attributed to him and that indicate that he committed the violation, so that he can present his defenses, And knowledge of his matter and the seriousness of his position, and readiness to defend himself, in addition to the fact that he must be confronted with the evidence against him, which is evident from the papers or from the testimonies of witnesses and from the discussion of this evidence".¹¹

From the foregoing, the researcher notes the keenness and accuracy of the Jordanian legislator and judiciary in determining the guarantees of the public employee in general and ensuring that the employee is informed of the violation attributed to him and enabling him to view the disciplinary file; As a prelude to defending himself, and for the researcher to support this behavior adopted by the Jordanian legislator on the basis of strengthening the guarantees of the public official by stipulating them explicitly in the basic texts of the legislation.

4.2 The right of defense in the administrative investigation

The principle of the right of defense is one of the basic principles guaranteed by the constitution, as all the different legal systems were keen to stress the need to respect the right of defense, which was confirmed by the judiciary in many of its rulings.

4.2.1 The requirements of exercising the right of defense

The employee referred for investigation may defend himself in all legal ways, whether he does so himself or through a lawyer who defends him. Violation of the right of defense leads to the invalidity of the disciplinary punishment, whether it was issued by the administrative or judicial authorities, and in order for the employee to exercise the right of defense, he must be given the opportunity to take all necessary measures for this right¹², such as seeking the assistance of a lawyer, and the need to hear his

8 Al-Shteiwi, Saad. (2007) .Administrative Investigation in the Scope of the Public Office, 1st Edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, p. 105.

9 Al-Jourani, Muhammad Ali. (2015) .The administrative investigation as a guarantee of the guarantees of the public servant in Iraqi and Jordanian laws - a comparative study -, master's thesis, Middle East University,, p. 104

10 Service Regulation No. (9) of 2020, Article No. (146/b/1).

11 Supreme Court of Justice, Decision No. 466, dated 4/17/2011, Qustas Publications.

12 Al-Helou, Majid Ragheb .(1985) .Administrative Judiciary, Publications House, Alexandria, Egypt, p. 579.

statements, or give him the necessary time to prepare His defense, and in order to guarantee the right of defense, there are many requirements that can be summarized as follows:

First: the interrogation

Interrogation is defined as discussing the accused in detail with the charge attributed to him, and the Egyptian Court of Cassation defined it as: "Confronting the accused with the various evidence and discussing it with him in detail so that he can refute it if he denies the charge or admits it if he wishes to confess." The interrogation of the suspect is considered one of the most important investigation procedures, Without it, it is not possible to declare the validity and integrity of the investigation procedures unless the employee neglected this right, and during the interrogation, the investigator confirms the identity of the suspected employee and discusses with him the charge against him, and his testimony in detail in order to obtain from him a confession or a defense that he denies¹³.

As for confrontation, it is: putting the accused face to face in front of another accused or one or more witnesses to hear their statements in a specific incident or incidents, and respond to him with affirmation or denial. However, it is distinguished from it by being limited to specific evidence or evidence, other than the interrogation, which includes all indictment evidence¹⁴.

Second: The right of the employee referred for investigation to seek the assistance of a lawyer

The right of the employee to appoint a lawyer to defend him is one of the guarantees provided to the employee in the administrative investigation, and this is what was stipulated in most of the different legal systems, and helping the employee referred for investigation is a right and a duty, and therefore the employee can defend himself by himself if he decides so, and he has the right to choose whoever he wants from lawyers.

The presence of the employee referred for investigation before the investigation committee does not mean the exclusion of the lawyer with his client, as the employee may not be separated from his lawyer as stipulated in the Code of Criminal Procedures. The lawyer protects the employee from deceptive questions, bright promises, suggestive or ambiguous questions, in general, he defends the interest of his client and puts it with the requirements of justice above all considerations¹⁵.

Third: The right of the employee to present defensive evidence

In fact, this guarantee does not need a legal text to decide on it, as it is considered one of the most important demands of the right of defense, and is closely related to the right of defense. Witness testimony or other evidence.

The suspected employee has the right to summon any witness and demand that his annual reports or any documents or reports related to him be included in the investigation file. He is also entitled to present any evidence he deems necessary to defend himself as applied in the principles of criminal trials in ensuring the right of defense for the accused to defend himself in the charges against him, in order to achieve justice¹⁶.

In this regard, the Jordanian legislator came with an explicit text that guarantees the employee to present his defense in full, as stated in the text of Article (146 / b / 1): "...and to allow him to present his defenses and objections in writing or orally and to discuss the required witnesses therein and summon any person to testify, He is also allowed to include any other documents or reports related to the investigation file, provided that the statements of any witness are heard only after taking the legal oath¹⁷.

On the other hand, jurisprudence and administrative jurisprudence have proven that the employee's failure to guarantee the right of defense forfeits the right of the person concerned to invoke that, and he may be tried despite his refusal to defend himself¹⁸.

13 Al-Jarbou, Ayoub Bin Mansour.(2004) .Employee Guarantees in the Administrative Investigation Stage in the Saudi System, Public Administration Periodical, No. 1, Vol. 44, Saudi Arabia, p. 40.

14 Hegazy, Abdel-Fattah Bayoumi. (2003) .Principles of Primary Investigation before the Administrative Prosecution, Dar Al-Fikr Al-Jamei, Alexandria, Egypt, pg. 212.

15 Al-Atoum, Mansour Ibrahim.(1984). The Disciplinary Responsibility of the Public Employee, 1st Edition, without a publishing house, p. 327.

16 Kanaan, Nawaf.(2005). Administrative Law, Book Two, Edition 1, House of Culture for Publishing and Distribution, Amman, p. 205.

17 Civil Service System No. (9) of 2020, Article No. (146/b/1).

18 Al-Shteivi, Saad.(2007) .Administrative Investigation in the Scope of the Public Office, 1st Edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, p. 143.

The employee is committed to the legal limits required by the necessity of defense without exceeding them by challenging his superiors, insulting them, rebelling against them, harming them, disparaging them, or degrading them¹⁹.

To ensure that the suspected employee exercises his right to defend himself in accordance with the legal controls, the investigation authority must balance between the employee's right to defend himself and the interest of the administrative investigation, so that one interest is not given over another.

4.2.2 The impartiality of the investigation party

The impartiality of the investigation team is an important factor in reaching the truth. Without a neutral party that seeks to clarify and preserve the truth by all legal means, it is not possible to approach the path of justice, because standing by one party at the expense of another casts a shadow on the work of the investigation team and makes it systematic in a way that achieves the interest of one party at the expense of the other.

Impartiality has become a principle applied to everyone who assumes authority or exercises competence among state employees, and adherence to it has become an absolute obligation imposed on the authority concerned with the investigation or disciplinary trial to take into account this, and from here it is required for the integrity of the investigation that all legal guarantees are available in it, the most prominent of which is the impartiality of the investigator, as He must have the adequacy, independence and sound judgment that enables him to properly perform his duty.²⁰

In order for the authority concerned with the investigation to be impartial and impartial, in a way that guarantees the most important guarantee for the employee referred for investigation, which is impartiality, this authority must be specialized in the investigation work without any other work, as is the case in the investigation. Authority, on the one hand, must be separated from the accusative authority, on the other.

First: Separating the investigation party from the accusation party

A dispute arose between the jurists regarding the impartiality that must be present in the investigation committee. There are those who believe that there is no objection to the accusing authority conducting the investigation, given that this procedure is in fact an extension of the disciplinary authority and aims to ensure the smooth and regular functioning of the public facility. And another aspect of the jurists believes that the combination of the investigation and accusation authority is a dangerous situation that entails prejudice to the guarantees of the public employee in the face of the disciplinary authority, because the employee in charge of the investigation follows from the administrative point of view the authority that imposes the punishment, so it is easy to influence his impartiality²¹.

The researcher believes that the separation between the accusing party and the investigation party is the closest to impartiality, so that there is no prior idea on the part of the investigation that the employee is guilty and deserves punishment because he was originally the one who accused him of committing the disciplinary offense assuming that he is guilty.

Second: Separation between the investigative body and the ruling body

Ensuring the impartiality of the investigation requires separation between the authority that undertakes the investigation and the authority that undertakes the judgment in the disciplinary case, and therefore the inadmissibility of combining the investigation authority and the judgment in one authority. This is the principle of separation between the powers of investigation and the power of judgment. The investigating authority deals with all evidence and evaluates its availability towards the accused, while the ruling authority searches for the absolute truth and balances the investigation evidence reached by the investigation body with the balance of right, justice and sound legal reasoning²².

5. Conclusion

19 Ayyash, Amjad (2007). Guarantees of Disciplinary Accountability for Public Employees: A Comparative Study, Master Thesis, An-Najah National University, Palestine .P 24.

20 Al-Anzi, Saad Nawaf. (2007). Procedural Guarantees in Disciplining, University Press, Alexandria, Egypt, p. 16.

21 Rahmaoui, Kamal. (2003). Disciplining the Public Servant in Algerian Law, Dar Homa for Printing, Publishing and Distribution, Algeria, p. 159.

22 Abu Al-Enein, Muhammad Maher .(2006). Disciplinary Defenses, 1st edition, pg. 254.

At the end of this study, in which we discussed the position of the Jordanian legislator in the substantive aspects related to the administrative investigation, we found a set of results and recommendations that we present as follows:

First: The results

- The employee intended to be disciplined has the right to access the investigation file as a basic disciplinary safeguard enjoyed by the accused employee before taking any disciplinary action on the occasion of committing a disciplinary error.
- The Jordanian legislator did not refer to legal provisions on the subject of the administrative investigation according to which the accusation party is separated from the investigation party.
- The Jordanian legislator did not refer to legal provisions on the subject of administrative investigation according to which it separates the point of accusation and the trial panel.
- The Jordanian legislator succeeded in defining the guarantees of the public employee by ensuring that the employee is informed of the violation attributed to him and enabling him to view the file of the disciplinary case by explicitly stipulating that in the legal legislation..

Second: Recommendations

- We hope that the Jordanian legislator puts in place legal texts and legislations according to which the investigation party is separated from the accusation party.
- We hope that the Jordanian legislator puts in place legal texts and legislations according to which the authority of investigation and the trial party are separated.

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