



The Legal Procedural Guarantees of The Iraqi Public Employment in Disciplinary Cases

Yad Rashid Issa¹, Muhammad Hafiz Badarulzaman², & Mohamad Fateh Labanieh³

^{1,2,3}School of Law, COLGIS, Universiti Utara Malaysia, Sintok, 06010, Kedah, Malaysia.

Corresponding author: Mohamad Fateh Labanieh, **Email:** m.fateh.labanieh@uum.edu.my

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ABSTRACT

This article focuses on examining the procedural guarantees accorded to Iraqi civil servants in disciplinary cases, as enshrined in Law No. (14) of 1991, as amended hereinafter referred to as “LDSPSE-1991”, along with the Iraqi Constitution of 2005, hereinafter referred to as “IC-2005”. The main purpose of the research is to determine whether the Iraqi laws provide enough procedural safeguards to protect public employees against unfair and arbitrary administrative conduct. Using a doctrinal research approach, this paper will use primary sources including laws, constitution and case-law, as well as secondary sources in the form of books, scholarly journal articles and other law reports. The result shows that, while Iraq's laws contain some very crucial safeguards, including written investigations, creation of an investigative committee and defence, such guarantees are not fully adhered to in practical sense. Some major shortcomings involve notifications, access to investigation papers, confrontations, examining witnesses, having legal representation, being neutral for the committees and recusals. The study thus suggests the necessity of legislative changes to make procedural guarantees more concrete and applicable.

Keywords: LDSPSE-1991, Procedural Guarantees, Public Employees, Iraq

INTRODUCTION

The laws and regulations governing public employment impose a set of duties on public employees, which they must observe continuously. They also subject the public employees to several prohibitions that they must avoid. Where a public employee breaches his or her duties or commits a prohibited act, he or she commits a disciplinary violation and becomes subject to disciplinary penalties in accordance with the relevant legislation (Khayran, 2024).

In the light of the previous, there is a difference, either legal or doctrinal, in the wording used to describe actions performed by an employee that violate the official duties. Terminologies like "administrative fault," (Al-Tamawi, 1995; Nasser, 2019) "professional misconduct," (Habish, 2008) and "disciplinary violation" (Farhat, 2012; Nasser, 2019) have been mentioned. In our opinion, "disciplinary violation" is the correct term because it is consistent with the meaning of the term discipline according to the legislator when dealing with this issue, starting from the Employees Discipline Law enacted in 1929 and continuing until today in the LDSPSE-1991.

Additionally, regarding terminology, there is an argument about the definition of disciplinary violation. It is described as any violation of official duties by commission or omission by the employee (Al-Malat, 1967; Khayran, 2024). Some other authors consider it to be every action or omission by the employee that is not consistent with their duties. Iraqi jurists have considered a disciplinary violation as a non-performance of the duties prescribed by law by the employee (Al-Tamawi, 1995). However, no formal definition has been introduced in the Iraqi legislation concerning disciplinary violation (Mansour & Al-Hamza, 2024). It can be suggested that a disciplinary violation can be defined as any action of the employee violating the legally prescribed official duties intentionally or negligently, leading to the imposition of discipline on him and punishment.

Moreover, the legislator has not presented a detailed list of actions that are considered disciplinary violations. Indeed, some actions are specifically referred to as disciplinary violations. For example, holding more than one job, participating in commercial activities, revealing official secrets, or accepting gifts. However, the fact that a particular action is not mentioned explicitly should not be a reason to consider it not to be a disciplinary violation (Al-Malat, 1967). All acts or omissions violating the official duties by an employee can be considered disciplinary violations (Lilo, 2013). The competent authority can consider all acts

of the employee violating the official duties to be disciplinary violations, especially that it is impossible to present a detailed list of all actions that fit under this definition (Al-Abdullah, 2023). As adopted by the Iraqi legislator, the same practice is followed in most countries. Nevertheless, a few states, including Germany and Italy, have codified disciplinary violations (Mohammed, 1996).

After the disciplinary violation, the stage of disciplinary investigation starts. It means the process of verifying the veracity of the charge against the employee by collecting relevant evidence; thus, it is an important process needed to confirm the decision, which would hold the employee guilty or not guilty of the charge against him or her.¹ According to the Egyptian Administrative Court, the investigation is “an objective, impartial and fair inquiry with respect to the facts of the case and their attribution” (Egyptian Supreme Administrative Court, 2000, September 23: Judgment No. 399.) In the context of this article, there is no clear legal definition of disciplinary investigation in most laws, including Iraqi law. However, the significance of the disciplinary investigation is such that all these laws impose an obligation of conducting it before any penalty is imposed on the public employee. This can be evidenced in France where, according to the French law, no disciplinary penalty can be imposed on the employee without forming committees to conduct the relevant investigation and permanent committees that investigate employees who have been charged with disciplinary violations (Al-Tamawi, 1986).

This practice can also be seen in Egypt as provided by Article (79) of the Law of the State Employees No. (47) of 1978 stating that “the public employee cannot be sanctioned with a disciplinary penalty unless after conducting an investigation, holding a hearing, and the employee’s statement being recorded, allowing him or her to cite his or her witness and documents concerning the violation”. This rule is also found in Article 10/1 of LDSPSE-1991. It can thus be concluded that investigation is one of the most important elements of disciplinary action. It is a legal means of proving the guilt of the public employee and a prerequisite stage for collecting evidence of guilt or non-guilt of the public employee (Wadi, 2025). At the same time, investigation is a vital legal guarantee in this area, allowing an employee to defend himself or herself (Al-Husseini, 2014). Therefore, a penalty imposed on the public employee without carrying out the relevant investigation process or conducting an investigation without meeting the formal or substantial requirements will make such a decision invalid.

¹ Y5 [vip] any reference

Disciplinary penalties in public employment play an important role in enforcing the rules of discipline prescribed by law. Such rules are indispensable for enabling administrative bodies to perform their functions in pursuit of the public interest, particularly through the imposition of penalties on employees who commit disciplinary violations. However, given the broad powers enjoyed by the authorities competent to impose disciplinary penalties, which may extend to depriving the employee of his or her position, certain guarantees must be respected.

Moreover, administrative investigation is a term used in some of the comparative legal systems in place of 'disciplinary investigation'. This term takes center stage in the process of disciplinary responsibility because of the fact that the beginning of an administrative investigation assumes the presence of a violation of the duties performed by the employee in the course of his/her service in the enterprise or company. Consequently, the administrative investigation can be seen as an instrument of legal procedure aimed at finding out the truth whether the act done by the employee is a disciplinary violation or it is not (Al-Sheikh, 2003; Al-Abdullah, 2023).

Consequences arising from an administrative investigation are certainly very severe because the employee risks losing his/her job due to the conclusion made by the investigator after the investigation is completed. The employee could either be fired due to violation of duties performed during work hours, or the investigator might apply other forms of punishment specified in Article 8 of the LDSPSE-1991, as amended. Furthermore, if it turns out from the results of an administrative investigation that the employee committed a crime, the employee will face criminal charges for committing such a crime.

Besides, under the hierarchical system adopted in Iraq, the authorities that possess the power of appointment also possess the power to refer the public employee to disciplinary investigation. The investigation is assigned to an administrative investigative committee, which has no authority other than issuing recommendations to impose a penalty or refrain from doing so. Accordingly, disciplinary proceedings under Iraqi law take the form of administrative disciplinary investigation.

Taking into account these very serious consequences of the process of administrative investigation, the Iraqi disciplinary system for public employees is grounded in a statutory framework that regulates disciplinary penalties and provides procedural legal guarantees during administrative investigations (Yousef, 2025; Mahdi and Obaid, 2013). These guarantees are needed to find a compromise between the wide administrative powers of investigation, based

on the concept of the effectiveness of the disciplinary penalties, and the guarantees of the employee, based on the presumption of innocence provided for in Article 19 (Fifth and Sixth) of the IC-2005.

It is worth noting that the failure to observe these guarantees may result in the invalidity of the investigation and any disciplinary decision based upon it (Yousef, 2025). Nevertheless, the effectiveness of these guarantees remains limited in certain respects. Judicial oversight is available, but legal scholarship suggests that it may be weaker and insufficient in relation to disciplinary penalties. In practice, concerns remain regarding the ability of the disciplinary system to consistently prevent arbitrary administrative conduct and to ensure justice and institutional integrity (Yousef, 2025). One of the most significant problems concerns the practical application of procedural guarantees during disciplinary investigations. Although Iraqi law recognizes important safeguards, such as the right of defence, the requirement of proper investigation, and the possibility of invalidating disciplinary procedures where essential guarantees are disregarded, these safeguards are not always applied effectively in practice (Tooly, 2023; Yousef, 2025). A further difficulty arises from the fact that some disciplinary provisions are drafted in broad or ambiguous terms. Such legislative vagueness allows administrative authorities to interpret and apply disciplinary rules inconsistently, and may create opportunities for arbitrary or abusive administrative conduct (Jalili et al., 2024; Tooly, 2023; Yousef, 2025). In principle, failure to observe essential procedural guarantees should lead to the annulment of the investigation and any disciplinary penalty based upon it. In practice, however, the effectiveness of this protection depends largely on the employee's ability to access judicial review in a timely and effective manner (Tooly, 2023; Yousef, 2025).

Accordingly, through LDSPSE-1991, as amended, and the IC-2005, this study examines the legal procedural guarantees of the Iraqi public employment in disciplinary cases. Specifically, the problem addressed by this study lies in determining the extent to which the Iraqi legislator, under LDSPSE-1991, has succeeded in providing sufficient guarantees for establishing a fair legal system for disciplining public employees. This requires balancing the interests of public facilities and administrative bodies, on the one hand, with the need to protect the public employee, on the other.

RESEARCH METHODOLOGY

This article was based on doctrinal legal research. Doctrinal legal research is “research in law” (Singhal and Malik, 2012). It strives essentially to “discover, explain, examine, analyse and present in a systematic form the facts, principles, provisions, concepts, theories or the working of certain laws or legal institutions, to gain and present new knowledge and ideas or to suggest change and reform” (Vibhute and Aynalem, 2009) Besides, it shows areas of difficulty and, perhaps, anticipates future developments (Hutchinson, 2008.)

Regarding the type of data used in this article, both primary and secondary data are used in this article. Specifically, the primary data was sourced from Acts, Laws, and Court Cases. On the other hand, secondary data was collected from textbooks, newspaper articles, law reports, journal articles, and online legal databases. Regarding the data collection methods, the data in this article were collected by using a library-based approach, the “theoretical approach”. Additionally, this article used several approaches to analyse both primary and secondary data. Specifically, analytical and critical approaches were adopted to examine the procedural legal guarantees of the Iraqi public employment in disciplinary cases.

FINDINGS AND DISCUSSION

The following explains the legal procedural guarantees afforded to the Iraqi public employee in disciplinary investigations. Specifically, the guarantee of notification of the public employee, the guarantee to enable the public employee to access his or her service file and investigation papers, the guarantee of the written disciplinary investigation procedures, the guarantee of confronting the public employee with the alleged violation and securing the right of defence, guarantees pertinent to the authority to refer an employee to investigation under the LDSPSE-1991, guarantees relating to the formation of the investigative committee, guarantee relating to the impartiality of the disciplinary authority.

The Guarantee of Notification of the Public Employee

In order to facilitate the simplification of the disciplinary investigation procedure and achieve its speedy resolution, the legislator is obliged to stipulate notification mechanisms along with proper time frames within which both the accused public employees, the witnesses, and all other participants in the investigation have to act (Zero, Haji & Odil, 2019). These provisions are designed to ensure that the procedure takes place within a specific timeframe, thus allowing for identifying the party causing the delay or neglecting its obligations to conduct an investigation. At the same time, such a regulation obliged the investigation authorities

conducting a disciplinary investigation to perform their tasks in accordance with the norms of the public service system.

Notification can be defined as a summons, and it includes informing the public employee who is suspected of committing an infraction about the infraction committed against him/her in such a manner that will make him/her aware that the administration plans to apply disciplinary penalties in case he/she commits the violation (Khalifa, 2008). The notification has to include a date for holding the investigation in order to give the employee enough time to prepare himself/herself for defence (Wadi, 2025; Khayran, 2024). It must be noted that, according to French administrative jurisprudence, the period between the notification and holding the disciplinary investigation cannot be less than forty-eight hours (Khayran, 2024). Additionally, according to Article 22 of the Lebanese General Disciplinary Council System for Employees, published through Decree No. 7236 dated 1967, notification papers should be served to the employee at his/her workplace, chosen domicile, real residence, through the administration he/she belongs to, through the Internal Security Forces, or by any other means of proper administrative notification.

Besides, the importance of notification differs from one system of law to another. In the French system, there is a distinction between minor offences and serious offences. Notification is compulsory only in the case of serious offences, while no notification is necessary for minor offences. Procedures for dealing with minor offences are considered lawful without notification because such offences do not need any preparatory work (Muharib, 1986). On the other hand, under Egyptian legislation, the employee has to be notified about the decision taken to refer him/her to the disciplinary investigation process, including a clear description of the accusations against him/her and the date and place of the disciplinary hearing. Such notification should be in written form and should be made in accordance with the service procedures adopted by the jurisdiction (Al-Misyouni, 1981).

In the context of this study, it should be mentioned that the LDSPSE-1991 does not contain any legal provisions that regulate the notification, including the method and competent authority of notification; the time limit within which the employee must appear before the committee; the legal consequences of non-appearance or invalid notification; the manner of notifying an employee residing outside Iraq or an employee who has been referred to retirement; and the evidentiary value of electronic notification. This omission weakens the

procedural protection afforded to the public employee at the earliest stage of disciplinary investigation.

Therefore, legislative measures should be taken in order to make the LDSPSE-1991 state that the public employee needs to be notified about appearing in front of the investigative committee in relation to the investigation procedure regarding the alleged violation. One might argue that even when there is no special legislative measure for notification under LDSPSE-1991, it is considered a general rule, and the Employee Judiciary Court (hereinafter referred to as “EJC” cancelled the resignation decision in a particular case based on such an approach. Nonetheless, it is important that the issue is regulated by LDSPSE-1991 in order to prevent any opposite interpretations. In other words, since there is no legal requirement for the administrative authority to notify the employee in a certain manner, the competent administrative authority will be free to adopt any mode of notification provided that it can ensure the employee’s presence in front of the investigative body to give his/her statement.

The Guarantee to Enable the Public Employee to Access His or Her Service File and Investigation Papers

Enabling the public employee subjected to disciplinary investigation to access to his or her service file and investigation papers is considered an important mechanism in the disciplinary investigation (Sultan, 2000; Al-Rustum, 2024). The reason behind its importance lies in providing the public employee with an opportunity to present a good defence against any allegations raised against him or her, something which is unlikely if denied access to those materials and relevant information (Wadi, 2025). Hiding these materials is not acceptable because of the increasing emphasis on openness and transparency (Zero, Haji & Odil, 2019). In other words, the fact that the investigation committee has ignored this formal mechanism and consequently deprived the public employee from exercising such a right represents a violation of an important formal mechanism, rendering the entire disciplinary investigation process invalid (Sultan, 2000). Several laws are aware of this guarantee. For example, according to Legislative Decree No. 2862 dated 1959 concerning the procedures of the Central Inspection, Article 13 states that where the inspector’s report recommends imposing liability on a public employee, the Inspector General should inform the employee of the report or at least its summary, allowing the public employee to prepare a written defence within a period of not less than one week from being informed.

In the context of this article, after analysing the LDSPSE-1991, one can easily realize that there is no express provision recognizing the right of the public employee under disciplinary investigation to access his or her service file or investigation papers. It has been noted that the investigative committees usually carry out administrative investigations under strict conditions of confidentiality. The justification for such confidentiality may lie in the protection of the public employee's dignity and reputation, the establishment of friendly relations among staff members, and preventing any form of pressure on either the employee or witnesses not to change their declarations. While it might be argued that these justifications may prove realistic in most situations, it cannot be justified why denying the right to access the investigation papers of the public employee is not considered a necessary measure to take. Therefore, in order to avoid any conflicting interpretation on this matter, it is important to provide expressly for this guarantee in the context of an administrative investigation.

The Guarantee of the Written Disciplinary Investigation Procedures

After notifying the public employee about the misconduct committed by him/her, the investigatory committee commences the investigation process by conducting the written disciplinary investigation, which is executed under the powers given by Article 10 (second) of LDSPSE-1991. It stated that,

“First: The Minister or the Head of the Department shall establish an investigative committee composed of a chairperson and two members with relevant experience, provided that at least one of them holds an initial university degree in law.

Second: The Committee shall conduct a written investigation with the offending employee referred to it. In the performance of its duties, the Committee may hear and record the statements of the employee and witnesses, and examine all documents and data which it deems necessary to review. The Committee shall prepare a report recording the procedures it has undertaken and the statements it has heard, together with its reasoned recommendations, either that the employee should not be held accountable and that the investigation be closed, or that one of the penalties prescribed under this Law be imposed. The Committee shall then submit all such materials to the authority that referred the employee to it.

Third: If the Committee considers that the act committed by the employee referred to it constitutes a criminal offence arising from his employment or committed in his official capacity, it shall recommend that he be referred to the competent courts.

Fourth: As an exception to the provisions of paragraphs (First) and (Second) of this Article, the minister or head of department may, after interrogating the violating employee, directly impose any of the penalties provided for in paragraphs (First), (Second), and (Third) of Article (8) of this Law.”

Additionally, for the accomplishment of formalities related to the disciplinary administrative investigation, the process must be done in a written format (Al-Aboudi, 2012). Writing holds great evidentiary weight, indicating the occurrence of the process. It can be considered as one of the strongest pieces of evidence. The process of writing will also give the public employee a chance to have access to the written proceedings, and hence he or she will be able to review all evidence against him or her, including that provided in his or her absence (Sahl, 1998; Wadi, 2025). Thus, writing makes the job of the judge easier in the process of examining the legality of both the process of the disciplinary administrative investigation and the disciplinary penalties that follow from it. Moreover, it is useful in defending the investigation authority against any accusation of unfairness because it would be hard to refute the process of writing that has been accepted by the relevant parties (Al-Ouiji, 2024). Additionally, a written recording allows for reviewing any appeals filed against the decision made based on the disciplinary administrative investigation (Al-Ouiji, 2024).

As a consequence of what preceded, the Iraqi legislator decided to adopt the principle of written investigation in general and as one of the formalities in administrative investigation. This is applied in the Court Decision No. 120/Discipline/Appellate/2011, where the court affirmed that conducting an administrative investigation orally, without a written recording, constitutes a violation of Article 10(Second) of the LDSPSE-1991. Article 10(Second) of the LDSPSE-1991 indicated that,

“The committee shall conduct the investigation in writing with the violating employee referred to it. In the course of performing its task, it may hear and record the statements of the employee and witnesses, examine all documents and data it deems necessary to review, and prepare a report recording the procedures it has taken and the statements it has heard, together with its reasoned recommendations...”

It may be observed from the above article that the legislator required the investigation to be written, but did not oblige the investigating authority to record it in a specific form. What is required is that the writing be carried out in accordance with general procedural principles and with due regard to the fundamental guarantees upon which the rationale of written investigation is based (Al-Aboudi, 2012). It is worth noting that the insistence on written investigation by the Iraqi legislator is due to its importance, as explained above. However, this principle was not adopted absolutely, and therefore, the Iraqi legislator introduced an exception thereto, as discussed in the following (Al-Ouiji, 2024).

Based on the above, it is believed that although the premise that interrogation is an exception to the general rule of formal written investigation, and therefore may not be interpreted broadly, this argument used to justify the application of oral interrogation is groundless and does not withstand the foregoing criticisms (Al-Rustum, 2024). Moreover, the argument that oral interrogation is a mechanism used by limited and specific individuals, such as the minister or head of department, to impose minor disciplinary penalties, does not apply in all cases. However, it is argued that a disciplinary penalty may appear minor in form, yet produce significant consequences for the public employee, such as depriving him or her of a scholarship, fellowship, promotion opportunity, or any other benefit that he or she might have obtained had the disciplinary penalty not been imposed based on an oral interrogation lacking the required guarantees.

The Guarantee of Confronting the Public Employee with the Alleged Violation and Securing the Right of Defence

The guarantee of securing the right of defence for the public employee is the foundation of a fair trial. It is strongly connected with some other basic human rights, among which are the right to access to justice, equality between prosecution and defense, and the presumption of innocence. Therefore, respect for this guarantee or right constitutes the primary element of justice (Ahmad, 2023). Specifically, the Lebanon State Council also guarantees such a right as it has ruled that any judicial or administrative authority having the power to impose disciplinary penalties should, before imposing the penalty on the employee, notify him/her of the reports, information, and documents in its possession which it considers to be accusations against the employee. As a result, the employee should be able to make statements for defending himself/herself. The State Council further concluded that such procedures are essential procedural prerequisites because they refer to some general legal principles, breach of which leads to nullification of the decision.

Furthermore, several definitions of the right of defence have been provided by different scholars of jurisprudence. Some define it as an opportunity for the accused to undergo a fair trial according to the law (Ahmad, 2023; Al-Abdullah, 2023). It should be noted that the Iraqi legislator has not codified any particular rule in connection with the guarantee of securing the right of defence for the public employee according to the LDSPSE-1991. As well as, LDSPSE-1991 does not expressly require that the public employee be confronted with the charges and violations attributed to him or her. Nor does it require that the public employee be granted

sufficient time to respond to such allegations. This constitutes a serious deficiency in relation to the right of defence guaranteed by the IC-2005, particularly 19 (Fourth). It stated that "the right of defence is sacred and guaranteed at all stages of investigation and trial." Hence, it is a constitutional right. In order to allow the public employees to defend themselves properly, they need an opportunity to present a defence in an appropriate way. According to some scholars, recognizing the existence of the right itself does not ensure its effective exercise (Barakat, 1979; Al-Ouiji, 2024). However, the effective application should be clearly stated and codified in LDSPSE-1991. Accordingly, reconsideration of such an issue by Iraqi legislation in order to recognize the necessity of securing the right of defence for the public employee should be done as soon as possible. Moreover, it is worth noting that the guarantee of securing the right of defence for the public employee plays a fundamental role in allowing him or her to assign a lawyer and in avoiding possible violations of the public employee's rights because of his or her ignorance of the law.

In addition, the guarantee of securing the right of defence for the public employee includes the right to call witnesses who will help to refute the accusations made against the accused public employee. Administrative court decisions support the latter proposition. For instance, the Egyptian Supreme Administrative Court decided that if the investigators did not listen to the witnesses, then there was a flaw in the process of disciplinary investigation.

Although Article 10 (Second) of LDSPSE-1991 refers to the recording of witness statements, it does not regulate important aspects of testimonial evidence, including whether the witness must take an oath before giving testimony; the employee's right to confront and question witnesses; mechanisms for summoning witnesses and the consequences of their refusal to appear; and the possibility of calling witnesses from outside the department. These gaps may weaken the fairness and reliability of the investigative process for the public employee. Besides, the witnesses should be interrogated according to the established procedure. Finally, it is important to mention that to secure the right of defence for the public employee from any obstacles, the following conditions should be met:

1. The public employee should not be penalized for any statements used for his/her defense. Namely, the statements denying the accusations made against the public employee and providing inaccurate information might be considered defense elements unless made in bad faith. The Egyptian Administrative Court stated that the accused could not be held responsible for false statements that were made only for the purpose of defending and in

good faith (Court of Administrative Judiciary of Egypt: 1953, March 13: Judgment No. 37. Collection of the Eighth Judicial Year, item 653/657).

2. The public employee cannot be asked to take an oath. It follows from the principle that the accused is presumed to be innocent till proven to be guilty, which implies that the employee has to be treated like an innocent person throughout the entire process of investigation (Hosni, 1989). This condition should be respected regardless of the employee's position and whether he/she already have a disciplinary record. Otherwise, forcing an accused employee to take an oath violates his/her right to defence, (Al-Ouiji, 2024) amounts to psychological pressure, and nullifies the whole process (Al-Shawi, 2018).
3. The employee has the right to stay silent. Even though LDSPSE-1991 does not recognize the employee's right to remain silent or to refuse to answer questions during the investigation. It also does not prohibit the use of pressure, leading questions, deception, or coercive techniques to obtain admissions. The mainstream opinion among jurists is that the right to remain silent is one of the aspects of the public employee's autonomy in the process of disciplinary investigation. Therefore, no negative consequences for exercising this right should be expected (Criminal Procedure Code No. (23) of 1971, Article 156(5), amended). The Iraqi Constitution of 2005 protects human liberties, as stated in Article 35 of the IC-2005, as well as Article 126(2) of the Code of Criminal Procedure No. (33) of 1971, as amended, provides for the prohibition of forcing to answer.

Guarantees Relating to the Formation of the Investigative Committee

One of the guarantees introduced by LDSPSE-1991 is that an investigative committee must be established to examine the complaint against the accused employee in connection with a violation before imposing a disciplinary sanction as stipulated in Article 8 of LDSPSE-1991. This is clearly stated in Article 10 of the LDSPSE-1991. It stated that

"First: The minister or the head of the department shall form an investigative committee composed of a chairperson and two experienced members, provided that one of them holds at least an initial university degree in law."

So, based on the above, it is clear that the investigative committee consists of three administrative officials, and one of its members is a graduate of a law bachelor's degree. However, no specific administrative rank has been provided for the chairperson or the other members of the committee. Besides, as regards the requirement of experience, it may be argued that the Iraqi legislator rightly requires that the chairperson and committee members shall be

experienced because this requirement means that the investigation shall be based upon a solid and comprehensive knowledge and experience of the matter investigated. This experience may be acquired due to relatively long involvement in administrative work with competence, diligence, and integrity. Nonetheless, no concrete criteria have been established for measuring experience under LDSPSE-1991. In practice, sometimes the minister or department head has chosen to constitute the investigative committee with an administrative official of very low rank. This may indicate some sort of lack of precision and objectivity in the selection process (Hussein, 2025).

Additionally, with regard to the numerical structure of the investigative committee, the Iraqi legislator has opted for three members, including the chairperson, which is an odd number to facilitate the majority of decisions even if one member opposes. The EJC treats the provision of Article 10 of LDSPSE-1991 as obligatory and non-negotiable; therefore, a disciplinary penalty would be invalid if the investigative committee comprises four members contrary to Article 10 of LDSPSE-1991. As the latter is obligatory and public order-related, it could be invoked at any stage of investigation by any person concerned or even raised by the committee itself on its own. The reason behind this is that three members are sufficient to carry out the necessary duties. If some special expertise is needed, then external experts may be asked, but they will not become part of the committee.

Moreover, no requirement of a high functional or salary grade of the chairperson or the committee members, higher than, or at least equal to, that of the accused public employee, has been stated by the Iraqi legislator. In light of the previous, it is believed that this issue needs to be addressed legally and properly in order to confine the discretionary power of the minister or department head to choose the chairperson and members of the committee. In addition to experience, it would be advisable that the chairperson and the committee members should be impartial to preclude any investigation conducted for revenge, maliciousness, or favouritism. Furthermore, it is recommended that the minimum period of experience required before becoming a member of the investigative committee be specified, in addition to other requirements that demonstrate practical experience.

Additionally, it is essential to note that it should be noted that Article 10(First) of LDSPSE-1991 did not refer to the multiplicity of investigative committees for violations occurring within a ministry or an entity not affiliated with a ministry. The Iraqi legislature was correct in this regard, as it would be unreasonable for a single investigative committee to investigate all

violations occurring within a given period of time, given that the circumstances of all committed violations are not identical, in addition to the efforts required during the investigation, which would naturally exceed the limits of practical capacity. Nor would it be prudent for one committee alone to investigate all committed violations, so long as it is possible to form another committee, or several other committees, to perform the required tasks. Moreover, the circumstances and particularities of each case must be considered separately.

Based on the above, it is clear that defects in these procedures may invalidate the disciplinary process and demonstrate the need for legislative reform and stronger oversight mechanisms (Jalili et al., 2024).

Guarantee Relating to the *Impartiality of the Disciplinary Authority*

The scholarly research in the field of administrative law has made it quite clear that there shall be a separation between the process of accusation and the process of judgment. This serves the important purpose of ensuring the impartiality of the disciplinary authority (Al-Rustum, 2024). However, studies indicate that justice, impartiality, and integrity are not always adequately secured in practice, which may lead to arbitrary administrative behaviour and violations of employee rights (Al-Akaishi, 2025; Jalili et al., 2024; Yousef, 2025).

These problems are reinforced by broader institutional and cultural factors, including weak oversight bodies, limited access to justice, insufficient respect for judicial decisions, and administrative resistance to external review. Such factors reduce the practical effectiveness of formal guarantees and weaken the employee's ability to obtain meaningful protection against unlawful disciplinary action (Akrami et al., 2025; Al-Akaishi, 2025). In light of the previous, one question that could be raised about the applicability of the above-mentioned principle in the case of hierarchical disciplinary authority, where the administrative superior possesses the right to impose disciplinary penalties on the public employee (Hussein, 2025; Al-Ouiji, 2024). Additionally, the question can be raised about the possibility for the public employee to ask for disqualification or recusal of the investigating committee or the decision-making disciplinary authority.

In the context of this article, LDSPSE-1991 does not expressly provide for the principle of impartiality in relation to the authority responsible for conducting the investigation. The investigative committee does not enjoy genuine independence, since its formation and the appointment of its members remain subject to the will of the same hierarchical administrative

authority that initiated the investigation. This may render the committee an instrument in the hands of the administrative superior rather than an effective guarantee for the employee. Besides, there is no possibility for recusal or disqualification of a member of the investigation committee (Hussein, 2025). Consequently, the impartiality of investigative committees according to this regime cannot be stated without reservation. Accordingly, Iraqi legislation has to apply the above-stated principles to the general disciplinary law applicable to public employees.

CONCLUSION

This article examined the legal procedural guarantees afforded to Iraqi public employees in disciplinary cases, with particular reference to the LDSPSE-1991, as amended, and the relevant constitutional principles under the IC-2005. The main objective of the article was to determine the extent to which the Iraqi legislator has succeeded in establishing a fair disciplinary system that balances two competing interests: the need to preserve the proper functioning, discipline, and efficiency of public administration, and the need to protect public employees from arbitrary or unlawful disciplinary action. This objective is particularly significant because disciplinary investigations may lead to serious consequences, including disciplinary penalties, dismissal from public employment, reputational harm, and, in some cases, referral to criminal proceedings.

Several procedural guarantees in regard to disciplinary investigation have been identified in the Iraqi law under discussion. Namely, such issues as carrying out a disciplinary investigation, the documentary nature of the investigation procedure, the formation of the investigating committee, and the possibility of nullification of a decision on disciplinary sanctions in case of violation of certain safeguards have been discussed in this research. Nevertheless, it is evident that such guarantees are not quite sufficient as regards their comprehensiveness. It should be stressed that the LDSPSE-1991 does not regulate in detail the procedure of notification, specifying neither the way of sending notifications nor who can notify workers about an upcoming investigation, nor time limits, nor the effects of non-compliance with such notification requirements, nor even the nature of electronic notifications.

Moreover, the study shows that the disciplinary legislation in Iraq fails to provide explicitly the right of the employee to access his or her service file and investigative documents. This is an issue that should be taken into consideration because access to documentation and the

related evidence is crucial for a successful defense. Even though confidentiality can become appropriate under some circumstances in order to protect the honor of both the accused and witnesses, it cannot be used to deny access to the relevant evidence. Therefore, there is a risk that different administrative practices will emerge in the absence of a clear legislative provision on this issue.

Another important observation pertains to the obligation to perform a written investigation according to the terms of Article 10 of the LDSPSE-1991. It should be stated that the written investigation becomes an important procedural step since its performance contributes greatly to such aspects as evidence preservation, judicial review, the right to defense of the employee, and limitation of arbitrary decisions on the part of the administration. However, one should point out the lack of regulation of this procedure in the terms of detailed requirements. Moreover, the possibility to use the oral form of questioning as grounds for issuing some kinds of penalties may impair the significance of the written form of the process.

Moreover, the research uncovered issues associated with the right to defense. While the Iraqi Constitution provides a right to defense through the whole process of investigation and trial, LDSPSE-1991 does not include a number of vital provisions concerning the exercise of this right in a disciplinary process. Particularly, such crucial aspects of this right as the right of the employee to receive clear and understandable charges, the opportunity to answer adequately, to get legal aid, the right to summon witnesses and ask them questions, the right to refrain from answering, and the right not to be forced to give self-incriminating statements are regulated insufficiently.

In terms of the composition of the investigative committee, the researcher noted that Article 10 of the LDSPSE-1991 contains an important provision establishing a committee consisting of three members: a chairperson, two representatives who have extensive experience, and one of them should be graduated from the faculty of Law at the university. Still, the legislation fails to specify what should be considered as enough experience, the administrative grade of committee members, or whether committee members should be the same or higher-ranking employees than the accused employee. The lack of these details allows too much discretion on the part of administrative authorities.

Moreover, it can be mentioned that the right to an impartial hearing is still far from being fully protected by this act. In a hierarchical model applied in Iraq, the administrative body referring

the employee to investigation participates actively in forming an investigative committee. Since this committee is dependent on administration and no procedure concerning disqualification of biased members of a committee is stipulated by the Act, impartiality cannot be guaranteed in the process of discipline.

Based on these conclusions, the Iraqi legislator must reform LDSPSE-1991 to develop more precise and comprehensive legal guidelines for disciplinary investigations. These reforms should:

- 1) Set out the regulations concerning notification, covering its format, content, means of delivery, responsible authority, deadlines, and possible consequences of a failure to provide valid notification.
- 2) Recognize and protect the rights of employees to gain access to their service record, records of investigations, evidence, and relevant reports with the exception of those whose confidentiality is legally justified and narrowly defined.
- 3) Further regulate the requirement for written investigation procedure by laying down the minimal requirements regarding statements, evidences, testimonies of witnesses, proceedings of the committee, and recommendation made by its members.
- 4) Establish the rights of defense in disciplinary process, such as the right to be officially notified of accusations, the right to prepare one's own case within reasonable period and under favorable conditions, the right to hire a lawyer in case of necessity, the right to introduce one's own evidence, the right to summon and cross-examine witnesses, and the right to remain silent without any prejudice.
- 5) Set clear standards of composition of the investigative committee including requirements concerning professional experience, legal education, administrative rank, and impartiality of its members.
- 6) Develop detailed provisions related to the issues of impartiality and disqualification of members of the investigative committee and disciplinary decision-makers.

Finally, this paper urges to enhance judicial and administrative oversight of disciplinary process. Legal proceedings must become available and efficient enough to make guarantees of a fair procedure not a mere formality. The administration must be bound by court's decision, and respect its obligations of guaranteeing fair procedures. In general, despite some significant progress achieved in disciplinary law, this sphere of law still remains subject to serious improvements.

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