

مجلة العلوم الإنسانية

دورية علمية محكمة تصدر عن جامعة حائل



السنة السادسة، العدد 19
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جامعة حائل

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للتواصل:

مركز النشر العلمي والترجمة

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نبذه عن المجلة

تعريف بالمجلة

مجلة العلوم الإنسانية، مجلة دورية علمية محكمة، تصدر عن وكالة الجامعة للدراسات العليا والبحث العلمي بجامعة حائل كل ثلاثة أشهر بصفة دورية، حيث تصدر أربعة أعداد في كل سنة، وبحسب اكتمال البحوث المجازة للنشر. وقد نجحت مجلة العلوم الإنسانية في تحقيق معايير اعتماد معامل التأثير والاستشهادات المرجعية للمجلات العلمية العربية معامل "Arcif" المتوافقة مع المعايير العالمية، والتي يبلغ عددها (32) معياراً، وقد أطلق ذلك خلال التقرير السنوي الثامن للمجلات للعام 2023.

رؤية المجلة

التميز في النشر العلمي في العلوم الإنسانية وفقاً لمعايير مهنية عالمية.

رسالة المجلة

نشر البحوث العلمية في التخصصات الإنسانية؛ لخدمة البحث العلمي والمجتمع المحلي والدولي.

أهداف المجلة

تهدف المجلة إلى إيجاد منافذ رصينة؛ لنشر المعرفة العلمية المتخصصة في المجال الإنساني، وتمكن الباحثين -من مختلف بلدان العالم- من نشر أبحاثهم ودراساتهم وإنتاجهم الفكري لمعالجة واقع المشكلات الحياتية، وتأسيس الأطر النظرية والتطبيقية للمعارف الإنسانية في المجالات المتنوعة، ووفق ضوابط وشروط ومواصفات علمية دقيقة، تحقيقاً للجودة والريادة في نشر البحث العلمي.

قواعد النشر

لغة النشر

- 1- تقبل المجلة البحوث المكتوبة باللغتين العربية والإنجليزية.
- 2- يُكتب عنوان البحث وملخصه باللغة العربية للبحوث المكتوبة باللغة الإنجليزية.
- 3- يُكتب عنوان البحث وملخصه ومراجعته باللغة الإنجليزية للبحوث المكتوبة باللغة العربية، على أن تكون ترجمة الملخص إلى اللغة الإنجليزية صحيحة ومتخصصة.

مجالات النشر في المجلة

تتم مجلة العلوم الإنسانية بجامعة حائل بنشر إسهامات الباحثين في مختلف القضايا الإنسانية الاجتماعية والأدبية، إضافة إلى نشر الدراسات والمقالات التي تتوفر فيها الأصول والمعايير العلمية المتعارف عليها دولياً، وتقبل الأبحاث المكتوبة باللغة العربية والإنجليزية في مجال اختصاصها، حيث تعنى المجلة بالتخصصات الآتية:

- علم النفس وعلم الاجتماع والخدمة الاجتماعية والفلسفة الفكرية العلمية الدقيقة.
- المناهج وطرق التدريس والعلوم التربوية المختلفة.
- الدراسات الإسلامية والشريعة والقانون.
- الآداب: التاريخ والجغرافيا والفنون واللغة العربية، واللغة الإنجليزية، والسياحة والآثار.
- الإدارة والإعلام والاتصال وعلوم الرياضة والحركة.

أوعية نشر المجلة

تصدر المجلة ورقياً حسب القواعد والأنظمة المعمول بها في المجالات العلمية المحكمة، كما تُنشر البحوث المقبولة بعد تحكيمها إلكترونياً لتعم المعرفة العلمية بشكل أوسع في جميع المؤسسات العلمية داخل المملكة العربية السعودية وخارجها.

ضوابط وإجراءات النشر في مجلة العلوم الإنسانية

أولاً: شروط النشر

1. أن يتسم بالأصالة والجدة والابتكار والإضافة المعرفية في التخصص.
2. لم يسبق للباحث نشر بحثه.
3. ألا يكون مستلماً من رسالة علمية (ماجستير / دكتوراة) أو بحوث سبق نشرها للباحث.
4. أن يلتزم الباحث بالأمانة العلمية.
5. أن تراعى فيه منهجية البحث العلمي وقواعده.
6. عدم مخالفة البحث للضوابط والأحكام والآداب العامة في المملكة العربية السعودية.
7. مراعاة الأمانة العلمية وضوابط التوثيق في النقل والاقباس.
8. السلامة اللغوية ووضوح الصور والرسومات والجداول إن وجدت، وللمجلة حقها في مراجعة التحرير والتدقيق النحوي.

ثانياً: قواعد النشر

1. أن يشمل البحث على: صفحة عنوان البحث، ومستخلص باللغتين العربية والإنجليزية، ومقدمة، وصلب البحث، وخاتمة تتضمن النتائج والتوصيات، وثبت المصادر والمراجع باللغتين العربية والإنجليزية، والملاحق اللازمة (إن وجدت).
2. في حال (نشر البحث) يزود الباحث بنسخة إلكترونية من عدد المجلة الذي تم نشر بحثه فيه، ومستلاً لبحثه.
3. في حال اعتماد نشر البحث تؤول حقوق نشره كافة للمجلة، ولها أن تعيد نشره ورقياً أو إلكترونياً، ويحق لها إدراجه في قواعد البيانات المحلية والعالمية - بمقابل أو بدون مقابل - وذلك دون حاجة لإذن الباحث.
4. لا يحق للباحث إعادة نشر بحثه المقبول للنشر في المجلة إلا بعد إذن كتابي من رئيس هيئة تحرير المجلة.
5. الآراء الواردة في البحوث المنشورة تعبر عن وجهة نظر الباحثين، ولا تعبر عن رأي مجلة العلوم الإنسانية.
6. النشر في المجلة يتطلب رسوم مالية قدرها (1000 ريال) يتم إيداعها في حساب المجلة، وذلك بعد إشعار الباحث بالقبول الأولي وهي غير مستردة سواء أجاز البحث للنشر أم تم رفضه من قبل المحكمين.

ثالثاً: الضوابط والمعايير الفنية لكتابة وتنظيم البحث

1. ألا تتجاوز نسبة الاقتباس في البحوث (25%).
2. الصفحة الأولى من البحث، تحتوي على عنوان البحث، اسم الباحث أو الباحثين، المؤسسة التي ينسب إليها - جهة العمل، عنوان المراسلة والبريد الإلكتروني، وتكون باللغتين العربية والإنجليزية على صفحة مستقلة في بداية البحث. الاعلان عن أي دعم مالي للبحث - إن وجد. كما يقوم بكتابة رقم الهوية المفتوحة للباحث ORCID بعد الاسم مباشرة. علماً بأن مجلة العلوم الإنسانية تنصح جميع الباحثين باستخراج رقم هوية خاص بهم، كما تتطلب وجود هذا الرقم في حال إجازة البحث للنشر.
3. ألا يرد اسم الباحث (الباحثين) في أي موضع من البحث إلا في صفحة العنوان فقط..
4. ألا تزيد عدد صفحات البحث عن ثلاثين صفحة أو (12.000) كلمة للبحث كامل أيهما أقل بما في ذلك الملخصين العربي والإنجليزي، وقائمة المراجع.
5. أن يتضمن البحث مستخلصين: أحدهما باللغة العربية لا يتجاوز عدد كلماته (200) كلمة، والآخر بالإنجليزية لا يتجاوز عدد كلماته (250) كلمة، ويتضمن العناصر التالية: (موضوع البحث، وأهدافه، ومنهجه، وأهم النتائج) مع العناية بتحريرها بشكل دقيق.
6. يُتبع كل مستخلص (عربي/إنجليزي) بالكلمات الدالة (المفتاحية) (Key Words) المعبرة بدقة عن موضوع البحث، والقضايا الرئيسية التي تناولها، بحيث لا يتجاوز عددها (5) كلمات.

7. تكون أبعاد جميع هوامش الصفحة: من الجهات الأربعة (3) سم، والمسافة بين الأسطر مفردة.
 8. يكون نوع الخط في المتن باللغة العربية (Traditional Arabic) وبحجم (12)، وباللغة الإنجليزية (Times New Roman) وبحجم (10)، وتكون العناوين الرئيسية في اللغتين بالبنط الغليظ. (Bold).
 9. يكون نوع الخط في الجدول باللغة العربية (Traditional Arabic) وبحجم (10)، وباللغة الإنجليزية (Times New Roman) وبحجم (9)، وتكون العناوين الرئيسية في اللغتين بالبنط الغليظ. (Bold).
 10. يلتزم الباحث برومنة المراجع العربية (الأبحاث العلمية والرسائل الجامعية) ويقصد بها ترجمة المراجع العربية (الأبحاث والرسائل العلمية فقط) إلى اللغة الإنجليزية، وتضمنها في قائمة المراجع الإنجليزية (مع الإبقاء عليها باللغة العربية في قائمة المراجع العربية)، حيث يتم رومنة (Romanization / Transliteration) اسم، أو أسماء المؤلفين، متبوعة بسنة النشر بين قوسين (يقصد بالرومنة النقل الصوتي للحروف غير اللاتينية إلى حروف لاتينية، تمكن قراء اللغة الإنجليزية من قراءتها، أي: تحويل منطوق الحروف العربية إلى حروف تنطق بالإنجليزية)، ثم يتبع بالعنوان، ثم تضاف كلمة (in Arabic) بين قوسين بعد عنوان الرسالة أو البحث. بعد ذلك يتبع باسم الدورية التي نشرت بها المقالة باللغة الإنجليزية إذا كان مكتوباً بها، وإذا لم يكن مكتوباً بها فيتم ترجمته إلى اللغة الإنجليزية.
- مثال إيضاحي:

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Al-Shammari, Ali bin Issa. (2020). The effectiveness of an electronic program based on the Keeler Model (ARCS) in developing the motivation towards my language subject among sixth graders. (in Arabic). *Journal of Human Sciences, University of Hail*. 1(6), 98-87

السميري، ياسر. (2021). مستوى إدراك معلمي المرحلة الابتدائية للإستراتيجيات التعليمية الحديثة التي تلي احتياجات التلاميذ الموهوبين من ذوي صعوبات التعلم. المحلة السعودية للتربية الخاصة، 18(1): 48-19.

Al-Samiri, Y. (2021). The level of awareness of primary school teachers of modern educational strategies that meet the needs of gifted students with learning disabilities. (in Arabic). *The Saudi Journal of Special Education*, 18 (1): 19-48.

11. يلي قائمة المراجع العربية، قائمة بالمراجع الإنجليزية، متضمنة المراجع العربية التي تم رومنتها، وفق ترتيبها الهجائي (باللغة الإنجليزية) حسب الاسم الأخير للمؤلف الأول، وفقاً لأسلوب التوثيق المعتمد في المحلة.
12. تستخدم الأرقام العربية أينما ذكرت بصورتها الرقمية. (1,2,3... Arabic) سواء في متن البحث، أو الجداول والأشكال، أو المراجع، وترقم الجداول والأشكال في المتن ترقيماً متسلسلاً مستقلاً لكل منهما، ويكون لكل منها عنوانه أعلاه، ومصدره - إن وجد - أسفله.
13. يكون الترقيم لصفحات البحث في المنتصف أسفل الصفحة، ابتداءً من صفحة ملخص البحث (العربي، الإنجليزي)، وحتى آخر صفحة من صفحات مراجع البحث.

14. تدرج الجداول والأشكال- إن وجدت- في مواقعها في سياق النص، وترقم بحسب تسلسلها، وتكون غير ملونة أو مظلمة، وتكتب عناوينها كاملة. ويجب أن تكون الجداول والأشكال والأرقام وعناوينها متوافقة مع نظام APA-

رابعاً: توثيق البحث

أسلوب التوثيق المعتمد في المجلة هو نظام جمعية علم النفس الأمريكية (APA7)

خامساً: خطوات وإجراءات التقديم

1. يقدم الباحث الرئيس طلباً للنشر (من خلال منصة الباحثين بعد التسجيل فيها) يتعهد فيه بأن بحثه يتفق مع شروط المجلة، وذلك على النحو الآتي:
أ. البحث الذي تقدمت به لم يسبق نشره (ورقياً أو إلكترونياً)، وأنه غير مقدم للنشر، ولن يقدم للنشر في وجهة أخرى حتى تنتهي إجراءات تحكيمه، ونشرة في المجلة، أو الاعتذار للباحث لعدم قبول البحث.
ب. البحث الذي تقدمت به ليس مستلاً من بحوث أو كتب سبق نشرها أو قدمت للنشر، وليس مستلاً من الرسائل العلمية للماجستير أو الدكتوراة.
ج. الالتزام بالأمانة العلمية وأخلاقيات البحث العلمي.
د. مراعاة منهج البحث العلمي وقواعده.
هـ. الالتزام بالضوابط الفنية ومعايير كتابة البحث في مجلة حائل للعلوم الإنسانية كما هو في دليل الكتابة العلمية المختصر بنظام APA7
2. إرفاق سيرة ذاتية مختصرة في صفحة واحدة حسب النموذج المعتمد للمجلة (نموذج السيرة الذاتية).
3. إرفاق نموذج المراجعة والتدقيق الأولي بعد تعبئته من قبل الباحث.
4. يرسل الباحث أربع نسخ من بحثه إلى المجلة إلكترونياً بصيغة (word) نسختين و (PDF) نسختين تكون إحداها بالصيغتين خالية مما يدل على شخصية الباحث.
5. يتم التقديم إلكترونياً من خلال منصة تقديم الطلب الموجودة على موقع المجلة (منصة الباحثين) بعد التسجيل فيها مع إرفاق كافة المرفقات الواردة في خطوات وإجراءات التقديم أعلاه.
6. تقوم هيئة تحرير المجلة بالفحص الأولي للبحث، وتقدير أهليته للتحكيم، أو الاعتذار عن قبوله أولاً أو بناء على تقارير المحكمين دون إبداء الأسباب وإخطار الباحث بذلك

7. تملك المجلة حق رفض البحث الأولي ما دام غير مكتمل أو غير ملتزم بالضوابط الفنية ومعايير كتابة البحث في مجلة حائل للعلوم الإنسانية.
8. في حال تقرر أهلية البحث للتحكيم يُخطر الباحث بذلك، وعليه دفع الرسوم المالية المقررة للمجلة (1000 ريال غير مستردة من خلال الإيداع على حساب المجلة ورفع الإيصال من خلال منصة التقديم المتاحة على موقع المجلة، وذلك خلال مدة خمس أيام عمل منذ إخطار الباحث بقبول بحثه أولاً وفي حالة عدم السداد خلال المدة المذكورة يعتبر القبول الأولي ملغي.
9. بعد دفع الرسوم المطلوبة من قبل الباحث خلال المدة المقررة للدفع ورفع سند الإيصال من خلال منصة التقديم، يرسل البحث لمحكمين اثنين؛ على الأقل.
10. في حال اكتمال تقارير المحكمين عن البحث؛ يتم إرسال خطاب للباحث يتضمن إحدى الحالات التالية:
 - أ. قبول البحث للنشر مباشرة.
 - ب. قبول البحث للنشر؛ بعد التعديل.
 - ج. تعديل البحث، ثم إعادة تحكيمه.
 - د. الاعتذار عن قبول البحث ونشره.
11. إذا تطلب الأمر من الباحث القيام ببعض التعديلات على بحثه، فإنه يجب أن يتم ذلك في غضون (أسبوعين من تاريخ الخطاب) من الطلب. فإذا تأخر الباحث عن إجراء التعديلات خلال المدة المحددة، يعتبر ذلك عدولاً منه عن النشر، ما لم يقدم عذراً تقبله هيئة تحرير المجلة.
12. يقدم الباحث الرئيس (حسب نموذج الرد على المحكمين) تقرير عن تعديل البحث وفقاً للملاحظات الواردة في تقارير المحكمين الإجمالية أو التفصيلية في متن البحث.
13. للمجلة الحق في الحذف أو التعديل في الصياغة اللغوية للدراسة بما يتفق مع قواعد النشر، كما يحق للمحررين إجراء بعض التعديلات من أجل التصحيح اللغوي والفني. وإلغاء التكرار، وإيضاح ما يلزم.
14. في حالة رفض البحث من قبل المحكمين فإن الرسوم غير مستردة.
15. إذا رفض البحث، ورغب المؤلف في الحصول على ملاحظات المحكمين، فإنه يمكن تزويده بهم، مع الحفاظ على سرية المحكمين. ولا يحق للباحث التقدم من جديد بالبحث نفسه إلى المجلة ولو أجريت عليه جميع التعديلات المطلوبة.
16. لا تردّ البحوث المقدمة إلى أصحابها سواء نشرت أم لم تنشر، ويخطر المؤلف في حالة عدم الموافقة على النشر.
17. ترسل المجلة للباحث المقبول بحثه نسخة معتمدة للطباعة للمراجعة والتدقيق، وعليه إنجاز هذه العملية خلال 36 ساعة.
18. هيئة تحرير المجلة الحق في تحديد أولويات نشر البحوث، وترتيبها فنياً.

المشرف العام

سعادة وكيل الجامعة للدراسات العليا والبحث العلمي

أ. د. عبد العزيز بن سالم الغامدي

هيئة التحرير

رئيس هيئة التحرير

أ. د. بشير بن علي اللويش

أستاذ الخدمة الاجتماعية

أعضاء هيئة التحرير

أ. د. سالم بن عبيد المطيري

أستاذ الفقه

أ. د. منى بنت سليمان الذبياني

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The Guarantees of Public Employees in Disciplinary Administrative Decisions According to The Saudi Employment Regulation, Basic Legal Study

الضمانات القانونية لتأديب الموظف العام وفق النظام السعودي، دراسة قانونية تأصيلية

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الملخص

تتطلب المصلحة العامة الحفاظ على سير المرافق العامة بانتظام واضطراد وتوصيل الخدمات للأفراد بأفضل الطرق وأسرعها، الأمر الذي يتطلب وجود كوادر بشرية ذات كفاءة لتسيير عمل هذه المرافق. ولكن في الواقع العملي قد يوجد موظفون متقاعسون عن أداء واجباتهم الوظيفية مما قد يوجب معاقبتهم تأديبياً كضمانة لعدم تكرار المخالفة من قبلهم. إن العقوبات التأديبية ترتب آثاراً خطيرة على الموظف من حيث المساس بحقوقه الوظيفية والمالية مما يتوجب إيقاع هذه العقوبات وفق ضمانات تكفل الوصول إلى الحقيقة المجردة وتحمي حقوق الموظف العام. لذا يتمحور موضوع هذا البحث حول الضمانات التي كفلها المشرع السعودي والتي يجب على الجهات الإدارية مراعاتها والتقيّد بها منذ إحالة الموظف إلى التحقيق حتى إصدار القرار الإداري التأديبي من قبل السلطات المختصة. كما تسعى هذه الدراسة لحث السلطات المنوط بها إجراء التحقيق إلى توفير أكبر قدر ممكن من الضمانات لصالح الموظف المتهم من أجل تحقيق المصلحة العامة المتمثلة برّدع الموظف المخالف من جانب، والحفاظ على حقوق الموظف العام من تعسف الإدارة من جانب آخر.

الكلمات المفتاحية: المخالفة المسلكية، الموظف العام، الضمانات التأديبية.

Abstract

Maintaining functions of public utilities regularly and delivering services to individuals in the best way require the presence of qualified human cadres to run the work of these facilities. However, in practice, there may be some employees who fail to perform their job duties, which calls for disciplinary sanctions to guarantee that the violation will not be repeated. Disciplinary sanctions have serious effects on the employee in terms of prejudice to his employment and financial rights, which requires that the imposition of these sanctions be supported by guarantees that ensure access to the absolute truth and thus guarantee the rights of the public employee. Therefore, the subject of this research revolves around the guarantees offered by the Saudi legislator, which the administrative authorities must observe and abide by from the referral of the employee to the investigation, until the issuance of the disciplinary administrative decision by the competent authorities. This study also seeks to urge the authorities entrusted with investigating to provide the greatest possible guarantees in favour of the accused employee to achieve the public interest of deterring the violating employee on the one hand and to preserve the rights of the public employee from the arbitrariness of the administration on the other hand..

Keywords: Disciplinary Violation, Public Employee, Disciplinary Guarantees.

1. Introduction:

Public service dominates a large part of the studies on administrative law due to the special importance of the employee sector in modern administration, especially after the multiplicity of tasks entrusted to it, which are related to the delivery of services to individuals in the best and fastest ways, requiring the administration to increase the number of various public facilities in the fields of health, security, educational, economics, and the operation of the largest number of manpower (employees).

Public employee is considered the main factor in any country, where the administration cannot perform its duties except by promoting a legal regulation that guarantees the public employee a set of rights and duties that help him perform his job to the fullest. In this regard, the disciplinary regulation works to achieve the public interest through a balance between the employee's performance of his job duties with the required ability and efficiency, and the requirements of the public job.

Achieving public interest depends on the good performance of the employee, his speed, honesty, and efficiency. In return, it is necessary to offer protection to the public employee by providing guarantees that ensure his rights and provide him with protection from the administrative authority abuse, which may be before the imposition of the punishment or after the issuance of the disciplinary decision against him, where all of these guarantees to the employee are under the concept of fair procedures.

The job control regulation in Saudi Arabia came to grant rights and impose obligations on the employee, and if the employee deviates from these obligations, he commits a behavioural violation that entitles the administration to take any of the measures specified by law against him.

Therefore, it is important to clarify in this research the guarantees pledged by the Law of Employee Discipline, which the administrative authority must adhere to from the moment the employee is referred to the investigation until the issuance of the disciplinary decision. This will help to inform the employee of his rights established by disciplinary laws and judicial rulings, and at the same time remind the administration of the necessity of following the lawful methods in matters of investigation to ensure the validity and integrity of the procedures.

Accordingly, this study deals with the historical development of public administration and clarifies the relationship between public administration and its employees, in addition to identifying the public employee and the conditions that must be met in him to be the subject of administrative accountability for the acts he commits. It will also clarify the nature of the disciplinary offence, its elements, and its pillars, and distinguish between it from criminal offence. Finally, the study will clarify the guarantees enjoyed by the employee before the administrative authorities from the moment he is referred to the investigation committees until a disciplinary decision is issued against him.

1.2 Study Problem:

The public employee may find himself in a dispute with the institution he works for, whether in terms of his legal competencies or his rights and privileges, and the institution may take administrative measures against the employee which raises the question about the validity of the actions taken against employee and the availability of guarantees that ensure the validity of these procedures issued by the competent authorities, whether it is a presidential authority or disciplinary committees, determining previous, contemporary, or subsequent guarantees for the imposition of the disciplinary sanction, and the extent to which the Saudi legislation responds to balance between the importance of these guarantees and the administrative considerations that may conflict with them in order to reach a correct disciplinary policy through which a balance is achieved between the proper functioning of public utilities regularly and steadily on the one hand and the need to provide a reasonable number of disciplinary guarantees to the employee subject of investigation on the other hand.

1.3 Study objective:

The Saudi legislator has provided the employee exposed to the disciplinary investigation with several guarantees that the disciplinary authority must take into consideration, and if these guarantees are neglected or not respected, the disciplinary decision that results from this investigation is defective and subject to annulment. Therefore, this study aims to clarify the guarantees that aim to achieve a fair investigation for the accused employee to show the truth and ensure the fairness of the punishment imposed on its impact, and thus this study is a legal reference

that helps the administration to avoid problems that occur in the field of administrative disciplinary decisions, in addition to the contribution of this research to protecting the rights of the public employee from the arbitrariness of the administration.

1.4 Study Methodology:

This study follows a descriptive-analytical approach that helps in analysing legal texts and reviewing the will and purposes of the legislator from the Job control regulation for the year 2021 and other related regulation and judicial awards, it also stands on the position of the judiciary and jurisprudence on the legal and practical foundations for disciplining public employees in the Kingdom of Saudi Arabia. This approach therefore requires examining the employment regulation in the Kingdom of Saudi Arabia; the relationship between public employee and administration; disciplinary sanctions in the Saudi Employment Regulation; the employees' discipline guarantees; and end the research by some results and recommendations.

2. Employment Regulation in the Kingdom of Saudi Arabia.

Many rules regulate the process of disciplining employees and are distributed among several laws and regulations, where the Saudi legislator issued the Employee Disciplinary Regulation for the year 1971, and then issued the Job Discipline Regulation for the year 2021, which only cancelled a set of articles of the Employee Disciplinary Regulation for the year 1971 and kept the remaining texts, in addition to the executive regulations issued based on these regulations (Article 24 of the Job Discipline Law of 2021).

The new Job Discipline Regulation in the Kingdom of Saudi Arabia aims to protect the public service by ensuring the regular and steady functioning of the public facility and the proper performance of the employee's work, where this regulation applies to all employees, except for those who work according to regulations in which the punishment is regulated by special rules, such as academic professors, judges and diplomatists. The Saudi Job Discipline Regulation for the year 2021, Royal decree no (M/18), date 15/9/2021 consists of (25) articles aimed at protecting the public order of the public service and ensuring the regular functioning of the public facility in the country. In addition, the regulation includes rules that regulate the good performance

of the employee in line with the comprehensive development processes that are conducted in the Kingdom of Saudi Arabia in all government sectors throughout the country. The new discipline regulation supports the values of quality, loyalty, and respect for the rights of others, which creates a fair and safe work environment for all people with the ability to avoid difficulties that can reflect negatively on the quality of services provided to the public.

The current occupational regulation has established a set of guarantees for the public employee that were not existed in the previous one in terms of not punishing the employee without any consideration for his previous work and effort, the necessity for the issued disciplinary decision to be reasoned, non-responsibility of the employee for the mistake if it is committed for implementation the orders of his president, the necessity of forming one or more committees in each governmental department by a decision of the Minister that undertakes the investigation of violations committed by employees.

Since the new regulation is distinguished by the establishment of a safe and fair work environment to help achieve the highest competitiveness standards through unifying the sanctions regulation on all employees, studying the employment guarantees requires addressing the concept of the public employee initially, in addition to the nature of the relationship between the public employee and the administration which will be addressed in the following requirements:

2.1 The Definition of Public Employee

The state exercises its utility activity through its employees, where they are its tool to achieve its goals, therefore, the public office enjoys the attention of the legislator and jurists in various countries, and the role of the public employee is determined narrowly and broadly according to the economic and social philosophy of each country, especially that the country's activity is no longer limited to protecting internal and external security and resolving disputes between individuals.

The Saudi legislator did not single out an inclusive definition of the public employee, as its definitions were distributed in different laws and legislations. For example, the Job Discipline Regulation defines a public employee as " who works for the state, or one of the bodies with a public legal entity in a civil job in any capacity

whatsoever - whether he works there permanently or temporarily (Article no. 1 of the Saudi Job Discipline Law for the year 2021).

Public employee is also defined as any person entrusted with permanent or temporarily work in the service of a public utility run by the state, a public law person, or any person who contributes permanently to the management of a facility regardless of the nature of the work he or she performs (Alfalati, 2005).

From these definitions, we can conclude that the necessary elements to be considered a public employee are as follows:

First: To appoint a person to a permanent job in the sense that the burdens and duties of the job are permanent and continuous and not casual, sudden, or temporary, hence the day workers are not considered public employees.

Second: The appointment must be in the service of a public facility managed by the state or a public law person. The public facility is what the legislator establishes intending to provide services to the public that are estimated to be services of utmost importance to society such as services for health, education, and security facilities, therefore, private sector employees are not considered public employees but workers.

The keenness to advance the public position makes it necessary to take care of the testing of employees and to require the ability and competence of those appointed to public positions in order to achieve the public interest, as the Saudi legislator stipulated several things in the position of public service, where the appointee must be a Saudi national (and an exception may be made to employ a non-Saudi temporarily in jobs that require competencies that are not available in Saudis), have completed Eighteenth years of age, fit for service, has good conduct and morals, possesses the qualifications required for the job, not convicted of legal punishment or imprisonment for a crime involving honour or dishonesty until at least three years have passed since the end of punishment execution, and not dismissed from state service for disciplinary reasons unless at least three years have passed since the issuance of the dismissal decision (Article no. 4 of the Saudi Civil Service Law of 2021).

2.2 The Relationship Between Public Employee and Administration

Dispute arose in jurisprudence and judiciary about the nature of the relationship between the

employee and the county, whether it is a contractual relationship regulated by the contract or is it a legal and regulatory relationship governed by laws and regulations.

The prevailing opinion in jurisprudence and judiciary is that the employee in his relationship with the state is in a contractual position and on this basis emerged many contractual theories that agree that the contract is the basis of this relationship, but they differ in the nature of the contract, where some considered it a private law contract, while others adapted it as a public law contract (Rayan, 2018).

However, this adaptation has been severely criticised, which led to its collapse, since the appointment of the employee is made based on an administrative decision issued by the competent authority at its own will, and if the employee's acceptance is necessary to implement this decision, the basis for the appointment and the entry of the employee into the public service is the decision to appoint alone and not the employee's acceptance of it, meaning that the decision was issued unilaterally and there were no negotiations between the parties prior to its issuing, as happens when civil contracts are concluded. Objectively, the principle of "the contract is the law of the contracting parties" which is recognized in private law, is not suitable for regulating the employee's relationship with the state, because the administrative authority has the power to modify the employee's legal status without depending on his consent, and the employee cannot terminate the contract if the administration violates its terms (Abu Ermileh, 2014).

As a result of criticisms of this theory (the contractual theory) in adapting the relationship between the public employee and the state, jurisprudence in France began in the middle of the last century to move towards adopting the relationship as an organisational relationship, governed by the legal rules related to the organisation of public service, where the French Council of State has finally decided to adapt the relationship between the employee and the state based on the legal rules (Alburini, 2018) which is what the administrative judiciary in Egypt has settled on and what the Arab countries, including Saudi Arabia, have adopted (Al-Thneibat, 2011).

The adaptation of the employee's relationship with management as an organisational relationship, and the fact that the employee is accordingly in an organisational position rather than contractual, has several legal consequences that can

be summarised as follows:

1. The employee shall be appointed by an administrative decision issued by the competent administrative authority and at its own will without the employee's consent or acceptance of the job in the appointment decision.
2. Any amendment to the provisions of laws and regulations shall apply to any employee, even if this results in a change in his rights, an increase in the work entrusted to him, or his transfer for the public interest, without the employee having the right to claim that he has acquired rights derived from the laws and regulations that were in force at the time of his appointment.
3. The administrative judiciary shall be competent to hear disputes arising from the employment association as this association is one of the public law associations, and the employee shall have the right to resort to the administrative judiciary to file a lawsuit to cancel administrative decisions that violate laws and regulations.

3. Disciplinary Sanctions in the Saudi Employment Regulation

After it is proven that the employee committed the disciplinary violation, the right of the administration to impose the appropriate disciplinary sanction for the committed violation is established through a set of procedures starting from issuing a referral decision to the violations committee until the issuance of the disciplinary administrative decision. Addressing the job guarantees that the employee has during the investigation phase requires explaining the concept of behavioural violation first in the following requirement.

3.1 The Definition of Behavioural Violation.

Many terms were given to the error committed by the employee and exposes him to disciplinary responsibility, some of them are administrative error, behavioural violation, administrative guilt, or disciplinary offence, all of which indicate the error committed by the public employee and damage to the public facility (Kanaan, 2008).

Arab jurisprudence dealt with the definition of a disciplinary offence as a disciplinary error resulting from a violation of general provisions or a violation of general rules not stipulated in

the laws, and therefore the disciplinary authority has the discretion of whether the act constitutes a disciplinary offence or not (Al-Deghaither, 1992). Others have defined it as any act or omission committed by an employee that violates his or her job obligations, or any act or omission that violates a legal norm that an employee must not commit in the performance of his job (Al-Salamat, 2019).

The difficulty of identifying disciplinary offences exclusively is one of its distinguishing features, which gives disciplinary authorities the power to assess whether the act done by the employee is considered a violation of the job duties or not, subject to the control of the administrative judiciary.

Disciplinary responsibility is based on the error committed by the employee, which represents a breach of the job duties and a violation of the laws, regulations, and instructions that must be considered as a public employee. Therefore, the disciplinary sanction is based on the idea of disciplinary error, and the employee's disciplinary responsibility arises whenever such an error is committed, even if it does not lead to damage.

Before the issuance of the current job discipline regulation in 2021, the Saudi regulations related to the organisation of public service affairs did not include a specific definition of behavioural violations or disciplinary sanctions, but only mentioned the public employee duties during the performance of his work and granted the administration to impose disciplinary sanctions if the employee violated these duties. In this regard, the Board of Grievances defined a disciplinary offence as "a charge based on a public employee violation of his duties, requirements, and dignity of his job" (Judgement of the Board of Grievances No. 50/60 of 2001).

However, the Saudi legislator corrected this matter and defined the disciplinary offence in the current job discipline regulation issued in 2021, where it defined the behavioural violation as "any act, or omission, issued by the employee, that includes neglecting duties, or commits job prohibitions stipulated in the law, or constitutes a violation of the honour and dignity of the job. (Article no. 1 of the Saudi Job Discipline Law for the year 2021).

According to the definitions, a behavioural violation can be defined as any act or omission committed by a public employee, intentionally

or unintentionally, during the performance of the job or outside it, that would violate the duties and rules of the job or prejudice its dignity.

The establishment of disciplinary responsibility requires the presence of material and moral elements. The material element including the positive act (doing an act) or the negative act (refraining from acting) committed by a public employee and is in violation of the provisions of laws, regulations, and instructions (Atallah, 2002). In this regard, the Board of Grievances has committed to the necessity of providing the material element for the establishment of disciplinary responsibility, as it stated in one of its rulings on "... The disciplinary administrative decision is not based on valid reasons, as the complainant is not attributed a violation as long as he did not organise and write the transaction" (Judgement of the Board of Grievances No. 42/T/2 of 1991).

As for the moral element, it is represented in the will and knowledge of the employee who commits the positive or negative act that constitutes a breach of the duties and requirements of the job. It is stated in one of the rulings of the Board of Grievances that "...what the employee did was done in good faith and in implementation of the orders of his superior, the act committed by him lacks a moral element and therefore does not constitute an offence that requires disciplinary sanction". (Judgement of the Board of Grievances No. 182/T/7 of 2014).

Here, it must be noted that committing one of the crimes stipulated in the laws may expose the employee to both criminal and disciplinary responsibility at the same time, and if a judicial ruling is issued clearing him of the criminal offence, this also does not exempt him from disciplinary responsibility based on the principle of separation and the permissibility of combining disciplinary sanctions and criminal punishment (Al-Zahrani, 2017).

The Saudi Board of Grievances affirmed the principle of the independence of the criminal offence from the disciplinary offence in one of its rulings, which ruled that: "... A disciplinary offence is essentially a stand-alone offence independent of a criminal offence, consisting of an employee's violation of the duties or dignity of his or her job, while a criminal offence is the defendant's deviation from society in what criminal regulations forbid or order." (Judgement of the Saudi Board of Grievances No. 50/86 of 1981).

Although the disciplinary sanctions in the dis-

ciplinary regulation were specific, for example, where it starts with a warning and extends to deduction from salary and deprivation of allowance until it reaches its maximum form of dismissal, the Saudi legislator granted the competent administrative authority to hold the employee accountable to decide whether the behaviour attributed to the employee is considered a disciplinary violation that requires punishment or not. It also left the discretion concerning choosing the appropriate punishment for the violation and tightening it or not, so it came with a ruling for the Board of Grievances (the disciplinary authority has the right to assess the appropriate punishment for the violation without excessive severity or excessive pity, and the judiciary has established that the disciplinary authority has the right to assess the seriousness of the administrative guilt and the appropriate punishment, provided that its use is not tainted by abuse of authority (Judgement of the Board of Grievances No. 116 of 2016).

3.2 The Distinction Between Disciplinary Offence and Criminal Offence.

There is a similarity between disciplinary and criminal offences, as both are abnormal behaviour punishable by law and must be avoided in the public interest, and those who commit them expose themselves to accountability and appropriate punishment. Such conduct attributed to the employee may constitute two offences, one disciplinary, and one criminal, where the disciplinary accountability is not restricted to criminal prosecution except in respect of whether the act constituting the offence is committed by the employee or not. Although there are some similarities between administrative disciplinary and criminal offences, there are significant differences between them that must be noted in this regard as follows:

- In terms of people:

A disciplinary offence cannot exist unless the positive or negative act has been committed by the public employee, and here the job description of the person is an essential element in committing the disciplinary offence, while the perpetrator of the criminal offence may be a public employee or any individual.

- In terms of the acts constituting the crime:

The most important characteristic of the disciplinary offence is that it is not subject to the principle of legality, which is (no crime and punishment except by text), but rather is a breach of

the dignity of the job and deviation from the requirements of job duties, as for the crime in the criminal field, it is specified exclusively in the laws (Al-Shibli, 2019).

- In terms of purpose:

The disciplinary sanction aims to deter the employee who commits the behavioural violation so as not to repeat it, which leads to improving the employee's performance, as its motivational measures aimed at ensuring the good performance of employees. Whereas in the penal regulation, it is a matter of protecting the whole society and ensuring its stability and security, meaning that the disciplinary sanction aims to ensure good regularity and continuity of work in public facilities, while the penal sanction aims to combat crime, which is a goal decided to protect the public interest (Al-Otaibi, 2007).

- In terms of responsibility:

The disciplinary offence is related to the employee's behaviour and violation of the obligations and dignity of his job, and is independent of the criminal offence in terms of responsibility because exempting the employee from criminal responsibility and cancelling the criminal charge attributed to him does not prevent him from being held disciplinary accountable, as the employee may be disciplined for violating legislative texts, administrative custom or the duties of the public service, while the criminal offence is not committed unless the perpetrator violates a legislative text (Abu Ermila, 2014).

- In terms of the imposed punishment type:

The disciplinary punishment is related to prejudice to the employee status and is by establishing a set of specific sanctions exclusively starting from warning to dismissal from the job, but in the criminal regulation, the punishment is related to the violation of the freedom of the person, his life, or his money, and the judge is free to estimate the punishment according to the incident under consideration within the limits allowed by law, which may be the imposition of a fine, imprisonment, or execution (Al-Shibli, 2019).

- In terms of procedures:

The disciplinary offence is distinguished from the criminal offence in terms of the procedures to be followed since the employee committed the crime and is held accountable for it until the imposition of punishment on him, and

these procedures are regulated by article (4) from the Job control regulation for the year 2021 including (investigation, Confrontation, Righting of Defence, Legality of Penalty, and Reasoning of the administrative decision), where the competence is for the competent administrative authority through the investigation of violations committed and the imposition of disciplinary sanctions. As for the criminal offence, it has its foundation, which is regulated by public laws such as the Code of Criminal Procedure and the Penal Code (Habibi, 2005).

- In terms of obsolescence:

Regarding the statutes of limitations, they differ from the disciplinary offence and the criminal offence, as the criminal offence is time-barred in the sense of prosecuting its perpetrator, over time from the crime occurrence date to the date of arresting the perpetrator (except some crimes such as the ones concerned terrorism or faking money), while the disciplinary offence is not subject to the rules of a statute of limitations, so the right to pursue and punish the employee does not recede over time (Rayan, 2018).

4. Employees' Discipline Guarantees.

The administrative authorities were the only body competent to conduct investigations with public employees for alleged violations, but after the issuance of the Employee Disciplinary Regulation of 1971 and the Job Discipline Regulation of 2021, a special body called the Investigation Committee of Law Violations was established in each ministry, in addition to the Oversight and Anti-Corruption Authority to take on the same task performed by the administrative authorities in conducting administrative investigations. Accordingly, the administrative authorities competent to investigate disciplinary violations in Saudi Arabia are the administrative authority, which has the original competence, in addition to the Oversight and Anti-Corruption Authority, which has exceptional competence in that. (Article no. 12 of the Employee Discipline Law for the year 2021, and Articles no 7, 12, and 17 of the Employee Discipline Law for the year 1971).

The imposition of disciplinary sanctions on violating employees is very serious and important because it affects their job, their financial positions, or both, and in order not to impose sanctions without restrictions, it was necessary to establish legal guarantees that all disciplinary authorities adhere to when issuing a disciplinary

decision to impose a specific sanction on an employee.

It should be noted that the regulations that define the rights and duties of the public employee, including the guarantees of disciplinary administrative decisions, were distributed among several pieces of legislation, such as the Employee Disciplinary Regulation of 1971, the Job Discipline Regulation of 2021, and the Executive Regulations of the Job Discipline Regulation of 2021.

The wisdom behind the legislator establishing these guarantees is to provide a sense of reassurance to the employee when he is held accountable, in addition to the fact that the commitment of the disciplinary authorities to these guarantees inspires public confidence in the decisions reached by the administration because they are consistent in their content with the provisions of the law and thus achieve the objectives of the disciplinary regulation. These guarantees will be addressed in the following requirements:

4.1 Investigation.

Part of the jurisprudence defined the preliminary investigation as legal means to reach the truth represented in a set of procedures aimed at investigating whether the accusation attributed to the employee is true and requires punishment or not and aims to clarify the legal adaptation of the act attributed to the employee (Shafiq, 2002).

A disciplinary decision cannot be sound and fair unless it is based on correct and honest information, so the employee laws stipulated that it is not permissible to impose a disciplinary punishment on the employee until after investigating him, which is considered one of the most important guarantees of the employee that exempts him from accountability simply by suspicion or false accusation.

The rulings of the Board of Grievances state that the Saudi judiciary has not taken steps to ensure the validity of the disciplinary investigation, but for its validity, it required the inclusion of investigations and inferences that are carried out following the legal procedures to which the administration is committed." (Judgement of the Board of Grievances No. 19/T of 1977).

Accordingly, it can be said that the investigation is merely a preliminary procedure by the competent authority to determine the truth

of the facts attributed to the accused employee and the circumstances in which it was carried out, through research, scrutiny, and investigation of evidence that indicates the occurrence of the disciplinary violation and the truth of who committed it or did not.

In practice, the presidential authority exercises its oversight role following the powers granted to it, including conducting investigations with its employees to uncover the violations attributed to them. This is done through competent bodies within each administrative body called the Investigations Department, Follow-Up Units, or the Investigation Committee of Law Violations, as is the case in the Kingdom of Saudi Arabia.

The concerned administrative authority (the Investigation Committee of Law Violations) is the one with the original competence to exercise the necessary investigation procedures with its employees, and this is evident from the text of Article (9) of the current Job Discipline

Law for the year 2021, which stipulates the following: "One or more committees, as the case may be, shall be formed by a decision of the Minister in each government entity, to consider and investigate the violations committed by employees, and the regulation shall determine the number of members of each of the committees stipulated in the law], their formation, their mechanism of work, their procedures. and the method of making its recommendations, taking into account that each committee is headed by a specialist in regulations."

The administrative head accordingly assigns one of the competent employees from the Follow-up or Legal Affairs Department to conduct the investigation. The benefit of the committee members to be assigned by the administrative head concerns the necessity of the members to be neutral and has experience in the task of investigation such matters that only the head knows about. However, despite the absence of a legislative text in Saudi Arabia that prohibits the administrative head from conducting the investigation himself, the researcher believes that the requirements of justice and impartiality require that the administrative head does not combine the powers of investigation and judgement, as the principle of separation between the powers of accusation and judgement is one of the stable legal principles that may not be violated, even if there is no text deciding it.

In addition to the administrative authority's competence to investigate against the accused employee (the Investigation Committee of Law Violations), the Oversight and Anti-Corruption Authority is competent under the Saudi Job Discipline Regulation to conduct a disciplinary investigation into violations attributed to public employees in government departments. The competence of the Oversight and Anti-Corruption Authority to conduct a disciplinary investigation in the Saudi regulation is exceptional from the general rule that stipulates the competence of the administrative authority in which the employee works (the Investigation Committee of Law Violations) to conduct such an investigation.

In other words, the Investigation Committee of Law Violations has the original competence to investigate violations committed by employees in general, but the Saudi legislator mentioned an exception to this by granting another administrative body "the Oversight and Anti-Corruption Authority" as a central administrative body to investigate all employees of different workplaces in specific violations. Accordingly, the cases in which the Oversight and Anti-Corruption Authority has exclusive competence to initiate a disciplinary investigation with the accused employee have been identified, as follows:

First: The case in which the accused employee commits a criminal offence, where the administrative authority, upon discovering this crime, first refers the investigation papers to the head of the Oversight and Investigation Authority to take what he deems appropriate. (Article no. 12 of the Saudi Employee Disciplinary Regulation of 1971).

Second: The case where the Authority has discovered the violation when exercising its supervisory function, where the head of the Authority if he deems that the matter requires investigation, delegates whomever he deems necessary from among the investigators to conduct it, and the entity to which the employee is affiliated must be notified of the investigation before starting it (Article no. 7 of the Saudi Employee Disciplinary Regulation of 1971).

Third: The case where the administrative department to which the employee is affiliated deems that the disciplinary violation assigned to him requires punishment of dismissal, it is then obligated to inform the Oversight and Anti-Corruption Authority and send a copy of all investi-

gation papers. The Authority may, within thirty days from the date of receiving the papers, initiate the investigation.

However, it should be mentioned that if the Authority has reached that the committed disciplinary violation requires dismissal and the rank of the concerned employee comes within the fourteenth or fifteenth degree, the Authority in this matter must refer and follow the case before the Administrative Court that has the competence to issue the dismissal decision for such employees, while the dismissal decisions of other employees with the degree of thirteenth or less are given by the competent minister/s (Article no. 10 & 11 of the Job Discipline Law for the year 2021).

Fourth: The case of the employee committing a violation in an entity other than the one he works for, where in this case the employee must be referred directly to the Oversight and Investigation Authority to investigate the employee (Article no. 12/1 of the Job Discipline Law for the year 2021).

Fifth: The case of employees who belong to more than one government agency committing a violation or violations related to each other (Article no. 12/2 of the Job Discipline Law for the year 2021).

Sixth: The case in which the employee commits a violation, but his services have been terminated before the completion of the investigation against him, or before the start of administrative measures against him (Article no. 12/3 of the Job Discipline Law for the year 2021).

Seventh: An employee who commits a violation during his work, and then his job position changes by moving to work on another Employment regulation (Article no. 12/4 of the Job Discipline Law for the year 2021).

Accordingly, it is clear that the Saudi regulator has made the competence of the Investigation Committee of Law Violations in investigating with the employee, the original, and that the competence of the Oversight and Anti-Corruption Authority is an exceptional competence that came exclusively in cases stipulated in the Job Discipline Regulation and the Employee Disciplinary Regulation, and except in these cases, the Committee is free to assess the conduct of the investigation itself or refer it to the Oversight and Anti-Corruption Authority if it deems so.

The Saudi legislator was also keen on the need to provide guarantees during the procedures conducted by the concerned administrative authorities or the Oversight and Anti-Corruption Authority that the investigation is in writing of minutes of meetings or serial minutes indicating the date of its completion, the investigator signature, and the time and place of opening the report (Article no. 4 of the Job Discipline Law for the year 2021).

In this regard, a ruling by the Disciplinary Board in the Saudi Ministry of Education stated that the failure to conduct any investigation with the accused employee before referring him to the Disciplinary Board leads to the failure of one of the pillars of the disciplinary administrative decision, on the basis that the investigation is the first procedure preceding the disciplinary administrative decision (Judgement of the Board of Grievances No. 24 of 2017).

It was also stated in a ruling of the Board of Grievances that “the punishment may not be imposed until after conducting a written investigation with the accused, hearing his statements and proving that he committed the violation, and it is proven from the case papers that the administrative authority did not comply with this order, which means that the disciplinary decision is defective in its reasons and procedures and violates the regulation, which must be cancelled along with its consequences (Judgement of the Board of Grievances No. 289/T/3 of 1988).

Another ruling of the Board of Grievances stated that (... since the appealed disciplinary decision is without investigating the violation, hearing the statements of the complainant, investigating his defence, and proving this in the decision issued for punishment or in the investigation report; as a result, the appealed decision violated the provisions of the Employee Disciplinary Regulation, and therefore it must be void and null (Judgement of the Board of Grievances No. 161/T/ of 1992).

4.2 Confrontation.

Saudi administrative jurisprudence has addressed the definition of the principle of confrontation as hearing the employee's statements on the violations attributed to him and their evidence so that he can stand on them and defend himself, which is either a personal confrontation or a verbal one. Where in a personal confrontation, the

accused is confronted before another accused or a witness in order to hear their statements on the facts of the accusation and to respond either by confirmation or denial. The verbal confrontation, according to which the accused is confronted with the statements of an accused or another witness in the investigation, has the greatest impact on the rights of the accused as he is confronted with the evidence of the accusation (Al-Harbi, 2006).

The principle is that the investigation procedures in the Saudi regulation are carried out in the presence of the accused employee himself, and the aim of this is to inform the employee of the nature of the charges against him and to confront him with them without ambiguity so that he is aware of his order and so that he can present his defence. This was confirmed by the Saudi legislator when it required that the decision of the Oversight and Investigation Authority to refer the employee to the disciplinary body include a statement of the acts attributed to the accused specifically (Article no. 4/1 of the Job Discipline Law for the year 2021).

In application of this, the jurisprudence of the Board of Grievances has established the illegality and invalidity of any investigation involving implicit and inexplicit charges against the employee, and for the investigation to be reliable, it must be based on unambiguous charges. One of the rulings of the Board of Grievances states that (... a perusal of the investigation and its contents shows that the accused was not explicitly accused of defrauding public funds, while the accusation was implicitly levelled against him, which should not be relied upon in such matters, but must be explicitly charged and held accountable for it (Judgement of the Board of Grievances No. 9/T/1 of 2013).

The Board of Grievances explicitly established the principle of confrontation in one of its rulings, stipulating (... The principle of administrative or disciplinary trials is that they have the guarantee of civil trials and that they are conducted following the principles, controls, and rules that guarantee the integrity of the decisions issued by the bodies entrusted with conducting the trial, and among the most important of these guarantees and rules is confronting the accused employee who must be followed in order to memorise the facts and evidence of conviction, in a way that guarantees reassurance about the validity of the facts that necessitate the punish-

ment (Judgement of the Board of Grievances No. 11/86 of 1981).

Another ruling of the Board stated that “one of the essential guarantees that must be taken into account in the administrative investigation is confrontation, by confronting the employee on the truth of the accusation with various evidence indicating that he committed it and the need to enable him to present his defences as a basic guarantee for him.” (Judgement of the Board of Grievances No. 29/99 of 2014).

The officer shall not force the accused to make his statements in the manner attributed to him, but he shall no longer be able to invoke that his statements have not been heard in this case as he has missed the opportunity and the right to defend himself at his own free will and without interference by the investigating body. However, if he persists in his silence and refrains from responding, in this case, the progress of the investigation procedures must be continued in light of the facts established therein (Article 9) of the Executive Regulations of the Job Discipline Law for the year 2022).

The implementation of the principle of confrontation entails that the accused employee be informed of all the papers and documents relied upon by the investigation body to charge the employee, and therefore the Saudi regulator has been keen to explicitly stipulate that the accused employee or his delegate has the right to access the investigation papers, and he may, with the permission of the Chairman of the Council, copy them.

Accordingly, we find that the Saudi legislator has obligated the disciplinary authority to interrogate the employee before imposing any punishment against him from the punishments authorised to be imposed, in addition to providing the employee with a copy of the statement of claim, investigation minutes, and all written and material data submitted in the case, as well as inviting him in the manner he deems appropriate to receive his copy and inform him of the date of the hearing. Therefore, interrogation as an investigation procedure is an attempt to uncover the truth, and it means confronting the accused employee referred to the investigation with the irregularities attributed to him and asking him to express his opinion on them and discuss them in the existing evidence in denial or confirmation, and in detail.

4.3 Right of Defence

Enabling the accused employee to view the disciplinary file, inform him of the charge against him and investigate him is considered a guarantee of a fair disciplinary trial, as the administration makes him feel that it is to punish him if it is proven that he committed the disciplinary violation in order to allow him to prepare his defence.

One of the most important disciplinary guarantees at the investigation stage is the guarantee of the right to defence, especially about questioning the accused employee and confronting him with the charges against him, enabling him to defend himself, or examining witnesses. Therefore, the right of defence is considered one of the main rights granted to the public employee and one of the basic guarantees that must be available in all disciplinary trials, and the omission of guarantees of the right of defence by the disciplinary authority is punishable by invalidity, and the right of defence including appointing a lawyer as one of the general principles governing disciplinary matter procedures does not need a legislative text because it is one of the principles established in the law.

Despite this, we find that the Saudi legislator has stipulated the right of defence due to its importance before imposing a disciplinary punishment on employees, as Article (4/a) thereof stipulates: (It is not permissible to impose any punishment on the employee except after investigating him, confronting him with the violation attributed to him, hearing his statements, investigating his defence, and proving this in writing in a report. The decision issued to impose the punishment shall be justified. The regulation shall specify the method and procedures of the investigation).

Also, article (18) of the Executive Regulations of the Job Discipline Regulation for the year 2022 also stipulates that (the punishment may not be imposed based on any facts or evidence that the interrogated employee has not been confronted with, or whose answer and defence thereon have not been proven in the investigation minutes).

For its part, the Saudi judiciary has affirmed the guarantee of the right of the defence of the accused, as one of the basic guarantees for the employee to reveal the truth and avoid any room for the arbitrariness of the administrative author-

ities against him. Pursuant to this, the Board of Grievances ruled in one of its rulings that (no disciplinary punishment may be imposed on the employee except after investigating him in writing, hearing his statements and defence, informing him of the truth of the charge against him, informing him of the various evidence indicating that he committed the violation, and proving this in the decision issued for punishment or in a record attached to it, and violating this guarantee allows an appeal against the disciplinary decision) (Judgement of the Board of Grievances No. 29/86 of 2014).

Another provision stated that “the essential guarantees that must be observed in the administrative investigation are confrontational, by stopping the employee on the truth of the charge against him and informing him of the various evidence indicating that he committed the violation so that he can present his defences” (Judgement of the Board of Grievances No. 128/56 of 2019).

4.4 Impartiality.

The impartiality of the disciplinary authorities is one of the basic principles on which disciplinary accountability is based, because it is fair for the employee to be assured of the impartiality and independence of the body that investigates him or is being held accountable to it, and ensuring the impartiality of the disciplinary authority requires that the investigating authority should not be combined with the authority to impose the sanction and that there are no personal, occupational, or objective considerations that question the impartiality of the disciplinary authority.

The Saudi legislator did well when he did not address the definition of the principle of impartiality since it is a wide definition and hard to be limited. Some of jurisprudence in this regard believes that the issue of impartiality can only be achieved by meeting two basic conditions, namely the separation of the powers of investigation and judgement in disciplinary cases and stripping the investigator of any personal or occupational considerations that may affect his impartiality (Al-Sawaf, 1987).

Reasoning on the statutory texts in the Saudi regulation, we find that they did not refer to the condition related to the principle of separation of powers of investigation or accusation and judgement. Accordingly, the powers of investigation and judgement can be combined, but this com-

bination of these two powers is only envisaged if the presidential authority assumes the functions and proceedings of the investigation, where it is the authority that issued the decision to refer the accused official to an internal investigation committee, and it is the same authority that punishes the accused.

It is understood from this provision that the investigation may never be conducted by a person who is related to one of the accused employees, to ensure that the investigation procedures are carried out in an objective spirit that is far from any considerations that may have a clear impact on the course of the investigation and thus on its outcome. As the investigator may have deviated in the use of his authority by seeking a goal different from the one for which he authorised this authority (Al-Tayeb, 2018). The law did not grant the investigator the authority to investigate except in order to uncover the truth by research, investigation, and collection of evidence proving the guilt or innocence of the employee, as the case may be. So, if the investigator takes sides and leans towards the accused employee because he is a relative or friend, etc., he will strive to remove all suspicions that prove the attribution of the violation to the employee even if he is convinced in his own decision to condemn him, which is a violation of the principle of impartiality.

Similarly, if the investigator is in a previous dispute with the accused for any matter, the guarantee of impartiality requires him not to influence the will of the accused to push him to say what he does not want to say or to interfere in any way in the defendant's answer, and the investigator must not expose the accused to any pressure or coercion during the investigation. If the investigator committed any of these prohibitions, it shall result in the lack of impartiality in the exercise of investigation and consequently the illegality of the evidence resulting from such investigation incriminating the accused official (Al-Harbi, 2006).

In this regard, the executive regulations of the Job Discipline Regulation stipulate in Article (2/2) that “a member of the Committee may not consider or investigate violations with the employee if he is his direct supervisor or is related to him by kinship or affinity up to the fourth degree.” The statutory provisions in the Saudi regulation also explicitly establish the principle of impartiality in disciplinary trials, including Arti-

cle 24 of the Employee Disciplinary Regulation of 1971, which states that “the accused and the representative of the Oversight and Investigation Authority may request the dismissal of any member of the Trial Board if there is a reason for the response.”

It is also stated in one of the rulings of the Board of Grievances that: (... One of the most important principles established in the administrative investigation is the impartiality of the investigation committee and the completion of the investigation procedures objectively and impartially by taking into account several matters such as not expressing a previous opinion on the incident under investigation.... If a member of the investigation committee spoke with the accused employee and expressed his opinion on the offence attributed to him outside the official disciplinary hearings, the impartiality of the investigation committee here is not applicable, which defects and invalidates the disciplinary administrative decision (Administrative Court of Appeal Judgment No. 7140 of 2018).

4.5 Proportionality.

The principle is that the disciplinary authority has the discretion of the seriousness of the administrative guilt and the appropriate punishment, but the limits of the legitimacy of this authority should not be tainted by its use of exaggeration, i.e. the apparent inappropriateness between the degree of seriousness of the administrative guilt and the type and amount of the punishment, if the disciplinary sanction is not commensurate with the error committed by the employee, it is tainted by the defect of violating the law and goes outside the scope of legality to illegality (Lallam, 2018).

Proportionality is one of the legal principles of the disciplinary sanction, which is the appropriateness of the seriousness of the violation committed and the appropriate punishment, so the punishment imposed on the violating employee must be commensurate with the nature of the violation committed without negligence or exaggeration, and the Job Discipline Regulation for the year 2021 stipulated this principle in Article (10/3) by saying: (When choosing the punishment, it shall be taken into account that it is proportionate to the degree of violation, while considering the precedents and mitigating and aggravating circumstances, provided that no more than one punishment is imposed for the

same violation. or related irregularities).

In application, one of the rulings of the Board of Grievances states that: “the employee must consider ethics in his dealings with his superiors and colleagues, and even if he is claiming a right, this does not entitle him not to sustain the etiquette of decency in communication, and if he violates that, he must be disciplined. And while the Oversight and Investigation Authority requested that the employee be punished by dismissal from service, the department considers that the conviction does not deserve dismissal, but rather punishes him with one of the punishments stipulated in the regulation, namely, blame. When deciding the punishment, the department took into account the service of the employee which is more than 24 years, as well as what he suffered as a result of the investigation and bringing him to the Judicial Council, so this would be a deterrent to him by staying away from what he had done and not returning to such a thing next time, which makes the administrative decision issued to assign the punishment of blame the appropriate and correct disciplinary decision” (Judgement of the Board of Grievances No. 148/T of 2019).

The Board of Grievances ruled in another judgement that “... The employee’s possession of several narcotic pills represents a deviation from the requirement of job duty, as this imposes more care from the taboo, but the record of the accused employee of administrative punishments with good job evaluation has a mitigating effect in estimating the appropriate punishment and not exaggerating it, so we decide to cancel the disciplinary decision represented in his dismissal” (Judgement of the Board of Grievances No. 78/T of 2018).

4.6 Legality of Penalty.

If the employee commits a violation of his job duties and is proven guilty of this by the disciplinary authority, the appropriate penalty must be imposed for this violation, but this authority does not have the right to impose whatever punishments it wants, on the contrary, it must abide by the punishments set by the legislator pursuant to the rule of the legality of penalty. Therefore, it is not permissible to impose a disciplinary punishment that is not stipulated by the legislator, even if it is lighter than the prescribed punishments or even if it is imposed based on the consent of the violating employee because the disciplinary punishment It is not permissible to agree

on violating it.

The disciplinary punishments that may be imposed on the employee are limited to the text of Article (6) of the Staff Disciplinary Law for the year 2021, namely:

1. Written warning.
2. Deduction from the salary but not exceeding the net salary of (three) months, provided that the monthly deduction does not exceed (one-third) of the net monthly salary.
3. Deprivation of one annual allowance.
4. Not to consider his promotion, not exceeding two years from the date of his eligibility for promotion.
5. Dismissal from service.

The administration has the right to choose from the list of punishments mentioned in this article whatever it wants, provided that the punishments are not combined, and that the violation must be proportionate to the punishment. The Board of Grievances has ruled in commitment to the principle of legality, saying: "It is not permissible to deprive the employee of the allowance he receives, because the regulation of disciplining employees has limited the punishments, which are warning, blame and deductions... from the foregoing, the department concludes that the decision is void and cancelled" (Board of Grievances Judgment No. 304/A of 2021).

The Board of Grievances ruled that "a decision was made to draw the attention of the employee to the violation attributed to him, meaning that the administration wanted to punish him disciplinarily, but this punishment was not included in the sanctions prescribed by the Employee Disciplinary Regulation, and therefore the decision is violating the regulation and must be cancelled" (Judgement of the Board of Grievances No. 152/C of 2020).

And in another provision, "cancelling the transfer decision as long as it is proven that the punishment is not based on a valid reason, in addition to the fact that the regulation does not offer the punishment of the employee by transfer" (Judgement of the Board of Grievances No. 24/T of 2018). In this regard it should be mentioned that transfer is considered as a hidden punishment in which administrative authority may order the employee to do something by claiming that it is for the sake of work, but in reality, it is not. Such

decision is wrong and the employee can appeal before the competent court to cancel this decision and should work hard to prove the main aim of his/her transfer not to achieve the public interest or the work's sake.

4.7 Reasoning of the administrative decision.

Administrative decisions, including disciplinary decisions, shall be based on valid reasons by the administration and aimed at the public interest unless the appellant proves otherwise. The reasoning of the disciplinary administrative decision means that the administration discloses in the body of the administrative decision the legal motives and reasons that prompted the disciplinary authority to take it, and therefore the decision is reasoned if the administration discloses in the body of the decision itself the reasons on which the source of the decision was based.

The established rule of jurisdiction and jurisprudence is that the administration is not obliged to give reasoning unless the law requires it to do so, but there is an exception to this rule, which is that the administration in its disciplinary administrative decisions is obliged to give reasoning even if there is no text obliging it to do so (Judgment of the Administrative Court no. 1502/2018). Therefore, reasoning is one of the guarantees that ensure the fairness of the punishment imposed, because obliging the disciplinary authority to provide reason means mentioning the real reasons that prompted it to impose the disciplinary sanction on the incident or facts committed by the employee, which in itself constitutes a behavioural violation that requires punishment. This reasoning also gives the court the power to ensure that the incident attributed to the employee is proven against him, especially since the administration's conviction of the incident does not prevent the court from intervening in extending its control over the proof of the incident and adapting the attributed act to the employee whether it was or was not a disciplinary offence.

The reasoning of the disciplinary decision includes a set of basic elements, of which the most important are:

First: Determining the incident or facts that require disciplinary punishment, where these facts are a reality and not mere illusions and also constitute a crime punishable by law, therefore, the mere accusation and statements sent are not considered.

Second: A statement of the legal basis on which the disciplinary authority relied in considering that the act or actions, whether positive or negative, committed by the employee constitute a disciplinary offence, and accordingly the legal basis must be clear, which ensures the legitimacy of the disciplinary decision because it is based on valid and existing legal reasons (Habili, 2005).

Third: Responding to the defences he presents, so that the reasoning of the disciplinary decision includes responding to the defences expressed by the accused employee, provided that this defence is related to the subject matter of the case, that is, a decision on it is necessary to decide on the merits, but the disciplinary authority is not obliged to pursue the employee's defence in all its merits as long as it has generally highlighted the arguments from which its belief was formed, and therefore it may present the arguments on which his defence was implicitly based (Al-Balushi, 2021).

It should be noted that the Saudi legislator did not stipulate the need to provide reason for disciplinary administrative decisions, but only the need to reason the recommendation issued by the Oversight and Anti-Corruption Authority to the administrative body for which the employee works, which is competent to issue the disciplinary decision (Article no. 15 of the Job Discipline Law for the year 2021). In other words, the Saudi legislator is obligated to reason the recommendation without reasoning the administrative decision itself, which requires the need for legislative intervention to amend the current regulation and add an explicit text that obliges the administrative authorities with competence to issue disciplinary administrative decisions to reason their decisions.

5. Conclusion

The guarantees in the disciplinary administrative decisions play a preventive role rather than a punishing one, as it does not aim at mere punishment, but also aims at bridging the gaps and avoiding the occurrence of errors and behavioural violations in the future. Therefore, the disciplinary regulation plays a role that cannot be ignored or denied in achieving justice among the categories of employees, and is based on a balance between the right of the administrative regulation to pursue its employees and punish them on the one hand, and the right of the accused employee to provide the legal guarantees associated

with him since the issuance of the decision to refer him to the investigation until the issuance of the decision to punish him on the other hand.

The disciplinary investigation must have all the legal elements and guarantees of the investigation in terms of the employee being summoned, questioned, and confronted with what is attributed to him, and giving him the opportunity to defend himself, discuss with the witnesses, and other requirements of the defence. If the investigation does not have any of these components, it cannot be described as an investigation in the legal sense.

After presenting the guarantees that the employee enjoys, it can be noted that the Saudi legislator is keen to immunise the employee's rights against any unlawful infringement by the disciplinary authorities. This is an approach that establishes the principles of justice and transparency to reassure the employee and make him carry out his job duties comfortably and feel that the law is his guarantee against any injustice or abuse by the administration. In addition, the guarantees established by the Board of Grievances during the employee's trial confirm its keenness on the principle of sound disciplinary procedures to preserve justice and guarantee fairness for the employee against the administration's abuse.

However, there are some shortcomings in the legislation that regulates the process of disciplining employees, and there is a lack of procedures regulating how to inflict disciplinary punishments, which opens a wide door for breaching the guarantees established for the employee referred by investigation, which can be addressed by adopting the following recommendations.

Recommendations:

- The regulations that define the rights and duties of the public employee, including the guarantees of disciplinary administrative decisions, were distributed among several pieces of legislation, such as the Employee Disciplinary Regulation of 1971, the Job Discipline Regulation of 2021, and the Executive Regulations of the Job Discipline Regulation of 2021. This legislative variety does not serve the interest. It is difficult for the public employee to familiarise himself with all these legislations to know his rights, and it is also difficult for the administration to familiarise itself with all these legislations

and to know the applicable legal restrictions when issuing disciplinary administrative decisions. Therefore, it is important to integrate all these legislations into one law or regulation.

- The Saudi legislator did not stipulate the need to justify disciplinary administrative decisions, but only the need to justify the recommendation issued by the Oversight and Anti-Corruption Authority to the administrative body for which the employee works, which is concerned with issuing the disciplinary administrative decision. Therefore, it is important to amend the current Job Discipline Regulation by adding a text obligating the administration to give reasons for its administrative decisions, because this constitutes a basic guarantee for the employee and allows the judiciary to monitor the legality of the reasons that led to the issuance of the decision, It makes reasoning an essential form in the decision, and its absence entails the invalidation of the decision itself.
- The need to find a comprehensive and integrated disciplinary regulation that considers the legislative development and the fundamental change in the administrative and occupational environment in the Kingdom in order to ease the understanding of the rights granted to the public employee concerning the disciplinary decisions; ensure speed and effectiveness in the imposition of disciplinary punishment; and to provide the necessary guarantees for the fairness of the punishment imposed on the employee.
- The need for the Saudi Employee Disciplinary Regulation to provide for the necessity of separating the investigation authority from the accusing authority, so that the investigation yields the desired results and the accused employee appears before an investigation committee that is completely independent of the presidential authority (the accusing authority), which considers the violation as a neutral and independent party and issues its recommendations as a result of the investigation in full transparency and according to its own conclusion without being affected by any other considerations affecting its impartiality, especially job considerations.
- The degree of the investigator should be

equal to the degree of the employee referred to the investigation as one of the basic guarantees that were not mentioned in the regulation for disciplining employees, as the investigation requires that it is conducted by an employee who appreciates the job position of the violating employee and understands the nature of the work he practises and has sufficient experience that enables the investigator to make a successful investigation.

- Since the aim of this study aims to enable the public employee to be aware of the illegal disciplinary decisions issued against them, it is necessary to conduct training courses and workshops for public employees related to behavioural violations and the guarantees that they possess during the administrative investigation stage. This will also provide an opportunity for the administration to see the restrictions that must be followed when initiating investigations and issuing disciplinary decisions.
- Publishing all judicial rulings related to behavioural violations in the form of periodic booklets and distributing them to employees and managers to benefit from them such matter will help the public employee to avoid committing any behavioural mistakes from one side, and help the administration to issue legal decisions from another side.
- Recommending the opening of postgraduate programs (Masters and Ph.D.) that are specialised only in job violations and guarantees of disciplinary administrative decisions, which provides many competencies that can fill administrative positions in the government of the Kingdom of Saudi Arabia that helps the administration to avoid issue illegal decisions.

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