

المسؤولية الانضباطية للتدريسي في التعليم العالي الاهلي – دراسة تحليلية مقارنة في التشريع العراقي

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Disciplinary Accountability of Faculty Members in Private University Education – A Comparative and Analytical Study in Iraqi Legislation

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Introduction

Faculty in education institutions and the entire education environment in itself represent a cornerstone of the well-being of any society and there is no doubt that lecturers and professors hold a massive responsibility in educating and developing future generations and the greatness of such responsibility requires that faculty members to be of higher standards in discipline and commitment, hence why holding them accountable for their wrong doings or inappropriate behaviour is, in one way, measured by how committed they are to following laws and regulations issued by the state authorities represented by the Ministry of Higher Education and Scientific Research in Iraq.

Violating laws and regulations may be indicative of an undisciplined and disrespectful faculty member and this may help in the identification and removal of wrong individuals caring for future generations. Accordingly, state authorities have issued several laws and regulations to ensure the discipline of these faculty members are of higher standards, taking into consideration the importance of the task they are responsible for. Iraq state authorities have an existing system for the

discipline of state employees including the faculty members of state universities and that is the State and Public Sector Employees Disciplinary Law No. (١٤) of ١٩٩١', which despite its weaknesses and regulatory gaps that are required to be addressed by the state as soon as possible, represent a decent ground for a good disciplinary system of the faculty members of state universities.

However, there is no such system regulating the same matters for the faculty members of private universities. There are several approaches considered by several scholars including the researcher and research paper we are discussing here. These disciplinary procedures and measures are key elements and part of the important actions taken by universities to ensure and guarantee the continuous operation of a proper education system where each faculty are liable for their actions and have to be held to higher standards where their actions must be scrutinized considering the scale and importance of their roles. However, these rules and their application may slightly differ in the sphere of private education, where certain restrictions may to some extent be relaxed bearing in mind the source of authority in such universities. However, this may not necessarily be true in all cases and universities and that may be because of the people in charge of applying these rules in their institutions.

Nonetheless, this attempt to understand the process of disciplinary procedures for the faculty members of private universities has had a few points worth discussion and must be reviewed to ascertain if the researcher has had the correct discussions and conclusions. As such, we will target a few points discussed in the article and we will see if the research has achieved its goals and objectives, and this will be as follows:

I. **Research Title:** The research title has reflected on the issue being researched properly and was self-explanatory.

^١ Scope of application of the law can be found in article ٢ of the law.

II. **Research Methodology:** The author applied two research methodologies and they are as follows:

a. **The Comparative Methodology:** The author has stated that he used this methodology to compare between the disciplinary system used with faculty members in state institutions who are essentially civil servants, and faculty members in private universities given the similarity between their roles. The author also stated that he compared the position of legislatures, courts, and jurisprudence in both Egypt and Iraq^٢. This approach is commended and we believe the author had the right idea for such comparisons as he probably wanted to show the differences in treating faculty in private universities in both Egypt and Iraq as well as the ideas of legislatures, courts and jurists despite having very similar legal systems.

However, the article lacked any reviews on the Egyptian system for private universities and the author has not presented this at any point of the discussions as the comparisons only focused on the thoughts of Egyptian jurists regarding the definition of disciplinary responsibility and accountability for state civil servants and not the faculty of private universities. Additionally, there were differences in using the comparative methodology across the article because the author has divided the first branch of the first section into several points articulated the different views of legislatures, court and jurisprudence, but then went on to randomly provide some comparisons in section two without referring to the same aforementioned systems used in the first section articulating the views of legislatures, courts, and jurists. This may cause some confusion and lack of clarity for readers.

^٢ See page (٢٩١) of the Article.

b. **The Analytical Methodology:** The author has managed to provide a good analysis to the laws and regulations and some of the opinions discussed within the article^٣.

III. **Research Problem:** The research problem stated in the article has some valid points and questions that need to be answered as private universities lack regulation in terms of the disciplinary system for faculty. However, the author has indicated that there need to be a determination as to the duties and prohibited actions of faculty members of private universities

IV. **Definitions:** The author has provided an extensive review of the definitions of “Responsibility” in linguistic and legal taxonomy aspects of it, as the author went through these definitions, he established the meaning of the aforementioned word because it is material to the understanding of how it can be applied and in reaching the true meaning of the word, he consulted the thoughts of some scholars and judicial precedents in a structured manner and that to the benefit of the reader. However, the author has not provided a definition of how this can be applied to faculty members in private universities as all his discussions only focused on the framework of this word or term in the sphere of state employees.

The author instead has moved the application of such responsibility on the faculty members of private universities to the second part of his research and that should not be the case, but we will accept it given that it leads the reader to the result, but only after seeking a lengthy path.

V. **Subject of the Article:** The subject of the article has discussed a very important matter and issue that actually lacks in research and analysis and requires further examination of the topic given that there needs to be a solid determination as to the governing rules and applicable law to the responsibility of faculty members of private universities on their illegal and undisciplined actions and behaviours. This is very important given the fact there is a lack in clarity in both

^٣ Ibid, same page of the Article.

legislation and rules applied in this area and requires an unyielding action by the authorities responsible for maintaining these matters.

VI. **The Review of the Subject:** The issues within the subject of the article have been discussed in an order determined by the author as being the best fit to the discussion and then he proceeded in his analysis on each thought on the matter and we will review what was included in these points raised by the author to reach the determination on how the author has come out in terms of analysis of the existing circumstances and potential solutions as well as the evidence discussed to support each of these thoughts, and it is as follows:

a. **The Disciplinary Responsibility Discussion:** The author discussed the disciplinary responsibility of a state employee, which, of course, includes faculty of state universities and he went on these discussions in depth including any provisions in laws and regulations and judicial precedents, but he did not include in the discussion any thoughts on disciplinary process under of faculty of private universities under different system such as that of Labour Law (No. ٣٧) of ٢٠١٥. Instead, the author went on to derive the meaning of responsibility of a faculty of private universities from the meaning of responsibility of faculty of state universities, and this actually lacks specificity and understanding of other systems such as that of Labour Law. However, the author has admitted the limited number of references in both Iraq and Egypt regarding this issue, but he did not discuss any of what is available.

On the same issue, and as a result of the abovementioned discussion, the author went on to conclude that the elements and components of the disciplinary responsibility for the faculty of private universities and he limited the discussion to two major elements^٤, one being proving that the faculty has committed a violation of legal and customary rules and duties in the institution he works at, and the second is the penalty that can be imposed on the faculty member, which would

^٤ See page (٢٩٨) of the Article.

lead to prevent the faculty member from any privileges (temporarily or permanently) or impose certain fines or deductions on their salary.

However, the author has not presented this with a proper consideration to other matters such as providing an explanation on the nature of the relationship between the faculty member and the private university and whether it is a contractual relationship such as that of the labourer and the owner of the business, or it may be a regulated relationship in the same manner as the one between the state faculty member and the state university. The author should have discussed and distinguished these aspects of the relationship, but he preferred to refer to the court decisions issued on the matter and one defined it as a contractual relationship and the other determined it was an “Unnamed Contract”[°] relationship, and it is not a bad decision to refer to these court decisions, but rather the lack of discussion on what they contained of arguments, the author should have delved into these arguments and determined the best one of them to govern the relationship and, of course, he should support his choice with some evidence.

b. **The Duties of Faculty Members in Private Universities:** The author has raised the idea of the duties of the faculty members of private universities and listed three cases where these duties were articulated and they are as follows:

١. The Code of Conduct: The code for the Workers in Private Universities and he presented it as being issued by the Ministry of Higher Education and Scientific Research (The Ministry), but the issue here is that there is no such official Code of Conduct issued by The Ministry and the author should have been more diligent in researching this area.

[°] The Iraqi Civil Code (No. ٤٠) of ١٩٥١ (ICC) has provided specific rules for some types of contracts named in the code such as the sale or lease contracts, and left the general rules of contract to apply to any other types that were unnamed stating that these general rules of contract would apply to any contract whether it is named or unnamed, for further details on this issue, see article (٧٦) of the ICC.

٢. The Labour Contract: The author indicated that the Labour Contract between the Private University and the Faculty Member has included these duties, with a reference of this idea being stated in a dissertation at the University of Kirkuk in ٢٠٢١^٦, and then proceeded to disagree with this idea without actually presenting much of evidence to nullify this argument.

٣. Court Decisions: The author indicated as well that a third place where these duties are listed is the court decisions that referred to the relationship being a labour contract and the other that ruled on the matter as being an “unnamed contract” with the author favouring the latter, and as stated earlier, without discussing its contents and arguments it included.

In addition to the earlier three hypotheses introduced by the author, he commendably discussed the ideas regarding applying the rules and principles of the Law of University Service (No. ٢٣) of ٢٠٠٨ and the Law of State Employees Discipline (No. ١٤) of ١٩٩١ unless they contained a provision that will inapplicable to their nature being not state employees and this was included as a general rule in Article (٥٤) of the Law of Private University Education Law (No. ٢٥) of ٢٠١٦^٧.

c. **The Penalties Imposed on Faculty Members of Private Universities^٨:**

The author has also discussed the hypotheses regarding the way in which a disciplinary penalty on Faculty Members of the Private Universities and he constrained this to four hypotheses and they are as follows:

١. Code of Conduct of Workers in Private Universities, the author again presented this without identifying the source of these rules and without verifying their actual existence as we stated earlier.

^٦ The Dissertation referred to here is for the researcher Abdulla Khalaf Abdulla, “Legal Regulation of the Contract between Private Universities and Faculty Members – A Comparative Study”, University of Kirkuk, School of Law and Political Science, ٢٠٢١.

^٧ See page (٣٠٢) of the Article.

^٨ See pages (٣٠٣) to (٣٠٦) of the Article.

٢. Penalties listed in Labour Law (No. ٣٧) of ٢٠١٥, as referenced in the Regulations issued for facilitation of implementation of Private University Education Law (No. ٢٥) of ٢٠١٦, but the author here again has not verified their existence as these are draft regulations and was not published officially by the Ministry and stated that it was ceased of operation through a decision made in the State Council of Iraq^٩ through an official letter sent by the Department of Private Education at the Ministry carrying the number (١١٢٥١) issued on September ١٩, ٢٠٢١, and we could not verify the accuracy of this letter and the decision of the State Council of Iraq even after consulting the Department of Private Education.

We also do not know in which authority does the State Council of Iraq has to cease the use of an official Regulations regarding the matter, unless of course, he means that it was a draft regulation and was not approved by the State Council of Iraq then it would make sense, but that was not clear whatsoever from the regular reader, which makes the issue clear as mud in this matter rather than clarifying it.

٣. The Penal Rules of Private University Education (No. ٢٥) of ٢٠١٦, where these rules specifically stated in Article (٣٩)^{١٠} of the aforementioned law, which imposes the penalty of suspension in case of violating the “Scientific and Educational Values” and he used the one penalty listed there to state that it is part of the Administrative Penalties rather than Disciplinary Penalties given the fact the there is no direct occupational or contractual relationship between the Minister and the Faculty Members of Private Universities, which we would convincingly refute this idea by the fact that the aforementioned article is a direct disciplinary penalty and is imposed by the Minister given the occupational relationship as the Minister is highest person responsible for the supervision of all Ministry activities and this

^٩ This is formerly Know as the State Consultative (Shura) Council, but the name was amended in the law (No. ١٣) of ٢٠١٧.

^{١٠} This Article provides that “The Minister has the authority, based on a reasoned recommendation by the Private University Education Council, to temporarily or permanently suspend a faculty member if they commit an act that is against the scientific and educational values”.

of course includes the education provided by faculty members of Private Universities licensed by the Ministry and committed to obey the rules of the Ministry^{١١}.

٤. The Law of State Employees Discipline (No. ١٤) of ١٩٩١, and the author has gone directly to not accept it as the main guide for imposing penalties listed in the aforementioned law on the ground that these faculty members of Private Universities are not actually state employees, and we agree with this conclusion.

VII. Conclusion

The Author of this article has raised a much-needed discussion on the issue of disciplinary procedures and penalties imposed on the faculty members of private universities and it, indeed, requires even further filtering and analysis to reach the right conclusion of the problem this situation raises. We strongly encourage other researchers to continue on this path and find other solutions for it.

The author here has to be commended on selecting this particular controversial issue, however, he had some missteps in the process of his analysis such as not entertaining the idea of subjecting faculty members to the rules of Labour Law and not including any other comparative systems in other countries and not even Egypt's private education system even though he stated that will be compared with to cover all his bases.

^{١١} See Article (٥) of the Law of the Ministry of Higher Education and Scientific Research (No. ٤٠) of ١٩٨٨.

Reviewers Conclusions:

In the end, we believe that this article has contributed to raising these issues and concerns many faculty members of private universities have, even though the researcher needed to be more careful with the discussions he included and some references as provided earlier here.

We also agree with the conclusion he reached that the matter of discipline of faculty members in private universities needs immediate corrective action and lay the ground for a specific disciplinary system designed to faculty members of private universities and we hope that it will be addressed within the draft legislation being considered at the Iraqi parliament.