

the right of the Jordanian universities' staff to seek a lawyer's counsel during the administrative disciplinary investigation

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## **The Right of the Jordanian Universities' Staff to Seek a Lawyer's Counsel during the Administrative Disciplinary Investigation**

Dr. Mohammad Mousa Ali "El-Sheakh Deeb"

Mutah University

### **Abstract**

The preliminary investigation stage, whether in the field of criminal or administrative law, is the stage prior to the consideration of the criminal or administrative case. This preliminary investigation must be accompanied by several general guarantees, including: The evidence of guiltlessness, the impartiality of the competent authority in this investigation, the guarantee of the speedy completion of the preliminary investigation, the codification of the preliminary investigation procedures, the confidentiality of the preliminary investigation for the public (others), the openness of the preliminary investigation for the parties to the case (the litigants) and their representatives, the presence of the accused in the preliminary investigation, and his right to seek a lawyer's counsel.

The administrative disciplinary investigation procedures have their own specificity. Such procedures differ from the rest of the procedures in the penal field. Therefore, one of the most important matters that dominated the researcher's concern is the major problem whose impact may be exacerbated, and related to the belief of the administrative heads, some deans of law faculties and their faculty members, investigation committees, and advisors jurists, directors of legal departments, and university lawyers, that the workers in those universities have no right to seek the assistance of a lawyer or defender during the disciplinary administrative investigation.

The legal or lawyer profession was not known to Arabs in the old times, but there was a so-called argumentator or controversialist, a person with a strong argument, who was able to spread the viewpoint of each party in the dispute. The poets were the most capable people to take on this task. Many contemporary jurists have also inferred the permissibility of the accused's use of a lawyer, and they cited evidence from the Qur'an and Sunnah related to this context. Some say that the Islamic system had a so-called governor of crimes, and his job was similar to that of the Public Prosecution today. Moreover, the body that handled the preliminary investigation was the mandate of the grievances, and Islamic jurisprudence permitted the use of a lawyer based on the theory of absolute interests.

The right of the accused to seek a lawyer was mentioned in the Universal Declaration of Human Rights and in the European Convention on Human Rights. Moreover, it was stipulated by most of the various constitutions such as the Egyptian Constitution, the Constitution of the Soviet Union, the Constitution of the People's Republic of China, and the United States of America, but it was not mentioned in the

Jordanian Constitution. And I wish it had been stipulated despite the fact that there is an implicit provision for it in the Jordanian Code of Criminal Procedure and some special job regulations in Jordan. In this regard, a text was found in the job regulations related to universities allowing a worker in Jordanian universities to seek the assistance of a lawyer during the preliminary investigation before the administrative disciplinary boards, but such a text was silent about the right to seek the assistance of a lawyer before the administrative investigation committees, which led to the belief that it is not permissible for the worker in Jordanian universities to seek a lawyer's counsel before such committees.

In short, in the absence of a clear text in the legal rules regulating discipline, the investigation authority is obliged to enable the employee, who has to undergo administrative disciplinary investigation, to use his right to seek the assistance of a lawyer to defend him. This right, when the law is silent, is merely an application and implementation of the general principles that regulate trials in general.

The important thing is that the consequences of not observing the guarantee of seeking a lawyer's counsel during the preliminary criminal or administrative investigation reflects the invalidity of the disciplinary administrative decision because the guarantees of the administrative investigation, including the right to the assistance of a lawyer, are considered parts of the general order. A worker in Jordanian universities can object to what may happen in violation of legal principles, either the investigation authority responds to his objection, corrects the procedure, or rejects the objection, and this is recorded in the proceedings. In this way, the lawyer can raise the illegality of the procedure before the court in order to reach the invalidation of the evidence or evidence based on it.

## **Introduction**

The public administration and the government depend in the conduct of their activities on the human resources, that is, their employees who work for them and for their account, and they are called public employees, as they are subject to a specialized legal system that is different from the system of workers in private administrations. In their disputes, they are subject to the scope of administrative law and to the jurisdiction of the administrative judiciary. Based on the importance of this topic, the researcher has decided to conduct the present research on workers in Jordanian universities, due to the difficulty of conducting the study on all public officials working in the country and its institutions, and because these are covered by the definition of public officials, especially since there are two types of workers in Jordanian universities, namely: academic staff and members of the administrative body (staff).

It may happen that one of the employees in Jordanian universities, whether a faculty member or an administrative staff member, commits a violation related to the job or breaches his job duties. He is administratively questioned about this, and a disciplinary penalty cannot be imposed directly against him without giving him the guarantees of administrative procedures. Hence there is a need to inform the worker in Jordanian universities of guarantees during this investigation, and this requires knowledge of the general criminal investigation guarantees in general, and the administrative disciplinary investigation guarantees in particular. This requires clarification of an important guarantee of these guarantees, which is the guarantee of the right to seek a lawyer's counsel during the preliminary investigation, where we will talk in detail about the development of this right, starting from antiquity, through the Islamic stage, and the extent to which this right is relied upon in Islamic Sharia. It also requires the extent to which this right is stipulated in the Universal Declaration of Human Rights, and in the European Convention on Human Rights, reviewing also the extent to which this right is

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stipulated in various constitutions, and finally in the Jordanian Code of Criminal Procedure, reviewing the consequences of violating this right in terms of not allowing the use of a lawyer during Primary investigation.

Therefore, the researcher will divide this topic into two sections:

The first topic: the general procedures related to the general and criminal preliminary investigation guarantees.

The second topic: Procedures for guarantees of disciplinary investigation in the employment systems of Jordanian universities.

### **Topic One: The General Procedures Related to the General Criminal and Preliminary Investigation Guarantees**

The preliminary investigation stage is one of the stages of the criminal case. It does not mean the stage of the initial investigation, or the stage of collecting evidence, but rather a subsequent stage to it. Therefore, the stage of the preliminary investigation differs from those two stages, and this means that the investigation in the broad sense includes all stages of the case, starting from the initial investigation stage, or the stage of collecting evidence, then the stage of the preliminary investigation, and then the stage of the final investigation; that is, the trial stage.

The preliminary investigation is mandatory in all felonies, and in all misdemeanors of first instance, according to the text of Article (51/1) of the Jordanian Code of Criminal Procedure. But it is permissible for conciliatory misdemeanors, as well as for violations. As long as we are talking about an investigation, this investigation must be surrounded by several guarantees, and accordingly this part of the present research will discuss the general guarantees at the stage of the preliminary criminal investigation. An important guarantee of these guarantees will be discussed in detail in this section, which is the guarantee of the right to seek counsel of a lawyer during the preliminary investigation. This section will embody a detailed discussion about the development of this right, starting from antiquity, through the Islamic period, and the extent to which this right is based in Islamic law, as well as the extent to which this right is stipulated in the Universal Declaration of Human Rights, and in the European Convention on Human Rights. It will also include a review of the extent to which this right is stipulated in various constitutions, and finally in the Jordanian Code of Criminal Procedure.

This section will also discuss the consequences of violating this right, and the rights that derive from it, in terms of not allowing the accused to seek the assistance of a lawyer during the preliminary investigation, and the consequences thereof. Therefore, I will divide this topic into three sections:

The first section: General guarantees in the preliminary criminal investigation stage.

The second section: The extent of the right to the assistance of a lawyer during the preliminary criminal investigation.

The third section: The consequences of not considering the guarantee of the assistance of a lawyer during the preliminary criminal investigation.

#### **The first section: General guarantees in the preliminary criminal investigation stage**

The Code of Criminal Procedure does not provide a definition of a preliminary investigation. There have been many doctrinal definitions of the preliminary investigation, and they all revolve around one content; that is, the preliminary investigation is a set of judicial procedures that are initiated upon the occurrence of a crime, and are concerned with taking them by a certain authority, the Public Prosecution, with the aim of revealing the truth in a crime that has occurred to take the necessary action legally in such cases <sup>(1)</sup>.

The procedures of this preliminary investigation must be surrounded by several guarantees, including:

**First: The Clue of Guiltlessness:**

This principle is considered one of the guarantees that must be taken into account during the preliminary investigation. The principle is that the accused is guiltless unless his guilt is proved, and this principle is a basic principle in the democratic system. It aims to exclude the issuance of prior judgments, so no person can be brought to investigation or prosecution as a convict unless his guilt is proven <sup>(2)</sup>.

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(1) Muhammad Saeed Nammour, *The Origins of Criminal Procedures*, House of Culture for Publishing and Distribution - Amman / Jordan, first edition in 2005 AD, pp. 327-328.

(2) Rana Al-Otour, *The Punitive Authorities of Independent Administrative Bodies and Their Role in Expanding the Circle of Criminalization*, *Al-Manara Journal for Research and Studies*, Al al-Bayt University - Mafraq / Jordan, Vol. 16, p. 2, 2010 AD, p. 56.

**Second: Impartiality of the Concerned Authority in the Preliminary Investigation**

The first guarantee of the preliminary investigation is that it is entrusted with an authority that is sufficient, independent and well-appreciated, which leads to the proper conduct of investigation procedures. This requires a separation between the powers of accusation and investigation. We find that the different legislations did not follow a single approach. Some laws separated the powers of accusation and investigation, whereby the authority of accusation was entrusted to the Public Prosecution and the authority of investigation was entrusted to the investigative judge. Other legislations, such as the Egyptian legislation, and the majority of Arab legislations combine the powers of accusation and investigation into one authority <sup>(1)</sup>. Therefore, impartiality requires the necessity of separating the power of accusation and the authority of the investigation so as not to be misused. This may lead to the failure to achieve the defense of the accused, so the signs of the crime that led to the accused's guiltlessness are lost <sup>(2)</sup>. According to the jurisprudence, the criminal investigation is limited to the investigating judge, and the Public Prosecution may not carry out any of the investigation procedures except as an exception if there is a necessity, or in the case of *flagrante delicto*.

This opinion stems from the fact that the judge enjoys impartiality and independence, which are not available to a member of the Public Prosecution Office <sup>(3)</sup>. Referring to Articles (24), (44), (45) and (46) of the Jordanian Code of Criminal Procedure, we find that the Jordanian legislator takes the principle of combining the functions of accusation and investigation in the hands of the

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(1) Hassan Sadiq Al-Marsafawi, *Al-Marsafawi in the Criminal Investigator*, Mansha'at Al-Maaref - Alexandria/Egypt, edition 1990, pp. 27-28.

(2) Muhammad Al-Tarawneh, *Human Rights Guarantees in the Criminal Case*, Wael Publishing House - Amman / Jordan, first edition, 2003 AD, pp. 77-78.

(4) Rifai Sayed Saeed, *Guarantees of the Defendant in the Initial Investigation*, Publications of Al al-Bayt Universities - Mafraq / Jordan, first edition, 1997, pp. 20-21.

Public Prosecution<sup>(1)</sup>, where the Public Prosecution assumes the original investigation authority and the magistrate assumes the duties of the Public Prosecutor in the centers where there is no public prosecutor. The judicial police shall also be given the functions of the public prosecutor in case there is a *flagrante delicto*<sup>(2)</sup>, although the investigator may not rule on the case he investigated in order to preserve the impartiality of the investigation authority<sup>(3)</sup>.

### **Third: Recording the Preliminary Investigation Procedures and Accelerating the Completion of the Preliminary Investigation:**

Investigation procedures must be recorded in writing so that they can be referenced and invoked. This is done by recording it in a record, which is written by the investigative clerk under the supervision of the investigator<sup>(4)</sup>. Referring to Articles (38), (63), (63/A, 3), (72/1) and (87) of the Jordanian Code of Criminal Procedure, we find that the Jordanian legislator has adopted the principle of codifying investigation procedures. The speed in completing the investigation procedures is an important guarantee for the accused and for the public interest as well. If the accused is guilty of what he is accused of, the speed of the investigation leads to accelerating the imposition of punishment and leads to better achieving general deterrence and ensures the capture of evidence before it is lost over time<sup>(5)</sup>. Referring to the text of Articles (63/1), (64/3), (67) and (100/b), we find a clear reference to this guarantee, as it clarified that the investigative procedures are carried out quickly without delay.

### **Fourth: The confidentiality of the preliminary investigation for the public (others) and the publicity of the preliminary investigation for the parties to the case (the litigants) and their agents:**

One of the most important measures necessary for the proper conduct of

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(1) Muhammad Saeed Nammour, *Principles of Criminal Procedure*, previous reference, p. 338.

(2) Muhammad Al-Tarawneh, *Human Rights Guarantees in the Criminal Case*, previous reference, 79.

(3) Muhammad Saeed Nammour, *Principles of Criminal Trials*, previous reference, pp. 338-339.

(4) *Ibid*, p. 84.

(5) Kamel Al-Saeed, *Explanation of the Code of Criminal Procedure*, House of Culture for Publishing and Distribution - Amman / Jordan, Edition 2004 AD, p. 429.

the investigation is to keep the information collected by the investigation authority along with evidence, objects and traces collected from the scene of the crime out of the reach of the general public to ensure that the investigation proceeds in its normal course <sup>(1)</sup>. For this reason, the investigation should be secret for the public and known for the litigants, meaning that the right to attend the investigation procedures is limited to them so that the accused can defend himself against the accusation <sup>(2)</sup>.

**Fifth: The presence of the accused in the preliminary investigation and his right to seek a lawyer's counsel:**

The accused has the right to attend the investigation procedures, and this entails a right which is the right to seek the assistance of a lawyer. It is not permissible in any way to prevent the lawyer from attending with him, whether at the preliminary investigation stage, or at the trial stage.

**Topic Two: Extent of the right to the seek a lawyer's counsel during the preliminary criminal investigation**

We must link this right to several things:

**First: The Right to seek a Lawyer's Assistance in Antiquity:**

The existence of the lawyer as a profession practiced before the courts was not proven in ancient legislation. Pharaonic Egypt, which dates back to four thousand years BC, did not know the existence of advocates assisting the accused and they refused the opponents' oral arguments (judicial rhetoric), which led to the existence of a class of writers to assist opponents in drafting their memoirs for a fee. As for the Sumerians, although their history dates back to before the Babylonians and Assyrians, and they are the oldest people who lived in the south of the Tigris and Euphrates valleys, the ancient documents were not cut off by the presence of lawyers in Babylon.

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(1) Salim Al-Zanoun, Criminal Investigation - General Principles of Criminal Investigation - Part One, Dar Al-Faris for Publishing and Distribution - Amman / Jordan, fourth edition, 2001 AD, 143.

(2) Muhammad Saeed Nammour, Principles of Criminal Trials, previous reference, pp. 342-343.

**First: The Right to seek a Lawyer's Assistance in Islamic Law:**

The right of the accused to defend himself is an inherent right guaranteed by Islamic law. Many contemporary jurists have inferred the permissibility of the accused's use of a lawyer. Almighty said: "He said, "My Lord, indeed, I killed from among them someone, and I fear they will kill me. And my brother Aaron is more fluent than me in tongue, so send him with me as support, verifying me. Indeed, I fear that they will deny me. [Allah] said, "We will strengthen your arm through your brother and grant you both supremacy so they will not reach you. [It will be] through Our signs; you and those who follow you will be the predominant" <sup>(1)</sup>.

**Third: The Right to Seek a Lawyer's Counsel in the Universal Declaration of Human Rights and the European Convention on Human Rights:**

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On December 10, 1948, the United Nations General Assembly approved the Universal Declaration of Human Rights, and this declaration was devoid of a text on the validity of the use of a lawyer. But it stipulated in Article (11) that: Every accused person is considered innocent until proven guilty by law; by a trial against him, in which the necessary guarantees for his defense are secured. The European Convention on Human Rights, moreover, issued in 1950, in its eighth article, established five rights that the accused enjoys, and one of these rights is: the right to defend himself or to choose a lawyer to defend him,

#### **Fourth: The right to seek a lawyer's Counsel in various constitutions:**

There are some constitutions that have been keen to stipulate the right to seek the assistance of a lawyer within the section related to basic rights, such as the Constitution of the Arab Republic of Egypt issued in 1964 AD and the Constitution of 1971, where Article (69) of this Constitution states that: The right to defense in person or by a lawyer is guaranteed.

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(1) Al-Quran (28: 33-35).

In the United States of America, the right of the accused to seek the assistance of a lawyer is one of the basic rights guaranteed by the American Constitution in accordance with the Sixth Amendment to the Constitution, which states that the accused enjoys the right to the assistance of a lawyer to represent him in all the criminal charges attributed to him. There are constitutions that do not mention the right to defend or to seek the assistance of a lawyer, such as the Constitution of the Kingdom of Morocco issued in 1962 AD, and the Interim Constitution of Sudan issued in 1964 AD <sup>(1)</sup>.

#### **Fourth: The right to seek a lawyer's Counsel in Jordanian Criminal Procedure Code:**

The lawyer in our era has a great role to play, as he monitors the procedures taken against the accused to ensure their suitability and consistency with the law. The presence of the lawyer with the accused strengthens the morale of the accused, calms and helps the accused to be balanced and calm in his answers, prevents the issuance of involuntary confession, and gives confidence and reassurance <sup>(2)</sup>. I wish if there was a text in our current Jordanian constitution that includes the right of the accused to seek the assistance of a lawyer at all stages of the investigation in order to defend him and achieve justice. However, a provision for this was found in the Jordanian Code of Criminal Procedure with regard to the preliminary investigation, and that is in Articles (63), (64), (65) and (66) thereof. Article (64/1) stipulates that the defendant, the person responsible for money, the personal prosecutor, and their attorneys have the right to attend all investigation procedures except for hearing witnesses.

The right to seek a lawyer's counsel is subdivided into the following rights:

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(1) Abdel Hamid Al Shawarbi, Violation of the Right to Defense in the Light of Jurisprudence and the Judiciary, previous reference, p. 26.

(2) Nayef bin Muhammad Al-Sultan, The Rights of the Accused in the Saudi Criminal Procedures Law, House of Culture for Publishing and Distribution - Amman / Jordan, first edition in 2005 AD, p. 169.

**A- The right of the accused concerning the immunity and protection of his lawyer:**

If the lawyer is not protected and immune in the defense mission he performs, this will be directly reflected on the accused's right <sup>(1)</sup>.

**B - The right of the accused to choose a lawyer:**

It is obvious that the accused is the one who benefits mainly from initiating the defense, so it is his right <sup>(2)</sup>. Referring to the text of Article (64) of the Jordanian Code of Criminal Procedure, we find that the lawyer has the right to attend all investigation procedures except for hearing witnesses, but the text of Article (65) did not justify each of the plaintiffs to seek the assistance of the Public Prosecutor (the investigator) except with one lawyer.

**C- The right of the accused to contact his lawyer:**

In order for the lawyer to be able to prepare his defense effectively, he must be allowed to meet with his client whenever he or the accused wants. For this communication to be real, the lawyer must be able to meet his client in private <sup>(3)</sup>. The accused must have the opportunity to meet and communicate with his lawyer by all means of telegraphic and telephone communication, in addition to the right to speak to his lawyer directly <sup>(4)</sup>. If the communication between the accused and his lawyer is by phone, this call may not be recorded or wiretapped <sup>(5)</sup>.

**D- The right of the accused concerning the confidentiality of the information he gives to the lawyer:**

All laws and regulations regulating the legal profession in the Arab

(1) Abd al-Hamid al-Shawarbi, Guarantees of the Accused in the Stage of Criminal Investigation, previous reference, p. 186.

(2) Muhammad Fakhri Abd al-Razzaq al-Hadithi, The Right of the Accused to a Fair Trial, House of Culture for Publishing and Distribution - Amman/Jordan, Edition 2005 AD, p. 159.

(3) Ahmed Al-Mahdi, Ashraf Shafi'i, Initial Criminal Investigation, Guarantees and Protection of the Accused, Dar Al-Kutub Al-Mahalla Al-Kubra / Egypt, 2005 edition, p. 155.

(4) Abd al-Hamid al-Shawarbi, Guarantees of the Accused in the Stage of the Criminal Investigation, Mansha'at al-Maaref - Alexandria/Egypt, Blaa Edition, p. 184.

(5) Ahmed Al-Mahdi, Ashraf Shafi'i, Initial Criminal Investigation, Guarantees and Protection of the Accused, previous reference, p. 155.

countries state that the lawyer is obligated not to disclose the secrets of his client in any way <sup>(1)</sup>.

**E- The right of the accused that his lawyer must not defend those who oppose him:**



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This is a consequence of the fact that an independent lawyer is assigned to the accused when there are multiple accused in the same case to prevent a conflict between their interests, and according to the same approach, the Sixth Amendment to the American Constitution prohibits double representation of the lawyer <sup>(2)</sup>.

#### **F- The right to access the investigation file:**

In order for the lawyer to be able to perform the task entrusted to him, he must be aware of all the facts of the charges against the accused <sup>(3)</sup>.

#### **Part Three: Consequences of not considering the guarantee of the assistance of a lawyer during the preliminary criminal investigation**

The presence of the lawyer with his client during the investigation is a guarantee of the integrity of the procedures taken, as he can object to what may happen in violation of legal principles <sup>(4)</sup>.

#### **Topic Two: Procedures for guarantees of disciplinary investigation**

##### **In the functional systems of the University of Jordan**

If a staff member in Jordanian universities, whether a faculty member or an administrative staff member, commits a job-related offense or breaches his job duties, he is responsible for that, and the disciplinary punishment cannot be

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(1) Abdel Hamid Al Shawarbi, Guarantees of the Accused in the Stage of Criminal Investigation, previous reference, p. 28.

(2) Hatem Bakkar, Protecting the Right of the Accused to a Fair Trial, previous reference, pp. 255-256.

(3) Muhammad Mahdah, Guarantees of the Accused During the Investigation - Part Three, Dar Al-Huda - University of Constantine / Algeria, first edition in 1991, p. 337.

(4) Mustafa Al-Auji, Lessons in Criminal Procedure, Al-Halabi Human Rights Publications - Beirut / Lebanon, first edition in 2002, p. 166.

imposed directly against him without giving him the guarantees of the administrative disciplinary investigation. Punishment may be imposed on him by the presidential authority after questioning, and he may be referred to a disciplinary investigation committee or a disciplinary board. Hence, there is a need to protect the worker in Jordanian universities with guarantees, and these guarantees are related to the administrative disciplinary investigation. Therefore, this part is divided into three sections:

**First Section:** Disciplinary investigation guarantees stipulated in the job regulations in Jordanian universities.

**Second Section:** Extent of the right to seek a lawyer's assistance during the disciplinary investigation in the functional systems of the Jordanian universities.

**Section Three:** Consequences of not considering the guarantee of seeking a lawyer's counsel during the disciplinary investigation in the functional systems of the Jordanian universities.

**First Section: Disciplinary investigation guarantees stipulated in the job regulations in Jordanian universities**

Disciplinary administrative investigation can be defined as a set of disciplinary measures taken in accordance with the form required by law, with the knowledge of the legally competent authority, and aims to search and prospect for evidence useful in revealing the truth and collecting it in order to determine the incident and establish its truth, and to indicate whether it constitutes a disciplinary offense or not <sup>(1)</sup>. A disciplinary violation is defined as: an employee's breach of the duties of his job, positively or negatively, or performing a prohibited act <sup>(2)</sup>.

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(1) Muhammad Majid Yaqout, *The Origins of Administrative Investigation in Disciplinary Violations*, Mansha'at Al Maaref - Alexandria / Egypt, Edition 2000 AD, pp. 65-73.

(2) Khaled Khalil Al-Zahir, *Administrative Law - Book One*, Dar Al-Masirah for Publishing, Distribution and Printing - Amman / Jordan, first edition 1998, p. 243.

In fact, the concept of disciplinary investigation is mainly related to the basic guarantees, for the investigation is nothing but a set of guarantees that are closely related to each other and lead to the justice of disciplinary accountability <sup>(1)</sup>.

The procedures of this administrative disciplinary investigation must be surrounded by several guarantees, including:

**First: Clue of Guiltlessness**

That the texts of independent administrative bodies in Jordanian legislation did not refer to this principle is not a defect. It is sufficient to stipulate it in the Jordanian Code of Procedure. This principle has also been confirmed by numerous rulings of the European Court of Human Rights <sup>(2)</sup>. Unfortunately, by referring to some of the decisions of the Jordanian administrative space, it was found that they take the opposite of this principle, as it accepts that the presidential authority, the investigation committee, or the disciplinary councils take their decisions based on suspicion and doubt <sup>(3)</sup>.

**Second: Impartiality of the authority concerned with administrative investigation and non-alignment (guaranteeing the right of reply and stepping down):**

Most of the functional legislations require the provision of a basic guarantee in the job discipline, represented in guaranteeing the (neutrality) of those who participate in the membership of the disciplinary committees and councils so that the accused employee is assured that justice will be served. Moreover, the impartiality of the disciplinary authority is one of the basic guarantees in disciplinary procedures, and to implement these guarantees, it is

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(1) Saad Nawaf Al-Anzi, *The Legal System of the Public Employee*, University Press - Alexandria / Egypt, 2007 edition, pp. 300-301.

(2) Rana Al Otour, *The Punitive Authorities of Independent Administrative Bodies and Their Role in Expanding the Circle of Criminalization*, previous reference, p. 56.

(3) Supreme Amendment No. (258/2000) dated 12/2/2000.

necessary to separate the power of accusation and the authority to impose a penalty <sup>(1)</sup>. Among the legal principles that can be applied in the disciplinary field to ensure impartiality, is the principle that it is not permissible to participate in disciplinary boards for anyone who has undertaken an investigation work, or for anyone who has expressed an opinion about it <sup>(2)</sup>. With reference to the texts of the regulations of the faculty and staff applied in the official Jordanian universities, for example: the faculty system at the University of Jordan, number (106), for the year 2007, and the personnel system at the University of Jordan number (52), for the year 2003, the workers in the official Jordanian universities are divided into two types:

**First: Faculty Members:**

A faculty member in the Jordanian universities refer to the following:

- 1- Professor.
- 2- Associate Professor.
- 3- Assistant Professor.
- 4- The teacher.
- 5- The assistant teacher.

**Second: Members of the Administrative Board (Employees):**

They are divided into the following:

- 1- Employees who have permanent jobs.
- 2- Contractual employees.
- 3- Employees with fixed salaries.

If the university employee does not perform the university tasks and duties entrusted to him, or does not refrain from undertaking any of the

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(1) Salim Salama Hatamleh, *Administrative Judiciary (Employee Appeals)*, Ugarit Publishing and Distribution House - Jerash / Jordan, Edition 2004 AD, p. 112.

(2) Abdel Aziz Abdel Moneim Khalifa, *Disciplinary Guarantees in the Public Service*, House of Legal Books - El Mahalla El Kobra / Egypt, Edition 2004 AD, p. 120.

prohibited actions stipulated in these regulations, or does not adhere to the provisions of laws, regulations, instructions and decisions in force, disciplinary penalties are imposed on him/her. There are two types of penalties:

**A- Disciplinary penalties imposed on faculty members:**

- 1- Notice.
- 2- Warning.
- 3- Final warning.
- 4- Dismissal of the service with payment of all financial dues.
- 5- Dismissal from the university with deprivation of the university's financial contribution to the Provident Fund.

**B- Disciplinary penalties imposed against members of the administrative body (employees):**

- 1- Notice.
- 2- Warning.
- 3- Suspension of the annual salary increase for a period not exceeding one year.
- 4- Deduction from the basic salary for one month, not exceeding half of it.
- 5- Salary forfeit.
- 6- Suspension of the job.
- 7- Dismissal of the service with disbursement of all his financial entitlements.
- 8- Dismissal with depriving him of the end-of-service gratuity and compensation or the university's financial contribution to savings or both. The faculty system at the University of Jordan has clearly defined the authority responsible for conducting the investigation:

**A- For faculty members:**

The concerned authority to impose the penalty is as follows:

**The first type: Administrative heads:** It includes the following:

- 1- Head of the department: If the disciplinary penalty to be imposed is a notice penalty.
- 2- Dean of the College: If the disciplinary penalty to be imposed is the notice or warning penalty.
- 3- Rector: If the disciplinary penalty to be imposed is a warning penalty or a final warning penalty.

**The second type: Disciplinary Councils:** They include the following:

- 1- Primary disciplinary council for faculty members.
- 2- The Appeal Disciplinary Board for Faculty Members:

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**B- For members of the administrative body:**

Article (51) of the system for members of the administrative body (employees) clarified that the authority committed to impose the penalty is as follows:

The first type: Administrative heads: It includes the following:

- 1- Director of the Administrative Department.
- 2- Director of the administrative unit or the dean of the college.
- 3- Rector.

**The second type: Disciplinary Councils:** They include the following:

- 1- Primary Disciplinary Board for Employees:
- 2- Disciplinary Board of Appeal for Employees:

**Third: Recording the disciplinary investigation procedures:**

The general rule in the field of job discipline is to write down the procedures for investigating disciplinary offenses. This is because it is one of the requirements of judicial control over the work of the disciplinary authorities, and this requires proof of the investigation in a record or serial records.

**Fourth: The confidentiality of the disciplinary investigation with regard to the public (others) and its publicity with regard to the accused employee and their lawyers:**

The job regulations at the University of Jordan, whether related to faculty members or administrative staff have openly stated that the sessions of the primary and appellate disciplinary council, whether for faculty or administrative staff members, shall be confidential, including the session in which the council's decision is read. This is based on the text of Article (44) of the faculty system at the University of Jordan, and the text of Article (52/e) of the staff system at the University of Jordan.

**Fifth: Confrontation (confronting the employee with the violations attributed to him and attending the disciplinary investigation sessions):**

This principle means informing the employee and confronting him of the violations he committed, the charges against him, and his right to see his file, and this principle has developed in the field of public employee discipline until it has become one of the general principles <sup>(1)</sup>.

**Sixth: Ensuring the right of defense through the personal presence of the disciplinary investigation and the right to seek a lawyer's assistance:**

This guarantee means enabling the accused employee to respond to the accusations attributed to him by possible legitimate means, and this requires enabling the employee to attend in person and express whatever aspects of his defense he wants, verbally or in writing, and completely freely and without any material or moral influence <sup>(2)</sup>.

**Topic Two: Extent of the right to seek a lawyer's assistance during the disciplinary investigation in the functional systems at the University of Jordan**

The guarantee of seeking a lawyer's assistance is one of the general principles of law that the judiciary has traditionally applied without the need for a text to determine it <sup>(3)</sup>. This is because the concerned employee may not be well acquainted with the disciplinary file in most cases due to his weak cultural level or because he is not specialized in the law.

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(1) Khaled Samara Al-Zoubi, Administrative Law and its Applications in the Hashemite Kingdom of Jordan, Dar Al-Thaqafa Library for Publishing and Distribution - Amman / Jordan, second edition 1993, p. 251.

(2) Adnan Amr, Principles of Administrative Law, Mansha'at al-Maaref - Alexandria / Egypt, second edition in 2004 AD, p. 276.

(3) Abdel Aziz Abdel Moneim Khalifa, Procedural Legitimacy in the Presidential and Judicial Discipline of the Public Employee, House of Legal Books - El Mahalla El Kobra / Egypt, 2006 edition, p. 282.

In short, the right of defense requires the following <sup>(1)</sup>:

- 1- Notifying the employee of the accusation against him and informing him of the various evidences proving its occurrence and attributing it to him.
- 2- Allowing the accused employee to view the file of the disciplinary case and all papers and documents related to the violation or complaint addressed to him.
- 3- All procedures related to disciplinary accountability must be conducted in person.
- 4- The right to seek a lawyer's assistance.
- 5- Providing written and personal evidence (witnesses).
- 6- Notifying the employee of the decision issued to impose the penalty.

### **Topic Three: Consequences of not considering the guarantee to seek a lawyer's assistance during the disciplinary investigation**

The investigation that takes place without the presence of a lawyer, if the accused employee demands his assistance, leads to the nullification of the investigation <sup>(2)</sup>. Moreover, the decision of the Supreme Court of Justice No. 75/85 pg. 524 No. (3, 4) for the year 1987 AD stated that: The investigation should be carried out within the limits of the general principles, taking into account the basic guarantees so as to guarantee the employee the right to defend in order to achieve justice.

### **Conclusion and Recommendations**

After studying all the legal texts related to the preliminary criminal investigation in Jordan, as well as those related to the disciplinary investigation, the law of official Jordanian universities, the system of the teaching staff at the

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(1) For more information, see: Noufan Al-Aqeel Al-Ajarmeh, Disciplinary Authority of the Public Employee, previous reference, pg. 429-434.

(2) Khaled Samara Al-Zoubi, Administrative Law and Its Applications in the Hashemite Kingdom of Jordan, previous reference, p. 256.

University of Jordan No. 106 of 2007, and the personnel system of the University of Jordan No. 52 of 2003, many worthy observations have emerged:

1- The necessity to include a text in the Jordanian constitution regarding the right of the accused or public employee to seek the assistance of a lawyer during the preliminary investigation, whether the investigation is in the administrative or penal field, as is the case with the various constitutions of the world.

2- It is necessary to include in the various job systems in Jordan the right of the public employee to seek the assistance of a lawyer during the preliminary administrative disciplinary investigation before the investigation committees, and not be limited to applying that before the administrative disciplinary boards, in order to prevent diligence in wasting this right.

3- It is necessary to include in the various job systems in Jordan that the employee at the university, subject to the disciplinary investigation or his lawyer, should be allowed to copy the administrative disciplinary file and not only allow him to view the records of the sessions at the very moment of writing it.

4- It is necessary to include in the various job systems in Jordan the right of the employee to seek the assistance of a lawyer to defend the worker at the university.

5- It is necessary to state in the various job systems in Jordan a warning to the employee at the university subject to the disciplinary investigation, that he has the right not to answer the accusation against him except in the presence of a lawyer.

6- It is urging to include the assistance of a clerk with the authority concerned with the preliminary administrative investigation, where the university employee, who is under the disciplinary investigation, may write the records of the sessions himself, but it is customary to write it by one of the members of this authority concerned with the preliminary investigation, which leads to his preoccupation with writing and not paying attention to the proceedings of the investigation.

7- It is necessity to include in the various job systems in Jordan that no severe penalty shall be imposed by the administrative chief unless after allowing the public employee to seek the assistance of a lawyer to defend him.

8- It is necessary to include in the various job systems in Jordan the provisions related to the reasons for the response of the chairman and members of the investigation committee in the different job systems, especially universities, as is the case with the president and members of the disciplinary boards.

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Dr. Mohammad Mousa Ali "El-Sheakh Deeb"

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