

RESPONSIBILITY OF MEMBERS OF THE DIPLOMATIC CORPS AGAINST THE ADMINISTRATIVE WORK (IRAQ AS A MODEL)

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Abstract

The function of diplomatic missions is considered one of the jobs that are subject to the internal and international law. It is a tool for implementing the foreign policy of the state and is related to the diplomatic envoy who represents it. This is because the diplomatic envoy, like all other state employees, is entrusted with responsibilities and duties towards his accredited country and its nationals, as well as towards the accredited country therein. The head of the mission is the person appointed by his country in another country after obtaining the approval of the receiving country, and he shall be responsible before his government and the government of the receiving country for all actions related to the mission and the management of its affairs. Thus, he shall have the rank of ambassador, authorized minister, or person-in-charge, and according to the level of diplomatic representation between the two countries. The granting of diplomatic status and its degrees shall be related by the internal laws and these members shall be affiliated with the Ministry of Foreign Affairs. However, the foreign service jobs are one of the categories of public civil service jobs, who implement their country's foreign policy through the work carried out by the diplomatic envoy, at the request of his government, of which is considered as one of the acts related to the sovereignty of his country, and in the event that the envoy refuses to perform the latter, he will be subject to the disciplinary punishment imposed by his country for disobeying its orders, as he is being responsible for his political and administrative work entrusted to him. Moreover, the negligent employee shall be punished for his negligence by imposing an appropriate punishment and according to its severity. Thus, disciplinary action is deemed as an effective guarantee for the diplomatic employee not performing his job duties in accordance with the laws and regulations in force in his country.

The mission of the diplomatic envoy is ended due to several reasons, pertaining to his person, reasons related to his country, and reasons related to the country he is accredited at.

Keywords: responsibility, diplomatic missions, administrative work, legal responsibility.

INTRODUCTION

The role of diplomacy is increasing in the field of strengthening friendly relations, encouraging cooperation between countries, and contributing to resolving and settling disputes, which reflects positively on maintaining international peace and security. The establishment of diplomatic representation between countries to achieve their interests requires the staff to work with dedication and high accuracy in their administrative work.

The diplomatic job must be subject to a specific and clear legal system in order to facilitate the performance of the tasks of this job, which are practiced by diplomatic missions and special missions, as it must be regulated by internal law and the application of legal rules and regulations in force so that employees, who are working in the diplomatic field, can carry out their administrative work at the best possible manner.

Second - The Research Problem: The problem of the study is summed up by highlighting the diplomatic missions that enjoy diplomatic immunity and that they are from the public order and that



this privilege does not justify the diplomatic missions from violating laws, regulations and instructions and thus not being responsible for their actions, including administrative ones, so this study came to answer the following questions main:

1. What is the legal and administrative responsibility of the diplomatic missions in case of breach of laws, regulations and instructions?
2. What are the necessary legal methods taken regarding the abuses of diplomatic missions?

Third - The Research Objectives: This study aims to subject the diplomatic envoy to legal accountability before the accrediting country, and it does not mean that he escapes from the law if he violates his job duties and refrains from prosecuting him and prosecuting him for the actions and actions he has done and he can be held accountable before the judiciary.

Fourth - The Importance of the Research: The importance of the research is represented by investigating the laws and regulations that shed light on the administrative and political jobs and tasks that the diplomatic employee exercises, including representative jobs for his country in the host country, and that the presence of the diplomatic employee delegated to the territory of the host country expresses the status of diplomatic representation, noting that He enjoys diplomatic immunity in the receiving country, but this immunity is not absolute but rather restricted and has been mentioned in international agreements, and it relates to some work in civil and administrative matters that the diplomatic envoy performs outside the limits of his official position and in his personal capacity, but he is not exempt from responsibility in the event of a breach of administrative work entrusted to him and in accordance with the provisions of the laws of his country.

Fifth - Research Structure: This research consists of two chapters. The first Chapter shows the concept of the diplomatic mission, the second chapter will discuss the legal responsibility of the members of the diplomatic corps, and in conclusion, some of the conclusions and proposals will be summoned.

First Chapter

Concept of the Diplomatic Mission

Diplomatic representation is a bond of closer relations between the two countries that exchange representation and work to maintain good understanding between them. Since this does not come unless the envoy of each envoy is a person acceptable to the other the country. However, the diplomatic custom has been that the country shall confirm, before appointing its envoy to the other country, the acceptance of this envoy. Moreover, the other country may object to the person to be appointed without giving the reasons for that and the need for the country, to which the person is delegated, to accept before appointing him as head of the diplomatic mission. As for the rest of the members of the mission, it is not required that they be appointed to obtain this acceptance, and the country to be delegated to may choose them without referring to the opinion of the state dispatched to it¹. We will divide this research into two requirements, as follows:

Part One

Diplomatic Mission Staff

The job of diplomatic missions is one of the jobs that are subject to the internal law of each country, as it determines the conditions for their selection, the method of their appointment and promotion, and the amount of their salaries. The diplomatic employee has responsibilities and duties towards their country, as well as the direction of the accredited country, and this is what we will discuss successively.

Section One

What is Diplomacy?

Diplomacy has been defined as (a set of international rules and norms, procedures, decrees and formalities that are concerned with regulating relations between the individuals of international law, i.e. countries, international organizations and diplomatic representatives, along with indicating the



extent of their rights, duties, privileges, conditions for the exercise of their official duties and the principles that they must follow to implement the provisions and principles of international law, and conciliation between the interests of the disparate states as they are, so that the

¹Dr. Thamer Kamel Mohammed, contemporary diplomacy and negotiation management strategy. Dar Al Massira for Publishing and Distribution, first edition, 2000, page 70.

conduct of political negotiations in international conferences and meetings and the conclusion of agreements and treaties). Diplomacy has also been defined as "a political process used by the state in the implementation of its foreign policy in its dealings with states and other international persons and the management of its official relations with each other within the international system"².

It is clear from the foregoing that diplomacy is a set of arts that include the art of speaking, the art of skill and accuracy of delivering information correctly to the recipient, and that it is a political science that includes a specific style, mastering the practice of the profession of employees who practice it through foreign relations with countries and the art of conducting negotiations and reconciling the interests of countries at various international conferences, and to represent the interests of the country's citizens in other countries.

Section Two

The Concept of the Diplomatic Envoy

The job of a diplomatic envoy is considered one of the important jobs in the country apparatus to which the "status of a diplomat" is assigned, as regulations, instructions and laws pertaining to diplomatic envoys are applied to it. The Vienna Convention on Diplomatic Relations of 1961 stipulates in Article 1/e that the term "diplomatic envoy" means the head of the mission or one of its diplomatic staff. Likewise, the diplomatic envoy means the person who represents his country abroad permanently; in everything that affects its external relations with the receiving country. However, the envoy is subject to the internal law of the diplomatic corps system, and it is a two-faced law, the first is internal and applies to diplomats working in the General Court of the Ministry of Foreign Affairs, The other is external applied to diplomats when they work in missions abroad, and that the status of a diplomatic envoy is only proven to the head of the mission and the diplomatic staff of the mission³.

¹Dr. Thamer Kamel Mohammed, former source, page 70.

²Dr. Salah Al-din Ahmed Hamdi, Studies in Public International Law, Publications ELGA, first Edition, 2000, page 90.

³Dr Suhail Hussein Al Fatlawi, diplomatic immunity of the diplomatic envoy, Comparative Legal Studies, publisher: Egyptian Office for Publications, T2002, Page 23.

This is not proven to administrative and technical staff and private users, and this distinction is of great importance in relation to the immunities and privileges of the various groups. Diplomatic immunities and privileges are not fully proven except for diplomatic envoys because the capacity of diplomatic representation enjoyed by them is complete and incomplete¹.

The country is considered as a legal person that cannot act except through public officials, as they are the instrument of governance, and the level of administration depends on the level enjoyed by the public employee. Professor Valen said, "The administration is only worth what the public servant who represents it and acts under its name"². The country's interest in the public office and the public employee has been doubled in this century, until it was said that the twentieth century is the century of the public jobs, confirming its importance and the importance of its concern to the public employee. Therefore, modern legislation in different countries has given special attention to regulating the rules for the public jobs, and in particular, the rules governing the discipline of state employees, because it is the effective guarantee for the employee to respect the duties of his job and to carry them out to the fullest³.



The employees in every era are the tool of government and the goodness or corruption of this tool depends on their goodness or corruption, and the administrative organization consists in the country of general administrative persons, who carry out the management of public facilities and projects. This tool in fact is a public legal person that play this role under the name of the country and for its account, with the aim of achieving the public interest. The natural person, the public employee, expresses it will, achieves it goals, represents the administration and expresses its will in all areas of its activity. The public employee aims to achieve the private interests of the employer, while the workers in public projects aim to achieve the public interest, which is summarized in ensuring the functioning of the administrative apparatus in the country in a regular process in order to meet public needs. Moreover, the functional organization means defining specializations, authorities, and relationships to coordinate the behavior of a group of individuals with the aim of achieving a specific goal in the field of administration⁴.

¹Asem Jabber, The consular and diplomatic function in law and practice, comparative studies, Aweidat Research for Publishing and Printing, Lebanon, Editions: 2001, Page 66.

² Saeed Bin Salman Al-Ibaree, Diplomatic relations between theoretical and applied, Dar Al-Nahda Al-Arabia for publication and distribution, 1996 Edition, Page 98.

³Alaa Abo-Amer, Diplomatic Function, Its origin, institutions, rules, laws, Dar Al-Shorouk for publication and distribution, 2001 Edition, Page 32.

⁴Mohammed Al-Saeed Al-Daouk, Mustafa Salama Hussein, contemporary international law. Alexandria: University Press, 1997 page 76.

Part Two

Duties of Diplomatic Missions

The work of the diplomatic mission is undoubtedly the functions of the diplomatic representative, which he exercises as a member of the mission, and enters into the concept of the diplomatic representative all members of the diplomatic mission, including the head of the mission, and that the administrative work is one of the tasks of the internal administrative organization of the mission and how to manage and distribute work in it¹.

Also, works related to the functioning of the diplomatic mission in this regard have more applications in the theory of acts of sovereignty, including the decisions issued and related to the protection of citizens residing abroad through diplomatic means. One of the most important applications in this field is the conclusion of treaties and what is related to them. Acts related to negotiation, signing and ratification were previously considered acts of sovereignty, and neither administrative nor judicial courts have the right to interpret a treaty. Rather, they must resort to the government in this regard, and they must take the interpretation which is presented by the Minister of Foreign Affairs and has all its consequences. The actions that are issued as a result of the application of a text contained in a treaty or a diplomatic agreement are also considered among the acts of sovereignty². The diplomatic envoy is deemed as the owner of an important message that he can perform through the work he does, which is serving his country and its citizens, so he must perform this message with honesty and sincerity, and the diplomatic mission must perform its functions in the fullest way for the accredited country and respect the accredited country, and the goal of the existence of diplomatic missions is to establish a friendly relations between all countries. These functions, according to the Vienna Convention on Diplomatic Relations³, shall include a group of which we will discuss in the following sections:

¹Mohammed sami Abdulhameed, Mohammed Al-Saeed Al-Daouk, Ibrahim Ahmed Khalifa. Public international law. Alexandria: University Press, 2003 page 43.

²Mohammed Sami Abdul-Hameed, Public international law, the second part, international rule. Alexandria: University Press, seventh edition, 2005, Page 88.

³ Dr. Ahmed Abo Al-Wifaa, *Diplomatic and Consular Relations Law* is a flag and a special reference to what is applicable in Egypt. Dar Al-Nahda Al-Arabia for publication and distribution, Cairo, 2003, Page 34.

Section One

Duties of a Diplomatic Envoy towards the Accredited Country

The duty of a diplomatic envoy is linked to the controls defined by customs, traditions, laws and regulations, and enshrined in professional ethics. These are controls that the diplomatic envoy must respect and abide by if he chooses to carry out his duty efficiently and successfully, and if he wishes to build friendly and constructive relations. However, such duties, that he must act upon out of concern for the interest of the country and the reputation of the envoy, shall abide him to keep the secret of the profession and not to provide any information about the issues that he has knowledge to through carrying out his professional duties, even if he leaves the job. The institutions of the receiving country and its system of government must also be respected as well¹.

If the host country is obligated to provide immunities, privileges and facilities to ensure the completion of the envoy's work and the success of his duty, based on the principles of diplomatic law, the continuity of these facilities is guaranteed by the envoy's commitment to his main duties towards the receiving country, respect for its national sovereignty and internal regulations, and devoting its objectives to representing his country, respecting its interests, and building strong and stable relations. Among these duties are²:

1. Embody a bright image of his country and his people through his practices and actions within the framework of work and society that reflect the image of the civilized and responsible face of his country.
2. To not interfere in the internal affairs and respect the laws and regulations in force, in a manner that does not conflict with the immunities and privileges enjoyed by a diplomatic envoy.
3. Respect the laws and regulations of the country, respect the laws and regulations of the host country is a basic duty for the envoy, as he must be careful not to transgress these regulations and laws or disregard them, no matter how simple they are, respecting traffic laws and discipline, and not sheltering and protecting fugitives from justice and protecting them and criminals who violators of the country's sanctity.

¹Dr. Abo Al-Qasim Saad Allah, *Prince Abdulkader's life*, University Press Office. 2004. Translation of Charles Henry Churchill, Page 43.

²Dr. Ali Hussein Al-Shami, *diplomacy, its origin, evolution, rules and system of diplomatic immunities and privileges*, Dar Al-Ilm for Millions, second Edition, 1994, Page 20.

4. Not to exploit the immunities and privileges granted.

Granting immunities and privileges to the envoy shall facilitate his work and protection, as there are actions that appear from time to time and practices that contradict with the goal, of which some envoys exploit them to carry out illegal actions such as currency trade, smuggling, counterfeiting, illegal gain, or providing facilities and cover for the practice of these illegal actions through locals agents. However, these illegal actions are inconsistent with the mission and duties of the envoy as stipulated in Article (10) of the Vienna Convention on Diplomatic Relations, and the diplomatic envoy may not engage in any commercial activity in the accredited country for his personal interest¹.

The diplomatic envoy, in the performance of his duties, must not interfere at all in the private affairs of the country he is sent to, refrain from advocating for any of the political parties in it, and not participate in revolutionary actions against its government, as well as respecting the traditions and religions followed in it and respect its own systems. If the diplomatic envoy behaved inconsistently



with his duties, the country he was sent to should request his country to summon him or assign him directly, when necessary, to leave the country².

From the foregoing, it can be said that the personality of the envoy is an important and prestigious figure, but it is subject to scrutiny and criticism. Therefore, the envoy must be aware that he represents his country and his people, and be proud of his identity, history and civilization, and that his mission must be a trust bear by him, and that he shall not misbehave and be an honorable image for his country.

Section Two

Tasks of the Diplomatic Mission

First - the Administrative Tasks of the Diplomatic Mission

The tasks of the head of the mission, who is considered a public servant of the sending country with an international status, shall work with his assistants to preserve and care for the country's interests, and he shall be responsible for the management of the mission.

¹Dr. Adnan Al-Bakry, diplomatic and consular relations, University Foundation for Studies, Publishing and Distribution, 01 Edition, 1986, Page 32.

²Dr. Ahmed Abo Al-Wifaa, public international law, Cairo: Dar Al-Nahda Al-Arabia for publication and distribution. Fourth Edition. 2004, Page 90.

The responsibilities of the heads of diplomatic and consular missions are similar in the field of responsibilities of the heads of administrative departments in the general administrative staff, except that the special situation of the mission results from its geographical presence in the sending country outside its territory. From the latter, the heads are granted certain powers that exceed the powers of the heads of administrative departments within the center of the ministry¹.

Second - the Judicial Functions of the Diplomatic Mission²

A diplomatic envoy may, in the event of he was requested, seek to resolve disputes that may occur between their citizens and foreigners by peaceful means, and also if the laws of his country allow him to rule as arbitrators when the matter is brought to them from the disputes existing between their citizens, who are in the circles of their jurisdiction, and the envoy no longer has the right to judge the affairs of their citizens in the hands of courts affiliated with it, which may assign them to collect evidence and other data about a crime that may have occurred from one of their citizens in the circle of their work, and for which a lawsuit has been filed before these courts. However, the consular mission, in the event of its intervention to defend the rights of an aggrieved citizen of its citizens, shall inform the diplomatic mission affiliated with it of this matter because it may fail to reach a positive result with the local authorities, so this requires that the case be submitted to the diplomatic mission to play its role for the purpose of presenting it to the responsible central authorities in order to represent them before the local courts for the purpose of protecting their rights and interests due to absence and for any other reason, taking into account the procedures followed in the country they are accredited to, and that Handing over judicial and non-judicial papers is one of the duties of the envoy in a manner consistent with the country of origin³.

¹Dr. Rafiq Atiaa Al-Kassar, Diplomatic protection for state nationals abroad. Doctoral thesis submitted to the Faculty of Law, Cairo University, (unpublished), (1998) Page 87.

² Dr. Abdulazeez Mohammed sarhan, Diplomatic and Consular Relations Law, An Analytical Study in International Jurisprudence and Jurisprudence and the provisions of the two agreement 1961. 1963. 1986, Page 22.

³Mohammed Khalaf, Diplomacy, Theory and Practice, Dar Zahran for Publication and Distribution, Amman, Jordan, Edition: 1997. Page 12.

Part Two

Legal Responsibility of Members of the Diplomatic Corps



The administration is working hard to ensure the regularity of the functioning of public facilities, and trying to find a balance between the employee's right to find guarantees and procedures that give him legal and psychological stability, and motivate him to dedicate in his hard work, and respecting the dignity of the job. It is necessary to choose the best appropriate disciplinary systems to achieve this goal in the event the employee's negligence in performing the tasks entrusted to him. If the efficient employee is rewarded for his effort and diligence with a promotion, then it is necessary, in return, the negligent employee shall be subject to punishment for his negligence with an appropriate penalty. Therefore, disciplinary action is an effective guarantee for the employee's respect for his job duties¹. This is what we will study in more details in this part.

Section One

Penalties Imposed by the Iraqi Legislator on Members of the Diplomatic Corps

An envoy begins serving the country after his appointment to a public position, and his service ends when he reaches the legal age of retirement, determined for service in the laws in force in each country. The service of the envoy is terminated for other reasons such as resignation, death, chronic illness and other reasons mentioned in the Civil Service Laws and Retirement Laws. Moreover, the service of the diplomatic envoy shall also be terminated according to the penalty imposed on him by the competent authorities to impose it according to an effective legal text, due to his committing violations that justify that, such as end-of-service penalty, the dismissal penalty, and those penalties that end his job bond².

¹Hassan Abdullah Younia Al-taei, Termination of the Functional Association and Judicial Oversight of its Decisions, First Edition, Arab Studies Centre for Publishing and Distribution (publisher), Al- Giza 2017.

²Othman Salman ghalian Al-Aboodi, Explanation of the provisions of the State and Public Sector Employees' Discipline Act No. 14 of 1991 amended, T2, 2012, Page 54.

Since the diplomatic envoy is subject to the internal laws and regulations related to his job duties, and therefore the breach of the Foreign Service Employees in their administrative functions leads to their being punished with the penalty prescribed for each act of this. It must be said that the employees of diplomatic missions are subject to the Disciplinary Law of State and Public Sector Employees No. 14 of 1991, as amended, with regard to disciplinary provisions¹. The penalties² are as follows:

First - Attention: It is made by notifying the employee of the diplomatic mission in writing of the violation he committed and directing him to improve his job behavior. This penalty entails delaying the promotion or increase for a period of three months.

Second - Warning: It is made by notifying the employee of the diplomatic mission in writing of the violation he committed and warned him against breaching his job duties in the future. This penalty entails delaying the promotion or increase for a period of six months.

Third - Cut off the salary: it is made by deducting the daily installment of the salary of the employee of the diplomatic mission for a period not exceeding ten days by a written order in which the violation committed by the diplomatic staff member is mentioned and necessitated the imposition of the penalty, and it entails delaying the promotion or increase according to the following:

A- Five months in case of cutting off the salary for a period not exceeding five days.

B- One month for each day of cutting the salary in case the penalty period exceeds five days.

Fourth - Reprimand: : It is made by notifying the employee of the diplomatic mission in writing of the violation he committed and the reasons that made his behavior unsatisfactory, and he is asked to avoid the violation and improve his professional behavior. This penalty entails delaying promotion or increase for a period of one year.

¹Article 36 of the Convention explicitly refers to Foreign Service Law No. (45) of 2008

²See article 8 from Discipline of state and public sector employees No. 14 of 1991



Fifth - Reducing the salary: It is made by reducing the salary is by deducting an amount from the salary of the diplomatic employee by a percentage that does not exceed 10% of his monthly salary for a period of not less than six months and not more than two years. This is done by a written order notifying the employee of the act he committed, and this penalty entails a delay in promotion or increase for a period of two years

Sixth: Downgrading the grade: It is made by a written order in which the employee is notified of the act he committed, and this penalty entails:

A- For the employee who is subject to laws, regulations, rules or service instructions that adopt the system of financial grades and promotion, and lowering the employee's salary to the minimum level that is directly below his grade, while granting him the bonuses he received in the grade he was removed from (measured by the measure of the bonus determined in the grade he was removed from) and he is returned to the salary that he was earning before his grade was demoted after being dismissed for three years from the date of imposing the penalty, with the period spent in his last salary being rotated before the penalty was imposed¹.

Seventh: End of Service: it is made by removing the employee from the job for a period determined by the End of Services' decision that includes the reasons that necessitated the imposition of the penalty on him as follows: (A period of not less than one year and not more than three years if the employee was punished with two of the following penalties or one of them twice and committed the third time during five years from the date of imposing the first penalty, an act that requires him to be punished with one of them: A- Reprimand B- Reduction of salary C- Downgrading the grade, D- The duration of his stay in prison if he is sentenced to imprisonment or jail against a crime that is not prejudicial to honor, starting from the date of issuance of the sentence against him. The period of his suspension is considered part of the term of End of Service, and half of the salaries disbursed during the withdrawal period will not be recovered from him).

¹Husban Abdullah Younis Al-Taei, Expiry of the functional association and judicial oversight of decisions issued by a comparative study, , Arab Studies Centre for Publishing and Distribution (publisher), Egypt, 2016, Page 122.

Eighth - Dismissal¹: It is the removal of the employee from the job permanently and it is not permissible to re-employ him in the departments of the state by a reasoned decision of the Minister in one of the following cases:


a- If it is proved that he has committed a serious act that makes his remaining in the service of the country detrimental to the public interest.

b- If he is convicted of a felony arising from his job or committed in his official capacity.

C- If he was punished with end-of-service, then he was re-employed, and he committed an act that requires end-of-service again.

We would like to point out that Foreign Service Employees are subject to the Foreign Service System, as well as the Discipline Law for state and public sector employees, and this is what the following State Shura Council decision states "From here, and through the laws and regulations in force, we would like to clarify, according to what was stated in the Foreign Service Law No. (45) of 2008 and the text of Article 36 thereof, which stipulates that the Foreign Service Employee shall be subject to the provisions of the Law of Discipline of State and Public Sector Employees No. (14) of 1991 and this what came with the clarification of the Ministry of Foreign Affairs in its letter No. (M.KH 1/25/1370) on 11/06/2015, the opinion of the State Shura

¹This was concluded from the decision of the State Consultative Council No. 144/2008, in which the Ministry of Foreign Affairs, in its book No. 1723/5351 of 25 August 2008, requested the opinion of the



State Consultative Council on the basis of the provisions of article 6 (iv) of the Council Law No. 65 of 1979, that one of its employees could be reinstated after being punished.

On the basis of the recommendations of the Commission of Inquiry established for this purpose, the Ministry's Legal Department considers that it is not possible to reappoint those who have correctly imposed the penalty of dismissal on the basis of the provisions of section 8 of the State and Public Sector Discipline Act No. 14 of 1991, as amended.

According to the Department of Foreign Affairs, the Investigative Committee did not take into account the legal aspect of article 51 of the Foreign Service Act in its composition, which included that the Ambassador should be investigated by a committee chaired by the Undersecretary and that two other ambassadors should be members of the Committee. Since article 51 of the Foreign Service Act sets forth the procedure for investigating the Ambassador and the committee responsible for doing so, and since the employee in question is entitled, Head of Observers performing computerized work in the Embassy of the Republic of Iraq in Baku, he is subject to the Law on Discipline of State and Public Sector Employees No. (14) for amended 1991 and as item (III) of the article (14) From the Law on Discipline of State and Public Officials, an official punishable by the penalty of dismissal may appeal against the imposition of the penalty during the (30) Days from the date of informing the employee of the refusal of a complaint in fact or judgement the Council refrains from expressing an opinion on the cases before the judiciary and decisions that have a reference for appeal, namely the Law on Discipline of State Employees

Council based on the provisions of Item Fifth of Article (6) of Council Law No. (65) of 1979 regarding the following: The representative of the Inspector General in the investigative committees as being an observer member, and where the foreign service employee is subject to the provisions of the Disciplinary Law for State and Public Sector Employees No. (14) of 1991, and since Paragraph (First) of Article (10) of the Disciplinary Law of State and Public Sector Employees No. (14) of 1991 stipulated that "the minister or the head of the department shall form an investigative committee consisting of a chairman and two experienced members, provided that one of them has a preliminary university degree in law" as Paragraph (Second) of the aforementioned stipulates that (the investigative committee shall handle the investigation in writing regarding the violating employee referred to it and it has, in order to perform its task, hear and write down the statements of the employee and witnesses, and review all the documents and data that it deems necessary to be reviewed, and since the identification of the members of the committee provided for in paragraph (First) of the aforementioned article is limited, and whereas the aforementioned state employee discipline law did not include a provision to involve a member as an observer in the investigative committees".

The researcher sees the principle of the rule of law as one of the basic principles for achieving justice, and it is one of the most important goals that the state seeks to achieve. Whereas the penalties imposed on the employee are a deterrent to him in order to be abided by the duties and tasks entrusted to him for the functioning of the public utility to the fullest extent in order to serve his state and the public interest.

If the investigative committee, assigned to investigate the violating employee, considers that his act constitutes a crime, then in this case the investigative committee should recommend referring the employee to the judiciary¹.

¹Paragraph 3 from article nine of Discipline of state and public sector employee's No. 14 of 1991.

² Dr. Fadi Al-Mallah, security powers, immunities and diplomatic privileges: in theory and practice compared to Islamic law. University Press, Alexandria, 1993 Edition, Page 23.

Section Two

The Competent Authorities to Impose Disciplinary Sanctions

The competent disciplinary authority is governed by the principle of legitimacy, meaning that it cannot impose a specific disciplinary punishment on a diplomatic employee except through the authority designated by the legislator.

The competent authority is not entitled to delegate its competence except within the limits of the laws, and this is considered one of the basic principles upon which the administrative judiciary relies in the cases brought before it.

Since the administration carries out its work through its employees, it is obligatory for this body to monitor their work and detect their mistakes, as it is the one that assesses, according to its experience, the circumstances surrounding the administrative violations and the appropriate penalties, through an investigative committee that is formed when there is a violation by an employee that leads to causing dysfunction for his negligence and default¹.

According to the provisions of Iraqi law, the competent authority to impose disciplinary penalties against the violating employee is²:

First - The President of the Republic.

The President of the Republic is considered free to impose penalties in the Iraqi legislation, which were previously dealt with in some detail, but he is restricted in terms of the employees he has the right to punish, so he has the sole right to punish the employees related to him³.

¹Abdulqader Shakir Mahmood, excluding the employee from the public office (comparative study), T1, Al-Wafaa Legal Library, Alexandria, 2017, Page 33.

²Othman Salman Ghailan, Public Service Ethics, Al- Halabi Human Rights Publications, Beirut 2014, Page 33.

³See article 7 of Article No. 5 of 2008 - Discipline of state and public sector employees No. 14 of 1991.

Second - the Council of Ministers.

If it appears to the Minister, through investigation, that the employee with the rank of General Manager or above, has committed an act that requires a punishment more severe than the one (attention, warning, cut the salary), then he must present the matter to the Council of Ministers, including the proposal to impose the penalties stipulated in the Disciplinary Law¹. However, it has the right to punish the employees related to him with one of the penalties, which are salary reduction, downgrading the grade, end-of-service, and dismissal². The decision of the Council of Ministers to punish the employee is not a final decision, but the employee has the right to appeal before the authority that initially issued it and then resort to the General Disciplinary Council when the grievance is rejected in fact or in de jure³.

The Prime Minister may, upon a proposal from the Minister of Foreign Affairs, form an investigative committee chaired by the Minister of Foreign Affairs and with the membership of the Minister of Justice and one of the ministers concerned with security affairs for the purpose of investigating the violations committed by the ambassadors, whether these violations are detrimental to the security of the country. However, the committee shall record the procedures and recommendations it has taken and submit them to the Prime Minister in order to take a decision of approval or rejection it within 30 days from the date of receiving the proposal to form the committee to the office of the Prime Minister, and informing both the Ministry of Foreign Affairs and the ambassador of his decision, and the ambassador can object, from the date of his notification, of the decision to impose the penalty before the Employees Judicial Court within (30) days⁴.

¹See section 12, second paragraph, of the Discipline Act.

²See section 14, second paragraph, of the Discipline Act.

³See both the provisions of article 14, paragraph 3, and article 15, paragraph 1, of the Discipline Act

⁴See article 37, paragraph 2 and 3, of Iraq's Foreign Service Law Act No. 45 of 2008

As for violations that do not affect the security of the country, a committee is formed to investigate the ambassador by the order of the Minister of Foreign Affairs, headed by the competent undersecretary, with the membership of the head of the legal department and one of the ambassadors. Moreover, It shall submit its recommendations to the Minister of Foreign Affairs to take a decision to approve or reject the order within a period of 30 days from the date of receiving the request to the Minister's office, according to it. The ambassador can appeal this penalty within a period of (30) days from the date of his notification of the decision before the Staff Judicial Court¹.

Moreover, if it is proved by the result of the investigation that the ambassador is not qualified to work in the diplomatic corps, or that his stay is detrimental to the interest of the work, the minister then must request from the Prime Minister to terminate his service and refer him to retirement or transfer him from the Ministry of Foreign Affairs².

Third - The Minister: Article 10 of the State and Public Sector Employees Disciplinary Law No. 14 of 1991, as amended, states that (the minister or department director must form an investigative committee consisting of a chairperson and two experienced members, provided that one of them has a preliminary university degree in law).

Moreover, and in accordance with the provisions of this law, the Minister may impose any of the penalties stipulated in this law on the employee who violates his job duties³.

As for the department director, he has the right to punish the employees of his department with one of four penalties: "attention, warning, cut the salary for a period not exceeding five days, and reprimanding⁴". This is in cases other than the employee whose position is a general manager or above. If the investigation committee recommends imposing a penalty more severe than these penalties, the head of the department shall refer it to the minister for a decision⁵.

¹See article 38 of Iraq's Foreign Service Law Act.

²First Section from article 11 of Discipline of state and public sector employee's No. 14 of 1991.

³Article 11, paragraph 2, of Disciplinary Law of State Employee

⁴Article 11, paragraph 3, of Discipline of state and public sector employees

CONCLUSION

After studying the subject of our research, it became clear to us that the diplomatic envoy is a public servant subject to internal laws and regulations, including the Foreign Service System, and the State Employee Discipline Law. Whereas the researcher reached some results and recommendations, we include them in the following:

First- Results:

1. A diplomatic representative is considered a public employee subject to the internal laws of his country, including the Civil Service Law, the State Employees Discipline Law, and the Foreign Service Law, which regulate how a diplomatic employee is appointed to the position, as well as his rights and duties, and each country has its own internal and Foreign Service Laws.
2. The concept of the diplomatic employee includes all diplomatic members of the mission and that the administrative work is at the core of the administrative organization of the mission and the duties of the head of the mission to distribute political, administrative and technical tasks and duties to the staff of the mission, including diplomats, administrators and technicians, in order to provide services for the benefit of the nationals of the country of the diplomatic mission, individuals, groups or bodies.
3. The service of the diplomatic envoy ends, based on several reasons related to the person of the envoy, the accrediting country or the accredited country, or common reasons between the two countries, and the reason may be under the penalty imposed on him by the competent

authorities based on an enforceable legal text due to his committing grave violations, while exercising his job, that lead to the penalty of dismissal or final end-of-service from public job.

4. An investigative committee shall be formed to investigate the diplomatic envoy who violates his job duties, according to what was drawn up by law, of which it undertakes the task of investigating him, provided that the committee shall raise its reasons for either closing the investigation or imposing one of the penalties prescribed by law on the violating employee.

Second - Recommendations

1. The employee of the diplomatic mission must work diligently and with dedication and not abide by his job duties in accordance with the laws in force.
2. The competent authority responsible for imposing the penalty must be the department to which the diplomatic and administrative employee belongs, as it takes special procedures and the department must follow them when imposing the penalty in order to guarantee the employee's right to defend himself, including access to the investigation file, have knowledge of what are the matters required for him, and the reason for his referral to the competent committee should investigate him, on that the administration should form a committee consisting of three members, one of whom is legal and has professional experience, for the purpose of imposing the appropriate punishment and according to the seriousness of the act he committed.

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- [1] Law of Disciplining State and Public Sector Employees No. 14 of 1991, as amended.
- [2] Foreign Service Law No. (45) Of 2008.