

# The Legal Status of Public Employees During Criminal Trials in Iraqi and Jordanian Law

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## Abstracts

The public employee is a fundamental component of the administrative system, bearing the responsibility for executing tasks related to public service, striving to achieve the public interest, and ensuring the efficient functioning of public institutions. Any disciplinary deviation by the employee grants the administration the right to take precautionary measures, whether for legal reasons or to serve the public interest, in accordance with the general principles outlined in the legal provisions that regulate the relationship between the employee and the administrative authority.

## 1. Introduction

The public employee is a fundamental component of the administrative system, bearing the responsibility for executing tasks related to public service, striving to achieve the public interest, and ensuring the efficient functioning of public institutions. Any disciplinary deviation by the employee grants the administration the right to take precautionary measures, whether for legal reasons or to serve the public interest, in accordance with the general principles outlined in the legal provisions that regulate the relationship between the employee and the administrative authority.

### Research Objectives

1. To examine the concept of the public employee by providing a comprehensive definition .
2. To outline the relationship between the public employee and the administration in the context of criminal trials, offering a detailed explanation of how the public employee is subject to criminal procedures .
3. To clarify the concept of "suspension from duty" and the legal procedures followed by the administration in such cases .
4. To propose effective legal remedies to protect public employees .

## Research Significance

This research addresses the situation of public employees during the initiation of legal proceedings against them, focusing on the challenges they may face in their professional careers. These challenges may lead to temporary suspension from duties without the employee's consent, whether such suspension is mandatory under the law, precautionary, or imposed as a disciplinary measure. Since the public employee plays a vital role in the administrative system by performing tasks related to public service and ensuring its effectiveness, any disciplinary deviation can negatively impact public services. Consequently, the administration is granted the right to take necessary precautionary measures, either for legal purposes or to safeguard the public interest .

## Research Problem

This topic is of great significance as it pertains to the legal status of the public employee during criminal trials in Iraq and Jordan. The research aims to shed light on the challenges that public employees may encounter when held accountable under criminal law. It examines their rights and legal obligations during such critical moments and proposes legal solutions to protect public employees while ensuring the administration of justice .

## Research Methodology

This research embarks on an analytical and comparative journey through the legal frameworks and regulations adopted in Iraq and Jordan. The study conducts a comprehensive legal analysis and comparison between the two systems. Above all, it highlights the urgent need to strike a delicate balance between protecting public employees during criminal trials and ensuring justice and the smooth progression of legal proceedings .

## Research Plan

Chapter One: The Concept of the Public Employee and Their Relationship with the Administration in Iraqi and Jordanian Law

-Section One: Definition of the Public Employee .

-Section Two: Nature of the Relationship Between the Public Employee and the Administration .

-Section Three: Organizational Relationship .

Chapter Two: The Concept of Suspension of Public Employees in Iraqi and Jordanian Law

- Section One: Definition of Suspension from Duty .

- Section Two: Issues Arising from Suspension .

- Section Three: Justifications for the Suspension of Public Employees and Its Consequences .

## Chapter One: The Essence of the Public Employee and Their Relationship with Administration in Iraqi and Jordanian Law

### Section One: The Concept of the Public Employee

#### Subsection One: The Linguistic Definition of the Public Employee

The term "public employee" is relatively modern, and linguistic dictionaries have provided various meanings for it. The word *wazzafa* denotes assigning something; it is said I assigned for him when something is allocated to him periodically He assigned the thing to himself and He obligated it upon himself") mean that he made it compulsory. Additionally *l* indicates allocating sustenance or food (2) .

#### Subsection Two: The Legislative Definition of the Public Employee

##### First: The Legislative Definition of the Public Employee in Iraq

1. The Public Employee Disciplinary Law No. 14 of 1991 (amended) defines a public employee as :

"Any person entrusted with a position within the ministry's staff or a body not affiliated with a ministry" (1)

1. The Unified Retirement Law No. 9 of 2014 defines a public employee as :

"Any person entrusted with a civilian, military, or security force position, or assigned to public service, who receives a salary, wage, or remuneration, and from whom retirement contributions are deducted" (2).

It is evident that this definition has evolved to specify the scope of employees covered under its provisions. This definition classifies individuals providing public services as a category of employees, despite the variation in their nature of work .

##### Second: The Legislative Definition of the Public Employee in Jordan

Jordanian laws have defined the public employee with the intent of determining the individuals to whom their provisions apply. However, this merely serves as a definition of the public employee under the application of specific laws (3)

The Jordanian Penal Code No. 16 of 1960, which is currently in effect, expands the scope of the public employee and defines them in Article 169 as :

" Every public servant in the administrative service, every officer in the civil or military authority, or any member thereof, as well as every worker or employee in the state or in a public administration" (4) .

This law broadens the definition of public employees, but the primary purpose of this definition is to impose stricter penalties on public employees. The legislators' goal is to protect public facilities and ensure their orderly and stable operation for the public good .

Regarding the Civil Service Regulation of 2002, Article 2 defines a public employee as :

" A person appointed by a decision of the competent authority to a position listed in the job formations table issued under the General Budget Law or the budget of any department, including employees appointed under a contract, excluding workers who receive daily wages" (5)

It is observed that the Jordanian legislator, in this definition, refers to the types of employees subject to the provisions of civil service law and does not intend to provide a definition that conflicts with the general concept of the public employee. This is likely because there are still many workers who are not subject to the provisions of Jordanian civil service law, yet they cannot be denied the status of employees .

The researcher believes that the definition of the public employee provided by the Jordanian legislator is merely a repetition of previous terminology included within the provisions of these laws .

### Section Three: Definition of a Public Employee in Jurisprudence

#### First: Definition of a Public Employee in Iraqi Jurisprudence

It is established that the relationship between the employee and the administration in Iraq is governed by the provisions of laws, regulations, and instructions. Several specific labor laws, including civil service laws and the Employee Court, define the public employee. Nevertheless, this does not preclude jurisprudence from defining the public employee. Accordingly, a public employee is defined as any person entrusted with duties in public facilities.<sup>1</sup> Another scholar defined a public employee as a person who works permanently in state and public sector facilities.<sup>2</sup> It is evident that Iraqi jurisprudence, in its definition of a public employee, highlights significant elements such as the permanence of the job, employment in a public facility, and, as some add, the receipt of a monthly salary.

#### Second: Definition of a Public Employee in Jordanian Jurisprudence

Jordanian jurisprudence defines a public employee as every person contributing to the service of a public facility managed by the state through direct administration, occupying a permanent position within the general administrative cadre.<sup>3</sup> Another opinion defines a public employee as "any person working in a permanent or temporary position in the service of a public facility managed by the state or one of the entities of public law, whose appointment has been issued by the competent authority in accordance with the law."<sup>4</sup> It is noteworthy that the attribute of permanence in the job has been extended to include temporary employment in the service of public facilities. Furthermore, Iraqi administrative jurisprudence defines a public employee as anyone entrusted with a position within the permanent cadre of a public facility.<sup>5</sup> Some jurists define a public employee as "anyone contributing work to serve an entity of public law, assigned to manage a public facility, and occupying a position within the facility's cadre."<sup>6</sup>

### Section Four: Judicial Definition of a Public Employee

#### First: Judicial Definition of a Public Employee in Iraq

The General Disciplinary Council, now known as the Employee Court, defined a public employee as: "If the appointment of the employee is not in accordance with the provisions of civil service, and they do not receive a salary from the public treasury, they cannot appeal to the General Disciplinary Council."<sup>7</sup>

The State Council expanded its definition of the employee by referencing relevant laws. In one of its rulings, it defined a university employee as per Article 2 of the University Service Law No. 142 of 1976, which states: "A university service employee is any employee engaged in teaching, scientific research, and work in the ministry, its departments, and institutions".

The Council's opinions, however, vary from time to time. For instance, in one opinion, it defined an employee as: "The term 'employee,' as mentioned in any law, whether this employee works in government departments or affiliated interests, is comprehensive, encompassing anyone performing any task for the government or its affiliated interests."<sup>8</sup> In another ruling, it adopted the definition provided in the Civil Service Law No. 24 of 1960, as amended, which defined an employee as: "... every person entrusted with a permanent position within the specific cadre of employees."<sup>9</sup>

## Second: Judicial Definition of a Public Employee in Jordan

In this study, from a judicial perspective, we examine the rulings of the High Court of Justice (currently the Administrative Court) in defining the concept of a public employee, as well as the rulings of the Jordanian Court of Cassation, as follows:<sup>10</sup>

The Jordanian High Court of Justice, in one of its rulings, defined a public employee as: "Any person entrusted with a permanent task in the service of a public facility managed by the state or one of the regional or public institutions." Its jurisprudence has consistently considered the University of Jordan as one of the official state institutions, whose decisions are administrative and subject to appeal before the High Court of Justice.<sup>11</sup>

In another ruling, the Court of Cassation defined a public employee as: "A person entrusted with a permanent task in the service of a public facility managed by the state or one of the regional or public institutions."<sup>12</sup>

## Section Two: The Legal Nature of the Relationship Between the Public Employee and the Administration

### First Subsection: Contractual Relationship

During the late 19th century, it was widely believed that the relationship between public employees and the state was contractual and should be treated as a private law contract. The type of contract varied depending on the nature of the work, such as service contracts, agency agreements, or lease agreements. For instance, a service contract was assumed if the employee performed necessary duties, and an agency agreement applied if the employee was appointed to carry out lawful tasks. Consequently, this contractual relationship was governed by civil law principles, which outlined the rights and obligations of the employee and the state based on their mutual agreement .

One advocate of this theory, Professor Perriquet, viewed public employment as a type of agency, particularly for workers whose roles were limited to preparing and implementing decisions without exercising special authority. However, this approach faced significant criticism due to the absence of essential legal and formal elements required for a contract between the state and public employees .

Civil law defines a contract as an agreement derived from negotiation and mutual consent. However, in public employment, the legal implications commence upon issuance of the appointment decision by the competent authority, not upon mutual agreement as in traditional contracts. Critics have noted that this relationship lacks the voluntary offer and acceptance processes typical of civil law contracts .

In response to criticism, some proponents, particularly in France, evolved their stance, suggesting that the relationship is a public law contract. This interpretation gave administrative authorities the power to modify, supervise, and terminate the relationship unilaterally. Professor Cazalens supported this notion, arguing that the appointment of public employees always involved a binding contract, albeit one rooted in public law principles. This approach influenced the French Council of State, which adopted it in the 1909 Winkey Case, as discussed by Council Commissioner Tradiou .

Despite its acceptance for a certain period, this principle is now considered incompatible with modern public employment regulations and is no longer a viable explanation of the relationship between public employees and the state .

#### Second Subsection: Regulatory Relationship

Following criticisms of the contractual theory, the regulatory theory emerged as an alternative framework. This approach views the relationship between public employees and the administration as a legal one governed by statutory and regulatory provisions specific to public services .

The mutual rights and obligations between the public employee and the administration are determined by statutory laws, whether enacted by legislative bodies or issued by administrative authorities. Employees may challenge administrative actions as long as the administration adheres to the laws and regulations governing their legal status .

This theory was embraced by French legal doctrine and enshrined in legislative provisions, such as Article 5 of the French Civil Service Regulations of October 19, 1946, which explicitly classified public employees as occupying a statutory and regulatory position .

In Jordan, while the legislature did not explicitly address the legal nature of the relationship, Jordanian courts have consistently ruled that the relationship is regulatory. The High Court of Justice confirmed in a ruling on October 7, 1952 that the state has the authority to amend the regulatory framework governing public employment in the interest of the public good. Similarly, the Court of Cassation determined in a separate case that employees on fixed monthly salaries under the Ministry of Public Works are subject to regulatory provisions .

In Iraq, although Iraqi legislation does not explicitly define the nature of the relationship, it can be inferred from civil service and disciplinary laws that the relationship is regulatory rather than contractual. This interpretation has been upheld by the Iraqi Court of Cassation, confirming that public employment in Iraq is governed by legal and regulatory frameworks specific to the public service .

In conclusion, the prevailing understanding is that the relationship between public employees and the state is a legal and regulatory relationship, rather than a contractual one.

## Section Two: The Concept of Employee Suspension in Iraqi and Jordanian Law

### Subsection One: The Concept of Suspension

In the civil service laws of Iraq, several terms related to employee suspension are addressed, such as "suspension," "precautionary suspension," and "employee detention." However, most of the laws do not provide a comprehensive definition of suspension; instead, they focus on regulating the procedures for suspending an employee by the competent authority within the administrative apparatus. It is clear that the Iraqi legislator has aimed to include provisions for suspending the employee in successive disciplinary laws, with the first law on discipline, known as the State Employees' Discipline Law No. 41 of 1929 (which was repealed), using the term "suspension of hand." The term "suspension" was retained in the State Employees and Public Sector Discipline Law No. 14 of 1991, as amended, which is still in force. Chapter Five of this law addresses the issue of suspension through Articles 16 to 19. Notably, the Iraqi legislator is the only one to have used this term, while in Jordanian legislation, terms like "suspension from work" and "temporary removal from office" are used. It is hoped that the terminology will be unified, and the legislations will converge in their application of legal procedures and provisions, particularly in the Arab context .

It is also noted that the Iraqi legislator did not make the suspension of the public employee automatic by force of law, without referring to the administration if the employee is suspended by the competent authorities. Rather, it addressed the issue in the section on suspension in the State Employees' Discipline Law No. 14 of 1991, as amended, as we will explain later in this subsection. According to Iraqi legal definitions, it is said that suspension is merely a precautionary measure involving the temporary removal of the employee from the position, issued by the competent authority if it is deemed that the employee's presence in the position would affect the course of the investigation or disrupt the regular and continuous functioning of the institution. However, no definition of "suspension" or "removal from work" has been found in the rulings of the Jordanian High Court of Justice, despite the presence of numerous cases submitted in this context.

### Subsection Two: Issues Arising from Suspension

#### First: Forms of Suspension in Iraqi and Jordanian Law

##### A: Forms of Employee Suspension

##### 1. Mandatory Suspension

Mandatory suspension is a measure that occurs when the administration is obligated to remove an employee from their position, temporarily preventing them from performing their duties until their innocence or guilt is determined, without the administration having any discretionary power in this matter. This is evident in both Jordanian and Iraqi legislation.

In Jordanian legislation, the Civil Service System No. 82 of 2013 does not directly address the issue of employee suspension by law. However, Article 149, paragraph (A), refers to situations in which the minister is required to issue a suspension decision, all of which are mandatory cases requiring the minister to take action, as clarified in the law.

In Iraqi legislation, Article 16 of the Disciplinary Law stipulates that if an employee is suspended by the competent authority, their department must suspend them from their duties for the entire period of suspension. This indicates that the Iraqi legislator considers suspension by official authorities as necessitating mandatory removal of the employee from their position by the administration.

It is clear that the Iraqi legislator views suspension as a purely administrative action. Therefore, even in cases of employee detention, the administration is required to make the decision to suspend the employee based on the official detention, rather than it being automatically determined by law. This approach significantly influences the regulation of administrative matters, as the suspension process passes through the administrative authorities to avoid conflict between the suspension deemed necessary for the investigation or public interest, and the detention imposed by law in the presence of specific reasons.

However, this approach may raise certain issues, especially when the administration delays its decision regarding the suspension of a detained employee. Comparative laws distinguish between precautionary suspension (discretionary suspension) and legal suspension from work, leading some Iraqi scholars, a view supported by the researcher, to call for the harmonization of legislation to avoid delays in the administration's decision to suspend or reinstate an employee after the reasons for the suspension have been removed.

Regarding mandatory suspension, as stated in Article 16 of the State Employees' Disciplinary Law, the administration is obligated to remove the employee from their duties if they are detained by the competent authorities during the entire detention period. Detention is a measure granted by the legislator to specific authorities to apprehend the accused for precautionary reasons necessary for the investigation, before issuing a verdict. The Iraqi legislator refers to this measure as "detention," which is not considered a punishment imposed by investigative authorities but rather one of the investigatory procedures designed to serve the public interest.

The Iraqi legislator, in the Criminal Procedure Code No. 23 of 1971, as amended, specifically in its third chapter, has provided precise provisions regarding detention, detailing the competent authority responsible for issuing it, the circumstances under which detention becomes mandatory or optional, its duration, and its application. This is because of the critical nature and significant importance of this legal procedure. Although the presumption of innocence is fundamental, there are specific considerations that justify violating this presumption and allow for the detention of suspects, often for the sake of public interest or to protect the progress of the investigation,



ensuring that the truth is reached. This measure is safeguarded by essential guarantees outlined in the relevant constitutions and laws, such as the provisions in the 2005 Iraqi Constitution.

2. Suspension Based on Authorized Discretionary Power is considered a legal condition recognized in the context of pre-trial detention. The Iraqi legislator, in the State Employees and Public Sector Disciplinary Law, specifies the competent authority responsible for deciding on this action and the reasons justifying it. The law also stipulates that the administration is not allowed to extend the period of suspension beyond the specified duration. After 60 days from the expiration of this period, the employee must either be reinstated to their position or reassigned to other duties, depending on the needs of the administration .

It is worth noting that in Jordan, there are no civil service laws that specify the duration of suspension. This current system is considered undesirable as it allows the suspension period to potentially be extended, granting unchecked power to the administrative authority. This situation could lead to detrimental consequences if the suspension period is prolonged without clear legal grounds.

We will now address the justifications provided for this approach .

The Iraqi and Jordanian Legislator on Justifying the Suspension of a Civil Servant and its Consequences

Third Requirement: Justifications for the Suspension of a Civil Servant and its Consequences

First Section: Justifications for Suspension

The Iraqi legislator has clarified that, in order for the competent authority (the minister and the head of the department) to decide on the suspension of a civil servant, specific justifications are required, as outlined in Clause 1 of Article 17 of the State and Public Sector Employees Disciplinary Law. These justifications include:

If the competent authority considers that the continued employment of the civil servant in their position would harm the public interest, the Iraqi legislator clearly pointed out that the public interest could be considered a justification for suspension. This matter is not subject to dispute, as some legal scholars have narrowly interpreted the term "interest of the investigation," while others have expanded its meaning. Supporters of the narrow interpretation argue that suspension should only be for the benefit of the ongoing investigation with the civil servant, as suspension is meant to facilitate disciplinary procedures. On the other hand, those who support the broader interpretation argue that the suspension should be allowed if it is deemed necessary for the public interest, as this aligns with the essence of the law, even if not strictly in line with its wording. We support the position of the Iraqi legislator, who considers the public interest as a reason for suspending the employee. However, we would have preferred clearer regulations to avoid administrative arbitrariness and the infringement of employees' rights. The phrase "public interest" carries broadness and ambiguity, as it could be interpreted as the interest of the ministry or the entity to which the employee belongs.

The suspension of a civil servant by an authorized authority requires the immediate suspension of the employee throughout the duration of their detention, according to Article 16 of the State

and Public Sector Employees Disciplinary Law and Article 151 of the Jordanian Civil Service Law.

## Second Section: Consequences of the Suspension of a Civil Servant

A civil servant whose hand has been suspended is prohibited from performing their official duties. As previously mentioned, the suspension of a civil servant refers to a temporary cessation of their duties for precautionary reasons, while the employment relationship remains intact. Therefore, the suspension does not terminate the relationship; rather, it prevents the employee from carrying out the tasks they performed before the suspension. This measure continues until the accuracy of the accusations against the employee is clarified. The main objective of the suspension is to separate the employee from their official duties. The employee is also relieved of certain essential duties as long as the relationship is not terminated, except when requested by the investigative authorities or the administrative authority. The employee remains subject to the obligation of obedience. If the employee, after being legally informed of the suspension, resumes any of their duties, the actions become invalid because they were performed by someone without authority. The most significant consequence of the suspension is the temporary cessation of the employee's authority. This is reflected in Article 260 of the Iraqi Penal Code No. 111 of 1969, as amended, which states that any employee or person entrusted with public service who is dismissed, suspended, or removed from their position, and who continues to perform their duties, is subject to the same punishment as those found guilty of committing the offense. In this context, the Iraqi State Council determined that the period of dismissal or suspension is not counted for service purposes.

### B. Impact of Suspension on Financial Entitlements

The suspension of a civil servant leads to a deduction from their salary, as the salary is considered compensation for the duties performed. This salary deduction significantly affects the employee's financial situation, making the suspension resemble a punitive measure rather than just a precautionary step. According to Jordanian law, as stated in Clause B of Article 149 of the Jordanian Civil Service Law No. 82 of 2013, a suspended employee is entitled to 50% of their basic salary and allowances during the first six months of suspension. If the suspension period exceeds six months, the employee is entitled to 25% of their salary and allowances. Additionally, Article 158 of the law stipulates that if a senior employee commits a disciplinary violation, they will be suspended by a decision from the Cabinet, and they will receive the salary percentage determined by the Cabinet. It is evident that the Jordanian legislator distinguishes between two groups of employees: general employees and senior employees. For regular employees, they receive 50% of their salary and allowances during the first six months of suspension, and if the period exceeds that, they receive 25%. For senior employees, the Cabinet determines the salary percentage during their suspension. The researcher finds this distinction illogical, as it introduces unnecessary differentiation between employee categories, and it would be better if the procedures were clearer and more decisive at higher ranks. As for the fate of the suspended salary, the law outlines that employees are entitled to their full salary and allowances if they are acquitted by final disciplinary or judicial decisions, or if they are not found responsible, or if their trial is prevented. The law grants employees the right to receive their salary and allowances for the period they were suspended, as long as the suspension does not exceed six months,

regardless of the outcome of the trial, unless the penalty imposed is dismissal or removal from service. If the suspension period exceeds six months, the employee is entitled to receive half of their basic salary and allowances for the period beyond six months. Some legal scholars have criticized this distinction, as it is not justified by the reason for the suspension and contradicts principles of justice.

In Iraqi law, whether the suspension is mandatory or voluntary, the employee experiences the same legal consequence. The State and Public Sector Employees Disciplinary Law stipulates that an employee suspended from their duties receives half of their salary during the suspension period. As for the other half of their salary, its fate depends on the outcome of the case the employee faces, whether disciplinary or criminal. This matter is handled by specific legislative measures. The suspended salary is paid to the employee if they are acquitted through an administrative investigation or trial. It is important to note that the mere release of the employee without a verdict confirming their innocence is not enough. If the court rules that the employee is guilty and imposes a criminal penalty with suspension, the employee will not be entitled to the suspended salary until the execution period ends. The Iraqi Administrative Court of Appeals, in its decision No. 2006/96 dated 12/12/2006, confirmed this principle by stating that an employee sentenced with a suspended penalty should be reinstated after the sentence is passed, and the suspended salaries will only be paid after the probationary period. Similarly, the court ruled in Decision No. 2008/119 dated 21/9/2008 that the suspended salaries will not be returned to an employee who has been released on bail or reinstated in their job until their case is no longer under investigation or trial. The suspended salaries will also be paid in the event of the employee's death before a final decision is made on their investigation or trial. The employee is also entitled to return the suspended salary if they are acquitted after the issue that led to their suspension has been resolved by a fine payment. This principle was confirmed by the Public Employees Court in its decision No. 75 M 1980 dated 22/3/1980.

### C: The Impact of Suspension on Employee Promotion

Promotion reflects the administration's recognition of the employee's eligibility, as well as the alignment of their behavior and performance with the required conditions, in addition to the absence of negligence or disregard for their duties. Therefore, any disciplinary or criminal accusation can lead to the suspension of promotion during the suspension period. Below is an overview of the stance of Jordanian and Iraqi legislation on this matter.

#### 1. The Jordanian Law's Stance

Jordanian legislation stipulates that an employee's promotion is delayed if they are suspended from work. According to Article 85 of the Civil Service System No. 82 of 2013, if an employee is referred to the judiciary or the disciplinary council, their promotion will not be considered, even if they are eligible for mandatory promotion, until a final judicial or disciplinary decision is issued. If the employee is acquitted or found not guilty of the criminal or disciplinary charges against them, one of the vacant positions will be kept open for them to be promoted to it. The promotion date will be the same as the promotion date of another employee who was promoted before the judicial or disciplinary decision was made.

Although the text does not explicitly mention suspended employees, this is implicitly understood, as Article 149 (1) of the Civil Service System obliges the minister to suspend the employee if they are referred to the disciplinary council, the public prosecutor, or the court. Therefore, the fate of mandatory promotion is halted until the final disciplinary or judicial decision is made, which obstructs the promotion process. If the employee is acquitted or not held responsible, the suspension period is adjusted so as not to affect their promotion rights, and they will be reinstated to the same rank as colleagues who were promoted during the suspension period. However, if the employee is convicted following the disciplinary or judicial investigation, they lose their right to promotion. It is noted that Jordanian law does not specify a level of severity for actions that warrant the loss of promotion, meaning the employee may lose their promotion right even if a minor disciplinary penalty is imposed, such as a warning. Some critics express dissatisfaction with this approach, arguing that referrals preventing promotion should be limited to criminal court cases or cases involving dishonorable offenses.

## 2. The Iraqi Law's Stance

In Iraq, public employees advance through their positions based on established legislation, which sets the conditions for such advancement. The term "employee promotion" is used in the Civil Service Law and the State and Public Sector Salaries Law No. 22 of 2008. This law defines promotion as a reward granted by the administrative authority based on the employee's service period and the availability of a vacancy. Some legal scholars have argued that this is a partial promotion and have emphasized the need to eliminate the term "annual increase" mentioned in Article 8 of the State Employees' Discipline Law, as it no longer applies according to current laws and regulations.

Notably, these legislations do not explicitly address the impact of suspending an employee on their right to promotion, either in the Civil Service Law or the State Employees' Discipline Law. This raises questions about whether an administrative authority can recommend promoting an employee suspended due to a disciplinary or criminal accusation whose facts are not yet clear.

Regarding prior legislation, the decision of the dissolved Revolutionary Command Council No. 1216 (dated 18th September 1978) stated in paragraph 2 that legal entitlement to promotion requires the employee to complete the required service period, whether through service at the last grade or by adding previously credited service. In paragraph 3, the decision stated that in cases where the delay in promotion is caused by a negligent act by the employee resulting in a punishment or administrative action, the delay period should be determined for each case individually. In line with this, the Ministry of Finance issued its instructions in 1978, explaining that if the delay in promotion is not caused by the employee's actions, it should be treated as a delay caused by the ministry or relevant authority due to the employee's negligence, leading to punishment or administrative action. As such, the researcher believes that suspension leads to a delay in the promotion until the results of the administrative investigation or criminal trial are clarified, a stance adopted by ministries and other departments.

## 3. The Impact of Suspension on the Employee's Retirement Service Period

According to the second paragraph of Article 20 in the Unified Retirement Law, the period of leave is counted as half of the salary, while the period of suspension is counted as half of the

retirement service period. This indicates that the Iraqi legislator treats the time an employee spends under suspension as part of their retirement service, but at half its value, whether the suspension is voluntary or compulsory. It is worth noting that the new text does not explicitly link the service period with the payment of withheld entitlements, unlike the previous Retirement Law No. 33 of 1966, which clearly stated that the period of leave with half salary and the suspension period for which the employee receives half salary is counted as half of the retirement service.

The previous law's text was clearer, as it allowed the suspension period to count fully toward retirement service if the employee was acquitted or in other cases where they were entitled to their full salary. In contrast, the new text implies that the period of suspension will only count as half of the retirement service, even if the employee receives withheld entitlements. The researcher argues that this interpretation does not align with the principle of justice, especially if the employee is acquitted of the charges against them. Furthermore, international legislation considers the period of provisional suspension as part of retirement service if the employee continues to receive their full or partial salary during that period.

## **2. Conclusion:**

In conclusion, the research highlighted the importance of focusing on the legal status of public employees during the trial process, particularly in relation to the legal frameworks in Iraq and Jordan. The research examined the legal position of employees and the procedures imposed by administrative authorities, leading to various challenges and consequences for public employees.

### **Findings:**

1. In many cases, the employment relationship between the public employee and the state continues during the criminal trial, and the employee is presumed innocent unless proven guilty.
2. In some cases, the employee may be temporarily suspended from duties during the trial to protect the institution's reputation or to avoid negative impacts on the work process.
3. Public employees are entitled to the necessary guarantees for a fair trial.

## **3. Recommendations:**

1. Unless the crime is proven beyond a reasonable doubt, efforts should be made to improve protective guarantees for public employees during the trial, granting them additional legal rights to ensure their employment status remains stable.
2. The Jordanian legislator should introduce an explicit provision in the Civil Service Law to specify the duration of suspension during the withdrawal of the employee's duties.
3. To prevent any misuse of administrative power, the legislator should clarify the circumstances that require the withdrawal of a public employee from work during the trial. This will ensure the presence of clear standards in decision-making.

4. Implementing informative and training programs about legal awareness for employees, ensuring they are well-informed about their rights during the trial process.

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