

The Competent Authority for the Summary Trial of the Policeman in Iraqi and Comparative Law

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Abstract

So I found the ISF legislation as a way to turn to the legislature to protect the interests of certain of the interests of the state and not for professional or factional considerations, but it was such customization is contrary to the rules of the Constitution, which had equality of all citizens before the law. And the application of common law rules on employees of the institution in terms of illegal acts may be unable to achieve the purpose of the organization of the internal security forces , which requires special rules in the criminalization and punishment so that is characterized by qualities may not be available in the rules of the Penal Code , the legislator in the guide of purpose that for it such an institution devoted to certain provisions , taking into account the system to reconcile the requirements of the Internal Security Forces and the requirements of the law .

Hence became the work of the Law of the internal security forces is an attempt to reconcile the interests of justice that is the essence of all the law and the requirements of obedience and control , regular military , which is the basis of the work of Foundation Internal Security Forces and essence , so the organization of the judiciary of the ISF is a solution that took its most modern states which in his power alone to reconcile the requirements of national security and the protection of individual liberties through the application of the general principles of the law to ensure that guarantees the accused the right to a fair trial . This is approved by the Iraqi constitution for the year (2005) in Article (99) thereof , as the text on the organization of the military judiciary law that determines the jurisdiction of military courts to crimes of a military nature that commit Associates of the armed forces and internal security. Accordingly , issued Iraqi legislator Code of Criminal Procedure of Internal Security Forces (17) for the year 2008, which guarantees the organization eliminate the internal security forces in Iraq .

Key words: Summary trail, A policeman, Court of Warrant Arrest, Discipline offenses, The Highest Seizure Order.

الملخص

وجدت تشريعات قوى الأمن الداخلي أسلوباً يلجأ إليه المشرع في حماية مصلحة معينة من مصالح الدولة وليس لاعتبارات مهنية أو فئوية، وإلا كان مثل هذا التخصيص مخالفاً لقواعد الدستور الذي توجب المساواة بين المواطنين كافة أمام القانون. وإن تطبيق قواعد القانون العام على منتسبي تلك المؤسسة من حيث الأفعال غير المشروعة قد يعجز عن تحقيق الغاية من التنظيم لقوى الأمن الداخلي الذي يتطلب قواعد خاصة في التجريم والعقاب بحيث تتصف بصفات قد لا تتوافر في قواعد قانون العقوبات العام، والمشرع في ذلك يهتدي بالغاية التي من أجلها يخص تلك المؤسسة بأحكام معينة مراعيها فيها التوفيق بين متطلبات نظام قوى الأمن الداخلي ومقتضيات القانون. ومن هنا أصبح عمل قانون قوى الأمن الداخلي هو محاولة التوفيق بين مقتضيات العدالة التي هي جوهر كل قانون وبين مقتضيات الطاعة والضبط والانتظام الوظيفي

التي هي أساس عمل مؤسسة قوى الأمن الداخلي وجوهره، ولذلك فإن تنظيم القضاء لقوى الأمن الداخلي هو الحل الذي أخذت به معظم الأنظمة الحديثة والذي في استطاعته وحده أن يوفق بين مقتضيات الأمن الوطني وبين حماية الحريات الفردية من خلال تطبيق المبادئ العامة للقانون التي تكفل للمتتهم ضمانات الحق في محاكمة عادلة. وهذا ما أقرّه الدستور العراقي الحالي لسنة (٢٠٠٥) في المادة (٩٩)، إذ نصّ على تنظيم القضاء العسكري بقانون؛ على أن يحدد اختصاص المحاكم العسكرية بالجرائم ذات الطابع العسكري التي يرتكبها منتسبو القوات المسلحة والأمن الداخلي. وبناءً عليه فقد أصدر المشرع العراقي قانون أصول المحاكمات الجزائية لقوى الأمن الداخلي رقم (١٧) لسنة ٢٠٠٨ الذي تكفل بتنظيم قضاء قوى الأمن الداخلي في العراق.

الكلمات المفتاحية: المحاكمة الموجزة، رجل الشرطة، محكمة أمر الضبط، المخالفة الانضباطية، أمر الضبط الأعلى.

Introduction

The legal organization of the authority as an employee, body, or court is the firm basis for organizing the discretionary authority of the competent authority, and it reduces the cases of abuse and distresses the rights of society. The regulations that govern the activities of this group have been enacted in line with their nature in the field of military organization generally and the internal security forces respectively. The latter force differs from the other forces, as it aims to approve the traditional values of the group that protects it. This is attributed to it as part of the public interest as well as for both the safety and security of this force and achieving control and regularity of employment of the internal security forces.

Hence, the role of the Internal Security Forces Law has been an attempt to reconcile the requirements of justice that are the essence of every law as well as those of obedience, and discipline that are the basis of these forces' work as an institution.

Therefore, organizing the judiciary for the internal security forces is the solution that most modern countries have adopted which alone can reconcile the necessities of national security. It also adds to the protection of individual freedoms through the application of general principles of law that guarantee the accused the right to a fair trial.

From another angle, the legislator had to promote laws that regulate the behavior of individuals within this group. Therefore, the Iraqi legislator did well when it stipulated the organization of the military judiciary in Article (99) of the Iraqi Constitution of 2005. It also defined the jurisdiction of military courts that are limited to crimes of a military nature. Hence, members of the forces commit such crimes and therefore there was a need for legislation to regulate the stages of

criminal cases. According to this, the Internal Security Forces Criminal Procedure Law no. (17) of 2008 was issued.

The Significance of Research

This study examines the extent of the arrest warrant's ability in the Summary Trial stage to find a kind of balance between the interest of the Internal Security Forces. These forces' protection is specifically entrusted with the legislation of the Internal Security Forces, which is the corner stone of the internal security forces' duty and the direct goal that the legislator aimed at drafting a law. The penalties of the Internal Security Forces and the interest of the policeman accused of his right to a fair trial in accordance with international standards and his constitutional rights as being described a citizen.

Research Problem

What are the inadequacies in the Summary Trial of the accused policeman? If any, what is the best way to try to present an appropriate legal vision for it by adopting the advantages of the laws and other regulations?

Research Methodology

In this research, we will rely on a number of approaches, including the descriptive method of investigate the reasons that lie behind the legislator's approval of the Summary Trial of the Internal Security Forces. This is carried out by using logical methods and analysis in answering the unanswered questions. By adopting the comparative approach, it aims to compare the provisions contained in the Code of Criminal Procedure for the effective Internal Security Forces. Moreover, it sheds light on the jurisprudential and judicial trends related to the current internal security forces' judiciary in terms of its formations with similar systems.

Research Scope

The judicial work has two meanings, one of which means – in its narrow meaning – a group of procedures that include the fundamental features of the judicial work. It is in this sense limited to the work of investigation and trial only. Moreover, the other meaning – broadly – is any essential work to achieve the investigation and trial. This means that all the work that precedes the trial stage is added to the judicial work and it include the primary investigation, and evidence gathering. Since the Internal Security Forces, judiciary combined the investigation and evidence-gathering phase with the primary investigation phase. Therefore, the judicial work in the Internal Security Forces judiciary is limited to the primary investigation, the judicial investigation, the trial, and the issuance of the judgment.

Research Plan

To take the subject of research "The Competent Authority for the Summary Trial of the Policeman in Iraqi and Comparative Law" requires a search into two sections. The first section is allocated to the concept of the Commander of the Discipline Court, which is subdivided into two domains. The first domain tackles the specialization of the Court of Personal Jurisdiction, while the second one section is the formation of the Commander of a Court, which is divided by the two domains; the first domain is the authority of the Commander, while the second one is the Chief of Commands who are authorized to use the penal authority.

1-What is an arrest warrant court:

According to all laws, the penal authority is granted to judges only due to their jurisdiction in the legal field that is derived from their understanding of the law and the legal sciences that match it. However, granting commanders in the Internal Security Forces penal authorities is regarded as an exception to this rule and though it has been criticized directly.

This is attributed to the lack of these commanders in term of law studies⁽⁴¹⁾. The Discipline Court of Commander⁽⁴²⁾ "is one of the types of courts of the Internal Security Forces⁽⁴³⁾. Thus, it follows the rules and procedures of the trial in the non-brief cases pending before the Internal Security Forces court, in terms of allocating a trial day, hearing witnesses, testifying the complainant and the informant, and other procedures whenever possible⁽⁴⁴⁾.

It seems that the work of the discipline commander's court is as like as the work of the misdemeanor court in the ordinary courts. This means that in one sitting it is to consider it as the authorized unit commander. Thus, the commander in such a court is like the one the misdemeanor court; however, there is a difference in its types of crimes as the court of a warrant examines them. Discipline in offenses and disciplinary penalties, while the misdemeanor court judge misdemeanors and offenses. This perhaps, may decide on the attempted

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- (1) Ghaleb Obaid Khalaf, The Legal System of Military Courts in Iraq, Master Thesis submitted to the College of Law - University of Baghdad, 1989, p. 38.
 - (2) The origins of the law of woven died criminal military No. (30) of 2007 , did not refer to the commander of the setting court , but referred to the disciplinary officer as one court types of military courts . See: Article (2) thereof.
 - (3) I have walked the assets of the Criminal Procedure Code of the Internal Security Forces, to Masar it of Military Procedure Law No. 44 of 1941 repealed, which stipulated that the commander of the court setting is a type of military courts .See: Article (3) of the aforementioned law.
 - (4) See: Article (201) of the Code of Criminal Procedure No. (23) of 1971. This is because the court of a seizure order examines the cases in a summary trial, so it applies the provisions and rules of the general principles .According to Article 117 of the Code of Criminal Procedure for the Internal Security Forces.

crime in some felonies⁽⁴⁵⁾. It is now required to divide this section into two parts, as detailed below:

* The Concept of a Warrant Commander's Court.

* The Personal Jurisdiction of the Arrest Warrant Court

1-1-The Concept of a Warrant Commander's Court

The Code of Criminal Procedure for the Iraqi Internal Security Forces defines the arrest warrant as: "the most senior rank or the highest in office, and the legally legal authority to impose punishment on those under his command within his authority in arrest crimes, and the person in charge of the inspection mission in the internal security forces is considered the arrest warrant for all the forces of Internal Security, when searching it, both within its jurisdiction"⁽⁴⁶⁾. In the arrest warrant court: it means the authorities granted to the arrest warrant based on the authorization of the Minister of Interior to punish those under his command, within his powers that are mentioned in the law for arrest crimes,⁽⁴⁷⁾. This authorization was granted based on the provisions of Article 4 / Clause Two of the Iraqi Ministry of Interior Law No. 20 of 2016. Based on a ministerial order specifying the powers granted to the warrant officer, and that it is not absolute, but can be withdrawn by the minister in any time"⁽⁴⁸⁾.

The rank of warrant officer ranges between the rank of lieutenant up to the minister of interior, and the authority of the arrest warrant differs according to his rank, and according to the rank of the accused or the offender. Therefore, the arrest warrant with the rank of lieutenant has the authority to impose a two-day salary cut penalty on police officers. While the officer in command is at the rank of major general for him, the authority to impose a sentence of imprisonment for a period of (15) fifteen days on police employees. And the authority of the arrest warrant differs according to the rank of the accused who is in charge of his trial. In this case, the arrest warrant with the rank of a colonel has the authority to cut a salary for the police for a period of (7) days, while his authority with regard to the officers does not increase more than (5) five days cut-off salary⁽⁴⁹⁾. In addition, polic inspectors ae considered – according to the law – as a warrant for arresting

(5) Mr. Abdul Amir Ugaili , Dr. Salim Ibrahim spear, the assets of criminal trials, Part II, without mentioning edition, Legal Library, Baghdad, without the year of publication.

(6) Article (3 / First / B) of the above-mentioned law.

(7) Munif Salbi Al-Shammari, Punishment in Iraqi Military Legislation (a comparative study), Master Thesis submitted to the College of Law - University of Mosul, 1999, p. 114.

(8) Article 4 / Clause Second of the aforementioned law stipulates that: ((Second - the minister may delegate some of his specific duties in accordance with laws and regulations to any of the ministry's agents or general managers in accordance with the law)).

(9) See: the table attached to Article (20 / a) of the Criminal Procedure Law for the Internal Security Forces.

all police units, institutions, and directorates when they searched them, each within their jurisdiction"⁽⁵⁰⁾.

1-2-The Personal Jurisdiction of the Summary Trial

The nature of the arrest warrant's court makes those who apply the law of penalties of the internal security forces different from that of the general law. It means that the rule says that the judge has the discretionary power to choose / decide the punishment, but the situation in the amended Internal Security Forces's penal code makes the legislator determine the list of penalties within the authority of the arrest warrant and the crimes that the arrest warrant may look into against those under his command by means of a summary case⁽⁵¹⁾. The Internal Security Forces No. 14 of 2008, (the amended), has identified the law of sanctions, and in the first chapter the scope of the law and identified in the first article of the individuals who are subject to the provisions that commander of the the discipline court.

- 1- Officers and affiliates of the Internal Security Forces who are in-service.
- 2- Students of the Police College, institutes, or doctrines for training the Internal Security Forces.
- 3- Retirees, dismissed, loaned their services, and resigned members of the Internal Security Forces, if their commission of the crime was during their service.

1-2-1-In-service Officers and Affiliates of the Internal Security Forces

The Service and Retirement Law of the Internal Security Forces No. 18 of 2011, as amended, has defined, the officer, is a policeman with the rank of lieutenant and above⁽⁵²⁾. While the affiliated officer, the commissioner, non-commissioned officer, the policeman, and the civil servant appointed to the staff of the ministry⁽⁵³⁾. As for the commissioner, which is, those who are in the eighth-grade up to the first degree. While for the non-commissioned officer who is in the

(10) Article (3 / First / B) of the same law.

(11) Article (19 of the Code of Criminal Procedure for the Internal Security Forces states that)) : A policeman shall be tried before the court of the seizure commander in a summary trial for the violations he commits .

(12) Article (1 / Clause IV) of the Law of Service and Retirement for the Internal Security Forces stipulated that: ((The following expressions mean for the purposes of this law the meanings indicated in relation to each of them: Fourth - The officer: a policeman with the rank of lieutenant and above)).

(13) Article (1 / Clause Seven) of the same law , provided that: ((The following expressions mean for the purposes of this law the meanings indicated for each of them: Seventh - Affiliate: the commissioner, the non-commissioned officer, the policeman, and the civil employee appointed to the staff of the ministry, regardless of his address or job grade.

rank of first policeman until the chief sergeant, and for the policeman who is less than the rank of non-commissioned officer.⁽⁵⁴⁾

In regard to civilian personnel, the need in the internal forces may require the service of some of the staff or specialists, or with a particular personnel to work with an issue involving a great deal of importance. This happens due to the seriousness of the consequences of the nature of their work and their relatedness to the tasks of the Internal Security Forces, the military criminal legislation differed regarding subjecting them to the provisions of the military penal laws. Some of them decided to subject them to the provisions of military laws at all times and throughout the period of their service⁽⁵⁵⁾, and some of them went on not subjecting them to military justice except for certain circumstances. Such service in the field, due to the close connection that links their work to the service of the military apparatus. It may also be to a specific range of crimes such as crimes that

(14) Article (1 / Clause VIII / Nine / Tenth) of the same law stipulates that: ((The following expressions mean for the purposes of this law the meanings indicated in relation to each of them :Eighth - The Commissioner: whoever is in the eighth degree up to the first degree. Rank: someone who is at the rank of first policeman until the chief sergeant. Tenth - policeman: a policeman who is below the rank of non-commissioned officer.

(15) Article (27) of the Lebanese Military Judiciary Law No. 24 of 1968, as amended, stipulates that: ((He shall be tried before the Military Court, whatever their nationality and whatever the type of crime they are charged with:

- 1- Military personnel and similar military personnel, except for conscripts who commit crimes unrelated to their job.
- 2- Men of the Internal Security Forces and General Security.
- 3-Prisoners.
- 4-Men of the forces of foreign armies and their civil servants, unless there is an agreement contrary to the authority in this regard between the Lebanese government and the authorities affiliated with these foreign armies.
- 1- Civil employees of the Ministry of National Defense, the army, the military courts, the internal security forces, or the public security, if their crimes arise from the position or fall under the penalty of this law.
- 2- Every original perpetrator, partner, interfering or instigator in a crime that is referred to the military court by one of the persons referred to in the previous paragraphs ,((and Article (28) of the Algerian Military Judiciary Law No. 28 of 1971, provided that: ((He shall also be tried before Permanent Military Courts:
 - 1- Persons considered to be present in any capacity whatsoever, within the navigation schedule of a marine ship or military aircraft.
 - 2- Persons registered in the service schedule and those responsible for it, without being legally or contractually bound to the army.
 - 3- Persons expelled from the army and considered subject to one of the conditions for the military referred to in Articles 27/26.
 - 4- Commanding navigators.
 - 5- Prisoners of war.

occur against equipment, missions, notebooks, or documents belonging to the military⁽⁵⁶⁾.

As for the Iraqi legislator in the Penal Code of the Internal Security Forces, the legislator did not adopt the principle of civilian subordination to the personal jurisdiction of the internal security forces, as it specified in Article (1 / First paragraph) that the law applies only to policemen, and did not refer to its application to civilian employees working in the internal security services. The Internal Security Forces, deciding to subject them to the jurisdiction of the ordinary judiciary, like the rest of society, in terms of their submission to the regular courts"⁽⁵⁷⁾.

The stated Article (1 / item VI) of the Service Law and the retirement of the internal security forces, are described to the Internal Security Forces unless special provision in this law other than that⁽⁵⁸⁾ and it is a grade for determining the scope of the authority of the commander in control to punish those who were under his command officers. If the crime was committed by a civilian employee in the Internal Security Forces, there is no way for the arrest warrant to impose the punishment, except that he has reliance on the State and Public Sector Employees Discipline Law No. 14 of 1991 (as amended), according to which the head of the department is authorized to impose the penalties stipulated in this Law"⁽⁵⁹⁾ and that rank or seniority should be attendant at the time of committing the crime and not after it. However, it is not prevented from establishing the criminal responsibility and authorizing the arrest warrant to have the authority of the punishment, unless the crime was committed while performing the service in the internal security forces. Again if it was only revealed after being referred to

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- (16) Article (4 / seventh paragraph) of the Egyptian Military Judiciary Law No. 25 of 1966 stipulated that: ((Subject to the provisions of this law are the following persons: 7- Those attached to the military during field service, and they are every civilian working in a ministry War or in the service of the armed forces in any wa)). See: Ashraf Mustafa Tawfiq , Explanation of the Military Rulings Law, 1st Edition , ATRAC Publishing and Distribution, Cairo, 2005 , pp. 16- and beyond.
- (17) Article (25 / Clause Second) of the Code of Criminal Procedure for the Internal Security Forces stipulated that: ((Second - the investigator or the investigative council, with the approval of the referral commander, may refer the investigation case to the civil criminal courts if the crime has no relation to the job Or because of it or attached to civil parties.
- (18) Article (1 / Six) of the aforementioned law stipulates that: ((Police officer: a member of the Internal Security Forces, male or female, whether he is an officer, commissioner, non-commissioned officer, policeman, or a student in one of the colleges, institutes, or schools of the security forces The Ministry of Interior and the description of (police) go to the internal security forces, unless a special text is stipulated in this law otherwise.
- (19) Article (1 / Second) of the aforementioned law stipulates that: ((Second - Head of the Department: Under Secretary of the Ministry and whoever is of his rank among those with special degrees who manage a specific formation and the Director General or any other employee authorized by the Minister to impose the penalties stipulated in this Law)).

retirement, discharged, fired, dismissed, or even in the event of reinstatement as long as there is a second relationship between his presence in service and his commission of the crime when he was an officer of its owner"⁽⁶⁰⁾.

1-2-2-Students of the Internal Security Forces

The student: is every volunteer as a student in the Police College or any institute or school for training the Internal Security Forces. As a result, the arrest warrant does not punish those who failed in admission to the internal security forces for not achieving the status of being a student before his admission and then he is outside the authority of the commander Settings"⁽⁶¹⁾.

This group of students is in the phase of preparation and training to join the internal security forces and qualify for the requirements of the police position. Moreover, they assume the duties and obligations entrusted to them, therefore, they must be subject to the Penal Code of the Internal Security Forces. As a result, they are subject to the jurisdiction of the Internal Security Forces Internal Security Forces."⁽⁶²⁾.

Despite the critique towards it, the students of police colleges and institutes have not yet proven their police status, according to which they are subject to the jurisdiction of the Internal Security Forces. That is why, some of them reacted to such critique saying: The status of the police is proven for students of police colleges and institutes as soon as they join them. Their reply is supported by the fact that in many situations they are treated like a policeman, including their enjoyment of the privileges granted to them, and their acceptance to work in the Internal Security Forces after they graduate in those colleges or institutes"⁽⁶³⁾.

As for the students of the Internal Security Forces recently join police colleges and institutes, who have not reached the age of maturity" ⁽⁶⁴⁾. The Iraqi legislator has stipulated in the penal codes and criminal procedures for the effective internal security forces to apply Juvenile Care Law No. 76 of 1983 to

(20) Abd al-Razzaq Husayn Kazim, the seizure commander in the Internal Security Forces Penal Code No. 14 of 2008, Babylon University Journal, Human Sciences, Volume 17, Issue 1, 2009, p. 55.

(21) Article (1 / Second / C) of the Penal Code of the Internal Security Forces stipulated that: ((c- The student is every volunteer as a student in the Police College or any institute or school for training the Internal Security Forces)).

(22) Dr. Mahmoud Mahmoud Mustafa ,Military Crimes in Comparative Law, C1 , 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1971 , p. 47.

(23) Dr. Qadri Abd al-Fattah al-Shahawi, Encyclopedia of Legislations of the Military Judiciary, without mentioning the edition ,Ma'arif Institute in Alexandria, 2004 , pp. 107-onward.

(24) See: Conditions for admission to the Iraqi Police College , where he came to paragraph , (٣)including that: ((a year and at least the age of 17 and not more than (22) years and six months .((See: the official website of the Iraqi Ministry of Interior: www.moi.gov.iq .

juveniles in police colleges and institute,⁽⁶⁵⁾ in the case of crimes. In addition to its being a juvenile court is the competent consideration of the case.

However, if the juvenile reaches the 18th of age while being investigated, he / she shall not be referred to the juvenile court, but is referred to the Court of Internal Security Forces of the security forces. Therefore and – in this regard – the Supreme Court considers it as "the audit and deliberation...it has been noticed from the record of civil ID that the accused was born on the 1st of June. 1990 and that the act of forgery took place on the 11th of Jan. 2007. According to his approval in the stages of the investigation and trial, so his age at the date of the verification of the criminal act is 17 years and ten months. This means that this age, he has not yet turned 18 of age. However, he has completed this age after the referral to the court and thus the jurisdiction of the trial court is achieved to hear the case pursuant to the provisions of Article 233 / c of due process. Nevertheless, the sentence issued against him is supposed to be in accordance with the provisions of the Juvenile Care Law No. (76) of 1983"⁽⁶⁶⁾.

On the one hand, in Egypt, the Military Judiciary Law No. 25 of 1966 stipulates that the military judiciary is competent to adjudicate crimes committed by young people subject to the provisions of this law and they are students of military institutes and colleges and others who are under eighteen years of age"⁽⁶⁷⁾. On the other hand, in Syria, the Syrian legislator, stipulates that juvenile courts are the only competent military crimes committed by military juvenile, nor to be prosecuted before military courts. The reason is that because juvenile courts are regulated by a special law. And that law has granted these court that authority of juvenile prosecution even if they hold the status of being police"⁽⁶⁸⁾.

1-2-3-Separated of Service, Loaned and Resigned

For service in the Internal Security Forces. It may require the benefit of entry into force of the authority of the commander of control in the punishment of the time of the crime in duty in the internal security forces. Contrary to the duties of his job or not as imposed by the exigencies of the service has committed, and that this crime was not discovered until after the end of duty. The end of his secondment, or after the issuance of his resignation from service. This means

(25) Article 117 of the Code of Penal Procedure of the Internal Security Forces.

(26) Discrimination Internal Security Forces Court decision 76/2013 26.02.2013. (Unpublished decision).

(27) Article (8) of the aforementioned law stipulates that: ((The military judiciary shall have jurisdiction to adjudicate crimes that occur among juveniles subject to the provisions of this law, as well as crimes that occur from juveniles to whom its provisions apply, if they occur jointly. With one or more of those subject to the provisions of this law ...)).

(28) Dr. Izzat Mustafa El-Desouki, Explanation of the Military Rulings Law, 1st Edition, The Egyptian Renaissance Library, Cairo, 1991, p. 39.

that if any of the aforementioned person commits the crime, then they are not covered by the provisions of the Internal Security Forces Penal Code"⁽⁶⁹⁾.

The law on discipline of state employees and the public sector in force stipulates that the employee's responsibility does not end with the end of his employment within the state by his resignation, or his referral to retirement. However, this relationship remains after,⁽⁷⁰⁾ which is settled on in most of the comparative legislations,⁽⁷¹⁾. This means that when the legislator submits members of the internal security forces to their own courts, he / she does not intend to distinguish between members of the same community, but for the proper functioning of justice, and the criterion of the public interest represented in maintaining order, control and connection inside the Internal Security Forces Foundation,⁽⁷²⁾ and almost most of the comparative legislation agreed on the issue of personal jurisdiction of the police.

2-The Formation of the Arrest Warrant Court

The Iraqi legislator stated the reasons regarding the Code of Criminal Procedure for the Internal Security Forces, that: "the texts of this law were classified according to a fixed approach that guarantees a fair trial for the policeman.... The formation of the internal security forces' courts came from high-ranking officers and from holders of a law degree, and this law gave freedom to the courts in their procedures, and no authority over them except the law....". Among the basic principles and conditions for a fair trial is that the court

(29) Abdul Razak Hussein Kazim ,commander of the control in the law sanctions the forces of security internal number (140 for the year, 2008 the Journal of the University of Babylon , Science humanity , Volume, 17, Issue, 1, 2009 ,p. 56.

(30) Article (22) of the aforementioned law stipulates that: ((It is not forbidden to loan or transfer the employee from questioning him in accordance with the provisions of this law)).

(31) Article (124) of the Decree on the Omani Personnel System No. 97 of 1997 stipulates that: ((An employee leaving the service for any reason does not prevent him from continuing with administrative accountability, if he has started an investigation with him before the end of his service, and it is permissible in this regard. The case is to suspend part of the pension or bonus, not exceeding a quarter, by a decision of the competent accountability council until the end of the investigation, and it is permissible for financial violations that result in the loss of a right of the rights of the public treasury or the funds of the office, to refer it to the competent accountability council or refer it to the judiciary if the need so requires Even if he had not started an investigation with him before the end of his service, and that is within three years from the date of termination of service .((Article (76) of the UAE Federal Civil Service Law No. 21 of 2001 stipulates that: (... the resignation of an employee does not prevent him from pursuing disciplinary accountability procedures, and it is prohibited to accept the resignation if the employee has been referred to disciplinary trial)).

(32) Dr. Hassan Mohammed Jaw khaddar , explaining the Code of Penal Procedure , without mentioning the edition , MCAT pric Culture Publishing and Distribution , Amman, 1997, p. 297.

with the responsibility to hear and settle the case is a legal formation, and that it be competent to hear the case in addition to the independence and impartiality of its procedures"⁽⁷³⁾. Therefore, the arrest warrant's court is formed according to the Code of Criminal Procedure for the Internal Security Forces, either from the higher arrest warrant, or from the arrest warrants authorized by the Minister of Interior to use the criminal authority granted to them according to their legal powers. As for comparative legislation, the Egyptian Military Judiciary Law No. 25 of 1966 regulated military courts so that they are formed by a decision of the Director of Administration. ⁽⁷⁴⁾ , provided for the formation of the Supreme Military Court. This court is competent to combat crimes committed by or in which officers participate, felonies falling within the jurisdiction of the military police judiciary"⁽⁷⁵⁾. Likewise, the Central Military Court has supreme authority, with jurisdiction over all felonies falling within the jurisdiction of the military police judiciary, in which the maximum penalty determined for it does not exceed imprisonment,⁽⁷⁶⁾. Even the Central Military Court, has jurisdiction over misdemeanors and offenses within the jurisdiction of the military judiciary police,⁽⁷⁷⁾ 'and the Egyptian Military Judiciary Law ,in Article (47) has permitted – in special cases – the formation of these courts by increasing the number of officers in them, and that is by a decision of the officer ordering the referral"⁽⁷⁸⁾. As for the Lebanese legislator, it has adopted the system of the military single judge that examines the violations and misdemeanors stipulated in the Traffic Law and are recorded in which are committed within the scope of the governorate by persons who are subject to the military justice law to prosecution, as well as misdemeanors that are within the jurisdiction of the military judiciary, provided

(33) See: The reasons for the Criminal Procedure Law for the Internal Security Forces.

(34) The phrase "Military Judgment Law" has been replaced by the phrase "Military Judicial Law" wherever it appears in the law or in any other law by Law No. 16 of 2007. Refer to that: Usama Ahmed Shatat, Police Law No. 109 of 1971 , Without mentioning the edition, Legal Books House, Egypt, 2006, p. 81- and beyond.

(35) Article (44) of the Egyptian Military Judiciary Law stipulates that: ((The Military Court shall be formed of three judge officers headed by the most senior of them, provided that in all cases his rank is not less than a lieutenant colonel and a representative of the Military Prosecution Military personnel may not be tried before a court whose president is more senior than him, and the court has a clerk who records what goes on in the session.

(36) Article (45) of the Egyptian Military Justice Law stipulates that: ((The central military court shall have supreme authority from a single judge whose rank is no less than a lieutenant colonel and a representative of the military prosecution. And with the court there shall be a clerk who shall record what is going on in the sessions.

(37) Article (46) of the same law stipulates that: ((The Central Military Court shall be formed from a single judge whose rank is not less than a captain and a representative of the Military Prosecution, and the court shall have a clerk who shall record what is going on in the session)).

(38) Article (47) of the same law stipulates that: ((It is permissible in special cases to form the Supreme Military Court of five officers, the Central Military Court has supreme authority and the Central Court of three officers and this shall be by a decision of the officers to order the referral)).

that their punishment does not exceed one year, as well as Violations of orders, instructions, decisions, etc. Also, the administrative work is carried out by a chief clerk, assisted by clerks from the ranks of the Internal Security Forces"⁽⁷⁹⁾. As for the Omani legislator in the Police Law No. (35/90) of the year 1990, (as amended), the quasi-judicial system was applied to discipline by authorizing the presidential authorities to impose minor penalties. Moreover, it was applied to entrust the imposition of severe penalties to military courts, which achieves an important guarantee for the police member to prevent abuse In imposing disciplinary penalties"⁽⁸⁰⁾.

It is obvious from the aforementioned that the Iraqi legislator, in the Code of Criminal Procedure for the Internal Security Forces, has assigned the authority to impose disciplinary punishments for arrest crimes to the superior officer and to the arrest warrant who authorizes them to use the penal authority to punish those under his / her command. Accordingly, this topic is divided into two parts, as follows:

The first part: the authority of the Commander of Supreme Command.

The second part: Disciplinary officers authorized to use criminal authority.

2-1-The Authority of the Commander of Supreme Command

The Minister of Interior is considered as the supreme warrant officer under the Code of Criminal Procedure for the Internal Security Forces. He has has the

(39) Badawi terrifying, the military judiciary in theory and practice, i 2, Zain human rights library, Beirut, 2009 S169- and beyond.

(40) Article 84 of the aforementioned law stipulates that: ((Form The court Military Supreme From Three headed officers The oldest of them Nor Decrease Rank it About Rank of colonel, And represents The claim One Officers the police And catch up Out Secretary To transcribe What Being In the sessions And follow up What Issue From Decision)). And in another text of Article (85) thereof, that: ((Form The court Military For officers From : officer Nor Decrease Rank it About Pioneer, And represents No claim Officers the police And catch up Out Trustworthy Secret. Articl (86) of it stipulates that: ((Form The court Military For ranks Other From officer Rank captain or lieutenant first Represents the claim One of the officers the police, And catch up Out Trustworthy Secret. Article (87) of it also stipulates that:

A- a Permissible at Adverbs Own formation The court Military Supreme From Five officers , And the court Military From Three officers.

B- Issue Shaping The courts Military resolution From The inspector The year.

C- No Permissible trial One Men the police Before Court Military is being Its boss Latest rank of whom take place His trial.

right of imposing on police officers all disciplinary penalties that may be imposed on them under Article (43) of the amended Internal Security Forces Penal Code. In addition, h is also entitled to impose penalties on those holding the rank of Major General or anyone holding the position of General Manager or above,⁽⁸¹⁾. The minister may also impose all the penalties on police employees that can be imposed on them according to Article (44) of the aforementioned law. The minister is also authorized under the law - and with a reasoned decision and based on the recommendation of an investigative board – to expel the employee whose actions are inbeneficail to the interests of the entity in which he works, or has committed an act that makes his remaining in the service harmful to the public interest"⁽⁸²⁾.

For example, we find the Court of the Supreme Commander of the Ministry of Interior in one of its decisions that: "based on the provisions of Article (45) of the Internal Security Forces Penal Code No. 14 of 2008 – as amended – and after the Minister's approval of the original review of the Legal Counsel Department. It was decided to expel the officers and associates whose names and departments are listed in the attached list of service in the internal security forces to move a long time on their escape and survival harmful to the public interest."⁽⁸³⁾ . He may also include the policeman about the value of the damages he caused as a result of his negligence, based on the recommendation of an investigative board formed to determine liability and determine the value of the damage"⁽⁸⁴⁾.

The Iraqi legislature has also granted the Minister of Interior (the Supreme Control Commander) the authority to abandon the disciplinary punishment or amend it by tightening it, reducing it ,or approving it. He also has the authority to withdraw the investigation in any matter that is being investigated. He is even capable of transferring it to another investigative committee, or ordering the re-investigation of the investigation procedures, according to drives related to the interest of the investigation in order to achieve justice or for other legitimate reasons. In this regard, the Internal Security Forces Court of decides that: "Upon scrutiny and deliberation....it was found that there are fundamental deficiencies in the investigation and the trial courthas not completed it ,which made its judgment based on investigations purified, which should be completed by the formed investigative authority ... For this reason, he decided to revoke the decisions of the trial court and return the papers to it for deposit to the investigative council from the referral commander (the higher control commander),⁽⁸⁵⁾. "and if it becomes clear that the committed violation is outside the scope of disciplinary

(41) Article (20 / Clause III) of the above-mentioned Law.

(42) Article 45 of the Internal Security Forces sanctions law.

(43) court decision ordered the setting up of the Iraqi Ministry of Interior No. 161 in 12/8/2009) .Unpublished decision.

(44) Article (38 / item I) of the Penal Code Internal Security Forces.

(45) Resolution discrimination Internal Security Forces Court No. 143/2013 in 18/03/2013) .Unpublished decision.

offenses due to their significance, the minister may refer the investigative papers - related to the case in question – to the competent internal security forces court if required. He may also call off the decision issued by the investigation committee, and within (15) days from the date of receiving the decision to his office or his knowledge of it"⁽⁸⁶⁾. As for the status of comparative legislation, the Egyptian Minister of Interior has the power to impose disciplinary penalties for the first time, and he may impose on officers – up to the rank of colonel – the warning penalty and the salary deduction penalty for a period not exceeding (30) in one year. In this way, the period of penalty does not increase at one time. He can – for (15) days – reward the officer with the rank of brigadier general and above with a warning penalty only"⁽⁸⁷⁾. As for the Emirati legislator, the Minister of Interior has authorized the Minister of Interior to keep the investigation temporarily or permanently, or to punish the officer with a warning or deduction from the salary for a period not exceeding a month, or simple detention for a period not exceeding (15) days, or imprisonment for a period not exceeding (10) days. He is also authorized to refer the violating officer to the Disciplinary Board if the violation requires that he be sanctioned with a more severe penalty,⁽⁸⁸⁾. While the Yemeni legislator, has given the minister of interior the right to sign the officers until the rank of lieutenant colonel, reprimanding, warning and deduction of the salary for a period not exceeding (30) days per year, so not for the discount increases in time per seven days. The Minister can reward officers of the rank of colonel or higher, with the penalty of reprimanding and warning, and the minister may – likewise within (30) days from the date of issuing the punishment from the head of the department or the deputy minister – to amend the penalty by tightening it, reducing it, or calling it off while preserving the matter or referring the officer to the Disciplinary Board"⁽⁸⁹⁾.

(46) Article 11 of the Code of Criminal Procedure of the Internal Security Forces Act.

(47) Article (49) of the Egyptian Police Authority Law stipulates that: ((The minister, the assistant minister in charge, the head of the department, and those in his position may impose on the officer up to the rank of colonel the penalty of warning and the penalty for deduction from the salary for a period not exceeding thirty days per year. One so that the penalty period does not exceed fifteen days in a single time, and the Minister and the Concerned Minister's Assistant may reward an officer of the rank of brigadier general with a warning penalty)).

(48) Dr. Hamed Rashid ,Procedures and Guarantees of Disciplinary Accountability for a Police Affiliate, Police Thought Journal, Sharjah Research Center, Fourth Issue, 1996 , p. 87.

(49) Article (94) of the Yemeni Police Authority Law stipulates that: ((The minister, the deputy minister, the deputy minister, the head of the department, and those in his position may sign the officer up to the rank of the presenter of the blame penalty, the warning penalty and the deduction from the salary for a period not exceeding thirty days in one year, so that The period of the deduction penalty at one time does not exceed seven days, and the Minister and the Deputy Minister may recompense the officer of the rank of colonel or higher with the penalty of blame and the penalty of warning. Subject or with referring the officer to the Disciplinary Board, and the Disciplinary Board may impose any of the penalties mentioned in Article (92) of this Law.

2-2-Regulation Commanders Authorized to Use Criminal Authority

The legislator has given the minister the authority to permit any of the warrant officers the power to punish those who work under his command⁽⁹⁰⁾. For the violations committed, and they are tried before the authorized arrest warrant in a summary trial for those violations"⁽⁹¹⁾. Therefore, it is not permissible to impose a penalty on anyone holding the rank of brigadier or colonel except for those with the rank of major general or those who have authorized the penal authority for this rank, ⁽⁹²⁾ as the Iraqi legislator has authorized – in the Code of Criminal Procedure of the forces of internal security law – commander of the discipline who is the rank of the highest who issued a tunable decision, ratification authority on that judgment or order to re - trial of commanders control or to reduce the punishment disciplinary or called off within (7) days from the issuance of that penalty or from the date of notification"⁽⁹³⁾.

Those authorized to use the penal authority to punish those under their command are: "Ministry deputies, counselor and advisors, the inspector general, assistants of deputies, the deputy inspector general, general directors, the commander of the Federal Police, the commander of the border guards, the leaders of the provincial police, and directors of directorates not associated with the agency or General Directorate and all under the jurisdiction of his work,⁽⁹⁴⁾. "it is logical to assume control over the acts of their subordinates and their actions and reveal their mistakes and act on them as the closest surrounding working conditions and which result from errors or irregularities and commensurate with these errors and irregularities of sanctions and disciplinary"⁽⁹⁵⁾. They are responsible for the regularity of workflow in the units that they head, and they are therefore the most capable of judging the actions of police officers that constitute a violation and assessing the appropriate disciplinary punishment away from the

(50) Article (21) of the Code of Criminal Procedure for the Internal Security Forces stipulated that: ((The Minister may authorize any of the arrest warrants to have criminal authority to use it to punish those under his command.

(51) Stipulates Article 19 of the same law , that: ((a man on trial before the commander of the police control court in the trial of a brief for offenses committed by.

(52) Article (20 / Clause Two) of the same law stipulates that: ((Second - No penalty may be imposed on someone with the rank of brigadier or colonel other than those with the rank of major general or someone who has authorized the penal authority for this rank)).

(53) Article (24 / Clause 1 (of the aforementioned law stipulates that: ((...) it may not be amended or repealed unless the convicted person appeals the judgment within (7) seven days from the date of notification thereof before The arrest warrant is higher than the one who issued the judgment, so this warrant has the right to ratify the judgment, the inclusion decision, retrial, reduce the penalty, cancel the sentence, or amend the inclusion decision ...)

(54) See: Ministerial No. 27412 in 22/08/2015 issued by the Iraqi Interior Ministry command.

(55) Dr. Sami Gamal El-Din, The Fundamentals of Administrative Law ,without mentioning the edition, Al Maarif Institute in Alexandria, 2004 , p. 381.

long and complex procedures, in light of their assessment of the circumstances of the error".⁽⁹⁶⁾

As for comparative legislation, the Egyptian Police Law authorized heads of departments to impose penalties conferred upon the minister and his assistant on officers up to the rank of colonel. Therefore, they are not allowed to direct the punishment to those holding the rank of brigadier general. Also, the law granted the assistant minister to impose on police secretaries and assistants the punishment of postponing the due date of the raise, and the penalty of depriving them, and suspension from work.⁽⁹⁷⁾ He also authorized the head of the authority to impose – on police secretaries and assistants – the penalty of warning and seizure in the barracks, deducting the salary, and the deputy director of security to inflict on the policemen all the penalties stipulated in Article (96) of the Egyptian Police Authority Law"⁽⁹⁸⁾.

The Yemeni legislature, granted heads of departments a minister's authorities, and not for them to punish the officer in the rank of colonel or above. However, for the non-officers ranks, the legislator has authorized the minister and his deputy and the Deputy Minister and Chairman of the Authority and the leader and general manager, and the like to sentence authority for crimes control⁽⁹⁹⁾ and managers who are authorized by the UAE legislator may impose a warning, deduction from the salary, and a simple penalty for a period not exceeding (7) days"⁽¹⁰⁰⁾.

Conclusion

Having reached the end of this research, with the grace and success of Allah, I find myself committed to write down the results and conclusions that have been drawn from this research. Therefore, I hope that they will be taken up by the Iraqi legislator to complete the goal that we sought as a result of delving into the completion of the research, as follows:

- **Findings**

(56) Dr. Nawaf Kanaan, The Disciplinary System for the Public Service 1st Edition, Ithraa for Publishing and Distribution, Amman, 2008, p 192.

(57) Article 81 of the Egyptian Police Authority Act.

(58) uhammad Majid Yaqout, Procedures and Guarantees in Disciplining Police Officers, 2nd Edition, Al Maaref Establishment, Alexandria, 1996, p. 209.

(59) Article (94) of the Yemeni Police Authority Act.

(60) Article (81) of the UAE Police Law stipulates that: ((Chiefs appointed by a decision of the Minister may impose a warning and deduction from the salary for a period not exceeding a month and a simple seizure for a period of one week, after hearing the statement of the violator and making a defense ...)) .

- 1- The Internal Security Forces Justice System in Iraq is recognized as a constitutional base and has importance as a judiciary that is compatible with the nature of the internal security forces.
- 2- The Internal Security Forces judiciary consists of two types of courts, disciplinary courts and penal ones. The first is concerned with looking into violations and disciplinary penalties, and disciplinary punishments are imposed by the competent arrest warrant through summary trials. While the second, is concerned with adjudicating all crimes committed by persons subject to the personal jurisdiction of the Internal Security Forces' jurisdiction. Criminal penalties are imposed by the competent Internal Security Forces court through non-summary trials.
- 3- The arrest warrant is considered a court of the Internal Security Forces that examines violations of the requirements of the position and breach of its duties in the internal security forces, because the system of the internal security forces is a system based on obedience, preserving the lives and property of people and imposing security, which requires that the arrest warrant has legal authority to preserve security and the system, and this is shown by the disciplinary procedures and disciplinary sanctions it is authorized to do.
- 4- The Code of Criminal Procedure for the Internal Security Forces stipulated that the provisions of the Criminal Procedure Code No. 23 of 1971, (as amended), shall apply when there is no special provision in the law. Thus, the enforceable law has filled many of the gaps and completed many of the deficiencies faced by procedures in trials before the courts of the Internal Security Forces.
- 5- The seizure commander's court is independent in issuing its decisions and administratively linked to the Minister of Interior.

• **Recommendations**

- 1- It has been stated in Article (20/first) of the law of the powers of a of internal authorization, commander of control sanctions set out in the table supplement it has included this table authority to the commander of the settings to imprison associate in while not given the validity of confinement in the clauses (43, 44) of the Act of sanctions, which means the need to relook at this table with regard to the penalty of imprisonment with the powers of the commander of control contained in the laws. Therefore, we call to substitute it with the term of imprisonment based on th number of days in line with the principle of the legitimacy of the text penal. This is occurred to avoid the expansion of the power discretion of the commander of the control inference on the validity based on the extension of Article (20/A) of the law of the criminal procedures law of the Internal Security Forces.
- 2- The need to appoint the chairman and members of the courts of the Internal Security Forces, and everyone who undertakes the work of investigation

- and trial in the courts before performing their duties, to ensure the integrity and fairness of judgments.
- 3- Linking the courts of the Internal Security Forces to the judicial authority in the state in a way that guarantees the necessity of its independence and impartiality. Here, judges are free from any interference, supervision or oversight by other internal security forces authorities.
 - 4- We suggest to the legislator that the text for a state grievance procedure before the arrest warrant is the source of the decision, where the wording of the text is as follows: "It is required before the execution of the judgment or the inclusion decision issued by the arrest warrant to impose the penalty to grieve the judgment with the authority that issued it, and that is within (30) days from the date of notification of the police officer's decision to impose a penalty on the mentioned decision of this appeal within (30) days from the date of submission and when not to decide which despite the end of this period is that a rejection of the grievance of the ratification of the judgment or decision to include or retrial or reduction of sentence or caling it off or amend the inclusion decision". Because of its importance and a guarantee for the punished policeman in order to address the issue within the body in which he works and through his direct commander.
 - 5- We call upon our legislator to reconsider Article (24 / second) of the Code of Criminal Procedure for the Internal Security Forces, not to immunize the disciplinary decision. It also considers granting a policeman who has been sentenced to disciplinary punishment to distinguish his decision before the Internal Security Forces Court of Cassation even if the decision is disciplinary in accordance with the provisions of the constitution. The wording of the text is as follows: "The policeman may appeal the decision of the arrest warrant to the Internal Security Forces Court of Cassation, within (30) thirty days from the date it was notified or considered notified, and the court's decision issued as a result of the appeal shall be final and binding".

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