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The investigative evidence and its role in proving disciplinary cases (A comparative study)

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Abstract
To determine the role of investigative evidence in proof, it is initiated by the administrative judge based on their investigative powers within administrative matters. This role differs from that of a regular judge, whose involvement in disputes is typically passive, intervening only to resolve the conflict. In contrast, the administrative judge directs the methods of investigation in the dispute before them. Moreover, the administrative judge has broad authority to consider and use these means and pieces of evidence without being bound by them, as the legislator has not assigned a specific weight to each means of proof.

Keywords: Legislator, authority, investigation, administrative

Introduction
The stage of evidence is considered one of the most crucial phases in any legal case. It is also one of the most significant topics in both scientific and practical judicial research, as it serves as a means to uncover the truth and achieve justice, which is the highest authority of the state. The methods of evidence are of immense importance, comparable to the significance of the judicial system itself. They form an essential part of the judicial ruling, representing the very spirit and essence of the decision. For this reason, the process of organizing evidence has been established since ancient times. Although different branches of law may vary in how they regulate it, no right can exist without proof of the action or material fact from which it arises. We need to convince the judge of the existence of that right. Through these methods, the judiciary can perform its duty, achieve justice, and maintain social order by delivering rights to their rightful owners and imposing penalties on those who deserve them. The judge can only reach the truth through the evidence and arguments that each litigant seeks to support their case with.

When we examine administrative law, we find that it possesses certain specific characteristics that distinguish it from other branches of law. In addition to being relatively modern compared to laws such as civil and criminal law, its rules are not codified in a single legislative text that comprehensively covers all its procedural and substantive rules governing administrative actions and disputes. What we find in administrative law is a collection of scattered legislative provisions, supplemented by a certain proportion of unwritten legal principles. This is due to the fact that administrative law is rapidly and continuously evolving. This dynamic nature reflects on administrative courts, which are frequently—almost daily in some cases—confronted with new problems faced by the state's administrative apparatus. This gives the judiciary the flexibility to seek solutions in jurisprudential literature, customary practices, judicial precedents, general legal principles, and individual judicial interpretation in order to find appropriate remedies.

First: The Importance of the Research
Investigative evidence in proof holds immense importance, comparable to the significance of the judiciary itself. The importance of investigative evidence lies in its role as a crucial tool that enables us to either cast doubt on an action or affirm it as truth through the issuance of a final judgment in a case. Investigative evidence is inseparable from the judicial ruling; it is the very essence and core of the verdict. As such, it serves as the primary means of securing rights and obligating others to fulfill their duties. Practically speaking, a right holds no value if its holder is unable to prove it, including through investigative evidence.

Second: The Research Problem

The topic of this study addresses an important issue: the role of investigative evidence in proof, especially in the absence of a specific law governing procedures or evidence in administrative cases. Legal rules remain dormant until brought to life by the judiciary, which enables the law to grow and evolve through the positive role of the administrative judge. The judge interprets and extracts the legal rules applicable to the case at hand from among the existing legal texts, attempting to bridge gaps and address them. While the administration seeks to achieve the public interest and documents most of its activities through formal written means, individuals often conduct their transactions orally. This difference has influenced administrative litigation. Therefore, the role of investigative evidence, whether direct or indirect, has a direct impact on disciplinary cases, contributing significantly to uncovering the truth.

Third: Research Methodology

In this research, we will adopt the analytical and comparative approaches. This involves analyzing the legal texts that regulate the role of investigative evidence in proving disciplinary cases in Iraq and the countries under comparison. Additionally, we will compare these countries to highlight the approach each has taken in outlining the role of both direct and indirect investigative evidence. Furthermore, we will examine judicial rulings and principles established by administrative courts specializing in public employment cases.

Fourth: Research Outline

This research will be divided into two sections. In the first section, we will discuss the topic of direct evidence and its role in proving disciplinary cases. In the second section, we will address indirect evidence and its role in proving disciplinary cases, as outlined below:

First Section: Direct Evidence and Its Role in Proving Disciplinary Cases

Direct evidence in proof refers to evidence whose indication directly pertains to the fact that is intended to be proven. This includes written documents, expert opinions, inspections, and witness testimonies. Written documents record the specific fact to be proven, whether it involves a legal transaction or a legal fact, and thus serve as a direct method for proving such facts. Witnesses, when their testimonies focus on the exact fact to be proven—whether a legal transaction or a legal fact—also provide direct proof. Inspections and expert opinions are likewise direct methods of proof, as they are physically and directly connected to the fact in question.

Thus, we will address each type of evidence in four subsections as follows

Subsection One: Writing

Writing is considered one of the most important methods of proof in legal transactions. It is an effective and reliable means in dealings, especially given the diminished trust in witness testimony and the complexity of evolving relationships. Writing helps to mitigate the issues of human memory loss that can obscure the truth, particularly when a long time has passed since the legal transaction or the fact to be proven. Consequently, written documents are distinguished by their permanence over time. When presented in court, they attest to the facts they represent—unless it is proven that they have been falsified or damaged.

As the saying goes, "Words fly away, but writing remains," which means that writing holds more weight and value in evidence than oral statements. The French were influenced by this notion. Historically, oral testimony (witnesses) was considered superior to writing. However, a decree issued in 1566 reversed this understanding, establishing that writing is superior to oral testimony. This shift was motivated by several reasons, including the inability of humans to retain facts over a decade, the difficulty of exposing perjury compared to forgery in writing, and the reduced trust in witness testimony, which can be bought.

The rationale for considering writing as a form of evidence lies in its role in safeguarding legal transactions regulated by contracts, as well as administrative activities such as decisions, administrative contracts, and employee-related documents like administrative judgments and personnel files. Administrative correspondences, letters, and reports are also typically written. Generally, administrative documents are considered written evidence, subject to rebuttal and challenge if evidence warrants it. This has been affirmed by the decisions of the Administrative Judiciary Court and the Court of Employees, which have stated in one of their rulings: "... from the course of the public hearing, listening to the statements of both parties, exchanging memoranda, and reviewing the documents, it is clear that the case is ready for a decision..." Therefore, administrative file documents are deemed credible for the data they contain and are prepared for evidentiary purposes.

These documents can be either official or unofficial (private)

1. Official Documents: These are documents prepared by a public official or a person entrusted with a public service, within the scope of their legal authority.

The French legislator defines an official document in Article 1317 of the Civil Code as: "An official document is one that has been received, according to the required formalities, by a public official authorized to authenticate from the party who wrote the document."

The Egyptian legislator defines it in Article 10 of the Amended Evidence Law as: "Official documents are those in which a public official or a person entrusted with a public service certifies what has been done by them or what they have received from the concerned parties, in accordance with legal formalities within their powers and functions."

The Iraqi legislator defines it in Article 21 of the Amended Evidence Law as: "Official documents are those in which ... what has been done by them or what has been stated by the concerned parties in their presence is recorded."

From reading the above texts, it is clear that for a document to be considered official, it must be created by a public official or a person entrusted with a public service within the scope of their legal authority and in accordance with legal conditions. If it is not created by such an official or entrusted person, it remains an unofficial document, even if it is signed, fingerprinted, or stamped.

Official documents come in various forms, including those

issued by judges, court clerks, and civil registry officials. When an official document is issued by a public official and is free from defects, it is considered a simple presumption that can be challenged through proof of forgery. The strength of an official document primarily lies in the document itself and its contents, meaning it must be issued by the competent official who signed it, and it must include the necessary formalities for its validity.

It is important to note that writing does not require a specific form: It can be handwritten, printed by any means, or written in various types of ink or pencil, and in any language, whether Arabic or foreign. The document can also be signed either manually or electronically.

A question arises in this context: What is the evidentiary value of official documents before the administrative judiciary?

To answer this question, official documents are the primary means of proof before the administrative judiciary compared to other ordinary documents commonly used in regular courts. This has been confirmed by the Administrative Judiciary Court in Egypt, which stated in one of its decisions: "... It is not permissible to question what is established in official documents based solely on rumors or hearsay. What is established in the official document is certain and binding on everyone. This certainty does not disappear with mere doubt; it continues to produce its effects and be used as evidence until proven otherwise."

Article 11 of the Egyptian Evidence Law indicates that, according to the practice of the Administrative Judiciary Court, official documents can only be challenged for forgery and serve as evidence against all regarding the matters they contain.

In Iraq, one of the decisions of the Administrative Judiciary Court stated: "... Official letters issued by government departments are considered evidence unless challenged for forgery."

Similarly, Article 22 of the amended Iraqi Evidence Law reflects the practice of the Iraqi Administrative Judiciary Court, stating that passports, nationality certificates, and court records are considered official documents.

2. Unofficial Documents are written documents concerning a legal transaction, which are not drafted by a public official or a person entrusted with a public service. Therefore, the only legal source for the creation and evidentiary value of an unofficial document is the signature recognized by the law.

It is noted that neither the Iraqi Evidence Law nor the Egyptian Evidence Law provides a specific definition for unofficial documents. Thus, scholars have defined them as ordinary documents issued by individuals without the involvement of a public official or a person entrusted with a public service in their preparation. The legislature does not require any specific form or format for their preparation. These documents are termed unofficial because custom or practice has made ordinary individuals responsible for drafting or preparing them.

Therefore, to be valid, ordinary documents must be written; writing is an essential element for their existence, as it indicates the purpose for which the document was prepared, namely the fact that the document is intended to prove. There is no requirement for the writing to have a specific form; the parties involved are free to choose the manner and language of the writing. Additionally, the validity of the writing is not affected by any additions, erasures, or marginal notes, and the requirement for signatures does not apply as it does for official documents.

Furthermore, these documents must be signed by the person against whom they are used. The signature must be done without the involvement of any official, and the law does not prescribe a specific form for the signature; it can be a signature, a seal, or a fingerprint. The law has permitted the latter two methods, considering that some individuals cannot read or write, and that fingerprints may be more indicative of commitment to the document's content compared to other types of signatures, which are easier to forge.

The signature is a fundamental requirement for the existence of the document, which grants it evidentiary value. Its absence renders the document invalid. This is confirmed by Article 14 of the Egyptian Evidence Law and Article 25 of the amended Iraqi Evidence Law, which state: "An ordinary document is considered valid unless the handwriting, signature, or fingerprint attributed to it is denied."

From the above text, it is clear that for an unofficial document to be valid, it must be signed by its source; otherwise, the document is invalid and has no evidentiary value.

Unofficial documents are of two types: those prepared for evidence, such as contracts, where some scholars believe these documents have the same evidentiary value in administrative proof as they do in civil proof if presented in an administrative dispute; and unofficial documents not prepared for evidence, meaning they were not intended for proof when created but can be used as incidental evidence. These documents often lack signatures from the parties involved, such as household notebooks and business ledgers, though they may include signatures in cases like letters and original telegrams. The evidentiary value of these documents varies depending on the elements of proof they contain.

In Iraq, one of the decisions of the Supreme Administrative Court regarding the use of ordinary documents in proving an administrative case states: "In reviewing the decision before the full court of the State Consultative Council ... it was decided to annul it because the General Disciplinary Board had resolved the case by disbursing the allowances before completing its investigations and verifying the presence of the appellant in the assigned province through receipts confirming this. Following the cassation decision and after verifying the appellant's stay in the assigned province, the General Disciplinary Board decided ... to obligate the defendant, in addition to his job, to disburse all internal mission allowances."

The question that arises here is: What is the evidentiary value of unofficial documents before the administrative judiciary?

To answer this question regarding the evidentiary value of unofficial documents, it is essential to distinguish between the evidentiary value of the document concerning its issuance and its value concerning third parties. Regarding the evidentiary value of the unofficial document concerning its issuance, it is considered binding if the signer acknowledges the document or remains silent without explicitly denying its issuance, whether in whole or in part. In such cases, the actions recorded in the document are enforceable against the signer and their general and specific successors.

Regarding the evidentiary value of the unofficial document concerning third parties, it is binding on the issuer and their general or specific successors if the document has a fixed date. This is confirmed by Article 15 of the Egyptian Evidence Law and Article 26 of the amended Iraqi Evidence Law, which state: "An ordinary document is not binding on third parties from its date unless it has a fixed date. It is considered fixed in one of the following cases:

1. From the day its content is recorded in another document with a fixed date.
2. From the day it is authenticated by a notary public.
3. From the day it is endorsed by a judge or an authorized official.
4. From the day of the death of any person who had an acknowledged effect on the document through handwriting, signature, or fingerprint, or from the day it is written or fingerprinted due to a physical ailment, or generally from the day any other event conclusively indicates that the document was issued before the occurrence of that event."

Thus, the administrative judge will only recognize an ordinary document presented in an administrative case if one of the conditions stated in the above article is met.

Section Two: Expertise

Neither the Egyptian legislator nor the Iraqi legislator has defined expertise as a method of proof in the Evidence Law. Therefore, expertise is understood as a technical consultation requested by the judge either on their own initiative or at the request of one of the parties to clarify certain technical matters that the judge cannot resolve without determining their factual accuracy.

Legal scholars define it as seeking the opinion of experts on certain factual matters that the trial judge cannot perceive merely by reviewing the documents or on technical aspects that reveal the subject of the dispute. The judge cannot rule on these matters based on personal knowledge, and there is nothing in the case files and evidence that helps in understanding them. Expertise is essential for forming the court's opinion on the subject of the dispute.

Expertise is conducted by individuals who possess certain technical skills that judges do not have, covering various fields such as medicine, agriculture, engineering, handwriting analysis, fingerprint analysis, and more. In the current era, significant scientific and technological advancements make many disputes involve technical or scientific aspects that exceed the judge's limits and knowledge.

The purpose of utilizing expertise is to either prove or disprove a fact or to assess its value. Thus, the outcome of the expert report is merely evidence among other evidence presented to the judge in the case. This is confirmed by Article 156 of the current Egyptian Evidence Law and Article 140 of the Iraqi Evidence Law, which state: "The court may use the expert's report as a basis for its judgment. If the court decides to use an expert, whether on its own initiative or at the request of the parties, it must follow certain procedures, the most important of which is the issuance of a decision appointing one or more experts before ruling on the case."

Regarding the evidentiary value of the expert report before the administrative judiciary, the expert's report and records of their work are considered official documents and possess the evidentiary value of official documents because they are issued by a person entrusted with a public service. Consequently, they cannot be refuted concerning what the expert personally verified or observed or heard within the scope of their duties. Therefore, the expert's opinion is treated as evidence presented in the case and is subject to the court's discretionary authority, like other evidence. The court has full discretion to accept or reject it, as confirmed by Article 140 of the amended Iraqi Evidence Law and Article 156 of the Egyptian Evidence Law, which state: "The expert's opinion does not bind the court... with the obligation to provide reasons for not accepting the expert's opinion in whole or in part." The Egyptian administrative judiciary has emphasized the court's discretion in accepting the expert's opinion, ruling that: "It is established that the use of experts as a procedural measure is a matter left to the court, which has the authority to assess all elements and is not obligated to accept the expert's opinion except insofar as it deems it just and fair. The court may adopt what it finds reliable in the expert's assessment and may reject the expert's conclusions in whole or in part."

In the realm of administrative judiciary, the application of expertise is significant across various jurisdictions, including France, Egypt, and Iraq. In France, the law dated July 11, 1889, regulates expertise before administrative courts. According to Article 13, as amended, the administrative court may, either on its own initiative or upon request by one of the parties, order an expert examination on specific issues before ruling on the matter. Expertise is frequently utilized in French administrative courts, particularly in cases involving administrative liability, medical matters, public works, assessment of injuries, estimation of damages, or the size of constructions, including hearing some witnesses.

In Egypt, the application of expertise in administrative judiciary is well-established. It is recognized by the State Council’s judiciary as a means of proving administrative cases due to its compatibility with the nature of administrative litigation and its alignment with public law principles.

In Iraq, the Administrative Court also utilizes expertise in both annulment cases and full jurisdiction cases. For instance, in a case against the Baghdad Municipality, the Administrative Court requested an expert assessment regarding the legality of the plaintiff’s detention. The plaintiff sought compensation for material and moral damages resulting from the detention. According to Article 7, Paragraph (T) of the amended State Council Law, the court may grant compensation based on the plaintiff's request if deemed necessary. Given the expert's valuation of the plaintiff's damages, which complied with the requirements outlined in Article 144 of the Evidence Law, the General Assembly of the State Council confirmed the Administrative Court's decision to annul the contested decision and ordered the payment of the claimed amount, which was part of the compensation determined by the expert, while reserving the plaintiff's right to pursue the remaining claim.

Subsection Three

Inspection

The Iraqi and Egyptian legislators have not specifically defined inspection as a method of proof; therefore, it is generally understood in legal doctrine as the act of the court

or its appointed representative visiting the site of the dispute to observe it directly. This method allows for an effective and cost-efficient way to ascertain the truth. The court or the appointed representative can inspect the disputed matter by physically visiting the location, which is considered an effective means of uncovering facts. The judge may order an inspection either on their own initiative or upon request by one of the parties involved.

Inspection is generally at the judge's discretion, even if both parties explicitly request it, and it is conducted in the presence of the parties. The administrative judge, based on a prior ruling before deciding the case, can set a date and time for the inspection and notify the parties to attend the proceedings. The judge may also enlist the help of technical experts or specialists if the inspection requires technical information beyond the judge's expertise. Additionally, the judge can hear witnesses whose testimony is deemed necessary and carry out any necessary actions.

According to Article 130 of the Iraqi Evidence Law and Article 132 of the Egyptian Evidence Law, "The court or the judge appointed for inspection may consult an expert or hear witnesses they deem necessary." Furthermore, a summary action requiring inspection, known as an action to establish the condition, may be filed. The Administrative Court describes this action as a precautionary measure undertaken at the plaintiff's expense, aimed at providing a temporary, quick resolution to facilitate a final judgment on the matter by establishing a particular condition. If the subject matter of the action is not directly proven, it may be difficult to derive evidence from it later. If a substantive case is filed afterward, the findings from the action to establish the condition can be used, provided that the right or condition in question is maintained or is potentially present, and the party has a legitimate interest in proving it. This interest is recognized by law, even if it is potential. The purpose of proving this right is to prevent imminent harm that cannot be avoided in the future or to confirm a right that risks losing its evidence in case of dispute. This aligns with the principles established by the Supreme Administrative Court, and the urgency of the action is a required element.

One of the key applications of inspection as a method of proof before the Administrative Court is its use by French administrative courts to assess the impact of building permits on the nature and character of neighboring areas. The courts may also conduct inspections to verify the details in the original administrative decisions under challenge when these cannot be submitted as part of the case file.

In Egypt, administrative judges use inspection as well. For example, in one decision concerning an appeal against a promotion decision, there was a dispute about the nature of the promotional grades in different categories. The court needed to determine whether these grades were merely coordinative or regular grades, and whether the intention was to improve the situation of irrigation engineers in general. To investigate these grades and the purpose of their creation, the Administrative Court decided to send one of its members to the Ministry of Public Works to review the file related to these grades. This was carried out as detailed in the inspection report dated June 11, 1949.

In Iraq, both the Administrative Court and the Court of Discipline (formerly the Council of Discipline) use inspection whenever necessary for the case proceedings. For instance, one decision from the Court of Discipline included a review of the site inspection report on the village of Al-Fihman's network, conducted by a committee of three members as per the administrative order. The report confirmed that the work was completed by the complainant without violations. Consequently, the imposed penalty was deemed unsupported by law.

Section Four: Witness Testimony

Neither the Iraqi legislator nor the Egyptian legislator, nor the Algerian law, provides a specific definition of testimony as a method of proof. In legal doctrine, testimony has various definitions; it is generally understood as the account of a witness regarding their sensory perception of what they have seen or heard from others, which aligns with the factual reality they testify to in court after taking an oath. This testimony is provided by individuals whose statements are accepted and who are allowed to give testimony, excluding the parties in the case.

Witness testimony is given in court based on a request from one of the parties or on the judge's initiative. The judge may request witness testimony whenever it seems useful for resolving the dispute. This is confirmed by Article 70 of the Egyptian Evidence Law and Article 81 of the Iraqi Evidence Law, which state: "The court may, on its own initiative, summon witnesses whom it considers necessary to hear their testimony in the matters where the Evidence Law permits testimony for reaching the truth." The Civil and Administrative Procedure Code of Algeria specifies the conditions and procedures for testimony in Articles 150 to 163 and Articles 859 and 860 of the Civil and Administrative Procedure Code.

Witness testimony can be of two types: direct and indirect. Direct testimony is the primary type, where the witness reports what they have seen or heard firsthand, such as witnessing a contract or an event occurring in front of them. Indirect testimony, on the other hand, involves a witness reporting on a fact based on what they heard from someone else who may have seen or heard it themselves. For example, a witness who testifies about a car accident they heard about from another person. This type of testimony is permissible in court when reporting what another person has said about the direct evidence. However, some legal scholars argue that indirect testimony does not hold the same weight as direct testimony and may not be considered equally valid.

Section Four: Witness Testimony

The researcher supports this view because testimony often changes during transmission, making the account susceptible to alterations and omissions. It varies from person to person based on human nature.

It is noteworthy that witness testimony, like the other methods mentioned previously, has applications in administrative judiciary both in Egypt and Iraq.

In Egypt, a decision by the administrative court noted, "Regarding the incident where the appellant entered the Chairman's office and pushed the door in an inappropriate manner while he was speaking with the Director of Public Relations, this fact is confirmed by the statements of the Chairman, the Director of Public Relations, his manager, and the office secretary, and the court is assured of its accuracy..."

In Iraq, a decision by the Administrative Court stated, "... Since paragraph (d) of Article 6 of Chapter Two of the Basra Provincial Council System allowed voting on the

performance and dismissal of the governor and his deputy by a two-thirds majority of the Provincial Council members, which amounts to (41) members, and after listening to the personal testimonies of (G, N, M) and (H, N, A), it was found that the meeting did not occur according to the procedural mechanisms outlined in the internal regulations. Signatures were collected without any meeting occurring while they were each at their homes..."

From the above, it is evident that administrative judges in Egypt, Iraq, and Algeria utilize witness testimony as a method of proof whenever it is feasible and suitable for the nature of the administrative case. The judge has discretionary authority in this regard and considers what is appropriate for resolving the presented dispute.

Section Two: Indirect Evidence and Its Role in Proving Disciplinary Cases

Indirect methods of proof do not directly establish the fact to be proven but are inferred through deduction. These methods include circumstantial evidence, confession, interrogation, and oaths. Circumstantial evidence does not directly address the fact in question but rather another fact closely related to it. Establishing the second fact is considered an indirect proof of the first fact. Thus, the fact to be proven is established indirectly. Similarly, confession, interrogation, and oaths are not direct methods of proof. Although they address the fact in question, the validity of that fact is not directly derived from them but through inference.

Section One: Confession

Confession is a method of proof recognized by the legal systems of most modern societies, despite differences in legal theories. It has been institutionalized due to the evolution of societies and the complexity of cases. Sometimes, evidence may be incomplete or lack decisive authority, making it difficult for judges to resolve disputes. In such situations, a confession can facilitate the judge's task and provide a resolution to the dispute. The concept of confession involves a deliberate acknowledgment by a person of a fact that has a specific legal consequence for them. This is demonstrated by accepting what the opposing party claims, and it represents an unusual method of proof, as it pertains to a legal fact that does not require further proof.

Confessions are divided into two types

1. **Judicial Confession:** Legal scholars define it as an acknowledgment by a party before the court of a legal fact claimed against them during the course of the litigation. It is also defined as a person's acknowledgment to another of a fact, whether or not they intend to create a legal obligation. From a legislative perspective, the Egyptian legislator defines it in Article 103 of the Egyptian Evidence Law as: "Confession is the acknowledgment by a party before the court of a specific legal fact claimed against them." The Iraqi legislator defines judicial confession in Article 59 of the amended Iraqi Evidence Law as: "Judicial confession is the notification by a party before the court of a right they owe to another."
2. **Non-Judicial Confession:** This type occurs outside the court or before the court in a different case unrelated to the subject matter of the confession. It is a legal act performed unilaterally. It is defined as: "What is issued outside the court or before it but in a different legal proceeding not related to the admitted fact." According to the Iraqi legislator in Article 59: "Non-judicial confession is the confession made outside the court." This type of confession may occur during an investigation conducted by the public prosecutor or during an administrative inquiry. The legislator has not specified a particular form for such confessions; they may be oral or written, such as in a letter, or in a document not prepared for proving the contested fact. It may also be implicit.

Both types of confession do not create a new right but rather acknowledge the occurrence of a fact or a specific act at a past time.

For a confession to be valid, whether judicial or non-judicial, the following conditions must be met

1. **Full Capacity:** The confessor must be of full legal capacity. A confession made by an insane person or a minor is not acceptable. Nor is the confession of their guardians or caretakers acceptable, in order to protect their interests and prevent harm.
2. **Personal Declaration:** The confession must be made by the party themselves or their representative. It does not matter whether the party is original or intervenes as a party to the case.
3. **Relevant Fact:** The confession must relate to a fact that has legal consequences, whether it is a legal act or a material fact. Mere statements or information not bearing legal significance are not considered valid confessions.
4. **Judicial Context:** The confession must be made before the judge during the course of the trial in which the confession is to be used as evidence. Confessions made during administrative investigations or public prosecutor inquiries are not considered judicial confessions.
5. **Permission for Public Servants:** The law requires that a confession made by a public servant or an individual entrusted with public duties must be authorized by their respective authority. This is confirmed by Article 60, paragraph 2 of the Iraqi Evidence Law, which states: "The confession of a public servant or someone entrusted with public duties is not valid unless authorized by their superior."

Admissibility of Confession: The admissibility of judicial confessions differs from that of non-judicial confessions. A judicial confession, when all its conditions and elements are met, is considered conclusive evidence against the confessor. This is confirmed by Article 1356 of the French Civil Code, which states that a confession "is evidence against the person who made it and is indivisible." Similarly, Article 67 of the current Iraqi Evidence Law stipulates that a confession is conclusive and binding only on the confessor, and it cannot be contradicted or retracted unless invalidated by a court ruling. This is further supported by Article 1/68 of the current Iraqi Evidence Law, which states: "The confessor is bound by their confession unless contradicted by a court ruling." The party does not need to present additional evidence, as the judge is required to accept the confession and has no discretion in this matter

unless a factual error is demonstrated. The confession cannot be divided, as confirmed by Article 104 of the Egyptian Evidence Law and Article 69 of the current Iraqi.

Evidence Law, which state: "The confession is indivisible for its owner."

Regarding non-judicial confessions, they are not made before a court and are subject to the discretionary power of the competent judge. This is affirmed by Article 70 of the current Iraqi Evidence Law, which states: "Non-judicial confession is a matter for the judge's discretion and must be proven according to general rules of evidence."

In summary, the rules governing confessions in administrative cases align with those in civil cases, with the distinction that in administrative proceedings, the confession must be issued by the competent administrative authority to be valid.

In Iraq, one of the decisions of the Administrative Judiciary Court stated: "… And since the plaintiff admitted in the hearing dated 11/09/2008 that he received the salary for the disputed grade in June 2008, he must have had definitive knowledge of it by that date. Since he filed the lawsuit on 12/07/2009, it was filed outside the legal time limit."

From the above, it is clear that the subject of confession holds significant importance as it is a recognized means of evidence in administrative matters. It resolves the existing dispute, and the judge is obligated to accept it. For this reason, it is referred to as the "master of evidence." However, it is important to consider the nature of administrative lawsuits, as not all disputed rights can be proven through a confession.

Section Two

Interrogation

Interrogation is a method of investigation in which one party in a lawsuit questions the other party about the facts of the case, aiming to obtain answers or admissions that substantiate claims or defenses. The court resorts to this method to reach the truth necessary for evidence. The judge has the authority to subject the parties to interrogation, either upon a request from one of the parties or on their own initiative. This is affirmed by Article 36 of the French law dated July 22, 1899, as amended by the decree issued on April 10, 1959, which states that the court can, on its own initiative or at the request of the parties, order the interrogation of the parties either in an open session or in chambers. Similarly, this is confirmed by Article 106 of the Egyptian Evidence Law and Article 71 of the amended Iraqi Evidence Law, which states: "The court, on its own initiative or at the request of the parties, may interrogate any party it deems necessary to interrogate." These provisions clarify that the judge may interrogate the parties either on their own initiative or upon a request from one of the parties, allowing them to personally question the parties and draw inferences for evidence. A judicial confession from one party can also serve to prove disputed matters. However, statements from non-parties to the case are only heard in the form of testimony or expert opinion.

The Iraqi legislator, in Article 72 of the current Iraqi Evidence Law, requires that the party requesting the interrogation must clearly specify the facts about which they wish to interrogate the opposing party. The court is also required to document in the session minutes the reasons for requesting the interrogation of one of the parties. The person to be interrogated must be competent to handle the disputed right, as the purpose of the interrogation is to obtain an admission from the party being interrogated regarding the contested right. Additionally, the fact subject to interrogation must be related to the case and relevant for evidence, meaning there should be no legal impediment to its proof.

It is worth noting that the French Council of State generally does not use this method, particularly when it concerns administrative staff, in respect of the principle of separation between judiciary and public administration and to avoid conflicts between them. Although the French legislator granted administrative judges the authority to interrogate parties, particularly administrative staff who represent the administration, to obtain certain objective clarifications regarding administrative management according to Article 45 of the law dated July 2, 1889, this does not extend to interrogating them about disputed facts.

In Egypt, the current Council of State Law considers interrogation as one of the methods of evidence that an administrative judge may use to investigate a case, following the procedures outlined in the Civil and Commercial Evidence Law under Article 10 and subsequent articles. Article 72 of the current Council of State Law states: "The State Commissioner may, in preparing the case, contact the concerned government entity to obtain necessary data and documents, and order the concerned parties to be questioned about the facts that he deems necessary to investigate." Additionally, Article 36 states: "The court may interrogate employees and hear witnesses from among employees and others."

In practice, the Egyptian Administrative Court has decided, on January 4, 1950, that it is necessary to hear the statements of Mr. X, the General Manager employed in the government, regarding the basis for the decision to prohibit certain grades under the contested decision, based on the written statement he prepared and attached to the Ministry of Finance file. This decision was implemented, and the court heard Mr. X's statements as detailed in the session minutes on February 22, 1950.

In Iraq, the State Council applies the Evidence Law, which includes Articles 71 to 75 specifically addressing the method of interrogation. There is no restriction on interrogating the plaintiff, whether an individual or an employee. However, concerning administrative bodies or legal persons, the legislator, in Article 2/75 of the Iraqi Evidence Law, specifies that such entities are to be interrogated through their legal representative, stating: "The court may interrogate legal persons through their legal representative."

Consequently, it appears that interrogation is more frequently applied in Egypt within the realm of disciplinary judiciary. Employees accused of misconduct are referred to disciplinary courts, where they are interrogated by the relevant authorities responsible for imposing disciplinary penalties. Despite this, some legal scholars argue that the significance of interrogation diminishes in the context of administrative disputes of a specific nature, particularly since these disputes are surrounded by a range of written administrative procedures, including parties' memoranda, expert reports, inspection minutes, and documents such as contested decisions or contracts and correspondence

between the administration and the parties involved.
We support this view; our review of the application of interrogation in administrative judiciary shows that it is employed only when necessary. It can often be replaced by written submissions and memoranda from the parties, which respond to the requirements set by the administrative judge.

Section Three: Oath
The oath is considered a method of proof as outlined by evidence laws, and it is regarded as a conclusive form of evidence, especially if it is decisive in resolving the dispute. The judge relies on the oath to issue a ruling and bring the conflict between the contending parties to a conclusion. It is an internal and subjective method that depends on the conscience and conviction of the individual to uncover the truth.
An oath can be defined as a mechanism where a party who lacks evidence for their claim invokes the conscience of the opposing party by requiring them to swear by God Almighty regarding the truth or falsehood of the claim.

Types of Oath
1. **Decisive Oath:** This is an oath directed by one party to the other with the aim of resolving the dispute. It is used when the party does not have evidence for the claim they are making. Rather than being a direct form of evidence, it is a method employed by those needing proof to support their claim. The only recourse left is to appeal to the conscience of the opposing party. If the party directed to take the oath refuses to do so, the claimant wins the case. Conversely, if the party takes the oath and is found to be truthful, the case is decided in their favor. This type of oath is called decisive because it resolves the dispute at hand, as confirmed by Article (3/119) of the Iraqi Evidence Law: "Anyone who is directed to take an oath and refuses to do so without challenging it to the opponent will lose the claim related to the oath." Article (2/114) of the Iraqi Evidence Law states: "A decisive oath is one that concludes the case."
2. **Supplementary Oath:** This type of oath is directed by the judge on their own initiative to one of the parties, without a request from them. The judge has discretionary power to use it to complete their conviction if the existing evidence is insufficient to prove the case. The Egyptian legislator, in Article (119) of the applicable Evidence Law, and the Iraqi legislator, in Article (121) of the amended Iraqi Evidence Law, have specified the conditions for directing a supplementary oath, which are:

- The case should not be devoid of evidence.
- There should not be complete evidence in the case.

If these conditions are met, the judge may direct the supplementary oath based on their evaluation of the case's circumstances, evidence, and context.
There has been debate over whether oaths are considered a valid means of evidence in administrative courts. Generally, evidence in administrative proceedings is flexible and unconstrained, allowing judges to form their own judgments based on various forms of evidence and inferences presented before them. While the principle of freedom of evidence applies, this does not mean that all methods of evidence acceptable in private law courts are applicable in administrative courts. Some methods, such as oaths, may not be suitable due to the nature of administrative cases. For instance, oaths cannot be used as evidence in administrative proceedings for reasons related to public order. They are inconsistent with the specific nature of administrative disputes, where oaths cannot be directed at the administrative authority due to its lack of capacity to make decisions on the contested rights. Additionally, administrative representatives are not subjected to oaths, and to ensure equality, decisive oaths are excluded for both parties. This principle is upheld by administrative courts in France. Furthermore, the facts subject to an oath must pertain to individuals due to public order considerations and the nature of administrative cases, which involve unequal parties. Consequently, there are no legislative provisions governing oaths before the Council of State or administrative courts, unlike the provisions in civil law, which regulate this means in Article (135) and subsequent articles.
In Iraq, the Iraqi administrative judiciary follows the French administrative judiciary's approach, denying the use of oaths as a means of evidence in administrative courts. Iraqi legal scholars have justified the prohibition of decisive oaths for legal persons, including state employees, by stating: "An oath is a personal matter that must connect with an individual's conscience and beliefs; therefore, legal persons cannot be sworn in because they are legally considered as incapable entities, acting only through their representatives. These representatives cannot take oaths on behalf of the legal person they represent. Consequently, decisive oaths cannot be administered to state employees in their official capacity as they represent others. An individual cannot swear on behalf of someone they represent, as the employee's duties are based on legal authority." This perspective is supported when applied to administrative case parties, as the administration, as a legal person, lacks personal memory and belief, relying only on its records and documents. Therefore, its oaths or statements must be regulated by legal provisions and jurisdiction.
Thus, it is not possible to administer oaths to administrative representatives because they are not personally involved in the subject matter of the case before the administrative court. Their role is solely to defend the interests of the administration.
Regarding supplementary oaths, which judges may direct to one of the parties to complete their conviction, this method of investigation is not explicitly mentioned in the legal texts of France, Egypt, or Iraq. The prevailing opinion among legal scholars is to exclude supplementary oaths for administrative representatives for the same reasons as for decisive oaths. However, there are two views on the possibility of directing supplementary oaths to individuals rather than the administration:
1. **Opposition View:** This perspective argues against directing supplementary oaths to individuals, upholding the principle of equality between the parties.
2. **Supportive View:** This view supports the possibility of administering supplementary oaths to individuals but not to the administration. This allows the administrative judge to complete their understanding and judgment based on their discretion and the specifics of the case, without imposing any binding legal effects. Proponents argue that differentiating between individuals and the administration is necessary due to the specific nature of

each party. They contend that this distinction does not violate the principle of equality before the administrative court, as supplementary oaths are investigative tools aimed at fully addressing the case, unlike decisive oaths, which resolve the dispute ( ).

From the preceding discussion, it is clear that both decisive oaths and supplementary oaths are incompatible with the nature of administrative disputes. This is because the facts of administrative disputes are typically recorded in files and records in advance, enabling the court to access the necessary evidence to ascertain the truth. Therefore, both types of oaths are excluded from the means of proof before administrative courts.

Branch Four: Presumptions

The French legislator defined presumptions in Article 1349 of the French Civil Code as the conclusions drawn by the law and the judge from a known fact to ascertain an unknown fact. In Iraq, the legislator has dedicated Articles 98 to 104 of the Evidence Law to outline the rules governing presumptions, while the Egyptian legislator has dedicated Articles 99 and 100 of the Evidence Law to the same subject. Jurisprudence defines presumptions as the process by which the legislator infers a presented fact to deduce an unknown fact based on the concept of common probability; that is, based on the idea of likelihood and probability.

The foundation of a legal presumption is the legislative act, and its basis is the legal text; it cannot exist without it. Thus, it serves as a form of provisional proof, offering a temporary form of evidence rather than definitive proof.

Presumptions are of two types

A. Legal Presumptions

The Iraqi legislator defines legal presumptions in Article 98 of the Iraqi Evidence Law as follows: "A legal presumption is the inference made by the legislator from a known fact to establish an unknown fact." These presumptions are categorized into two types:

1. **Simple Legal Presumptions:** These are presumptions that can be challenged by evidence to the contrary. The legislator established them to relieve the party for whose benefit the presumption was made from having to prove the fact claimed, provided they can prove an alternative fact that supports the presumption. This type of presumption is not considered a matter of public policy.
2. **Conclusive Legal Presumptions:** These are presumptions that cannot be contradicted by evidence. They exempt the party for whose benefit they are established from proving the fact in question through any means of proof. However, it is still possible to disprove them only through oaths and admissions. An example in France is the judicial presumption of truth, which assumes the correctness of judicial decisions, known as the res judicata principle. This principle dictates that decisions with the force of res judicata are conclusive on the rights adjudicated, and no evidence to the contrary is accepted, except as it pertains to the parties involved and the same cause of action. Article 1351 of the French Civil Code confirms this by stating: "The authority of res judicata applies only to the subject matter of the case, and the request must be based on the same cause and be between the same parties in the same capacity." Similarly, the presumption of waiver and implicit abandonment of a claim is addressed in Article 56 of the order issued on July 31, 1945, concerning the French Council of State, and Article 9 of the law enacted on July 22, 1989, amended by Article 8 of the 1954 decree concerning administrative courts. According to this presumption, if a party fails to respond to a notice from the Council of State or the administrative courts regarding the submission of required documents and pleadings, this non-response is considered a presumption of waiver of the claim, allowing the council or court to issue a judgment accordingly.

In Egypt

Article 10 of the State Council Law stipulates that "... the refusal or failure of administrative authorities to issue a decision that they are required to make under the laws and regulations is considered equivalent to an administrative decision." Additionally, Article 24 of the same law states that "... the passage of sixty days from the submission of the grievance without a response from the administration is considered a refusal, and the deadline for filing a lawsuit challenging the decision regarding the grievance is sixty days from the expiration of the aforementioned sixty days."

In Iraq

Article 61 of the Civil Service Law No. 42 of 1960, as amended, states that an employee is entitled to their salary from the date of commencement of their job, and if they do not begin work within ten days from the date of certain knowledge (excluding customary travel days), the appointment is considered canceled. The appointing authority may grant the employee an additional thirty days from the notification date to commence work if a valid excuse is provided; otherwise, the appointment is deemed canceled after this period.

Judicial Presumptions

The French legislator defines presumptions generally in Article 1349 of the French Civil Code, as mentioned earlier. The Iraqi legislator defines judicial presumptions in Article 102 of the Iraqi Evidence Law, which states that a judicial presumption is an inference of an unproven fact from a proven fact in the pending case. The Egyptian legislator does not provide a specific definition for presumptions, leading scholars to define them as the inference of an unknown fact from a known fact. This definition indicates that a judge can infer what is unknown from what is known about the case based on their intelligence and insight to reach the conclusion of the judgment.

Applications of Judicial Presumptions

In the context of administrative judiciary, one notable application of judicial presumptions is the presumption of abuse of power. The French State Council has established that a decision to dismiss an employee by a newly appointed president before taking office, and then executing this decision unusually quickly, specifically the day after starting work, constitutes a presumption of abuse of power.

In Iraq, the former General Disciplinary Board (now the Court of Administrative Justice) has considered the act of transferring an employee far from their family and

residence, causing material harm, as an abuse of power. A relevant decision states: "... The transfer of an employee from one department to another falls within the discretionary authority of the administration to ensure the proper functioning of the public service. However, this authority is not absolute but is constrained by public interest and the prohibition of abuse of this right. Since the transfer of the plaintiff from Baghdad to Babil province, far from their family and residence, and imposing additional costs and expenses, makes the transfer akin to a disguised penalty, it must be annulled..."

Conclusion

Praise be to Allah, whose blessings make all good deeds complete. We pray and send blessings upon the Messenger of Mercy to the worlds, the trustworthy Prophet Muhammad (peace be upon him).

After completing our research on the topic of "Investigative Evidence and Its Role in Proving Disciplinary Claims," the study has reached the following results and recommendations:

First – Results:

1. **Role of the Administrative Judge:** The administrative judge plays a significant role in balancing and weighing different pieces of evidence. This means that the administrative judge is not bound to one method of proof over another, as long as the evidence is acceptable and suitable for the nature of the case before him.
2. **Importance of Written Evidence:** Writing is considered the primary means of proof and is one of the most significant features of evidence in administrative litigation procedures, due to the guarantees it provides that are not available with other types of evidence.
3. **Verification of Written Evidence:** In cases of doubt regarding the authenticity of written evidence, the law provides methods to ascertain the truth, such as claims of forgery or handwriting analysis.
4. **Expert Reports:** Expert reports are considered a type of evidence but are not conclusive or decisive. They are subject to the discretion of the administrative judge, who is not bound by the expert's findings. The judge may accept the report, part of it, or reject it in favor of opposing evidence.
5. **Importance of Witness Testimony:** Witness testimony before an administrative judge holds practical significance similar to that before a regular judge, whether in civil or criminal cases. This importance is due to the predominance of written procedures in administrative cases and the practical difficulties of obtaining witness testimony, which can result in a significant loss of time and effort.
6. **Use of Presumptions:** Both types of presumptions, legal and judicial, are frequently used by the Administrative Court and the Court of Administrative Justice.

Second – Recommendations

1. **Enactment of a Separate Administrative Procedures Law:** Establish a distinct law for administrative procedures specifically for administrative judiciary, separate from civil and administrative procedural laws. This law should encompass all aspects related to administrative claims, respecting the unique nature of administrative disputes and addressing the deficiencies and ambiguities found in the current legal texts concerning procedures before administrative judicial bodies.
2. **Reevaluation of Evidence Regulations in Administrative Claims:** Reorganize the provisions related to evidence in administrative cases by providing clear and explicit regulations that align with the nature of administrative disputes. This includes organizing rules for direct evidence in a manner consistent with the peculiarities of administrative litigation.
3. **Legislative Amendments for Judicial Presumptions:** We recommend that the legislator formally recognize certain judicial presumptions and elevate them to the status of legal presumptions, particularly those that have been consistently upheld by the judiciary. For example, this could include the presumption of certain knowledge of administrative decisions by individuals and the presumption of abuse of power by the administration. Additionally, it is important to empower the administrative judge with discretionary authority in applying these presumptions according to the circumstances of each case.

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