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Disciplining Public Employees in Kuwait: A search for increased fairness, coherence, and protection in the light of prevailing and expanding employee duties, particularly the duty to Whistleblow.

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Disciplining Public Employees in Kuwait: A search for increased fairness, coherence, and protection in the light of prevailing and expanding employee duties, particularly the duty to Whistleblow.

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DECLARATION

Yr wyf drwy hyn yn datgan mai canlyniad fy ymchwil fy hun yw'r thesis hwn, ac eithrio lle nodir yn wahanol. Caiff ffynonellau eraill eu cydnabod gan droednodiadau yn rhoi cyfeiriadau eglur. Nid yw sylwedd y gwaith hwn wedi cael ei dderbyn o'r blaen ar gyfer unrhyw radd, ac nid yw'n cael ei gyflwyno ar yr un pryd mewn ymgeisiaeth am unrhyw radd oni bai ei fod, fel y cytunwyd gan y Brifysgol, am gymwysterau deuol cymeradwy.

I hereby declare that this thesis is the results of my own investigations, except where otherwise stated. All other sources are acknowledged by bibliographic references. This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree unless, as agreed by the University, for approved dual awards.

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List of Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
ADR	Administrative Dispute Resolution
A.J.	Acmalité Juridique (Droit Adminisuatif)
art.	Article
C.E.	Conseil d'Etat
Convention	European Convention on Human Rights
CRE	Commission for Racial Equality
DDA	Disability Discrimination Act 1995
DDPs	Dismissal and Disciplinary Procedures
DPA	Data Protection Act 1998
DRC	Disability Rights Commission
DTI	Department of Trade and Industry
EAT	Employment Appeal Tribunal
EC	European Community
ECJ	European Court of Justice
EDT	Effective date of termination
Edn	Edition
e.g	For Example
EPA	Equal Pay Act 1970
EPCA	Employment Protection (Consolidation) Act 1978
ERA 1996	Employment Rights Act 1996
ERA 1999	Employment Relations Act 1999
ERDRA	Employment Rights (Dispute Resolution) Act 1998
ETA	Employment Tribunals Act 1996
et al.	et alii, others
ET Regs	Employment Tribunals (Constitution and Rules) Regulations 2001
ET Rules	Employment Tribunals Rules of Procedure 2001
GCC	Gulf Cooperation Council
FSA	Financial Service Authority
HRA 1998	Human Rights Act 1998

Ibid.	ibidem, in the same place
i.e	In other words
KW	Kuwait
NMWA 1998	National Minimum Wage Act 1998
No.	Number
op. cit.	Opere citato, in the work cited
NDC	National Disability Council
para.	Paragraph
PBUH	Peace be upon him
PHR	pre-hearing review
PIDA	Public Interest Disclosure Act 1998
PTW	Part-time Workers
p.	Page
pp.	Pages
r.	Rule
Rec.	Recueil des arréts du Conseil d'Etat (Rexueil Lebon)
Rev. Adm.	Revue Administrative
Q.	Question
Reg.	Regulation
RRA	Race Relations Act 1976
s.	Section
Sch.	Schedule
SDA	Sex Discrimination Act 1975
T.C.	Tribunal des Conflits
UAE	United Arab Emirates
UK	United Kingdom
U.S.A.	United States of America
WPA	Whistleblower Protection right
WT Regs 1998	Working Time Regulation 1998

DEDICATION

This research is dedicated to my beloved family, for believing in me and for offering me the encouragement that I need to achieve my goals. I also dedicate this work to my wife Dr. Halimah Al-Failakawi, who has been supportive, patient, and loving throughout my study at the UK at University of Bangor.

Finally, I dedicate this work to my children: Maryam, Mishal, Jenna, Osama, Aseel, Meshari and Yousef, for giving me a great source of inspiration and motivation, and a sense of perspective during this challenging period.

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My great appreciation is extended to public employees and public servants working at Ministry of Justice and at the National Assembly in Kuwait who

responded to the study questionnaire, participated in focus group discussions, and agreed to stakeholder interviews about prevailing discipline procedures in Kuwait. Their comments and observations have enriched and shaped the thesis and have helped to reinforce the author's conclusions about the need for reform and further legal and judicial protection of public employees in Kuwait.

ABSTRACT

This thesis critically analyses the equity of disciplinary procedures for public employees in Kuwait. In particular, it examines the degree to which current arrangements and legal provisions facilitate and guarantee, natural justice and due process in the context of employment in general, and in relation to whistleblowing in particular. The research evaluates comparative jurisdictions in order to highlight both the strengths and weaknesses of the existing provision in Kuwait.

This thesis further examines the relationship between the disciplinary measure for public employees in Kuwait and their duties to whistle-blow when necessary, and to this end it provides an overview of parallel developments in historical and closely linked Arab and Western countries (i.e. UAE, Egypt, UK, and France,) with a view of evaluating the strengths and shortcomings of existing Kuwaiti provisions. Emphasis is placed on the government sector, with the aim of highlighting its deficiencies and limitations, and subsequently proposing a means by which these can be rectified, leading to improved performance within the public services. This study provides a broad outline of the current disciplinary systems, along with the duty of whistleblowing, in order to identify the various legal concepts operating within the public services in the above-mentioned countries.

Particular focus is given on the law of Whistleblowing in Kuwait, requiring the disclosure of information in instances of corruption. In particular this thesis examines the potential conflict between the Whistleblowing Law and Article 25(5)

of the Kuwait Civil Service law no. 15 of 1979, which prohibited public employees from disclosing confidential information. This current study aims to understand, question, and draw suggestions from both laws, with the overall aim to improve the current disciplinary system in Kuwait. A detailed literature review suggests that disciplinary procedures relating to public employees in Kuwait mirror incremental developments to other linked Arab states which essentially consist of a mix of legal provisions ranging from constitutional provisions, case law, and administrative arrangements. Such provisions, however, relate either to citizens generally or to public employees in particular and are not framed in an employment law context and therefore may not be sufficiently adaptable to respond to a rapidly changing employment law context and may lag behind legitimate employee expectations. This thesis, therefore, considers the benefit of framing disciplinary procedures within a natural law framework and the compatibility of the concept to Islamic principles.

The conceptual discussion in this thesis is also supplemented by empirical evidence relevant to the essential issues that are needed to be considered when regulating the disciplinary provisions applicable to public employees. A questionnaire has been administered to gain concrete opinion of employees about the current legal framework in Kuwait. A representative sample of fifty public sector employees in the State of Kuwait were interviewed, and further discussions were undertaken with a number of key and senior employees working at the Ministry of Justice and

the Kuwait National Assembly (i.e. the Kuwaiti Parliament). These employees all had substantial experience from the disciplinary system in Kuwait, along with the duty to whistle-blow. The mixed methodology methods utilised in this thesis, deals with the rationale for establishing specific disciplinary rules for public employees, and the main principles of natural justice by which employers should abide. Reform under the Kuwait's civil service law is needed to incorporate principles of justice and fairness to all employees, regardless of rank differences because although employment in the public sector in Kuwait can provide for a very attractive and rewarding career it paradoxically, as highlighted this study, can also lead to individuals feeling trapped and vulnerable because of the pervasive and hierarchical nature of existing disciplinary procedures within the public service. It may also contribute indirectly to the prevalence of public employee lethargy.

This thesis concludes with a summary of results, followed by a number of recommendations including the need for a specialist Court, aimed at improving the regulations used in the disciplinary and whistleblowing system of Kuwait. The study highlights the need for reform since it provides evidence to suggest that existing disciplinary procedures are perhaps overused and applied inconsistently.

Chapter 1
Conceptual and Legal Framework for the Current Thesis

1.1 Introduction

The thesis begins by addressing the complex issue of defining a public employee and outlining the reasonable disciplinary procedures such employees have the right to expect. This is vital in a country such as Kuwait, in which most Kuwaiti citizens are employed in the public sector. In 2014, the total population of Kuwait and non-Kuwaiti nationals was3,820,964.[1] According to the government statistics available the total number of Kuwaiti citizen is 1,212,545, and the total of the non-Kuwaitis is just over double that at (2,608,419). The population is expanding and the most recent census (2018) put the population of Kuwait at 4.59m, of which only around 1.4m are Kuwaiti nationals with large minorities of migrant workers from all over the globe.

Less than half the Kuwaiti population are in employment, but significantly almost four out of every five of those working is in the public sector. In other words, 320,000 thousand are Kuwaiti nationals working at the public sector while 91,000 are employed in the private sector. [2]

[1] Ahmad, Faraj. *Kuwait through History*. Kuwait: Al-Aien establishment. 2014, p. 49.

[2] State of Kuwait Central Statistics Bureau. *Statistical review*, 39th Edition. 2018. It should be noted that the researcher will mainly focus on Kuwaiti public employees, as his data collection such as the questionnaire, focus group session and individual interviews, were derived from opinions of Kuwaiti citizens who are working in the public service.

The public sector in Kuwait is undoubtedly an attractive destination for employees, because it provides substantial ancillary benefits such as high salaries, and good working conditions together with virtual security in employment.[3] Although there are obvious advantages to such privileges, it is also the case that the dominance of the public sector has a negative aspect, in that those employed within it are to some extent trapped and vulnerable because of the pervasive influence of the sector on the whole of Kuwaiti society. In addition to being the major employer of Kuwaiti citizens, the public sector essentially controls all the powerful aspects of the country's economy, and therefore, is arguably able to play an oppressive and intimidating role in the labour market.[4] The vulnerability of public employees in any jurisdiction will also be compounded if there are any ambiguities about their status and their duties. As is highlighted later in the thesis,[5] existing definitions of public employees can be viewed as unsatisfactory,[6] since they are largely descriptive and circular, with little attempt in law or judicial guidance to outline the legitimate expectations characterising the status of an employee when disciplinary issues arise. This lack of precision is clear in those

[3] Source: www.alyaum.com/article6/4/2008.[Accessed 10th July 2016]; see also discussion below at p. 7.

[4] Maarefi, Abdullah A. "Evaluation System at Financial Institute in Kuwait," Ph.D. Thesis, Commerce College, University of America at London. 2006, p.50.

[5] See in Chapter 3, section 3.2.1 (Definition of Public Employee Under Kuwait Law), see p. 94.

[6] Edrees, Meshari Rashid. "The Competence of Jurisdiction of the Administrative Circle in the State of Kuwait," Master's Dissertation, Kuwait University. 2008, p.15.

situations in which legislative provisions suggest conflicting imperatives.[7] This is particularly so in relation to the conflicting imperative relating to the position of whistleblowers in Kuwait, with employees being simultaneously seemingly expected to keep secrets, and conversely to undertake the duty of informing their superiors when they encounter evidence of corrupt practice and conduct.[8]

Kuwait's legal system is rooted in a number of different legal systems and also influenced by developments in neighbouring Arab countries.[9] These diverse

[7] Conflicting imperatives are goals, priorities or motivations that underline many social and political relationships and are interdependent but contradictory. Furthermore, they also reinforce connections between rules and bureaucracy, by reasoning that if the wrong rules have been applied, or if rules have been applied incorrectly, it is difficult to maintain that the appropriate procedures have been followed. In other words, conflicting imperatives mean that disputes can arise over rules and expert judgment, and officials may disagree about how to apply rules when judging cases. See: Gould, Andrew. Conflicting Imperatives and Concept Formation. *The Review of Politics.* [E-Journal] Volume 61 Issue 3. 1999, pp. 439-463. Available at: http://www.jstor.org/stable/1408463 contents. [Accessed 8th July 2015].

[8] See discussion at Chapter 3, p. 84.

[9] Al-Saleh, Othman Abdulmalik, *System of the Constitutional Law in Kuwait*. Kuwait: Manshaat Dar Al-Kutoub, 2003, p. 26. However, in order to gain deeper insight on the Kuwait legal system, it is fundamental to understand how the Kuwait government deals with Islamic law. The Kuwaiti constitution declares Islam as Kuwait's official religion, this action ensures that Islamic legislature is a basic source of law. Islamic jurisprudence (Sharia and Doctrines) is the primary source of legislation in Kuwait as stipulated under Article 2 of the Kuwait constitution. This allows legislators the liberty to draw from Islamic jurisprudence whenever possible. It also, paves the way to some extent to draw on the tenets of Islamic (Sharia) rules in all facets of laws related to society. Arabic Jurisprudence accepts that everything drawn from the Divine Power, that organises the affairs of people in this worldly life and hereafter, is a legitimate source of law. However, this does not mean that religion is the only source used for a legal foundation; other sources of law include custom and the principles of the law of nature and rules of justice. The Kuwaiti constitution recommends using the Islamic religion in personal cases such as marriage, divorce and to resolve certain family issues. For other cases in Kuwait, the government can use other source of laws made by the Kuwait parliament such as criminal and commercial law. Article 109 of the Kuwait constitution further makes clear that "A member of the Assembly shall have the right to initiate bills", this stipulates that all kind of codes can be initiated without directly relating to Islamic jurisprudence. (See, Appendix A, Kuwait Constitution).

influences may also add to the confusion or uncertainty and contribute to possible gaps in the law in relation to public employee protection. The legal system of Kuwait is classified in some comparative and academic sources as a mixed legal system consisting of English common law, French civil law, and Islamic religious law. [10] For example, the law relating to commercial activities or the Commercial Code in Kuwait is very much influenced by English common law, French civil law and Egyptian which when applied should be underpinned by Islamic principles. The mix is historical and the influence and impact varies across the legal specialisms, but Article Two of the Kuwaiti Constitution (implemented in 1962) states that henceforth Islamic (i.e. Sharia) law should be the country's primary source of legislation.[11] Major legal codifications, to date, pertaining to the area debated in this thesis include the following:

The Civil Code, found in Decree Law No.67 of 1980;

Commercial Code No.68 of 1980 (amended by Law No.45 of 1989);

[10] Palmer, Vernon. "Mixed Legal Systems - The Origin of the Species." *The Tulane European and Civil Law Forum.* 2013, p.103. Palmer and others suggest that mixed or hybrid legal systems were traditionally regarded as odd, but suggest that, in reality, a large number of jurisdictions, perhaps the majority fall into this category, which in turn can be subdivided into subcategories such Common Law and Islamic law, Civil Law and Customary law. Perhaps the significant and important suggestion that can be made in relation to Kuwait is that it has been influenced by a multiplicity of legal traditions, which reflects its complex history and the competing influences of both the United Kingdom and France.

[11] However, there has been a tendency to adopt common and civil law provisions in relation to commercial activities, and to refer to Islamic provisions in the context of family disputes, see information below in this chapter.

Penal Code in Law No.16 of 1960, and the code of criminal procedure in Law No.17 of 1960;

Kuwait's Civil Service Law No.15 of 1979;

Kuwait's Administrative Dispute Resolution Act No.20 of 1981; and Whistleblowing Act No.24 of 2012.

Issues relating to fairness and justice [12] have clear cultural implications, particularly in response to the accommodation of political and religious diversity. The methodology adopted in this current thesis accounts for such difficulties by harmonising the application of Sharia law and its' Western counterpart, namely Natural law, [13] to global and increasingly universally accepted good practice in relation to human rights in the employment context. The essential aim is to integrate the various conceptual elements of the different traditions, with the objective of promoting fairness and increased effectiveness of legal provisions in Kuwait. The suggested recommendations and reforms reflect both a conceptual analysis and supplementary empirical

[12] The effective way of contributing to equality and achieving fairness is as follows: "(1) The law must be general. (2) The legal standards, including the definitions direct and indirect discrimination, must be clear. (3) The legal standards need to cover all the main areas of activity and the exceptions. (4) There must be reasons and punishments to encourage self-regulations to depend on active participation. (5) There must be the effective support for self-regulation with efficient enforcement by an independent agency". Hepple, Bob. *Equality: The New Legal Framework*. London: Oxford and Portland. 2011, p. 23. Also see, Dworkin, Ronald. *Justice for Hedgehogs.* London: The Belknap Press of Harvard University, Cambridge. 2011, p. 3.

[13] Natural Law is a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society.
Source: https://www.britannica.com/topic/natural-law [Accessed 3rd September 2016].

evidence, in the form of opinions provided by Kuwaiti public employees and other key stakeholders, i.e. Judges and Senior Officials.

Disciplinary procedures tend to differ between private and public sectors (for further details of this difference, see chapter 1, page 9). This is also the case in Kuwait, which regards public employees as representatives of the state, with their policies and practices being expected to reflect best practice and conduct. Thus, when discharging their duties, public employees are expected to uphold the highest standards of honesty and probity. Since the expectations placed upon them are high, they are consequently highly vulnerable to arbitrary criticism and discipline.

As previously indicated, most Kuwaiti employees are attracted to working in the public sector by a number of factors, including: high salaries; lower degrees of pressure at work; lesser demand for productivity; flexibility to leave the workplace for personal reasons; relaxed attendance rules; long periods of annual leave; generous retirement schemes; and the stability of working within government.[14]

However, employees in Kuwait tend to be more interested in working in the public (as opposed to the private) sector due to the government's provision of

[14] See: Al-Rashidee, Abdullah Habab, *Summary of the Administrative Jurisdiction in the State of Kuwait*. Kuwait: Dat Al-Salasel Press. 2013, p.41. Further reasons for attracting public employees to working with the government sector include less stress or tension on the job. The significant reason for this issue, as a concrete example, is the short working hours in public sector (starting 8 am ending 2 pm). But the private sector has longer working hours (starting 9 am ending 5 pm). See: http://www.aljarida.com/articles/1462409728594658200/ [Accessed 7th June 2015].

large sums of money for public employees. The institutional stability and generosity, which characterises the public sector in Kuwait, arguably results in some employees essentially regarding employment as an extension of a welfare state.[15]

Considerable evidence exists from a wide range of countries to suggest that the very favourable privileges enjoyed by the public sector, however, can lead to lethargic conduct and inefficiency.[16] Work effort may differ in relation to employees who are working in the private or public sector. This may be due to the difference in the incentives and rewards that both sector offer to workers, and to the difference in the employees they attract. Private work could be said to be more organised to offer employees external motivators that could affect their individual productivity. However, the government sector places a greater importance on job security for employees, which may be seen as less stressful than work in the private sector. [17]

Although the tendency towards lethargy in the public service has been noted across different cultures and jurisdictions, the risk of such developments is

[15] Source: http://www.kuwait-toplist.com/information-on-kuwait/living/ [Accessed 12th January2016].

[16] Buelens, Marc, & Van den Broeck, Herman. "An Analysis of Differences in Work: Motivation between Public and Private Sector Organizations" Public Administration Review. Volume 67 Issue 1. 2007, pp. 65-74. See also Cawley, B. "Public Service Motivation: State of Public Service Series" *An Foras Riarachain Institute of Public Administration*. June 2013, p.3. See also Chartered Institute of Personnel and Development (CIPD). *Working Life: Employee attitudes and engagement,* Research Report. 2006, p.10.

[17] Frank, Sue A, "Government Employees working Hard or Hardly working?" *American Review of Public Administration*. Volume 34 Number 1. March 2004, p.38.

perhaps particularly strong in Kuwait because of the favourable welfare, namely the provision relating to the employment of Kuwaiti citizens provided for in the Constitution. Article (41) of the Kuwait constitution provides that:

> (*Every Kuwaiti shall have the right to work and to choose the nature of his occupation.*
>
> *Work is the duty of every citizen. Dignity requires it and the public welfare ordains it. The State shall make work available to citizens and shall see to the equity of its conditions).*

In legal terms, the provision is probably a target duty rather than specified duty owed to an individual. [18] It is essentially aspirational –it does not provide every individual Kuwaiti with a personal right to compel the state to provide him with a specific job. The duty is expressed in more general terms as the wording of the last phrase of the Article implies '*the state shall make work available to citizens.'*[19] However, this codified duty exists, and its importance should not be underestimated. It is possibly of significant practical and psychological importance. As outlined above,[20] the Kuwaiti Government is the major employer

[18] See Callaghan, C. "What is a target duty?" *Judicial Review*. Volume 5 Issue 3. 2000, pp. 184- 187.

[19] See the explanatory note concerning Article 41 from Kuwait Constitution. It should be noted, however, Article no. 41 means that Kuwait government can help citizens to find jobs by advertisements through different media outlets such as T.V. and press. Thus, the complete obligation for the citizen is to choose any kind of job as he or she prefers to work in, whether it be at the public or private sector. See: www.kt.com.kw/ba/tafseriah.htm [Accessed 10th July 2016].

[20] See information above in this chapter.

of Kuwaiti citizens. The constitutional provision may also significantly impact the psyche and attitude of public employees in Kuwait.

Another potential influence on the attitude and conduct of employees is the nature of the disciplinary proceeding applied to them. Interestingly, and perhaps indicative of the potential for differential performance between the public and private sector is that in Kuwait, it is only in relation to the private sector that the rules pertaining to disciplinary procedures are specified in detail. The procedures for private workers are listed under part 2, section 2 of the Kuwait Labour Law no.6 of 2010 issued on 21st of February 2010. Although brief notes will be made in this thesis about private workers and Kuwait Law Labour no. 6 of 2010 which governs them, the reference to that area is merely for the purpose of illustration and not for comparison between public-sector employees and private-sector workers. The researcher in that regard highly recommends that the subject-matter relating to private workers, as governed by Kuwait Law no. 6 of 2010 concerning about labour law in the private sector, as a topic for future research.

However, it is clear that the Kuwait Labour law no. 6 of 2010 governing private workers offer more precision. Under Article 35 of the previous law, specifically, states that the employer has a duty to explicitly provide a list of administrative penalties on the premises or workplace. The following should be considered when preparing the penalty against the private employee: 1) Defining each violation of employers' rules (company rules) and its corresponding penalty. 2) Gradual increase of penalties. 3) The worker should not be penalised for a violation that occurred

fifteen days before the penalty was put on effect. 4) A penalty should not be brought against a worker who commits a violation outside the workplace, unless it is related to his work." [21] In Arabic, this is [يجب على صاحب العمل أن يعلق في مكان ظاهر بمقر العمل لائحة الجزاءات التي يجوز توقيعها على العمال المخالفين ويراعى في إعداد لوائح الجزاءات ما يلي : 1- أن تحدد المخالفات التي قد تقع من العمال ويحدد الجزاء لكل منها . 2- أن تتضمن جزاءات متدرجة للمخالفات . 3- ألا يوقع أكثر من جزاء واحد للمخالفة الواحدة . ألا يعاقب العامل عن أي فعل ارتكبه ومر على تاريخ ثبوته خمسة عشر يوما . 4- ألا يوقع الجزاء على العامل لامر ارتكبه خارج مكان العمل إلا إذا كان له علاقة بالعمل.].

Similarly, Article 37 affirms that a penalty will be void if the employee was not notified in writing and was given the opportunity to challenge the penalty imposed on him/her. It is evident that there are differences in duties, rights, disciplinary procedures, and grievances between the public and the private sector. The requirements for employer notice and procedural duties in the private sector are clearly outlined and grounded under Kuwait Labour Law no.6 of 2010 issued on 21st of February 2010. The parallel provisions in relation to the public sector are less specific and ambiguous and are discussed in more detail below.[22]

It is not here suggested that public employee lethargy in Kuwait is condoned, promoted or tolerated, but simply that the management and legal regulation of such behaviour is perhaps more challenging.[23] Employees working in the public sector view themselves of having the potential to work within the government,

[21] Article 35, Kuwait Labour Law No.6 of 2010, issued on 21st of February 2010.

[22] See information in this chapter.

[23] www.Fatwa.Islam Web.net>fatwa>show fatwa 20-9-2007 [Accessed 10th July 2016].

and thus feel that they have no need to produce, or prove, anything. Any attempts at correcting this attitude may be perceived in a negative manner, with any form of criticism being unwelcome. Indeed, it is likely to become more challenging as the nature and variety of public employment continues to extend. In Kuwait, the breadth of employment has extended from a small narrow base to the widening functions of the state, including the Ministries of Justice; Information; Social Affairs; Foreign Affairs; and Public Works. Not only has the breadth of public employment expanded but increasingly, the nature of employment contracts is changing, and the division between public and private employment is becoming less clear.

Flexicurity is the driving employment philosophy in Western and European countries, but there is good reason to suggest that the approach will be promoted globally including countries such as Kuwait, where the public sector has to date been well protected. Flexicurity attempts to reconcile and find the appropriate balance between an employers' need for a flexible workforce and the workers' need for security. The concept is usually and more commonly applied to the private sector, but increasingly public employers across Europe are adopting a similar approach.[24] In the light of financial and political pressures on governments

[24]Wilthagen, Ton and Frank Tros. "The Concept of "Flexicurity": A new approach to regulating employment and labour markets," *Transfer: European Review of Labour and Research.* Volume 10 Issue 2, 2004, p. 3.
Available at: http://www.nvf.cz/assets/docs/80401adfbc0953f74d581d0c0a71ff37/359-0/youth-flexicurity.pdf [Accessed 23th June 2017].

in Arabic countries, arising from the instability of the oil industry, and other regional developments, it seems likely that such approaches and policies will be mirrored in the context of Arabic countries including Kuwait.[25]

This expansion has inevitably led to a change in the status of, and attitude towards, public employees. When there were only a small number of public employees, they were perceived as being privileged and therefore not subject to public scrutiny. As the number has increased, so has the need for scrutiny, leading to their position becoming less privileged, as they have undertaken an ever-wider variety of posts. Public service[26] has become a duty rather than a privilege, leading to the employee no longer being a 'master, but a servant of the people.'[27]

It has, therefore, now become essential to define the degree of misconduct of a level sufficient to require the imposition of disciplinary procedures. The meaning of misconduct varies between countries, however, it is particularly important to establish clarity in countries such as Kuwait, as its public employees are

[25] See Talbot, V. Gulf Monarchies in the New Mena Region, in Altomonte, C and Ferrara, M (eds) *The Political Aftermath of the Arab Spring: Perspectives from the Middle East and North African Countries.* United Kingdom: Edward Elgar Publishing Ltd. 2014, pp. 1-17.

[26] The public service system is a service, which is provided or facilitated by the government for the public's convenience and benefit. Garner, Bryan. *Black's Law Dictionary, 9th Edition.* USA: West. 2009, p. 28.

[27] Al-Enezi, Saad Nawaf. "The Legal System for Public Employee in Kuwait," Ph.D. Thesis. Alexandria: Al-Jamiaa Press. 2007, p.21. Also see Karam, Ghazi. "Administrative Law in United Arab Emirates," Ph.D. Thesis (Arabic). Dubai: Brighter Horizon Publishers. 2010, p. 83.

forbidden to work in other forms of business activity.[28] The bar on other employment is clearly a detriment to the individual concerned, and may indirectly also impede his or her ability to leave the public service even when unhappy in the post.

In Kuwait, there is no clear definition of a public employee under Articles 2 and 3 of the country's civil service law,[29] and the definitions of the rights, duties and prohibitions of public employees are highly complex and extremely restrictive (see Chapter 3 for further details). Civil service law does not prove helpful in this matter, as it defines a public employee as an individual working directly for the government. The definition of a private worker, on the other hand, has more clarity, being an individual undertaking either manual or intellectual work for an employer (i.e. a business owner) for a salary, under the employer's management and supervision. The third chapter of this thesis, will therefore, include a critique of the legal definition of a public employee in Kuwait, the UAE, Egypt, the UK and France.[30]

The relevant articles determining misconduct in Kuwait civil service law fall under Article 24/5 of Kuwait's Civil Service Law No. 15 of 1979. The need for

[28] See Article no. 26 of Kuwait Civil Service Law no. 15 of 1979, Issued on 4/4/1979. See for example, Article 26 which stated that the employee may not undertake any kind of commercial, industrial work, while he or she is working to ensure that an employee dedicates himself or herself entirely to his or her jobs.

[29]Kuwait Civil Service Law no. 15 of 1979.

[30] See Chapter 3 for additional details concerning the definition of public employees in Kuwait, UAE, Egypt, the UK and France (The Definition of the Public Employee, Whistleblowing and natural justice).

clarity regarding the form of conduct permissible is particularly important in the context of the public sector, in which there is an increased emphasis on professionalism and work-based expectations. In order to determine which actions, constitute a breach of professional conduct, it is first necessary to review the complex system of obligations, prohibitions and sanctions. In general, certain aspects of the standards by which misconduct[31] are judged are given more prominence in some countries than in others.[32] Thus, a public employee drinking even a small amount of alcohol in the workplace would constitute serious misconduct in Kuwait and other Arab countries (i.e. the UAE and Egypt), whereas a state of drunkenness might be necessary before determining misconduct in a common law country. Similarly, gender issues can be regarded as both culture and legally specific.[33]

In legal terminology, discipline is the power of employers to issue orders to their subordinates, ensuring that these orders are: (1) carried out; (2) their application is supervised; and (3) sanctions can be imposed if they are not obeyed.

[31] Misconduct means a dereliction of duty, unlawful or improper behaviour. Garner, op. cit, p. 1613. However, for more details about the concept of misconduct, see Article 24/5 from Kuwait Civil Service law, and Article 66 from United Arab Emirates Federal law no. 11 of 2008. Also, see Al-Rashidee, op. cit., p. 541; Al-Tobtubaee, Adel. *Civil Law in Kuwait.* Kuwait: Maktab Al-Darasat. 2005, pp. 318- 319; and Karam, op.cit, p. 128.

[32] It is useful to include examples of misconduct in Kuwait, in order to highlight any divergence. For example, wearing inappropriate outfit such as short clothing and tank tops for both female and male.

[33] Indeed it appears from some of the empirical evidence collated in this study that perhaps men and women are treated differently in the Kuwaiti Civil Service, see information under chapter 5.

At the same time, it is necessary to protect employees from the risk of arbitrary actions on the part of the employer. As highlighted in this current thesis, senior public employees within the Kuwaiti public services are awarded considerable power within an organisation, with a resultant increase in both arbitrary and abusive behaviours.[34] Therefore, this thesis will evaluate the existing provisions in Kuwait with the objective of recommending appropriate, fair, accessible and responsive procedures, to manage employment-based disputes in highly hierarchical and powerful workplaces, such as those of the public services. The management of such issues can be problematic in the context of day-to-day employment disputes and becomes even more challenging when the employee needs to navigate the conflicting responsibilities of loyalty to their employer, and the exposure of corrupt practice.[35]

The significance of the high and pervasive demands placed on public employees should be recognised by the existence of clear guidance, regarding their precise expectations, along with the consequences of failing to comply. This thesis will examine provisions relating to disciplinary offences in Kuwaiti law, in order to

[34] This expansion in arbitrary actions is supported by the results of Al-Enezi's (2011) study. See: Al-Enezi, Saad Nawaf. "Procedures Guaranteed for Disciplinary," Research paper, Kuwait University. 2011, p. 27. Also, see: www.alyaum.com, op. cit. p. 2. [Accessed 10th July 2016].

[35] For this case, it is important to focus on the concept of natural justice in Islam, and to find a way to use natural justice as a fundamental concept.

determine clarity and fairness, and establish the impact on the performance of employees.

The concept of natural justice seeks to establish the objective development of a fair legal process, rendering it highly relevant to this current thesis. Quranic guidance embraces both process and probity,[36] demanding the highest standards of judicial procedures. For instance, the Holy Quran, states: 'Allah doth command you to render back your trusts to those to whom they are due, and when ye judge between the people, that ye judge with justice; verily how excellent is the teaching which he give you, for Allah is he who hear-eth and see-eth all things.'[37] Identical standards apply to the judge, the witnesses in court, the head of the family, and the general population, all of whom are expected to speak honestly and fairly.[38] However, despite the distinction given to Islamic law in the Constitution of Kuwait,[39] the above Islamic principles are generally referenced only in the context of family disputes. This perhaps is to be regretted because greater fairness and transparency is also required in the context employment disputes. For

[36]http://www.al-islam.org/towards-better-understanding-quran-shaykh-muslim-bhanji [Accessed 10th July 2016], the term of probity in Islam means to stand firm, as the God said in Quran to his messenger Mohammad "Thera for stand firm in the straight path as thou art commanded, thou and those who with thee turn (unto Allah), and transgress not (from the path): for he sees the well all that ye do." Surat Hood, verse 112.

[37] Surat An-Nisa, Verse 58.

[38] Source: Ali, Abdullah Yusuf. *The Meaning of the Holy Quran,* 10th Edition. USA: Amana Publications. 2001, p. 203. Also see: Kamali, Mohammad Hashim. *Freedom of Expression in Islam.* London: Islamic Text Society Cambridge. 1997, pp.68-69.

[39] Article 2, Kuwait Constitution, Appendix A.

example, when an employer awards one employee a large bonus, while others are given only a minimal bonus, without any other justification than the employer's liking, or disliking, of individual employees.[40]

Components of the theory of natural justice are present in the jurisprudence of both civil and common law, and thus it is considered to be both appropriate and useful to apply the framework of natural justice to guide the critical analysis in this thesis. Islamic writing also addresses issues of justice and fairness,[41] and therefore, this thesis will discuss the ways in which Kuwait is able to implement equity based on lessons taken from other jurisdictions, such as Egypt, the UAE, the UK and France. The selection of Egypt and the UAE as comparative cases relates to the similarity of legal provisions, scholarly interests, and political and commercial developments.[42] References to the French legal system are also appropriate, as the Kuwaiti legal system is derived from civil jurisprudence in French law,[43] with the result that French law, and its associated academic writing, has had a considerable influence on the development of the legislation in Kuwait.

[40]www.alyaum.com.op. cit., p.2 [Access 10th July 2016].

[41] Raudvere, Catharina. *Islam: An Introduction*. London: I.B. Tauris. 2015, p. 187. This text provides a summary of the central concepts of Islamic ethics, which are good deeds, virtue, and the endeavour to perform at one's best to ensure justice in the Arabic world.

[42] Al-Faresi, Ahmad Hamad. "Discipline in the Public Service of Civil Jobs in Kuwait, A Comparative Study" Journal of Law. Kuwait University. December 2004, p. 14.

[43] Al-Rashidee, op. cit., p.48.

Over the centuries, the concept of justice in Islam[44] has evolved to include principles that comprise: (1) clear and stable laws; (2) efficient political and judicial systems; (3) the protection of fundamental human rights; (4) and equal access to justice,[45] political processes and government accountability. These developments are essentially aspirational, and, although they provide a framework for justice, they cannot provide a guarantee. However, such developments are important, particularly as employment arrangements become increasingly complex and diverse. As indicated above, the public services sector in Kuwait has grown in its size, function and hierarchy, with the inevitable result that the nature of employment has changed in a manner that is likely to lead to an increase in conflict.

The above dynamic is well illustrated by the competing issues surrounding the public duty of loyalty, and to the requirement to whistle blow in certain circumstances. The disciplinary and whistleblowing processes also need to be more sophisticated and responsive. The task of providing appropriate protection for whistleblowers is currently being addressed differently and incrementally in a number of jurisdictions, including in the UK, France,[46] and more recently in

[44] Winter, Tim. *Classical Islamic Theology*. London: Cambridge University Press. 2008, p. 49.
[45] Ibid, p. 50.
[46] In the UK, the Whistleblowing System is grounded in substantive statutory legislation namely the Public Interest Disclosure Act 1998 (PIDA). There is no general whistleblowing law in France, The approach taken to date has been to enact a number of laws in relation to the public sector that address aspects of whistleblowing. See Chapter 3.
Source:www.lexology.com/library/detail.aspx?g=a621278a-34cb-40f0-9045-bc57d0ff5a66[Accessed 27th July 2016].

Kuwait.[47] The Act of whistleblowing in relation to employment rights has become a developing issue in both common law countries and civil law systems,[48] and thus this thesis will discuss the need to, and the possibility of, combining the commitment to combating corruption in Kuwait with the wider public interest, reflecting actions in common law countries, i.e. the UK. As indicated above, this thesis will address fundamental issues, with an emphasis on the need for a 'Whistleblowing Guidance,' to protect those employees wishing to raise concerns relating to any illegal behaviours occurring within their organisations, and in the context of Kuwait. The researcher will discuss the whistleblowing system in relation to its importance within the context of the Kuwaiti public sector, highlighting its relevance as belonging to a wealthy Arab country vulnerable to corruption, particularly in the form of the misappropriation of public funds and instances of money laundering.[49] The need for bespoke rather than transplanted

[47] The new Law no. 24 of 2012 that targets corruption in Kuwait. More details about whistleblowing in Kuwait will be further analysed in this thesis in Chapter 3, including whistleblowing tools in the UAE and Egypt.

[48] Some brief notes regarding common and civil law – common law is part of English law based on rules developed by the royal courts during the first three centuries after the Norman conquest, while civil law is the legal system in Western Continental Europe and Latin America, and is distinct from the English system of common law as it shares elements with Roman law. See: *Oxford Dictionary of Law*, 8th edition, London: Oxford University Press, edited by Jonathan Law, 2015, p.122. See also Watson, Alan. *The Making of Civil Law*, London: Harvard University Press. 1981, p.1.

[49] According to the 2017 Corruption Perceptions Index conducted by Transparency International, Kuwait currently ranks 85 out of 180 countries, with a score of 39/100. *Transparency* international is a non-governmental organization which is based in Berlin, Germany, and is a not for profit organisation founded in 1993. Its purpose is to take action to combat global corruption with civil societal anti-corruption measures and to prevent criminal activities arising from corruption.

legal solutions is widely recognised by writers on comparative law, but the principle does not preclude learning from the experiences of other, albeit different jurisdictions.[50]

For instance, whistleblowing is provided in the UK under the Public Interest Disclosure Act in 1998 (PIDA),[51] which came into force in July 1999, to protect certain kinds of disclosure (i.e. qualifying disclosure), as outlined below:

criminal offences;

failure to conform with legal obligations;

miscarriage of justice;

danger to the health and safety of any person; and

environmental damage.[52]

[50] See Adams, M and Bomhoff, J. *Practice and Theory in Comparative Law*. London: Cambridge University Press, 2012, p. 30. Also see: Michaels, Ralf. "One Size Can Fit All – On the Mass Production of Legal Transplants (December 19, 2012 (Constitutional Law)" Günter Frankenberg ed., Elgar, 2013. Available at SSRN: https://ssrn.com/abstract=2191543 [Accessed 16th June 2017].

[51] Notice: The Law of Public Disclosure Act 1998 (PIDA) came into effect in July 1999. Prior to the Act, employees had good reason to be hesitant about raising concerns in relation to wrongdoing because they feared that they would not be listened to or that they would be putting their jobs at risk. The Act allows employees to voice authentic concerns about misconduct and malpractice without receiving penalties such as dismissal, victimisation, or denial of promotion, facilities or training opportunities. The protection given is qualified and some concerns remain about the effectiveness of the protection given to those prepared to whistleblow. A more detailed critique of the provisions is provided in Chapter 3 at section 3.5.3 (Evaluation of the whistleblowing process in the UK), p. 152.

[52] Section 43 of Employment Rights Act (ERA) 1996. Taylor, Stephen and Emir, Astra. *Employment Law: An Introduction,* 2nd Edition. London: Oxford University Press. 2009, p. 489.

The whistleblowing provisions in Arabic countries are more limited and are essentially confined to criminal activities. The current provisions in Kuwait, the UAE and Egypt will be further analysed in Chapter 3.

There is clear justification for this current research, due to the potential added vulnerability of public servants in countries such as Kuwait, where employees may be particularly in danger of abuse, because of what can be described as the double bind nature of their status and benefits.[53] They are motivated to stay because of their high status and salary, but are also subject to abuse and unhappiness because of the hierarchical, and sometimes autocratic nature of both the culture, and the structure of public service organisations within Arab countries. In such circumstances employees may not be able to protect themselves from unreasonable and, at times, unjust demands. Employees may have little input in the workplace's decision-making process.[54] Thus, the employer has absolute authority or control in the management of the workplace. Autocratic leadership can be characterised by the decision-making process, which is completely unilateral, i.e the decisions are being made by a leader (i.e. employer or the line manager).[55]

[53] The double bind occurs when the person cannot confront an inherent dilemma, and therefore can neither resolve it nor opt out of the situation.

[54] Source: http://www.tuw.edu/business/top-down-vs-bottom-up-management/ [Accessed 23th June 2017].

[55]http://www.planetofsuccess.com/blog/2010/how-to-deal-with-autocratic-leadership/ [Accessed 24th June 2017].

This thesis will, therefore, conclude by making recommendations for both legal and institutional reform. In essence, the overall aim is to promote a bespoke Kuwait concept of due process[56] in the context of public employee protection, and to give particular regard to the mechanisms necessary in circumstances, such as whistleblowing, where there may also be conflicting imperatives.

1.2 Research Aims and Objectives

1.2.1 Aims

The research focuses on an examination of the present system, in order to:

- Examine the ways in which public employees are defined in Kuwait, and similar jurisdictions, and the extent to which existing legal provisions need to be reformed to ensure improved understanding and protection.
- Examine the extent to which existing disciplinary procedures relating to public employees in Kuwait promote due process by conforming to both Western and Islamic considerations of natural justice.
- Examine the extent to which public employees (and other key stakeholders, such as judges and senior employees) view existing provisions relating to discipline as being accessible, understood, fair, and effective.

[56] For example, the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power the state and that of the individual, requiring the state to respect the rule of law. The right to due process is constitutionally provided for in some countries such as the USA and is a wider concept than that of natural justice. It, therefore, seems an appropriate term in the context of this thesis which advocates an approach consistent with natural justice and also principles of justice and fairness that are fundamental to Islamic law. Majeed, Nudrat. "Good Faith and Due Process: Lessons from the Shari'ah" *Arbitration International*. Volume 20 Issue 1. March 2004, pp. 97-112.

- Examine the ways in which the law can be further reformed to address the conflicting expectations applying to public employees when in a position (or under a duty) to whistle-blow.
- Examine the need and benefit for constitutional and institutional reform, by establishing a specialist, and separate, judicial administrative tribunal to hear disciplinary issues.
- Examine the provisions that inform public employees of their right to raise an administrative claim demanding their rights at work.
- To make recommendations in relation to the reform of the Kuwaiti Administrative dispute system in relation to employment protection of public employees, particularly in the context of whistleblowing.

1.2.2 Objectives and Research Questions

The research focuses on resolving the significant issues, as stated below:

Article 25/5 of the Kuwait Civil Service Law no. 15 of 1979 prohibits employees from disclosing confidential information. However, in contrast, and possibly contradictory, there is also (under Article 36 of Whistleblowing Act no. 24 of 2012) a duty to whistle-blow in order to counter corruption. Therefore, the research problem concerns the difficulty in understanding the extent to which protection[57] is afforded to the anti- corruption whistleblower under Kuwait Law no. 24 of 2012. It is clear that the administration (i.e. the government) in the State

[57] The protection for the whistleblower under articles 39 and 40 of Kuwait Whistleblowing Act no. 24 of 2012 are explained at chapter 3, p. 143.

of Kuwait has the right to discipline public employees under Article 27 of the Kuwait Civil Service Law no. 15 of 1979 and Article 25/5 of the Kuwait civil service law prohibits disclosure of information; this leads to conflict, as Article 36 of the Kuwait Whistleblowing Act encourages the disclosure of confidential information to serve the purposes of anti-corruption. The confusion is not addressed in the legislative provisions, and therefore potentially contributes to public employee unwillingness to whistleblow in circumstances which might be appropriate and needed for the public good.

The thesis argues that the imposition of reforms based on the concept of natural justice are needed, and that such reforms would be consistent with the principles and best practice under Sharia Law. This thesis will therefore consider the function of natural justice[58] as applied in public employment law in Arab States particularly in Kuwait, with the aim of promoting the use of natural justice and due process as a fundamental concept for disciplinary procedures. The reference to due process is included to emphasise the need for substantive, as well as, procedural fairness.

[58] The generic term of natural justice implies an ethical wisdom. Garner, op. cit., p. 868. However, the legal term of justice denotes to the fair and proper administration of laws, in order to arrive at an impartial resolution to claims that are at odds. Garner, op. cit., p.869. In other words, justice is the correct application of a law as opposed to arbitrariness, bias and allegation. Curzon, Leslie and Richard, Paul. *The Longman Dictionary of Law,* 7th Edition. London: Pearson Longman. 2007, p. 332. In terms of the concept of natural justice, it is regarded as an important theory of constitutional law. The meaning of natural justice varies from one country to another. Fair play, however, is the only fundamental idea that is considered similar.

As outlined above, there are substantive, structural and cultural issues which may make it difficult for a public employee to achieve due process under the current arrangements in Kuwait. The focus issue in this thesis is the approach taken toward disciplinary matters in the State of Kuwait. This reflects a broad conception of penalties. Although discipline generally operates within a broad legal framework in Kuwait, it is difficult to identify specific provisions prescribing the correct procedure within a single statute.[59] The issue has been further aggravated by the fact that employers have immense power over public employees, largely due to a lack of specific listing of administrative offences. [60] It should also be noted that over thirty-one years have elapsed since the formulation of Kuwait Civil Service Law no. 15 of 1979, but that, public employees still remain exposed to insecurities relating to a lack of clarification of their rights and duties.[61] It is clear that, in the absence of legal protection, there is considerable possibility for employees to be victimised.[62] An important aspect of this broad conception of misconduct is the notion that a mere suspicion of an

[59] The laws concerning disciplinary procedures in Kuwait, the United Arab Emirates, Egypt, UK and France will be further elaborated in Chapter 4 of this thesis.

[60] For more information, see chapter 5 section 5.6 (Findings of the Focus Group) and section 5.7 (Outcomes of the Individual Interviews with the Top Management), to comprehend the meaning about the administrative offences, which are not specifically listed in Kuwait.

[61] For more details about these duties and rights, which have not been clearly defined in Kuwait, see Interview no. 3, Appendix D.

[62] Al-Sabti, Adnan Mohammad. "Legal Safeguards for Disciplinary Proceedings in the Kuwaiti and the Egyptian System, A Comparative Study," Master`s Dissertation. Egypt: Hulwan University. 2007, p. 25. Also, (see chapter 4 for further discussion about the legal protection for the disciplinary proceeding in Kuwait).

offence can constitute grounds for sanction, leading to employers being able to refer a public employee for administrative investigation at will.[63] It is also important for employers to clearly explain the rights and duties of employees, and to issue a list of administrative offences.[64] Thus, enabling employees to take appropriate steps to avoid committing potential administrative wrongdoing. Similarly, disputes can arise in pursuit of administrative law. Certain actions committed by public employees in the performance of their duties are treated as legal infringements, which then require discipline, i.e. absence from work without leave; smoking a cigarette inside the workplace; and sleeping at work. However, in Kuwait and the UAE, and in contrast to other Arab countries like Egypt, there are no independent or separate administrative tribunals and disciplinary courts.[65] Thus, in both countries, administrative cases are adjudicated by ordinary courts, or by a chamber within the court. In theory, the lack of special courts/chambers might appear as an advantage, in that it

[63] The administrative investigation is discussed in chapter 4.

[64] Administrative offences are covered in Chapter 4.

[65] The constitution of the United Arab Emirates under Article 45 states that "the union authorities shall consist of: The Supreme Council of the Union; the President of the Union and his Deputy; the Council of Ministers of the Union; the Federal National Council; and the Judiciary of the Union." Also, Article 102 states that "The Union shall have one or more Union Primary Tribunals which shall sit in the permanent capital of the Union or in the capitals of some of the Emirates, in order to exercise the judicial powers within the sphere of their jurisdiction in the following cases: civil, commercial and administrative disputes between the Union and individuals whether the Union is plaintiff or a defendant." Nevertheless, the UAE does not have an independent tribunal dealing with all kinds of administrative cases but does have a circle that deals with administrative cases. See Al-Hamadi, Hameed Ibraheem. "Control over the Constitution Laws in United Arab Emirates State- A comparative study with Egypt, Kuwait, Bahrain." Master`s dissertation. Egypt: Centre of the Legal Issues. 2011, pp. 111-113.

provides for independence and externality. In reality, however, the opposite may be the case since the discipline process becomes all in-house with no judicial monitoring whatsoever. The lack of a purposeful and appropriate tribunal is surprising given that the Constitutional provision actually provides for the possibility.

Article 171 of the Kuwait Constitution, provides that:

"A Council of State may be established by a law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting bills and regulations."[66]

The constitutional recommendation has not been implemented. As it stands, the Administrative Circle (Chamber) provisions are not sufficiently at arm's length, i.e. complaints are initially dealt with internally and probably act as a disincentive to employees who have grievances. Indeed, it can be suggested that Kuwaiti public employees in this context are at a disadvantage when compared to the rights of those in the private sector given that some additional institutional and external protection is provided for them. Article 146 of the Kuwait Labor Law

[66] Kuwait Constitution, Appendix A. Article 171.

No. 6 2010, for instance, provides for a form of external Dispute resolution. It provides that:

> "Before an employee, or his representative, or successors, file a case in the court, he should place a complaint against the employer in the ministry of Social Affairs. The ministry shall summon both parties in helping to solve the problem. If it fails, it must transfer the complaint file, to the relevant labour court with a summary of what happened in the sessions attempting to solve the problem within one month of filing the complaint in the ministry. The courts shall decide on the issue."[67]

Thus, prior to an employee taking a claim to a court, he/she must as stated under Labour Law no. 6 of 2010, Article (146) first consult the Ministry of Social Affairs in the Department of Workers' Dispute to resolve the issue. However, in the public sector, no such support systems are available. Public employees in Kuwait are clearly at a disadvantage, since they do not have access to any specialised external body to arbitrate or resolve the employment issues.

Public employees, therefore, have only one option which is to choose to bring their disciplinary employment complaint to a non- specialised low-level Court. The operating existing Court deals with a high volume of cases across the whole

[67] See Article no.146 of Kuwait Labour Law No. 6 of 2010.

administrative sector.[68] Minor and complicated cases end up in the same judicial forum (Circle Chamber), with the result that there is little opportunity to consider wider issues of natural justice. This thesis will argue that there is a need for a more specialised Court with a greater capacity to deal with the complicated issues that can arise. Other Arabic scholars have made similar arguments,[69] but this thesis will also introduce supportive evidence based on interviews with relevant stakeholders.[70] Such arguments are also supported by the evidence available from neighbouring jurisdictions such as the UAE, Egypt and other Civil Law jurisdictions, particularly France.[71] The UAE, like Kuwait, has not established a specialised court,[72] whereas in Egypt and France independent courts (Councils of the State) have been set up, specifically[73] established to address administrative

[68] The researcher has reviewed the court's case lists and estimates that on average, some 500 cases are heard every week. For further details about this, see: http://www.alanba.com.kw/ar/kuwait-news/incidents-issues/ [Accessed 4th January 2015].

[69] Bursli, Adel Majed. "Administrative Dispute Procedures in the Kuwait Legal System," Master's Dissertation. Kuwait University. 2009, p. 35. See also, Al-Rashidee, op. cit., p. 980.

[70] See Chapter 5 at section 5.3 (top management Employees Interviews, 8 interviews).

[71] As outlined above- the Constitution and legal jurisprudence of Kuwait has been much influenced by French law.

[72] Both Kuwait and the UAE have administrative (Circle Chamber), but not an independent (Councils of the State). As noted previously, dealing with all forms of administrative cases. See Al-Shaali, Khalifah Rashed. *Emirates Administrative Law*. UAE: Ajman University. 2005, p. 24. Also, be noted that the constitution of the UAE under article 102 said that in the UAE has a union court to deal with all kind of administrative cases.

[73] The meaning of council of state in France and Egypt will be discussed under chapter 4.

disputes.[74] This researcher will, thus, also question the feasibility, and evaluate the merits and stakeholder support for the proposal to establish both an independent court and a Council of State, to deal with all types of administrative disputes.[75]

More specifically the research objectives address the specific questions listed below:

What is the definition of the public employee in Kuwait?

What are the duties of public employees in Kuwait?

What is the scope of protection given to whistleblowing in Kuwait?

How is the system of discipline in Kuwait managed and do the disciplinary procedures in Kuwait provide fairness and justice?

Is there any contradiction between the Law of Whistleblowing no. 24 of 2012 in Kuwait, in particular the duty of whistleblowing against the corruption in Kuwait, and the Law of Kuwait Civil Service no. 15 of 1979, which prohibits the public employee from disclosing secret information?

[74] Administrative dispute is a legal term, as stated in the Kuwait constitution along with law no. 20 of 1981 for administrative disputes. Article 169 of the Kuwait Constitution states that "law shall regulate the settlement of the administrative suits (Disputes)." Thus, it is clear in the article that the Kuwait government is using the term of administrative disputes; see Bursli, op. cit., pp. 38-41.

[75] Some perceived advantages are promulgated in the literature – it is suggested, for instance that a specialised Court could handle a high volume of administrative cases, and encourage expertise with specialist judges, dealing exclusively with administrative law. Al-Sabtie, op.cit, p.65.

1.3 Research Rationale

The researcher has been motivated to undertake this study following his previous experience working as a counsellor and a lawyer in the National Assembly of Kuwait, and as a manager in a legal department. In this role, the researcher dealt with a number of different cases brought to the Speaker of the Kuwait National Assembly (i.e. the Kuwaiti Parliament), detailing disputes involving government employees working in the Kuwait National Assembly. A number of the petitions demanded clarification of employees' rights and duties at work, and in some cases sought the court's assistance to revoke disciplinary sanctions imposed by the National Assembly. This prompted the researcher to reflect and consider conceptual and process issues relevant to promoting fairness in the area of administrative investigation,[76] and the disciplinary procedures involved in administrative disputes and disciplinary sanctions.[77] This experience has raised the researcher's awareness of the crucial need to promote increased employment protection of public employees, in the hope that this, indirectly, will also have a positive impact on the motivation and productivity of public employees in due course.

[76] Administrative investigation is intended to investigate the truth of the charge or offences to the employee, and to collect the information from all the elements related to it. See Case Number 1261 of 2005. Session 23/1/2007. Administrative Case, Journal of Justice and Law, issued by the Supreme Court in the State of Kuwait, Ministry of Justice. April 2011, p. 69; Case Number 1047 of 2005. Session 30/1/2007. Administrative Case, Journal of Justice and Law, issued by the Supreme Court in the State of Kuwait, Ministry of Justice.

[77] See Chapter 4 for more on disciplinary sanctions.

As suggested above, there may be institutional, sociological and psychological explanations as to why there is a need to address the motivations of public employees in Kuwait. The motivation of public employees is sometimes difficult, and perhaps made more difficult because often the post is seen as permanent and a job for life. Job security can lead to inactivity and allied problems such as employee absenteeism.[78] However, the focus in this thesis is the relationship of law to the above— the potential deficits and benefits that can arise from arrangements, that either fail or succeed, to promote natural justice in the context of employment protection. At the outset, it is conceded that the concept of natural justice is Western in origin, and not a mainstream judicial principle in terms of Islamic jurisprudence but, as is argued in this thesis,[79] parallel principles can be identified in both traditions and that the lessons and best practice may be usefully applied.

1.4 Hypothesis

There are a number of sub-hypothetical (related) issues raised in this study:

Hypothesis 1: Routinized and frequent use of disciplinary penalties against the public employee has a negative impact on the employee's job performance.

[78] See: Re'em, Yair, "Motivating public Sector Employees: An Application-oriented analysis of Possibilities and Practical Tools, "Master degree in Public management. 2010, p.10. Source: https://wwww.hertie-school.org [Accessed 8th February 2016].

[79] Notice: Justice in Islam is described in Surat Al-Hadeed, no.57, verse 25. The Holy Quran says that:" we sent a foretime our messengers with clear signs, and sent down with them the book and the balance, that men may stand forth in justice".

Hypothesis 2: Public employees in Kuwait perceive that the existing discipline arrangements as both unfair and confusing, and that this unfairness can in part be explained by lack of procedural safeguards including proper appeal processes.

Hypothesis 3: The sense of grievance is made worse because of the different treatment of high- ranking public servants.

Hypothesis 4: Public employees have little confidence in in-house disciplinary arrangements and would support the establishment of an independent administrative tribunal (Council of State), instead of a Circle or a Chamber.

Hypothesis 5: The seemingly contradictory obligations of whistleblowing and confidentiality and loyalty significantly add to the confusion relating to employee duties.

Hypothesis 6: The discipline system in Kuwait needs to be reformed and amended.

1.5 The Importance of the Study

This study will focus on the disciplinary procedures affecting public employees in Kuwait, and the critical discourse will refer to comparative developments in the UAE, Egypt, the UK and France in order to illustrate issues and alternative approaches. This subject demand particular attention, since a clear conception of disciplinary accountability remains lacking in Kuwait. The importance of the present study concerns the ability to highlight procedural aspects related to Kuwait Law Number 20 of 1981, which covered disputes between government

employees and their employers (i.e. administration), and the Kuwait civil service law relating to disciplinary procedures.

Therefore, the importance of this current study relates to the need to address the following points:

1. The need to provide suitable guarantees, during administrative investigation procedures and disciplinary actions, when a public employee is being investigated, and when a dispute between employee and employer is being resolved.
2. The need to focus on the rights and duties of government employees in the process of fulfilling their duties at work, and in particular the duty to whistle blow in order to combat corruption,[80] and to identify key results of administrative disputes already taking place between government employees and their employers (i.e. the administration).
3. The need to protect employees from the risk of arbitrary action undertaken by their employer, and to award protection against the risk of abuse, as both these risks are inbuilt in any employment relationship.
4. The need to ensure that the administration runs smoothly in the interests of efficiency, and to provide a guarantee of fair treatment for public employees, through the principles of natural justice.

[80] Article 36 of Whistleblowing Law No. 24 of 2012 which attempts to provide safeguards against corruption in the Kuwait public office is later discussed in this study. However, Article 36 stated that reporting against the crimes of corruption is a duty of every person. All details about the code of whistleblowing in Kuwait can be seen at Chapter 3, p. 146.

1.6 Study Methods

This thesis is a combination of black letter law, doctoral research, and empirical investigation. The combination of methodologies aims to establish a full and broad analysis of disciplinary procedures and the duty to whistle blow, in order to develop effective recommendations, aimed at facilitating fairness and coherence, in regard to disciplinary proceedings which are consistent with concepts of natural justice and Islamic legal principles. Thus, the researcher has undertaken a review of possible research methods,[81] leading to the decision to utilise the following three research tools:

1. Study of Black letter law:

The black letter law content includes constitutional codes, statutes, and case law, more specifically cases and judgments relating to disciplinary procedures and whistleblowing. There is also an exploration of legal proceedings, including those related to the discipline and grievance procedures of public employees.[82] These cases have prompted further understanding of the core disciplinary procedures in Kuwait, and the duty of safeguarding confidential information, i.e. the cases studied in this thesis examine the significance of the relationship between the duty of confidentiality, the disciplinary system, and the duty of whistleblowing. This thesis will also address a number of key cases from different stages of the Kuwait

[81] Source: http://www.humanities.manchester.ac.uk/studyskills/assessment_evaluation/dissertations/methodology.html [Accessed 6th November 2014].

[82] Several discipline and grievance procedures of public employee in Kuwait are discussed in Chapter 4.

courts (i.e. First Court, Appeal Court, and Cassation), involving public employees, along with discipline and grievance procedures in Kuwait. However, the scope for critical review of Kuwaiti provisions is limited, because Kuwait's whistleblowing law is only newly established, and no specific cases on the issue are yet available from Kuwait. This deficit is partially addressed by references to experiences in other jurisdictions, particularly in the UK where the law has been longer established.[83] Reference to Quranic sources is also included as a source of law to illustrate the congruence between the concept of natural justice and Sharia scholarship. This approach is consistent with the Constitutional provisions of Kuwaiti law which specified under Article 2, which advocates the use of Sharia law as legitimate source of law. As is explained at Chapter 4, section 4.3.3 (Natural Justice in Islam), the judicial tendency to date has been to limit the purview of Sharia law to family matters, but it is here emphasised that no such jurisprudential restriction exists. It is therefore argued that the application of Sharia law together with the consideration of natural law principles is justified and appropriate.

2. Critical analysis of the theoretical aspects:[84]

This study has analysed journal articles, Master's and PhD theses, research papers and reports, in order to establish a legal analysis of disciplinary procedures and

[83] See chapter 3, section 3.5.3 (Evaluation of the Whistleblowing Process in the UK).

[84] Kallet, Richard H. *How to Write the Methods Section of a Research Paper*. Available at: http://faculty.kmu.ac.ir/fs/WebSite/1/PageStructure/editor/content/586/method.pdf [Accessed 5th July 2016].

the duty of whistleblowing in Kuwait. The legal aspect was also subject to a critical analysis of the legislation, case law, codes, and reports concerning disciplinary procedures, whistleblowing in Kuwait, and natural justice in the Islamic religion (Sharia). The review and evidence are supplemented by an examination of the discipline and duty provisions, in relation to whistleblowing in the UAE, Egypt, the UK and France. It is emphasised that this thesis makes no claim to be a comparative study. References and discussion of parallel provisions in the UAE, Egypt, the UK and France are included to illustrate specific issues identified in relation to public employment in Kuwait in relation to disciplinary procedures, whistleblowing, and natural justice in Islam.

3. Empirical Study.

Three types of empirical investigations were undertaken: Firstly, questionnaire with volunteer public employees in Kuwait who had experienced or were prepared to comment on the fairness of existing disciplinary arrangements. Secondly, focus group interviews with a similar cohort but based at the Kuwaiti Parliament. Thirdly, structured individual interviews with key stakeholders namely Senior Public Service Managers and Senior Jurists.

3:1 A questionnaire was employed, with a sample size of fifty public employees, experienced in the justice and disciplinary procedures of Kuwait. As a result, the participants assisted the researcher in obtaining a set of relevant answers, and the necessary information for this thesis.

3:2 Interviews with the Focus Group:

The focus group consisted of 20 volunteer ordinary public employees based at the Parliament. General questions were asked with a view of covering the scope of this thesis including disciplinary proceedings and fairness, and whistleblowing issues.

3:3 Interviews with senior management (eight interviews):[85]

All those interviewed, especially the key stakeholders, agreed to participate on the basis of guaranteed anonymity. Thus, no official titles are given and the individuals, including the judges, are simply referred to by numerical reference. The only distinguishing information provided is the status of the Court Jurisdiction in relation to the judges.

The interview is also employed as part of the research methodology for this study, in order to explore information, collect ideas, and establish knowledge from public employees concerning the relationship between discipline and whistleblowing as a duty in Kuwait, and the prohibition of the disclosure of confidential information.

The first focus is on a discussion of interviews with the focus group, as described in Section 5.5 (The Focus Group Session- Methodology, Sampling, and Data Collection). The information gained from the focus group fed the supplementary eight interviews with senior management, i.e. any employee who is a head of section or manager, or who ranks higher than managers, such as a judge. It was

[85] See Appendices D and E.

decided to conduct interviews with members of senior management, and to select expert employees, to discuss matters regarding the legal fundamental concept of discipline, the whistleblowing system and natural justice in Islam by means of individual interviews. By contrast, the focus group interviews were primarily with junior employees who had limited experience in comparison to senior management employees.

Those who participated in the interviews with senior management were interviewed to determine new viewpoints throughout February 2014 and were specialists in the fields of discipline and whistleblowing procedures in Kuwait. They were also influential (or key) personnel involved in disciplinary procedures and the duty of whistleblowing. The interviews were divided into three groups: the first being comprised of section heads with extensive experience of dealing with disciplinary procedures, and with considerable knowledge of the new steps being undertaken, concerning the whistleblowing code in Kuwait (Interviews No. 3, 4, 5, 6). The second group consisted of managers, primarily of legal departments, investigation departments, and the legal information network in Kuwait (Interviewees No. 1 and 2). The third group consisted of judges, who were selected from the highest Kuwaiti court, the Accusation Court (Interview No. 8). The judges are also counsellors in the Kuwait Ministry of Justice (Interviewee No. 7).

1.7 Structure of the Study

This current study is divided into six chapters:

Chapter 1 outlines the general framework of the study, introducing its key aims, importance and rationale. It will include the questions posed in the study, along with the justification for the study and its importance.

Chapter 2 reviews relevant theoretical and empirical research literature associated with the key research problem, focusing on discipline in terms of: (1) definition; (2) concepts; (3) expectations of public employees; (4) the act of whistleblowing. The key objective of this literature review is to position the current thesis in relation to previous studies, as well as to emphasise the extent to which this thesis is comprised of innovative research, presenting new knowledge that differs from the data included in prior studies.

Chapter 3 discusses the definitions of public employees (i.e. government employees) in more detail with regard to black letter law and legal references in Kuwait, UAE, Egypt, UK and France. It also covers the duties and responsibilities of public employees, and in particular the duty of whistleblowing, in relation to natural justice under Islamic legal principles.

Chapter 4 details the features of existing disciplinary procedures, along with disciplinary courts and natural justice in Islam. It explores the legal base of disciplinary procedures in light of the relationship between public employees in Kuwait, the UAE, Egypt, the UK and France. This chapter also focuses on

disciplinary procedures for government employees in the state of Kuwait, as stipulated in the Public Service Law, as well as the manner in which provisions pertaining to disciplinary procedures have been implemented in practice: it thereafter provides an overview of judicial arrangements for disciplining employees with a view of commenting on the strengths and weaknesses of existing Kuwaiti provisions.

Chapter 5 examines the views of Kuwaiti public employees concerning existing disciplinary procedures, including: Kuwaiti legislative and civil service laws; Justice and disciplinary goals; and an analysis of the questionnaire designed by the researcher. The questionnaire samples fifty public employees (i.e. government employees) employed by the Kuwaiti Ministry of Justice. The purpose of the questionnaire is to assess the opinions of public employees regarding their rights and duties, and to understand the impact of disciplinary sanctions on their performance. In addition, this chapter includes evidence from interviews with key Kuwaiti employees, along with the results of the questionnaire and the interviews (i.e. both with focus groups and individuals).

Chapter 6 summarises the findings of the study, including the results, recommendations, and proposals for future research.

Chapter 2
Literature Review

2.1 Introduction

This chapter reviews the literature relevant to the current thesis, based on the research aims and objectives outlined under chapter one. The researcher opted to dedicate a separate and independent chapter for reviewing previous literature due to several reasons. Firstly, synthesizing information from past materials would help the researcher identify what is previously known in his field of research, what is yet to be recognized, and consequently juxtapose different and various ideas against the wide-ranging themes in this present thesis. Simply put, a literature review will indicate the relevance, usefulness, timeliness and originality of the researcher's thesis, ultimately adding scientific and literary value.

The literature reviewed in this current chapter is drawn from secondary sources such articles, theses (e.g. master's and PhD) and online resources, which are selected to provide a background to the substantive and theoretical issues discussed in this thesis. The substantive area of law covered is wide, in that it covers material on both disciplinary procedures, together with an outline on specific developments in regard to protective provisions relating to whistleblowing. This review concludes by identifying a number of critical research and policy issues highlighted in the literature and summarising current understanding regarding disciplinary procedures and whistleblowing. The review will focus on jurisprudential sources, but brief reference will also be made to socio-psychological sources, which comment on issues such as motivation in the

context of employee discipline and public disclosure in particular.

This literature review evaluates each source according to its relevance, value and relationship to the current study. The review will be followed by a specific critique, analysing the key points, and highlighting the strengths and weaknesses of each study, as well as their relevance to the current research.

The researcher makes reference to scholarly literature from five separate countries (i.e. Kuwait, United Arab Emirates, Egypt, France and the United Kingdom), in order to increase the understanding of the research topics, and provide a context for this thesis by evaluating previous material as a separate topic. The selection of the countries in question can be justified because of some identified commonalities with Kuwait. Firstly, Kuwait and the UAE are both members of the Gulf Cooperative Council (GCC), and thus share general legislation practices.

Secondly, Egypt has played an important role in providing a model for legal practices across the Arab world, including Kuwait, particularly in relation to Administrative and Employment law.[86] Indeed Egyptian law is often referred to directly in Kuwaiti Courts as a source of persuasive legal authority. The researcher has direct experience of this tendency, and the same tendency is reflected in the literature review, in that some of the writing about Kuwait also refers to Egyptian law in order to illustrate relevant developments. This deference

[86] Source: http://www.droitetereprise.org/web/?p=208 [Accessed 20th August 2016].

to Egyptian law can perhaps be explained because of its ancient and early origin. It may also reflect the fact that more modern Egyptian law was also much influenced by English common law, particularly in relation to commerce and business law.

Thirdly, Kuwaiti law has been touched by Western colonial influences and indeed Kuwait's legal system is largely derived from French law.[87] Similarly, the UK also has had colonial links with Kuwait, and although it is clear that French, Egyptian civil law has overtaken common law in Kuwait, some common law influences remain, particularly in relation to commercial law.[88] Reference to UK law, however, is primarily justified on the basis that the discipline and grievance procedures associated with employment law and whistleblowing in the UK provide an example of systematised legislation and guidance, the understanding and evaluation of which, will be of benefit to this current study.

2.2 Literature Review[89]

This section discusses the concept of a 'public employee' and provides an explanation of each of the following matters of concern: (a) the meaning of a

[87] For evidence of the use of French law by Kuwait, see the report prepared by United Nations, 2004, op. cit., p.7.

[88] See Williamson, M. The diffusion of Western Legal Concepts in Kuwait: Reflections on the State, the Legal Education from a comparative and Historical perspective, in Farran, S, Gallen, J and Rautenbach, C, (eds) *The Diffusion of law: The Movement of law and Norms around the World*, London: Routledge. 2015, pp. 25-47.

[89] Some of the literary materials are articles, originating from a variety of journals; for instance, Journal of Law about Kuwait, which is a periodical, and an academically referred journal concerning the publication legal research and studies issued by Kuwait University; while other materials are from Master's Dissertations and Ph.D theses.

public employee; (b) the duties and rights of public employees, including the duty of whistleblowing; (c) the discipline of public employees and grievance procedures; and (d) the concept of an administrative dispute; and its implication for the process of an administrative investigation.

The research breaks new ground in that it analyses the main issues in reference to Kuwait, although benefiting from the support and insight from studies conducted in other jurisdictions. This research is also timely because the Kuwaiti government has recently enacted a legal instrument focusing on the issue of whistleblowing but, as will be highlighted in later chapters of this thesis, the degree of protection provided is limited and ambiguous.[90]

The difficulties and limitations associated with attempting to make comparisons across cultural and linguistic divides is acknowledged, and to this end the researcher has been greatly assisted by translated texts from French to Arabic.[91]

The structure of the literature review will be as follows:

Section 2.2.1 provides a brief critique of the definition of the public employee; Section 2.2.2 addresses the reasons as to why the duties and the rights of the public employees, in particular the duty of whistleblowing is important; and Section 2.2.3 discusses the legal terms of discipline and the grievance procedures of the

[90] The detailed discussion of whistleblowing law in Kuwait is to be found at chapter 3 of this thesis.

[91] The issues with the French language were partly resolved by the researcher obtaining a complete text translated from French to Arabic. For example, Dr. Ahmad Yessri translated the book titled *'Les Grands Arêtes de la Jurisprudence Administrative'*.

public employee in Kuwait together with reference to comparative developments and illustrations from the five countries selected.

2.2.1 The meaning of 'public employee'

The characteristics of a public employee have been discussed in academic Arabic literature, and have also been the subject of judicial interpretation:[92]

Ahmad Al-Faresi (2004)[93] has examined the concept of a public employee in Kuwait, describing the employee as an individual working at either a permanent or temporary service facility managed directly by the government.[94]According to the Kuwaiti Civil Service Law No. 15 of 1979, "a public employee is any individual holding a civil job associated with the functioning of government bodies."[95] The meaning of the provision was the subject of a discussion in the Administrative Department of the Court at first instance which concluded that:

> "*In accordance with the provisions of Articles 2 and 3 of the Law No. 15 of 1979 concerning the civil service, the employee means everyone who occupies*

[92] It is to be noted that the literature studies/sources in this section (2.2.1 The meaning of 'public employee') are all Arabic Literature (e.g. Al-Faresi, Al-Enezi (2007), Al-Saidi, Kater, Abdulmajeed).

[93] Al-Faresi, Ahmad Hamad. "Discipline in the Public Service of Civil Jobs in Kuwait, A Comparative Study," *Law Journal.* Kuwait University. December 2004. (Kuwait Arabic Article).

[94] Ibid. p. 6.

[95] See Article 2, law no. 15 of 1979. Kuwait Civil Service Law.

a civil job at any government department, such as ministry or administration unit which its budget enters within the general budget or attached thereto".[96]

As can be seen from the above, the provisions of the Code and Judicial interpretation the definitions are descriptive and circular, and provide no framework guidance as to any principles that should be applied in cases of dispute about employee status. Indeed, it is arguably indicative of the insufficient attention given to the issue of public employee protection that the case was not decided by a Higher Court.

Similar circular definitions can be identified in studies of public employees in other Arabic countries. For instance, **Sief Al-Saidi's (2006)**[97]study of public employees in the UAE and Egypt simply referred to them as individuals working under a contract of employment with the government.[98] Such open-ended approaches can lead to the definition of a public employee being interpreted widely. This possibility is illustrated by the study of **Sherif Khater (2011)**[99] which examined the decisions of the High Administrative Court in Egypt and concluded that it included

[96] Case Number 453 of 2000, Administrative Case, Session 13/10/2003, Journal of Justice and Law, periodical journal issued by the technical office of the Supreme Court in the state of Kuwait. Volume 2/Issue 25. Nov. 2003, pp. 128-130.

[97] Al-Saidi, Sief Bin Salem. "Discipline System for Public Employees in the United Arab Emirates law," Ph.D. thesis (Arabic). Egypt: Aien Shams University. 2006.

[98] Ibid, p.35.

[99] Khater, Sherif Yousef. "Public Employees in Egypt - A Comparative Study," Master's Dissertation. (Arabic). Egypt: Dar Al-Fikr. 2011.

individuals that benefit from the government's public utilities.[100] Moreover, the study suggested that the legal tradition was to refer to all laws pertaining to public employees of the state, as being applicable to the basic rules and conditions of an individual's public-sector employment. In other words, reference could be made to all civil service law and other legislative provisions in order to determine the nature of an individual public employee's contract.[101]

There are obvious dangers[102] from the possibility of wide-ranging definitions of public employee, and the lack of certainty as to the terms and conditions relating to such employment can add to the actual or perceived unfairness of any disciplinary process. The fact that the obligations of public employees can be determined by reference to a multitude of legal provisions also adds to the likelihood of misunderstanding or actual ignorance of what employment obligations might arise.

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[100] A public utility is an organisation that provides basic services to the public, or which maintains the infrastructure for a public service. In addition, the term utilities can also refer to the set of services provided by organisations and consumed by the public; e.g. electricity, natural gas, water, and sewage.
Source: http://www.investorwords.com/3949/public_utility.html [Accessed 3rdAugust 2017].

[101] For more information about the civil service law in Egypt no. 47 of 1978 refer to Al-Dawi, Ahmad Mamdouh. *The System of the Civilian Worker in the State* (Arabic). Egypt: Egypt Company. 2013, pp. 8-20; Al-Bahi, Sameer Yousef. *Explanation of the System of the Civilian Workers in the State law no. 47 of 1978 with the Amendments to law no. 203 of 1994* (Arabic). Egypt: Dar Al-Kutoub. 2007, pp. 20-50. See also Othman, Hossain Othman. *Lessons in the Administrative Judiciary* (Arabic). Lebanon, Dar Al-Jamiaa. 2007, p. 213; and Abdelhadi, Basher. "Researches and Studies in the Public Administration and Administrative Law," Research paper (Arabic). Faculty of Law. Egypt: Hulwan University. 2006, p. 73.

[102] Although beyond the scope of this thesis, a wide interpretation of public employee might add to the serious risk of injustice as might be the case in relation to the dismissal of thousands of individuals in Turkey. See for instance, Rios, Lorena. President Erdogan's "New Turkey" *IBA Glogal Insight*. June 2017, pp. 37-41.

2.2.2 The Duties of Public Employees, including the Duty of Whistleblowing[103]

A number of Arabic writers have discussed the duties of a public employee.

Tarwa Mahjoub (2005),[104] for example, an Egyptian study notes that each employee has a number of duties in the workplace:[105] firstly, employees need to take responsibility for their personal health and safety, to avoid harming both themselves and their co-workers through any action or negligence; and secondly, there is an expected duty for employees to comply with any obligation imposed by the employer or under relevant provisions. This places a clear duty on the employee to take responsibility for their own safety, as well as that of their co-employees. It also imposes a duty of cooperation upon all employees, to assist all other co-employees to comply with their statutory duties. However, the obligation does not extend to include a duty to obey all orders of an employer, but only those that are lawful.[106] The legal authority of employers to give orders does not extend to orders that have an impact on individuals outside of the work place. Appropriate dress code is cited as an example, but regrettably the study makes no comment about

[103] Note that under this section number (2.2.2 The Duties of Public Employees…) some of the sources are Arabic references, e.g. (Mahjoub, Al-Enezi (2007), Al-Ajili, Al-Faresi, Al-Admat, Ayyash).

[104] Mahjoub, Tarwa Mahmoud. "Administrative Investigation," Ph.D. thesis (Arabic). Egypt: Aien Shams University. 2005.

[105] Tarwa Mahjoub discusses both rights and obligations but the focus is on duties. A similar approach is taken in this current thesis, because a major theme is the interrelationship between the duty of loyalty, confidence, confidentiality and the contrasting duty to whistleblow.

[106] For more information on the duty to obey lawful and unlawful employer orders, see section 3.3.1, in chapter 3 of this study.

the relevance of general conduct outside the work environment to the disciplinary process.[107]

In another study, which focused on the legal position relating to the role of employees towards their employer in Kuwait, Egypt and France, **Mohammad Al-Adamat (2010)[108]** similar to Tarwa Mahjoub's study earlier concludes that an employee need only obey a lawful order from their employer. In general, the employee is under an obligation to obey all lawful instructions of the employer.[109] Thus, it appears that an employee's fundamental duty is to obey the orders of his/her employer, and provide his/her services in the manner required by the employer, generally established by means of a contract.[110] The ability to control the manner of performance as well as the outcome provides Senior Managers with considerable power over subordinate employees, and may well lead to tension and frustration, particularly when the work is of a professional nature, because professional employees usually put great emphasis on their expertise in deciding how a task should be performed.[111]

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[107] Are public employees, for instance, always expected to work in a professional manner, including outside the workplace? See discussion at Chapter 2, pp. 50 and 52.

[108] Al-Adamat, Mohammad Aref. "The Administration's Authority to cancel the public services under the Administrative Law," Master's Dissertation (Arabic). (Comparative study, Jordan, Kuwait, and Egypt). Jordan: Mu'tah University. 2010.

[109] Ibid, p. 67.

[110] Ibid, p.68.

[111] Volti, R. *An Introduction to the Sociology of Work and Occupations.* USA: Pine Forge Press. 2008, See in particular Chapter 9 on Professions at pp. 153-172.

Both Mahjoub's[112] and Al-Adamat's[113] research have presented the general duty on employees to follow orders. However, positive duties and expectations placed on public employees have not been elaborated.

In contrast to the previous studies, others have been more specific. **Naif Al-Mutairi and Munther Al-Shimali,**[114] for example, list the following obligations of public employees: (1) employees must ensure they act in a professional manner towards all those with whom they have dealings;[115] and (2) they must work to the best of their ability to be impartial, proficient, prompt, and thoughtful in their affairs. Employees are also expected to refuse bribes, and thus compromise their personal judgment or integrity. They are required to comply with rules and regulations, and not to exploit their official position by using information acquired in the pursuance of their work for their personal benefit and gain.[116] Arguably, the further defined responsibilities, to which public employees are expected to observe, contribute more clarity in identifying the respective duties and obligations of public employee.

[112] Mahjoub, op. cit. p. 20.
[113] Al-Adamat, op. cit.
[114] Al-Mutairi, Naif Mutlag and Al-Shimali, Munther Abudulaziz. *Discipline for Employees at Kuwait Law* (Arabic). Alexandria: Monshaat Al-Maaref. 2008, pp. 66-72.
[115] The authors did not specify whether the obedience has to be demonstrated in out of work situation.
[116] Ibid. pp. 66-72.

However, **Saad Al-Enezi** highlights some core issues in two separate but interrelated studies in 2007[117] and 2011. Citing legal authority,[118] he suggests that the definition of the duties and obligations of public employee is wide, so that in essence public employees are required to perform their roles accurately and faithfully, and respect both their superiors and their work. Thus, through preserving the dignity of their position and obeying their supervisors, they will ensure the public service is improved for the benefit of the state.[119] Al-Enezi's research implies a duty to uphold the dignity of the employee's position both in and out of the working environment, and casts doubt on the more restrictive interpretations of Mahjoub and Mohamad Al-Adamat above. Considerable emphasis is placed on the dignity of the post and the pervasive expectation of high standards of conduct by public employees. He cites a decision of the Egyptian Supreme Administrative Court in support of his argument: "any negative action that is done by the employee outside of his work will be recognised as a breach of his duties, because the employee is obliged to improve his behaviour inside, or

[117] Al-Enezi, Saad Nawaf. "The Legal System for Public Employee in Kuwait," Ph.D. thesis (Arabic). Alexandria: Al-Jamiaa Press. 2007. It is to be noted that this thesis has been published as a book by Al-Jamiaa Press Company at Alexandria, Egypt Country, Al-Enezi, Saad Nawaf. "Procedures Guaranteed for Discipline," Research Paper (Arabic). Kuwait University. 2011.
[118] Case Number 172 of 2000, Administrative Case, Session 22/1/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. 1st of January 2001- 31st May 2001. Volume 1/Issue 29. April 2004.
[119] Ibid. p.147.

outside his duties."[120] Al-Enezi adds that such an all-embracing interpretation of public service is justified because it informs the nature of each social system. In that sense, breach of obligations and the consequent disciplinary procedure tends to refer to an honourable mission, as is based on the need to protect standards and seek improvement[121] rather than the principle of punishment. Therefore, any measures taken in disciplining public employees are not directed towards revenge or retribution, but towards ensuring the continued and improved performance of public utilities. The latter point signifies the potentially pervasive nature of public employee duties. In that regard, Al-Enezi in the later study (2011)[122] stresses the need for further codification of disciplinary procedures. In particular, he draws attention to the draconian[123] nature of Kuwait's Civil Service Law no. 15 of 1979 (article 27),[124] and recognises the need for safeguards prior to initiating disciplinary procedures and also the need for a legal framework in relation to the procedures adopted. He concluded that:

[120] Case Number 17 of 2000. Alexandria Court 4/1/2003. Egyptian High Administrative Court. (Not published). For more about public employees' duties, see Saleh, Obeed Mahjoub. *The Duties of the Public Employee.* Alexandria: Monshaat Al-Maaref Press. 2012, p. 23; Kamel, Nabilah, Abdulraheem. *Summary of the Administrative Law.* Egypt: Dar Al-Nahda. 2009, p. 376.
[121] Al-Enezi, 2007, op. cit., p.232.
[122] Al-Enezi, 2011, op. cit., p.2.
[123] That is relating to Draco, a notorious law maker in ancient Athens who promoted laws with excessive powers.
[124] See discussion at Chapter 3, p.110, section 3.3.3 (The Duty to Obey and Comply with Employer's Orders in Kuwait).

1. the disciplinary provisions, and basic guarantees of discipline, should be supported through regulations;
2. the disciplinary offences should be listed and details provided in advance in relation to job-specific failures in performance, thus placing some limits on the existing absolute discretion given to the administration (the government employer) in deciding what constitutes an administrative offence;
3. the current open-ended provisions provide public employers with opportunities to engage in investigative exercises which could not be justified on the basis of actual evidence;
4. existing provisions added to employee perceptions of unfairness, because of the different and more favourable procedures that applied to Senior employees.

Following from the previous study, the researcher deems that clarifying the disciplinary procedures in the event of breach are vital checks and balances to counter the pervasiveness of employees' duties. The latter point is particularly important given the high expectations placed on public employees as indicated by

Asma Al-Ajili's (2009)[125] study, which focuses specifically on the need for public employees to maintain confidentiality and to build trust with their employer.[126] From that previous perspective, a public employee is a representative of the state and is also entrusted by the state with confidential information. Public employees must therefore not disclose and disseminate confidential information to the public, otherwise they will be subjected to legal accountability (disciplinary or criminal), due to the significance of the information conveyed to him/her. The information is to be regarded as secret. Al-Ajili's study concludes that the majority of laws in Arabian countries confirm this secretive nature of information as provided and cited by Egyptian legal authority. For instance, Article (77) Paragraph (8) of the Egyptian Civilian Personnel System No. 47 of 1978 stipulates the following:

> "The employee (servant) shall be prohibited to disclose matters entrusted to him, if it is confidential by its nature, or by virtue of instructions issued to him. He shall keep such information as confidential even after leaving his service."[127]

Egyptian System no. 47 of 1978 states that civil service secrets must be kept confidential by employees, i.e. those relating to information that is, by its nature, confidential (e.g. security information and military details), or that which has been

[125] Al-Ajili, Asma Abdelkadem. "The Rights for Public Employees - A comparative study, "Master's Dissertation (Arabic). Iraq: Babel University.2009.

[126] Similar argument about confidentiality can be found in other studies. See Sief Al Saidi 2006, op. cit., p.45.

[127] Article 77/8 of the Egyptian Civilian Personnel System no. 47 of year 1978. And Article 25 of Kuwait Civil Service Law no. 15 of the year 1979. Also, see Article 68 of Federal law no. 11 for the year 2008 for the United Arab Emirates. All these articles focus on prohibitions on the disclosure of any confidential information pertaining to his or her work.

determined confidential by the state. The employee (worker)[128] should not disclose any information of this nature to a third party. Nor does the employee have the right to comment to the media on his or her duties, unless permitted to do so in writing by a competent administrative manager.[129] Other than the limited guidance provided above, however, there is no legislative framework for deciding what information by "*its nature*" may be deemed confidential and regrettably the author provides no light on the matter. However, it can be suggested that the very wide categorisation of confidential information may place public employees at an added and unfair risk of disciplinary action.

Not surprisingly, therefore, other studies have echoed Al-Enezi's call for the need of clear guidance and codification in relation to public employee disciplinary procedures. **Ahmad Al-Faresi** (2004),[130] for instance, recommends that the administrative authority (i.e. the government) should issue a reference manual, listing the rights and duties of public employees, including a definition of disciplinary offences. He adds that these manuals should be reviewed annually, and deletions or additions made, including (where necessary) modifications to the duties of public employees.[131] Similar arguments are made by **Hani Al-Tahrawi**

[128] Notice: In Kuwait, Egypt and UAE, the words 'worker,' 'servant,' and 'employees,' can be used to convey the same meaning.

[129] Al-Ajili, op. cit., p. 34.

[130] Al-Faresi, op. cit., p. 35.

[131] However, Al-Faresi in his study recommended that the administration should provide a booklet outlining the disciplinary procedures (Al-Faresi, op. cit., p. 20). However, it should be noted that despite the fact that his study was published almost seven years ago, no hand book has been produced.

(2010)[132] who examined the duties and responsibilities of public employees in Egypt. He suggests that before any disciplinary action can reasonably be taken against employees, they should be provided with a list of their duties and responsibilities. He also suggests that employees should not be given any form of penalty, unless it can be established that they have committed a specified breach. In other words, "no crime and no penalty may be established except by the law." In addition, the study concludes that disciplinary and grievance procedures should be made in a written form, and be both specific and clear, as this assists employees and managers to understand the actual rules and procedures, where they can be found and how they should be applied. Arguably, any rules public employees are expected to obey should be found in a code for disciplinary procedures or employee guidelines, or both. It was previously customary to write such rules on a prominently displayed notice, posted within the workplace, but this is no longer considered sufficient.[133] The important point is that rules must be brought to the attention of employees, either during their induction, or through the distribution of hard copies of such rules. Clearly the

[132] Al-Tahrawi, Hani Ali. "The Concept of Disciplinary Offence," Research paper (Arabic). Jordan: Al-Zarkah University. 2010.
[133] Ibid, p.12.

above also relates to human rights issues which are beyond the scope of this thesis.[134] However, **Hamdi Abdelhadi (2006)[135]** acknowledges the human rights issues and cites critical factors supporting the duties and rights of public employees in the UAE as: (1) recognition of the public rights and the freedom of individuals, and (2) protection of individuals from abuse by the authorities.

Amjad Ayyash (2011)[136] another Egyptian study, further discusses some of the core issues addressed in this thesis, namely the rights of an employee in the context of disciplinary action taken against him of her. The study rightly emphasises the need for an investigator who is impartial in presenting and collating evidence. Ayyash's study also asserts that accused employees should have the right to question hostile witnesses. The study, however, provides no

[134] In 1948, the United Nations General Assembly proclaimed the 'Universal Declaration of Human Rights' as a common standard of achievement for all people and all nations. The United Nations demanded that every individual and every organ of society must keep this declaration constantly in mind; and that the Human Rights and the freedoms proclaimed in the Declaration must be respected by all means in progressive measures, both national and International. However, despite all these demands by the United Nations, disregard and contempt for human rights has continued, as manifest by the numerous barbarous acts that continue in many parts of the globe. See: Al-Rajhi, Saleh Abdullah. "Civil and Political Human rights: A comparative study between Islamic Sharia and the Universal Declaration," *Journal of Law*. Kuwait University. Volume 27 Issue 1. March 2003, pp. 101-104.Both Kuwait and the UAE are members of the United Nations and are signatories to the universal declaration of Human Rights. For more details about human rights in Arab countries see: Kadir, Rizgar Mohammad and Hassan, Heve Amjad. "The Monitoring Study," *Journal of law,* University of Kuwait. June 2011, pp. 401-404. Also see http://www.moi.gov.ae apartments/generic content/human.9spx. [Accessed 21th August 2016].

[135] Abdelhadi, Hamdi. "Disciplinary Sanctions," Ph.D. thesis. Egypt: Aien Shams University. 2006.

[136] Ayyash, Amjad Jihad Nafe. "Guarantees of Disciplinary Questioning of the Public Employee," Master's dissertation (Arabic). Egypt: Banha University. 2011.

guidance as to how such impartiality is to be achieved. For instance, the issue of the right to representation is not discussed in detail, and it is not clear how the fairness of a dubious investigation could be challenged. This shortcoming is perhaps explained by the author's emphasis on the significance of the Egyptian constitutional provision, which provides for a constitutional right to a court hearing. Article 68 of the Egyptian constitution provides a right to seek judicial scrutiny of administrative decisions. It provides:

> "Access to the courts is an inalienable right, and every citizen is entitled to submit his case to the competent Judge. The State shall guarantee the citizen access to the courts for the parties to a controversy and a speedy determination of their claims. Any provision in the law stipulating the immunity of any act or administrative decision from judicial control is prohibited."[137]

It is not clear, however, to what extent an individual would be entitled to legal representation. Article 67 stipulates that every person accused of a crime must be provided with counsel for his defence, whereas Article 69 provides for a guaranteed right to defence in person, and a declaration to the effect that the law will grant the financially incapable citizen with the means to resort to justice in order to defend his or her rights. The right, if any, to legal representation in an employment disciplinary case is therefore ambiguous and probably doubtful.

[137] Article 68 of the Egypt Constitution. This article, however, is equivalent to Article 166 of Kuwait Constitution stating that "The right to recourse to the courts is guaranteed to all people. Law shall prescribe the procedure and manner necessary for the exercise of this right."

Indeed, it can be suggested that if an in individual has not been legally represented at the initial disciplinary investigation, he or she is perhaps unlikely to subsequently opt for a court hearing. The individual may not even be aware that the option exists.

Although the right to representation is not fully addressed, it can be argued that the right to defend oneself should be understood as a general principle that needs to be respected. Accordingly, the core or fundamental requirement in terms of fairness is that the public employee should have full knowledge of all the accusations against him/her.[138] Similar arguments, as outlined later in this thesis, are fundamental to the process of achieving natural justice.[139]

The Duty of Whistleblowing

The topic has been given very little attention in Arabic literature, but clearly much of the above discussion relating to the obligation and non-obligation to follow orders and instruction is of general relevance to the act of disclosing sensitive material, commonly referred to as whistleblowing.

[138] Al-Massri, Zakariya. *The Assets of the Public Administration- Comparative Study* (Arabic). Egypt: Dar Al-Kutoub. 2007, p. 885; Ayoub, Alsabee Mahsoub. *The Summary of the Disciplinary Judiciary Disputes* (Arabic). Egypt: Dar Al-Jamiaa .2010, p. 22.

[139] See Fenwick, Helen and Phillipson, Gavin. *Text, Cases &Materials on Public Law & Human Rights*, 2nd Edition. London: Cavendish Publishing Limited. 2003, p.81.

More specifically the legal provisions in relation to whistleblowing in both Kuwait and Egypt are confined to obligations in relation to corruption.[140] Significantly, however, the Kuwaiti provision imposes a duty on all persons to make disclosures in such circumstances.[141] In contrast, there is no general statutory duty on individuals to disclose in the UK, not even in relation to corruption.[142] However, a professional duty to disclose may arise in very limited circumstances, in respect to a narrow range of professional employees carrying out public functions.[143] In other words, most public employees have the right to whistleblow but there is no obligation to do so. Numerous guidance documents have been produced including: UK Civil Service Commission- *Whistleblowing and the Civil Service Code*, June 2011. It should be noted that the code goes wider than the PIDA, and suggests that in some circumstances civil servants have a right and responsibility to speak up and report behaviour that contravenes the Code's values. It should be noted, however, that the word selected is "responsibility"

[140] Alam, Eman Osama, "Corruption and the Tool of Whistleblowing," Research Paper (Arabic). Egypt: Egypt University. 2009.

[141] See Article 36 of Kuwait Whistleblowing Act No. 24 of 2012, under chapter 3 at p. 146.

[142] There is no general legal duty to disclose, or report known or suspected corrupt activity to law enforcement bodies in the UK. However, the Bribery Act 2010 establishes a corporate offence in relation to commercial organisations who fail to prevent bribery (s.7). This specific offence can be committed by individual employees as well as corporations. There is, therefore, some similarity between the provisions of Kuwait and the UK, but arguably the provisions in Kuwait are wider.

[143] For example, a failure of a member of a profession to whistleblow could lead to disciplinary proceedings within his or her profession. Employees may be subject to regulatory bodies which establish codes of conduct that bind the individual' professional behaviour.

rather than "duty". It is a moot point whether or not a responsibility is regarded in law as being the same as a duty.

However, the protective remit provided to whistleblowers in the UK is much wider than corruption, and applies to employment across the public, private and voluntary sectors. Indeed, there was limited protection under the common law for disclosures in the public interest, even before the UK legislation on whistleblowing 'The Public Disclosure Act 1998 (PIDA)' came into force.[144]

The important point to emphasise in the context of this thesis is that the UK law, seeking to protect whistleblowers is grounded in an employment context.[145] In contrast, as outlined above, the Kuwaiti and Egyptian provisions to date are cast more widely in terms of citizenship generally, and therefore at risk of having little practical impact on employment and disciplinary practice.[146]

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[144] There was common law protection based on public interest, but the protection provided no real remedy if an individual had actually been dismissed, so legal protection before the Act (PIDA) came into force, was 'wholly inadequate'. See Ewing, Keith; Collins, Hugh; and McColgan, Aileen. *Labour Law Text and Materials*, 2nd Edition. London: Hart Publishing. 2005, p. 636.

[145] See Francis Report chapter 2 – overview of the legal and policy context at p.49, para 2.7.2: "*The law seeking to protect whistleblowers is cast entirely in an employment context. It proceeds from an assumption that an exception needs to be made to a general requirement to keep the affairs of the employer confidential, rather than acceptance that all those providing a public service have a duty to raise concerns which affect the public interest."* Frances QC, Freedom to Speak Up – a review of whistleblowing in the NHS, 2015.

[146] It is, however, acknowledged that the Kuwaiti provisions are recent in legal terms and that it is probably too early to speculate on the impact of the Code. However, it is noted that there have been no reported cases to date (refer to the evidence from the respondents reported in this study, see the discussion under interview no.8 at Appendix D).

The practical impact of the UK whistleblowing provisions, however, has been the subject of considerable academic and judicial scrutiny which has resulted in both legislative amendments[147] and the development of employment-based guidance. **Professor David Lewis**, for instance, a leading UK and internationally respected academic on whistleblowing,[148] conducted a ten-year review of the impact of the legislation based upon black letter law and empirical survey evidence[149] by organisations such as Public Concern at Work[150] and concluded that the jury is still out- "We cannot conclude from the first 10 years of PIDA whether it has been either a success or a failure." Professor Lewis provides a partial explanation for the mixed progress emphasising that "*the UK statute did not set out to encourage whistleblowing; it merely aims to protect those who raise a particular type of concern (a 'qualifying disclosure') in a specified way."*[151]

A more recent fifteen-year review on similar lines has been undertaken by **Jeanette Ashton**, which encouragingly concludes that the legislation as amended has delivered incremental change for the better:

[147] See the Enterprise and Regulatory Reform Act 2013, discussed at chapter 3, p.154.

[148] See Lewis, David. *A Global Approach to Public Interest Disclosure: What Can We Learn from Existing Whistleblowing Legislation and Research?* United Kingdom: Edward Elgar, 2010.

[149] Lewis, David. "Ten years of Public Disclosure Act 1998 Claims: What can we learn from the Statistics and Recent Research?" *Industrial Law Journal*. Volume 39 Issue 3. 2010.

[150] Public Concern At Work, is a UK based whistleblowing charity which advises individuals with whistleblowing dilemmas at work, supports organisations with their whistleblowing arrangements, and informs public policy and makes recommendations regarding legislative change.

[151] Lewis, David. Ten Years of Public Discloser Act 1998 Claims. 2010, op.cit at p. 327.

'It is suggested that the PIDA has promoted greater transparency in the workplace in providing for the first-time statutory protection for whistleblowers which prior to this was inadequate.'[152]

Both Lewis and Ashton refer to detailed quantitative and qualitative material with Ashton accurately observing that the disparity between the letter of the law and the reality of the workplace is, arguably, a recurrent theme.[153] This broader approach includes discussion about ethical and psychological considerations which also impact on employee behaviour. The point is well made in **Robert Larmer's (1992)**[154] discussion on whistleblowing and employee loyalty. As he suggests:

'*...loyalty requires that one is concerned with more than considerations of justice… A loyal friend is not only someone who sticks by you in times of trouble, but someone who tries to help you avoid trouble. This suggests that a loyal employee will have a desire to point out problems and potential problems long before the drastic measures associated with whistleblowing become necessary'*.[155]

Interestingly, and relevant to this thesis, Larmer specifically makes the point that his analysis was focussed on the private sector, and that loyalty issues in

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[152] Ashton, Jeanette. "15 years of Whistleblowing Protection under the Public Interest Disclosure Act 1998: Are We still Shooting the Messenger?" *Industrial Law Journal*. Volume 44 Issue 1. 2015 at p. 44.

[153] See chapter 3, pp. 133-134.

[154] Larmer, Robert. "Whistleblowing and Employee Loyalty," *Journal of Business Ethics,* Volume 11. 1992, pp. 125-128.

[155] Op .cit. at p. 128.

government agencies deserve careful and separate consideration. As Larmer's comment implies, the considerations that apply are dynamic and not static. The same point is well made by **Erika Henik (2008)**[156] who is critical of "cold" calculations and cost-benefit analyses to explain the judgements and actions of potential whistleblowers. She argues that "hot" cognitions, value conflict and emotions should also be considered. Irrational, impulsive or self-defeating behaviours have to be considered within a dynamic framework. Risky decisions, like the decision to blow the whistle can involve ambiguity and mixed emotions and, as will be argued in this thesis, disciplinary procedures and substantive legal provisions should reflect this reality. Legal concepts such as acting in 'good faith' and 'reasonable belief,' for instance, need to reflect the dynamic realities.[157] Further, it can perhaps be argued that the lack of adequate transparent whistleblowing, disciplinary and grievance procedures might contribute to individual employees taking "hot decisions" and becoming the victims of institutional failure. Indeed, it appears that the risk exists even in countries like the UK, where protective measures have been introduced. It is, therefore, not surprising that whistleblowers continue to be seen as vulnerable individuals as evidenced from the specialist Charity Public Concern at Work highlights. In its report titled '*Whistleblowing: the Inside Story'* (2013), concludes that the

[156] Henik, Erika. "Mad as Hell or Scared Stiff? The Effects of Value Conflict and Emotions on Potential Whistleblowers," *Journal of Business Ethics*. 2008, pp. 111-119.
[157] See discussion at chapter 3.

majority of whistleblowers (83%) had previously attempted to raise concerns internally at least twice, with 74% of whistleblowers stating that no action had been taken in response to a report of misconduct. A further problematic issue raised from the results of the report, which reveals that the majority of whistleblowers (19%) had been referred for disciplinary sanction, or demotion, while 15% of whistleblowers had actually been dismissed.[158] Commenting on these results, **Cathy James**, the CEO (Chief Executive Officer) of Public Concern at Work noted the importance of whistleblowing in preventing harm in advance.[159] It is unfortunate that interrogations frequently arise only after the harm has been done, even when employees have expressed concern of malpractice[160] while the wrongdoing was occurring.[161]

Legal rules allowing for a duty to whistleblow is arguably an initial viable option, due to the two-fold advantage of uncovering wrongdoings and offering protection for whistleblowers. In relation to the Arab states, the legal instruments grant protection to cover disclosures made in relation to distinct aspects such as anti-corruption laws. The former type of instruments was seen to lack an avenue for disclosures in further areas beyond the scope of corruption-related crimes. Lack

[158] Ibid, p.5.

[159] Carroll, Clare. "Whistleblowing: Irelands Protected Disclosers Act 2014-Its Context and Impact" *Compliance and Risk*. 2015, p.3.

[160] In law, malpractice is a type of negligence in which the professional, under a duty to act, fails to follow generally accepted professional standards, and consequently their breach of duty is the proximate cause of injury to the plaintiff who then suffers harm. It is committed by a professional or her/his subordinates or agents on behalf of a client, causing damage to the client. Source: http://www.themedilawfirm.com/PracticeAreas/
Malpractice Law.aspx. [Accessed 25th August 2014].

[161] Carroll, op. cit. p.7.

of protection would also potentially undermine the effectiveness of legislation aimed at uncovering crimes of corruption.

The regrettable truth for countries with whistleblowing policies such as Kuwait, UK and France is that all too frequently the claims of wrongdoing can be both disregarded and discouraged and, more seriously, that well-intentioned whistleblowers may also be ostracised or victimised.[162] Previous literature suggests that there is much more to be done towards protection of whistleblowers.

2.2.3 Discipline of public employees and grievance procedures[163]

Discussion regarding disciplinary procedures, particularly its definition and purpose of such procedures are widely discussed by various scholars and academics.

A common theme that runs across prior studies is the notion that the aim of disciplinary procedures is to promote good working practices, rather than the punishment of individual employees. The author Amani Zain Farraj (2012) notes that the goals of disciplinary penalties need not incorporate the concept of punishment, but rather that it should aim to reform employees, while avoiding the evocation of negative emotions.[164] Disciplinary procedures, therefore, should facilitate an improved individual and group conduct for the benefit of the

[162] Pritchett, Stephanie. "Whistleblowing - Avoiding the hot water when others let off steam," *Privacy and Data Protection Journal*. Volume 11 Issue 7. August 2011, p.3.

[163] Notice: all the references under section (2.2.3 Discipline of public employees and grievance procedures) are to be found in Arabic materials- see (Al-Faresi, Abdelhadi, Al-Sabti, Al-Saidi, Al Enezi (2011), Arjmind, Mahmoud, Al-Enezi (2007), Muharib, Al-Rabeei, Abduljaid).

[164] Farraj, Amani Zain. *Legal System for Public Employee Discipline.* Alexandria: Dar Al- Fikr. 2012, p. 375.

employer's organisation, [165] and not to punish mistakes maliciously or out of spite.

The perspective above has been adopted by newer studies such as Saad Al-Enezi (see above) who suggests that while the expectations of good conduct on public service employees may be extensive and all-embracing,[166] disciplinary penalties at its simplest sense are imposed because of the supposed detrimental impact of the relevant reproachable acts on the esteem or reputation of the employer.[167] Following Al-Enezi's position, disciplinary proceedings could mean those actions which are brought to reprimand, suspend or expel a licensed professional, or other individual, from his/her office, or group, because of conduct[168] that is deemed unsatisfactory, unprofessional, unethical, improper, or illegal.

In that regard, **Ahmad Al-Faresi (2004)[169]** have rightly argued that Kuwait's disciplinary systems should not primarily be viewed as a mechanism for imposing sanctions on individual employees. He argues instead that disciplinary procedures should be viewed as a method of improving work performance and

[165] The legal concept of discipline is a process of dealing with job-related behaviour that do not meet expected and communicated performance standards. Its goal is to improve employee performance, and the primary purpose for discipline is to make the employee understand that a performance problem or opportunity for improvement exists.
Source: http://humanresources.about.com/od/glossaryd/a/discipline.html [Accessed 7th March 2013].

[166] See information above in this chapter.

[167] Al-Shitewi, Saad. *Disciplinary accountability for public employee.* Egypt: Dar Al-Jamiaa Al-Jadida. 2008, p.141.

[168] Garner, op. cit., p. 476.

[169] Al-Faresi, op. cit., p. 26.

behaviour of the public employees. The emphasis, he suggests, should be on the positive aspect of improving performance, and mentoring conduct for both the benefit of the individual and the employer organisation.[170] The commonly stated purpose such as that of Al-Faresi and prior studies may be positive but in reality, the disciplinary process may be perceived as negative by those subjected to it. Moreover, in some cases those responsible for the management of the disciplinary process may have mixed or even corrupt motivations, which add to the perception or reality of injustice. The latter point becomes a greater concern particularly since Al-Faresi's study provides no guidance as to how fairness is to be achieved within the internal processes. A further criticism has been put forward in a later comparative study by **Abdullah Arjimind's (2006)** on the philosophy of disciplinary actions, in relation to civil servants in the UAE and other countries.[171] Comparing legislative provisions from Egypt and the UAE, Arjimind found that in both cases disciplinary offences were not specified. For Arjimind, this lack of clarity relating to the meaning of a disciplinary offence[172] is problematic; thus he concluded that there was an urgent need for public employment-based training programmes aimed at clarifying the justification and philosophy of public employee disciplinary proceedings. Nonetheless, as was

[170] Al-Shitewi, Saad, op. cit., p.150.

[171] Arjimind, Abdullah Mohammad. "Philosophy of Disciplinary Actions for Civil Service Workers- A Comparative study between United Arab Emirates and other countries, 3rd Edition." Ph.D. thesis published as a book (Arabic). United Arab Emirates: Dubai University. 2006.

[172] Ibid.

the case in the prior studies above, Arjimind argues that disciplinary sanctions should only be used in order to dissuade employees from repeating acts of misconduct. He additionally recommended that the sanctions for disciplinary offences should be moderate and proportional, [173] which is an arguably sensible proposition in support of the idea that disciplinary procedure should not be used as a form of punishment.

Sief Al-Saidi's (2006)[174] study published the same as year as the one above, evaluates the disciplinary procedures in the UAE and Egypt, and have also placed emphasis on the positive characteristics of disciplinary procedures. If employed correctly, such procedures he argued can motivate and improve performance, and identify developmental needs. In order to justify his approach, he drafted practical guidance to enable organisations to develop and operate disciplinary rules and procedures, in order to make a positive contribution to their business objectives. His study concluded with the following recommendations:[175]

[173] The concept of proportionality is well developed in civil law systems and has been gradually adopted in common law countries and given increasing importance. In general terms, the concept of proportionality requires the balancing of the general interests of the state and the protection of an individual's rights and interests. A number of questions need to be considered including whether the state's objective is legitimate?; is the measure suitable for achieving it?; and is it necessary in the sense of being the least intrusive way of achieving the aim? See 'A brief guide to the grounds for judicial review' by The Public Law Project. Public Law Project Information Leaflet 3 2006 at p.4.

[174]Al-Saidi, op. cit., p.364. Note: to clarify that the study of Seif Al-Saidi is a study from the UAE.

[175] Ibid, p. 375.

i. That cultural change is needed in the approach to disciplinary proceedings in both the UAE and Egypt. A more positive and inclusive approach could be created, by integrating discipline procedures in a codified manual which explains the rights and duties of public employees, and the procedures to be followed prior to the exercise of rights to discipline.

ii. That structural changes were also needed to establish employee confidence in the system. He suggested that the UAE should, following the good example of Egypt, establish a specialised court to oversee administrative disputes and the conduct of disciplinary procedures.

As indicated in the earlier parts of this thesis,[176] the same deficit of a specialised court applies to Kuwait.[177] The Kuwaiti deficit, however, is not limited to the

[176] See the above discussion in this chapter.

[177] The situation in Kuwait is identical to that in the UAE. In Kuwait, there is no independent administrative court, leading to a need to create an independent administrative court in both Kuwait and the UAE. Interestingly, the Constitutions of both countries provide for the possibility of such bodies (see earlier discussion in relation to Kuwait at chapter 1, p.21). Article 102 of UAE constitution, for example, provides, "The Union shall have one or more Union Primary Tribunals which shall sit in the permanent capital of the Union or in the capitals of some of the Emirates, in order to exercise the judicial powers within the sphere of their jurisdiction in the following cases: 1. Civil, commercial and administrative disputes between the Union and individuals whether the Union is plaintiff or defendant. 2. Crimes committed within the boundaries of the permanent capital of the Union, with the exception of such matters as are reserved for the Union Supreme Court under Article 99 of this Constitution. 3. Personal status cases, civil and commercial cases and other cases between individuals which shall arise in the permanent capital of the Union." Disappointedly, despite the Constitutional provision

lack of a specialised court, but also ambiguities surrounding grievance procedures. As suggested earlier, employee perceptions of fairness will be very much determined by the degree to which the disciplinary processes are proportional, and the extent they have a voice in the workplace. Given that the drawbacks for disciplinary punishments can include a negative effect on turnover, increased absenteeism, self-protective behaviour and poor performance,[178] it is vital that employees are protected from being subject to unnecessary trivial investigations. Therefore, it is argued that grievance procedures are instrumental component in the disciplinary process, which are generally defined as expressions of dissatisfaction, or disquiet, requiring a response, and form an important driver for in-service improvement. [179]

Abdullah Mahmoud's (2007) [180] study about the grievance procedures UAE, Egypt and France, offers an insightful analysis and guidance in approaching grievance procedures. In the UAE, the grievance procedures are established under

there is still there is no independent administrative court in UAE. Also, see Al-Rashidee, op. cit., p. 541.

[178] Interview No. 1 Appendix D.

[179] Abdulhadi, Mahmoud Haji. "Discipline Penalties," Master's Dissertation. Kuwait University. 2004, p. 65.

[180] Mahmoud, Abdullah Mohammad. "Procedural provisions for grievance," Master's Dissertation (Arabic). United Arab Emirates: Ajman University. 2007.

Article 84 of Federal Law no. 21 of 2008.[181] Thus, employers are required to apply specific grievance procedures when dealing with the grievances of employees. An employee may wish to raise a grievance concerning their employer, a colleague, or their working environment. It is important that employers need to take grievance issues seriously,[182] as unresolved problems at this stage can result in a general and serious breakdown in the employer–employee relationship. A common reason for some employee instigating grievance procedures is disagreement over appraisals or job evaluation exercises.[183] Employers should use pre-set grievance procedures, to deal with all grievances. It is necessary for a copy of applicable procedures to be distributed to all employees. Importantly, grievance procedures should be made available in writing and disputes should be settled quickly, and effectively.[184] It is therefore suggested that grievances may be a mechanism to balance the negative effects of disciplinary penalties, and

[181] However, Article 84 of Federal law no. 21 of 2001 states "A public employee may submit a grievance to the Penal Department in the Supreme Federal Court against the decisions of the Disciplinary Council inflicting on him such penalties as suspension from work without a salary, reduction of salary, scale or both and dismissal. The said grievance shall be submitted within thirty days from the date of notification of the penalty. Members of the Disciplinary Council may not be included in the membership of the court adjudicating on the said grievance and the ruling of the said court shall be final." This article is equivalent to Kuwait Law no. 20 of 1981 with amendments, which has a resolution of administrative disputes, and Article 7 which explained the procedures of the grievance.

[182] Mahmoud, Abdullah, op.cit, p.113.

[183] Ibid, p. 114.

[184] Ibid, p. 115.

consequently should not be defined in too narrow a manner, since this may prevent employees from establishing a legitimate outlet for their concerns.[185]

While grievance procedures are influential internal factor to promote perceptions of fairness in the disciplinary process, employee perceptions could also be affected by external factors and legitimate expectations. **Hamdi Abdelhadi (2006)[186]** studied the manner in which the Kuwaiti Court System should act when contemplating disciplinary sanctions, and cites the leading decision from Supreme Court of Kuwait which concluded that: "the disciplinary offence should match the public interest and without any misuse of the power."[187] The public interest, however, may not always coincide with what is fair in an individual case, and it should be noted that the concept of abuse is interpreted widely in Arabic jurisprudence, and includes actions which may appear to be within the law but are carried out for an improper purpose. The scope for

[185] Kannaan, Nawaf Salem. *Civil Service in United Arab Emirates*, 1st Edition (Arabic). United Arab Emirates: University Book Shop. 2008, p. 204.
[186] Abdelhadi, Hamdi, op. cit., p. 25.
[187] Case Number 1261 of 2003, Administrative Case, Session 23/1/2005. Journal of Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 35. April 2006.

committing a disciplinary offence is therefore wide.[188] Evidence to support this claim is also from **Adnan Al-Sabti (2007)[189]** who notes that on the basis of the Kuwaiti Public Code alone such offences could include (1) violation of work schedules; (2) breaches of work performance; (3) work system irregularities; and (4) breaches of conduct (e.g. failing to respect an employer. Further, his conclusions add weight to Al-Saidi's comparative study referred to above, in that he strongly endorses the need for the establishment of an independent Administrative Court in Kuwait (i.e. similar to those in Egypt and France).[190]

As is clear from the above, an inquiry into the need or otherwise of a disciplinary investigation can be the result of multiple and varied concerns including expressed grievances initiated by fellow employees. In connection to the latter, **Ahmad Al-**

[188] According to a contemporary Islamic Jurist, 'abuse in the exercise of right is defined as any conduct, which is licit in principle, but which contradicts the purpose for which the right was legislated.' In addition, the purpose of the right is not necessarily a mere private benefit of its holder; instead, it is the end that the holder must achieve without ignoring the general rules of Sharia. Thus, there is a relationship between the right and purpose, and if it is utilised for any purpose not consistent with the aim, it will be considered abusive. All the Arab Civil Codes that codify this concept stipulate that the use of a power for an improper purpose is an unlawful exercise of the power. Thus, if the conduct clearly exceeds the limits of the ordinary use of the right, by a careful and prudent person, the actor will be considered abusive. To conclude, the concept of abuse in the exercise of rights is not equivalent to the unlawful exercise of the right. See Dawwas, Amin. "Abuse in the Exercise of Rights in Islamic Law and the Civil Codes of Arab Countries," *Journal of Law*. Kuwait. Vol. 19/No. 1, March 1994, p. 40. See also, Riyad, Ahmad Rizk. Abuse of Administrative Power. Alexandria: Al-Wafaa Legal Press. 2010, p. 30.

[189] Al-Sabti, Adnan Mohammad. "Legal Safeguards for Disciplinary Proceedings in the Kuwaiti and the Egyptian System - A Comparative Study," Master's Dissertation (Arabic). Egypt: Hulwan University. 2007.

[190] See below at chapter 4.

Rabeei (2012)[191] reviewed the procedures for administrative investigations in Kuwait, Egypt, and France. He noted that an administrative investigation takes place at the point at which a public employee is being scrutinised, i.e. at the point the administration has become convinced that the employee has committed an administrative violation that might be worthy of sanction. He suggests that the aim of this form of investigation is to identify the wrongdoing committed, in order to discipline the wrongdoer and to rectify the damage to the administration of the public service. He further suggests that the aim of administrative investigation is to take into account the conditions that prompted the public employee to commit the misconduct in question, in order to hopefully prevent similar occurrences in the future.[192] This suggestion is sensible and understandable, but in some circumstances, could lead to an individual employee being treated as a means to an end. Surprisingly, however, the study does not address an important preliminary issue, which is the need for clear guidance, in relation to what protection is available to employees prior to any assessment as to whether any disciplinary offences are likely to have occurred. The degree of protection given to an individual at the very earliest stage of the investigation can be crucial to the individual's sense of dignity and worth. In western jurisdictions, employees,

[191] Al-Rabeei, Ahmad Mahmoud. "Administrative Investigation in the Public Service, Comparative study," Master's Dissertation(Arabic). Egypt: Dar Al-Kutoub. 2012. Al-Rabeei's study is a comparative study between three countries. It compares Egypt, Kuwait, and France, in the particular field of administrative investigation.

[192] Ibid, p. 23.

including civil servants are sometimes offered or encouraged to take garden leave[193] in order to facilitate an investigation and to provide some protection for the individual under scrutiny. Such flexible arrangements are not provided for under existing Kuwaiti arrangements, with the result that the impact of some investigations may be more harmful than perhaps necessary.[194]

However, Al-Rabeei's study which involved a review of many governmental departments in the state of Kuwait is noteworthy for two reasons. Firstly, it examined (1) the concept of administrative investigation; (2) the authority of the administrative investigator; (3) the procedures for administrative investigation; (4) and guarantees made by the administrative investigator, and concluded that in Kuwait, administrative investigation broadly falls under the responsibility of the administrative head (i.e. the Minister or Undersecretary). The same individual in authority is also responsible for deciding on the degree of sanction deemed appropriate. There is no separation of function between the investigative and the disciplinary role, with the result that there is an insufficient guarantee of neutrality

[193] The term garden leave originated in the British Civil Service where employees could request special leave for exceptional purposes. "Garden leave" became a euphemism for "suspended": as an employee formally suspended, with a pending investigation, would often request to be away on special leave instead. Employees receive normal pay during garden leave and must adhere to their conditions of employment. If an employee is suspended they can be called in for interview to quicken the process.

[194] Case No. 217 of 2003, Administrative Case, Session 1/9/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 32. January 2007.

in the investigative process. The study is also noteworthy for a second reason as it implies that in practice the right to a court hearing is not 'inalienable.'

Al-Rabeei discusses the jurisdiction of the Administrative Court in this context and notes that the role of the Court Kuwaiti under Law No. 20/1981) is to settle administrative disputes.[195]

These disputes concern the following areas:[196]

- Salaries
- Pensions
- Allowances and bonuses owed to the employees
- Requests for the annulment of administrative decisions issued by the appointment
- Promotion and termination
- Disciplinary sanctions on public employees.

[195] The researcher in his present study has already explained that the term "dispute" is a legal term as per Kuwait Law no. 20 of 1981. Refer to chapter 1, p.30, footnote no. 74. However, the Black letter law of the word dispute is "disputatiofori" which is originally a concept in (Latin) Roman Law, meaning 'the argument before a court' or the practice of legal advocacy. Garner, op. cit., p. 485. For more information about the terminology of disputes, see Al-Kabbani, Bakher. Kuwait *Administrative Law.* Kuwait: Kuwait University Press. 2003, p. 197. Al-Deen, Bilal Amin Zain, Administrative Discipline, Master's Dissertation, Alexandria, Dar Al Fikr, Al Jamiaa, Egypt, 2010. p. 17.

[196] Al-Mokateh, Mohammad Abdulmohsen. *Kuwait Administrative Law*. Kuwait: Kuwait University. 2004, p. 281; Al-Tobtubaee, op. cit., p. 872; Al-Saleh, Othman Abdulmalik op. cit, p. 628. See Case Number 795 of 2004, Administrative Case, session 10/4 2006, Journal of Justice Law, periodical journal issued by technical office of the Supreme Court in the state of Kuwait, 1st Apr. 2006- 30th June 2006. Volume 2/Issue 34. October 2008, p. 255.

Although the list is specific by providing a clear mandate in relation to the legal review of actual sanctions, it does not exclusively provide for a review of the actual disciplinary process in terms of fairness. It is, therefore, arguable that the right provided is not as wide as that of judicial review under common law systems.[197]

The above suggests that there is a need for additional clarity in relation to the scope and definition of a disciplinary offence, and the right of appeal to an expert, specialised judicial court. The same is also true in relation to the type and severity of the possible sanctions that can be imposed for established disciplinary offences. **Ali Muharib (2004)[198]** undertook a comparative study of the general disciplinary framework of Egypt and the UK,[199] and concluded that there was no framework for the range of penalties that could be imposed, and that in reality the employers were given considerable discretion. Egyptian legislation, for instance, provided

[197] Judicial review is a form of court proceeding, usually in the Administrative Court in which the judge reviews the lawfulness of a decision or action by a public body. It is concerned with whether the law has been correctly applied, and the right procedures have been followed. Judicial review is about the supervision of administrative decision making. It can be a fast, effective and powerful way to convince a public body to reconsider a decision or force them to act. The court's decision must be followed, and one judicial review case can make a difference to other people. See *Short Guide 03:An Introduction to Judicial Review* byThePublic Law Project, at p. 1. It should be noted, however, that although the process can be used to challenge decisions taken by public bodies, there is some judicial reluctance to allow judicial review in an employment context. See for example, the Scottish case of *Gray v Watson and Ors* [2014] CSIH 81, CS).

[198] Muharib, Ali Jumma. "Administrative Discipline," Ph.D. thesis (Arabic). Jordan: Dar Al-Takafa. 2004. It is to be noted that Muharib's thesis has already been published as a book in Jordan by Dar Al-Takafa publishing.

[199] Muharib's study provides a comparative study of Egypt, France and UK. See Muharib, p. 258.

for warnings; penalties; financial sanctions; and dismissal.[200] Moreover, under the Egyptian administrative disciplinary system[201] (specifically under Law No. 47/1978) the competent presiding authority,[202] a senior administrator, has the right to determine the nature of a penalty, while the court has also the right to reject the imposition of punitive disciplinary action relating to the retirement, or discharge, of an individual from service. Judicial intervention is therefore available in the context of critical outcomes. The disciplinary system in Egypt therefore provides for partial judicial supervision and monitoring of the penalties imposed, and has established an administrative system aimed at becoming fully judicial,[203] i.e. there is an Administrative Prosecution[204] and a Supreme Administrative Court.[205] As indicated above, no such specialist forum exists in Kuwait and the right to judicial scrutiny is uncertain.[206]

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[200] Ibid. p. 320.Also see, Al-Qadi, Nasser Aldeen. *General Theories for Discipline in the Public Service.* Egypt: Dar Al-Fkir. 2007, p. 377. Al-Sheikili, Abdulkader. "The Legal System of the disciplinary penalty," Ph.D. thesis (Arabic). Egypt University. 1983, p. 133.

[201] Muharib, op. cit., pp. 606-607. Al-Shekli, Abdulkhader. *"Discipline for Government Workers-Comparative Study"*. Egypt: Dar Al-Takafa. 2006, p. 10; Al-Afifi, Mustafa, "Philosophy of the disciplinary punishment," Ph.D. thesis (Arabic). Egypt: Ain Shams University. 1976, p. 181.

[202] See Tawfeek, Hisham Mohammad. *Responsibility Control- Comparative study* (Arabic). Alexandria: Dar Al-Fkir Al-Jamiaa. 2008, p. 53.

[203] Ibid, p. 276; Asfor, Mohammad. *Discipline Theory.* Egypt: Alam Al-Katoub.1967, p. 339.

[204] For the laws of administrative prosecution in Egypt under law no. 117 of 1958 with amendments. See, Shatat, Osama Ahmad. *The laws of the Administrative Prosecution, State Council, and High Constitutional Court.* Egypt: Dar Al-Kutoub. 2006, p. 5.

[205] Al-Zubi, Khaled. *Discipline of Employees - Comparative Study. Egypt*: Dar Al-Takafa. 2007, p. 24; and Ramadan, Shaiban Ahmad. *The Role of the Disciplinary Court.* Egypt: Dar Al-Nahda. 2005, p. 42.

[206] See above at p. 70.

Ali Abdul Jayid (2007)[207] similarly focused on the range of disciplinary penalties, and the judicial control in France.[208] Interestingly, he notes that the range of penalties that can be imposed is specified and include a range of options under Article 30 of the French Law no. 224, i.e. the penalties can range from "warning, cancellation from promotion, removal from work with keeping the right to pension, removal from work with deprivation of pension, being temporary dismissed from work, delay of seniority, salary deduction, and referral for early pension."[209] Although Abdul Jayid concluded that the French system provided greater clarity in relation the range of penalties, he also emphasised that the system also provided for considerable discretion and opportunities for unfairness. For instance, deductions of salary could be contentious and not consistent with the equity principle. A more detailed framework was necessary in order to facilitate fairness. He also, like others referred to above, indicted that administrative leaders needed detailed training in order to minimise the danger of imposing excessive penalties on public employees.

[207] Abdul Jayid, Ali Hassan Ali. "Extremes for Penalties and Impact of the Administrative Decision." Master's Dissertation, Egypt: Dar Al-Nahda. 2007. (Arabic).

[208] It should be noted, however, that the study was from an Arabic scholar and that it is published in Arabic.

[209] Braibant, Guy. *Le droit administrative Francais.* Paris: Dalloz. 1992, pp. 368-375. Also see, Waline, Jean. *Droit Administratif,* 22nd edition, Paris: Dalloz, 2011, p. 276; Daniel, Chabonol. *La practique du contentieux.* Paris: Libraire de la conr de cassation. 1991, p. 79.

Overall, it is possible to make several analytical points as a result of the above review of existing articles and research studies by various authors, concerning the disciplinary process of public employees and grievance procedures. Firstly, disciplinary procedures need to be designed to assist employees in understanding their duties and responsibilities. Secondly, procedures should focus on correcting any mistake should an employee commit an error by chance, or unintentionally, rather than punishing the employee. This would then motivate the employee to improve his/her performance in future and prevent such mistakes being repeated. At the same time, if the employee is found guilty of deliberate misconduct or misbehaviour affecting their employers, then penalties should be incurred. Public employees need to be aware of the disciplinary procedures (and corresponding penalties) to which they may be subjected, and any grievance procedures should also be clarified. The employee should have an equal right to voice his/her complaints or concerns in the workplace to the respective authority as the employer has to enforce discipline. This would promote greater confidence and faith in the employee in relation to administration procedures, thus enhancing the employee's performance. This thesis argues that when compared with other countries, the disciplinary system in Kuwait requires a degree of reformation. Significant clarification is needed in relation to both the definition and the duties of public employees, together with structural and cultural changes relating to the disciplinary processes which apply to them. Amongst the structural changes probably needed is the establishment of an administrative court, with the capacity

of dealing with the wide range of discipline issues that arise in relation to public employees.

2.3 Chapter Summary

This literary review has referred to a wide range of legal and socio-psychological sources from Kuwait and other countries with identified commonalities, with the aim of clarifying the role and duties of the public employee. Although the characteristics of public employees have been the subject of discussion in Arabic literature and judicial interpretation, the definitions to date have been circular in nature and provide little guidance, in relation to cases of dispute about either public employee status or public employee obligations. The definition of a public employee and his or her relevant duties may therefore be wide. Indeed, the literature suggests that considerable emphasis is placed in Arabic States on the dignity of the public employee post and the expectation of high standards of conduct from those appointed. Confusing, arguably, contradictory conclusions as to the actual scope of the duties required of public employees are to be found in the academic literature with some, for instance, suggesting that the duty of public employees to obey is confined to the need to obey lawful instructions only, whilst others suggest that the duties may be more pervasive. Similar confusion also exists in relation to the right, if any, to appeal to a judicial court in cases of public employer/ employee disputes. The review highlights the lack of existing clarity in relation to what can be regarded as a disciplinary offence and the need for further codification in order to facilitate employee understanding of his or her obligations,

and proportionate sanctions where the conduct has fallen short. The need for investigator, impartiality in presenting and collating the evidence is obvious, and codification would assist in providing a framework and more specific parameters of any investigation. The review also highlighted that under existing arrangements that, regrettably, it is not clear to what extent an individual public employee would be entitled to representation when accused of a disciplinary offence.

The need for greater clarity is very evident in relation to whistleblowing duties where conflicting duties are imposed, in relation to observance of confidentiality and the exposure of corruption. As outlined in this literary review, the subject of whistleblowing has been given scant attention in Arabic literature. It is noted in this review that the protective remit provided to whistleblowers in the UK is not confined to exposing corruption, it applies to all issues of public interest and encompasses the public, private and voluntary employment sectors. Moreover, in contrast to the Kuwaiti provisions which apply to all citizens, the wider whistleblowing provisions in the UK are grounded in an employment context, and therefore probably of more obvious and necessary concern to the employer and employee.

As the above suggests, both structural and cultural changes are needed to promote greater fairness in relation to disciplinary procedures that apply to public employees in Kuwait. Moreover, greater clarity is required in order to distinguish between managerial and administrative measures aimed at promoting

good work practice and effective delivery of services and those enacted to discipline individuals for breaches of public employee contractual obligations. And to this end, it has been argued that there is a need for the Kuwaiti government to list all offences,[210] in order to prevent administrators from imposing offences arbitrarily. Greater scrutiny and monitoring are also needed in order to safeguard the fairness of the disciplinary procedures. Moreover, it can perhaps be argued that the lack of adequate transparent whistleblowing, disciplinary and grievance procedures might contribute to individual employees taking "hot decisions" (sometimes irrational or ill-considered decisions), thus becoming the victims of institutional failure. Indeed, one of the commonly identified themes in the literature is the current deficit of judicial monitoring because of the lack of a specialised Administrative Court. The preponderance of evidence referred to in this the chapter adds weight to this argument, but it is also suggested that the jurisdiction of such a specialised court should include the right to review the fairness of the disciplinary process as a whole, and not simply be confined to specific breaches in procedure.

[210] Interview No. 1 Appendix D.

Chapter 3
Conceptualising the status of public employee in Kuwait in the light of competing duties

3.1 Introduction

As outlined in earlier chapters, a significant proportion of Kuwaiti citizens are employed in the public service and the country, reflecting global trends, is increasingly engaged in the process of privatisation of some public service functions.[211] In such circumstances, issues relating to the definition of public service employees may increasingly arise. As will be outlined the definition is descriptive and circular and provides little or no guidance as to public employee duties and prohibitions. This deficit will therefore be discussed in the context of the generic issues, the conflicting duties of employee loyalty, and the need to whistle- blow in prescribed circumstances.

This Chapter will therefore begin with an overview, and critique of the existing legal provisions and guidance which address the status and role of public employees within Kuwait. The definitions and primary duties that apply have been codified in law and are currently to be found in Decree Law No 15. 1979, which as indicated in the Explanatory note that accompanies the decree, were enacted in order to establish *'relatively constant basic principles and overall clauses.'*[212] Interestingly, the Explanatory note conceded that more detailed

[211] For example, the Kuwait Government is dealing with private companies for cleaning the rubbish from whole districts in Kuwait.

[212] See Explanatory Note- issued 4 of April, 1979 at para 1.

provisions relating to the content and procedures would be required by means of amendments. However, to date no such provisions have been enacted.[213] As indicated above, and as will be highlighted below, the provisions pertaining to both definitions and duties, however, remain highly descriptive and offer little or no guidance to employees or managers in the context of day to day employment practice. Such lack of precision can obviously lead to disputes, uncertainties for both employee and employers,[214] and legal inaction.[215] Moreover, as will be highlighted in this chapter, such problems are made worse when the provisions can be seen as inconsistent or contradictory. The Code contains one inherent contradiction, namely the dual requirement to act in the public interest[216] whilst also maintaining strict confidentiality.[217] This fundamental contradiction has been aggravated by the enactment of an additional Kuwait Law Decree no. 24 of 2012, which includes a provision imposing a duty on public employees to whistle blow as a means to counter corruption. Again, the provisions in the Code are loosely worded, and ambiguity is added because it is not clear whether the provisions contained in it are meant to override the General Civil Service Code. Such

[213] Any amendments could be implemented by means of further decrees.

[214] See discussion at Chapter 1.

[215] See Foster, Nicholas H. D. "Islamic Perspectives on the Law of Business Organisations II: The Sharia and Western-style Business Organisations" *European Business Organization Law Review*. Volume 11, Issue 2. June 2010, pp. 273-307. This article argues that, typically, Western legal concepts are imported into Arab states without the necessary considerations of Sharia equivalents, with the result that gaps appear in provisions, which result that there is little or no legal activity; he describes this state of being as legal lethargy.

[216] See Article 11 (Kuwait Civil Service Law) discussed below.

[217] See Article 25 (Kuwait Civil Service Law) discussed below.

confusions are not unique to Kuwait and similar Arab civil law jurisdictions, but the consequences arguably are possibly more serious, because to date there has been little consideration of the need of fairness in the context of resulting disciplinary disputes. As it stands, the law fails to protect the whistleblower sufficiently, as shown later in this chapter.

In this chapter, the researcher's objectives, as detailed in chapter 1, section 1.2, are used as tools to identify key aspects of the definitions presented. Therefore, the chapter explores the following:

- How public employees are defined in Kuwait and similar jurisdictions, and the extent to which existing legal provisions need to be reformed to ensure better understanding and improved protection.
- How the law might be further reformed to address the conflicting expectations that apply to public employees when in a position to whistle blow.
- The nature of the conflict between the prohibitions imposed on the public employee under Article 25/5 of Kuwait Civil Service Law no. 15 of 1979 (the disclosure of confidential information), and the duty of whistleblowing against corruption in Kuwait, under Article 36 of the Whistleblowing Act no. 24 of 2012.
- The protection of employees, in this case whistleblowers, under Kuwait Law no. 24 of 2012 against corruption.

Defining public employees as a group is crucial, as the government employs many public employees to run its public facilities and supervise the common policies of the state. A public employee can therefore be identified as a person working in the public services, who is employed by a government department.[218] The government in Kuwait is responsible for the administration and provision of a large number of diverse public services, including roads, urban planning, sanitation, rubbish, food inspection, and licensing.[219] As a government body, the municipal council in Kuwait is responsible for housing Kuwaiti people, resolving environmental issues and simplifying licensing procedures. Nevertheless, as outlined above, at present there is no standard definition of a public employee, because many legal systems have found it sufficient to identify individuals, included in the public services legislature, without defining the status and nature of their duties.

The delegation of responsibilities from central government to municipalities was covered in Case Number 103 of 1986,[220] which revealed "the scope of Kuwait Civil Service Law No. 15 of 1979 as a common law is designed to prescribe the

[218] Al-Mokateh, Mohammad and Al-Faresi, Ahmad. *Kuwait Administrative Law*. Kuwait: Kuwait University Press. 2009, p. 20. Abdulbaset, Mohammad Fuad. *Discipline Crime in Civil Service.* Alexandria: Dar Al-Jamiaa.2005, p. 3; Hussein, Mohammad Bakher. *Administrative Law*. Alexandria: Dar Al-Fikr. 2012, p. 503; Oada, Abdulatif. *Resignation in the Public Service.* Egypt: Al-Fkir Press. 2012, p.18.

[219] See United Nations Report, 2004, op. cit., p.8.

[220] Case no. 103 of 1986, Administrative Case, Session 18/2/1987, Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

organisation of civil service provisions in the state of Kuwait". The translation of this case in Arabic is [نطاق سريان قانون الخدمة المدنية (الكويتي) رقم 15 / 1979 هو القانون العام في تنظيم أحكام قانون الخدمة المدنية في الدولة].[221] In addition, Law no.15 of 1979 concerning the civil service in Kuwait provides general rules governing its role in relation to public employees. It encompasses rights, obligations, appointments, skill evaluations, wage increases, promotions, transfers, disciplinary actions, and the termination of employment.[222] Herein, the scope of public employees' responsibilities and duties are identified and established, as is the obligation of public employees to carry out key laws and orders efficiently. The opinion that will be presented in this chapter leads to the conclusion that public employees must abide by the rules and regulations imposed upon them in the work place, but that the rights of public employees, the duty of whistleblowing, and additional duties associated with the disciplinary system imposed on public employees are unclear.

Although, as outlined in earlier chapters, the duty to whistle-blow in Kuwait in relation to corruption applies to all citizens, it is understandable why public employees may be regarded as possibly having an enhanced duty to whistle-blow given their insider status and commitment to public service. Indeed, arguably, a commitment to public service should not be limited to the exposure of corruption only. The whistleblowing duty is intended to expose perceived unlawful activity

[221] Ibid, p. 22.

[222] Al- Enezi, 2007, op. cit., p. 69.

by an employer or employee as part of the duty of that employee, within an organisation or company, to a suitable authority in a position to judge and resolve the situation. It is based on the presumption that an organisation should not be subject to laws based on fraudulent and corrupt practices, and that it should be possible to protect society and serve the public interest.[223]

The term 'whistleblower' refers to any person who raises a concern about wrongdoing that occurs inside the workplace or among a body of people.[224] A whistleblower reveals misconduct that might be classified as a violation of a law, a rule, regulation, or a direct threat to public interest such as fraud, corruption, safety, or a related violation. At the personal level, blowing the whistle could have severe consequences for the individual. There has been growing recognition that the act of whistleblowing must be encouraged if organisations are to control illegal practices successfully. This has led to national efforts in some countries to implement a variety of whistleblowing laws and procedures to protect and encourage those who speak-out. The protection of whistleblowers is included within whistleblowing policies; however, their primary objective is to protect the organisation and the public interest. To render their internal reporting system

[223] Public interest relates to the usefulness of a piece of information to the public, and concerns national security fraud. In addition, public interest can be used as a defence against accusations concerning passing on confidential information or invasion of privacy. Collins, Peter Hodgson. *Dictionary of Law*, 4th ed, London: Bloomsbury, 2004, p. 241.

[224] Alam, op. cit., p. 11.

more effective,[225] organisations should adapt effective on-going staff training concerning whistleblowing, and staff handling of disclosures. In addition to whistleblowing legislation, it is critical that organisations should ensure employees' welfare and protection to encourage their willingness to whistle blow. For example, in the UK, the purpose of the Public Interest Disclosure Act in 1998, which provided an amendment to Employment Rights Act [ERA1996], was to protect individuals making certain disclosures of information in the public interest.[226] This law represents an effort to eradicate perceived corrupt or illegal practices by employers, by limiting the possibilities for retaliatory measures. Employees are often reluctant to speak out about practices that might threaten their employers or other employees above them in the organisational hierarchy. In addition, senior management should seek to demonstrate their commitment to address cases effectively according to an established policy framework. Guidelines should be implemented and executed carefully.[227]

Given the proximity of employees generally to potential work based- scandals it is important that employees are provided with statutory protection and guidance in relation to good practice in the context of whistleblowing. As outlined above, the existing Kuwaiti provisions are not employment focussed and it is arguable

[225] See the article of Lewis, David "Is a Public Interest Test for Workplace Whistleblowing in Society's Interest?" *International Journal of Law and Management*. 2015, p. 12.

[226] Lewis, David and Sergeant, Malcolm. *Employment Law*. London: Oxford University Press. 2009, p. 18.

[227] Lewis, David. Ten years of Public Discloser Act 1998 Claims. 2010, op.cit , p.3.

that the lack of employment-based legislation in relation to whistleblowing adds to the ambiguity in relation to what protection employees can expect when exposed to whistleblowing dilemmas.

A framework for more detailed good practice needs to be underpinned by the concept of natural justice and Sharia law, which all Muslims should follow. Good practice refers to honesty,[228] worker's rights, equality, and halting wrongdoing, which are all requirements under Sharia Law (the Quran); for example, the Quran states in Surat Al-Nesa, "Allah commands you to make over trusts to their owners.[229] Also, Prophet Mohammad said, "give the labourer (worker) his wages before his sweat dries."[230] Sharia law also advises avoidance of suspicion, as an individual must act only when there is sufficient and clear evidence in the form of facts. In the UK, as indicated above, the law is more specific, and more employment focussed but protection is not guaranteed and individuals may be wrongly victimised. However, compensatory adjustments are typically and subsequently made and individuals' rights upheld. In contrast, there is evidence to suggest that regrettably senior managers in Kuwait consistently neglect to engage their employees in consultation and thus often fail to address serious workplace problems.[231] This makes it more important that the government should

[228] See discussion at Chapter 3.
[229] Holy Quran, Al-Nesa, no. 58.
[230] Hadith of Prophet Mohammad.
[231] Source: http://www.alkharjonline.net/articles-action-show-id-1450.htm [Accessed 7th July 2016].

establish clear rules that are fair to everyone, in particular to protect whistleblowers reporting wrongdoing to the benefit of the public. The Kuwait government should also demonstrate to public employees how the law can be practiced most effectively to benefit the interests of all individuals, poor or wealthy, simple workers or senior workers. Everyone should be equal and receive justice in a successful nation.

In summary, some countries attach special importance to providing protection and security to whistleblowers, such as the UK and France. For example, the PIDA s. 47B,[232] gives the whistleblower protection from not being subjected to detriment by a colleague, as well as from his or her employer.[233] The advantage of grounding whistleblowing protection in employment law, as the example from English law illustrates, is that it better reflects the realities of whistleblowing in an employment setting. It also allows opportunities to address more complex issues such as what level of protection, if any, should be given to whistleblowers when their conduct may be motivated by mixed motivations- both personal and altruistic.[234]

The need for clarity is important particularly in relation to public employees who may be deemed to have an enhanced duty to whistle- blow in the public interest.

[232] PIDA is an abbreviation of the Public Interest Disclosure Act in 1998 in UK, see section 47B (1) ERA 1996 that states, "a worker has the right not to be subjected to any detriment by any act or deliberate failure to act, by his employer done on the group that the worker has made a protected disclosure".

[233] Ashton, Jeanette, op. cit., p. 2.

[234] See discussion at Chapter 3.

Definitions, of public employees can, as outlined below are ambiguous, and greater precision may be needed particularly given the changing and expanding nature of government activity.

3.2 Towards a definition of public employee

In this section, the researcher will examine various legal definitions of the public employee in different legislations beginning with Kuwait and other Arab neighbours together with Western developments in the UK and France.

3.2.1 Definition of Public Employee under Kuwaiti Law

The public sector includes a range of employment, as there are often numerous groups of public employees within the civil service at all levels of government. The second article of the Kuwait Civil Service Law no. 15 of 1979 provides the following definition: "*Employee means any person who occupies a civil post in a government authority, whatever the nature of his work or the title of his job."*

No other role or further guidance is provided in the definition, except that Article 3 excludes Members of the Army, Police and National Guard from being included in the Code. In addition, the Code refers to institutional considerations and specifies that a Government Authority means any Ministry, Department or Administrative Unit or Administration whose budget is part of the State's Public Budget, or attached to it.[235] The institutional parameters are therefore also loosely defined, and the boundaries are arguably very unclear given that Article 3 (part

[235] See Article 2, Kuwait Civil Service Law no.15 of 1979.

B)[236] seems to extend the definition of Government authority to include public administration by special laws which fall outside the provisions of the Code.[237] The scope of Code is therefore potentially very wide.

This law controls all civilian employees working in the government sector.

But according to the common features of the Kuwait civil service law no. 15 of 1979, a person must meet certain conditions to be called a public employee, which are:

1- He/she had to be appointed in a post wherein his/her duty should be permanent or temporary.[238] This meant that the job itself must be permanent and not of limited duration.[239] The actual wording of the Code allows for Kuwaiti citizens to be employed in both capacities in that the Article provides for both permanent and temporary employment but in practice it is only non-Kuwaiti citizens that are appointed to temporary posts. This also can be explained by reference to the Code since Article 15 specifically provides that Non-Kuwaitis can only be appointed in a temporary capacity on a contractual basis.[240] The combination of these two provisions has resulted is the universal practice of Kuwaitis being appointed to

[236] Kuwait Civil Service Law no.15 of 1979, Article 3(part b) states that: "Authoritative where the service is administered by special laws when no specific provisions for them are mentioned in this law. The provisions of this law do not apply to members of the Army, Police or National Guard".

[237] Also see Articles 3, Kuwait Civil Service Law no.15 of 1979.

[238] Article no. 12 of 1979 Kuwait Civil Service Law.

[239] Al-Hullo, Majed Rakib. *Kuwait Administrative Law and Civil Service Law*. Kuwait: Manshurat Dat Al-Salasel, 2008, p. 31.

[240] Article no. 15 of Kuwait Civil Service Law.

permanent positions.[241] This, in turn may lead to lethargic public employee performance and to subsequent disciplinary and personnel management issues.[242] It arguably may also have led to lack of flexibility with in the working arrangements[243] and lack of progress in the direction of flexicurity.[244] However, flexibility in the workplace means a respect to the internal environment of the institution including the specific skills and competencies of the workers. Workplace flexibility also denotes the ability of managers and employees to accept institutional changes and respond to any change. The possibility of multiple task performance, dealing with sudden situations, and simplifying frameworks and public policy within the organization, are also part of workplace flexibility.

In Kuwaiti Jurisprudence, the job must be permanent and last until the retirement age of 65 years old under Kuwaiti Law, and a public employee should be regarded as such by the Kuwaiti courts, being a person responsible for permanent work in the service of a public facility managed by the state.

[241] However, the Code does also allow for certain posts to be for a trial period or held for a temporary post for a period; if the person appointed proves to be unfit, he/she can be dismissed, or have his/her contract terminated. Where the individual successfully completes the trial period, the person concerned will be deemed to be fixed in his/her post.

[242] See discussion at Chapter 1.

[243] About flexibility, see: http:/www.skgep.gov.ae>newsletter [Accessed 26th July 2016].

[244] Flexicurity is an integrated strategy for enhancing, flexibility and security in the labour market. For more information see the discussed in chapter 1.

However, Article 12 of the Kuwait Civil Service Law provides an exception to this principle, by dividing permanent and temporary posts.[245]

Permanent posts are as follows:

- Senior management and leadership roles (e.g. Undersecretary and Undersecretary's Assistant).
- Public jobs (e.g. managers and section heads).
- Technical assistance jobs.

In addition, Article 15 of Kuwait Civil Service Law declares public jobs are filled by appointment and promotion. The decision to appoint is made by the Minister and Undersecretary, except for the upper management posts mentioned above, which require a decree to be issued for appointment.[246]

As previously mentioned, temporary posts are made available when there is a necessity to appoint non-citizens. As stated in Article 26/2 of the Kuwaiti constitution, "Aliens may not hold public offices except in the cases specified by

[245] Al-Mokateh and Al-Faresi. Op. cit., p. 170.

[246] Decree means a writing from the Head of State. In Kuwait, the decree is issued by King of State of Kuwait to appoint the top management, such as Ministers, Undersecretary and Undersecretary Assistant. Al-Enezi, 2007, op. cit., p. 32.

law". The word "aliens" here refers to non-citizens. It can be said that the essence of public employee status can also be applied to non-citizens.[247]

The employee's service should be rendered in a public facility fully managed and controlled by the government;[248] the controlling nature of this relationship is reinforced by the Code, which also stipulates that they must work exclusively for the Government. The code under Article 26 stipulates that:

"An employee may not undertake:

(a) any commercial, industrial or professional work, except in those cases determined by the Civil Service Council; and

(b) Join the Board of Governors in any Commercial or Industrial company unless he/she represents the Government".

This, in practice, has been interpreted to mean that public employees are not only permanent but also work full time; an approach which has been reinforced by the Supreme Court of Kuwait when it concluded that public employees are those who operate and function at civilian government agencies, and work full time.[249] Public employees should work honestly and full time within the

[247] It is important to take note of Article 26/2 of the Kuwait Constitution, which states that Kuwaiti and non-Kuwaiti employees should have the same opportunity to work for an employer in the public sector under this law. The only difference here is that appointment of Non-Kuwaiti employees should be done using contractual methods, and the contract should be signed by the Non-Kuwaiti and the administrator. Typically, contracts are signed for periods of no longer than two more years. However, the period can be extended for longer, depending on the public interest.

[248] Al-Mokateh and Al-Faresi, op. cit., p. 177.

[249] Case Number 153 of 1986, Administrative Case, Session 14/1/1987. Kuwait Appeal Court (Not published). The court's decision is to entrust the public employee with a permanent job

government sector only.[250] In other words, it is not permitted for public employees in Kuwait to work part time in the private sector. For example, working for a private communications company or via the internet would not be permitted, because public employees are expected to spend their time and efforts working for the government.

Although the benefits and privileges of being a public employee in Kuwait are many and obvious, it is clear also from the discussion above that terms are not always clear and sometimes may not be suitable and lead to tensions between the employer and public employee. Clearly the vulnerability of such individuals might impact on their attitude towards public interest duties such as whistleblowing, and it is arguable that they should be provided with extra legal protection because of the danger of arbitrary or victimised dismissal. This thesis therefore argues that the Kuwait government should ensure greater clarity of civil service law for the public sector, such as clearly listing all administrative duties, offences and penalties, as is already the case in the private sector.[251] To ensure public sector workers know what protections are extended to them, the

in the public service or another person to work within a specified job position in the administrative organisation of a service facility. Also, Kuwait administrative court made a decision in accordance to Article 1(3) of the Kuwait Administrative Dispute Resolution law no. 20 of 1981. The judgment of the court states that "a public employee is anyone working at a public facility which the state is managing. Whilst it is acknowledged that the working conditions in the Kuwaiti Public service are good and not arduous not everyone may want or be able to work 5 days a week from 8:0 a.m. to 2:0 p.m."

[250] Article 26 Kuwait Civil Service Law no. 15 of 1979.

[251] Al-Rashidi, Abdullah, op. cit, p. 308.

government should strive to ensure transparent procedures for documenting disciplinary issues, offences and penalties analogous to the Labour Law no.6 issued on the 21st of February 2010, concerning labour in the private sector in Kuwait.[252]

3.2.2 Definition of Public Employee under United Arab Emirates Law

In the UAE, there are laws establishing the identity of public employees. First, there is Article 1 of the UAE Federal law no. 11 of 2008,[253] which states that, "the provisions of this law shall be applicable to all public employees and low-grade employees of the United Arab Emirates".[254] The law differentiates between two categories of public employees, those categorised as employees, and lower grade employees.

The definition of an employee is also given in Article 2 of the Civil Service law of United Arab Emirates, which specifies, "Any person appointed within the senior, higher, or intermediate level as shown in a schedule of the relevant order, the person is considered a public employee, whereas the junior or low-grade

[252] To be noticed that the Kuwait Labour Law no. 6 of 2010 is concerned about the private sector in Kuwait. See Kaaki, Walid, op. cit, p.2.

[253] Prior to 1971, the UAE had no specific system of public service. There was no clear administrative structure in the Emirates. In contrast, under the recent law number 11 of 2008, the meaning of public employee was mentioned.

[254] Al-Deen, Fawzi Salah. *Public Service in the United Arab Emirates,* 4th Edition. United Arab Emirates: Sharjah University Bookshop. 2006, p. 49.

employees are appointed in any sub-category of cycle 4 of the schedule."[255] Hence, the category of an employee and a low-grade employee can be acquired.[256] There are also some similarities between the definition of public employees in Kuwait and the UAE,[257] because UAE and Kuwait have joined together under the G.C.C. (Gulf Cooperative Council).[258] Therefore, in general, legislative provisions in the UAE and Kuwait are very similar.[259]

3.2.3 Definition of Public Employee under Egyptian Law

As stated in a statement made by the Egyptian supreme administrative court on December 13, 1970, a "public employee should be appointed to a permanent position in the service of a public facility that the state manages directly."[260] As mentioned previously, the researcher believes that the term "public employee" refers to people who are specifically working or serving at the government side. However, Article 1 of Egyptian civil service law no. 47 of 1978 with amendments to no. 23 of 1994, states "he or she who serves the government is considered as a

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[255] Article 2 of the civil service law of the United Arab Emirates no. 11 of 2008.

[256] Al-Kaisi, op. cit., pp. 173-174.

[257] Notice: UAE and Kuwait have joined together under the G.C.C. (Gulf Cooperative Council). See: http://www.gcc-legal.org/MojPortalPublic/Home.aspx. [Accessed 27th July 2016].

[258] Source:https://www.britannica.com/topic/Gulf-Cooperation-Council [Accessed12thSeptember 2016].

[259] Al-Deen, Fawzi had explained the civil service code in Kuwait and UAE. See Al-Deen, Fawzi, op. cit., pp. 53-54, and pp. 64-66 about civil service code in UAE.

[260] Case Number 200 of 1975, Supreme Administrative Court in Egypt, Session 13/12/1978, Administrative Case, section 1, p.200. Ministry of Justice. 1985.Also, see Case Number 465 of 1962. Supreme Administrative Court in Egypt, session 19/12/1965, Administrative Case, section 1, Ministry of Justice, 1970, p. 90. See also Case Number 3601 of 1984, Supreme Administrative Court in Egypt, session 29/4/1986, Ministry of Justice, 1996, which is mentioned at the text named *"New Administrative Encyclopedia"* in section 36 by Adya, Naeem and Al-Fakhani, Hassan. Egypt: Dar Al-Arabia. 2004, p. 11.

public employee".[261] This law is arguable not consistent with the general notion that a public employee is anyone serving the public interest, which therefore includes a wide range of categories of employees. This confirms the absence of a proper and definite definition of a public employee. Therefore, there is no precise legal definition for the term "public employee" according to Egyptian public service law.[262]

However, the administrative court in Egypt defines the elements to be used as criterion to distinguish a public employee, when applying the rules of the administrative law. As a result, specific laws and rules apply when the competent authority appoints public employees as defined by court.[263] The description of a public employee in Egypt requires a similar condition as the requirements to be called a public employee in Kuwait.[264] The flexibility and open-ended approach adopted by the Egyptian approach is sensible and grounded in judicial decisions. However, the lack of clearly defined criteria can lead to problems particularly

[261] Mohammad, Ali Abdulfatah. *Right for Public Employee.* Alexandria: Dar Al-Jamiaa. 2007, p.22. See also Oada, op. cit., p. 18.

[262] Abdulbaset, Mohammad Fuad. *Administrative Law.*Alexandria: Dar Al-Jamiaa. 2009, p. 378. See also, Kannaan, 2012, op. cit., p. 30. Ayoub, Alsabee Mahsub. *The Summary of the Disciplinary Judiciary Disputes* (Arabic). Egypt: Dar Al-Jamiaa . 2010, p. 12. See also Zaidan, Ali Aldeen and Al-Saee, Ahmed Mohammaed. *Comprehensive Encyclopaedia for Administrative Law, section 1.* Alexandria: Dar Al-Fikr Al-Jamiaa. 2004, pp. 171-172. Abdulwahab, Mohammad Rafaat and Ajila, Assem Ahmad. *Principles of the Administrative Law*. Egypt: Dar Al-Nahda. 2007, p. 398. See also, Al-Nahari, op. cit., p. 372.

[263] Al-Jamel, Yahya. *Administrative Law and Cases.* Egypt: Dar Al-Nahda Al-Arabia. 2005, p.141. Abuzeid, Mohammad Abdulhameed, *Obedience for the Supervisor under administrative law.* Egypt: Dar Al-Nahda. 2008. p. 375.

[264] See information above in this chapter.

given that the nature of employment is changing and becoming more complex. In Egypt, for instance, a distinction is made between a 'public worker' and a 'public employee' with Dr. Mustafa suggesting that "the definition of the public worker is wider than that of the public employee." This is because the definition of a public worker includes characteristics of the term public employee." [265]

3.2.4 The Definition of Public Employee under UK Law

According to the leading authors on UK labour law, Deakin and Morris, the term public employee,[266] in the UK, just as is the case in Kuwait, is not precisely defined. For categorisation purposes, however, the UK government includes a wide range of agencies and departments including the civil service; the armed forces; the National Health Service; local government; the police; maintained educational establishments; and public corporations such as the Underground and Nationalised Banks.[267] This list therefore includes a wide range of institutions with very varied functions but, similar to in Kuwait, the legal and administrative provisions also vary[268] and it is far from clear what the legal status and what rights might apply to individuals across the public service. For instance, although the rights of public employees generally will be based on contractual provisions,

[265] Fahmee, Mustafa Abuzeid. *Administrative Judiciary and State Council*. Alexandria: Dar Al-Matbuat Al-Jamiaa. 2010, p. 178.

[266] Deakin, Simon and Morris, Gillian. *Labour Law*, 6th Edition. London: Hart Publishing. 2012, p. 192. See also, Morris, G., and Fredman, S. "Is there a Public/ Private Labour Law Divide?" *Comparative Labour Law Journal*, 1993, pp.153-164.

[267] Deakin and Morris, op. cit. at pp. 191-2.

[268] For instance, in both countries the provisions relating to the armed forces and police are different to those that apply to government officials.

uncertainty remains as to the status and rights of civil servants, since the Crown (that is the head of State) is their employer and, traditionally, the Constitutional view taken by the Courts was that the legal rights of the Crown could not be limited.[269] In legal language, it was said that the Crown could not `*fetter*` its own

[269] In the United Kingdom, the term 'Civil Servant' is limited to government employees who are considered Crown employees: see Smith, Ian and Thomas, Gareth. *Smith and Wood's Employment Law*, 9th Edition. London: Oxford University Press. 2008, p. 95. Crown servants are those persons employed under or for a government department whose duties of employment are of a public nature, exercising crown functions. Moreover, according to the Committee on Recruitment's definition in 1932, the civil service in the United Kingdom only includes Crown employees and these are not considered the same as those who hold posts of political or economic jobs, and take full salaries approved by Parliament; see Pitt, Gwyneth. *Employment Law*. London: Sweet and Maxwell. 1992, pp. 44-48. Traditionally, Crown employees have not been classed as employees, but have had protection against unfair dismissal; however, Crown servants have now gained employee status under TULCRA 1992, s. 273; see Holland, James and Burnett, Stuart. *Employment Law*. London: Oxford University Press. 2009, p. 23. "Worker" has the same meaning as "employee", in which "worker" means an employee who works or tries to work under a contract of employment, whereby this individual is willing to do or perform any work or services for another party. An individual is also a worker if he or she is employed under, or for the purposes of, a government department. Lautenberg, Dominique. *Core Statues on Employment Law.* London: Palgrave Macmillan. 2012, p. 73. Moreover, see also the author Astra Emir in his text titled "Selwyn's Law of Employment", in which he addressed the regulation applied to 'workers', not just employees; nonetheless, only genuinely self-employed persons are excluded from the regulations. Emir, Astra. *Selwyns. Law of Employment*, 18th Edition. London: Oxford University Press. 2014, p.63. It should be noted that the distinction between employees and workers is becoming the subject of increased complexity and legal intervention because of the expansion of the so- called gig-economy. See, for instance, Uber BV v Aslam [2018] EWCA Civ. 2748.

discretion by contract.[270] More recent cases, however, have taken a different approach and have recognised the possibility that in some circumstances there can be an intention to create a contractual type relationship. For instance, it has been held that a civil servant has an implied contractual duty to serve an employer faithfully and with reasonable care and skill, and conversely, the civil servant right has the right to sue the crown employer for any arrears of pay.[271] However, it is not clear to what extent the Crown can vary the terms of employment and it may be that civil servants are vulnerable to the danger of being harassed and exploited. The legal status of civil servants therefore remains complicated and unclear, and although legislation has been enacted to place the management of the civil service on a statutory basis,[272] regrettably the opportunity to clarify the legal status of civil servants was not taken.

[270] See Rederiaktiebolaget Amphitrite v R [1921] 3KB 500. However, the meaning of the term "contract" is an agreement with specific terms applied between two or more individuals or entities, in which there is a promise to do something in return for a valuable benefit known as a consideration. Source: Cornell University Law School [no date]. Available at: www.law.cornell.edu/wex/contract [Accessed 23rd July 2013]. Moreover, the employment contract is simply described as an essential provision that gives a clear idea of the conditions in which the employer and employee are bound in the employment relationship. For example, provisions governing a worker's duties often include the obligation to respect the employer's orders and instructions, which is an important indicator when determining the existence of an employment contract. Casale, Giuseppe. *The Employment Relationship*. London: Hart Publishing. 2011, p. 26.

[271] Reilly v R [1934 AC 176]; See also R v Lord Chancellor's Department, ex p Nangle [1991] ICR 743.

[272] The Constitutional Reform and Government Act 2010, provided the Minister for the Civil Service with the statutory power to make regulations and instructions for the Civil Service including the power to decide on conditions of service. The Act also provides for a Civil Service Code.

Deakin and Morris, however, suggest that in practice the lack of clarity may not be as important to the protection of civil servants in the UK as it once was for two reasons. Firstly, general employment legislation which applies to the private sector, such as Equality Legislation[273] has also been applied to the public sector including the Civil service.[274] Secondly, the Human Rights Act 1998 gives a right of action to public servants, including civil servants to bring an action against their employer to protect those human rights contained in the European Convention on Human Rights. These two developments have substantially strengthened the employment protection available to public employees in the United Kingdom, though as, illustrated above, some significant anomalies still remain.

The continuing vulnerability of civil servants, for example, to variation of terms is worrying and interestingly, can be identified as a risk in the context of the public employee in Kuwait. It is however, arguable that possibly the public employee in Kuwait may be even more vulnerable to harassment and exploitation in employment than his/her counterpart in the UK, because there have been no similar developments in relation to the imposition of general employment or private employment law on the public service in Kuwait, and clearly the European Human Rights provisions do not apply. The lack of parallel developments across the public and private sector employment provision is not surprising given that Civil Law legal systems, such as in Kuwait and France (see below) tend to have

[273] Equality Act 2010, s 83(2).

[274] Deakin and Morris, op. cit., p. 193.

very separate and different arrangements for public and private law provision. Indeed, it can be argued that perhaps it is to be regretted that some of the provisions that apply to the private sector in Kuwait have not also been applied to the public sector.[275]

3.2.5 The Public Employee in French Law

In France,[276] the civil service (la function publique) holds an extremely important position, not only in terms of number of staff, but also in terms of public powers. It plays a very important role in extremely diversified fields that affect the entire country.[277] Nevertheless, Al-Ajarma[278] claimed: "there is no legislation dealing with direct definition of the concept of a public employee in France," and further,

[275] Source: http://sst5.com/readArticle.aspx?ArtlD=211&SeclD=50 [Accessed 28th January 2016].

[276] See the authors Brown, Lionel Neville and Garner, John Francis. *French Administrative Law*, 2nd Edition. London: Butterworths. 1973, p.15.

[277] Bekke, Hans and Van der Meer, Frits. *Civil Service Systems in Western Europe.* USA: Edward Elgar. 2000, p. 191. However, Professor Gaston Jeze expressed the principle and the role of the public service saying "Dire que, dans telle hypothese, il y a - service public, c'est dire que, pour donner satisfaction reguliere et continue a telle categorie de besoins d'intérét general, il y a un regime juridique special et que ce regime peut étre modifié a tout instant par les lois et réglements. Toutes les fois qu'on est en présence d'un service public proprément dit, on constate l'existence de regles juridiques speciales, de theories juridiques speciales, qui, toutes, ont pour objet de faciliter le fonctionnement régulier et continu du service public, de donner le plus rapidement et le plus complétement possible satisfaction aux besoins d'intérét general." The meaning of this text in English (as translated by the researcher) is "in such hypothesis the public service is to give regular satisfaction and continues to provide the needs of the public interest. There is a special legal regime which can be changed at any moment according to laws and regulations. Whenever we are in the presence of a public service itself, there exist special legal rules associated with special legal theories, which aim to facilitate regular and continuous work for the public service, and to provide satisfaction as quickly and as fully as possible to meet the needs of general interest." Jeze, Gaston. *les Principles Generaux du droit Administrative, tome 1*. Paris: Dalloz. 2005, p. 416.

[278] Al-Ajarma, Nufan Al Akill, *Authority Discipline for Public Employee.* Oman: Dar Altakafa. 2007, p.107.

the term "Public employee" is difficult to define in France. According to French jurists, it is applicable only to those central government employees who have received a commission from public appointing authority, and it involves a fixed monthly salary and the right to a retirement package. This definition excludes temporary employees and labourers.[279]

More importantly, however, recent French legislation essentially divides public employees into two categories- civil servants and other public employees. All Civil servants are regulated by the Civil Service Act of 1984 and are subject to the provisions outlined in the General Employment Framework. The terms for other public employees are less clear- they may be employed under public or private law, depending on the particular post. Civil Servants enjoy better job security- they benefit from life- long tenure whereas non- civil servant public employees can be employed under a variety of terms including fixed- term contracts. The complexity is added to by the fact that the employment terms of Civil servants can vary according to Seniority.[280] Therefore, as Muharib and

[279] Duez, Paul and Debeyre, Guy. *Traite de Droit Administrative.* Paris: 2005, p. 634. See the book "Droit administrative" in English language "Administrate law," translated by Mansour Al-Qutheny from the French authors Georges Vedel and Pierre Delvolve, at p. 448 to explain the term Public Employee. Al-Qutheny, Mansour. *Administrative Law,* 1st edition. Lebanon: Majed Press. 2008, p. 488. See also, Esplugas, Pierre. *Conseil Constitutionnel et Service Public*. Paris: Librairie Generale de droit et de Jurisprudence. 1994, p. 151. This text explains the public service and the organisation of the council and constitution.

[280] In France, for example, Senior Civil Servants are referred to as High Level Civil Servants. They enjoy special conditions that are different from the other civil servants, but do not have a legally defined status. Admittedly such high-level positions are exceptional and have a special social status, and in particular, they enjoy special conditions in relation to their recruitment and entry, assignation of posts and benefits. See Eurostat Statistics Explained: *Public Employment France*, Revised 7 December, 2015.

others have rightly suggested,[281] although more attention might have been given to the definition of public employee in France than in other jurisdictions, complexities and ambiguities remain. Moreover, such ambiguities are not confined to definitions of public employees but also apply to the respective duties of public employers and employees.

3.3 The Duties of the Employer and the Employee

In this section, the researcher will explore some of the significant duties and responsibilities of public employees in Kuwait and other legislations. The structure of this section resembles the one above in that it begins with Kuwait and thereafter discusses developments in neighbouring Arab countries, the UK and France.

3.3.1 The Duties of the Employer in Kuwait

Employees are essential to an employer's success in all work environments. In the public sector, the employer is responsible for running public facilities in a way that provides positive guidelines and proper provision for employee welfare.[282]

The term "employer" (administration) refers to the person or firm employing workers. Employers give a salary to workers in accordance with set working

[281] Muharib ,op. cit.,p 76. See also French Employment Law No 634 issued on 13/7/1983.
[282] Farraj, op. cit., p. 7.

hours or alternatively award them a predetermined fixed salary.[283] Both employers and employees have distinct duties and responsibilities to protect themselves and others, as will be discussed in the subsequent section.

3.3.2 Duties and Responsibilities of the Public Employee in Kuwait

A notable feature of the public service environment, according to Article 26 of the Kuwait Constitution, is that the "Public office is a national service entrusted to those who hold it. Public officials, in the exercise of their duties, shall aim at the public interest."[284] Those officials designated to run the facilities of the state must meet established requirements to improve and develop public services to the highest standards, in order to achieve the primary objective of extending services to benefit the public. Moreover, it is clear from the case law that public employees are required to be very flexible and accommodating in order to achieve the public interest - he or she, for instance, can be required to relocate in order to

[283] It is important to mention that the administrative circle (court) in Kuwait, under article one from Kuwait administrative resolution dispute no. 20 of 1981, establishes the right to deal with salary disputes between employees and employers. See Case Number 24 of 1988, Kuwait Supreme Court, Administrative Case, session 4/7/1988.

[284] Article 26/1, Kuwait Constitution, Appendix A. However, Doctor Badria Al-Saleh reported the same meaning describing the aim of public employees in the public interest. Under Article 11 of the Kuwait civil service number 15 year 1979, it stated that "The public office is considered as a national service for the public employees to do their jobs towards the public interest." Al-Saleh, Badria, *Rules for the Dismissal of Public Employee under Kuwaiti Law.* Kuwait: Al-Wazzan International Press, 2004, p. 8.

further the aims of the public service. High standards of performance are also demanded. Article 24 of the Kuwait Civil Service Law, for example, requires that the employee pay his/her full attention to the laws regulations and instructions in the workplace, and the work entrusted to him is to be performed accurately, precisely and with honesty."[285]

Furthermore, it is prohibited for him/her to commit any act or omission incompatible with the duties of his/her position, or to adopt a behavioural attitude in conflict with general essential morals, and pressures affecting the integrity of their position.[286] In relation to this, it is established that such duties are of an administrative nature,[287] whereby violation does not necessarily constitute a reason for disciplinary action, rather it is dealt with through a process of counselling, guidance, and support. However, if a public employee fails to comply with and perform certain aspects of their duties, this would constitute an area where disciplinary action and sanctions might be imposed.[288] The terms of

[285] Kuwait Civil Service Law and Kuwait Civil Service System Booklet, Kuwaiti Legislations Group, section 9, 8th edition. Minister Cabinet: Legislation Department. 2012, Article 24, p. 11. See also earlier discussion relating to honesty and Sharia law in this chapter.

[286] Al-Mutairi and Al-Shimali, op. cit., pp. 221-222. Also, see: Hussein, Mohammad Bakher. op. cit., p. 608 said that most employment laws worldwide do not respect the employment's duties; for instance, Article 16 of the public system for French employees issued by order number 59/244 on February year 1959, stated that any mistake the employee committed during his service would require a disciplinary penalty.

[287] Al-Mutairi and Al-Shimali, op. cit., p. 221.

[288] If a public employee fails to comply with and perform their duties, then he or she will himself or herself at risk. Then the public employee is then expected to comply with any disciplinary action. See Al-Mokateh and Al-Faresi, op. cit., pp. 274-275.

disciplinary procedure will be further elaborated on in the next chapter (Chapter 4).

3.3.3 The Duty to Obey and Comply with Employers' Orders in Kuwait

The duty to obey is an obligation without which there can be no public service. Public service is an organised form of activity that requires certain duties are maintained to establish the success of an organisational structure, depending on the extent and nature of the instructions required to operate a public facility. Obeying orders and compliance with instructions is regarded as a vital element, serving to ensure that the administration functions smoothly.[289] For this purpose, public service organisations are divided into two categories hierarchically: superiors and subordinates, each with their own powers and responsibilities. Thus, in the State of Kuwait, legislature provides the terms of reference required to identify who is a supervisor and who is a subordinate.

In respect to compliance, submission, and obedience, which characterise the relationship between a subordinate and his/her superior, the following conditions must be observed by the employee: [290]

1. To carry out and fully implement the instructions of their superior.

[289] Al-Enezi, 2007. op. cit., p. 67. Al-Tobtubaee, op. cit., pp. 299-300. Al-Mokateh and Al-Faresi, op. cit., p. 274.Abuzeid, Mohammad. Op.cit. pp. 97-100.

[290] Article 24 of Kuwait Civil Service Law no. 15 of 1979. Also see, Al-Shitewi, op. cit., p. 11; Abdullah, Sabri Jalbi. *Conditions for Practicing the Public Employee for the Rights and Political Freedoms.* Egypt: Dar Al-Kutoub. 2012, pp. 655-659; Al-Enezi, 2007, op. cit., p. 164; Al-Nahari, Majid Medhat. *Principle of the Administrative Law.* Egypt: Dar Al-Nahda. 2010, pp. 461-462.

2. To observe and view to the highest standards their superior's decisions regarding amending, suspending, or cancelling his/her previous instructions.
3. Discharging the duties and obedience of the public employee as conceived within an established public service.
4. The employee shall obey his/her employer,[291] lawful and reasonable orders, and to avoid obstructing the employer's business.[292] Within this framework, there may be a risk that the order and its execution are unlawful; however, the public employee must first execute it, because obedience is necessary, and a public employee is answerable for their actions. In connection with this, a question arises regarding the criteria for determining whether a public employee should obey and respect an order issued by his/her superior, even if that order is illegal.

   The author Nassem Rathey stated that there are two principles embodied by the duty of obedience. The first principle is that an employee should implement and obey his/her superior's orders blindly without questioning their legality. The second is that the employee should refrain from carrying out clearly illegal instructions that could result in tangible damage. However, the employee should obey orders and instructions that would not cause tangible damage, provided he/she also draws the attention of his/her superior

[291] Al-Hullo, Majed Rakib. *The Government and the Employees between Submission and Facing.* Egypt: Dar Al-Nahda. 2004, p. 361.

[292] Bear in mind the inclusion of the word ‘reasonable’ seems to indicate that the requirement to obey is not absolute. Abuzeid, Mohammad Abdulhameed, op. cit., p. 40.

to the consequences, which the latter should be responsible for.[293] For example, the Kuwait Supreme Court explained the duties of a doctor to include being available in non-working hours, especially in emergency situations that require the presence of a doctor and in hospital settings. If instructed to stay overnight in a hospital to see through an assignment, a doctor must commit to do so if his superiors believe that this is in the interests of offering appropriate medical services to patients. Hence, the commitment of the doctor to stay overnight and maintain their presence in the hospital to ensure cover is appropriate within the duties of his job, is consistent with Article 24/3 of Law No. 15 of 1979.[294] The scope of the Article, however, is debatable. Involuntary overtime may be reasonable in the context of life and death situations such as apply to doctors but should the same apply to routine activities where the outcomes are not as obvious or serious.

The Article also includes some contradictory guidance For instance, the first principle of legality confers on the public employee the supervision of proper orders issued by his/her superiors to execute legal orders, and the non-execution

[293] Note Nassem Rathey argues that obedience is one of the primary duties in the civil service system." See Rathey, Nassem. *The Obedience of the Workers to Supervisors in the Civil Service.* Alexandria: Dar Al-Matbuat Al-Jamiya. 2006, p. 110.

[294] Case Number 406 of 2004, Administrative Case, Session 28/3/2005. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. 1st Jan.2005-31st Mar.2005. June 2007.

of illegal orders.[295] It is difficult to impose the first principle of absolute obedience, as it requires that a public employee execute orders dictated to him/her, even if they break the law, are invalid, or illegal which can possibly constitute a criminal act. As a result, any public employee who refuses to obey an order, even an unlawful one, puts himself/herself in a position of committing an offence and becoming liable for a disciplinary sanction.[296]

Therefore, the second notion of duty of obedience is more logical, and rational because it allows consideration of issues related to the subject matter, allowing the public employee the right to express his/her opinion, and transfer to their superior the responsibility for any consequences resulting from the execution of orders.

If instructions are manifestly unlawful, a public employee must make every endeavour to see them revoked. The employee must refrain from carrying out the unlawful orders and should immediately notify their superiors of his/her refusal to obey as appropriate. In addition, if the legality of the order appears questionable, the employee must inform their superiors of his/her misgivings; if

[295] Amro, Adnan. *Principles of Administrative Law.* Alexandria: Monshaat Al-Maaref. 2004, p. 266. Tawfeek, Hisham, op. cit., p.23.

[296] Ali, Mohammad Ibrahim. *Protection for Public Employee.* Egypt: Dar Al-Nahda. 2010, pp. 378-379; and Abuzeid, 2008, op. cit., p. 177.Abdulhadi, Mahmoud Haji. "Discipline Penalties," Master's Dissertation. Kuwait University. 2004, p. 16.

after concerns have been expressed, and if the order is not cancelled, then the employee must obey.[297]

The wording of the Code is ambiguous, and although it does not require unquestioned obedience, it may appear to do so given the wording and structure of the Article 24 which stipulates a number of requirements including the following:

An employee shall:

(1) Personally, undertake the task assigned to him, in good faith and efficiently, and he shall deal properly with citizens:

(2) An employee shall faithfully and honestly execute orders issued to him within the bounds of the law, regulations and rules in law:

(3) He shall abide by the terms of the law and regulations and shall preserve State property. Furthermore, in dispensing with funds, he shall do so while respecting the dictates of honesty and care; and

(4) He shall uphold the dignity of his post, and conduct himself with due respect.

As is clear from the contents of the instructions above, the duty to obey is not absolute and arguably the contents in clause one which refers to `good faith` and clause three about honesty and care reinforce this interpretation. However, in practice, the duty to obey may seem to be obligatory for there is no guidance

[297] Mahjoub, op. cit., p. 101. Al-Tabak, Shareef. *Administrative Investigation and Disciplinary Case*. Egypt: Dar Al-Fikr. 2008, p.84.

as to circumstances in which the boundaries of legality may be crossed. In reality, the public employee who disobeys would need to be very brave or obstinate. The public employee is, therefore, very likely to obey even in circumstances where he may have serious misgivings as to the validity of the instruction. The weak position of the dissenting or questioning public employee is not assisted by the provisions contained in Article 27 of Kuwaiti Civil Service law (No. 15 of 1979), which provides:

> Any employee, who fails his duties or breaches the rules set out in laws or regulations, is subject to disciplinary action, and without prejudice, if necessary, to penal and civil sanctions:
>
> An employee shall not be subjected to disciplinary action if it is proven that he committed the violation while obeying a written order issued to him by his superior officer and after he has drawn the officer's attention to the violation. In such a case, the responsibility may be handled by the person issuing the order.

In theory, the provision above provides some protection to the public employee who is uncomfortable about obeying an instruction but in practice, it provides little or no protection because few instructions are likely to be given in the form of a written instruction. Indeed, superior officers and managers are probably less likely to put instructions in writing in circumstances when the validity of the contemplated activity is questionable. However, it could be argued that the code is stronger than it appears because Article 24/3 above

refers to orders which could be interpreted as written orders only. As a result, the current day to day tendency of public employees as this research will show (see Chapter 5 at section 5.4.1 Discipline Procedures) employees obey instructions, despite personal misgivings because they believe that they have no other choice.

3.3.4 The Duty to Maintain Professional Secrecy in Kuwait

The duty to maintain professional secrecy can also be defined as the obligation of the public employee not to disclose or make known any information acquired, or confidential documents he/she may see or hear in the course of his/her employment in the discharge of duties, without permission from the competent authority.[298] Professional secrecy is a generally established requirement, applicable to all public employees, regardless of whether they have sworn to perform their duties as public servants. This provision must extend and remain in force even after the individual resigns or leaves the service.[299]

The confidentiality requirement, applies to the following circumstances:

1. Information obtained about other employees or citizens should remain private and should be treated in confidence.[300]

[298] Mohammad, Mohammad Ahmad. *Employment Contract.* Alexandria: Dar Al-Matbuat, 2013, p. 174; and Al-Khalailah Mohammad Ali. *Local Administration.* Jordan: Dar Al-Takafa. 2013, p. 198.

[299] Article 25 paragraph 5 of Kuwait Civil Service Law no. 15 of 1979.

[300] Abuzeid, 2008, op. cit., p. 214. Al-Kabbani, op. cit., p. 197.

2. A public employee and employer must also consider all matters within their reach and knowledge as confidential, whether these pertain to their task, to the section where they work, or other sections and departments, even if they do not have loyalty to these sections and departments.

The obligation to maintain professional secrecy is often expressed as a general prohibition against disclosing confidential or official information acquired in the duration of, or in connection with a public employee's employment.[301] Hence, some legislation includes statements binding employees to observing the confidentiality of information to which they have access. In addition, the government has made disclosure of facts protected by professional secrecy a penal offence. This stipulation is emphasised in legislation in other jurisdictions; for example, UK's Official Secrets Act 1989[302] and Egyptian Law No. 58, article 77/5.[303] The Gulf Cooperation Council States (Kuwait and UAE) also emphasise the same in their analogous laws.[304] In Kuwait, the duty to maintain secrecy is implied within the public employee's general duty to maintain the dignity of his or her post. Article 25/5 of the Kuwaiti Civil Service Law No. 15 for 1979;[305] for instance,

[301] Al-Massri, op. cit., p. 861; and Al-Rakem, Yousef Ahmed. *Summary for Explanation of the Kuwait Civil Law Service.* Kuwait: That Al-Salasel Press. 2013, p. 116.

[302] Bradley, A.W and Ewing, K.D. *Constitutional and Administrative Law*, 14th Edition. London: Pearson Longman. 2006, p. 617.

[303] Ali, Mohammad Ibrahim, op. cit., p. 382.

[304] In the United Arab Emirates, the government has issued and changed many codes to govern the civil service; these laws are as follows: Federal law no. 4 of 1972, Federal law no. 8 of 1973, Federal law no. 5 and 6 of 1978, Federal law no. 21 of 2001, and Federal law no. 11 of 2008, this is UAE's current Civil Service Law.

[305] Article 25/5 of Kuwait Civil Service Law no. 15 of 1997.

specifically provides that the employee shall uphold the dignity of his post and conduct himself with a due respect.

To summarise the legal context, the researcher outlines the main question concerning the conflict between Article 25/5 and Article 36 of the Whistleblowing Act in Kuwait.[306] First, public employees are obliged to undertake general duties to protect against disclosure of confidential matters under Article no. 25, paragraph 5 of the Kuwaiti civil service law no. 15 of 1979. If disclosures are made, employees shall be disciplined under Article no.27 of the Kuwaiti civil service law. Second, under Article 36 of the Whistleblowing Act no.24 of 2012, where the duty of whistleblowing against corruption in Kuwait is not a matter of obligation. In other words, the employee must decide whether to whistleblow and balance competing or possibly conflicting legal requirements: He or she must act reasonably and must be able to support opinions and beliefs with strong factual evidence. Furthermore, as Article 37 states that whistleblower must have serious indications to justify his belief in the soundness of the reported incident. Otherwise, there is no protection for the whistleblower under Kuwaiti Whistleblowing Act no.24 of 2012. In that regard, the objectives of Sharia law, which are called '*Maqasid al-Shari'ah*' in Arabic might lend support to further protect whistleblower particularly in situations where they seemingly have no safeguard. Public welfare (*maslaha*) and justice (*'adl*) as underpinning the

[306] Kuwait Whistleblowing Act no. 24 of 2012.

objectives of Islamic law should be respected and followed in the administration of justice. The latter is particularly significant given that the supremacy of Islamic law is endorsed under Article 2 of the Kuwait Constitution, which states that the main source of legislation in the State of Kuwait shall be the Islamic Law (Sharia). In addition, Article 7 of the Kuwait Constitution stipulates that justice, liberty and equality should be applied between citizens. In other words, judges should treat all parties, both claimant and defendant equally, no matter if they are rich or poor, man or woman, and that everyone should have equal opportunities to defend him or herself. However, it is worth noting that the while Kuwaiti courts refer to Islamic law in interpreting law for specific matters, rules regarding labour law and employment matters whether in the public or private sector is not strictly governed by Islamic law. One significant caveat must be highlighted pertaining to the term 'labour law' in Kuwait, which is exclusively designated for private employees (or workers who work at the private sector) as stipulated by the Kuwait Labour Law no. 6 of 2010, titled as the law specifically 'concerning labour in the private sector.' The researcher highly emphasizes that the topic about private workers is not part of this study's research area.

However, it should be recalled that despite Article 2 of the Kuwait constitution dictating Shariah law as a source of legislation, this does not mean strict compliance to Islamic law in all aspects. Islamic/Shariah law is mainly followed and used in litigations involving family disputes, inheritance and marriage, similarly judges in

Kuwait can only make reference to Islamic law in those previously mentioned areas as expressly stipulated under Law no. 51 of 1984 regarding personal status with amendments. In other words, courts and lawyers must abide by Islamic law principles on the few areas in which parliament has specifically legislated laws that incorporate religious principles.

Another notable issue in relation to issues involving public employee is that they are dealt by rules pertaining to administrative law; it is thus unusual for Islamic law to play any significant part in litigation, since it is not exactly written or provided for in any single statute in Kuwait.

The importance of the above cannot be overemphasised as it highlights the perceived inconsistencies and somewhat inadequate safeguard that might apply to public employees. Potential problems may be endured by employees simply from a failure to obey the employer's orders. As highlighted below, the consequences can be very severe and include demotion and dismissal.

3.3.5 Duties and Responsibilities of Public Employees in the UK

Employees should aim to meet certain obligations and duties when receiving a salary for carrying out their duties, as follows:

1. Duty of faithful service: The relationship between the employer and employee should be one of trust and confidence. The law implies that under

a contract of employment, every employee should serve their employer faithfully.[307]

2. Duty to obey lawful and reasonable orders: The duty to obey all lawful, reasonable orders, and instructions made by employer, is one of the essential duties of an employee under common law.[308] The emphasis here is on the requirement that the order must be lawful,[309] and reasonable. It cannot be unlawful or constitute an unreasonable act. If a superior's order is manifestly illegal, the employee, just as is the case in Kuwait (see above) can refuse to obey, but the UK provisions are wider in that protection can also be given if the instructions are unreasonable, as was possibly the case in relation to the Kuwaiti Doctor case example referred to above.[310]
3. In the UK, the Public Interest Disclosure Act 1998[311] forms part of general employment legislation, which protects employees and other workers from reprisals for public interest whistleblowing. The act sets out a clear and

[307] Frazer, Andrew, "The Employees Contractual Duty of Fidelity" *Law Quarterly Review*. 2015, p.2.

[308] However, a difficulty arises in deciding to what extent are orders unlawful or unreasonable. There is an abundance of case law on this matter, and each case is unique. Maclntyne, Ewan. *Business Law,* 4th Edition. London: Pearson Education. 2008. See also Maitland, F.W. *The Constitutional History of England,* London: Cambridge University Press. 1980. p. 659.

[309] The term "lawful order" primarily means an order that is reasonably within the ambit of the employment in question, so that once again, in any given dispute much or all will depend on the terms of the individual contract of employment, whether expressed or implied. Smith and Thomas, op. cit., pp.160-161.

[310] See discussion above in this chapter about the Case no. 406 of 2004 'Kuwaiti Doctor'.

[311] The whistleblowing system in UK is discussed in section 3.5.3 (Evaluation of the Whistleblowing in the UK) of this thesis, since this act contains a number of wide- ranging employee protection provisions.

simple framework to promote responsible whistleblowing, reassuring workers that remaining quiet about perceived malpractice[312] is not a safe option. PIDA is also aimed at safeguarding employees who raise concerns.

In the UK context, whistleblowing is not only understood to relate on anonymous informing, but also to legitimately raising a concern. However, whistleblowers often risk recrimination, victimisation, and sometimes dismissal,[313] even if they act in good faith. Therefore, in order to determine whether PIDA 1998 is applicable, certain criteria should be met regarding the definition of disclosure and of work-related disadvantage.[314] Two points should be noted about the Legislation of the Public Interest Disclosure Act 1998 of the UK. First, as an employment protection measure, it does not afford rights to those who do not have an employment relationship, for example, members of the public. Second, workers can qualify for protection if they make a disclosure in good faith to a

[312] Malpractices are as follows: "criminal offences; civil offences and breaches of the law (including negligence, breach of contract, breaches of administrative law); miscarriages of justice; dangers to the health and safety of individuals or the environment; or deliberate attempts to conceal information relating to any of these matters." Pritchett, op. cit., p. 48. See also Smith and Thomas on page 147 who state that "the reasonable belief of the worker (employee) making the disclosure, is to show these following: A criminal offence; a failure to comply with a legal obligation; a miscarriage of justice; a health and safety danger; environmental damage; or deliberate concealment of any of these above." Smith and Thomas, op. cit., p. 174.

[313] However, see Professor Ian Smith's article explaining the concept of dismissal, in particular, the dismissal must be fair and "with notice". Smith, Ian. "Employment: Line Up," *New Law Journal.* Issue 7483. 30 September 2011, p.6.

[314] Novak, Rhys; Bond, Robert and Henty Paul, "Looking to the next 12 months: 10 issues for UK complains officers," *Complains and Risk.* 2015, p.3.

person prescribed by the Public Interest Disclosure 1999 (as amended).[315] According to the Employment Rights Act 1996 section 43F, workers must reasonably believe:[316] "(a) the relevant failure falls within any description of matters in respect of which that the person is prescribed, and (b) that the information disclosed, and any allegation contained in it, are substantially true".[317] Before the Public Interest Disclosure Act 1998 came into force in July 1999, the common law did provide a defence against dismissal for employees who acted in the public interest. However, it provided no guidance as to what could be regarded as in the public interest and no protection to the employee in the work context regarding such issues as prospects for future promotion.[318] Indeed, Lewis states that the conventional view of whistleblowers was that they were troublemakers deserving punishment for their disloyalty.[319] In this context, Eman Alam[320] observed that before laws were introduced, there was no specialised protection for whistleblowers. This meant some staff chose not to blow the whistle for fear of recrimination. However, it is very important to concentrate on the points made

[315] The most recent amendments were in 2005.

[316] Nairns, Janice. *Employment Law Statutes 2011-2012*. London: Routledge. 2012, p. 93. Note that the contrast of this provision in Kuwait is under Article 37 of the Kuwait Whistleblowing Law no. 24 of 2012, which requires the need for the whistleblower to have serious indications to justify their beliefs.

[317] Section 43F, (PIDA) 1998.

[318]Source:http://www.cipd.co.uk/hr-resources/employment-law-faqs/unfair-dismissal.aspx.2/8/2016 [Accessed 2nd August 2016].

[319] Lewis, David. "Resolving Whistleblowing Disputes in the Public Interest: Is Tribunal Adjudication the Best that Can Be Offered?" *Industrial Law Journal*. Volume 42 (1). 1 March 2013, pp. 35-37.

[320] Alam, op. cit., p. 34.

by David Lewis, wherein he observed that investigative research shows the two main reasons people do not report perceived wrongdoing are fear of losing their job and a belief that even if they did so, the matter would not be resolved. Consequently, if the legislation is to promote whistleblowing in the public interest, it should provide a mechanism for investigating and protecting individuals who report allegations of wrongdoing. Moreover, Part IVA of the Employment Rights Act 1996 (ERA) cites protection against "detriment" suffered because of disclosing information to the public benefit. However, employers are not obliged by this statute to implement whistleblowing procedures. Even if they have them, there is no specific requirement to investigate allegations or deal with any proven wrongdoing. Thus, Lewis believes that, if disclosures of serious wrongdoing are to be encouraged, both the law and dispute resolution mechanism need to be improved.[321]

The evidence collected in relation to a series of disasters in the 1980s and 1990s confirms the truth of Lewis' observations above.[322] One of the main accidents triggering recognition of the need for the formulation of a Whistleblowing

[321] Lewis, David. "Resolving Whistleblowing Disputes in the Public Interest: Is Tribunal Adjudication the Best that Can Be Offered?" 2013, op. cit, p. 55.

[322] Evidence collected by an independent charity established in 1993 by Guy Dehn and cited in Ashton, Jeanette, article "15 years of whistleblowing protection under the public Interest Disclosure Act 1998, are we still shooting the messenger 2015, op. cit., p. 2.

legislation was the sinking of the ship, the Herald of Free Enterprise, at the port Zeebrugge in 1987.[323] It resulted in the deaths of 193 people, and was followed not long after by the Clapham rail disaster (1988) and the explosion of the Piper Alpha oil platform (1988).[324] It was argued that these tragedies could have been avoided, or their effects could at least be minimised if employees had been able to whistle blow.[325] For instance, the issue of the Clapham Rail crash, referred to above, which resulted in the deaths of 35 passengers, was that the rail's supervisor had noticed loose wiring in the junction a couple of months earlier but said nothing as he did not want to 'rock the boat', or cause problems to arise.[326]

3.3.6 Duties and Responsibilities of Public Employees in France[327]

A brief outline of the duties of French public employees is here provided with the aim of illustrating some of the potential strengths and weaknesses of the Kuwaiti provisions. In France, civil employees have duties and a failure to carry them out can result in disciplinary action and possible discharge. Although, as indicated above, the duty of public employees to observe professional secrecy is discretionary, it is noteworthy that specific protection for whistleblowers in

[323] Source: http://www.maib.gov.uk/cms_resources.cfm?file=/HofFEfinal.pdf [Accessed 4th January 2016].

[324]Source:http://www.educationscotland.gov.uk/scotlandshistory/20thand21stcenturies/piperalpha/index.asp [Accessed 4th January 2016].

[325] Alam, op. cit., p.12.

[326] Ashton, op. cit., at p. 2.

[327] The duties of public employees in France are organised under a public administrative law issued on 13 of February 1993.

France, as in Kuwait, was only recently provided.[328] According to the Collins Robert's French dictionary, a whistleblower in France is called "denonciateur"; meaning "personne qui tire la sonnette d' alerte" (translated as, a person sounding an alert).[329]

The main duties of public employees in France are outlined under a series of administrative laws[330] and include:

1. Civil employees must not reveal private or secret information, especially regarding individual service users.[331]
2. Civil employees have a duty to carry out their tasks with strict neutrality, especially when dealing with individuals. Discrimination on political, religious, racial, and sexual grounds is unacceptable. Equal treatment of users whose situations are identical is a paramount principle. The concept of fairness is an important part of this duty, and in certain cases, aspects of the private life of a civil employee may be termed incompatible with his/her functions. In such cases, he/she must refrain from any behaviour that might openly disclose their political or religious beliefs to users.[332]

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[328] See information above in this chapter.

[329] Collins, Robert. *Collins Robert French Dictionary.* France: Harper Collins Publisher, 7th Edition. 2005, p. 750.

[330] Issued on the 13 February, 1993.

[331] Article 66-5 of law no.71-1130 of 31 of December 1971. Also see, Chapus, Rene. *Droit Administatif General Tome 2, 15th Edition.* Paris Montchrestien. 2011, p. 103.

[332] Lombard, Martine and Dumont, Gilles. *Droit Administratif 7th Edition.* Paris: Dalloz. 2007. p. 302. Waline, Jean, op. cit., pp. 339-340. Also, see some details about this duty of impartiality as follows: C.E. 24-1-1919, Commomnal, p. 94; C.E. 19/12/1919, Chobeaux, Rec. p. 940; and C.E. 16-7-1943, Bordclat, Rec. p.191.

3. Civil employees are expected to uphold some caution and reserve,[333] concerning the policies of the government. An employee should not, by his/her actions and especially by his/her declarations, cause harm to public institutions. Generally speaking, a civil employee should always refrain from expressing opinions that can be interpreted as official thoughts from the French government or a public body.[334]
4. Civil employees must obey orders[335] given by their supervisors. Disobedience is only legitimate and mandatory, if the order given is both evidently illegal and contrary to public interest.

French civil servants therefore have to address similar dilemmas to those faced by public employees in Kuwait, but arguably given the strong public interest defence provided for above are better protected should they decide to sound the ` *alerte*`.

3.4 Definition and Parameters of Whistleblowing

As outlined below, the parameters and nature of existing whistleblower protection

[333] The duty to reserve is called in French "l'obligation de reserve" and Article 29 of the Law of Employment No. 634, which was issued on 13/7/1983, is organised according to the duty of reserve.

[334] Braibant, Guy and Strin, Bernard. *Le droit Administratif Francais, 7th Edition.* France: Presses de sciences po et Dalloz. 2005, p. 107. See some cases from the state of French council for the obligation about reserve. C.E. 20 fev. 1952, magnin, rec. p. 117, C.E. 10 mans 1971, Jannes, A.j. 1971 p. 621.

[335]In French, this duty is called in French language, this duty is called "obeissance hierachique." See De Laubadere, Andre; Gaudemet, Yves; and Venezia Jean-Claude. *Traite de Droit Administratif, tome 1, 13th edition.* Paris: Libraire Generale de Droit et de Jurisprudence. 1994, p. 310. See also, Article 28 under law no. 634 year 1983 French employment law. In French language, (Article 28) la loi no. 634 du 13 juillet 1983, p.330.

is very varied in terms of both scope and definition. Whistleblowing is defined as an act where a person, usually an employee, in a government agency or private enterprise, discloses information to the public or to those in authority, of mismanagement, corruption, illegality, or other wrongdoing.[336] The whistleblower in UK can be a worker or an employee who reports certain types of wrongdoing. This will usually be something that the worker has seen at his/her work. The wrongdoing must be disclosed in the interest of the public. This means it must affect others, e.g. the general public. A whistleblower in the UK is protected by law under (PIDA). For example, the whistleblower should not be treated unfairly or lose his/her job because the whistleblowers had 'blown the whistle'.[337]

Whistleblowing can highlight the following:[338]

- Deliberate acts of criminal offence such as fraud and corruption;
- Reckless endangerment to health, safety and to the environment;
- A miscarriage of justice;
- A breach of law by an organisation, e.g. not having the right insurance;
- A belief that someone is concealing wrongdoing;

[336] Lewis, David, "Ten years of Public Disclosure Act 1998 claims…, 2010, op. cit., p.2.
[337] https://www.gov.uk/whistleblowing/what-is-a-whistleblower [Accessed2nd August 2016].
[338] Vickers, Lucy. *Freedom of Speech and Employment.* London: Oxford University Press. 2002, p. 153.

Whistleblowing can also be variously explained as an internal conflict management tool, an anti-corruption mechanism,[339] and an act of free speech. Whistleblowing is considered the act of exposing a perceived organisational wrongdoing, by reporting it to authorities or by complaining to someone in a position to correct the situation.[340] In relation to this, four essential characteristics comprise whistleblowing in UK, as follows:

1. There must be good faith in terms of the disclosure of information, either internally to members of the organisation, or externally toward those outside the organisation.
2. A current or past member of the organisation must make the disclosure.
3. The information in the disclosure must relate to employer or worker misconduct. The misconduct may be real or perceived and would usually include one or more of the following: mismanagement, abuse of authority, gross waste of funds, harm to public welfare, violation of rules and regulations, and unethical or immoral conduct.[341]

[339] Francis, Ronald and Armstrong, Anona. "Corruption and Whistleblowing in International Humanitarian Aid Agencies," *Journal of Financial Crime.* 1 November 2011, p. 50.

[340] Miceli, Marcia and Near, Janet. "Relationships among Value Congruence, Perceived Victimization, and Retaliation against Whistleblowers," *Journal of Management.* 2013, p. 10.

[341] The meaning of immoral conduct differs from culture to culture, although most outlaw extreme behavior such as murder. Often morality is based on religious definitions, such as biblical teachings for Christians, and the Quran for Muslims. Certainly, the moral values established in communities' laws, frame how people should behave. Martin, Jacqueline. *The English Legal System,* 5th Edition. London: Hodder Education. 2013, p. 8. Moreover, the concept of morality conforms with recognised rules associated with what is considered correct conduct. Garner, op. cit., p. 1025. In Islam, morality means that there are various natural and moral states of human being. According to the Holy Quran, the state arising out of the human

4. The individual making the disclosure must have reasonable belief of the reported misconduct and should be able to determine who bears responsibility for it.[342] This is a significant condition, for the whistleblower needs to be able to refer to concrete evidence in support of his/ or her belief. The Kuwait Whistleblowing Act specifies under article 37, "whistleblowing under this law requires an indication to justify his belief in the soundness of the reported incident."[343]

   Kuwaiti law is therefore arguably more demanding- reasonable belief or honestly held mistaken belief is not sufficient to provide protection for those who choose to disclose.

3.4.1 Nature and Scope of Whistleblowing

Whistleblowing is a process, involving at least four elements:[344] the whistleblower, the discloser subject, the organisation against which the complaint

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or Nafs-e-Ammâra (the Commanding Self) is the first source of morality if the weapon of reason is applied. The reasoning ability in a human being is sufficiently well developed to analyze his behavior critically and to perceive the immediate and remote consequences of his actions. Source: http://www.islam-info.ch/en/Morality_in_Islam.htm [Accessed 22nd August 2016].

[342] Smith, Ian. "Employment: Working it out," *New Law Journal.* Issue 7552. 15 March 2013, p. 99.

[343] Article 37 Kuwait Whistleblowing no. 24 of 2012.

[344] Yeoh, Peter. "Whistleblowing: Motivations Dereliction Self-Regulation" International Journal of Law and Management. 2014, p.4.

is vested, and the regulatory bodies or local authorities[345] to whom the complaint is made. Whistleblowers should either make their allegations internally; i.e. to people within the accused organisation, or externally to regulators, to law enforcement agencies, to the media or to groups concerned with the issues involved.[346] Most of the companies prefer internal disclosures. Reports on misconduct are then made in reference to a fellow employee or superior within a company, because this gives employers the opportunity to address the situation. Employees are protected from detriment if they act in good faith,[347] and they might also make a disclosure internally to their employer. A disclosure[348] is not

[345] The whistleblower can bring his report against corruption directly to the Kuwait Anti-Corruption Authority. As Article no. 20 of Kuwait Whistleblowing Law stated, "taking into account the inviolability of private life, honour and dignity of persons, every person who becomes aware of the occurrence of any crime of corruption shall report it to the Authority to study it. The Authority shall, with the coordination of the competent bodies, initiate the investigation of the crimes of corruption stipulated by this law upon reaching its knowledge in any way."

[346] Vickers, Lucy, op. cit p. 162.

[347]On other hand, it does not matter if after an investigation, a worker's beliefs are found to be wrong. However, a worker must show that at the time of the disclosure, it was reasonable to hold a particular belief; that the information and allegation were substantially true: and that the worker acted in good faith and did not act for personal gain. (Disclosures in breach of the Official Secrets Act 1989 are excluded.) The EAT (see the list of abbreviations in this thesis) has ruled, however, that the worker must produce 'facts'. An allegation alone (in this case in a solicitor's letter) would not be sufficient (Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 325). This is, arguably, a restrictive interpretation of the Legislation. Willey, Brian. *Employment Law in Context: An Introduction HR Professional*, 4th Edition. London: Pearson. 2012, p. 66.

[348] For the meaning of protected disclosure, see Lautenberg, Dominique.Op.cit,. p. 90.

protected if the worker commits a criminal offence in making it, for example breaching laws or rules.[349]

External whistleblowers are usually associated with reports to persons or entities not associated with the organisation, although this is not necessarily the case. In cases of external whistleblowing, disclosures depend upon the severity and nature of the information. In some instances, as in Kuwait, external disclosures are encouraged by monetary reward.[350] Article no. 42 of Kuwait Whistleblowing Law no. 24 of 2012, for example, provides said that the state of Kuwait is under an obligation to compensate the whistleblower for material or moral damages that he or she may sustain as a result of whistleblowing against corruption.[351]

Alternatively, whistleblowing might involve the unauthorised disclosure of information about perceived organisational wrongdoing,[352] by a member or former member of that organisation, to parties that are in a position to take action, where such disclosure is in the public interest.[353]

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[349]Source:https://ico.org.uk/media/reportaconcern/documents/1042550/protection_for_whistle_blowers.pdf [Accessed 2nd August 2016].

[350] The reward in this context is regulated by Law. For example, Article no. 42 of Kuwait whistleblowing Law no. 24 of 2012 said that the state of Kuwait is under obligation to compensate the whistleblower for material or moral damages that he or she may sustain as a result of submission his or her whistleblowing against corruption.

[351] See Article 42 of Whistleblowing law no. 24 of 2012 against corruption in Kuwait.

[352] Nairns, Janice. *Employment Law for Business Students*, 2nd Edition. London: Pearson Longman. 2004, p. 137.

[353] Alam, op. cit., p. 5. See also, Wilson, James. "Dear Diary Back Page Law Stories," *New Law Journal.* Issue 7515. 25 May 2012, p. 120.

However, deciding, whether whistleblowing is internal or external can be complex. The line between the two is not clear. Whistleblowers may make their allegation internally, for example, to people not directly involved within the potentially offending organisation. If external whistleblowing is allowed, as in some jurisdictions, such as the UK, whistleblowers can alert a range of external bodies including the regulators, law enforcement agencies, or the media.[354]

It should be noted that the possibilities are more restrictive in Kuwait. Disclosure to the media, for example, is not permitted. In fact, Law No. 24 of the 2012 concern whistleblowing in Kuwait makes no direct reference to internal or external whistle blowing. It, however, sanctions direct reporting to the Public Authority against corruption or to the public prosecution. As outlined below, it also appears to provide some immunity for individuals embroiled in the wrongdoing provided they act in good time. Article 43 expressly states:

"*the perpetrators, who took the initiative to reporting to the authority, the public prosecution, or the competent authorities of the existence of a criminal agreement to commit one of the crimes stipulated by Article 22 of this Law, and whoever participated in it before commencing the commission, shall be exempted from penalty. The court may exempt from penalty, if the whistleblowing took place after the occurrence of the crime and before commencing investigation, providing*

[354]Source:https://www.nidirect.gov.uk/articles/blowing-whistle-workplace-wrongdoing [Accessed 2nd August 2016]. It is important to note that the Kuwait whistleblowing no. 24 of 2012 does not have internal or external whistleblowing. Kuwait simply deals with direct report to the Public Authority against Corruption or to the Public Prosecution Office.

the perpetrator, in the course of the investigation, enabled the authorities to arrest the other perpetrators for the crime, seize the funds related to the crime, or arrest perpetrators of their similar crime in type and severity".[355]

It is clear, from the above, that a potential whistleblower needs to consider a variety of complex issues before proceeding to disclose issues of concern to him or her. The considerations, as indicated below, may be either positive or negative:

1. Internal whistleblowing allows a firm to correct a previous wrongdoing and avoid the associated consequences. Encouraging internal whistleblowing can increase safety and wellbeing within an organisation, support codes of ethics, reduce mismanagement, improve morale, maintain good will, and circumvent claims for damages and/or legal regulations.[356]
2. External whistleblowing typically involves extreme situations, with the potential for consequences that are more severe and extensive. The extension of Citizens' rights, privileges and safety, greater regulation and support for codes of ethics may be regarded as necessary in such instances because the organisations are exposed to external scrutiny and publicity.[357]

As can be seen from the above, there are various complexities in disclosing concerns and potential risks facing whistleblowers, which also raises human rights questions. The issue of whistleblowing under international human rights law

[355] This protection, however, seems very unsatisfactory since it depends outcomes that are very far removed from the control or influence of the employee.
[356] Yeoh, op. cit., p.4.
[357] Miceli, Marcia and Near, Janet. op. cit., P. 10.

is topical as protection of whistleblowers is vital, and particularly since Kuwait is a state party to the International Covenant on Civil and Political Rights (ICCPR), [358] thus is legally obligated to uphold the rights under the covenant. The latest whistleblowing law no. 24 of 2012 in Kuwait paves way for the recognition of imparting information and may be seen as promoting civil and political rights. However, it is an anti-corruption legislation rather than a standalone general law for the protection of whistleblowers. Article 22 of Kuwait's law no. 24 of 2012, for example, expressly identifies crimes of corruption. Therefore, the legislation does not cover any type of misconduct, in order to give rise to or trigger the wider rights advocated by the ICCPR, such as freedom of expression and opinion. The latter situation is concerning as a judge in Kuwait cannot directly deal with the universal declaration rule of human rights.[359] A judge in Kuwait may only apply human rights principles if the party to a dispute can convince the court about the significance of such principles. Only in those circumstance will judges mention human rights principles to support their judgments, which could be viewed as a detriment to the protection of whistleblowers.

[358] International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
[359] Al-Saleh, Othman, op. cit.,p.910

3.4.2 Mixed Motivation and expanded Whistleblower protection

This section will provide further insights on the motivations behind whistleblowers in the UK and other countries,[360] and particularly how they can be protected by the law.

Motives for whistleblowing vary, but they are usually underpinned by the common acknowledgement that not blowing the whistle on perceived wrongdoing is a dereliction of duty. On the other hand, the employees or the workers in Kuwait are reporting against misconduct, due to their ethics, advocated in the Civil Service Law no. 15 of 1979, which orders the employee to uphold the dignity of his post, and conduct himself with a due respect.[361] It is important to note here that the primary aims of whistleblowing policy must be to uncover unlawful conduct,[362] establishing whether a behaviour is causing a direct threat to the public interest, or violation of safety and security.[363] Furthermore, whistleblowing is not the same as making a complaint. When a

[360] It is important to emphasise that the Kuwait government had introduced a law about whistleblowing (Law no. 24 of 2012), to prevent corruption and the disclosure of corruption crimes specified under Article No. 22 of this law. The whistleblowing law gives some protection to whistleblowers; for instance, Article 40(3) provides a whistleblower legal protection to not be referred to a criminal, civil or disciplinary action.

[361] Article 24/5 Kuwait civil service law no.15 of 1979.

[362] Novak and et.al, op. cit., p.3.

[363] However, in accordance with the PIDA, the FSA (see the list of Abbreviation) is advising whistleblowers to report any of the following: a criminal offence; a failure to comply with any legal obligation; a miscarriage of justice; the putting of the health and safety of any individual in danger; damage to the environment; or deliberate concealment relating to any of the above. See the FSA Handbook, SYSC 421 G (2). Filby, Michael. "Will the whistleblowers play for the FSA?" *New Law Journal.* Issue 7044. 9 August 2002, p. 165.

person blows the whistle, their concern is not with how their employer has treated them. Indeed, usually the issue prompting their actions does not directly affect the whistleblower personally. Rather the goal is to stop illegal and unacceptable behaviour occurring in his/her organisation, by alerting others to stop the negative behaviour,[364] which threatens the public interest. However, it is clear that there is a difference between making a complaint and whistleblowing. In other words, a whistleblower may be raising concerns in which he or she may or may not have any personal concern and is therefore very different from a complaint where he or she has a stake in the outcome. Indeed, the purpose of the UK's statute, namely, the PIDA, is to protect individuals who make certain disclosures of information in the public interest.[365]

Whistleblowing is the procedure of exposing a company's illegal actions to an appropriate authority or agency by an employee. A person may require considerable courage to report wrongdoing as they may be victimised for

[364] Wrongdoing is equivalent to negative behaviours, wherein the employee is guilty of sufficient misconduct. As an employee, he or she may be dismissed summarily without notice and before the expiration of a fixed period of employment. However, there is no rule of law defining the degree of misconduct that would justify dismissal. The test for dismissal will vary depending upon the nature of the business and the employee's position. Beale, Hugh, *Chitty on Contracts, Volume 11 Specific contracts,* 31st Edition. London: Sweet and Maxwell. 2012. p. 39.

[365] Yeoh, op. cit., p.4.

disclosure of wrongdoing.[366] From a moral perspective, the employee's decision to stand against illegal activities is commendable, but that same action could have negative consequences for the employee. Whistleblowing may cause an employee to be disliked or distrusted by others in the company, be disciplined, or in worst cases be discharged. Although whisteblowing is often encouraged by the authorities and sometimes given a degree of statutory protection, more could be done to protect those who risk themselves for the truth to be known.[367]

Due to the unpredictable consequences of whistleblowing, it is probable that many employees who witness wrongdoing do not even consider blowing the whistle, because they fear the detrimental impact of such action on their relationship with the employers.[368] Thus, potential whistleblowers might feel discouraged from disclosing information against their organisation,[369] fearing a backlash against them.[370] Unfortunately, empirical studies in the UK indicate that the whistleblowing system in UK does not provide sufficient protection to

[366] In light of the duty of the employee to disclose wrongdoing, under the Public Interest Disclosure Act 1998, certain protected rights of disclosure have been given to whistleblowers. See the authors Ian Smith and Nicholas Randall, regarding the duty of the employee to use disclosure for wrongdoing in the text entitled '*Contract Actions in Employment Law-Practice and Precedents,'* 2nd Edition. UK: Bloomsbury Professional. 2011, p. 85.

[367] Moran, John Jude. *Employment Law New Challenges in the Business Environment.* USA: New Jersey. 1997, p. 119.

[368] Yeoh, Peter, op.cit, p.4.

[369] Ibid, p. 5.

[370] Ibid, p.10.

whistleblowers, especially when an employer retaliates.[371] This is why the law, and the rights of the employee, must be clarified and strengthened.

3.4.3 Policies and Rules for Reporting Administrative Offences

The procedures for reporting administrative offences vary between one organisation and another, and between one whistleblower and another. As discussed above, the potential victimisation of reporters of administrative offences has become a serious barrier to disclosure. Although in some jurisdictions those who report administrative offences are safeguarded automatically by the law, which protects them from punitive action by their employer, in others, they might suffer a variety of detriments, including dismissal,[372] or salary reduction.

Therefore, it is apparent that to encourage reporting, it is necessary to issue legislation to protect whistleblowers, by providing them with support, protection and in some cases, possibly financial incentives. For example, a worker whose

[371] Yeoh, Peter, op.cit, p.13.

[372] In the UK, for instance, if employees are dismissed in connection with any of a number of topics, activities or sets of rights (e.g. participating in or asserting them), the dismissal will automatically be unfair. Former employees need do no more than prove the dismissal and the grounds for it. The following are the main topics: statutory disciplinary procedure, trade union membership, recognition and action, health & safety, statutory rights, family related, pension trustees, Sunday shop work, working time, redundancy, transfer of undertaking, spent conviction, national minimum wage, public interest disclosure, accompanied at meetings, part-time and fixed-term work, flexible working, jury service, and whistleblowing. Ramage, Roderick. "Snippets from the Reduced Law Dictionary," *New Law Journal.* Issue 7371. 29 May 2009, p. 3.

contract is terminated may claim compensation for loss of employment along with any other detriment suffered as a result of the qualifying disclosure being made.[373]

3.5 Differing State Responses to the need to protect whistleblowers

3.5.1 Whistleblowing in Kuwait, the UAE and Egypt

Even though the whistleblowing provisions in Kuwait are confined to the act of corruption, it is important to emphasise that the definition of corruption is wide. Article 22 of Kuwait Whistleblowing Law no. 24 of 2012, stated that the following offences are considered crimes of corruption within the scope of the application of the provisions of this law:

1. offences against the public funds stipulated by Law No. (1) of 1993 as referred to, including offences relating to public tenders, bids and practices.
2. bribery and abuse of influence stipulated by Law No. (31) of 1970 amending some provisions of the Penal Code as referred to.
3. crimes of money laundering stipulated by Law No. (35) of 2002 as referred to.
4. falsification and forgery offences stipulated by the Penal Code as referred to.
5. offenses relating to the course of justice stipulated by the Penal Code as referred to.

[373] Cain, Brian. "Whistleblowing: The First Cases," Secretary's Review. Issue 12. *New Law Journal.* 11 October, 2000, p.2.

6. crimes of illicit gaining stipulated under the Kuwait Whistleblowing Law no. 24 of 2012.
7. crimes of customs smuggling stipulated by Law No. (10) of 2003 as referred to.
8. crimes of tax evasion stipulated by Decree No. (3) of 1955 as referred to.
9. crimes of impeding the work of the authority, putting pressure upon it to hinder the performance of its duties, interfering in its terms of reference, or refraining from providing it with the required information stipulated by this law.
10. the crimes stipulated by the Law for the Protection of Competition.
11. any other crimes stipulated by other law, which are considered crimes of corruption.[374]

The system also focuses attention on the whistleblower, providing him/her with the legal protection required in order to feel secure, and to build trust to perform his/her duties toward the community.[375] Reporting crimes and targeting corruption is a key starting point when conducting punitive procedures; it is also an important step towards achieving justice and security. Thus, it is essential to ensure that a reporter is given an adequate chance to defend himself/herself, and that judges should be sufficiently competent to make a fair decision based on the

[374] Article 22 of the Kuwait whistleblowing Act no. 24 of 2012.
[375] For further explanations about whistleblower protection in Kuwait, under articles 39 and 40 of Kuwait whistleblowing law, see information below in this chapter.

facts and principles of justice. However, perhaps not surprisingly, given that whistleblowing procedures in Kuwait, UAE, and Egypt, are not grounded in employment or civil service specific legislation there is still no special provision to provide a degree of protection for whistleblowers in an employment context. It follows, therefore, that there is still no special commissions or institutions charged with eliminating wrongdoing, under a formal whistleblowing system.[376] Interestingly, measures relating to the protection of the whistleblowers in the UAE largely mirror and possibly follow the partial and recent protection provided in Kuwait. Indeed, it was not until the passing of the Dubai Law No. 4 of 2016 on Financial Crimes that a degree of protection was provided for those that report financial crimes. It should be noted that the Dubai provisions do not apply to the whole of the UAE. However, there exists a UAE wide obligation to report criminal activity, as set out at Article 274 of the UAE Penal Code. In practice, however, whistleblowing is rare. The reticence to whistleblow, as others have commented, is understandable because if a whistleblower discloses confidential information about his/her employer to any regulatory authorities or even to the police, he or she may he be in breach of his/her employment contract but and may also be in breach of the law.[377]

[376] Curzon and Richards, op. cit., p. 617.

[377] See R Ford and N Braganza, *New Protection for whistleblowers in Dubai https://www.clydeco.com/insight/article/new-protection-for-whistleblowers-in-dubai,* 10 July, 2016. [Accessed 8th of June 2018].

Arguably more alarming, given the much publicity that has been given to public corruption in Egypt, there is no parallel protection to date provided to whistle blowers even in relation to the limited context of corruption. This is a cause for concern since in 2014, it was estimated that 800 billion Egyptian Pounds of the state's budget had been lost to corruption since the revolution. According to *Transparency International's* corruption perceptions index, Egypt was ranked 94 out of 175 countries in 2014. Despite the serious public interest issues confronting public employment in the country, Egypt to date has not introduced laws to ensure comprehensive whistleblowing frameworks across the public, private and civil society sectors, or to ensure the protection of whistleblowers.[378]

Although Egypt's Criminal Law no. 80 of 2002 provides citizens with the right to report corruption,[379] the criminal law does not protect whistleblowers from harmful consequences if they choose to act. Whistleblowers in Egypt must risk unemployment, and according to some sources are at risk of being the target of threats, including death threats and other personal detriments.[380] The law requires that employees provide personal information when reporting incidents of corruption to a monitoring body, such as the Administrative Control Authority.

[378] See Hamed, E. (January 15, 2015). "Egypt's revolutions have not stopped corruption." Al Monitor Retrieved from: www.al-monitor.com/pulse/originals/2015/01/egypt-corruption-riserevolution.html# [Accessed 8th of June 2018].

[379] Counsellor Dr. Abdulmajeed, op. cit, p. 4. The author, Abdulmajeed, asserts that Egypt has Law no. 80 of 2002 with amendments, Law no 78 of 2003, and Law no. 181 of 2008 concern about money laundering, against Anti-Corruption in Egypt.

[380] Abdulmajeed, Abdulmajeed, op.cit, pp. 124-125.

According to Omnia Hussein, a Middle East and North Africa program coordinator for Transparency International Secretariat, the possession of personal information by authorities' renders whistleblowers susceptible to harassment from the perpetrator of the alleged wrongdoing, which can include denying the whistleblowers access to promotions and bonuses.[381]

As indicated above, Kuwait, has tentatively led the way in comparison to its historical Arab counterparts. Indeed, Kuwait Law No. 24 of 2012 for whistleblowing against corruption in Kuwait appears to give the whistleblower protection under articles no. 39 and 40 (which establish the extent of protection for whistleblowers). Article 39 states that "the whistleblower enjoys protection from the time of submission of the report. Protection extends to the spouse, relatives and all other persons closely related to him, when necessary." Similarly, Article 40 specifies that "protection of the whistleblower includes the following:

1) to provide the whistleblower with personal protection: by not revealing his identity or whereabouts, and providing him with a guarding escort or with a new place of residence, if necessary;

(2) to provide the whistleblower with administrative and functional protection: by preventing any administrative action against him and ensuring the validity of his job salary, rights and benefits during the period determined by the Authority; and

[381] Source: http://ckpblog.knowledgeplatform.com/post/Whistleblowers-in-Egypt-in-need-of-protection.aspx [Accessed 19th November 2015].

(3) to provide the whistleblower with legal protection: by not having recourse to him criminal, civil or disciplinary actions when the report meets the requirement set out in Article 37 of this Law. The executive regulations shall determine the methods and procedures for all kinds of protection."[382]

Articles 39 and 40 contradict Article No. 52 of the same law. Article 52 states that, "Without prejudice to any heavier penalty, the whistleblower of crimes of corruption who consciously or deliberately[383] provided false data or information, concealed information or data, committed fraud or deception, concealed the truth or was misleading justice, shall be penalised by imprisonment for a term not exceeding three years, and may be terminated from office by virtue of a court decision."[384] Article 52 lists the conditions under which a whistleblower can be punished. Therefore, both the whistleblower and people closely associated with the whistleblower, such as their family, are not protected sufficiently under Whistleblowing Law no. 24 of 2012. Herein, Article 52 states that anyone reporting a crime of corruption will be indicted for punishment in the event of:

1. reporting false information;
2. concealing data or information relevant to the report;
3. fraudulent reports; and

[382] Article 39. Kuwait whistleblowing Act no. 24 of 2012.

[383] Deliberately can also mean doing something in a careful, thoughtful manner. Source: https://www.vocabulary.com/dictionary/deliberately [Accessed 5th August 2016].

[384] Article 52, Kuwait Whistleblowing law no. 24 of 2012.

4. misleading the judiciary, by virtue of Kuwait court decision.[385]

Crucially and importantly it needs to be stressed that the wording of the provision is ambiguous and therefore unlikely to provide would-be whistleblowers with the necessary legal assurances which would encourage them to whistle blow. Although the provision seems to provide a defence to those who may choose to whistle-blow on condition that their intentions are honourable the provision also stipulates that punishment may also be possible on the basis of misleading information only. Moreover, the harshness of the potential punishment for failing to satisfy the criteria for protection certainly would act as a disincentive to individuals contemplating whistleblowing. If deemed to fall outside the criteria, whistleblowers can receive a three-year term of imprisonment for the whistleblowing, along with possible dismissal from their position in the workplace, stipulated under Article no. 52 of Kuwait Whistleblowing Law no. 24 of 2012 regarding the establishment of the Anti-Corruption Public Authority.[386]

In view of the serious consequences that may that a whistleblower may face for whistleblowing, the researcher considered the protective potential of Islamic law in the context of anti-corruption. The question posed relates to why a Muslim would choose to be a whistleblower, risking his/her own personal imprisonment or dismissal. If a whistleblowers believe the information they submit in a report to be valid and constituting sufficient evidence against corruption, then they are

[385] Article 52, Kuwait Whistleblowing law no. 24 of 2012.

[386] Ibid (Article 52, Kuwait whistleblowing Act no. 24 of 2012).

still subjected to the decision made by the court and the judge. Should a judge deem that the whistleblower's report is inaccurate, or that it offers insufficient evidence, or that it misleads the court in some way, then a whistleblower who acted in good faith could be victimised and even dismissed.

To offset any danger of being punished wrongfully, Islamic Law (Sharia) advises individuals not to deliberately place themselves in a position in which they could be penalised. According to the words of God (Allah) in the Holy Quran "make not your own hands contribute to (your) destruction but do good; for Allah loved those who do good."[387] Such "destruction" arises when a whistleblower presents information against corruption in good faith, correct information as he/she believes, with sufficient evidence, yet the court decides the whistleblower is concealing the truth or misleading the judiciary. In other words, to guarantee avoidance of trouble or harm, a person would necessarily avoid the act of whistleblowing. Part of the justification for non-action may also be founded on Islamic principles for Prophet Mohammad[388] said in Hadith that: "No harm shall be inflicted or reciprocated in Islam."[389]

While the researcher finds the Kuwait Whistleblowing Law no. 24 from 2012 to be largely beneficial, the researcher wholly disapproves of Article 52, which

[387] Holy Qu'ran, Surah Al-Baqara, No.195.

[388] Note, however, that the prophet in other hadiths also encourages whistleblowing and pre-emptive action. See information below in this chapter.

[389] Hadith of Prophet Mohammed.

requires the imprisonment of a whistleblower (and permits other serious consequences) if the whistleblower fails to show that he had grounds for his belief. Article 52 seems to discourage employees from blowing the whistle and largely contradicts[390] Article 36, which provides that whistleblowing is a duty of everyone.[391]

In order to address the ambiguity and minimise the reticence to whistleblow it is evident that clearer and more positive legislative guidance is necessary. A clear distinction needs to be made between malfeasance and misfeasance- those who make mistakes should not be treated as harshly as those who consciously mislead. There is a need for proportionality in relation to sanctions that can apply to individuals who may be mistaken but well-intentioned.[392]

3.5.2 Whistleblowing in relation to the Islamic Context

The concept of whistleblowing as discussed in Islam is embodied by the Al-Shahada, or the testimony of a witness. Testimony obliges Muslims, in their service to Allah, to fulfil the duty of attestation, and not withhold evidence when confronted with information about misdeeds or unlawful actions.[393] That is why

[390] The researcher suggests that Kuwait government should reconsider and change Article no. 52 above which penalises the whistleblower by imprisonment for a term not exceeding three months, and the power to terminate the whistleblower from his or her work.

[391] Article 36 stated that "Whistleblowing of crimes of corruption is a duty of everyone and the liberty, security and tranquillity of the whistleblower are guaranteed in accordance with the provisions of this law, or any other law, that provides for other guaranteed in this regard. The whistleblower shall not be prejudiced by any form whatsoever for reporting such crimes".

[392] i.e. making a mistake and deliberate wrongdoing.

[393] Qotob, Mohammad. *Dubiosities about Islam*, 6th Edition. Cairo: Dar Al-Shorooq. 1978, p. 294.

God said in the Quran, “Do not conceal testimony, for whoever conceals it surely his heart is sinful, and Allah, is all-knower of what you do”.[394] The notion of whistleblowing is further justified in the Quranic verse Al-Baqara. The words of Allah state, “And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption.”[395]

On the subject of public disclosure, Abu Dawud, an Islamic scholar, asserts that in the ‘hadith’ (the teachings of Prophet Mohammad), the best witness is one who testifies to what has been observed before they are asked to do so. This hadith demonstrates that Islam encourages people to blow the whistle, whether asked to or not, if the act of doing so will be morally beneficial to the Islamic community. In order to be a good Muslim, a person must perform duties, including whistleblowing if applicable. The hadith suggests that in discharging one’s duties one must not act out of expectation of any incentive or extra protection, aside from the general protections of Islam afforded to individuals. This is because freedom of expression is recognised in Islam, as is the right of the whistleblower to be safeguarded from any kind of harm or victimisation. The researcher believes that Sharia law, as indicated above, encourages people to blow the whistle against corruption. Also important, in this context, is the need for further guidance on the scope and width of the concept of corruption. The tendency is to perceive the

[394] Holy Qu'ran, surah Al-Baqara, verse 283.
[395] Holy Quran, surah Al-Baqara, verse 205.

concept as being confined to wrongdoing in a financial context but interestingly and importantly Transparency International Organisation, the leading transnational pressure group addressing corruption on a global footing, advocates a wider definition namely the act of misusing entrusted power for private gain.[396] Clearly, the adoption of such a wide definition could potentially lead to the extension of whistleblower protection to wider fields than that of financial abuse, including serious breaches in relation to employment law. However, to date there is no evidence of the Kuwaiti corruption measures being interpreted in a wider context.

Islamic teaching also provides scope for a wider interpretation of the duty. The Quran provides justification for proactive intervention for the public good. The messenger Luqman, for instance, left a will to his son, stating in the original text in Arabic that:

"يا بني أقم الصلاة وأمر بالمعروف وانه عن المنكر واصبر على ما أصابك إن ذلك من عزم الأمور"

This translates as "O my son, establish prayer, enjoin what is right, forbid what is wrong, and be patient over what befalls you. Indeed, [all] that is of the matters [requiring] determination."[397]

[396] Source: https://www.transparency.org/ [Accessed 14th December 2015]. Note that Transparency International Organisation is a non-governmental *body* which is based in Berlin, Germany, and was founded in 1993. Its non-profit purpose is to take action to combat *global* corruption with civil societal anti-corruption measures and to prevent criminal activities arising from corruption.

[397] Holy Qu'ran, Surah Luqman, No.17.

Qotob[398] suggests this verse enlightens the reader of the notion of Akida or holding a belief. Akida is an Islamic belief to uphold good will, avoid wrongdoing, and endure any difficulties that arise inevitably through faith.[399] The researcher emphasises herein that the verse about Luqman strongly suggests everyone has the duty to report misconduct, regardless of any complications that might arise in the process of blowing the whistle. Therefore, the researcher firmly argues that although part of Islamic law implies the obligatory nature of whistleblowing, it also emphasises that individuals need to act with caution. The caution is arguably reasonable given that although the act of whistle blowing may benefit society as a whole, the act of whistleblowing can also have negative consequences for the 'blower', such as expulsion from work, dismissal, reprimands, demotion and the possibility of threat affecting the whistleblowers individual and familial ties. The researcher therefore respectfully suggests that Islam imposes a duty of whistleblowing, in defining acts as halal.[400] The word *Halal*, refers to anything that is considered permissible and lawful under the Islamic religion. The act of whistleblowing with prudence supports transparency and accountability. Therefore, blowing the whistle in an Islamic context is not

[398] Qotob is an Islamic author, scholar and teacher. He is an important intellectual of the Egyptian Islamic Movement. Esposito, John. *The Oxford Dictionary of Islam.* London: Oxford University press. 2003, p.306.

[399]http://library.islamweb.net/emainpage/articles/134445/the-islamic-concept-of-faith [Accessed 29th August 2016].

[400] Al-Jallad, Nader. *The concepts of al-halal and al-haram in the Arab-Muslim culture: a translational and lexicographical study*. University of Jordan. 2008. Source: http://www. truebanking.com.pk/img/reports/Report-2.pdf. [Accessed 5th August 2016].

only halal (lawful) but also a form of duty depending upon the conditions. The counterpart to the concept of duty in Islamic jurisprudence is the notion of *wajeb* which means definite demands or an emphasis on doing something. In other words, *wajeb* has the same meaning of obligation.[401] This illustrates that whistleblowing in Islam is considered a duty that is lawful, but it is important to specify that a failure to perform whistleblowing against unethical conduct is not considered to be deserving of a penalty. In other words, the duty is regarded as discretionary, rather than a mandatory duty. Moreover, the cautious approach may in effect have the impact of dissuading a potential whistleblower from making a disclosure. The latter statement is supported in Islam by a hadith of Prophet Mohammad which specifies that if there are two options or choices, one must choose the easier of the two as long as it does not amount to a sin.[402] For example, if the whistleblower chooses to avoid the duty to whistle-blow in order to prevent harm or prosecution on him/her, then he/she will not be will not be deemed to have acted wrongly.

[401] Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence.* London: Islamic Text Society Cambridge. 1991, p.33.
[402] Ibid, p.269.

Although arguably non- Islamic countries may take a more proactive approach to whistleblowing, it is clear, as highlighted below in a brief overview of developments in the UK, that the more positive approach to whistleblowing is of fairly recent origin and not completely understood or implemented. Be that as it may, as outlined above, the UK provisions unlike provisions in Kuwait and sister Islamic states are grounded in employment law rather than criminal and constitutional codes established to combat corruption.

3.5.3 Evaluation of the Whistleblowing Process in the UK

In the past, particularly prior to 1999, the legislative situation created a culture of secrecy, whereby people felt obliged to remain quiet, even when they were aware of illegal practices happening in their workplaces. However, the disclosure of breaches of statutory duty to relevant regulatory bodies in the public interest is permitted. In other words, if there was any misconduct associated with the welfare of the public, employees may avoid being sued by raising a public interest defence. There were no official guidelines in this area of law, so there was inadequate protection for people wishing to disclose information safely.[403] Whistleblowers were therefore in danger of being victimised and were vulnerable to being the subject of detrimental employer reprisals such as disciplinary action, dismissal, and the failure to gain promotion or a pay rise. [404]

[403] Taylor and Emir, op. cit., p. 488.
[404] Vickers, op. cit., p. 152. Yeoh, op. cit., p.4.

Eventually, good faith whistleblowing to employers was protected by the Secretary of State in Statutory Instrument 1999 No. 1549. This supported the earlier Public Interest Disclosure Act of 1998, which stated that disclosures made to external bodies would no longer be considered a breach of duty or contract of employment.[405]

The primary aim of the Public Interest Disclosure Act 1998 (PIDA) is to encourage the resolution of concerns by implementing proper workplace procedures, and therefore has a more limited application to workers who decide to circumvent those procedures. The Act is not limited to cases where the disclosure relates to a wrongdoing or failure by the whistleblower's employer, but includes disclosures made about the wrongdoing of any person or organisation, including a detriment suffered as a result of a disclosure made about the activities of a previous employer. There are three conditions to be satisfied for the PIDA to apply, namely (1) there must be a qualifying disclosure, (2) the qualifying disclosure must be a protected disclosure and (3) the worker must have been dismissed or suffered a detriment as a consequence of the disclosure. The standard to be used when considering the above categories is a subjective one. For example, the worker does not have to prove the existence of any of the above state of affairs;

[405] Lewis, David. A Global Approach to Public Interest Disclosure: What Can We Learn from Existing Whistleblowing Legislation and Research? Op.cit, p. 78. However, the Public Interest Disclosure Act 1998 protects employees, workers, contractors, trainees, agency staff and home workers (etc.) from being subjected to any detriment, on the grounds that they have made a disclosure about their employer. Pritchett, op. cit., p.6.

he merely has to demonstrate that he had a reasonable belief that a set of circumstances. He does not have to prove that an offence was actually committed. Clearly, if he fails to show that he had grounds for his belief, it may well be that a tribunal would find this belief unreasonable. A disclosure will not be a qualifying disclosure if the worker commits an offence by making it (e.g. in breach of the Official Secrets Acts). However, the substance of the disclosure might relate to matters taking place anywhere in the world.[406]

The PIDA also sets out the types of disclosure that can give rise to protection, the circumstances in which such disclosures will be protected and the workers to whom any protection applies.[407] The Act sets out the circumstances under which whistleblowers, who are dismissed or suffer some other detriment can claim redress in the courts. In addition, it offers a measure of protection to whistleblowers who choose to take action when they become concerned about their employer's activities. Another benefit derived from the PIDA is that there is no qualifying period of employment; the law applies to all workers, not only to public employees. "The definition of worker in PIDA is wider than in other parts of the employment law, as it specifically includes agency workers and independent contractors. Excluded from the scope of the protection are those who work in the security services and the police".[408] Thus, the provisions of the

[406] Emir, op. cit., p. 287.
[407] Lewis, David. "Resolving Whistleblowing Disputes in the Public Interest: Is Tribunal Adjudication the Best that can be Offered?" 2013, op. cit., p. 56.
[408] Ibid.p.8.

PIDA extend to almost all workers.[409] More recent legislative reforms have also extended the definition of employer in the whistleblowing context. Section 19 of the Enterprise and Regulatory Reform Act[410] provides protection against detriment to the whistleblower when the source is a fellow employee and not the employer directly. Section 19 (1b)[411] provides that the action of a victimising employee can be treated as an act of the employer. Employers, therefore, have to be proactive in ensuring that whistleblowers are protected.

After reviewing the Public Interest Disclosure Act 1998 in the UK, it becomes clear that the Disclosure Act extends special protection for whistleblowers in specific circumstances. The Act offers protection to workers (not just to Crown employees, but also to independent contractors and third-party contractors) who disclose specific information using the procedures laid out in the Act. It also aims to provide protection rights to whistleblowers, in cases where the disclosure of information results in dismissal.[412] It is not a breach of duty for an employee to disclose misconduct by their employer, or other events that occurred during their employment, which need to be disclosed in the public interest. However, employees cannot disclose their employer's trade secrets, or misuse confidential information acquired during the course of their employment. The legislation

[409] Benny, Richard; Jefferson, Michael; and Sargeant, Malcolm. *Employment Law*. London: Oxford University Press. 2010, p. 52.
[410] Section 19 of the Enterprise and Regulatory Reform Act.
[411] Section 19 (1b) of the Enterprise and Regulatory Reform Act.
[412] Holland and Burnett, op. cit., pp.167.

provides some protection from victimisation that results from any disclosure of information in the public interest, although legal advice should be sought prior to disclosure. Thus, PIDA therefore provides wide-ranging, though perhaps not sufficiently comprehensive[413] protection to those who blow the whistle on the misdeeds of their employers.[414]

The whistleblowing system in the UK is a process based on some requirements. The first and foremost requirement is that the report be testified to in "good faith."[415] This is proposed to prevent revelations that are intended to torment or harass the employer in the absence of genuine justification. In this case, justice for the employer is prioritized, as alleged committed wrongdoing without clear and precise evidence could damage the employer's integrity and reputation.

The phrase "in good faith" is the key here.[416] It evolved when an employee made disclosures alleging misconduct by her senior manager to one of the bodies providing funds to her employer.[417] After an independent investigation, the

[413] See below where it is suggested that the concept of good faith is perhaps open to overly negative interpretations.
[414] Benny and et al., op. cit., p. 214. See David Lewis and Sargeant, op. cit. 2004, p. 28.
[415] In contract law, the implied covenant of good faith and fair dealing is a general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith, so as to not destroy the right of the other party or parties to receive the benefits of the contract. Emir, op.cit, p.289.
[416] Lewis, David. "Whistleblowers and the Law of Defamation: Time for Statutory Privilege?" *Web Journal of Current Legal Issues.* Issue 3. 2005, p. 30.
[417] Ibid. p.31.

senior manager was acquitted, and subsequent disciplinary proceedings against the employee concluded in her dismissal. She claimed the protection of section 43G. The tribunal held that, whilst she reasonably believed in the substantial truth about the disclosures, she had been motivated to make them through personal opposition to the manager, and, therefore, they were not made in good faith. The decision made by the tribunal was upheld by the EAT (Employment Appeal Tribunal). The Court of Appeal stated that it is incumbent on the employment tribunal to assess on a broad and common-sense basis whether, in any particular case, a disclosure fulfils all the requirements of section 43G (1).[418] The Court stated that "good faith" requires more than reasonable belief in the truth of the allegation made.[419] In this respect it can be suggested that English law has similar limitations to those outlined above in relation to Kuwait.[420]

It is clearly the responsibility of each tribunal to consider whether a disclosure is not in good faith, due to a concealed motive. The Court explained that a

[418] Article no. 43 G (1) of the (PIDA) Act 1998 stated that the authority shall take charge of the following functions and terms of reference: 43G—(l) "A qualifying disclosure is made in accordance with this section, if (a) the worker makes the disclosure in good faith, (b) he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true, (c) he does not make the disclosure for purposes of personal gain, (d) any of the conditions in subsection (2) is met, and (e) in all the circumstances of the case, it is reasonable for him to make the disclosure".

[419] However, Article 37 of Kuwait Law no. 24 of 2012 against corruption states the same information regarding requirements for blowing the whistle, in particular that the whistleblower has a serious indication justifying that his or her belief was true.

[420] See information above in this chapter.

tribunal should only find that the disclosure[421] was not made in good faith because of some hidden motive unrelated to the legal objectives.[422] In view of the fact that the tribunal had found personal rivalry was the employee's dominant motive for making the disclosures, they did not qualify for protection. In cases where antagonism is a motive, allegations become suspicious.

Robert Larmer[423] examined another key phrase raised in the legislation: "employee's reasonable belief," as considered by an employment tribunal. An employee made a disclosure about his employer's management style, alleging that the employer's actions amounted to criminal harassment and a breach of the implied duty of trust and confidence. The employment tribunal found the allegations to be not proven and relied on this finding to conclude that the employee had not made a qualifying disclosure. The EAT stated that the members of the tribunal had erred in departing from the statutory test, by asking themselves whether the factual allegations were correct. Instead, they should have asked whether the employee held a reasonable belief that what was disclosed showed a relevant failure. The EAT stated that reasonable belief must be determined based

[421] In deciding whether a disclosure was reasonable, regard will be made to matters including the identity of the person to whom the disclosure is made; the seriousness of the relevant wrongdoing; whether the relevant wrongdoing is continuing or likely to recur; whether the disclosure was in breach of a duty of confidentiality owed to any other person; any action the employer or another person to whom a previous disclosure was made took or might reasonably have taken; and whether the worker complied with an applicable whistleblowing policy. Carroll, op. cit., p.5.

[422] Upex and et al., *Employment Law*, 3rd Edition, London: Oxford University Press. 2009, p. 356. See also Cain, Brian. op. cit., p.20.

[423] Larmer, op. cit., p. 126.

on facts as understood by the employees themselves, not on what is later determined.[424] Larmer confirms that the concept of employee's belief is crucial and must be reasonable and supported by fact.

Additionally, it is very interesting to observe[425] that the reported cases on whistleblowing in the UK highlight how difficult it can be for a person to determine what will and what will not be a protected disclosure. It also underlines the fact that if an employer is unaware of a disclosure having been made, any case for unfair dismissal will also fail.[426] However, encouragingly, as the case below illustrates, one of the definite advantages of grounding whistleblowing protection in employment law is that the Court can determine that the burden of establishing the truth of competing claims can lie with the employer and not be the sole responsibility of the employee whistleblower. In the case of Fernandes v Netcom Consultants Ltd, Fernandes was the financial officer[427] at Netcom, and was dismissed for gross misconduct. It was discovered that the employee had only asked his superior to give him receipts for his expense account, as his superior had decided to add more personal expenses although the company was in financial difficulty. Fernandes insisted on warning his superior that his actions were contrary to the policy of the company. The employee was unfairly dismissed, as he was found to have made an internal disclosure in good faith to

[424] Upex and et al., op. cit., p. 356.
[425] Cain, Brain. op. cit., p.20.
[426] Emir, op. cit. p.289.
[427] ET2200060/00.

his employer (after a disciplinary hearing). The tribunal held that the reasons put forward by Netcom for Fernandes' dismissal were simply a cover up with no foundation. The Tribunal concluded, the real reason for his dismissal was that Netcom wished to cover up the misdeeds that had taken place in the organization affecting the company's funds. The tribunal stated where the reason for the dismissal claimed by the employer were not true and that the burden of proving the truth remained with the employer to show the true reason for the dismissal. Here Netcom could not show a good reason for dismissing Fernandes and consequently the dismissal was automatically judged unfair.

The case of Azmi v. ORBIS Charitable Trust ET 4 May 2000 (2200624/99) was decided on similar grounds. In this case, Ms. Azmi had recently joined the trust, which was a registered charity. Shortly after joining, she had raised concerns internally to her executive director about financial irregularities. She claimed that she had been automatically unfairly dismissed for making a qualifying disclosure within the scope of the PIDA 1998. However, Orbis stated the reason for her dismissal was Azmi's poor performance, as she was not satisfactorily meeting expectations. The Employment Tribunal found that the true reason for the dismissal was not lack of performance, but Ms. Azmi's act of revealing the financial irregularities to her employer, along with her persistent attempts to raise concerns about the running of the charity and breaches of UK charity law.

She was awarded compensation but not re-instated to her post whilst, perhaps unfairly, the Director of the trust was retained in his position.[428]

From the above discussion if a tribunal were to decide whether a disclosure is reasonable, it should consider to whom the disclosure was made (e.g. disclosure to a professional body or to the media); the seriousness of the matter; whether the issue is on-going or likely to be repeated; whether the admission of information violated the employer's duty of confidentiality owed to others; and whether the disclosure breached any of the internal procedures approved by the employer.[429]

Any disclosure must also comply with a set of conditions, which will vary according to who makes the disclosure. In this respect, the question of a whistleblowing tool relates to on whom can the whistle be blown? The law provides some basic guidance in this context. The disclosure can be made to one of the following persons:

- To the employer concerned, such as a senior manager.
- To a legal advisor: any disclosure to a legal advisor means the employee must simply hold a reasonable belief that his/her disclosure shows malpractice.
- To a Minister of the Crown,[430] where the worker's employer is appointed by a Minister (section 43E).

[428] Cain, Brian. op. cit., pp.20-22.
[429] Baker, Nigel, "Whistleblowing and the Law" *New Law Journal*. Issue 5. 30 June 2004, p.4.
[430] Smith and Thomas, op. cit., p. 174.

The Employment Rights Act 1996 designates whistleblowing procedures and gives workers legal protection if they make external disclosures in certain circumstances.[431]

The Employment Rights Act 1996 also protects those who blow the whistle on the misdeeds[432] of their employers, indicating that dismissal in breach of the Act's provisions constitutes unfair dismissal.[433]

If whistleblowers who disclose externally to a prescribed person, rather than internally disclosing to their employee, suffer unfair dismissal or discrimination, they will be protected if the whistleblower is not made his or her disclosure for personal gain or retaliation.[434]

Moreover, [435] it is the responsibility of the employment tribunal to decide, after an event, whether or not any disclosure was protected under the Act. Indeed, it can be very problematic to determine if a disclosure falls within the scope of PIDA. Therefore, caution is crucial in cases of whistleblowing. Aside from the ERA 1996 and PIDA 1998, the UK offers additional advantages to whistleblowers under the

[431] Lewis, David, "Is a Public Interest Test for Workplace Whistleblowing in Society's Interest?" op. cit., 2015, p. 8.

[432] Misdeeds mean an immoral or wicked deed, source: http://dictionary.reference.com /browse/misdeed [Accessed 6th July 2014].

[433] Benny and et al., op. cit., p.214.

[434] Emir,op.cit,p.289.

[435] See, Larmer, op. cit., p. 128.

Equality Act 2010.[436] Whistleblowers are expected to gain access to the Equality and Human Rights Commission (EHRC), and its resources.[437] This means that they need not rely on voluntary bodies and trade unions for assistance. As the EHRC has both investigative and enforcement powers, this might encourage potential whistleblowers to believe any disclosures in the public interest would be valued rather than looked upon as a cause of disgrace.[438]

According to Aston's commentary regarding the UK whistleblowing protection, in particular the PIDA, is not working as it should. This is because the aim of the whistleblowing system is to change human behaviour and this inevitably leads to a gap between the law and society's norms. In that light, whistleblowers are usually vulnerable to threats, harassment or persecution if they report serious misconduct in the workplace. For that reason, many organisations have set up support groups and formed legal defence funds to help whistleblowers. An example of such organisation in the UK is PCAW or (Public Concern at Work).[439] Despite the shortfalls of existing protection under English law it is clear from the above that there are significant advantages from locating the legislative protection within an employment law context rather than in broader Criminal or

[436] The Equality Act 2006 received Royal Assent on 16 February 2006. This Act established the new equality and human rights commission (E.H.R.C). Nairns, 2004, op. cit., pp. 27- 28.

[437] Source:http://whistleblowers.wordpress.com/2006/06/17/public-interest-disclosure-Actprotecting whistleblowers-UK [Accessed 4th October 2015].

[438] Smail, Alastair. "Where are we with whistleblowing?" *New Law Journal.* Issue 7022. 8 March. 2002, p.3.

[439] Public Concern at Work is a charitable organisation promoting accountability and good practice in the workplace. See: http://www.pcaw.co.uk/ [Accessed5th September 2016].

Constitutional Codes such in Kuwait. The Judicial system in France, like that of Kuwait, is a civil law system and therefore, as will be illustrated below, the protection provided for whistleblowers is not grounded in specific employment law provisions but in Public Law Codes. Indeed, until very recently, as outlined below, the protection provided was spread across a range of data protecting provisions with no less than five particular areas of concern.

3.5.4 Evaluation of the Whistleblowing process in France

Until very recently the legal provisions relating to whistleblowing in France consisted of five laws dating from 2007 to 2014. These five whistleblowing laws regarding the fight against corruption are as follows:[440]

1. French Law No. 1598 of 2007, 13 November 2007 on the fight against corruptions, Article L1161-1 of the Labour Code.

2. French Law No. 2011-2012 of 2011, 29 December 2011, known as (Bertrand Law) on strengthening the safety of medicines and health products, Article L5312-4-2 of the public health code.

[440]Source:https://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/WhistleblowersUpdate%20on%20Europe_20%2004%202015.pdf [Accessed 9th September 2016].

3. French Law No. 2013-316 of 2013, 16 of April 2013, known as (Bland in Law) on the independence of experience in the field of health and environment and the protection of whistleblowers, article L351-1.

4. French Law No. 2013-907 of 2013, 11 of October 2013 on the transparency of public life, Article 25.

5. French Law No. 2013-1117 of 2013, 6 of December 2013 on combating tax evasion and serious Economic and Financial Crime, Article L1132-3-3 of the CT, Article 6/A (Civil service).[441]

In France, employees are given immunity as long as disclosures made are associated with harassment, discrimination, health and safety, and risks to the environment. France's legal framework for whistleblowing schemes is based on

[441] The French citations are listed below:

- Loi du 13 novembre 2007 n° 1598 relative à la lutte contre la corruption (créant l'article L1161-1 du Code du travail (CT);
- Loi du 29 décembre 2011 n° 2011-2012 relative au renforcement de la sécurité du médicament et des produits de santé (loi Bertrand) (créant l'article L 5312-4-2 du Code de la santé publique (CSP) ;
- Loi du 16 avril 2013 n°2013-316 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alerte (loi Blandin) (créant l'article L 1351-1 du CSP;
- Loi du 11 octobre 2013 n°2013-907 relative à la transparence de la vie publique, article 25;
- Loi n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière (créant l'article L 1132-3-3 du CT et l'article 6 ter A (Fonction publique).

decision made by the French data protection authority (CNIL).[442] It is significant to note that the CNIL has the authority over the whistleblowing procedures in France.

It is clear from the academic literature that any protection provided for the whistleblower must fall within the type covered by the whistleblowing procedure, and information disclosed should be purposeful and objective.

Encouragingly, but surprisingly only as recently as 2018, more specific whistleblowing procedures have been enacted which specify more specific rules regarding employers' duties in regard to establishing more effective whistleblowing procedures. Indeed, it has been suggested that the law is in response to international criticism of France's perceived "hands-off attitude" toward anti-corruption enforcement.[443] The New legislation, known as the Sapin

[442] CNIL is the abbreviation in French for the 'Commission nationale de l'informatique et des libertés,' which is an administrative authority for ensuring data privacy.
Guyer, Thad and Peterson, Nikolas. The Current State of Whistleblower Law in Europe: A report by the government Available at:
https://whistleblower.org/sites/default/files/TheCurrentStateofWhistleblowerEurope.pdf [Accessed 8th December 2014].

[443] See Susrut A. CARPENTER, Patrick HANNON, George A. STAMBULIDIS, New French Anti-Corruption Law: Companies Doing Business in France Must Beware, 22 November 2016 (Available online: https://www.lexology.com/library/detail.aspx?g=bab97afd-83bb-40be-bdc7-39aaec08f797) [accessed 7th of June 2018].

II Act, applies to both the public and private sectors and specifies[444] that every company of at least 50 employees must have established a whistleblowing procedure specifying the way the whistleblower's information is dealt with, and employees must be informed of the procedure.

The new Act defines whistleblowers as individuals who report in good faith, a crime, an offence, a breach of an international commitment or a law or regulation, a threat or an important prejudice to the general interest that the wrongdoer became aware of. The protection does not therefore extend to corporate bodies. Moreover, the legislation specifies that the justification must be grounded in the general interest and makes no provision for the possibility of personal reward.

Acts of retribution directed at a whistleblower acting in good faith are prohibited and dismissed individuals can be reinstated. However, where employees abuse the procedure they can subsequently be subject to disciplinary procedures initiated by the employer. Be that as it may, the Act is an important step forward- prior to its enactment, as outlined above, the protection was confusingly provided for across a range of provisions and the consolidation is to be welcomed. However, it should be noted that the new statute does not cover all aspects of

[444] The provisions are to be found in the Act of 9 December 2016, the Ministerial Order of 19 April 2017 and the Data Protection Authority (*Commission Nationale de l'Information et des Libertés*) (CNIL) Regulation 2005-305 (modified in 2010 and 2014).

public employment[445] and does not extend to matters which are deemed to be state secrets. As others have suggested, the uncertainties relating to what may or may not be state secrets, could result in public employees remaining confused as to whether their freedom to disclose was protected or otherwise.[446]

It is important to note that abuse of the whistleblowing schemes may result in disciplinary action and judicial proceedings[447] against the whistleblower. However, if good faith were shown, even if the allegations are not subsequently substantiated, will mean the whistleblower is not subject to sanctions.

As indicated above, the protection is contingent on showing good faith, and as others have highlighted,[448] an employee may face a disciplinary sanction and even incur criminal liability when he or she reports a violation in bad faith or with malicious intent."[449]

[445] For instance, it does not cover disclosure of information which is of a medical nature, legally privileged or relates to intelligence or national security.

[446] See: Sophie Pélicier-Loevenbruck, Decrypting the New Whistleblower Law in France, 24 May 2017 (Available online: https://www.littler.com/publication-press/publication/decrypting-new-whistleblower-law-France [Accessed 7 June 2018].

[447] A judicial proceeding refers to a judgment based first within a business setting, and then in court. A proceeding in court is based on the research or direction of the court, which is expressed or implied. Auby, Jean-Marie; Auby, Jean-Bernard; Didier, Jean-Pierre; and Taillefait, Antony. *Droit de la fonction publique: Etat, Collectivités locales, Hôpitaux*, 5th Edition. Paris: Dalloz. 2005, p. 610.

[448] Ferrington, Amy; Barras, Joel S. and Smith, Michael D. *Whistleblower Protection Around the World* [Online]. 2015. Available at: http://www.employmentlawwatch.com/2015/02/articles/employment-france/whistleblower-protection-around-the-world [Accessed 13th June 2015].

[449] Ibid. p. 5.

Articles concerning whistleblowing in France should be read in association with European Union regulations. The EU regulations[450] provide a degree of protection to whistleblowers, by making it a criminal offense, to retaliate against any person, including meddling with that person's lawful employment, or livelihood, for providing truthful information to a law enforcement officer. The processing and the recording of anonymous complaints has raised privacy concerns with respect to the accused under the French Data Protection Act of January 6, 1978 (as amended), and the European Union Directive on Data Protection, Directive 95/46/EC of October 24, 1995.[451]

As can be seen, from the above, recent legislative reform in France has meant that arguably the French provisions are now, like the English provisions, better embedded in an employment context than the equivalent provisions in Kuwait. The scope of the protection, though not comprehensive, is also wider. Some important issues are, however, not addressed. The meaning of good faith in a particular context, for instance, is not clear and it may be that mixed motivation may not be protected given that the only recognised legitimate motivation is the 'general interest.'

[450]Additional note, most of the European employment law are derived from French laws. Hardy, Stephen and Butler, Mark. *European Employment laws- A comparative guide, 2nd Edition*. London: Spiramus Press. 2011, p. 91. See also Braibant and Stirn, op. cit., p. 29.

[451] See Chapus, Rene. op.cit, p. 204; Gustave,Peiser. *Droit Administrative General Mementos*. Paris: Dalloz. 2008, p. 198; Godfrin, Philippe and Degoffe, Michel. *Droit Administrative Des Biens, 8th Edition*. Paris: Sirey. 2006, p. 328.

3.6 Chapter Summary

This chapter explained the definition of a public employee in Kuwait, the UAE, Egypt, UK and France, but existing definitions, particularly in Kuwaiti law, are wide in scope and unclear.[452]

Various duties of an employee were also explored. The most contentious duty is the compliance to follow all employers' order. Employees carry the responsibility to obey all lawful and reasonable instructions from the employer. However, identifying what orders are deemed lawful and reasonable is problematic, even more so when non-compliance is viewed as an obstruction of the employer's business which is punishable by disciplinary action in France, as well as under Article 27 in Kuwait.

Equally problematic is the duty to maintain professional secrecy, imposed on employees under Article 25/5 of Kuwait Civil Service Law no. 15 of 1979. This duty to keep confidential information is in clash with the duty to whistleblow against corruption, established under Article 36 of the Whistleblowing Act no. 24 of 2012. Thus, the concept of whistleblowing and its procedures was particularly analysed. Whistleblowing is when a person, usually an employee, in a government agency or private enterprise, discloses information to the public or to those in authority of mismanagement, corruption, or other wrongdoing. As was the common theme in this chapter, whistleblowers are regarded as a powerful mechanism to call

[452] Khater, Sherif. op. cit., p. 10.

attention to genuine abuses of power by decision-makers in a business and in government. However, whistleblowers may often make accusations and their motives are not always pure. Their actions can disrupt the workplace and may cause serious harm to individuals who have been wrongly accused of misconduct. Therefore, rules and regulations should be transparent and fair to everyone without exception. Whistleblowing in the UK is organised under the PIDA 1998 and requires reports of wrongdoing to be made in good faith. Until recently, the whistleblowing provisions in France were found in a range of provisions but encouragingly recent consolidation has added clarity and widened the protection available, although questions remain as to the actual extent to which `secrets` can be made public and individual whistleblowers protected from the risk of detriment should they disclose. In comparison to its sister states of the UAE and Egypt, it can be argued that Kuwait has led the way in terms of reforms in that it was the first to provide statutory protection for whistleblowers who provide information in the public interest relating to corruption. The protection provided, however, is only partial and a number of uncertainties remain as to the scope of the legislative shield. The same uncertainty reflects the dichotomy which also exists in Islamic law which both consider it a duty for a person to testify against misdeeds or illegal actions, but Islam also advocates the avoidance of placing oneself in peril, which arguably causes difficult dilemmas for potential whistleblowers and a significant disincentive for those contemplating disclosure.

Possibly the major disincentive, however, is the harshness of the potential penalty for making a disclosure if deemed to be outside the criteria which provide for protection. The lack of more specific and employment focused guidelines on the meaning of good faith adds weight to the perception that whistleblowing should in essence be regarded as a highly exceptional act rather than considered good practice where there are genuine matters of concern.

Having studied the definition of public employee and the duty of whistleblowing in Kuwait, U.A.E, Egypt, France and UK, the next chapter focuses on disciplinary procedures undertaken in each of these countries in the light of principles of fairness found under the concept of natural justice.

Chapter 4
Compatibility of Natural Justice with Kuwait's Disciplinary Procedures

4.1 Introduction

In order to further the explanation of disciplinary procedures in Kuwait, and the concept of the Natural Justice presented in Chapter 1 (General Framework for the Current Thesis), this chapter analyses how far Kuwaiti disciplinary procedures reflect Natural Justice. Natural justice is defined as "*a legal philosophy used in some jurisdictions in the determination of just, or fair, processes in legal proceedings.*"[453] Where the construct is recognised and applied as a judicial tool the concept of natural justice, and its principles, can be applied any time by a tribunal, a hearing committee, or a panel taking disciplinary decisions, irrespective of which rules apply. These principles have previously been applied by courts during administrative cases.[454] These principles are also based on fair play or awarding equitable opportunities to all those involved in the tribunal. These principles ensure that each employee is given a fair opportunity to present his/her case, and any decisions must be made in an unbiased manner.

Herein, the researcher examines and explains the following:

[453] Sarshar, Mubashshir. 2008. *Natural Justice and its Applications in Administrative Law*. Available at: http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=mubashshir. [Accessed 1st April 2014].

[454] University of Waterloo. *Principles of Natural Justice/ Faculty Association*. Available at: http://uwaterloo.ca/faculty-association/policies-agreements/principles-natural-justice. [Accessed 1st April 2014].

- the extent to which existing disciplinary procedures relating to public employees in Kuwait conform to both western and Islamic considerations of Natural Justice;
- the extent to which public employees and other key stakeholders think that existing provisions, relating to discipline in Kuwait, are known and understood fair and effective; and
- the need for constitutional and institutional reform in Kuwait that encompasses establishment of a separate specialist judicial administrative tribunal to hear disciplinary issues.

The public service domain requires specialist systems and procedures, to maintain a high quality of service and the well-being of employees. Such disciplinary procedures are applicable at different levels in different countries. As discussed in Chapter 3, some nations attach special importance to disciplinary provisions and embody them in their constitutions.[455] The effectiveness of any public service relates directly to, and is affected by, the efficiency of the people working in that service. In the public service sector, disciplinary systems need to be maintained and improved, to guarantee good employee performance, and to contribute to the advancement of society.[456] In this context, "*the disciplinary authority is a power*

[455] Some countries outline disciplinary procedures for employees in their constitutions. For example, in Egypt, the Constitution for the year 1971 in Article 12 stated that "the public jobs are the right for the citizen, and the state will protect them, and nobody can dismiss them unless through the disciplinary ways." See Abdelhadi, Maher. *Legitimacy of the Disciplinary Procedure.* Egypt: Dar Al-Nahda. 2005, p. 87.

[456] Nairns, 2004, op. cit., p.196.

vested on the authority to impose the rules and regulations on the public employees."[457] However, this power may not be abused or misused for improper purposes to one's benefit, or exert excessive powers for other reasons, simply because the person was given that authority.

Different disciplinary systems, such as Quasi-Judicial and Judicial systems are designed to ensure adherence to explicit or implicit obligations and prohibitions.[458] The latter part of this Chapter covers these systems in detail, concentrating on how disciplinary procedures relate to Islamic considerations of Natural Justice. It also explores the tendency to establish special obligations for public employees in Kuwait, the UAE, Egypt, the UK and France.

In connection with this, there is a direct link between the workability and effectiveness of any penalty, and the authority competent to impose it. Although differing countries implement various administrative practices, three systems, namely Administrative, Quasi –Judicial, and Judicial systems are commonly employed to limit and specify the authority to impose a penalty or disciplinary action. These systems and their impact on considerations of fairness, are discussed below.

[457] Al-Tahrawi, op. cit., p.13.
[458] Ibid. p.25.

4.2 Disciplinary Systems

As stated above, three systems are relied on to impose discipline: Administrative, Quasi-Judicial, and Judicial system. In some cases, legislation can specify the adoption of a single system. Often a mixture of systems is selected, for example, by assigning the imposition of light penalties to the administrative authority, and other penalties to a Quasi-Judicial or Judicial body.[459] Adaptability permitting the selection of either one of these disciplinary systems, or a mixture of all, can provide stability and fairness. These systems are described below, and their particularities evaluated in the context of Kuwait.

4.2.1 Administrative System

Administrative systems are essentially closed insider provisions established and overseen by the administrative executive, sometimes using a specially appointed appeal board, which are set up to determine which acts violate the responsibilities of the administration and issue the appropriate penalties.[460]

The administrative system was adopted under Kuwait's administrative law.[461] However, as outlined above, mixed systems also exist, as is illustrated by the arrangements found in the UAE[462] which provides for the three possibilities

[459] Bursli, op. cit., p. 32.

[460] Hammoud, Zahwa. "Discipline in Civil Service," Ph.D. Thesis (Arabic). Alexandria, Alexandrian University. 1984, p. 235. On the other hand, the Kuwait Supreme court said the competent authority for discipline is to assess the seriousness of administrative offences and to impose a suitable penalty.

[461] Al-Harbi, Abdulatif bin Shadeed. *Discipline Guarantees in the Public Service.*Egypt: Dar Al-Nahda. 2006, p. 105.

[462] Al-Kaisi op. cit., p. 7.

within its framework for disciplinary procedures. Three good reasons, as outlined below can be given for adopting a mixed system approach.

1. Administrative authority alone is responsible for the proper functioning of government. Therefore, it must determine the means by which it can achieve this objective. It must have the disciplinary powers to enable it to intervene, and act appropriately when handling administrative violations affecting government utilities.[463]
2. The Administrative authority is in a suitable position to establish the context in which the employee performs his/her official duties. Therefore, it is also able to determine the gravity of the offence and its impact on the effective running of public services, so that an appropriate penalty can be imposed.[464] Administrative conventions, such as the circumstances of work, the work-based culture of the particular organisation, and rank in the administrative hierarchy, should also be considered.
3. The major objective of disciplinary action is to understand the circumstances where a violation could be committed, and to overcome shortcomings and deficiencies in the administrative system.[465]

[463] Farraj, op. cit. p. 224.

[464] Shaheen, Makawiri Mohammad. *Disciplinary Accountability.* Egypt: Alam Al-Kutoub. 2003, p. 95.

[465] Kuwait does not have a Quasi-Judicial system, there is a deficiency of 'soft law'. See: Al-Hullo, 2008, op. cit., p. 270.

4.2.2 Kuwait and the Administrative System

The discipline procedures that apply to public employees in Kuwait are primarily provided for under an Administrative system.[466] The responsibility for imposing disciplinary penalties has been assigned to the administrative authority, as represented by the Undersecretary.[467] The lack of external scrutiny clearly adds to the risk of closed systems being characterised by poor and possible abusive practice and regrettably, there is evidence, to suggest that Kuwaiti arrangements too frequently fall short of good practice. Higher ranking officials make biased and unfair decisions, and abuse their power, by reassigning or punishing employees unfairly. In case number 3300/2012, for example, the Appeal Court of Kuwait held there had been an abuse of power- a case where apparently there had been a transfer of an employee from one administrative job to another department which did not fit with the employee's qualification and legal experience. The Court concluded that it had been arranged simply to offend and punish the employee. The judgment denotes that the administration abused its power.[468] As

[466] Al-Mokateh and Al-Faresi, op. cit., p. 287.

[467] The administrative authority sometimes misuses its power against the public employee, for example, "امتناع الجهة الادارية عن اتخاذ قرار كان من الواجب عليها اتخاذه سواء بالرفض أو الايجاب وفقا للقواعد واللوائح جواز الطعن عليه بالالغاء" this decision as translated into English states that "the administration failed to make a decision according to the rules and regulations". See Case Number 432 of 2005, Administrative case, session 19/12/2006, Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009, p. 43.

[468] Case number 3300/2012 administrative case, issued on 26/1/2015, Kuwait appeal court (Not published).

suggested in Chapter 3,[469] if corruption was widely defined to include broader issues other than financial abuse, such abuse could conceivably fall within the ambit of existing whistleblower employment protection provisions but in the absence of a broad definition the issue are rightly properly considered with reference to considerations of fairness and natural justice. The Court decision clearly held that the conduct breached principles of fairness, but the facts also highlight the need to consider the extent to which existing provisions relating to discipline of public employees are known, understood, fair, and effective?

This question can be answered as follows:

1. From the outset, the employer is expected to create a legal written guidebook to assist public employees, explaining everything to them, including their duties, rights and disciplinary procedures, as well as the effectiveness of the provisions determining their performance.
2. The administration (government) is expected to introduce disciplinary procedures in Kuwait as a corrective function, to help public employees improve their attitudes, thereby avoiding the impulse to impose multiple sanctions on him or her.
3. The administration (government) should be aware of the fairness of any disciplinary procedures, and not misuse its power against public employees.

[469] See at Chapter 3, p. 149.

After explanations concerning the disciplinary actions in Kuwait, it is necessary to briefly address the grievance procedures in Kuwait, or the process to which an employee can make a grievance against the penalty that has been imposed upon them. Article 66 of Kuwait Civil Law System no. 15 of 1979 that stipulates:

> Employees occupying technical posts may make grievance to the Minister against the decision of dismissal from the service as a disciplinary sanction. Employees working in clerical posts may also make grievance to the Civil Service Council against the same penalty. In all cases, the grievance must be submitted within thirty days of the date of notification from the decision of dismissal, and the decision made regarding the grievance is final.[470]

Accordingly, in cases of penalty or dismissal of a public employee from service, regardless of the rank of the employee, they have the right to submit

[470] Article 66 for Kuwait Civil Service System no. 15 of the year 1979, Kuwait Civil Service Law booklet, op. cit., p. 299.

a grievance to contest their dismissal from the service. Any grievance[471] must be lodged within 30 days of the date when the employee has been informed of the dismissal decision. After the final decision from the Civil Service Council regarding dismissal, the employee has the right to bring a case against the administration within 60 days. The employee must bring the appeal within this time limit because according to Article 7 under Law no. 20 of 1981 (concerning the resolution of administrative disputes), the Administrative Court in Kuwait will not accept the public employee's case after 60 days.

4.2.3 Quasi – Judicial System

The reason for terming this a Quasi-Judicial system is that a Judge must preside over the board of discipline or be a member thereof.[472] The authority of the board of discipline to control the actions of the administrative authority, gives it a

[471] For more information regarding grievance procedures in Kuwait and other countries: UAE, Egypt, and France, see Bursli, op. cit., pp. 92-103. In addition, in relation to Kuwait it covers grievance procedures, as the court said that the deadline for grievances is sixty days. Case Number 253 of 2000. Administrative case, session 19/3/2001 Journal of Justice and Law, Kuwait Supreme Court, Ministry of Justice technical office, periodical journal issued by the technical office. 1st of January 2001- 31st of May 2001. Volume 1/ Issue 29. April 2004, pp. 172-176. The case in Arabic means [ميعاد الطعن في القرارات الادارية ستون يوما ينقطع هذا الميعاد بالتظلم الاداري اللازم حصوله قبل رفع دعوى الالغاء والتربص بفوات الميعاد المقرر للبت فيه مضي تلك المدة دون رد بمثابة رفض التظلم] Moreover, the court held that this case stated any grievance should be submitted against the administration within 60 days. Al-Tabak op. cit. pp. 257-259; Al-Wakeel, Mohammad Ibrahim. *La Constitution Francaise.* Egypt: Al-Nahda Al-Arabia. 2008, p. 94; Kalifa, Abdulaziz. *Guarantees for Discipline.* Alexandria: Monshaat Al-Maaref. 2008, p. 90; Judo, Jihan Mohammad. *Administrative Procedures for Appeal and Administrative Cases- A comparative study*. Egypt: Dar Al-Kutoub. 2009, p. 85; On the other hand, in the case of Egyptian law, the period is 60 days, which is the same as that for grievances in Kuwait. See Al-Tobtobaee, op. cit., p. 347.

[472] Karam, op. cit., p. 129.

judicial character. The system is also administrative in function, because the authority continues to perform the role of imposing penalties on offending employees. However, some amendments have been introduced to the administrative system,[473] with the aim of providing fundamental guarantees to employees. Therefore, the disciplinary authority under the Quasi-Judicial system is equidistant from each of the administrative influences, which provides employees with a degree of reassurance in respect to employment security. It is also able to prevent the tyranny of deviation of administrative power.[474]

The amendments to date have been introduced to provide a degree of externality or neutrality in relation to the process of decision making in the context of employment protection and more effective personnel management as can be seen from the following examples;

1. alongside the administration, the legislator may institute consultative body (Board of Discipline), usually comprised of administrative elements, but with an independent element. Its opinion should be taken into account before the imposition of any penalty; and
2. a division of disciplinary penalties is in place, in which the imposition of light penalties is assigned to the administrative authority, and the more serious cases are assigned to a board of discipline.[475]

[473] See information immediately below in this chapter.
[474] Shaheen, op. cit., p. 95.
[475] Al-Deen, Bilal. op. cit., p. 212.

A number of justifications for adopting a quasi-judicial system can be suggested such as the following:

1. They provide enhanced opportunities for consideration of issues relating to employment protection rather than simply focusing on issues of punishment. In addition, the fact that a new and novel panel reviews the issues provides opportunities for an objective assessment which is not tainted by the prior and possible subjective convictions of the Administrative authority.[476] That is to say, the providing of a judicial and objective viewpoint of the disciplinary action and curbing the subjectivity of the Administrative authority;
2. It also adds a degree of institutional neutrality by separating the accusing authority from the authority delivering judgment and organising the intervention of consultative bodies, so that they give their opinion prior to the issuance of a judgment by an administrative authority; and
3. Assuring balance in Kuwait between the public interest and the interest of the individuals represented, with regard to the protection of public rights

[476] A Quasi-Judicial system gives greater protection and guarantee for employees, than Administrative authority. Al-Harbi, op. cit., p.108. At the same time, the researcher believes that the Quasi-Judicial system will provide some limits on the abuse of power of the administration over employees. Detection of administrative abuse is both complex and difficult, not only in terms of judicial supervision but also in relation to proof since the requirements are linked to the loosely defined legal concept of public interest. For further reading see Al-Bourini, Omar Abdulrahman, "Abuse of power: it's Nature and Basis", *Journal of Law*, Kuwait University, December 2007, p. 17.

and freedoms through adherence by the administration to the principle of legality, without exceeding the limits defined by the legislator.[477]

4.2.4 Judicial System

In this system, there is a complete division between the Administrative authority which filed the disciplinary case, and the competent judicial authorities that would determine the case. The Judicial authority independently evaluates the behaviour of employees and imposes appropriate penalties.[478] The judgment delivered by the judicial authority binds the Administrative authority. The role of Administrative authority is limited to revoke a charge against the offending employee. Moreover, "the law maker may also institute a special body, named the administrative prosecution, to level the disciplinary charge, and conduct the prosecution before the civilian courts."[479]

The reason for the separation of prosecution and trial authorities is to secure more guarantees for the accused and ensure the neutrality of the judge and the members of the board of discipline.[480] Meanwhile, this system establishes many restrictions to control the rights of the Administrative authority to exercise disciplinary powers. However, the adoption of the Judicial System does not mean that all employment issues need to be dealt with in a judicial manner. The assignment of disciplinary powers to a judicial authority is intended to achieve a better guarantee

[477] Bursli, op. cit., pp. 25-27. Karam, op. cit., p. 137.
[478] Al-Ajarma, op. cit., p. 95.
[479] Shaheen, op. cit., p. 96.
[480] Hamoud, op. cit., pp.236-237.

of security for the employee. In fact, the Administrative authority continues to exercise certain powers, such as the suspension of the employee's pending investigation, and the imposition of some penalties. There may also be a right of appeal against the judgments of the disciplinary authority, citing illegality. Such judicial intervention is mainly intended to protect the employee and to reduce the burden on the Administrative authority.[481]

Countries that possess the characteristics of an administrative disciplinary system, such as Egypt, adopt a Judicial System. The Supreme Administration Court in Egypt has issued many judgments determining that discipline should be a judicial decision, and that the court has the jurisdiction to review any decisions.[482]As a result, the Judicial System was adopted in Egypt as an organisation when the disciplinary council was instituted for the first time, as per no. 117 in 1958.[483]

As the content of the above paragraphs suggests, institutional arrangements for the delivery of discipline proceedings can have a positive impact on the delivery of fairness. However, each component of the judicial system has to deal with competing pressures and so it is necessary to consider the concept of fairness in an abstract and theoretical context. Investigative processes can both facilitate fairness and the perception of fairness and central to any discourse in relation to

[481] Al-Afifi, Mustafa, 1976, op. cit., p 220.

[482]Case No. 720 of 1995, Supreme Administrative Court in Egypt, Session 26/10/1996, Anthology of Administrative Principles, section 1, p, 627. Technical office, Egypt, 2004.

[483] Besyuni, Hassan Alsayid. *Rules for Administrative Dispute*. Egypt: Alam Al- Kutoub. 2008, p.63.

both administrative and judicial systems is the concept of natural justice which is discussed below.

4.3 The Concept of Natural Justice

In the subsequent sections, the researcher will explore some significant points about the principle of natural justice, and these sections which all relate to natural justice are as follows:

- 4.3.1 Comments relating to the Theory of Natural Justice
- 4.3.2 Disciplinary Procedures in Kuwait and Natural Justice in Islam
- 4.3.3 Natural Justice in Islam
- 4.3.4 Natural Justice in Western Thought

As previously discussed in section 1.1 Chapter 1,[484] that natural justice is based on principles requiring a foundation of clear and stable laws, efficient political and judicial systems, and the protection of fundamental human rights, as well as equal access to justice, political processes, and government accountability. The researcher has sought to evaluate the importance and applicability of natural justice in the public employment sector in the Arab states, and particularly in Kuwait. Additionally, judicial process and institutional issues were found to have an impact on the delivery of natural justice, and in this context particular consideration needs to be given to the current absence of a separate

[484] Quran is the backbone of Islamic Law. See Dutton, Yasin. *The Origins of Islamic Law: The Qur'an, the Muwaṭṭa' and Madinan 'Amal*. London: Routledge Curzon. 2002, p.157.

Administrative Court in Kuwait.[485] Issues relating to the feasibility and potential impact of such a Court will be considered in further detail. Disciplinary procedures can have a profound impact on the lives of individuals, and this chapter will therefore review the qualities of existing provisions with a view to promoting fair effective participation of employees in the process and ensuring that future disciplinary decisions are not influenced by arbitrary considerations and tainted processes. As the often-quoted legal quotation suggests, 'Justice should not only be done it should be seen to be done.' This is not a term in law which should be taken lightly. Put simply, the public needs to see justice done or they will feel that the system is failing them. The whole validity of the justice system is based on the public's consent to justice served.[486] This chapter will therefore also examine what can be done to ensure that the processes involved are transparent, accessible, understood, and efficient. To this end it will be argued that reforms aimed at achieving such indicators of good practice are realistic given that, as will be outlined below, Sharia law can respond to social changes although believed to be founded on eternal principles. It therefore can accommodate change in relation to changed circumstances and includes principles which mirror key concepts of natural justice. The same can be argued

[485] The point here is Kuwait still does not have independent separated court (Council of State) for administrative issues.

[486] See Lord Hewart in R -v- Sussex Justices, Ex parte McCarthy ([1924] [1923] All ER Rep 233) 192 .

in relation to the concept of natural justice. Adopting a natural justice perspective, could therefore, as will be argued in this chapter, provide some safeguards against the abuse and negative perceptions sometimes associated with administrative conduct and provide a conceptual framework for future reform.

4.3.1 Comments relating to the Theory of Natural Justice

This section further illuminates the importance and the parameters of the theory of natural justice as an instrument by which courts are able to control the actions of public authorities.

Natural justice can be understood as a procedure by which courts address the issue of bias, in order to pursue the defendant's right to a fair hearing. Thus, the purpose of natural justice is to impose a code of fair and reasonable procedures when it comes to decision-making.[487]

Justice in Kuwait is not solely practiced according to Islamic law (Sharia), which is based on the Holy Quran and the teachings of Prophet Mohammad. Kuwait also uses manmade laws, known as Kanun (i.e. non-religious law).[488] It is argued that the difference between natural justice and non-religious law, is that natural

[487] Wade, William and Forsyth, Christopher. *Administrative Law*, 10th Edition. London: Oxford University Press. 2009, p. 371.

[488] It was recognised that the Islamic Law (Sharia), did not cover everything or provide answers to all the problems that are fundamental and necessary for human beings. The Kanun (non-religious laws) were therefore implemented by the Sharia courts alongside Islamic Law, thus drawing the secular law code into the realm of society. Black, Antony. *The History of Islamic Political Thought: From the Prophet to the Present*, 1st Edition. Scotland: Edinburgh University Press. 2001, p. 212.

justice proceeds directly from Islamic law (Sharia), and as coming from God, it is stable and definite, while non-religious law, which originates from human beings is not. This argument is supported by Jurist Ahmad bin Muhammad bin Hanbal,[489] who states that justice must always support the public interest. In Islamic law, public interest is defined by the preservation of universal principles, which is necessary for the security of human welfare. These universal needs are as follows:

1. preservation of religion;
2. preservation of lineage;
3. preservation of life;
4. preservation of property; and
5. preservation of wealth.[490]

Since Kanun (i.e. man-made laws) vary according to time and place, its laws and procedures should only be altered in accordance with the principles of Sharia law.[491]

[489] Ahmad bin Muhammad bin Hanbal was an important scholar and theologian of Islamic jurisprudence.

[490] Source: http://www.islamreligion.com/articles/253/viewall[Accessed 26 June 2014].

[491] Al-Nashme, Ajil; Nuh, Assayed; Al-Hajiri, Mubarak; Al-Munayfi, Ahmad; and Al-Deen, Kholoud. *Islamic studies.* Kuwait: Ministry of Education. 2012, p. 135.

Ibn Taymiyyah Sheikh Al-Islam[492] states that when Kanun contradicts Sharia, it is Sharia that must be followed rather than Kanun. For example, a Sultan (the leader) should avoid giving orders that contravene Sharia and should follow and respect Sharia law to avoid clashes with Islamic principles.[493] Meanwhile, Islamic states are able to set new legislation to promote the public interest,[494] although with the proviso that such legislation does not contradict Islamic law.

Sharia law, however, embodies distinctive features. The principle of Sharia suggests that where there is no stated, or definite law specified under the Holy Quran, the Hadeeth, or the teachings of Prophet Mohammad, then judges should use customary law (Urf). Customary law originates in Islamic history and enables judges[495] to make orders to resolve disputes between parties. Here, the researcher will outline the theory of natural justice in Islam, which describes how God ordered Prophet Mohammad to enact justice between the people, particularly

[492] Ibn Taymiyya was one of the most incisive Muslim religious scholars of his time. He was an activist and adopted a conservative stance on Islamic law, and strict adherence to the Qur'an and legitimate teachings of the Prophet Muhammad. He believed that these two sources: the Quran and Hadeeth (Teachings of Prophet Mohammad) both contain all religious and spiritual guidance. Source: http://religion.answers.com/islam/ibn-taymiyyah-bio [Accessed 14 August 2014].

[493] Black, Antony. op. cit., p. 213.

[494] Ibid, p. 212.

[495] Notice: The judge in Kuwait uses Sharia law, which is the Islamic law for cases related to divorce and marriage under Law no. 51 of 1984 with amendments. Moreover, the researcher insists that it is not necessary to go deeper to explore divorce, and customary law, because these topics stray away from the main issues considered by the present study. However, details about Islamic systems and customary law are available
at: http://islamicstudies.islammessage.com/ResearchPaper.aspx?aid=676 [Accessed 26 June 2014].

among Muslims and non-Muslims. The chronicle in which God instructed Prophet Mohammad to use the concept of natural justice is as follows:

There was a Jewish man and a Muslim man. The Muslim's name was Tuma bin Aberuq, and he went to the Jewish man and asked him to keep a sword in his care. Dishonest witnesses gave evidence to the effect that the Jewish man had stolen the sword and Prophet Mohammad, acting as a judge in the case, initially decided the claim against the Jewish man. However, as a result of divine intervention he was enlightened and persuaded to overturn his decision and decide in favour of the Jewish man and thus finding the Muslim guilty of dishonesty.

The above account which can be read as both a factual and allegorical guide to just practice underlines that there should be no discrimination based on religion when making legal decisions, and that there should be equality in all instances.[496]

Another example for the theory of justice in Islam is a story related to the British Rule in India. There was a dispute about the ownership of land. It was a serious dispute between two antagonistic religious communities and there was a significant possibility that it could lead to a social uprising. Ascertaining the truth was difficult as both groups consistently gave conflicting evidence. As a result, the judge in the case, requested a trusted witness from both communities. The Muslim Community nominated their Imam, religious leader, an individual known to be a pious man, to represent them. Naturally there was community pressure on

[496] Al-Nashme and et al., op. cit., p. 163.

the Imam to provide testimony that would support his Muslim community. However, his testimony was short as he merely indicated that the claim of the Hindu community was well grounded and that conversely the claim of the Muslim community was without sufficient justification. As in the other example, the story has a strong message namely that the Muslim leader did not betray his community. The account affirms the fundamental principle that truth should always prevail, and justice should take precedence over self- interest. [497]

In conclusion, under Islamic law, God commands all Muslims (including judges) to make just commands that extend equitable treatment to all.[498] (For further details concerning the theory of Natural Justice in Islam, see Chapter 4 section 4.3.3).

Thus, the general aims of Kanun and Sharia law are identical, with both aiming to (1) provide fairness for the general population; (2) maintain public order; and (3) to prevent (as well as to punish) crime.

The above principles are also to be found in Judeo Christian and secular Western jurisprudence. Professor John Rawls,[499] for instance, suggests that, "it seems natural to think of justice as distinct from the various conceptions of justice, and as being specified by the role, which different sets of principles, and different

[497] Baig, Khalid, "What Does Islam Teach about Justice? Neither love nor hatred can be allowed to compromise justice,"Online source:www.islamreligion.com [Accessed 11th December 2016].

[498] Al-Nashme and et al., op. cit., p. 130.

[499] Rawls, John. *A Theory of Justice.* USA: Harvard University Press. 2005, p. 30.

conceptions, have in common."[500] Thus even those holding different conceptions of justice can agree that institutions are just when they make no arbitrary distinctions between individuals' basic rights and duties, and when their rules determine an appropriate balance between competing claims, to the advantage of an individual's social life. In the absence of any agreement as to what is just and unjust, it is clearly difficult for individuals to coordinate their plans efficiently, in order to ensure that mutually beneficial arrangements are maintained.[501]

It is here argued that the concept of natural justice in essence provides a framework to promote fairness which facilitates justice through the establishment of a balance between maintaining discipline and whistleblowing. Moreover, the researcher wishes to highlight the nature of the arguments concerning natural justice, drawing on the Holy Quran's direct order to ensure justice in all forms of dispute.

In Arabic, as stated in the Quran:

[يأيها الذين أمنوا كونوا قوامين لله شهداء بالقسط ولا يجرمنكم شنئان قوم على ألا تعدلوا أعدلوا هو أقرب للتقوى واتقوا الله إن الله خبير بما تعملون] .

This translates into English as:

O you who have believed, be persistently standing firm for Allah (God), witnesses in justice, and do not let the hatred of a people prevent you from

[500] Ibid, p.4.

[501] Ibid, pp. 5 and 7.

being just. Be just; that is nearer to righteousness. And fear Allah (God); indeed, Allah (God) is acquainted with what you do.[502]

Furthermore, the researcher wishes to focus on the relationship between administrative law and natural justice. From a broad viewpoint, natural justice signifies the generally accepted view of what is right and wrong, but its legal sense equates to fairness or the rule of fair play. In administrative law, the meaning of natural justice is an idea that contains two primary acts for an unbiased method which: (1) "a person may not be a judge of his or her own cause" and (2) "a person must be heard properly for his or her own defence."

The breadth and scope of the concept is wide. The rules of natural justice stem from the principle of ultra vires. So, a contravention of natural justice is then classified as a wrong procedure, and potentially an abuse of power.[503] Its application and relevance to public employment is therefore obvious given that it could extend to both contractual and administrative powers. Thus, in the context of disciplinary procedures it can be applied to both the process and the substantive considerations. Common principles of fairness should apply but as is illustrated below in relation to Kuwait, often different procedures are applied which potentially cross the ultra vires divide.

[502] The Holy Quran. Surah Al-Maidah, Verse 8.

[503] Wade, William and Forsyth, Christopher. op. cit., p. 372.

4.3.2 Disciplinary Procedures in Kuwait and Natural Justice in Islam

The Kuwait Civil Service law[504] indicates that administrative violations committed by employees occupying technical or assistant posts are under the responsibility of the Undersecretary,[505] and therefore the penalties that may be imposed upon the employee is to be decided by the Undersecretary.[506] However, the Minister may amend this by increasing, reducing or cancelling a penalty, or leaving a case on file. In the case of administrative violations committed by high-ranking officials, these are under the responsibility of the Civil Service Council. This council is comprised of independent members and there are no judges on this council.[507]

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[504] Kuwait Civil Service Law no. 15 of 1979.

[505] Article 56 of Kuwait Civil Service System.

[506] The Undersecretary of the Ministry of Commerce and Industry has authority to refer an employee to the Disciplinary Board. This was held in Case Number 282 of 1988, Administrative Case, session 1/5/1989. Council of Ministers, Legal Advice and Legislation, p. 792. The Arabic translation of this case is [سلطة وكيل وزارة التجارة والصناعة في الاحالة للمجلس التأديبي فهو يملك الاحالة]. Article 56 of the Kuwait civil service system no. 15 of 1979 considers that technical employees or assistants are normal employees who have not been promoted to Head of Section or Managers. Also, Case Number 238 of 2001 of the Kuwait court held that a manager has no permission or power of authority to refer an employee for investigation unless he has competence from the Undersecretary or Minister to do so. The translation of that case in Arabic is [خلو الاوراق مما يفيد تفويض مدير مستشفى الصباح أو نائبة في اختصاص احالة الموظفين شاغلي مجموعة الوظائف العامة الى التحقيق اثره بطلان القرار لعدم الاختصاص وبطلان الاجراءات التي صدرت بناء عليه بما فيه قرار المجازاة] Case Number 238 of 2001, Administrative Case, Session 29/04/2002, Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005, p. 192.

[507] Note: High-ranking employees include top levels leaders such as Undersecretary and undersectary assistant. Article 12/1 determined the high-rank employees from the Kuwait Civil Service No. 15 of 1979. The disciplining of those employees is governed under Article 62 from the System of Civil Service Council. The Minister, subsequently, will have to direct high-ranking employees to the civil service council, as stated under Article 63 of the Civil Service Law. See Al-Mokateh and Al-Faresi, op. cit., p. 289; and Al-Enezi, 2007, op. cit., p. 262.

According to Article 28 of the Civil Service Law No. 15 of 1979, the disciplinary penalties that may be imposed on an employee are as follows:

1. Warning: This sanction, also known as rebuke, reproof or admonition, is the lightest and it is the first-degree sanction.[508] The applicability of this penalty depends on the grade-level of the public employee;
2. Deduction from salary: Salary deductions should not exceed 15 days on each occasion, and no more than 90 days within twelve months;
3. Demotion of salary: For a period not exceeding three months;
4. Demotion to the next grade down: The Judgment regarding this penalty should state the seniority, and salary of the employee concerned; and
5. Dismissal from the service:[509] Dismissal of an employee from work is a serious decision and may require substantial compensation.

Here the researcher will discuss two issues. The first issue is about the scope of disciplinary penalties which would be exemplified by important Kuwaiti case

[508] Al-Mokateh and Al-Faresi, op. cit., p. 294.

[509] Farraj, op. cit., p. 390. Moreover, Al-Tobtobaee, op. cit., p. 448; Al-Mokateh, op. cit., p. 297; Behbahani, Salwa Faisal. *Employment System under Kuwait Civil Service*. Kuwait, Kuwait University Press. 2012, p. 93. In addition, the Kuwait court held that the implications of the judgment to cancel the dismissal of an employee from the service require that he or she is returned to work. Case Number 240 of 1988, Administrative Case, Session 10/2/1989,Council of Ministers, 2000, p. 766. The Arabic translation is [إن الاثار المترتبة على الحكم الصادر بالغاء فصل الموظف من الخدمة أن يجعل الرابطة الوظيفية وكأنها لم تنفصم بل تعتبر قائمة ويعود للموظف كافة حقوقه بأثر رجعي من حيث أقدميته وترقياته وعلاواته وذلك منذ صدور قرار إنهاء الخدمة حتى إعادته للعمل وذلك كنتيجة حتمية وأثر لازم من أثار حكم الالغاء إذ الغاء قرار الفصل يترتب عليه الغاء كل ما اتخذ من اجراءات استنادا لهذا القرار لان مابني على الباطل فهو باطل ويصبح من المتعين أن يعاد تنظيم المراكز القانونية على مقتضى حكم الالغاء].

laws, and the second issue concerns the process of quashing of disciplinary penalties.

In relation to the first issue, it is clear that in Kuwait the list of options is regarded as restrictive- other options are not available so issues such as proportionality of the penalty may not be fully considered. For example, the disciplinary system in Kuwait does not consider forced retirement as a disciplinary penalty.

The issue of forced retirement as an illegal disciplinary penalty was identified in Case Number 64 of 2000, Session 20/12/2001 whereby the Supreme Court of Kuwait stated, "the case concerning for the referral and forcing the employee to retirement is illegal; therefore, the plaintiff has the right to receive high compensation for the referral to retirement forcing him out from the workplace". The judgment text in Arabic is [إن القضية المتعلقة بالتقاعد والاحالة إلى قسراً فهو عمل غير قانوني، و يستحق المدعي على تعويضات مستحقة بسبب الإحالة إلى التقاعد القسري].[510] A similar decision was taken in relation to a female who was forced to retire from her workplace at the National Assembly. The Kuwait Supreme Court obligated the National Assembly to re-employ her and offer reasonable compensation. Consequently, she became the first female manager who could work in the Kuwait

[510]Case No. 64 of 2000, Kuwait Supreme Court, Administrative Case, Session 20/12/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005, p. 179.

National Assembly appointed by the court, since the first National Assembly (Kuwait Parliament) started in 1963, beginning her duties on 7th April, 2011.[511]

The researcher believes that in the case as indicated above, neither the principles of natural justice nor fundamental human rights were observed by the top management, who had forced retirement on her. Furthermore, the decision of the top management is also against Article 29 of the Kuwait Constitution, which states that, "all people are equal in human dignity, and in public rights and duties before the law, without distinction as to gender, race, origin and language or religion."[512]

It is also important to discuss the second issue, which is about the procedures for cancelling disciplinary penalties. Article 29 of the Kuwait Civil Service Law specifies that disciplinary penalties imposed on employees, may be quashed, in

[511]Case Numbers 32 and 49 of 2009, Administrative Case, Kuwait Supreme Court, Session 16/2/2011. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 35. June 2014.
In addition, the Kuwait court stated that the administration has the authority to refer the employee to retirement. Case Number 66 of 1995, administrative case, session 29/1/1996, Council of Ministers, p. 836. In Arabic this is [سلطة الادارة في احالة الموظف للتقاعد والقيود الواردة على هذه السلطة]. The court clarified in another case that the administration would be liable for any wrongful referral of an employee to retirement. Case Number 301 of 1991, Administrative Case, session 19/1/1992, Council of Ministers , p. 830. The Arabic translation of this case is [مسؤلية الادارة عن قرارها الخاطئ بإحالة الموظف للتقاعد انتفاء علاقة السببية بين قرار الادارة الخاطئ باحالة الطاعن للتقاعد وبين الضرر الذي لحق به.]. See also Al-Saleh, Badria, op. cit., pp. 57-62;Al-Rakem, Yousef Ahmed. op.cit, p. 160; Al-Haidar, Faisal Ahmad . Assets of administrative Disputes- comparative study (Kuwait-Egypt-Great Britain), 1st Edition. Kuwait: Al-Jleeb Press. 2010, p. 119.
[512] Article 29, Kuwait Constitution, Appendix A.

accordance with regulations set out in the Civil Service Law.[513] Public employees have the right to request a withdrawal of their punishments after a period of time. For example, an employee can submit an appeal to terminate a warning penalty after six months from the date of the penalty. Moreover, the administration might cancel penalties, because administrative penalties cannot be maintained indefinitely. This is supported by Article 70 of Kuwait Civil Service System no. 15 of 1979, which stated the period that needs to elapse for each penalty to be cancelled to suspend penalties in the future. If employees are not involved in additional administrative violations within the next twelve months, then the administration can cancel the penalties imposed.[514]

In this case, a question arises concerning the research, in particular regarding the following: To what extent do existing disciplinary procedures relating to public employees conform to both Western and Islamic considerations of Natural Justice? This question can be answered as follows:

1. Administrative offences are not listed, only disciplinary penalties are included under Article 28 of Kuwait Civil Service Law no.15 of 1979 for ordinary public employees.

[513] Kuwait Civil Service law and Kuwait Civil Service System Booklet, Kuwait Legislation group, section 9, 8th Edition, Minister cabinet, Legislation department, 2012, Kuwait. Article 29, p. 268.

[514] For more information about the cancellation of penalties and conditions; see Al-Tabak, op. cit., p. 160; Al-Tobtobaee, op. cit., p. 465; Shaheen, op. cit., pp. 493-494; Al-Hullo, 2008, op. cit., p. 268.

2. There is a different treatment between ordinary employees and high-ranking officials in terms of discipline. Disciplining of high-ranking officials falls on the responsibility of the Civil Service Council, which acts as a disciplinary board under Articles 62 and 63. In this connection, Article 62 of Kuwait Civil Service System no. 15 of 1979 authorises the Civil Service Council to form a committee to conduct investigations into the case being referred to. The committee may instruct one of its members, or others who are not members of the Civil Service Council to conduct the investigation.
3. The Kuwait government should apply Islamic rules and pursue Natural Justice in Islam. Justice must be extended equally to all people. Thus, any exercise of judicial partiality is improper. Disciplinary offences should be listed, and the disciplinary any sanctions should be equal for both normal employees and high-ranking employees, in accordance with the Board of the Civil Service Council in Kuwait and in respect to Article no. 29 of the Kuwait constitution.[515]

4.3.3 Natural Justice in Islam

Natural Justice in Islam is the subject of considerable debate.[516] To understand the theory of natural justice in Islam, it is important to understand the Islamic system in general, how the theory of natural justice functions within Islam, and how this compares with how justice is interpreted in western non-Islamic contexts (UK and

[515] See appendix A about Kuwait constitution, article 29.

[516] Al-Shanqeeti, Yab Mahfouth, *Justice and Social Solidarity Models and Evidence of the History of the Islamic,* Kuwait, Research and Studies Department, Al-Amiri Dewan, 2013, p.10.

France). To ensure the reader's full comprehension of the concept of natural justice, it is essential to present details concerning the sources of Islamic Law. However, such information will remain limited, as the Islamic system is a minor aspect of the thesis, and relevant only in terms of its relationship with the principle of Natural Justice.

The Islamic system of Natural Justice is a component of the belief system determined by God, or Allah, as understood within the context of Islam. The creator of the Islamic system is Allah, the most gracious and most merciful, and most acquainted with the best way to create suitable legislation to determine the relationships between human beings, thoughts, and the universe. The Islamic legal system, is often referred to as Sharia Law. The source of this law is Allah, who set out a formative legislative system, conveyed by Prophet Mohammed, who preserved the system in the Quran (the holy book of the Muslims). The word of Allah himself, the Quran, along with the teachings of Prophet Mohammed and the Hadith provide a complete constitution with which to guide the actions of humankind. The system is comprised of comprehensive rules, establishing all the requirements during a person's lifetime. For example, worshipping procedures, establishing morals, stating traditions, providing approaches to family and financial affairs, administrative disputes, rights and obligations, justice, and many more. Sharia law (Islamic System) therefore, establishes extensive legal guidance for all aspects of life, imparting salvation to humanity in order to assist those who suffer and despair.

Notably, in Islam, modern 'constitutional law' is analogous with Sharia Law, which is regarded as the highest law above all other rules. This applies to other Arab countries such as the U.A.E and Egypt. Sharia law is the basis of all laws and must be used in all circumstances. However, the State of Kuwait does not always consider the Islamic law. In spite of the fact that Article 2 of the Kuwait Constitution stipulates "the religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation."

The Surah or verse of Al-Nisa in Allah's book (Holy Quran) translated into English provides an account of the latter concept: "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So, follow not [personal] inclination, lest you not be just."[517] The same verse in Arabic is: " يا أيها الذين آمنوا كونوا قوامين بالقسط شهداء لله ولو على أنفسكم أو الوالدين والأقربين إن يكن غنيّا أو فقيرا فالله أولى بهما فلا تتبعوا الهوى إن تعدلوا وإن تلووا أو تعرضوا فإن الله كان بما تعملون خبيرا".

The significance of this Surah Al-Nisa in the Quran advises human beings to be just, because God is watching over humanity. Natural Justice is a divine legislation based on God's fair and wise rulings in the Quran and the Hadith. The Prophet was sent to attain the balance of justice naturally bestowed by God, which functions immutably, and gives a legislative insight, which relies on the choice of

[517] Surah Al-Nisa. Verse 135. Source: http://quran.com/4/135 [Accessed August 5, 2016].

an individual when applying the rules of God. Prophet Mohammed abided by the rules of the Quran, using words from Allah (God) to settle disputes amongst the people. "…And if you judge, then judge between them with justice. Indeed, Allah loves those who act justly."[518] ["وإن حكمت فاحكم بينهم بالقسط "]. The notion of justice in the Holy Quran is related to the concept of natural justice in Islamic system. According to Majid Khadduri, an Islamic Professor, stated that justice text or justice terminology in Islamic system has the same meaning as natural justice.[519]

A question arises here about how court adjudicators are appointed today to assure equity is maintained in accordance with Sharia law. The duty to validate the conditions needed to place worthy judges in the Islamic system is entrusted to a qualified supreme specialised authority, such as the Chief of the Supreme Court, the Supreme Council of Judges, or the Leader of the State. Islamic teaching puts great weight on the need for governments[520] to offer rewards and good salaries to judges, so they are not subject to financial and political pressures that might result in administrators controlling their decisions, leading to a loss of independence, covetousness, and vulnerability to bribery. The Kuwait constitution under Article no. 163 provides that "*in administering justice, judges shall not be subject to any authority. No interference whatsoever shall be allowed with the conduct of*

[518] Surah Al-Ma'idah. Chapter 5. Verse 42. Source: http://quran.com/5/42 [Accessed 7th September 2016].
[519] Khadduri, Majid. *The Islamic of Justice.* London: Hopkins University. 1984, pp. 93-97.
[520] See ar.m.wikipedia.org [accessed 27 August 2017].

justice. Law shall guarantee the independence of the Judiciary and shall state the guarantees and provisions relating to judges and the conditions of their irremovability."[521] In other words, to ensure justice all courts and tribunals of all degrees must function independently of any government or any other authority. Other agencies have no rule over the judiciary, and they have no right to dictate to the court anything that is related to cases reviewed by the court. No authority is entitled to force its will upon the judiciary in its capacities or change legal judgements. Generally speaking, the judge's position is subject to no power except that of the law, applied to the best of his/her conscience. The Kuwaiti constitution assures this, and to ensure its applicability, stipulates that a judge is not liable for dismissal.[522]

The rationale for the special treatment of judges is that neutrality and independence from government influence is imperative in order to promote justice for all citizens and equality before the law. Interestingly, and as is outlined below, parallel thinking and similar justification is found in Judeo/Christian and Western legal doctrine.

4.3.4 Natural justice in Western Thought

This thesis is not a comparative study of the principles of natural justice in Islam and the Western perspective of justice. However, it is interesting to contrast the

[521] Article 163, Kuwait constitution, Appendix A.
[522] ibid.

components of natural justice in Islam with similar concepts from a Western perspective. It is important to specify that the principle of natural justice in Islam derives directly from God (Allah) and from the teachings of Prophet Mohammed, as outline above. The legislative wisdom of Allah orders the people, in particular judges to achieve natural justice. This is accomplished through the guidance of the Holy Quran.

In the Hadith, there is a story about the Prophet encouraging the proper application of the law to achieve justice in Islam to Mu'ath. The Prophet said to Mu'ath 'How are you going to judge?' Mu'ath answered: "I will judge according to what is in the Book of Allah."[523] Prophet Mohammad said that: "who has the problem as a judge for the people, he should make justice for them at the moment."[524] It is clear from the Hadith above that no one's rivals would feel that the judge tends to his opponent, and the litigant would not feel a sense of injustice. In western countries like the UK and France, the attributes of natural justice are determined by rules of fair play as established by the courts. Natural justice upholds notions of fair trial, judicial independence and ensures the legal system is properly maintained. Fenwick and Phillipson[525] assert that courts must make a "conscientious effort" to ensure rules and directives are preserved in the judicial

[523] https://www.islamreligion.com [Accessed 5th March 2014].
[524] Hadith of Prophet Mohammed. Al-Shangeeti op. cit., p. 31.
[525] Fenwick, Helen and Phillipson, Gavin. *Text, Cases &Materials on Public Law & Human Rights*, 2nd Edition. London: Cavendish Publishing Limited. 2003, p. 481.

process, in order to determine appropriate penalties. Alongside imposing correct penalties, natural justice also sustains the determination of whether a wrongdoing has been committed, and thus guarantee in serving justice. The meaning of justice in the Islamic worldview denotes giving others equal treatment. Natural justice from the Islamic perspective signifies a treatment of fairness and impartiality. On the other hand, the concept of natural justice in Western thought states that the administration of justice should be governed by two fundamental principles: First, there must be a rule against bias, and this rule must show equal care for the fate of every individual over whom a government claims to wield power. Second, it is compulsory to respect the responsibilities and rights of each person, to decide the course of their life. These two regulatory principles establish boundaries predicated on acceptable theories of the distribution of justice.[526] Therefore, every distribution must be justified by showing how or what a government has done to respect these two fundamental principles. The conflict between justice and law, also implies that there are no guarantees that laws will be just. When they are unjust, officials and citizens may be required by the rule of law to compromise to achieve what justice requires.[527] Historically speaking, the starting point for the formation of the employment law in the UK is everyone is equal before the law.[528]

[526] Source: http://www.beyondintractability.org/essay/distributive-justice [Accessed 6th March 2014].
[527] Dworkin, op. cit., pp. 2 and 5.
[528] Rodgers, Lisa, "Public Employment and Access to the Justice in Employment Law," *Industrial Law Journal.* 2014, p.14.

4.4 Discipline and Human Rights

There is a legal relationship between discipline and human rights.[529] Human rights [530] and employment rights should be aligned in any modern democracy.[531] This is especially important in cases where men and women do not see their job as solely a means of making money. A person's job also defines his or her status and reputation and is an important tool for defining one's self-worth. The UK's Human Rights Act 1998 (HRA1998) requires judges to apply human rights interpretations as far as possible, unless parliament explicitly deviates from protected rights. This illustrates that parliament does remain free to encroach upon fundamental rights in the legislation if it so desires."[532]

Due to the precedence of the European Court of Justice (ECJ) within Europe, any disciplinary procedures in the UK and France must uphold EU rules. These are

[529] The subject of Human Rights is not the main topic in this thesis, it is mentioned here because of a strong relationship between the Discipline of Public Employees and the Human Rights. Allen, Robin; Crasnow, Rachel and Beale, Anna. *Employment law and Human Rights,* 2nd Edition. London: Oxford University Press. 2007, p. 2.

[530] The principle of human rights guarantees a fair trial in administrative disputes, as one of the fundamental rights of man and a pillar of the rule of law. The elements of human right are a fair trial of independence, which are listed as follows: fair trial of independence in the judiciary; impartiality of judges; the right of the implementation of judicial decisions on administrative disputes, and the right of access to fair judicial system; the right of procedural fairness; the right of public meetings. See Al-Rifae, Ahmed Basel. "The liberal democracy and the human rights crisis," *Journal of law,* Kuwait University. June 2005, pp. 329-330.

[531] Ibid, p.2.

[532] It should be noted that Kuwait has no statutory equivalent to the HRA1998 but is already a signatory to the universal declaration of human rights. Ibid, p. 900.

designed to help ensure accepted standards of conduct for civil employees are observed, by providing a fair method for dealing with alleged offences.[533]

In addition, International Treaties and the European Convention on Human Rights (ECHR),[534] as well as parliamentary sovereignty in the UK takes supremacy over domestic, as well as foreign sources of law. Thus, individuals under UK's jurisdiction can only rely on international treaties in as far as they have been transposed into national law.

It is considered important that employees be made aware of the standards of conduct expected of them, thereby suggesting a framework that should be set out to uphold employment protection law in practice. Therefore, it is clear that under Section 1 of the Employment Rights Act 1996, among the particulars of

[533] An offence is another area in which the relevance of conduct makes it plain where offences have been committed. The tribunals and courts distinguish between offences committed at work and those committed elsewhere. Whether the commission of a criminal offence outside someone's job merits a dismissal depends on its relevance to the individual's duty as an employee. The tribunal should take into account the status of the employee, the nature of the offence, the employee's past record, his access to cash, and proximity to members of the public. Honeyball, Simon. *Honeyball and Bowsers' Textbook on Employment Law,* 13th Edition. 2014, p. 173.

[534]ECHR denotes the European Convention on Human Rights. Leyland, Peter and Anthony, Gordon. *Administrative law,* 6th Edition. London: Oxford University Press. 2009, p. 185. See also, Kalin, Walter and Kunzli, Jorg. *The Law of International Human Rights Protection.* London: Oxford University Press. 2010, p. 31; Fredman, Sandra and Spencer, Sarah, "Beyond Discrimination: It's time for Enforceable duties on Public Bodies to Promote Equality Outcomes." *European Human Rights law Review.* Issue6. 2006, pp. 598-603.However, the ECHR, established many rules, and principles of human rights covering hearings by independent tribunals, expanding the European Court to include the above statement concerning administrative disputes, within its jurisdiction as well as civil disputes, and criminal matters. Allen and et.al, op. cit., p. 3. Kelly, David; Hayward, Ruth; Hammer, Ruby; and Hendy, John. *Business Law.* London: Routledge. 2011, p. 10.

employment, a civil employee is entitled to benefit from the disciplinary rules and procedures put in place by their employer. In addition, employers must outline disciplinary procedures in the written particulars of the employment terms given to employees within two months of starting work.[535]

However, the provisions relevant to discipline procedures and dismissal were introduced (originally in 1977) in the highly influential ACAS[536] Code of Practice No. 1: Disciplinary and Grievance Procedures. Therefore, many employers have definite rules and procedures, often in work-rules or handbooks, drafted in the light of the Code's recommendations. The Code has been revised and expanded on a number of occasions, the latest version was published in 2015. It is a statutory Code and therefore has legal impact.[537]

In addition, basic principles of fairness[538] should still be followed. In relation to fairness at work, the code suggests that the prime purpose of the recognition procedure on the law of Fairness at Work (FAW) is to offer greater protection and security at work for the vulnerable.[539] Fairness and transparency are promoted by

[535] Section 1 ERA 1996.

[536] See list of abbreviations for ACAS. Adams, Alix. *Law for Business Students*. London: Pearson. 2010, p. 186.

[537] A: Code of Practice and disciplinary grievance procedures, The Stationery Office, 2015.

[538] In defining fairness, people are invariably subjective (considering the concept in relation to their own personal values). They tend to define it relatively or comparatively (e.g. this is fair and that is not). When asked why they say something is fair or unfair, the tendency is quickly to move away from the abstract and explore details and practical elements of what constitutes fairness. These are likely to change over time, particularly, as social expectations and values shift. Willey, op. cit., p. 32.

[539] Novitz, Tonia and Skidmore, Paul. *Fairness at Work.* London: Hart Publishing. 2001, p. 74.

developing rules and procedures to handle disciplinary[540] and grievance situations.

When drafting or reviewing a disciplinary procedure, key factors to consider are:

- the need to inform employees about what disciplinary action might be taken;
- specify levels of management with the authority to take various forms of disciplinary action;
- require that employees are informed of any complaints against them, and offer supporting evidence before a meeting;
- give employees the chance to answer any complaint before management reaches a decision;
- provide that no employees are discharged for a first breach of discipline, except in the matter of gross misconduct; and [541]

[540] Barrow, Charles; Blunt, Steve; Gibbons, Steve; Manley, Isabel; and Rose, Nick. *Blackstone's Guide to the Employment Relations Act 1999.* London: Blackstone Press. 2001, pp. 61-63; and Smith and Randall, op. cit., pp. 226-227.

[541] Nairns also provides some examples of offences that are usually observed as a gross misconduct: such as "serious incapability at work caused by alcohol or prohibited drugs;theft or fraud; physical assault or oppressor; deliberate and serious casualty to property; serious misuse of an organisation's property or name; intentionally locating Internet sites containing pornographic, offensive and indecent material; grave disobedience; unlawful unfairness or harassment bringing the organisation into dangerous disrepute; causing loss, damage or distress through serious negligence a serious violation of health and safety rules and a severe breach of confidence". If any employees are involved in such act of gross misconduct, he or she may be suspended from full working payday, normally for no more than five working days while the alleged violation is investigated. If, upon completion of the investigation and the complete disciplinary procedure, the organisation is convinced that gross misconduct has occurred, the decision will normally be brief dismissal without notice or payment in lieu of note. Nairns, 2004, op. cit., p. 204.

- and the requirement for management to investigate infringements fully before taking any disciplinary action.[542]

In regard to the list above, the benefit of the disciplinary and grievance is that the effective usage of fair disciplinary and grievance procedures by employers can promote positive relations in the workplace and are able to avoid workplace related problems.[543] The latter statement connects with the belief that procedures should not be viewed primarily as a means of imposing sanctions, and discipline does not necessarily have to be negative. Disciplinary bodies should also be concerned with emphasising and encouraging improvements in individual conduct.[544]

On the other hand, disciplinary and grievance procedures can be less formal in small workplaces than in large unionised workplaces. Many disciplinary or grievance issues can be resolved informally, and there are clear advantages to both employers and employees if disputes can be settled informally, as in the UK, without recourse to courts.

[542] However, under the 2004 version of the ACAS Code of Practice, the approach to, and aim of disciplinary action is set out explicitly so that disciplinary procedures are seen primarily as a means of encouraging improved performance, or conduct from employees, as opposed to merely consisting of sanctions against wrongdoing. This objective is now implicit in the 2015 code. Nevertheless, encouraging improvement is an important principle for employers to apply.www.acas.org.uk. [Accessed 9th September, 2016].

[543] Nairns, 2012, op. cit, p. 197.

[544] Casale, op. cit., p. 161; and Lauterburg, op. cit., p.18.

The impact of Trade Unionism on the development, promotion, and adherence to Disciplinary Work-placed Guidance has been significant.[545] As will be illustrated below, equivalent disciplinary guidance similar to the UK has not been developed in Arab States and perhaps the deficit may be partly attributed to the different cultural and industrial traditions. However, as is argued below, other less acceptable reasons might also explain the different level of protection including the potential negative impact of such vested interests.

4.4.1 Disciplinary Procedures in the UAE[546]

There is no specific provision for the establishment of Disciplinary Court in the UAE. However, federal powers are provided for when adjudicating on disciplinary cases under Federal Law No. 8 of 1973 with amendments to law no. 11 of 2008 concerning the Civil Service. Article 84 of the same law. It stipulates, that "*disciplinary cases may be filed against public employees in the first cycle by permission of the Prime Minister and against public employees in the second and third levels (cycles), by permission of the competent Minister*."

[545] See Honeyball, Simon. Employment Law, 13th Edition. London: Oxford University Press.2014, P.348

[546] Note: Chapter 4, Section 4.4.1 (Disciplinary Procedures in the UAE), provides information regarding the laws in UAE. There are various laws governing each state as United Arab Emirates comprises of seven states namely Abu Dhabi, Dubai, Sharjah, Ajman, Fujaira, Um Al-Quwain, and Ras Al-Kaimah. The researcher emphasises that Kuwait is a country on its own without any states.

However, the provision in Article 81 of UAE Civil Service Law clarifies that "*no penalty may be inflicted on a public employee except after a written investigation has been conducted in which his/her statements are taken and opportunity has been provided for him/her to defend himself/herself. Reasons should be given for inflicting the penalty on the concerned public employee*."[547]

Civil Service Law no. 11 of 2008 in the UAE included provisions regarding the disciplining of public employees. The approach pursued is provided in Article 93, which states, "*the competent Minister shall be authorised to inflict any of the penalties stipulated in paragraphs A, B and C of Article 83 on the public employees*."[548]

Moreover, Article 86 states that the competent Undersecretary may impose any of the penalties stipulated in Article 83 against the employee. Article 83 stated that: "the following disciplinary penalties which might be inflicted on regular employees are: (a) Warning. (b) Deduction from a salary for a period not exceeding seven days. (c) Deprivation from a periodic allowance. (d) Suspension from work, without a salary or with the payment of half the salary, for a period not exceeding three months. (e) Dismissal from work with the preservation of the right to pension or retirement gratuity or deprivation from either one by a quarter

[547] Article 81 of UAE Civil Service Law no. 11 of 2008. Also see Kannaan, 2012, op. cit., p. 165.However, in Kuwait, Article no. 55 of Kuwait Civil Service no. 15 of 1979 has the same principle as Article 81 of UAE Civil Service Law no. 11 for 2008. Both the article for the two countries states that no penalty can be imposed upon the public employee unless there is a written investigation that has been done.

[548] Article 93 Federal law no. 11 of 2008.

thereof". Also, the following disciplinary penalties may be inflicted on the first-cycle (High-ranked employees such as Undersecretary and Undersecretary assistant): (a) Censure (b) Suspension from work without a salary for a period not exceeding three months. (c) Dismissal from work with the preservation of the right to pension or retirement gratuity or deprivation from either one by a quarter thereof."[549]

If the employee wishes to do so, he/she can choose to file a grievance to the competent Minister against the penalty within a month from the date of the decision. This approach is compatible with the UAE constitution. Article 41 of the UAE Constitution provides that each person has a right to complain to the concerned authorities including the judicial authority against any perceived violation of his/her rights and freedoms.[550]

The UAE is a federation of seven states that have their own laws and regulations on administrative issues and disciplinary process. In Abu Dhabi, for instance the Federal Law No. 6 of 1978, provides for the establishment of Federal Courts and the devolution of their competence to local judicial authorities in other Emirates. Article no. 3 of the above law states that the Federal Court of the First instance in

[549] It is to be noted here that the penalties for high-ranking officials in both the UAE and Kuwait include censure and dismissal. Dismissal from the service under Article 28 of Kuwait civil service law no. 15 of 1979, is the highest disciplinary sanctions imposed on high ranking employees, as well as on ordinary employees. See Article 28 of Kuwait Civil Service Law Booklet, Kuwaiti Legislations Group, section 9, 8th edition. Minister cabinet, Legislation Department, 2012, p.70. Also, see Al-Saleh, Badria. op. cit, p. 48.

[550] Article 41 of the UAE Constitution. Also see Mubarak, Abdultawab. *The Assets of the Judicature in the United Arab Emirates.* Jordan: Brighter Horizon Publishers. 2011, p. 201.

Abu Dhabi is competent to try all administrative disputes between the Federation (the Union) and individuals, whether the Federation (the Union) is a plaintiff or a defendant.[551]

However, the system adopted in the Emirate of Dubai provides a public employee with the right to take legal action against the decisions made by the disciplinary committee (board).

In the Emirate of Dubai, Article 188 of the Regulation on Personnel Affairs law no. 72 of 2006 stipulates,

> In each department, a disciplinary committee shall be instituted by a decision to be made by its Manager. The said committee shall be chaired by the Manager and shall include in its membership two of the heads of sections in the same department to look into the violations committed by the employees of the first, second and third grades. As for the violations committed by the employees of the fourth and lower grades, a disciplinary committee shall be constituted by a decision of the Manager and shall be chaired by a head of a section with a membership of two employees, provided that their grade is not less than the grade of the employee subject to the investigation.[552]

Elsewhere, in the Emirate of Sharjah, Civil Service Law no. 5 of 2001 applies; this defines the disciplinary penalties that can be imposed on employees

[551] Article 3 of Federal law no. 6 of 1979 for the constitution of federal courts.

[552] See Al-Jazery, Hamed Anwer. *Civil Service System in the Federal Government for the United Arab Emirates*, 1st Edition. UAE: Dubai Press. 2011, pp. 77-82.

committing violations, indicating in Articles 89 and 90 that a disciplinary council should be formed. Thus, the legislator in the Emirate of Sharjah has adopted a Quasi-Judicial System regarding disciplinary actions.[553] However, the competence and powers of this disciplinary council are not defined in law. The law, however, as set out in Article 98 states that heads of department are the competent authority, authorising them to formulate a penalty regulation, and enact other regulations, including those pertaining to violations, penalties and related inquiry proceedings. Hence, the administrative authority is entrusted with the classifications, and specification of violations, the penalties, and the investigation proceedings, which contradicts Articles 89 and 90 regarding the existence of disciplinary board.[554] If the administrative authority is entrusted, as provided for in the articles, with determining violations and regulating penalties, then this raises an issue about the role of the board in terms of discipline, and to whom the authority of imposing penalties should rightly be entrusted?

The division of responsibility in the Emirate of Ras Al-Khaimah is clearer. The Civil Service Law, which was issued in Ras Al-Khaimah under law no. 10 of 2003, is able to impose some disciplinary penalties, and other penalties assigned

[553] Karam, op. cit., p. 130.

[554] Al-Shaali, op. cit., p. 126.

to the disciplinary council.[555] The law of Ras Al-Khaimah includes the imposition of some penalties within the competence of the head of the administrative service.

A further aspect in the disciplinary system is that the disciplinary council, as stipulated in the law of Ras Al-Khaimah, is chaired by the administrative head, with the membership of a head of department and a judge. Therefore, the judge is considered a third member or a mere member. Hence, a clear and obvious defect seen here is that the Administrative superior may dominate the disciplinary board.[556] This confirms the fact that the legislature in Ras Al-Khaimah has adopted Administrative and Quasi-Judicial Systems.[557]

In all the Emirates, even if legislations ignore or disregard the principle of grievance, this competence is, nevertheless, vested in the courts by virtue of the constitution Article no. 41 as previously indicated, which determines the right of any citizen to fight and defend cases in court after paying the court fees. The fee may deter some potential complaints but is unlikely to do so given that it starts at first instance at 100 Dirhams, that is the equivalent to 20 GBP (The Right of Litigation).[558] Similarly, this right to bring allegations against the administrative is stipulated under the constitution of the State of Kuwait, where Article 166 states

[555]On the other hand, to have more information about Ras Al-Khaimah, see law service no. 10 for 2003. See also, Al-Sayer, Aissah. *Political history about United Arab Emirates State.* UAE: University bookshop Press. 2007, pp. 30-38.

[556] Karam, op. cit., p. 139.

[557] Bader, Ahmed Salama. *Public Employee in Gulf Countries Legislation*. Egypt:Dar Al-Nahada. 2008. p. 108.

[558] Mahmoud, Abdullah Mohammed, op. cit., p. 43. Also, to have more information about the right of litigation, see: Al-Hamadi, op. cit., pp. 78-81.

that "the right of recourse to the Courts is guaranteed to all people. Law shall prescribe the procedure and manner necessary for the exercise of this right."

The disciplinary proceedings in the United Arab Emirates show the steps that should be followed from the time a public employee commits a wrongdoing, until the time when a penalty is imposed upon him/her. These proceedings pass through two stages:

1. the investigation stage is when a wrongdoing is confirmed to have been committed by a particular public employee, and sufficient evidence is gathered to discipline him/her; and

2. the trial stage which may end with an acquittal of the public employee, or a conviction and imposition of a disciplinary penalty on him/her.[559]

These steps provide an opportunity for public employees to know the type of penalties that can be given to them by the government as disciplinary sanctions.[560] Several articles in UAE Federal Law No. 11 for 2008, concerning the Civil Service stipulate certain disciplinary proceedings, which the body authorised to carry out investigations must follow when dealing with the public employee accused of committing a wrongful act.[561] For example, Article 81 of the Federal Law no. 11 of 2008, states that no penalty maybe inflicted on public employees,

[559] Abdulwahab, Mohammad Refaat and Othman, Hossain Othman. *Principles of the Administrative Law.* Alexandria: Dar Al-Matbuat. 2001, p. 399.
[560] Al- Saidi. op. cit, p. 535.
[561] Ibid, p. 402.

expect after a written investigation,[562] which indicates a right to be given a fair hearing or natural justice.

Therefore, in cases where sufficient evidence has been gathered to discipline a public employee, and specific accusations have been filed based on the investigator's and the witnesses' testimonies, and if the public employee has been given the opportunity to defend himself/herself, the ultimate goal of the legislator would be accomplished, even if some minor procedural steps were overlooked. Disagreements might arise in relation to the law, and these should be applied if stipulations for organising disciplinary proceedings have not been met. A concerning characteristic of existing federal arrangements within the UAE, is that the consequences of identical employee conduct can vary significantly from state to state with some states opting to apply civil law with others adopting criminal sanctions.[563]

In the case of disciplinary proceedings, it is important that administrative investigations and trials observe the general rules applied in all trials. Moreover,

[562] Ibid, p. 403.

[563]http://scholarworks.49eu.ac.ae/cgi/viewcontent.cgi?article=1004&context=publiclaw thesis [Accessed 6 June 2018].

criminal and disciplinary courts are similar in the sense that both apply a code of punishment.[564]

More specifically disciplinary law should include detailed conditions to determine what proceedings must be followed in disciplinary cases.[565] UAE Federal Law No. 11 of 2008 concerning the Civil Service, dealt with disciplinary proceedings in this respect. Grievances may be submitted in respect of certain disciplinary penalties, as stipulated in some articles (95-100) of the same law. Thus, a public employee may submit a grievance to his or her administration against the penalties such as suspension from work without a salary, reduction of salary, and

[564] However, it is interesting to observe how the administration deals with disciplinary punishment, see Professor Aad Hamoud Al-Oaisi's research paper, which deals with the extent of the authority of the administration overseeing disciplinary punishment, and the role of the punishment council, as a surveillance body in establishing the legal justification behind punitive judgment. However, the responsibility for carrying out disciplinary punishment lies with the administration, and is directly linked to the party that committed the violation. Al-Oaisi, Aad Hamoud. "The Application of Disciplinary Punishment and its Legal Justification," *Journal of Sharia and Law,* UAE, College of Law, April 2009, p. 217.

[565] Case Number 2 of 2007, Union Supreme Court in UAE, session 9/7/2008.Journal of Sharia and law, volume 3, issued by Union Supreme Court in UAE, May 2012. However, this case was mentioned in the Arabic textbook, by Dr. Sammy Jamal Al-Deen, "*Administrative Order and the Discretionary Power- Comparative Study between United Arab Emirates, Egypt and France,*" Emirates University. 2009, p. 316.

dismissal.[566] However, there is a strict time limit. The grievance must be submitted within thirty days from the date of notification of the penalty.[567] In conclusion, the main disciplinary proceedings stipulated under UAE Civil Service Law No. 11 of 2008 are as follows:

1. Disciplinary cases against public employees in the first cycle[568] can be filed only with the permission of the Prime Minister. However, disciplinary cases concerning public employees in the second and third cycles,[569] can be filed with the permission of the appropriate competent Minister.

[566]Dr. Jalal Mohammed Ibrahim in his article, entitled "The Permissibility to Dismiss the Employee shall occur in the Event of Committing any Penal Crime in accordance with Article 120/para(s) of Emirate's Labour Law in the United States of Emirates," expressed that the subject of the paper revolves around a case in which the Dubai Supreme Court had reached a specific decision that the commentator tackled in detail. The matter relates to the application of Article 120/para(s) of the Emirate's labour law, which permit the employer to dismiss an employee in the event that they are found guilty of any penal crime, after committing any immoral crime related to honour and honesty. Ibrahim, Jalal Mohammad. "The Permissibility to Dismiss the Employee shall occur in the Event of Committing any Penal Crime in accordance with Article 120/para(s) of Emirate's Labour Law in the United States of Emirates" *Journal of Shariah and Law*. Emirates University, March, 2009, p. 18.

[567] On the other hand, the grievance procedures in the UAE were organised by federal law no. 11 for 2008, and in Kuwait the grievance procedures were organised by law no. 20 of 1981 for the resolution of administrative disputes and to undertake grievance procedures.

[568] However, the meaning of a first cycle public employee is intended to refer to the degree or position of a Top Management employee. The first cycle means the highest degree of employment. Degrees of employment are also organised according to numbers, wherein number 14 is the lowest degree and the final cycle. Therefore, the types of employee, as denoted regarding their cycle or degree starts from the lowest to the highest, beginning with cycle 14, and ending with the first cycle position. For more details regarding the type of public employees and their levels see Ibrahim, Ahmed Mohammad. *United Arab Emirates Public Administration.* UAE: Dubai Press. 2006, pp. 23-30.

[569] In Kuwait there is no equivalent of the 2nd and 3rd cycle, as in the UAE. In other words, Kuwait Civil Service Law does not use the term of cycles, and more details about the dividing the public jobs in Kuwait refer to section 3.2.1 (Definition of Public Employees under Kuwait Law).

2. The accusations filed against a public employee should be notified to him/her in writing along with the evidence substantiating such accusations.
3. As a precautionary measure, a public employee may be suspended from work during the investigation period,[570] in accordance with the decision of the competent Minister, or his/her deputy for a period of not more than three months. The suspension period may be extended by the decision of the disciplinary council, which should be taken within a month, following the approval of the Council of Ministers in respect of public employees in the first cycle. It is important to mention that a public employee is paid a full salary during the investigation period.[571]
4. The public employee who was referred for disciplinary penalty by the employer might choose to attend investigative sessions in person. It is also

[570] Article 87 of the UAE Civil Service Law no 11 of 2008 concerned about the suspended the public employee from his or her work.

[571] Article 87 of federal law no. 11 for 2008. See Arjimind, op. cit., p. 286. Also, see Kuwait Case Number 249/1985 regarding suspension from work. The court said: The precautionary suspension from the work is a legal action intended to disqualification of the employee on a temporary basis from his/her work in favour of achieving administrative investigation, Administrative case, Session 2/7/1986, Council of Ministers, p. 651. The translation in Arabic is [وقالت المحكمة : إن الوقف الاحتياطي عن العمل هو إجراء قانوني قصد به تنحية الموظف العام بصفة مؤقته عن أعمال وظيفته إما لصالح تحقيق يجري إداريا كان أم جنائيا وإما تصونا للوظيفة وحرصا على كرامتها وصيانة لها من العبث أو الاخلال بها . وقد نظم المشرع الوقف الاحتياطي في مجال الوظيفة العامة في القانون رقم 15 / 1979 في قانون الخدمة المدنية .]. Thus, both the UAE and Kuwait have the same meaning for the legal concept of suspension. This provision perhaps replicates the English Common Law provision of ` garden leave` i.e. a period of time after an employee leaves a job when they continue to be paid but are not allowed to go to work or to begin a new post.

permissible for a public employee to engage a lawyer to defend him/her,[572] and the public employee is responsible to pay the lawyer and to arrange legal fees. The choice is upon the public employee to decide whether to have a lawyer in his/her expense or not.

5. A written investigation and statements made by the public employee concerned should be made, noted down and not disclosed to other party.
6. The disciplinary council may conduct the investigation itself or assign the role of investigation to one of its members.
7. The decisions made by the disciplinary council should include the reasons upon which was based and should be read out in a session held for that purpose. Then, the disciplinary decision must be put in writing to notify public employees within two weeks of the issue.[573]

Encouragingly, the above provides some certainty and transparency in relation to the disciplinary framework in the UAE. Regrettably, however, the provisions in Kuwait are less transparent, more ambiguous, and arbitrary. Firstly, there is no certainty as to the right, if any, to legal representation[574] and perhaps more importantly, senior officials have draconian powers in relation to the manner they can dispose of disciplinary cases. High ranking officials, such as Under

[572] Hassan, Mohammad Kaddri. *United Arab Emirates Administrative law*, 1st Edition. UAE: Sharjah University bookshop. 2009, p. 370.
[573] Obeed, Mohammad Kamel. *The constitution of the United Arab Emirates, Comparative and Descriptive study.* UAE: Dubai Press. 2007, p. 251.
[574] See discussion above in this chapter.

Secretaries, have a range of options and their decisions are not subject to external scrutiny. The `insider` nature of the system is a cause for concern. Moreover, the Kuwaiti public sector employment protection system, like that of both Egypt and the UAE, is rooted in public law rather than employment law which arguably, as illustrated below, is more readily adapted to changing circumstances and potentially cheaper and easier to access.

4.4.2 Disciplinary Procedures in Egypt

According to Article 79 of the Egyptian law no. 47 of 1978, combined with amendments to law number 203 of 1994, there will be no penalty against public employees, unless there has already been an administrative investigation conducted against him/her by the administration.[575] Consequently, the researcher understands this to suggest that there is a legal presumption that no disciplinary action will be taken against the employee until the case has been fully investigated.

[575]Article 79 of Egyptian Civil Service Law no. 47 of 1978. It is important to understand that the administration cannot impose a penalty without having first consulted with the employee regarding the offence. See Al-Bahi, op. cit., pp. 599-601. See also: Bader, Ahmed Salama. *Administrative Investigation and Disciplinary Actions*. Egypt: Dar Al-Nahda. 2010, p. 174; Abdelhadi, Maher, op. cit., p. 248. See also, Case no. 780/85, session 27/12/1986, supreme administrative court, anthology of administrative principles, session 1, p. 602, technical office, Egypt, 2004; and how the Egyptian Supreme Administrative Court confirmed the that "no penalty can be imposed upon the employee, unless there has been a written statement during the investigation process".

However, when preparing an investigation, it is necessary to be orderly in collecting evidence to ensure it is more reflective, clearer and easier to review. The investigating authority should also allow for elimination and extension in the event of cases being brought by the employee, in case he/she appeals the cancellation of any disciplinary punishment imposed by the administration against him/her.[576] As in the above example of the UAE, the Egyptian legislature provides scope for disciplinary authorities responsible to impose penalties that may both be disciplinary or criminal.[577]

Disciplinary jurisdictions are as follows:

1. the Disciplinary jurisdiction of Administrative powers, outlined in Article 82 of the Law on the Civilian Personal System No. 47 of 1978, marks the signing of the jurisdiction on disciplinary sanctions. In addition, the Supreme Egyptian Administrative Court established the jurisdiction for the

[576] Ali, Mohammad Ibrahim, op. cit., p. 307; Ayoub, 2005, op. cit., p. 22. See also Al-Harbi, op. cit., p. 281.

[577] The administration can simultaneously punish the employee to a disciplinary action with criminal action using different laws. For example, the civil servant can be punished for a disciplinary sanction through administrative law and the criminal law is involved for criminal matters. See Abdulwahab, op. cit., p. 496. See also Hind, Hassan Mohammad. *System Law of Civilian Employees in Egypt*. Egypt: Dar Al-Kutoub. 2005, pp. 1036-1040.

punishment of Government Employees, for dismissal and referral to retirement; [578] stating this would be under its control; and [579]

2. the tribunal controls disciplinary jurisdiction for disciplinary sanctions. Egypt established an administrative prosecution and disciplinary courts under law No.117 for 1958, according to the reorganisation of disciplinary proceedings.[580]

After performing a judicial review of the administrative disciplinary penalty, the researcher reports here that the disciplinary penalty in Egypt comes under the consideration of a judicial review.[581]

[578] Bader, 2010, op. cit., p. 114. However, Article 80 of civil service law no. 47 for 1978 with the amendment for 1994, explained the penalty for the dismissal of public employees. See case no. 3901/92, session 22/1/1994, Egypt Supreme Administrative Court, Anthology of Administrative Principles, session 1, p. 630, technical office, Egypt, 2004. See also, Farraj, Amani, op. cit., p.388; Muharib, op. cit., pp. 314-315.

[579] Al-Ajarma, op. cit., p.225. Bader, 2010, op. cit., p. 112.

[580] Amro, Adnan, op. cit., p.273; Howeehed, Somiya Bado. *The Jurisdiction of the Administrative Decision- Comparative Study (Egypt, France, and Kuwait).* Egypt: Dar Al-Nahda. 2012, p. 51. See also Ramadan, op. cit., pp. 11-12; Batek, Rodan Mohammad. *Disciplinary Authority for governmental Workers.*Egypt: Dar Al-Nahda. 2005, pp. 213-214; Al-Tammawee, Sulaiman Mohammad. *Judicial Administrative Discipline*. Alexandria: Dar Al-Fikr Al-Arabia. 2003, p. 473.

[581] For more information regarding the judicial review of disciplinary administrative action in Egypt see Dr. Adel Khalil, who explained that according to the law passed by the Council of State, it enjoys original and general jurisdiction as a 1st degree court to deal with specific administrative disputes listed in Article 13 of the law. The law provides explicitly that: "The Court of Administrative justice shall have the jurisdiction to decide matters which are included in Article 10 with the exception of matters within the jurisdiction of administrative and disciplinary courts". Khalil, Adel. *Judicial Review of Administrative Actions in Egyptian and Comparative Law.* Egypt: Dar Al-Kutoub. 2011, pp. 225-227.

Despite Egypt's glorious and early civilizing history and the fact that it has been set up as Constitutional Republic since 1953, the regrettable reality is that public employment protection, like that in Kuwait, is under-developed and slow to reform. Moreover, the Egyptian administrative governance structure is complex and large, with many overlapping layers which is reflected in the legal arrangements which are grounded in public law.[582]

The complexity and importance of the public sector in Egypt is reflected in the fact that three of the four legislative employment provisions apply to the public sector, namely, Law No.47 for the year 1978, which applies to civil servants of the State. Law No.48 for the year 1978, which provides the rules applicable to public sector employees; Law No.203 for the year 1991, which specifically address special requirements for employees working in the public commercial sector of the State. The other provision, Law No.12 of 2003, was enacted to regulate the relationship between employers and employees in the private sector.[583] The weight of legislation reflects the size and pervasive nature of the public sector in Egypt, and as suggested earlier in relation to Kuwait, there is

[582] A Al-Araby, Vision for administrative reform in Egypt (Presentation by the Minister, June 2014). Cairo, EG: Ministry of Planning, Monitoring and Administrative Reform. Available at: http://www.ad.gov.eg/Admin/EditorDocs/Governance/Public%20Administration%20Reform%20Plan%20.pdf [Accessed 26th August 2018].

[583] For a detailed discussion of the complexities and the shortcomings of existing arrangements, see Barsoum, G, Egypt's Many Public Administration Transitions: Reform Vision and Implementation Challenges, International Journal of Public Administration (2018) 41(10). Available at: https://www.tandfonline.com/doi/abs/10.1080/01900692.2017.1387145 [Accessed 10th July 2018].

evidence to suggest that the existing public service may be characterised by public employee lethargy.[584] The size of the public service bureaucracy has arguably been disproportionately large in Egypt, at 6.37 million employees in 2014. Again, as in Kuwait, the civil service provides very favourable employment conditions compared to the predominantly informal private sector. Employees working in the public service offer permanent lifelong employment; access to social and health insurance that is not matched by the private sector; and relatively favourable pay and working hours.[585] Not surprisingly, therefore, the public service is the career of choice and particularly popular amongst both young employees and women.[586] The important point to make, however, is that despite the significant change in the nature of employment and the characteristics of public employees the relevant law which dates back in excess of forty years remains largely unamended. Moreover, recent attempts to update the provisions have been frustrated,[587] a very worrying concern given the widely reported

[584] See earlier discussion at chapter 1.
[585] See, Al- Araby op cit, p. 25.
[586] See Barsoum, G, The public sector as the employer of choice among youth in Egypt: The relevance of public service motivation theory. International Journal of Public Administration, (2016) 39(3), 205–215. Available at: doi:10.1080/01900692.2015.1004082 (Taylor & Francis Online) [Accessed 10th July 2018].
[587] For instance, a new Civil Service Law (Law 18 of 2015) has not been implemented. Its primary aim had been to regulate the hiring and seconding process in the civil service, and to formalise more transparent and rigorous performance evaluation process, and regulate salary increases. It is interesting to note, that as Barsoum, G (2018) op. cit. points out that the process for drafting the new civil service law started as early as 2006. The author implies that vested and competing interests militate against much needed reform of the law.

concerns voiced by Civil Liberty organisations about the current risk to human rights in Egypt.[588]

The issue of insider- disciplinary decision making is not such a major issue within the UK because public employees, with some exceptions,[589] benefit from the employment protection available to all employees and therefore their disciplinary treatment is subject to the judicial scrutiny provided for by the legislation and related applicable human rights provisions.

4.4.3 Disciplinary Procedures and Penalties in the UK

As indicated above disciplinary procedures relating to public employees in the UK have to comply with employment protection and human rights provisions and disciplinary and grievance procedures should comply with the Advisory, Conciliation, and Arbitration Service's (ACAS) Code of Practice.[590] ACAS is non-departmental public body of the UK government; its purpose is to improve employment practice by facilitating good industrial relations practice. It provides

[588] See for instance, a Report prepared by the International Commission of Jurists entitled *Egypt's Judiciary: A Tool of Repression* which suggests that amendments to the Constitution under Law No. 13 of 2017 will grant the president the authority to appoint judges to lead all judicial bodies including the Supreme Constitutional Court without any judicial involvement other than SJC's nomination of a pool of judges who are selected by seniority rather than merit; and to determine the conditions under which all judges are appointed and promoted and the organization of judicial bodies and authorities. See Egypt's Judiciary: A Tool of Repression; Lack of Effective Guarantees of Independence and Accountability, International Commission of Jurist, September 2016. Available at: https://www.icj.org/wp content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf [Accessed 20th August 2018]. Note the Commission is composed of 60 eminent judges and lawyers from all regions of the world who seek to protect human rights by promoting the Rule of Law.

[589] See discussion below in this chapter.

[590] See information above in this chapter.

basic practical guidance to employers, and employees and their representatives about how to conduct disciplinary and grievance situations in the workplace. Although it is a statutory code,[591] a failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, Employment Tribunals will take the Code into account when considering relevant cases and therefore conduct by the employer which fails to take account of the Code may well be deemed to be unfair. Tribunals will also be able to adjust any compensation awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

A flexible and comprehensive Code is very useful because diligent employers committed to improving standards of conduct and services need to pay attention to routine practices as well as issues of gross misconduct. Thus, employers need to be able to discipline their employees in cases where an employee is acting in an undesirable manner, makes a mistake or a serious conduct in the workplace such as harassing a colleague. However, a verbal warning from the employee's supervisor may be given as a penalty in situations where the employee has committed minor offences such as unexcused absences.[592]

On the other hand, when an offence is repeated or is an instance of gross misconduct, including matters such as sexual harassment, the disciplinary

[591] The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and has been revised on a number of occasions.
[592] Nairns, 2004, op. cit., p. 197.

procedure might provide for instant dismissal. In such cases, where the employer does not want to dismiss the employee, he/she should consider alternative penalties, such as demotion or transfer.[593]

The Code addresses these issues and provides for a wide range of possible penalties including;[594]

1. warning;

2. reprimand;

3. fine and deductions;

4. suspension without pay for misconduct;

5. precautionary suspension;

6. transfer;[595] and

7. dismissal. [596]

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[593]For more details about the penalty of transfer in administrative law and how basic common law states that an employee may not be transferred from one job to another without the employee's consent, see Smith and Thomas, op. cit., p. 577. However, the administrative circle in Kuwait decided that transferring an employee is a right of the administration, unless the court discovered facts and circumstances of administrative misuse of power on the employee and used the transfer as a penalty. If the court finds that the decision by the administrative body to move the employee is a mere administrative transfer from one department to another, and the transfer was simply a right exercised by that administrative authority, then the court would dismiss the lawsuit.The Arabic translation is [إذا تبين للمحكمة أن قرار الهيئة الإدارية لنقل الموظف كما نقل الإدارية من مجرد إدارة إلى أخرى، وهذا هو مجرد حق تمارسه السلطة الإدارية. لذلك، رفضت المحكمة الدعوى.]. Case Number 216 of 1993. Kuwait Supreme Court, Administrative case, session 2/5/1994. Encyclopedia Principle for administrative judicial, section 1, 1ST Edition. 2000, p.179.

[594] Selwyn, 2016, op. cit., pp. 348-373.

[595] In the UK, the transfer of an employee is considered one of the disciplinary options which available to the employer, but under Kuwait Law transfer is not listed as disciplinary sanction Article 60, Law no. 15 of 1979 Kuwait Civil Service Law.

[596] For more information about the penalty of dismissal, see: Honeyball, op. cit., p. 137; Holland and Burnett, op. cit., p. 228.

However, many other forms impinge upon the rights and expectations of the disciplined employee (e.g. fines, suspension, and demotion). Hence the crucial point about lawful disciplinary measures is that the employer must have the power to impose them. Normally this will involve having the contractual authority to do so.[597]

4.4.3.1 Grievance Procedures in the UK[598]

Disciplinary procedures set out arrangements for dealing with employees suspected of breaching organisational rules in some way. However, employees might choose to complain about the managerial interpretation of organisational rules, specifically if they feel they have been managed unfairly in some way. Therefore, whilst disciplinary proceedings are initiated by the employer against the employee, grievances are brought by the employee against the employer. The definition of a "grievance" in the Dispute Resolution Regulations 2006 is a complaint by an employee about action, which his/her employer has taken or is considering to take in relation to him/her.[599]

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[597] Smith and Thomas, op. cit., p. 460.

[598] Grievance procedures are when an employee makes an official complaint against his employer, a colleague, or regarding an element of the workplace environment. Nairns, 2004, op. cit., p. 219.

[599] Lauterburg, op. cit., p. 339. For more information about grievance procedures in the UK. See: Selwyn, 2011 op. cit., p. 331; and Willey, op. cit., p.302. Some keys to handling grievances in the workplace. For example, let the employer know the nature of the grievance. If it is not reasonable to resolve a grievance informally, employees should raise the matter formally and without unreasonable delay, with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance. Lauterburg, op. cit., pp. 339-340.

Grievance procedures are designed to offer formal means of resolving a dispute that arises when an individual employee has a complaint regarding their treatment at work. Grievance procedures also establish a process, whereby accused employees can express their complaints. Such procedures typically specify the need for a statement from the employee outlining their grievance, and make provision for a hearing, at which the employee can discuss his/her complaint.[600] Grievance procedures have long been an important component of good industrial practice, as reflected in employment law. Employers should take grievance issues seriously, since unsolved problems can lead to more serious problems later.[601] There is an implied term in a contract of employment that an employer will deal properly and efficiently with a grievance.[602] The ACAS Code, by providing for grievance as well as disciplinary procedures provides opportunities for the employee to be proactive and take the initiative when he or she has some employment concerns. In a sense, although the concept of whistleblowing clearly also extends to wider issues and to other individuals, the employee is also given an opportunity to blow the whistle about concerns that have a direct impact on him or her.

[600] Williams, Steve and Adam-Smith, Derek. *Contemporary of Employment Relations*, 2nd Edition. London: Oxford University Press. 2010. p. 355.
[601] Nairns, 2004, op. cit., p. 214.
[602] Smith and Thomas, op. cit., p. 471.

It may also provide an opportunity to provide some light indirectly on issues of more general concern.[603]

More specifically and importantly an employee should be allowed to bring a companion to the hearing and should be given adequate notice of the date of the proposed hearing and given time to prepare any defence against an employers' counter claims. The right to bring a `companion` is actually provided for in the legislation[604] but as a general rule this provision does not confer the right to legal representation unless the individual's contract of employment provides for the right or the employer's disciplinary and grievance procedure actually provides the right. The onus is on the employer to draft the procedure and an employer can provide for more generous provisions than the statutory minimum outlined in the Code and legislation. It should be noted, however, that if the consequences of the disciplinary hearing is likely to have a serious impact on the individual employee's working life, such as criminal sanctions or the future inability to carry on in a profession then the right to legal representation may exist under European Human rights provisions.[605] The contractual provisions may also be more expansive that the statutory Code, and a failure to follow the rules might therefore

[603] Moreover, if an employee has a grievance relating to their employment, the employee should raise this with his or her immediate Manager in writing at the earliest opportunity in accordance with their Organisation's grievance procedure, which is usually set out in the Staff Handbook. If the matter is not resolved at this stage, or the outcome is unsatisfactory, follow the steps for appealing against the Manager's decision as set out in the Grievance Procedure. Smith and Randall, op. cit., p. 227.

[604] See Section 10 of the Employment Relations Act 1999.

[605] See Article 6 of the European Convention on Human Rights.

be regarded as a breach of contract which could lead to a direct right to make a complaint to a Tribunal and claim compensation on the basis that he had effectively been wrongly dismissed.[606] It is also important to note that tribunals exist in order to provide simpler, speedier, cheaper, and more accessible justice than the ordinary courts.[607] They are judicial in nature and status but are more informal than ordinary courts. They therefore have the capacity to deal with more cases and tend to be more flexible. Tribunals, including, Employment Tribunals have wide discretion in operating their procedures but if deemed to be unfair then their decisions and their processes can be appealed to a high status supervisory court, the Employment Appeal Tribunal. The lower level Employment Tribunals consist of a judge with an expertise in employment law together usually with two non-lawyer members appointed to represent the different sides of industry, namely employers' organisations and trade unions.[608] There is therefore an attempt to ensure that decisions taken reflect employment realities and enlightened employment practice. Disciplinary and grievance processes in the UK can therefore provide for direct access to external and judicial scrutiny and in this respect, therefore the UK disciplinary and grievance process has much to recommend it compared to the internal system available in Kuwait. Another

[606] See Kuilkarni V Milton Keynes Hospitals NHS Trust[2009]ICR 656.
[607] See Wade H.W.R.and Forsyth, C.F. Administrative Law. London: Oxford University Press. 2009, at p. 770.
[608] There is however, regrettably evidence to suggest that increasingly sitting on their own – probably as a cost saving measure. This is to be regretted given the added insights the other Tribunal Panel Members can give.

important consideration is that tribunal applications can be made online and as a result of recent judicial intervention there are no fees.[609] In addition, there are normally no costs to pay when making a claim. Admittedly, there is a small risk of having to pay the employer's costs if the claim is unsuccessful but an order to pay costs will only arise if the applicant has acted in bad faith and, for instance, lied or misled the tribunal.

4.4.3.2 Standard Procedure of Discipline in the UK[610]

Grievance and disciplinary procedures exist as a formal means to resolve any individual disputes that arise from breaches of organisational rules, or acceptable standards of conduct. In fact, disciplinary and grievance procedures can usefully be regarded as elements of an alternative dispute mechanism rather than a punitive intervention. Indeed, the eminent common law employment law scholar, Prof Norman Selwyn, concluded that:

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[609] There is no longer a requirement to pay a fee to make a claim to the Employment Tribunal or the Employment Appeals Tribunal. This was confirmed on July 26th, 2017 by the Supreme Court which declared unlawful the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013. Prior to 2013, there were no fees for issuing claims in the employment tribunal but in a cost saving exercise and possibly in an attempt to discourage individuals from using the Employment Tribunal a Fees Order was introduced. Encouragingly, and a good example of the importance of having an independent Judiciary the Supreme Court, UK's highest Court decided that the fees prevented access to justice and were unlawful as a matter of English common law and EU law, as well as being unlawful under the Convention on Human Rights. The fees in the employment tribunal were therefore done away with immediate effect. See case R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent) [2017] UKSC 51.

[610] The standard disciplinary procedure is laid down in schedule 2, part 1 under the Employment Act 2002. Selwyn, 2011, op. cit., p. 340.

*`the exercise of disciplinary powers is a corrective function, not punitive. The object is to improve an employee's performance, so that he can remain a valued and useful employee, not to give vent to management frustrations. The choice of disciplinary sanction must therefore reflect this objective, and should, so far as it is possible, be tailored to the individual case, bearing in mind the need show some form of consistency in like case*s`[611]

With the above aim in mind, the UK Employment Law 2002 was enacted to provide a framework, to lower the number of tribunal applications by encouraging alternative dispute resolution mechanisms. Alternative dispute resolution aids in the enactment of new standard procedures for use in cases where disciplinary action and dismissal were demanded. In this matter, it is useful to have an alternative dispute resolution to reduce the number of cases, saving time and money. The standard procedure is laid down in Schedule 2, Part 1 of the 2002 Act.[612] It states that the employer needs to set out in writing the employee's alleged conduct, which led the employer to dismiss or take disciplinary action against the employee. The writing should be sent to the employee, inviting

[611] See Selwyn's Employment Law, 2016, op. cit, at p. 364.

[612] Smith and Thomas, op. cit., p. 468. However, the New Employment Act changed the way in which employers are required to handle disciplinary procedures and grievance. The dispute resolution procedures were repealed by the Employment Act 2008, which came into force on 6 April 2009. To accompany the Act, there was a new ACAS Code of Practice 1, which is essentially a simplified version of the old one. Employers still need to do the following: write to the employee setting out the reasons for the disciplinary meeting, give the employee a right to be accompanied by a work colleague or a Trade Union official, confirm the reasons for the disciplinary warning in writing, and give the employee a right of appeal against the decision. Kelly and et al., op. cit., p. 450.

him/her to attend a meeting. This must be done before action is taken, except for suspension, and after the employee has been informed of the basis of the employer's grounds and has had a reasonable opportunity to consider his/her response.[613]

The following points should be noted concerning the objectives of disciplinary procedures:[614]

- Deal with issues promptly and consistently;
- Establish facts before taking action;
- Ensure employees are clearly informed about allegations;
- Allow employees to be accompanied and to state their case;
- Ensure that any disciplinary action is appropriate to resolve misconduct or incapability;[615] and
- Provide employees with sufficient opportunity to appeal[616] against any disciplinary penalty decision made by the employers.[617]

[613] Ibid, p. 451. Moreover, members investigating disciplinary matters or grievances should not gather information by deception. Wallington, Peter op. cit., p. 460.

[614] For more details about disciplinary procedures in the UK, see: Lewis and Sargeant, 2009, op. cit., p. 108.

[615] It is important to provide the individual employee with sufficient information in relation to his or her's alleged misconduct.

[616] Appeal is a proceeding in which a higher tribunal re-examines the decision of a lower tribunal. Endicott, Timothy, *Administrative Law*. London: Oxford University Press. 2009, p. 607.

[617] Draft ACAS Code of practice Disciplinary and Grievance procedures. Phillips, Gillian and Scott, Karen, *Employment Law*, 2009, p. 452.

Clarity and proportionality are therefore key considerations, and as will be illustrated from the discussion below, disciplinary provisions in France strive to provide an appropriate balance.

4.4.4 Disciplinary Procedures in France

Before discussing disciplinary procedures in France, it is important to introduce the French Court System. A very prominent characteristic of the French court system is the hierarchies in place which the ordinary courts for civil and criminal cases, and for the administrative courts. The administrative court hierarchy comprises of administrative courts, administrative courts of appeal,[618] and the judicial division of the Council of State as the final instance court. Whereas, the ordinary judiciary comprises courts of the first instance, specialising in different areas of jurisdiction, and above those are the courts of appeal, and finally, the Court of Cassation.[619] Disputes arise over which of these jurisdictions should be selected to hear each matter; for example, a tort claim against a public authority is settled by the court according to conflicts of jurisdiction. Judges are then appointed by the President, in a procedure involving the competent section from the high council of the judiciary.[620]

[618] De Laubadere and et al., op. cit., p. 145.

[619] Chapus, op. cit., p. 689. See also Jacques, Salmon. *Conseil d'etat*. Paris, Brylant Bruxelles. 2005, pp. 31-34; and Kalck, Pierre. Tribunaux. *administratif et courts administratives d'appel.* Paris, Berger Levault. 2004, pp. 43-47.

[620] Article 65, French Constitution. See also, Gustave, Peiser. *Contentieux Administrative*, 14th edition. Paris: Dalloz. 2006, pp. 218-219.

The French disciplinary system is characterised by hierarchy and graded responses with little room for discretion variable fines, for instance, are not permitted.[621] A permanent amnesty is provided for administrative sanctions imposed for longer than three years, and the courts must decide whether a sanction is proportionate to the degree of seriousness of the misconduct concerned if appealed to by employees.[622] As elaborated above, a disciplinary sanction is an action taken by an employer after determining that an employee's actions are at fault. Before applying the sanction, the employer is required to comply with established procedures, to inform the employee concerned of the intent to discipline and to enable him/her to defend himself/herself.[623]

Penalties are essentially graded in severity with dismissal being regarded as the most serious sanction available. Similarly, as outlined below, the provisions are specific about what type of conduct can give rise to disciplinary penalties. In addition, employers are generally required to give good reasons for their decisions and if found inadequate the courts are not entitled to substitute

[621] Bandet, Pierre.*Le droit disciplinaire dans la fonction publique territoriale (Collection L'Actualite juridique)*. Paris: Editions du Moniteur. 1990, p. 99; Esplugas, op. cit., p. 93.
[622] Waline, op. cit., p. 283; and Vedel, Georges and Delvolve, Pierre. *Le systeme francais de protection des administres contre l'administration.* Paris: Sirey. 2003, p.17.
[623] Braibant and Stirn, op. cit., p. 258.

alternative justifications.[624] In addition, the courts decide on the basis of objective criteria, the employer's belief is not sufficient.[625]

The punishment of dismissal from work is therefore rightly regarded as a serious matter and specific breaches of employment duties need to have occurred and specified procedures must be followed in order to justify a removal from office. However, as can be seen from the specified list below there is considerable scope for arbitrary punishment. The employment offences are defined in very broad terms and include:

- Refusal to comply with an order from an employer;
- Failure to comply with the obligation of discretion and loyalty;
- Non-compliance with the duty of loyalty and discretion;

[624] The exception is the right to dismiss during a probationary period, when each party is free to terminate without giving good reason.

[625] See case of Brent against the Minsister of Agriculture, May 6.1976, Rec232D.1976.563. Mr Brent was the Chairman of a Real Estate company who was dismissed from his post allegedly because of serious failures in the exercise of his duties and which led to his dismissal from the Ministry of Agriculture. However, the Court took the view that the errors in question were not sufficient- not of sufficient magnitude to justify his actual dismissal. The French case was accessed from a book entitled" *Les Grands Aretes de la jurisprudence administrative,* by Marceau Long et al, Ist Edition.Paris: Dallz, 2006 and available in Arab text by Dr Ahmad Yessri, and entitled *Principle Judgement in the French Administrative,* Alexandria, Manshaat Al-Maared 2004, p 656.

- Criticism, insults, threats, violence;[626] and
- Errors or negligence at work.

Therefore, when compared with the situation in Kuwait, disciplinary procedures in France are more efficient. Moreover, they are designed to avoid the infringement of employees' rights. For example, French law accepts that the principle of 'ne bis in idem.'[627] The principle is a legal concept that prohibits dual punishment or gives a right not to be punished twice in criminal proceedings (as anchored in Article 368 of the Code de procedure pénale) and also equally applies to a disciplinary measure. It is an equitable principle that is violated when an individual has been punished twice for the same offence.[628] However, 'ne bis in idem' does not apply to a combination of disciplinary and criminal charges, which means that an individual can still be disciplined for administrative offences and at the same time be penalised for a crime. According to Article 29 of the Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires, every fault committed by a civil servant in the exercise, or on the occasion of his

[626] Also, see: C.E. 16 Juin 1965, Morin, Leb., p. 355; C.E 8 Juin 1966, Banse, Leb, p. 1011; C.E. 6 Decembre 1957, Serre, Leb., p. 657. See also, the case of Mr. Teinsier against the Ministry of Education, where the ministry dismissed an employee (Teinsier) for the administrative disciplinary offence. It had also been written in the newspaper, that Mr. Teinsier, who is the manager of the centre for scientific research, had an aggressive attitude toward the French government. C.E. 13 Mars 1953, Teinsier, Rec 133. D.1953.735. See: Auby and et al., op. cit., pp. 166-171; and Chapus, op. cit., pp. 330-335.

[627] The literal translation from Latin is "not twice of the same thing," see Kokkoris, Ioannis and Lianos, Ioannis. *The Reform of EC Competition Law: New Challenges*. London, Kluwer Law International. 2010, p. 179.

[628] Ibid, p. 179.

functions, exposes him to a disciplinary sanction without prejudice, if appropriate, to the penalties provided by criminal law.[629] Similarly, the administration of Kuwait under Article 27 of Kuwait Civil Service Law no. 15 of 1979 has the right to impose both a disciplinary and criminal penalty to the public employee, if the employee commits a criminal offence and the same time a disciplinary offence.[630] The researcher considers that the right to penalise an employee for an administrative and criminal offence is reasonable. In instances where an employee has committed a wrongdoing in the workplace or performed a criminal act contrary to the relevant law, such as stealing money in work from another employee, then it may only be fair to discipline and punish the employee for failing to abide by the rules and laws.

4.4.4.1 The Characteristics of Disciplinary Sanctions in France

Any disciplinary sanction[631] must equate to the offence. A disciplinary sanction can be any of the following:

- warning;
- censure;
- exclusion from promotion;

[629] Opdebeek, Ingrid and De Somer, Stephanie. "The Legality of a Combination of Disciplinary and Criminal Penalties Applied to Civil Servants in the European Sphare: An Impermissible Case of Double Jeopardy or a Legitimate Conjunction for Tackling Reprehensible Behaviour of Public Officials?" *European Human Rights Law Review*. 2015, pp.474-487.

[630] Article 27, Kuwait Civil Service Law no. 15 of 1979.

[631] See Article 67 of French public service no. 84-16 issued on 11/1/1984. Also see Salon, Serge. *Delinquance et repression disciplinaires dans la fonction publique*. Paris: L.G.D.J, 1969, p. 218.

- demotion;
- transfer;
- referral to retirement;[632]
- dismissal from work with compensation; and
- dismissal from work without compensation[633]

Before determining what a penalty should be, beyond a warning, the employer must call the employee to a preliminary interview, and inform him/her of the purpose, date, and time and place of the interview. The employer should remind the employee that he/she may be assisted by a person of his/her choice from among the staff at the organisation. During the interview, the employer must provide reasons for the proposed sanction and record the employee's explanation. The invitation to be interviewed, and notification of any sanction must be made and registered by mail, or be hand delivered in return for a receipt. When the charges against an employee are of sufficient gravity that it is impossible to retain the employee within the administration, the employer may take precautionary measures against him/her. These measures could include suspension from work, under section "La suspension prealable des agents auteurs de fautes graves"[634] in serious cases of misconduct.

[632] All of the above mentioned disciplinary sanctions in France are similar to the sanctions under Article 60 of the Kuwait Civil Service System no. 15 of 1979, except the referral to retirement. Kuwait Law does not consider the referral to retirement as a disciplinary sanction, but it is a disciplinary sanction in France.

[633] Chapus, op. cit., pp. 338-339.

[634] Braibant, Guy, *Le droit administrative Francais Paris*, op.cit, pp. 368-369.

The French disciplinary system[635] is an instrument of administrative authority, one that ensures the proper functioning of the public utilities. The French Administrative Authority, and the Joint Management Committees and Boards of Discipline have created a process for issuing disciplinary penalties, which can be taken up as necessary. To discipline staff,[636] the relevant authority should send a report to the administrative head. Thereby, their supervisory power has no value unless accompanied by sanctions. This is stipulated under Article 31 of the Law of February 4, 1959, which states that disciplinary authority is entrusted to any competent appointed authority. However, the competent disciplinary authority in France varies relative to the capacity to issue disciplinary sanctions as specified under the law.[637] Each administrative organisation assuring a degree of

[635] Lebreton, Gilles. *Droit administratif general,* 6th Ed. Paris: Dalloz.2011, p 172; and Michel, Jean. *Les recours administratifs gracieux, hierarchiques et de tutelle. France: La Documentation Francaise.*1996, p. 19.

[636] To understand disciplinary procedures in France, and to see the importance of these procedures for the employer before imposing any disciplinary sanctions against the employee, see Guy Braibant, who explained the disciplinary sanctions. Brainbant states "contrairement a la précédente, la responsabilité disciplinaire (plus importante dans la pratique et dans le droit) est souvent mise jeu. On n'en a pas beaucoup le sentiment dans le public parce que, la plupart du temps, les sanctions ne sont pas publiées. Il n'y a pas statistiques, on ne sait pas combien de postiers ou combien de policiers ont fait l'objet de sanctions dans l'année, ni quelles ont été ces sanctions. Mais elles existent et l'on ne peut pas dire que, de ce point de vue, les fonctionnaires soient complétement a l'abri de toutes poursuites": see Braibant, Guy, op. cit., p. 370. The translation of this text or this paragraph in English is "unlike the previous disciplinary responsibility, it is more important in practice, and in law it often does not have much impact feeling in the public domain, because very surprisingly the disciplinary sanctions are rarely published. There are no statistics, no one knows how many postal workers there are, or how many have been sanctioned and what the sanctions where".

[637] Coulet, William. *Le nouveau reglement de discipline generale dans les armees*. Revue du droit public et de la Science Politique, 1968, p. 5; Plantey, op. cit., p. 389; Oberdorff, Henri. Les institutions administrative, 6th edition. Paris: Dalloz. 2010.p. 40.

management authority to discipline employees, and to target irregularities easily and before they become entrenched.[638]

Based on the foregoing provisions under the State Council, the French code is exemplary in the manner by which it links the appointing authority and disciplinary hierarchy.[639] The system in France is in stark contrast with that in Kuwait, due to the reason that the French State Council deals and manages all administrative cases, but Kuwait still does not have a specialist and separate court to deal with various administrative issues. This issue of the unavailability of administrative court in Kuwait, as compared to other countries which have a specialist court for administrative cases, is a cause for concern and, as will be argued below, the deficit needs addressing.

4.5 Administrative Courts in Kuwait and elsewhere[640]

In Kuwait, the public employee is held liable under administrative law for all administrative disputes punishable by law. Therefore, the establishment of an

[638] Gustave, Peiser. *Contentieux Adminsitratif, 14th edition*. Paris: Dalloz. 2006, p. 27.

[639] A large body of French Public Law, known as "Administrative Law" (in French language called "Droit Administratif"), has been created mainly by the courts, particularly by the highest administrative court. Steiner, EVA, *French Law "Counseil d' Etat*", in English language "Council of State". Oxford University press, 2010, p.4.

[640] In section number 4.5, the researcher will firstly discuss the administrative court in Kuwait, and then examine the Administrative Court in France which is called "Counceil d' Etat".

Administrative Court[641] is of the utmost significance to the development of the judicial system in Kuwait. Prior to the creation of the Administrative Court, Article 2 of Law No. 19 of 1959 on the Regulation of the Judiciary expressly deprived the courts of the right to resist, interpret, or interfere with administrative decisions.[642] The article, as indicated above, limited the powers of the courts to determine pleas, expressing that the courts "…without annulling any administrative order or halting its execution or interpreting it."[643] This notion was maintained for over twenty years, despite the Kuwait constitution presenting a legal foundation upon which to establish an administrative court in 1962, as was clearly stated under Article 171 of the Kuwait constitution, which the researcher has previously referred to in section 1.2.2 (Objective and Research Questions Chapter 1). Article No. 171 of

[641] The Kuwait Court held that the competence or the jurisdiction of the administrative circle is in the field of dismissal, promotion, termination of service and the imposition of disciplinary sanctions. However, the court does not preside over the transfer of employees from one job or another and the delegation of work. Case Number 217 of 1993, administrative case, session 22/3/1994. Council of Ministers, p. 678. In Arabic, this case means [وحكمت المحكمة : بأن إختصاصها في مجال الغاء القرارات الادارية طبقا لما تنص عليه المادة الاولى من القانون رقم 20 لسنة 1981 يقتصر على طلبات إلغاء القرارات الخاصة بالتعيين والترقية وإنهاء الخدمة وتوقيع الجزاءات التأديبية ومن ثم يخرج عن اختصاص تلك الدائرة طلبات الغاء قرارات ندب ونقل الموظفين إلا أن تكون هذه القرارات منطوية على عقوبة مقنعة مما تختص الدائرة الادارية بنظره ولما كانت دعوى الطاعن تنصب على موضوع النقل فتقضي المكحمة برفض القضية .]. Also, the Kuwait's administrative circle is competent over administrative disputes, and has a mandate to eliminate, cancel and compensate for the administrative authority's failure to take decisions necessitated by the law. Case Number 499 of 2000. Administrative Case, Session 2/4/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005, p. 30. The translation in Arabic is [الدائرة الادارية بالمحكمة الكلية تختص دون غيرها بنظر المنازعات الادارية و لها ولاية قضاء الالغاء والتعويض وان امتناع السلطة الادارية عن اتخاذ قرار استلزمت القوانين واللوائح اتخاذه اعتباره في حكم القرار الاداري].

[642] Article 2, Kuwait Regulation of the judiciary, law no.19 of 1959. Also see Al-Mutairi and Al-Shamali, op. cit., p. 45; Al-Kandari, Hani Abdulatif. "Administrative Investigation in the State of Kuwait". Master dissertation. Kuwait University. April 2010, p, 18.

[643] Article 2, Kuwait Regulation of the judiciary, law no.19 of 1959.

Kuwait Constitution, clearly stipulates that: "A council of State may be established by a law to assume the functions of administrative jurisdiction."[644] However, the Kuwaiti legislature to date has not acted upon the opportunity to establish a full-scale State Council or Conseil d' Etat as exists within the French legal system. Thus, the State of Kuwait does not have a special administrative court similar to that in France. Under French law, the administrative courts are dealt with through the French Counseil (Council of State), which is probably the most famous of the European administrative law tribunals. As part of the Napoleonic model of legal systems, it was created in 1799, and it has been the inspiration of much of Europe's approach to legal control over the executive. Despite its general importance as the summit of administrative law, it is probably unique in its structure, being simultaneously a court and a government department, and as a court it acts mainly as the Supreme Court of the French administrative law structure. France, like most European countries, has separate court hierarchies for civil, criminal and administrative law, and only in the administrative courts can the actions of the executive be challenged. Due to the huge caseload in this system, with around 10,000 cases a year brought before it in the late 1980s, a new intermediary tier of regional administrative appeals courts was set up in 1989. Subsequently, the Conseil has heard only the most important cases but this has not reduced its significance.[645]

[644] Article 171, Kuwait Constitution, Appendix A.

[645] Robertson, David. *A Dictionary of Human Rights*, 2nd edition. London: Europa publication. 2004, p. 53. Brown, L.N and Garner, op. cit., p. 40.

These courts are completely separate from the civil and criminal court structure. The Conseil d' Etat is the highest administrative court, and handles all disciplinary cases.[646] Likewise Egypt has a council of state to deal with administrative cases under law no. 47 of 1972. Egypt also has Law no. 117 of 1985 to organise the procedures of the disciplinary courts and are able to act under the name 'Council of State.'[647] In Kuwait, however, the Administrative Court is only a circle within the court of the first instance. This exception could be attributed to the fact that, while other circles address matters regulated by codified legislation, adjudication in administrative disputes was intended as an addition to the executive authority, and not as an independent judicial authority. As a result, there is no administrative legislation according to which this circle can render its power to establish a special court.

At this point, it is possible to fulfil a key research objective; i.e. to examine the need for constitutional and institutional reform, by establishing a separate specialist judicial administrative tribunal to hear disciplinary issues. Based on the evidence and arguments above it is here suggested that the development would be

[646] For more information about the French state council (le conseil d' etat) and how administrative cases are dealt with, see Pierre, Pacter and Meline, Soucrmamien. *Driot Constitutionnel.* France: Sirey. 2007, p. 515.

[647] See Ramadan, Shaiban, op. cit., p.16. Anwar, Osama. *Legislation and Laws of Egypt State Council and Administrative Judicial*. Egypt: Dar Al- Arabi. 2012, pp. 17-36 and pp. 247-260. Bader, 2010, op. cit., pp. 225-230. Al-Tabak, op. cit., p. 248.

both feasible and welcome.[648] In summary, the development is justified and over-due as summarised below:

1. Article no. 171 of Kuwait Constitution expressly stated that Kuwait may establish a council of state.[649]

2. Public employees will feel more secure, when they know their cases will be handled by specialists and expert judges, who are dedicated solely to focusing on administrative cases.[650]

3. It would help promote fairness if judges were involved in the process of scrutinising and monitoring administrative issues in the context of the disciplinary process because of the potentially serious implications to the individuals concerned.

4.6 Chapter Summary

This chapter began by providing a brief overview of the concept of fairness within the context of Islamic law and natural justice with a view of understanding how the principles might beneficially be applied to the employment disciplinary process.

Thereafter the chapter provides an overview of disciplinary procedures and penalties in key Arab and non- Arab countries and the evidence of the chapter suggests that perhaps Civil Law systems are lacking in soft law and that

[648] For more details, why Kuwait needs a separate special court for administrative cases, see section 5.6 (Findings of the Focus Group) in Chapter 5. Interview no. 7, Appendix D.
[649] Article 171, Kuwait Constitution, Appendix A.
[650] See evidence of respondents in next chapter.

consequently the procedures may be viewed and applied as essentially punitive rather than corrective and transformational as is the case under English Common Law. A possible explanation for this legal diversity may be that the legal provisions under English Law are rooted in employment rather than public and constitutional law. The same explanation might also account for the fact that reforms of the disciplinary procedures in Arab countries appear to be slow and potentially failing to adapt to changes in workforce composition and public employee expectations. The issue of externality of judicial scrutiny was also discussed and, in this context, the non- existence of a specialised Administrative Court in Kuwait was highlighted and the suggestion made that such a development was both possible and needed.

The empirical research reported in the next chapter provides testimony to the need for further clarity, impartiality, and judicial scrutiny of the disciplinary process in Kuwait, and provides evidence which is compatible with the need to promote the concept of natural justice within an Islamic framework.

Chapter 5
The Views of Public Employees Concerning the Disciplinary System and Natural Justice in Kuwait

5.1 Introduction

This chapter reports on a survey of the opinions of Kuwaiti public employees, concerning the fairness and appropriateness of the disciplinary system currently in place within Kuwait, and examines the impact of disciplinary procedures on public employees. This study was conducted using three forms of survey: Firstly, there was a self-completion questionnaire (i.e. completed by the respondent without any assistance from the researcher.[651] Secondly, there was a group interview and thirdly there were individual interviews with six senior managers and two judges with relevant experience of administrative cases.

The questionnaire was designed and distributed in order to measure the attitudes of public employees toward disciplinary procedures, and the fairness of the disciplinary process in Kuwait. The questions primarily consisted of multiple-choice questions, along with a number of open-ended questions, requiring a written answer. The researcher personally distributed the questionnaire to employees from the Ministry of Justice, including instructions on how it should be completed and returned. The distribution and completion occurred over a one-week period. The questionnaire was designed as a central aspect of the

[651] See Bryman, A. and Bell, E. *Business Research Methods*, 2nd Edition London: Oxford University Press. 2015, p. 574 which provides a discussion of the methodological issues.

methodology of this study, and the interviews were also undertaken to clarify information, particularly in relation to whistleblowing in Kuwait. The questionnaire was completed by workers at the Ministry of Justice, prior to the implementation of the whistleblowing law against corruption in Kuwait, and hence no specific questions about the particular whistleblowing provisions were included. The focus of the questionnaire was, therefore, restricted to general issues of fairness. The relevant legislation was introduced during the course of the study with the result that specific questions relating to the legislation were included in the face to face contact arranged with the focus group and the individual interviews with key stakeholder personnel. The focus group interviews for the current research were conducted as a supplemental methodology to acquire further information, with an emphasis on the whistleblowing law in Kuwait. The individual interviews with eight senior officials were undertaken to obtain a deeper understanding and analysis.

The Ministry of Justice was selected not only for convenience and ease of access for data collection, but also as the most appropriate source of information from within the public sector. The questionnaire was designed to reflect the legal structure of discipline procedures in Kuwait, covering: firstly, personal information concerning the respondents; secondly, information concerning disciplinary procedures; thirdly, information concerning Kuwaiti Civil Service law; and finally, there was a discussion of the aims of natural justice and discipline, with a focus on the principles of natural justice within Kuwaiti

legislation. The strength and reliability of these questions were tested prior to the distribution of the questionnaire, and each respondent was requested to answer to the best of his or her knowledge. The researcher drafted a questionnaire which was piloted on colleagues in the Kuwaiti public service.

Following the return of the completed questionnaire from the entire sample of fifty respondents, the resulting data was prepared. Once the questionnaire had been collected, the primary data was passed to the statistical consulting unit at the Kuwait University's College of Business Administration. The questionnaire was subsequently checked and verified, and the results entered into an electronic database created by the statistical consulting unit, using SPSS.[652] The researcher was able to present a statistical analysis of the responses to the questions using figures and tables. The data from the two sets of interviews (i.e. the focus group and individual interviews) complemented the findings of the questionnaire, and was used to focus on the main questions of this research. The impact of disciplinary provisions and procedures on employment security in the Kuwaiti public service and on whistleblowing in particular.

The following sections undertake a detailed and descriptive analysis of the respondents' attitudes towards these issues. The questions of this present research are then discussed, along with further issues noted in Chapter 1, Section 1.2.2.

[652] SPSS stands for Statistical Package for the Social Sciences.

5.2 The Methodology and Research Instrument

As discussed above, the researcher designed and employed a research mechanism in the form of a questionnaire, supplemented by a focus group discussion and eight individual interviews with public service workers.

The following sections discuss in detail the three tools used in this research, i.e. (1) the questionnaire; (2) the focus group; and (3) the eight individual interviews. The material collated will largely be presented within the three separate categories of information and attitude gathering outlined but occasionally in order either to emphasise or qualify the evidence data from the other sources is used in order to reinforce the arguments and conclusions.

5.3 Individual Interviews with Top Management Employees (i.e. eight interviews)

An anonymised list and general description of the key stakeholders is provided. It will be noted that the majority of those interviewed are those holding Senior Public Management Positions. In addition, two in depth interviews were arranged with Senior Judges with extensive experience of disciplinary issues. The details are given in Table 5.1 below. The researcher met with all these top managers, all of whom insisted on anonymity.[653]

[653]It should be noted that disciplinary procedures, and the processes used by the top management to deal with their subordinates are sensitive topics, and therefore most of these top managers refused to have their names listed when they met the researcher.

Table 5.1: List of Top Managers interviewed by the researcher (Eight Interviews). The Managers included personnel from a wide range of Departments including International Relations, Public relations, Complaints Section, Administrative Investigation Section, Judicial Information Section, and the Administrative Development Section.

Institution	**Sector**	**Position**	**Name**
National Assembly (Kuwait Parliament)	Public	Senior Manager	Anonymous
National Assembly (Kuwait Parliament)	Public	Senior Manager	Anonymous
National Assembly (Kuwait Parliament)	Public	Head of Section	Anonymous
Ministry of justice	Public	Head of Section	Anonymous
Ministry of Justice	Public	Head of Section	Anonymous
National Assembly (Kuwait Parliament)	Public	Head of Section	Anonymous
Ministry of Justice	Public	Judge (Counsellor at Supreme court)	Anonymous
Ministry of Justice	Public	Judge (Counsellor at Supreme court)	Anonymous

A number of steps were taken prior to the interviews, as outlined below:

First, the researcher carefully prepared the interview questions to ensure all the information obtained was relevant to the key issues of fairness discussed in the thesis. The researcher also determined the objectives of the interviews,[654] and designed the questions for the research instruments based on the requirements of this thesis.

Second, the researcher was able to recruit respondents with appropriate expertise, taking a number of issues into consideration: (1) the interviews were conducted with expert public employees, i.e. judges who are counsellors; (2) the interviewees all had substantial experience in the field of the disciplinary system, along with some knowledge of the new whistleblowing code in Kuwait; (3) and they were familiar with, and interested in, the disciplinary system and the duties of public employees, in particular the duty to keep confidential information and the duty of whistleblowing, which is one of the main themes of this research.

Third, the researcher introduced himself to the interviewees and then thanked them for giving up their time to be interviewed. Before the interviews began, the researcher assured the respondents that direct sources of information would not be revealed or attributed and that participating respondents would have their anonymity protected. The respondents were also provided information concerning the focus of his thesis and the general aim of the interviews, i.e. to

[654] For more information concerning the pre-interview stage, see Beatty, R. *The Interview Kit*, 3rd edition. USA: John Wiley and Sons Incorporated. 2003, pp. 1-3.

examine the viewpoints of other employees and gain an understanding of the relationship between the confidentiality of information and the duty to whistleblow, along with the position of the disciplinary system within these duties. The researcher, therefore, discussed the strengths and weaknesses of the legal system and the duty of whistleblowing in Kuwait, followed by developing recommendations to enhance and develop the legal system.

Fourth, a number of obstacles in using the interview method was needed to be overcome. These included: (1) difficulties in obtaining appointments, in particular with one of the judges who (as outlined in his interview) was dealing with a number of administrative cases, and was therefore preoccupied with his work (Interview No. 7); (2) difficulty in gaining permission for sufficient time in which to conduct the interview; (3) and the reluctance of a number of interviewees to answer some of the questions. A key issue consisted of the interviews being held in Arabic, and subsequently translated into English by the researcher,[655] particularly there are challenges in translating the interview data from Arabic into English for the purposes of this thesis.

Fifth, the interview was conducted, and the findings were subsequently drawn up, and the confidential nature of the information confirmed to the participants.

The individual interviews with top management were conducted using the following set of ten questions:

[655] See Appendix D and E for both the Arabic and English transcripts of the interviews.

1. Would you please tell me about your background and your experience of the disciplinary system, and the duty of whistleblowers against corruption in Kuwait?

2. Based on your practical experience in the field of the disciplinary system, and the duty of whistleblowing against corruption in Kuwait, what do you consider to be the main legal advantages and disadvantages facing the disciplinary and whistleblowing systems?

3. From your point of view, what is the impact of disciplinary procedures on the performance of public employees? Is this impact positive or negative?

4. Based on your experience, does Kuwait need a separate administrative and disciplinary court to deal with all disciplinary offences?

5. Do you consider that the administrative offences are listed in a sufficiently clear and precise manner?

6. From your point of view, what solutions and proposals could be implemented to reduce the abuse of power on the part of the administration (i.e. employer)?

7. In your opinion, what is the extent of protection for the whistleblower under the Whistleblowing Act in Kuwait?

8. In your personal opinion, do you think that the whistleblower should be subject to disciplinary action under the Whistleblowing Act No. 24 of 2012? Additionally, the Civil Service Law No. 15 of 1979 under Article 25/5 prohibiting the disclosure of information, will the employee be subject to disciplinary procedures?

9. From your point of view and personal experience, do you think that the law

against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and law which prohibits the disclosure of information (Article 25/5 of the Kuwait Civil Service Law No. 15 of 1979) are contradictory, or complementary?

10. In your opinion, how do Islamic principles promote fairness in relation to employment and to the terms and conditions of public employees in Kuwait in particular.[656]

These questions enabled the researcher to obtain an in-depth understanding of each viewpoint, followed by an analysis of the perspectives, links, and contradictions within, and across, the interviews.[657] The approach of using an interview, or undertaking a talk with the workers was a useful method for analysing: (1) discipline; (2) the legal system; (3) whistleblowing; and (4) the duty of maintaining confidential information and natural justice in Islam (Sharia).

5.4 Statistical Analysis and Summary of the Statistics obtained from the Questionnaire

The questionnaire was divided into four parts, as listed above. There was a total of eleven different questions. Several formats were used to address each question, based on its main objective, ranging from questions requiring simple answers of 'yes' or 'no', to multiple-choice and open-ended questions.

[656] As discussed in Chapter 4, the concept of Natural justice, which means fairness, is not a mainstream topic in Kuwaiti law. However, the principles associated with the concept of natural justice are to be found in Islamic Provisions. For more information on natural justice, see chapter 4.

[657] Hodgson, S. *Answers to Tough Interview Questions*, 4th Edition. London: Pearson Longman.2011, p.155.

The following section outlines the results of the statistical analysis responses to the four parts of the questionnaire, along with a general description of the figures. There is also a detailed discussion of the perceptions of the respondents concerning the research questions.

Question 1: What is your nationality?

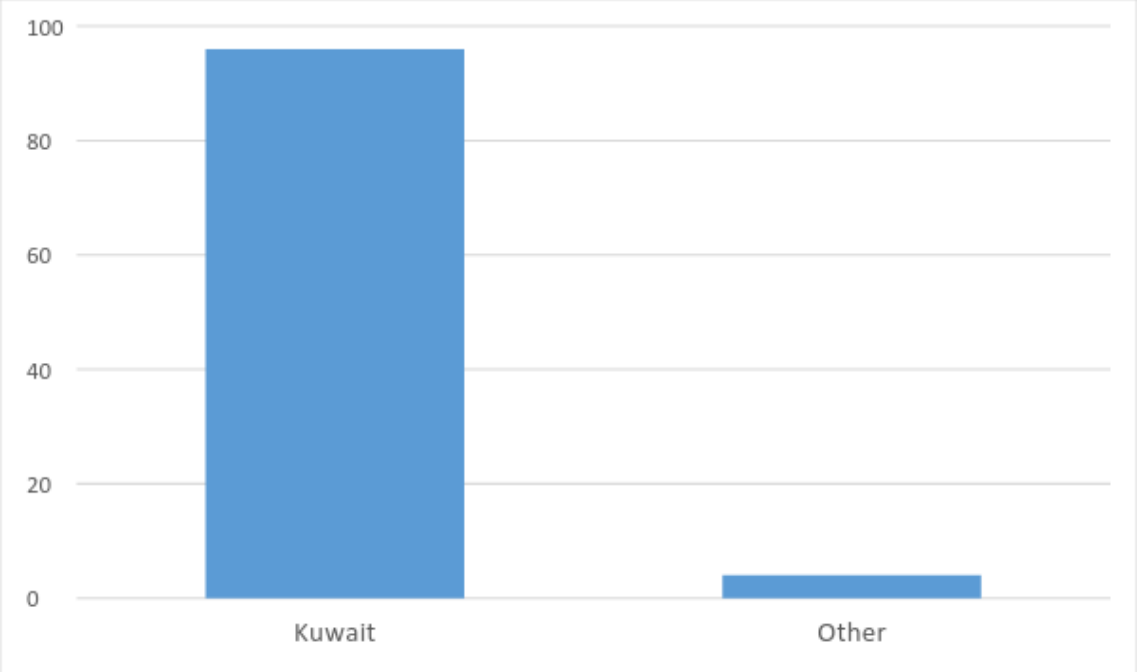

Figure 5.1: The nationality of the public employees surveyed

Figure 5.1 demonstrates that 96% of the public employees surveyed were Kuwaitis and 4% were non-Kuwaitis. The vast majority of the respondents were Kuwaiti nationals, in fact only two of the respondents were non-Kuwaiti citizens. This means that the response was hopefully representative of the typical Kuwaiti employee. There are only a small number of non-Kuwaiti employees working in

the Ministry of Justice.[658] As a result, the researcher decided to focus solely on Kuwaiti employees, in order to obtain their opinions concerning disciplinary procedures. The non-selective distribution of the questionnaire clarified the number of non-Kuwaiti employees. It should also be noted that most foreign nationals are employed in the private sector, under labour law no. 6 of 2010.

Comment

In order to discuss the above figure, it should be stated that the majority of the employees are local residents, who are fully aware of their respective duties within their working sectors. On the other hand, there are also a number of non-Kuwaiti employees engaged in servicing the private sectors. This result reflects the representation of nationalities in the public sector, which restricts the employment of non-Kuwaiti citizens.

[658] For more detailed information about the ethnic background of Public employees in Kuwait and the degree of employment protection provided to non-Kuwaiti see chapter 1.

Question 2: What is the highest educational qualification you hold?

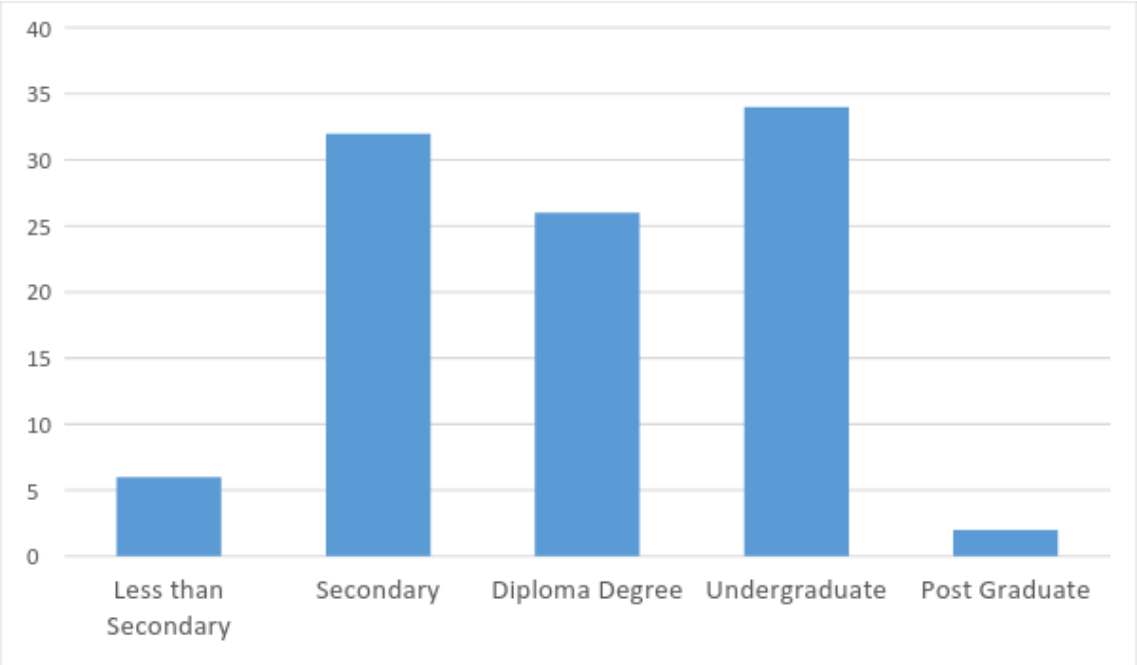

Figure 5.2: Qualifications held

The analysis revealed that: (1) 6% of participants had not completed secondary school; (2) 32% were secondary school graduates; (3) 26% held a diploma; (4) 34% a bachelor's degree; and (4) 2% were postgraduates.

Comment

The above figures reveal that only a small number of professionals in Kuwait hold higher educational qualifications, e.g. postgraduate degrees. The highest proportion of candidates have some degree of secondary education, or are undergraduates. Overall, the graph demonstrates that the respondents have some level of education.

Question 3: What is your professional post in your workplace?

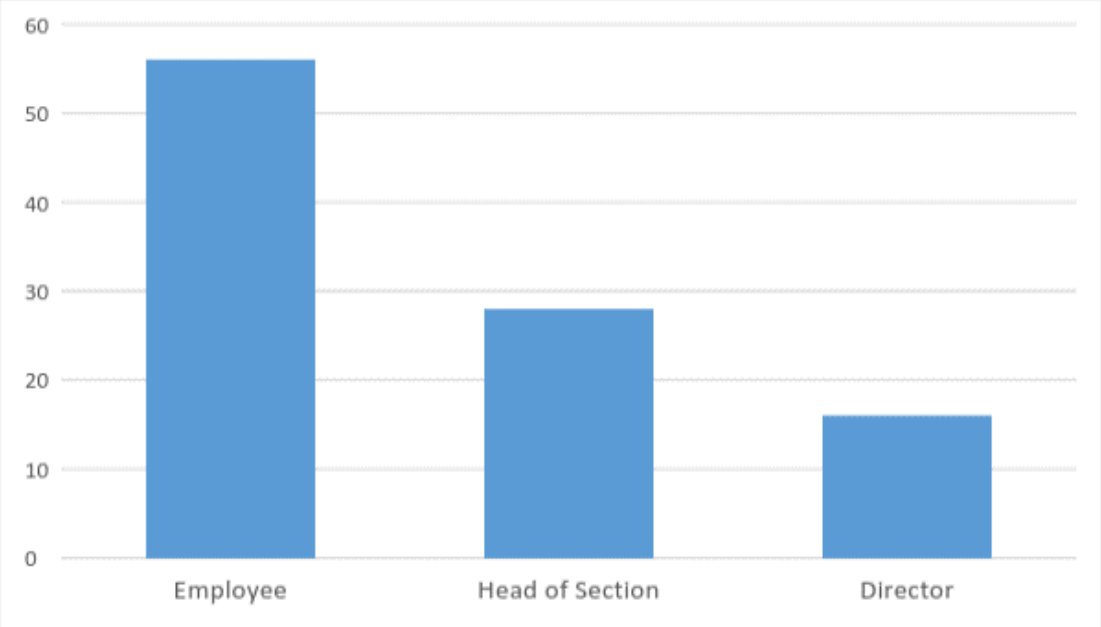

Figure 5.3: Status

The analysis reveals that 56% of those answering the questionnaire were general employees, 28% were heads of sections and 16% were directors.

Comment

It was observed that the majority of those providing feedback through the questionnaire were general employees associated with the public sector. This was due to their familiarity with the disciplinary systems in Kuwait. It was also more effective to collect responses from them regarding the legal facts and policies of the country in the public sectors. The results reveal that there were fewer heads of sections and directors. This can be beneficial, as the experience of ordinary employees and their relationship with their employers is most beneficial for the purposes of this survey.

Question 4: How many years have you been employed at your workplace?

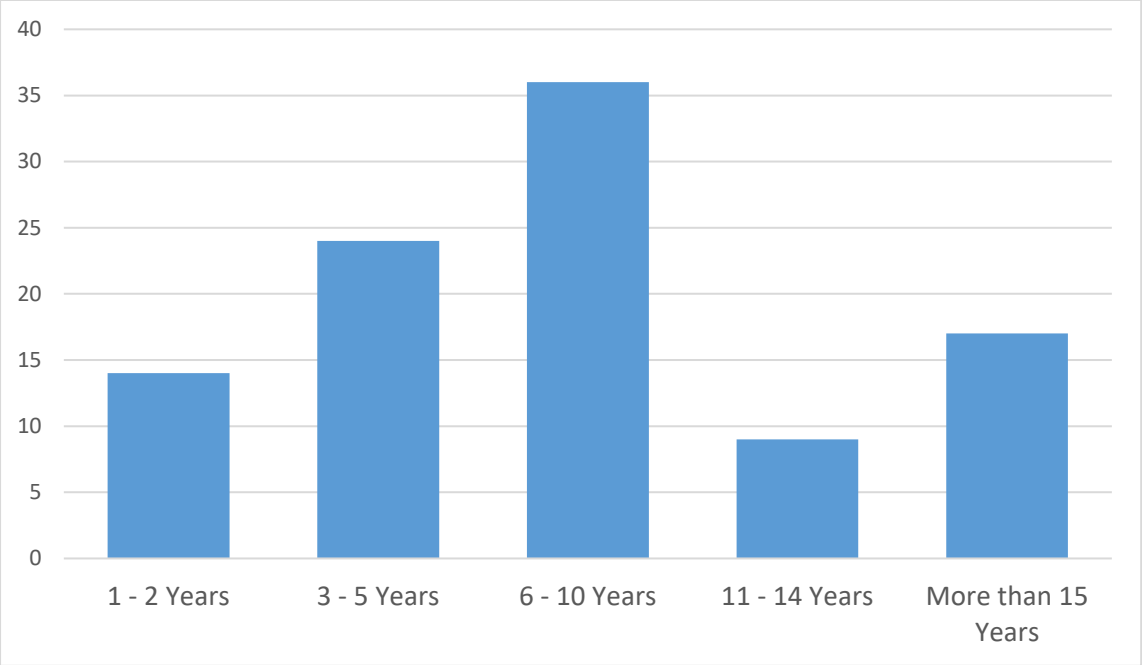

Figure 5.4: Experience in the workplace

The analysis reveals that: (1) 14% of participants had been employed for one or two years; (2) 24% had experience of between three and five years; (3) 36% had been employed for between six to ten years; (4) 9% had experience of between eleven and fourteen years; and (5) 17% had over fifteen years of experience. It is notable that the majority of the sample had between six and eleven years of experience working in the public sector in Kuwait.

Comment

The number of respondents who had worked in the public sector between approximately six and ten years, affirms that they had sufficient experience to provide information concerning the disciplinary system in the public sectors of Kuwait. This therefore facilitated gaining their opinions concerning the impact of

the disciplinary system in their workplace. On the other hand, the results reveal that almost an identical number of respondents had between one and two years of experience and over fifteen years of experience, and it can be stated that the newer employees proved eager to provide their primary responses concerning the disciplinary system of Kuwait.

The section that follows provides a discussion of the questions regarding disciplinary procedures in Kuwait. The discussion in the subsequent section focuses on Questions 5 to 8.

5.4.1 Discipline Procedures

The main objective of this section is to establish the process of disciplinary action in the Kuwaiti public sector. This includes: (1) establishing the frequency of disciplinary action in the public sector; (2) the laws and regulations of disciplinarians; (3) and the role played by higher authorities in disciplinary procedures.

Several questions were addressed in the examination of this issue (i.e. disciplinary procedures), including:

Question 5: Have you been disciplined in your workplace in the past?

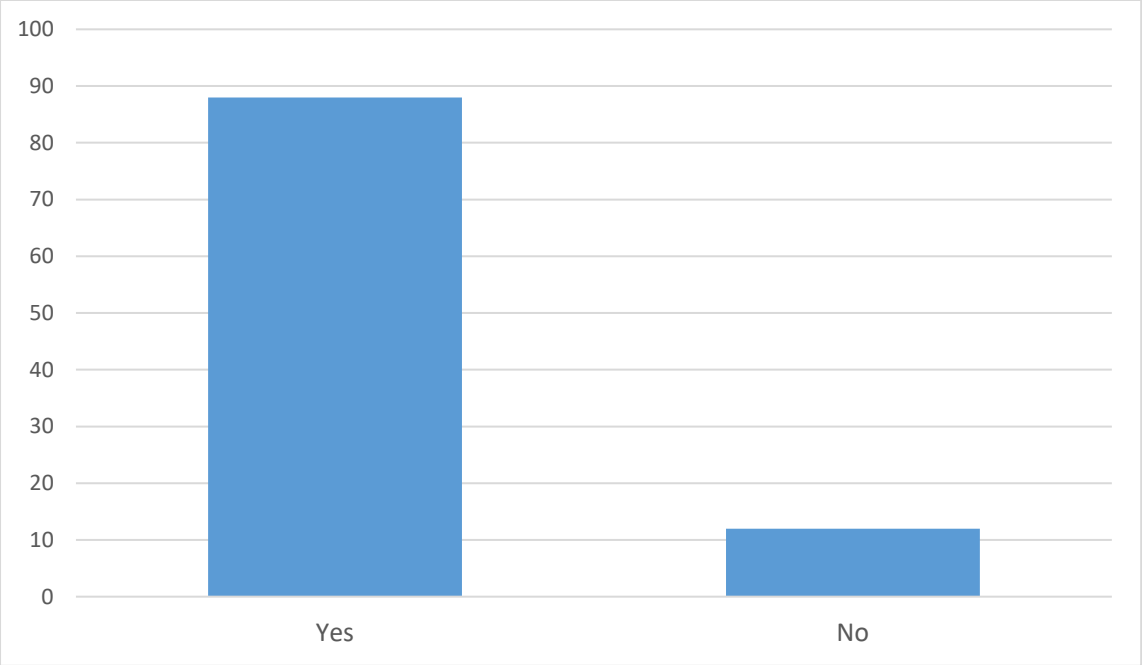

Figure 5.5: Previous experience of disciplinary action.

When asked if they had been disciplined, 88% of respondents answered 'yes', and 12% answered 'no'.

Comment

The results of the survey are surprising and dramatic, in that the responses suggest that almost nine out of every ten junior public employees have been subject to formal disciplinary procedures. It therefore appears that in practice employees are often subjected to such experiences, even though the Supreme Court of Kuwait in an important declaration, pronounced that public employers have a public duty to treat their employees fairly, and in a manner that upholds their dignity. It declared that although the administration has the right to refer any employee for

discipline,[659] those responsible for the management of the process should avoid the misuse of power. It stated: [ان المخالفات التأديبية باعتبارها خروجا على واجبات الوظيفة وفقا للمادة 24 من القانون رقم 15 لسنة 1979 في شأن قانون الخدمة المدنية والذي يوجب على الموظف في نطاق حقوقه وواجباته أن يحافظ على كرامة الوظيفة وان يسلك في تصرفاته مسلكا يتفق والاحترام الواجب ومن ثم يكون للجهة الادارية مجالا واسعا بتوقيع الجزاء الاداري والاحالة الى التحقيق واختيار العقوبة المناسبة للفعل بحسب ما يقتضيه حسن سير العمل في المرفق العام.][660] .

The English translation states that: This provision by the Kuwait Supreme court confirms that administrative discipline, in accordance with Article 24 of Law No. 15 of 1979, concerning the Civil Service law requires an employee within the scope of his or her rights and duties to maintain the dignity of his or her job.

However, it is clear from the overwhelming response of the respondents that the employer's right to use the procedure goes unchecked, and it would seem that formal sanctions may too often be used as a first rather than a last step.

[659] Discipline can also take the form of punishment where, after being warned that either performance needed to improve significantly, or that the behaviour had to be changed immediately (e.g. excessive lateness, last minute notification of absences, or being issued with too many traffic tickets while operating company vehicles), a negative consequence is applied. Punishment as discipline is usually imposed after the failure of positive teaching/training attempts to discipline has failed to achieve the desired result/behaviour.
Source:http://www.esmalloffice.com/SBR_template.cfm?DocNumber=PL05_0080.html [Accessed 1 May 2014].

[660] Case Number 411 of 2004, Administrative Case, Session 27/12/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 32. May 2007.

Question 6: If your answer is yes, then please note the types of penalties you have been given in your workplace.

Employees who responded that they had been disciplined in the past were then specifically questioned concerning the type of penalty they had received. The respondents specified a number of penalties, including: (1) a deduction from their salary; (2) a delay in promotion; (3) being transferred to another department; (4) being excluded from a pay rise; (5) warning[661] (6) and dismissal from the work.

Comment

The answers to this question reveal that the administration of Kuwait has selected a number of different strategies, to establish the policy of giving punishment to public employees in breach of their duties. The disciplinary decision is, in general, a response to a breach of employee duties[662] (i.e. negligence in carrying out his or her duties), with the administration subsequently having complete authority to assess the seriousness of the administrative offence and choose the suitable penalty. Common procedures adopted by the administration include a salary deduction, transfer to another location, or delay in obtaining further promotion. A decision from the Supreme Court of Kuwait emphasised that the

[661] The warning must be in written form to be valid under Kuwaiti Law, as stated in Case No. 148 for 2004, Administrative Case, Session 28/3/2005. Journal of Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. 1st Jan. 2005- 31st Mar. 2005. June 2007.

[662]Case Number 423 of 2007, Administrative Case, Session 9/2/2010. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 35. June 2014.

level of penalty should match the offence committed by an individual, i.e. the criteria of proportionality between offence and penalty is not based on a subjective (or personal) standard, but rather conforms to an objective standard, whereby the degree of the seriousness of the administrative offence must be proportionate with the type of penalty imposed.[663] When invited to comment the respondents indicated that they were unclear about the procedures and that the penalties were not graded, suggesting that anything was possible. The majority of the participants stated that the disciplinary system did not specify the administrative offences in a sufficiently clear manner, and suggested that should they be listed with the same clarity as criminal offences, which are categorised as felonies or misdemeanours based on their nature and the maximum punishment imposed. They complained that there is no such precise identification and categorisation for disciplinary offences, leading to employers having the potential to impose sanctions for petty reasons. Moreover, one of the stakeholder respondents made a similar point: *"I do not agree with the current Civil Service Law, which was promulgated in 1979 as I remember; and we are now in 2013, entering the year 2014. I think that the current Civil Service law is not in line and relevant with current scenarios, and as I said, the law needs some amendments to further protect the employee from the abuse of power of the employer.*"[664] More

[663] Case Number 240 and 244 of 1988, Administrative Case, Session 13.3.1989, Council of Ministers, p. 766.

[664] See the answer to Question 2 from Interview Number 3 under Appendix D.

importantly, it should be noted that their conclusions and concerns actually reflect the current law as decided by the courts.[665]

Question 7: If your answer for the previous question is yes, then specify the number of times you have been given a penalty in an entire year.

The questionnaire then questioned public employees concerning the number of times that they had been subjected to disciplinary procedures. Alarmingly, of those respondents who had indicated that they had been disciplined, the majority indicated that they had been disciplined between three to four times in a year.

Comment

This response suggests that the use of formal proceedings are so common that there is a danger for employees to possibly undermine and may not take the process seriously. Alternatively, the evidence may also suggest that some individuals are subject to abuse and victimisation. Whatever the case, it is clear from the evidence that current practice is not in line with the principle outlined

[665] In a case decided by the Supreme Court of Kuwait, (Case Number 527 of 2005, Administrative Case, Session 26/12/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009), it was noted that the government or administration has a broad scope of power to decide what constitutes an administrative offence, along with full control over the appropriate administrative penalty. This leads to a lack of any specific list to identify which actions may result in an administrative offence.

above and established by the Kuwait Court,[666] namely that the procedure should reflect the employees' legitimate right to be treated with dignity and respect.

Question 8: Do you have any handbook at your workplace that provides a list of administrative offenses?

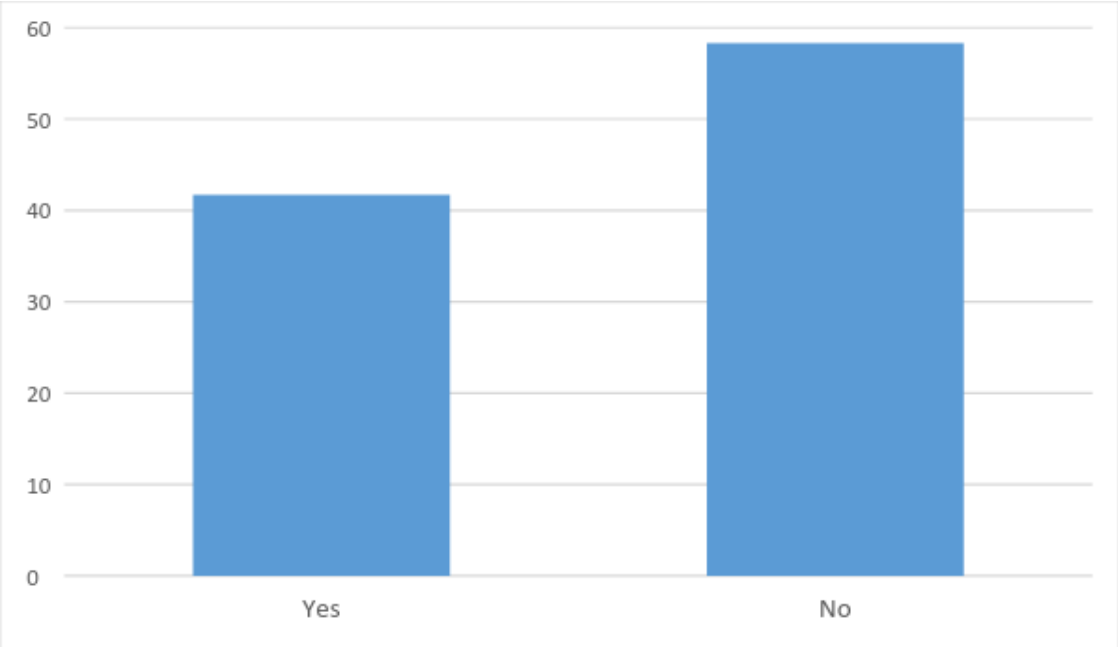

Figure 5.8: Availability of a guidebook on disciplinary offences

During this current research, the researcher investigated the availability of a guidebook outlining the processes of disciplinary action within an organisation. In total, 42% of respondents confirmed that they were provided with a guidebook, whereas 58% stated that they were not aware of any provision and that it may be lacking.

[666] Case Number 266 of 2009, Civil Case, Session 22/2/2010. Kuwait Supreme Court. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 35. April 2011.

Comment

The administration is obliged to provide a guidebook listing all forms of duties and disciplinary offences and require employees to be aware of its contents and provisions. Such guidebooks can raise awareness and guidance for employees, enabling them to follow the rules and laws within the workplace, and thus assist them in avoiding any breach of disciplinary offences.

The fact that the majority of respondents claimed that they either had no knowledge or had no access to a guidebook is disturbing. It is clear that there is no standard practice to ensure that employees are aware of the procedures and no training to ensure that the disciplinary procedures are understood. It should also be noted that this lack of knowledge and understanding has been commented upon as being a matter of concern by one of the stakeholder respondents. The respondent has said that: "*I think many of the public employees do not know enough about their duties and rights in Kuwait. Also, they do not have a handbook that shows the rights and obligations of the employee. They only have a law called the Civil Service Act No. 15 of 1979, which in my opinion is insufficient to clearly explain all kinds of disciplinary offences*."[667]

[667] See the answer to Question 2 from Interview Number 4 under Appendix D.

5.4.2 Kuwait Civil Service Law

In this section, the researcher focuses on the response of the employees, concerning the extent to which the authority was involved in applying disciplinary action, as stated in the Kuwait Civil Service Law.

Question 9: Do you think that the Kuwait Civil Service Law is sufficiently clear and organised as regards to disciplinary action?

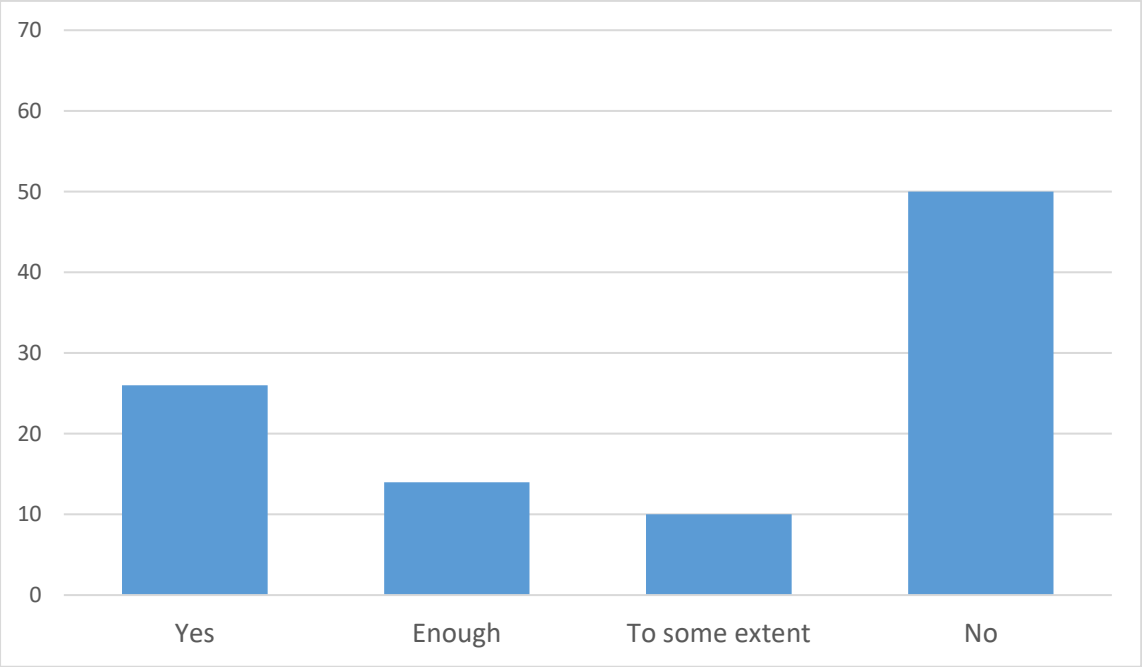

Figure 5.9: Suitability of the Kuwait Civil Service Law

The results reveal that: (1) 26% of respondents considered the civil service law to be comprehensive; (2) 14% stated that it was sufficient; (3) 10% believed it to be sufficient to some extent; and (4) 50% held a generally negative view.

Comment

The responses reveal that the majority of employees viewed the Kuwait Civil Service Law as insufficiently clear and not systematic to oversee disciplinary actions.

The respondents made several comments about the unfairness of the system. The most commented issue was that employees were treated differently for similar breaches. For instance, some had been disciplined because of punctuality issues, and indicated that others who had similar conduct were treated differently. Another comment made more than once, was that women were sometimes treated more favourably that their male counterparts by their male middle managers.

The fact that the respondents felt that they were being treated differently is not surprising, given the very wide scope provided to employers in the relevant Code. Article 24[668] is very wide, it provides that employees should obey "*all laws and regulations*." However, it provides no guidance as to what to do if the content is unclear or contradictory and makes no internal[669] provisions for appeal.

[668] This was discussed in detail in chapter 3.

[669] It would be possible for an employee to appeal to the Court, but this is rarely done because of the expense and time implications.

Question 10: Do you believe that under the present Kuwait Civil Service Law employees are protected at their workplace from any arbitrary disciplinary procedures when conducting his/her duties?

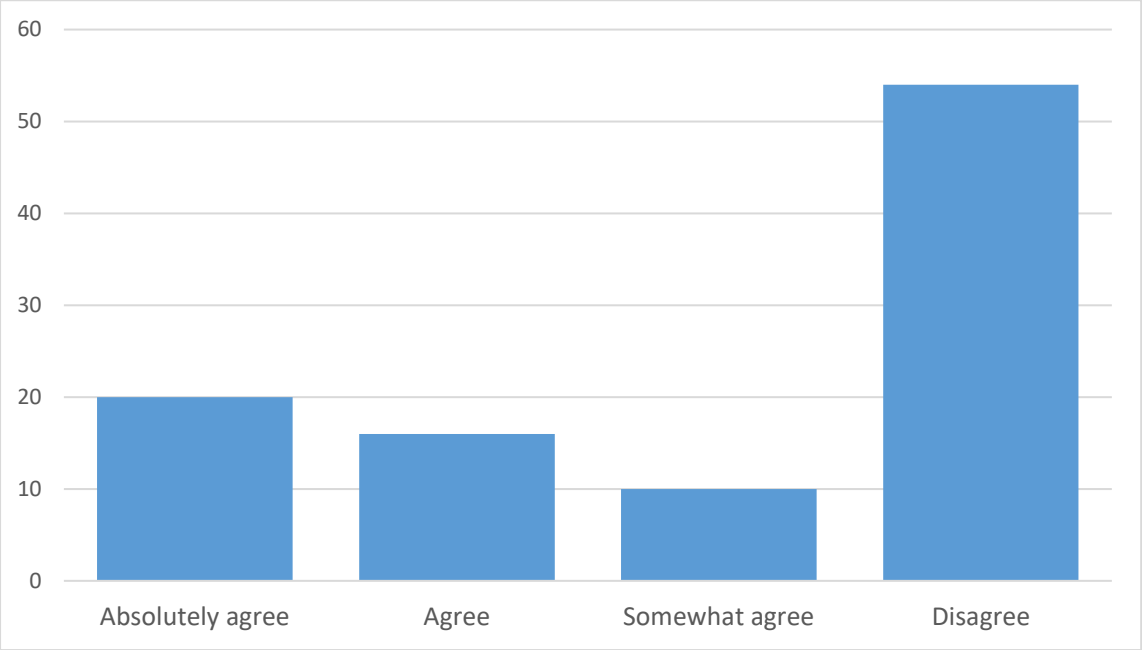

Figure 5.10: Protection extended to employees

When asked whether employees were protected from any arbitrary disciplinary action, under the present Kuwait Civil Service Law, while carrying out their duties: 20% of respondents fully agreed; 16% agreed; 10% answered 'to some extent'; and 54% disagreed.

Comment

The majority of the respondents were of the opinion that the protection provided was insufficient. The law has not been amended for almost forty years. During this period, there has been tremendous social change in Kuwait, and changes in

the expectations of employees.[670] A large number of both men and women receive some higher education abroad, and such influences have led to life style changes. In addition, the advance of technology provides opportunities for flexibility and for employee misconduct.[671]

[670] Source: http://ajialq8.com/?p=38269 [Accessed 10th March 2017].
[671] Source: www.cait.gov.kw [Accessed 10th March 2017].

5.4.3 Natural Justice and the Aims of Discipline

Question 11: Do you think that the Kuwait Civil Service Law applies fair and natural justice?

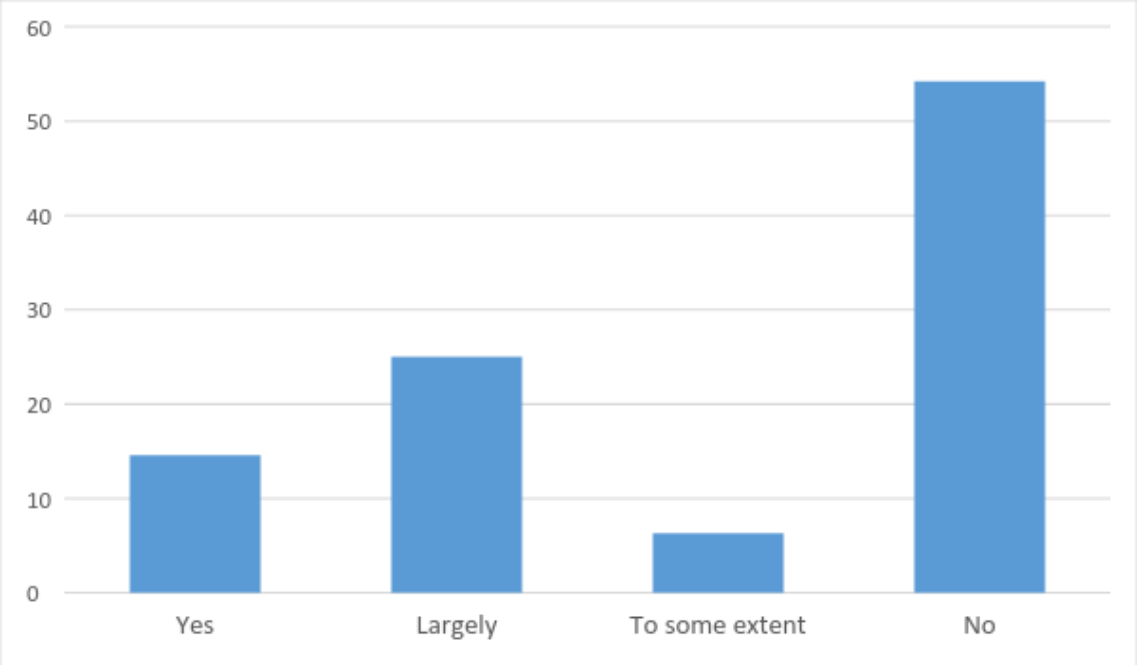

Figure 5.11: Application of fairness by the Kuwait Civil Service Law

When questioned concerning their perception of whether the law is applied in a fair manner, the respondents replied as follows: (1) 16% answered 'yes'; (2) 24% stated 'to a large extent'; (3) 6% stated 'to some extent'; and (4) 54% answered 'no'. One of the stakeholder respondents, a Judge, for instance, indicated that he felt that the existing arrangements imposed dual and different standards depending on the status of the employee. In his words:

"As I see it, the law gives the high position employees, such as Undersecretary Assistant more protection. But simply, it is easy to impose multiple disciplinary sanctions against ordinary employees, such as monthly deductions from salary

for a minor administrative offence. At the same time, however, I am sorry to say that it is difficult for the Minister to impose sanctions on higher officials, such as an Undersecretary Assistant. It is impossible to impose sanctions on them such as salary deductions, for any minor offences, for which ordinary employees are unfortunately punished for regularly. Indeed, as a judge I have seen many administrative cases concerning salary deductions, related to arbitrary decisions from the administration, and the court has used judicial review against the injustice for salary deduction."[672]

More worryingly, the same individual also suggested that senior managers are also not disciplined for more serious offences. He suggested that they were almost untouchable.

Comment

It is clear that over half the respondents (54%) did not agree that the Kuwait Civil Service Law provides justice and fairness. Article 28 of the Kuwait Civil Service Law no. 15 of 1979 exemplifies the inequality between public employees and higher ranked employees when it comes to disciplinary sanctions. As evidenced above, it is clear that low ranked employees are disciplined frequently. This research is not able to comment in any detail on the frequency of the disciplinary procedures, in relation to higher-ranking employees, but it is clear that they are

[672] See the answer to Question 2 from Interview Number 7 under Appendix D.

significantly less frequent. It is also clear that the regime is less harsh. The sanctions that, according to Article 28, can be imposed on an ordinary employee includes: (1) a warning; (2) deduction from salary; (3) demotion; and (4) dismissal from the workplace. However, higher ranked employees (e.g. those in leadership posts) are only subject to one of the following sanctions: (1) a written warning from the minister; (2) censure; or (3) dismissal. Thus, in comparison to the various punitive sanctions for general employees, those having a high rank are not subject to any deduction in salary or demotion. This demonstrates an unfair imposition of disciplinary sanctions between different levels of employee.[673] Furthermore, Articles 52, 62 and 63 of the Kuwait Civil Service System are unjust in terms of the referral for discipline. Higher ranked employees are investigated by the Council of the Civil Service,[674] while public employees are referred to their respective legal department at their workplace. This differential treatment can be seen as unfair. The Board of Discipline of the Civil Service Commission is a neutral committee with no connection to the organisation. In contrast, the legal department is part of the organisation and supervised by the workplace itself and can sometimes involve the same people

[673] Under Appendix D, Interview 5 mentions that the discipline system in Kuwait is complex and unclear, and there is an injustice on the employee without a high position, meaning there is definitively different standards of employee.

[674] Although these arrangements ensure some degree of externality and neutrality, it is also the case that the individuals involved are from similar social circles.

who have imposed the penalty.[675] This situation as discussed above which undermines the right of ordinary employees to defend themselves more adequately, compared to higher ranked employees, does not comply with the principles of natural justice. Neither the Kuwait Civil Service Law No. 15 of 1979 or Kuwaiti Civil Law No. 67 of 1980 make any reference to principles of fairness (natural justice) and how fairness is to be achieved. For example, Article 1 of Kuwait Civil Law simply states the judge must base his judgment on any written law or refer to Islamic jurisprudence. If, however, those criteria for judgment have been exhausted, the next solution for the judge is to refer to custom. Issues such as proportionality and access to representation are not necessarily considered. Essentially the system can be described as 'insiders' dealing with 'insiders.' It is, therefore, hardly surprising that, as indicated above, more than half of the respondents felt the system was unfair and not compliant with the basic principles of natural justice.

5.5 The Focus Group Session: Methodology, Sampling and Data Collection

The above section focused on evidence produced from the questionnaire sent to respondents. The discussion in this section will focus on the comments and evidence from the group interview.

[675] For further details concerning the disciplinary systems, refer to Chapter 4, Section 4.3.2 (Disciplinary Procedures in Kuwait and Natural Justice in Islam).

The focus group is comprised of twenty participants, all of whom were ordinary employees.[676] The participants were invited to the library of the Kuwait National Assembly. Prior to the session, the researcher explained the purpose of the focus group, in order to encourage participants to freely discuss the study questions. Flipcharts were used during the interactive session, in order to ensure the clarity of the researcher's questions. No moderator was present, and the researcher posed the questions. The session lasted for three hours, with notes being taken and the session audio-recorded and later transcribed. It should be noted that the researcher decided to conduct an interview for a group of twenty employees, as he wished to obtain a separate source of data for the research, and to hear the opinions of a group of employees concerning the systems related to discipline and whistleblowing.

A structured questioning method was used in the focus group session, for which four main questions were asked. The questions were of an open-ended type, which permitted respondents to speak freely and to prompt further responses from other attendants.

The questions asked were:

1. What is the impact of disciplinary penalties on the performance of public employees?

[676] The term 'ordinary employees' refers to those public employees who work under the supervision of section heads and managers. These employees have not yet been promoted to section heads or managers, and are thus referred to as 'ordinary' employees.

2. Do you think Kuwait should have an independent administrative tribunal, rather than simply a chamber, and to have a new court for disciplinary sanctions?

3. Is the disciplinary system concerning disciplinary administrative offences sufficiently clear, fair, and precise?

4. Is there any law protecting the whistleblower against corruption in Kuwait?

The subsequent section discusses the results of the focus group session, and provides the findings concerning the four questions stated above.

5.6 Findings of the Focus Group

The following paragraphs summarise the responses to the four questions. The responses were generally listed, although, in some cases, the exact verbal responses were also written down. In many cases, the responses were similar and repeated.

In summary, the answers to the four questions were established as follows:

1. What is the impact of disciplinary penalties on the performances of public employees?

The majority of the focus group noted that the impact of discipline was negative and demotivating, with only a small number stating that the impact of disciplinary penalties was positive and improved their work ethic. A small number stated that the impact of the penalties depended on the type of sanctions imposed, i.e. a deduction of several days' pay made a strong impact on an employee, while a warning on its own had less effect on their performance in the workplace. For instance, one of the focus group participant, a male employee who had been in

the public employment for over twenty years, commented on how disappointed and surprised he was that his salary was deducted, because he had admittedly made a comment about the shortcomings of his manager. He had not in his view committed any offence and had not received any kind of warning. The truth or lack of truth in his comment was never investigated. He was simply told that his act of criticism was against the law and therefore his employer was entitled to deduct from his salary.

2. Do you think Kuwait should have an independent administrative tribunal, rather than simply a chamber, and to have a new court for disciplinary sanctions?

The majority of respondents stated that it was essential to have an independent court specialising in administrative cases, and that having a circle to deal with administrative cases was insufficient.

For example, one female participant in the focus group, who had some experience in legal research, commented that she, felt that the Kuwaiti system compared unfavourably to that of Egypt, even though Kuwait was a wealthier country. She also suggested that there was no excuse for this difference, because she claimed that there were suitable judges in Kuwait who could adjudicate and ensure better fairness in Kuwait and that judges could be trained further.

3. Is the disciplinary system concerning disciplinary administrative offences sufficiently clear, fair, precise, and listed?

The majority of the participants in the focus group, similar to the respondents to the questionnaire, and the individual interviews, have stated that the disciplinary

system was lacking in fairness, because the administrative offences were not specified in a sufficiently clear manner. Therefore, it is clear from the questionnaire, the focus group, and the individual interviews that the lack of specific guidance and framework is a serious cause for concern. One of the Interviewee said that: "*I believe the administrative irregularities should be explicitly defined or listed, so as not to leave any interpretation as preferred by the administration."*[677]

4. Is there any law protecting the whistleblower against corruption in Kuwait?

The majority of participants affirmed that the Kuwait government had issued a law on whistleblowing, but that improvements were needed. The Whistleblowing Act No. 24 of 2012 grants some measure of protection to the whistleblower under Article no. 40 of the law, entitled Protection of the Whistleblower, i.e. Article no. 40 states that the whistleblower is given personal, legal and functional protection, and is thus offered protection from administrative retaliation

For instance, one of the focus group participant, who had some experience of being an administrative investigator of complaints, said that, in her experience, whistleblowers were not prepared to come forward. She claimed that corruption was a serious issue and very common, but claimed that witnesses were reluctant to make statements, because they felt that they would not be protected. She felt that this was an important issue because some serious crimes were not being

[677] See the answer to Question 5 from Interview Number 6 under Appendix D.

detected, and it meant that members of the public had less confidence and trust in the public service. She suggested that there was an urgent need to create a duty on public employees to report crimes of corruption clearer, and to provide much stronger protection for whistleblowers against victimisation for reporting wrongdoing.

This section summarised the replies from the group session. The following section discusses the findings of the third research method, i.e. the individual interviews with the top management.

5.7 Outcomes of the Individual Interviews with Top Management

As a supplement to the questionnaire and group interview, the researcher undertook individual interviews with eight key respondents (two senior managers, four section heads and two judges), with the aim of prompting further responses and comments from the respondents.

The interviewees consisted of section heads, managers or judges. The results of the interviews focus on the study questions concerning the relationship between; (1) the disciplinary system; (2) the duty of whistleblowing in Kuwait; (3) the prohibition on disclosing information; and (4) the concept of the natural justice in Islam (Sharia).

The interviews were composed of ten questions, including the four questions used for the focus group session (as discussed in the previous section), which were rephrased for the individual interviews. All answers from the eight workers to

these four questions were combined, as summarised below. The remaining six questions are discussed in Chapter 5 section 3 (Interviews with Top Management Employees (Eight Interviews), and the findings of the further questions are subsequently addressed below.[678]

The summary of the findings of the four questions from the individual interviews with the top management (i.e. section heads, managers and judges) is outlined below. It should be noted that each question number corresponds to that of the original question from the ten questions employed in the interviews with the top management.

Question 3 from the interviews: What is the impact of the disciplinary system? Is it positive or negative?

The interviews indicated that top management experienced the organisation's disciplinary procedure as both frustrating and stressful. Employees frequently had an emotional response to being disciplined, due to perceptions concerning fairness, e.g. employee behaviour and attitudes. Employees who feel they have been unfairly treated experience emotions such as anger and resentment, which leads to demotivation. In addition, unfair treatment of employees may also lead to: (1) lower production (in terms of both quantity and quality); (2) greater absenteeism; (3) less use of initiative; (4) lower morale; and (5) a lack of cooperation.[679]

[678] See the discussion below about the interviews questions (1,2,6,8,9,10) in this chapter.
[679] Interview numbers 1, 3, 4, 5, and 6, Appendix D.

Question 4 from the interviews: Do you think it is important to have an independent administrative tribunal, and for the government of Kuwait to create a disciplinary court?

The majority of the interviewees responded that Kuwait should have an administrative tribunal.[680] One of the interviewee said that: *''I prefer Kuwait to have an independent administrative tribunal to handle the disciplinary penalties. This means my case will go directly to the court or the administrative tribunal which specialises only for disciplinary penalties.''*[681]

Question 5 from the interview: Is the disciplinary system concerning the disciplinary administrative offences sufficiently clear, fair and precise?

Those responsible for departments claimed that they experienced the process as distressing and unfair. They also stated their lack of faith in the process, which they found to be unnecessarily complex, and lacking the ability to differentiate between major and petty grievances.[682]

Question 7 from the interviews: How are whistleblowers protected against corruption in Kuwait?

It was observed that the top management interviewees felt that whistleblowers should be offered protection from the time of submitting his or her information

[680] Interviews 1 to 6, and 8, Appendix D. See the answer to Question 4 from Interview Number 4 under Appendix D, which stated that:*(I agree with this situation of establishing a special administrative court, because there is a large number of administrative issues and congestion of the court schedule).*

[681] See Interview 1 and interviews numbers from 2 to 7 at Appendix D.

[682] Interviews 1 to 7, Appendix D.

against crimes of corruption (under Article 22), within the scope of the Kuwait Whistleblowing Law no. 24 of 2012. The law protects the identity and safeguards the life of the whistleblower.[683] However, the participants also stated that this protection[684] should extend to the spouse, relatives and all other individuals closely related to the whistleblower. Additional protection should also be afforded to the whistleblower by not revealing his or her whereabouts, and, if necessary, providing him or her with protection, and/or a new place of residence. It should be noted that the questions not discussed above (i.e. 1, 2, 6, 8, 9, 10), will be discussed in this thesis as follows:

Question 1 from the individual interviews: what do you know about the disciplinary system, and the duty of whistleblower in Kuwait?

The majority of the interviewees responded that the Kuwait Civil Service Law is very old which was issued in 1979, and is inadequate to manage the disciplinary offences and procedures.[685] Interestingly, as outlined in Chapter 4, above it appears that longevity is characteristic of employment and civil service provisions across the Arab states reviewed, and the bulk of evidence suggests

[683] Article 40, Kuwait Whistleblowing Law no. 24 of 2012.

[684] See the answer to Question 7 from Interview Number 8 under Appendix D. One of the eminent Judge has stated in Interview no. 8 that: (*the whistleblower, in general, must be kept confidential, awarded with financial incentive or bonus, and must be provided with a special protection for himself/herself including familial relations*).

[685] See for example the answer to Question 1 from Interview Number 7 under Appendix D.

that this characteristic is negative and reflects legislative inertia rather than being and indicator of satisfaction and effective legislation.

Question 2 from the individual interviews: Is there any advantages or disadvantages facing the discipline system and Whistleblowing Act in Kuwait? The overall perception from the respondents, in relation to Kuwait's disciplinary system, is that some public employees do not know enough about their duties and rights in Kuwait. Again, as in the focus groups, negative comments about the lack of information and specifically about the lack of a handbook relating to the rights and duties of employees is mentioned. As one of the respondents commented the existing law is very general as insufficient detail is provided in order to provide good guidance as to how to respond to day-to-day employment issues.

"I am not afraid to be honest and say that there is truly an ongoing corruption in Kuwait. So, I think there are great advantages for the whistleblowing system to stop people from making corruption in Kuwait. At the same time, I strongly believe that there are no disadvantages in the whistleblowing system."[686] The interviews suggest although some of the high ranking officials, particularly the judges, could see how the civil service duties and the disciplinary procedures could operate side by side the whistleblowing provisions, it was apparent from

[686] See for example Interview no. 4, the answer to Q 2. Appendix D.

evidence in the focus group discussion that there was a lack of employee confidence in relation to disclosing information.

As the above comment illustrates, it appears that the need for whistleblowing provisions relating to combating corruption was acknowledged by some respondents it is perhaps disappointing that none of volunteered support for similar protective provisions in relation to employment protection generally. The explanation, perhaps, is that no specific question was asked on the matter.

It is perhaps disappointing that not one of the respondents volunteered support for similar protective provisions in relation to employment protection generally.

Question 6 from the individual interviews: what do you think are the solutions and proposals to reduce the abuse of power of the administration?

The majority of the interviewees responded that it could be done by imposing control on the administrative side through what is known as judicial control of the law and extend its control over the subject of disciplinary violation.[687]

Question 8 from the individual interviews: Is the whistleblower exposed to disciplinary action under the Whistleblowing Act? And will the employee also be exposed to discipline under the Civil Service Law which prohibits the disclosure of information?

[687]See for example interview no. 4, the answer to Q 6. Appendix D.

Most interviewees had similar opinions and responded that it was very clear according to Article 51 of the Whistleblowing Law no. 24 of 2012 against corruption in Kuwait that an employer was not allowed to impose any disciplinary action against the whistleblower. The majority believed that Article 51 of the Kuwait Whistleblowing law protected the whistleblower and encouraged him or her to continue to whistle-blow against corruption. One interviewee, however, in contrast to the above, indicated that the Kuwait Civil Service no. 15 of 1979 particularly under Article 25/5 actually forbids or certainly discourages any employee to disclose secret information inside his or her workplace. As quoted from the same interviewee: *"I believe if the public employee insists on breaking this Article 25/5, he or she will place themselves in trouble, whereby he or she will be put under the disciplinary procedures."*[688]

Question 9 from the individual interviews: Does the law about whistleblowing in Kuwait contradict or complement the Kuwait Civil Service Law, which prohibits the disclosure of information?

Almost all of the interviewees have responded that Article 36 under the new law of whistleblowing in Kuwait makes clear that there is a duty for everyone to blow the whistle against corruption. Hence, the whistleblower does not necessarily need to be a public employee or private employee; it could be anyone or any

[688] See for example Interview no. 7, the answer to Q 8. Appendix D.

worker, so as long as information meets condition such as having made in good faith and not for personal gain.

In response to the above question, a senior stakeholder, and experienced Judge commented: that the civil law is different than the Whistleblowing Act, in which the public employee should be careful not to disclose secret information, particularly in relation to the employer's business. Therefore, there is no contradiction between the Whistleblowing Law No. 24 of 2012, and the law prohibiting the disclosure of secret information under Article 25, Section 5 of the Civil Service Law No. 15 of 1979. In clearer terms, the law of whistleblowing is a general law, where each person must report crimes of corruption and will be protected against any disciplinary action taken against him or her. However, if someone violates Article 25 of the Kuwait Civil Service law and discloses information relating to his or her work, the employee will be subjected to discipline and will not have any protection.[689]

Question 10 from the individual interviews: In your opinion, is there any natural justice (fairness)under Islamic law, and how is this fairness achieved?

An interviewee has given the following answer: *"From my experience of working at the Kuwaiti judiciary for more than thirty-five years, I perceived that natural justice only exists in Islam based on the words of God in the Quran. The Quran stated that "If you judge between people, you must judge with justice." As a judge*

[689] See for example Interview no. 7, the answer to Q 9. Appendix D.

myself, it is my responsibility to govern people with justice. We as judges have also sworn an oath in front of the Emir of Kuwait (King of Kuwait) to respect the constitution and try, as much as possible, to achieve justice among people. I would like to add that the pursuit of retrospective justice is, in fact, an urgent task of human beings (employees), as it highlights the fundamental character of the new order to be established. This order is based on the rule of law and the respect for the dignity and worth of each person."[690]

5.8 Chapter Summary

This chapter described a case study approach, in which a questionnaire, focus group and individual interviews were conducted. All of those approach leads to the following conclusions:

1. The impact of disciplinary procedures is detrimental to the performance of public employees working in the government sector in Kuwait.[691]
2. Kuwait Civil Service law does not apply equity and fair justice to the employees. This is due to the differences identified in the disciplinary process and the penalties given to low-ranked employees, compared to those in higher ranks.

[690] See for example Interview no. 8, the answer to Q 10. Appendix D.

[691] See Interview no. 1, the answer to Q 3. Appendix D.

3. Kuwait requires a separate administrative tribunal and disciplinary court to deal with all disciplinary offences (i.e. those of Egypt and France, which employ an independent tribunal to deal with disciplinary trials).
4. There is a lack of clarity and definition of disciplinary offences, enabling a wide scope for the administration to penalise an employee. There is a need for the offences to be specifically outlined and listed, in order to fully inform public employees about which actions constitute an offence, enabling them to avoid committing such an offence in the future.[692]
5. Evidence from the responses received from Senior Managers and Lawyers, adds weight to the suggestion that additional protection should be given to a whistleblower to offset the substantial consequences if they are held to be in breach of Article 52 of the Kuwait Whistleblowing Act.
6. On the basis of the above conclusions and evidence outlined in the chapter, it is concluded that the content of the Civil Service Code No 15 of 1979, and the way that it is administered, does not presently provide employees with sufficient safeguards in relation to the promotion of natural justice. The need for an update and reform is long overdue.

[692] See discussion above at p. 270.

Chapter 6
Conclusions and Recommendations: The need and possibility of promoting natural justice as added protection for public employees in Kuwait

6.1 Introduction

This study ventured into the topical issue of natural justice, attempting to determine whether or not the State of Kuwait operates on the principles of natural justice. The focus of the study was on identifying points that accord with natural justice in relation to the disciplinary procedures imposed on public employees in Kuwait. The selected points aim to achieve increased fairness, coherence, and protection in the course of carrying out one's duties as an employee, including when fulfilling one's duty to act as a whistleblower.

The evidence of this study suggests that although Islamic law and Kuwaiti constitutional provisions the principles are inherently compatible with the fundamental principles of natural justice the existing legal framework is insufficient to promote and help guarantee practical delivery of fairness in the context of public employee disciplinary procedures. The current Civil Service Act No. 15 of 1979 is devoid of any text regarding the applicable of the principles of natural justice and existing disciplinary arrangements are often not sufficiently transparent and open to external and judicial monitoring and scrutiny. Guidance in relation to both the process and penalties relating to disciplinary proceedings is lacking and it can be suggested that a two- tier system exists with the possibility

that junior public employees are vulnerable to over- exposure to disciplinary procedures.

The thesis suggests that current open-ended provisions under Kuwaiti law provide public employers with opportunities to engage in investigative exercises which could not be justified on the basis of actual evidence, and that the very wide categorisation of confidential information may place public employees at added and unfair risk of disciplinary action.[693] Moreover, the preponderance of evidence in the thesis adds weight to the argument in favour of the need for a specialised Kuwaiti Court with a right, to review the substantive fairness of the disciplinary process as a whole and not simply confined to specific breaches in procedure.[694]

6.2 Conclusion

Following the analysis of the results of this research study, there now follows: (1) a discussion of the main conclusions based on the findings; and (2) a number of recommendations based on the investigation into the regulations and laws of Kuwait and a comparison with similar regulations in the UAE, Egypt, the UK and France.

[693] See chapters 2,3, and 5.

[694] The need to be able to review substantive issues arises because of the lack of specific human rights legislations. See Chapters 4 and 5.

The research findings of both the questionnaire and interviews suggest a need to enhance the Kuwaiti Civil Service Law in order to deal with the duty of whistleblowing against corruption in Kuwait and the principles of natural justice. The study focused on the different disciplinary actions taken within the public and private sectors and explained the reasons why Kuwaitis choose to work within the public sector rather than the private sector. Emphasis was made on the abusive behaviour of employers when carrying out disciplinary actions within the workplace. A general background to the concept of natural justice in the teachings of Islam was also given, with emphasis on the question of competing issues surrounding the public duty of loyalty and the duty of whistleblowing, and the need to provide adequate protection for whistleblowers against wrongdoing. The study also discussed the concept of lethargic employees and the empirical evidence collated suggests the possibility that over-exposure to disciplinary procedures and subsequent employee disillusion might be a contributory factor. It would seem that formal sanctions may too often be used as a first rather than a last step given the alarming evidence that almost all respondents reported that they had been subject to disciplinary procedures. Moreover, the evidence suggests that it was a frequent experience and so common that there was a risk of employees not taking the process seriously. More cynically, perhaps individuals may have been subject to victimisation.[695]

[695] See Chapter 5, pp. 267-271.

The researcher examined and evaluated previous studies on topics that are relevant to the topic of this thesis, such as the right to discipline public employees, grievance procedures, the duties of a public official, and in particular, the duty of whistleblowing against misconduct, the concept of administrative dispute and the concept of the administrative investigation. The aim of the literature review was to shed light on what it means to be a public employee, to determine their duties, the duty of whistleblowing against wrong doing and identify disciplinary and grievance procedures in the State of Kuwait, UAE, Egypt, UK and France. The literature review enabled the researcher to identify new issues in his research and added to the knowledge about disciplinary procedures in the State of Kuwait, in which the principle of natural justice is stipulated by Islamic law. However, the Kuwait Civil Service Act does not deal with the principle of equality and justice for all public sector employees. It clearly emerged in this thesis that a distinction exists between high level employees and ordinary employees. It is argued that this distinction has no justification.

According to the review carried out by the researcher of Kuwaiti and other countries' legislation, there is no comprehensive definition of a public employee in Kuwaiti legislation, or the legislation of other countries such as France. Other significant points were also examined in this study, including the competing duties of maintaining the confidentiality of information in the State of Kuwait and the duty of whistleblowing against corruption. As Islamic Law is against corruption, the thesis explored the whistleblowing system in Kuwait and

evaluated the extent of legal protection for the whistleblower against corruption in Kuwait. The researcher also looked at existing whistleblowing systems in other countries, such as the UK and France. The grounding of whistleblowing in the generic legal framework of employment law possibly encourages a more pro-active approach and normalisation of the process. Thus, the whistleblower in the UK can be an employee who reports certain types of misconduct. This will usually be something that the worker has seen happen at their place of work. The wrongdoing must be disclosed in the public interest, which is widely defined and can be relevant even when the individual employee's motivation is mixed.

The study then addressed the different systems of discipline within a state, namely: the administrative system, the judicial system and the quasi-judicial system. The researcher also made some significant comments relating to the theory of natural justice in general and the theory of natural justice in Islam, including a focus on natural justice in Western thought. The researcher also examined the subject of disciplinary and grievance procedures in Kuwait, the UAE, Egypt, UK, and France. The subject of disciplinary sanctions in UK and the characteristics of disciplinary sanctions in France was also explained and detailed in this study. The researcher then focused on disciplinary actions taken in Kuwait, and found that disciplinary actions against public employees must be within the requirements of the law, otherwise they would constitute an abuse of power.

Disciplinary sanctions that can be used are already listed under the Kuwaiti civil service law, and include warnings, deductions from the salary of an employee and dismissal.

Lastly, this study included a questionnaire to acquire feedback from public employees on the disciplinary system and the implementation of natural justice principles in Kuwait. A focus group and interviews were carried out with members of top management, wherein a set of ten questions was asked. The statistical analysis of the questionnaire focused on the themes of disciplinary procedures, the Kuwaiti Civil Service Law, the goals of discipline and the principles of natural justice. It was demonstrated that Kuwait does not apply the principles of natural justice in administrative disputes. The researcher concluded his study with an examination of the most important results of the focus group and the individual interviews.

6.3 Findings of the Study

The following are the main findings of the study:

1. The disciplinary system in the State of Kuwait is, in practice, applied almost exclusively to ordinary employees (including section heads and managers). High-ranking public employees (e.g. undersecretaries and assistants to undersecretaries) are rarely disciplined or referred to disciplinary boards,

resulting in only a statistically insignificant number of cases being recorded of high-ranking employees being disciplined.[696]

2. Regarding disciplinary procedures, the interviews with top management (specifically, Question 10 of the interviews)[697] revealed that the principle of natural justice and fairness in Islam focuses on justice for employees. However, the Kuwaiti government does not apply the principles of Islamic Law for administrative issues.
3. In 1979, the administrative entities in Kuwait signalled the evolution of the disciplinary system for public employees. However, although some amendments were subsequently made, this has not led to significant improvement in disciplinary procedures. The evidence from the public service employee respondents suggests that treatment of employees is perceived as being inconsistent. Indeed, the most commented issue was that employees were treated differently for similar breaches and it should be noted that such comments were corroborated by observations from senior stakeholders who concluded that existing arrangements contributed to dual and differing standards.[698]
4. As the majority of decisions are taken by the legal department, and the investigation section remains influenced by personal considerations,[699] the

[696] Interview 7, Appendix D.
[697] Interviews 7 and 8, Question 10, Appendix D.
[698] See chapter 5.
[699] Interview No. 7, Appendix D.

investigation section[700] still lacks fairness and impartiality. The investigation section was discussed in Section 2.2.3 (i.e. Discipline of Public Employees and Grievance Procedures).

5. As previously discussed, the principle of natural justice in Islamic Law (i.e. Sharia) provides guidance to an administration on providing fair opportunities to all its employees. Administrative decisions should be fair, unbiased, and undertaken by a competent authority capable of making decisions fairly and without discrimination.[701]
6. There is lack of clarity about the fundamental purpose of the disciplinary process and possible tendency for practice to lean in the direction of punishment rather correction and the promotion of improved performance and motivation. The evidence suggests that the disciplinary process may be characterised by lack of clarity and proportionality and that there is no standard practice to ensure that employees are aware of procedures and no training to help ensure that they are understood.[702]
7. The majority of the public employees interviewed for this study believed public employees in the State of Kuwait require an independent

[700] Generally, the investigation section in Kuwait is within the legal department, and most of the government ministries have a legal department of affairs.
[701] Interview No. 7, Appendix D.
[702] See Interview No. 5, question 5 at Appendix D.

administrative court (Council of State) with its own speciality and structure.[703]

8. The evidence in relation as to whether there is a perceived contradiction between the whistleblowing provisions and civil service law is mixed. Each law has a separate function. The interviews suggest although some of the high ranking officials, particularly the judges, could see how the civil service duties and the disciplinary procedures could operate side by side the whistleblowing provisions, it was apparent from the focus group discussion that employees typically were not confident that they would be protected if they took the risk and disclosed.[704] The study also suggests that the dilemma in relation to whistleblowing reflects a dichotomy competing duties which is rooted and expanded upon in Islamic teaching.[705]
9. Article 52 of the Whistleblowing Law in Kuwait No. 24 of 2012 lists the serious conditions to which a whistleblower will be subjected,[706] and forms the most contentious rule contained within the whistleblowing law. Thus, the fate of a whistleblower can be decided by the public authority combatting

[703] Interviews 1, 8, Appendix D. Also see Section 5.6 (Findings of the Focus Group). The majority of the focus group participants consider it necessary to have an independent court in Kuwait specialising in all administrative cases, as it is insufficient to simply have a circle to deal with administrative cases.
[704] See discussion at chapter 5.
[705] Interview 8, Appendix D. Bear in mind, this result in no. 8 is related to this thesis, found in Chapter 1, under Section 1.2 (Research Aims and Objectives), paragraph no. 4, which focuses on conflicting expectations that apply to public employee when in a position to whistle-blow.
[706] Interview 8, Appendix D.

corruption in Kuwait, or by the courts. For example, if the court decides that the whistleblower has misled justice or believes the information is incorrect, the whistleblower will be subjected to imprisonment for a term of not less than three years and could even be expelled from the workplace. It should be borne in mind that Islamic law is against corruption, while at the same time it urges the individual to avoid placing themselves in trouble or in a destructive situation. The harshness of the punishment for being found guilty of giving a false account is a serious disincentive and arguably almost prohibitive. The disincentive is perhaps added to by the lack of any guidance as to the meaning of good faith in the whistleblowing context and no policy and judicial acknowledgement of the possibility of employees being motivated by a complex mix of both personal and public duty considerations.[707]

10. The application of the principles of natural justice is not provided in: (1) the Kuwaiti Civil Service Act No. 15 of 1979; and (2) the Kuwaiti Civil Code No. 67 of 1980.[708]

6.4 Recommendations

It is recommended that:

1. The Kuwaiti government give whistleblowers a greater level of protection. It was observed that some members of top management interviewed by the researcher insisted on the importance a duty to whistleblow, along with the

[707] See discussion at Chapter 3, pp. 147-149.
[708] Article 1 of the Kuwaiti Civil Law No. 67 of 1980.

need to protect the whistleblower, i.e. the Kuwaiti government is under obligation under Article 42 of the Kuwait Whistleblowing Law no. 24 of 2012 to compensate the whistleblower for material, or moral, damages that they may sustain as a result of submitting their report.[709]

2. A detailed list is required, specifying all civil disciplinary offences, including: (1) indecent conduct; (2) and any attack on colleagues, or employees, during working hours, or in relation to work.

   Further examples of disciplinary violations committed by employees in relation to regulations and instructions, include: (1) bribery or the government being subject to blame by local media; (2) external abuse of a position to accept bribes or requests; (3) acceptance of gratuities and gifts, either personally or through a third party, with a view to corrupting the interests of an employer; (4) the use of vulgarity with stakeholders in relation to work.[710]

   A detailed list of disciplinary offences would enable public employees to understand, in advance, the administrative penalties they need to avoid in their place of work. Clearer, more accessible, and frequently updated guidance is to be found in the UK, where both disciplinary and whistleblowing guidance is grounded in generic employment law provisions. The UK example is preferable to the situation in Kuwait, UAE and Egypt,

[709] Article 42, Kuwait whistleblowing Law no. 24 of 2012.

[710] Source: www.Al-Jazirah.com [Accessed 5th September 2016].

where employers continue to fail to explain in advance, both the disciplinary procedures and the rights of public employees.[711]

3. Natural justice, as expounded upon under Islamic Sharia Law,[712] can be used alongside any existing disciplinary system, to maximise efficiency and deliver greater confidence concerning its administration to public employees. It is, thus, highly recommended that the Kuwaiti government apply the principles of natural justice, as outlined by Islamic Law through the Holy Quran and the Hadiths of Prophet Muhammad. The researcher also urges the government of Kuwait to abide by Article 2 of the Kuwait Constitution, which stipulates that Kuwaiti legislators should use Islamic law as a basis of legislation in the State of Kuwait.
4. The researcher recommends that the Kuwait Government reforms Article 1 of the Kuwait Civil Service Law No. 67 of 1980 by adding framework Guidance or a supplementary Code which is accessible, promulgated, and consistent with fundamental natural justice principles thus providing a shield against bias, arbitrary, and closed decision making.

[711] Interview 3, Appendix D, supports the researcher's recommendation.

[712] Sharia, in terms of human legal systems, is the temporal application of divine justice. The underlying principle is not of blind obedience to rules, but rather the active working out of God's demands for justice. Justice must be done equally to all and sundry, and the exercise of judicial partiality is improper. As all human beings are servants of Allah, all must be judged according to the book of Allah. The entire Muslim community lives under the Sharia, and every member submits to the law under the sovereignty of Allah. Pratt, D. *The Challenge of Islam: Encounters in Interfaith Dialogues*. England: Ashgate, 2005, pp. 89-90.

6.5 Areas of Further Research

A number of proposals for future research can be suggested by this study. Firstly, the study suggests that the aims of disciplinary processes are not sufficiently clear and that further research is needed in order to identify good practice in relation to distinguishing between procedures aimed at promoting improved performance and others aimed at imposing sanctions for misconduct. This might be particularly important in the context of addressing the identified issues of public service employee lethargy. The concept of misconduct warrants further investigation particularly in the context of public service where employees, as in Kuwait, are expected to obey all orders and regulations with little guidance, if any, as to how to respond when the duties are unclear or potentially conflicting.

Secondly, the study suggests that Guidance and updating disciplinary procedures to be more evident when grounded in employment rather than a public law setting. This possibility warrants further investigation, ideally by means of comparative research, with a view of investigating how civil law systems, and Arab Countries in particular, can respond more effectively to changing working conditions and expectations. The longevity of the provisions outlined in this study suggests that more adaptable procedures are needed and also legal and institutional safeguards to ensure that necessary information is accessible and made known to the workforce.

Thirdly and finally, it is respectfully suggested that there is need for further scholarly study into the disciplinary procedures of public employees in Kuwait in

the context of Islamic jurisprudence, governed by the Holy Quran and the Messenger of Mohammad. The latter suggestion could also be supported with a comparison of employee protection promoted by International Human Rights Conventions.

Bibliography

Statutes

Egypt Civil Service Law no. 131 of 1948. Issued on 1/8/1980.

Egypt Constitution, Issued on 11/ 9/1971.

Hadith of Prophet Mohammad.

Holy Quran.

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

Kuwait Administrative Dispute Resolution Act no. 20 of 1981. Issued on 7/ 7/1981.

Kuwait Civil Law no. 67 of 1980. Issued on 1/8/1980.

Kuwait Civil Service Law no. 15 of 1979. Issued on 4/4/1979.

Kuwait Civil Service System no. 15 of 1979. Issued on 4/4/1979.

Kuwait Constitution. Issued on 11/ 11/ 1962.

Kuwait Labour Law No.6 of 2010. Issued on 21/02/2010.

Kuwait Procedures Act No. 38 of 1980. Issued on 16/7/1980.

Kuwait Whistleblowing Act no. 24 of 2012. Issued on 6/7/ 2012.

United Arab Emirates Constitution, Issued on 2/12/ 1996.

Cases

Kuwait Cases

Case No. 153 of 1986, Kuwait Appeal Court, Administrative Case, Session 14/1/1987. (Not Published).

Case Number 216 of 1993. Kuwait Supreme Court, Administrative case, Session 2/5/1994. Encyclopaedia Principle for Administrative Judicial, Section 1, 1ST Edition.2000.

Case Number 24 of 1988, Supreme Court, Administrative Case, Session 4/7/1988. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

Case Number 240 and 244 of 1988, Administrative Case, Session 13/3/1989. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

Case Number 276 of 2006, Administrative Case, Session 84/2008. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 36. 1st April. 2008-30th Jan. 2008. February 2012.

Case Number 64 of 2000, Kuwait Supreme Court, Administrative Case, Session 20/12/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 850 and 853 of 2003, Administrative Case, Session 20/12/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 32. May 2007.

Case Numbers 32 and 49 of 2009, Administrative Case, Kuwait Supreme Court, Session 16/2/2011. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 35. June 2014.

Case Number 249 of 1985, Administrative Case, Session 2/7/1986. Council of ministries, Encyclopaedia principle Administrative Judicial employee's disputes. 2000.

Case Number 103 of 1986, Administrative Case, Session 18/2/1987. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

Case Number 240 of 1988, Administrative Case, Session 10/2/1989. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

Case Number 282 of 1988, Administrative Case, Session 1/5/1989. Encyclopaedia principle of Administrative Judicial Section 6.1995.

Case Number 301 of 1991, Administrative Case, Session 19/1/1992. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Section 2, 1st Edition, 1995.

Case Number 56 of 1992, Administrative Case, Session 8/3/1993. Encyclopaedia Principle for Administrative Judicial. Cabinet Minister, Department of Legislation and Opinion. Section 1, 1st Edition, 2003.

Case Number 126 of 1993, Commercial case, Session 21/2/1994. Encyclopaedia Principle for Administrative Judicial, Section 1, 1ST Edition. 2000.

Case Number 217 of 1993, administrative case, Session 22/3/1994. Encyclopaedia Principle of Administrative Judicial about Kuwait Supreme Decision, Legislative Department, Council of Ministers, Section 2, 1st Edition, 2000.

Case Number 66 of 1995, Administrative Case, Session 29/1/1996. Encyclopaedia Principle for Administrative Judicial, Section 1, 1ST Edition. 2000.

Case Number 172 of 2000, Administrative Case, Session 22/1/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. 1st of January 2001- 31st May 2001. Volume 1/Issue 29. April 2004.

Case Number 734 of 2000, Administrative Case, Session 22/1/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 29. April 2004.

Case Number 397 of 2000, Administrative Case, Session 29/1/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 29. April 2004.

Case Number 253 of 2000, Administrative Case, Session 19/3/2001, Journal of Justice and Law, Kuwait Supreme Court, ministry of justice technical office, periodical journal issued by technical office. 1st of January 2001- 31st of May 2001. Volume 1/ Issue 29. April 2004.

Case Number 499 of 2000, Administrative Case, Session 2/4/2001. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 73 of 2000, Administrative Case, Session 21/1/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 519 of 2001, Administrative Case, Session 11/2/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 704 of 2000, Administrative Case, Session 11/2/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 625 of 2001, Administrative Case, Session 28/2/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case No. 623/2001, Administrative Appeal, Session 8/4/2002. (Not published).

Case Number 238 of 2001, Administrative Case, Session 29/04/2002, Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 572 of 2001, Administrative Case, Session 05/20/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 571 of 2001, Administrative Case, Session 27/5/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 595 of 2000, Administrative Case, Session 27/5/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 623 of 2001, Administrative Case, Session 04/08/2002. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 30. July 2005.

Case Number 453 of 2000, Administrative Case, Session 13/10/2003. Journal of Justice and Law periodical journal issued by the technical office of the Supreme Court in the state of Kuwait. Volume 2/Issue 25. Nov. 2003.

Case No. 227 of 2003, Administrative Case, Session 03/01/2004. Journal of Justice and Law, Issued by Supreme court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 32. January 2007.

Case No. 420 of 2002, Administrative Case, Session 23/02/2004. Journal of Justice and Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 32. January, 2007.

Case No. 217 of 2003, Administrative Case, Session 1/9/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 32. January 2007.

Case Number 217 of 2003, Administrative Case, Session 1/9/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 32. January 2007.

Case Number 840 of 2002, Administrative Case, Session 29/11/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 32. May 2007.

Case Number 122 of 2004, Administrative Case, Session 27/12/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 32. May 2007.

Case Number 411 of 2004, Administrative Case, Session 27/12/2004. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 32. May 2007.

Case No. 57 for 2004, Administrative Case, Session 3/1/2005. Journal of Justice and Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 33. June, 2007.

Case Number 57 of 2004, Administrative Case, Session 3/1/2005. Journal of Justice and Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 33. June 2007.

Case Number 1261 of 2003, Administrative Case, Session 23/1/2005. Journal of Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 35. April 2006.

Case No. 148 for 2004, Administrative Case, Session 28/3/2005. Journal of Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. 1st Jan. 2005-31st Mar. 2005. June 2007.

Case No. 294 of 2004, Administrative Case, Session 28/3/2005. Journal of Justice and Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 33. June, 2007.

Case Number 406 of 2004, Administrative Case, Session 28/3/2005. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. 1st Jan.2005-31st Mar.2005. June 2007.

Case No. 795 of 2004, Administrative Case, Session 10/4 / 2006, Journal of Justice Law, periodical journal issued by technical office of the Supreme Court in the state of Kuwait, 1st Apr. 2006- 30th June 2006. Volume 2/Issue 34. October 2008.

Case Number 982 of 2005, Administrative Case, Session 26/9/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009.

Case Number 638 of 2005, Commercial Case, Session 30/9/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009.

Case Number 432 of 2005, Administrative Case, Session 19/12/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009.

Case Number 527 of 2005, Administrative Case, Session 26/12/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009.

Case Number 703 of 2005, Administrative Case, Session 26/12/2006. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 3/Issue 34. April 2009.

Case No. 1261 of 2005, Administrative Case, Session 23/1/2007. Journal of Justice, and Law, Issued by Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1, Issue 35. April 2011.

Case Number 1047 of 2005. Session 30/1/2007. Administrative Case, Journal of Justice and Law, issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 35. April 2011.

Case Number 423 of 2007, Administrative Case, Session 9/2/2010. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 2/Issue 35. June 2014.

Case Number 266 of 2009, Civil Case, Session 22/2/2010. Kuwait Supreme Court. Journal of Justice and Law, Issued by the Supreme Court in the State of Kuwait, Ministry of Justice. Volume 1/Issue 35. April 2011.

Case Number 3300/2012, Administrative Case, issued on 26/1/2015, Kuwait appeal court. (Not Published).

Case Number 795 of 2004, Administrative Case, Session 10/4 2006. Journal of Justice Law, periodical journal issued by technical office of the Supreme Court in the state of Kuwait, 1st Apr. 2006- 30th June 2006. Volume 2/Issue 34. October 2008.

UAE Cases

Case Number 388 of 1996. 29 January 1997. Abu Dhabi Primary Court (Not published).

Case Number 383 of 2001, Civilian Case, Abu Dhabi, issued on 10/3/2002, Federal Supreme Court.Volume1, August 2007.

Case Number 2 of 2007, Union Supreme Court in UAE, session 9/7/2008.Journal of Sharia and law, volume 3, issued by Union Supreme Court in UAE, May 2012.

Egypt Cases

Case No. 200 of 1975, Supreme Administrative Court in Egypt, Session 13/12/1978. Administrative Case, section 1, p.200. Ministry of Justice. 1985.

Case No. 2385 of 86, Supreme Administrative Court in Egypt, Session 13/5/1989, anthology of administrative principles, section 1, p. 500. Technical office, Egypt, 2004.

Case no. 3093/92, session 15/1/994, supreme administrative court, anthology of administrative principles, section 1, p, 627. Technical office, Egypt, 2004.

Case no. 3901/92, session 22/1/1994, Egypt Supreme Administrative Court, Anthology of Administrative Principles, session 1, p. 630, technical office, Egypt, 2004.

Case No. 720 of 1995, Supreme Administrative Court in Egypt, Session 26/10/1996, Anthology of Administrative Principles, section 1, p, 627. Technical office, Egypt, 2004.

Case No. 780/85, session 27/12/1986, supreme administrative court, anthology of administrative principles, session 1, p. 602, technical office, Egypt, 2004.

Case Number 17 of 2000. Alexandria Court 4/1/2003. Egyptian High Administrative Court. (Not published).

Case Number 3601 of 1984, Supreme Administrative Court in Egypt, session 29/4/1986. Administrative Cases, section 1. Ministry of Justice. 1996.

Case Number 465 of 1962. Supreme Administrative Court in Egypt, session 19/12/1965. Administrative Cases, section 1. Ministry of Justice. 1970.

United Kingdom Cases

Azmi v. ORBIS Charitable Trust ET 4 May 2000 (2200624/99).

Babula v Waltham Forest College [2007] EWCA Civ 174.

BP Plc v Elstone [2011] 1 All ER 718; [2010] ICR 879.

Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325.

Dunn v Durham County Council. [2012] EWCA Civ 1654.

Fernandes v Netcom Consultants Ltd (ET 2200060/00).

Governing Body of Wishmorecross School v Balado [2011] UKEAT/199/11; [2011] ICR D31.

Gray v Watson and Ors [2014] CSIH 81, CS.

Hibbins v Hesters Way Neighbourhood Project [2009] 1 All ER 949.

Kuilkarni V Milton Keynes Hospitals NHS Trust[2009]ICR 656.

R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent) [2017] UKSC 51.

R v Lord Chancellor's Department, ex p Nangle [1991] IRLR 343.

RCO Support Services v Unison [2002] EWCA Civ 464.

Rederiaktiebolaget Amphitrite v R [1921] 3 KB 500.

R -v- Sussex Justices, Ex parte McCarthy ([1924] [1923] All ER Rep 233) 192 .

Reilly v R [1934] AC 176.

Three Rivers District Council v Bank of England (No. 3) [1996] 3 All ER 558.

Uber BV v Aslam [2018]EWCA Civ. 2748.

Underhill P in Governing Body of Wishmorecross School v Balado [2011] UK EAT/199/11.

Virgo Fidelis School v Boyle [2004] IRLR 268.

French Cases

A.J. 1979.31. CHR. Dutheillet de Larmothe et Robineau, Dr. Soc. 1979.199, concl. Dondoux, Goz.Pa.1979.2. 435.

A.J. 1980.309, concl. Dondoux, Dr.soc.1980. 484.

C.E 11 dec. 1903. Lot, rec. 780 s. 1904. 3.113.

C.E 12 Nov. 1949, Societe nanceiennee d'alimentation, Rec. 483

C.E 17 juin 1979. S.A.R.L. Soviali, Rec. 105.

C.E 18 fevr. 1977, Abellan, Rec. 97l A.J. 1977. 248.

C.E 18 Mai 1979, societe "Thomson Medical Telco" Rec. 217.

C.E 20 fev. 1952, magnin, Rec. 117.

C.E 23 Nov. 1977, Societe Gallice, Rec. 499.

C.E 6 mai 1976, societe d' amenagement foncier et d'Establissement rural d'. avergue et Minister de l'agriculture c. Benrnetee, Rec. 232 D.1976. 563.

C.E 8 Juin 1966, Banse, Leb. 1011.

C.E. 22/10/1937 ,delle minaire Rec. 843.

C.E. 10 Feurier 1989, Djafri. 517.

C.E. 10 mans 1971, Jannes, A.j. 1971. 621.

C.E. 13 Mars 1953, Teinsier, Rec 133. D.1953. 735.

C.E. 15 fevr. 1980, Societe ananonyme Eternit industries, Rec. 94.

C.E. 16 dec. 1977, Lehodey et autres, Rec. 508, Dr. Soc. 1978.112, concl. Mme Latournerie, J.C.P. 1979.II.19057.

C.E. 16 Juin 1965, Morin, Leb. 355.

C.E. 16-7-1943, Bordclat, Rec. 191.

C.E. 17 juin 1979, Manufacture francaise de pneumatiques Michelin, Rec.289.

C.E. 17 Novembre 1982, Karienga, Leb.385.

C.E. 19/12/1919, Chobeaux, Rec. 940.

C.E. 20 fev. 1952, magnin, Rec. 117.

C.E. 22-10-1937, Dalle minaire, Rec. 266.

C.E. 24-1-1919, Commomnal. 94.

C.E. 27 avr. 1979, Minister de l'agriculute c. Syndicat C.F.D.T. de la cooperative laitiere du puy; Rec. 171.

C.E. 6 Decembre 1957, Serre, Leb. 657.

C.E. Encoignard et Mme Szezepaniach, 2 juill. 1982, Rec. 265, Dr. Soc. 1982.767, concol. Biancarelli, A.J. 1982.450, chr.Tiberghien et Lasserre.

Arabic References

- **Books**

Abdelhadi, Maher. *Legitimacy of the Disciplinary Procedure.* Egypt: Dar Al-Nahda. 2005.

Abdul Jayid, Ali Hassan Ali. *Extremes for Penalties and Impact of the Administrative Decision* ,Egypt: Dar Al-Nahda. 2007.

Abdulbaset, Mohammad Fuad. *Administrative Law.*Alexandria: Dar Al-Jamiaa. 2009.

Abdulbaset, Mohammad Fuad. *Discipline Crime in Civil Service.* Alexandria: Dar Al-Jamiaa.2005.

Abdullah, Sabri Jalbi. *Conditions for Practicing the Public Employee for the Rights and Political Freedoms.* Egypt: Dar Al-Kutoub. 2012.

Abdulmajeed, Abdulmajeed Mohammad.*Whistleblowing against Corruption.* Dar Al-Nahdah, Egypt, 2014.

Abdulwahab, Mohammad Rafaat and Ajila, Assem Ahmad. *Principles of the Administrative Law*. Egypt: Dar Al-Nahda. 2007.

Abdulwahab, Mohammad Refaat and Othman, Hossain Othman. *Principles of the Administrative Law.* Alexandria: Dar Al-Matbuat. 2001.

Abuzeid, Mohammad Abdulhammeed. *Obedience for the Supervisor under administrative law.* Egypt: Dar Al-Nahda. 2008.

Adya, Naeem and Al-Fakhani, Hassan. *New Administrative Encyclopaedia*. Egypt: Dar Al-Arabia. 2004.

Ahmad Mamdouh. *The System of the Civilian Worker in the State*. Egypt: Egypt Company. 2013.

Ahmad, Faraj. *Kuwait through History.* Kuwait: Al-Aien establishment. 2014.

Al-Ajarma, Nufan Alaakill. *Authority Discipline for Public Employee*. Oman, Dar Altakafa, 2007.

Al-Bahi, Sameer Yousef. *Explanation of the System of the Civilian Workers in the State law no. 47 of 1978 with the Amendments to law no. 203 of 1994* .Egypt: Dar Al-Kutoub. 2007.

Al-Dawi, Ahmad Mamdouh. *The System of the Civilian Worker in the State.* Egypt: Egypt Company. 2013.

Al-Deen, Fawzi saleh. *Public Service in the United Arab Emirates,* 4th Edition. United Arab Emirates: Sharjah University Bookshop.2006.

Al-Deen, Kholoud. *Islamic studies*. Kuwait: Ministry of Education. 2012.

Al-Deen, Sammy Jamal. *Administrative Order and the Discretionary Power-Comparative Study between United Arab Emirates, Egypt and France,* Emirates University. 2009.

Al-Haidar, Faisal Ahmad . *Assets of administrative Disputes- comparative study (Kuwait-Egypt-Great Britain),* 1st Edition. Kuwait: Al-Jleeb Press. 2010.

Al-Harbi, Abdulatif bin Shadeed. *Discipline Guarantees in the Public Service.*Egypt: Dar Al-Nahda. 2006.

Al-Hullo, Majed Rakib, *Kuwait Administrative Law and Civil Service Law,* Kuwait, Manshurat That Al-Salasel, 2008.

Al-Hullo, Majed Rakib. *The Government and the Employees between Submission and Facing.* Egypt: Dar Al-Nahda. 2004.

Ali, Abdullah Yusuf. *The Meaning of the Holy Quran,* 10th Edition. USA:Amana Publications. 2001.

Ali, Mohammad Ibrahim. *Protection for Public Employee.* Egypt: Dar Al-Nahda. 2010.

Al-Jallad, Nader. *The concepts of al-halal and al-haram in the Arab-Muslim culture: a translational and lexicographical study*. University of Jordan. 2008.

Al-Jamel, Yahya. *Administrative Law and Cases.* Egypt: Dar Al-Nahda Al-Arabia. 2005.

Al-Jazery, Hamed Anwer. *Civil Service System in the Federal Government for the United Arab Emirates*. 1st Edition. UAE: Dubai Press. 2011.

Al-Kabbani, Bakher.*Kuwait Administrative Law.* Kuwait: Kuwait University Press. 2003.

Al-Kaisi, Aad Ali Hammoud. *Administrative Law (Comparative Study)*. 3rd Edition . United Arab Emirates: Dubai Faculty Law. 2008.

Al-Khalailah Mohammad Ali. *Local Administration.* Jordan: Dar Al-Takafa. 2013.

Al-Massri, Zakariya. *The Assets of the Public Administration- Comparative Study.* Egypt: Dar Al-Kutoub. 2007.

Al-Mokateh, Mohammad Abdulmohsen. *Kuwait Administrative Law.* Kuwait: Kuwait University. 2004.

Al-Mokateh, Mohammad and Al-Faresi, Ahmad. *Kuwait Administrative Law.* Kuwait: Kuwait University Press. 2009.

Al-Mutairi, Naif Mutlag and Al-Shimali, Munther Abudulaziz. *Discipline for Employees at Kuwait Law* . Alexandria: Monshaat Al-Maaref. 2008.

Al-Nahari, Majid Medhat. *Principle of the Administrative Law.* Egypt: Dar Al-Nahda. 2010.

Al-Nashme, Ajil; Nuh, Assayed; Al-Hajiri, Mubarak; Al-Munayfi, Ahmad; and Al-Deen, Kholoud. *Islamic studies.* Kuwait: Ministry of Education. 2012 .

Al-Qadi, Nasser Aldeen. *General Theories for Discipline in the Public Service.* Egypt: Dar Al-Fkir. 2007.

Al-Qutheny, Mansour. *Administrative Law, 1st edition*. Lebanon: Majed Press. 2008.

Al-Rakem, Yousef Ahmed. *Summary for Explanation of the Kuwait Civil Law Service.* Kuwait: That Al-Salasel Press. 2013.

Al-Rashidee, Abdullah Habab, *Summary of the Administrative Jurisdiction in the State of Kuwait*. Kuwait: Dat Al-Salasel Press. 2013.

Al-Saleh, Badria. *Rules for the Dismissal of Public Employee under Kuwaiti Law. Kuwait*. Al-Wazzan International Press, 2004.

Al-Saleh, Othman Abdulmalik. *System of the Constitutional Law in Kuwait*. Kuwait: Manshaat Dar Al-Kutoub, 2003.

Al-Sayer, Aissah. *Political history about United Arab Emirates State.* UAE: University bookshop Press. 2007.

Al-Shaali, Khalifah Rashed. *Emirates Administrative Law*. UAE: Ajman University. 2005.

Al-Shanqeeti, Yab Mahfouth. *Justice and Social Solidarity Models and Evidence of the History of the Islamic, Kuwait, Research and Studies Departmen.* Al-Amiri Dewan, 2013.

Al-Shekli, Abdulkhader. *Discipline for Government Workers- Comparative Study.* Egypt: Dar Al-Takafa. 2006.

Al-Shitewi, Saad. *Disciplinary Accountability for Public Employee.* Egypt: Dar Al-Jamiaa Al-Jadida. 2008.

Al-Tabak, Shareef. *Administrative Investigation and Disciplinary Case.* Egypt: Dar Al-Fikr. 2008.

Al-Tammawee, Sulaiman Mohammad. Judicial *Administrative Discipline.* Alexandria: Dar Al-Fikr Al-Arabia. 2003.

Al-Thonaibat, Mohammad Jamal. *Summary of the Administrative Law.* 2nd edition. Jordan: Dar Al-Takafa. 2013.

Al-Tobtubaee, Adel. *Civil Law in Kuwait.* Kuwait: Maktab Al-Darasat. 2005.

Al-Wakeel, Mohammad Ibrahim. *La Constitution Francaise.* Egypt: Al-Nahda Al-Arabia. 2008.

Al-Zubi, Khaled. *Discipline of Employees - Comparative Study.*Egypt: Dar Al-Takafa. 2007.

Amro, Adnan. *Principles of Administrative Law.* Alexandria: Monshaat Al-Maaref. 2004.

Anwar, Osama. *Legislation andLaws of Egypt State Council and Administrative Judicial.* Egypt: Dar Al- Arabi. 2015 .

Asfor, Mohammad. *Discipline Theory.* Egypt: Alam Al-Katoub. 1967.

Ayoub, Alsabee Mahsoub. *The Summary of the Disciplinary Judiciary Disputes.* Egypt: Dar Al-Jamiaa. 2010.

Bader, Ahmed Salama. *Administrative Investigation and Disciplinary Actions.* Egypt: Dar Al-Nahda. 2010.

Bader, Ahmed Salama. *Public Employee in Gulf Countries Legislation.* Egypt:Dar Al-Nahada. 2008.

Batek, Rodan Mohammad. *Disciplinary Authority for governmental Workers.*Egypt: Dar Al-Nahda. 2005.

Behbahani, Salwa Faisal. *Employment System under Kuwait Civil Service.* Kuwait: Kuwait University Press. 2012.

Besyuni, Hassan Alsayid. *Rules for Administrative Dispute.* Egypt: Alam Al-Kutoub. 2008.

Emam, Mohammad Abdu. *Judicial Administration.* Alexandria: Dar Al-Fikr. 2007.

Fahmee, Mustafa Abuzeid. *Administrative Judiciary and State Council*. Alexandria: Dar Al-Matbuat Al-Jamiaa. 2010.

Farraj, Amani Zain. *Legal System for Public Employee Discipline.* Alexandria: Dar Al- Fikr. 2012.

Hassan, Mohammad Kaddri. *United Arab Emirates Administrative law.* 1st Edition. UAE: Sharjah University bookshop. 2009.

Hind, Hassan Mohammad . *System Law of Civilian Employees in Egypt.*Egypt: Dar Al-Kutoub. 2005.

Howeehed, Somiya Bado. *The Jurisdiction of the Administrative Decision-Comparative Study (Egypt, France, and Kuwait).* Egypt: Dar Al-Nahda. 2012.

Hussein, Mohammad Bakher. *Administrative Law*. Alexandria: Dar Al-Fikr. 2012.

Ibrahim, Ahmed Mohammad. *United Arab Emirates Public Administration.* UAE: Dubai Press. 2006.

Judo, Jihan Mohammad. *Administrative Procedures for Appeal and Administrative Cases- A comparative study.*Egypt: Dar Al-Kutoub. 2009.

Kaaki, Walid. *The New Labor Law in Plain English.* Kuwait: Royal Advertising Press. 2010.

Kalifa, Abdulaziz. *Guarantees for Discipline.* Alexandria: Monshaat Al-Maaref. 2008.

Kamali, Mohammad Hashim. *Freedom of Expression in Islam.* London: Islamic Text Society Cambridge. 1997.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence.* London: Islamic Text Society Cambridge. 1991.

Kamel, Nabilah, Abdulraheem. *Summary of the Administrative Law.* Egypt: Dar Al-Nahda. 2009.

Kannaan, Nawaf Salem. *Civil Service in United Arab Emirate,* 1st Edition. United Arab Emirates: University Book Shop. 2008.

Khadduri, Majid. *The Islamic of Justice.* London: Hopkins University. 1984.

Khalil, Adel. *Judicial Review of Administrative Actions in Egyptian and Comparative Law.* Egypt: Dar Al-Kutoub. 2011.

Mohammad, Ali Abdulfatah. *Right for Public Employee.* Alexandria: Dar Al-Jamiaa. 2007.

Mohammad, Mohammad Ahmad. *Employment Contract.* Alexandria: Dar Al-Matbuat, 2013.

Mubarak, Abdultawab. *The Assets of the Judicature in the United Arab Emirates.* Jordan: Brighter Horizon Publishers. 2011.

Oada, Abdulatif. *Resignation in the Public Service.* Egypt: Al-Fkir Press. 2012.

Obeed, Mohammad Kamel. *The constitution of the United Arab Emirates, Comparative and Descriptive study.* UAE: Dubai Press. 2007.

Othman, Hossain Othman. *Lessons in the Administrative Judiciary* . Lebanon: Dar Al-Jamiaa. 2007.

Qotob,Mohammad. *Dubiosities about Islam*, 6th Edition. Cairo: Dar Al-Shorooq. 1978.

Ramadan, Shaiban Ahmad. *The Role of the Disciplinary Court.* Egypt: Dar Al-Nahda. 2005.

Rathey, Nassem. *The obedience of the workers to Supervisors in the civil service.* Alexandria: Dar Al-Matbuat Al-Jamiya. 2006.

Riyad, Ahmad Rizk. *Abuse of Administrative Power.* Alexandria: Al-Wafaa Legal Press. 2010.

Saleh, Obeed Mahjoub. *The Duties of the Public Employee.* Alexandria: Monshaat Al-Maaref Press. 2012.

Shaheen, Makawiri Mohammad. *Disciplinary Accountability.* Egypt: Alam Al-Kutoub. 2003.

Shatat, Osama Ahmad. *The laws of the Administrative Prosecution, State Council, and High Constitutional Court.* Egypt: Dar Al-Kutoub. 2006.

Tawfeek, Hisham Mohammad. *Responsibility Control.*Alexandria: Dar Al-Fkir Al-Jamiaa. 2008.

Yessri, Ahmed. *Principles Judgment In the French Administrative.* Alexadria, Manshaat Al-Maaref, 2004.

Zaidan, Ali Aldeen and Al-Saee, Ahmed Mohammaed. *Comprehensive Encyclopaedia for Administrative Law, section 1.* Alexandria: Dar Al-Fikr Al-Jamiaa. 2004.

English References

Adams, Alix. *Law for Business Students.* London: Pearson. 2010.

Adams, M and Bomhoff, J .*Practice and Theory in Comparative Law*. London: Cambridge University Press. 2012.

Alder, John. *Constitutional and Administrative Law.* 9th Edition. London: Palgrave Macmillan. 2013.

Allan, T.R.S. Law, Liberty, and Justice. *The legal foundation of British Constitutionalism.* London: Clarendon Press Oxford. 1994.

Allen, Robin; Crasnow, Rachel and Beale, Anna. *Employment law and Human Rights.* 2nd Edition. London: Oxford University Press. 2007.

Auerbach, Simon. *Legislating for Conflict.* London: Oxford University Press. 1990.

Baderin, M., and Senyongjo, M. *International Human Rights Law Six Decades after UDHR and Beyond.* London: MPG Books Group. 2010.

Bailey, S.H, Jones, B.L, and Mowbray, A.W. *Cases and Materials on Administrative Law.* 3rd Edition. London: Sweet and Maxwell. 1997.

Bailey, Stephen and Gunn, Michael. *Smith and Bailey on the Modern English Legal System.* 3rd Edition. London: Sweet and Maxwell. 1996.

Barrow, Charles; Blunt, Steve; Gibbons, Steve; Manley, Isabel; and Rose, Nick. *Blackstone's Guide to the Employment Relations Act 1999.* London: Blackstone Press. 2001.

Beale, Hugh. *Chitty on Contracts, Volume 11 Specific contracts,* 31st Edition. London: Sweet and Maxwell. 2012.

Beatson, J.B and Matthews, M.H. *Administrative Law cases and materials.* 2nd Edition. London: Clarendon Press Oxford. 1989.

Beatty, Richard. *The Interview Kit*, 3rd Edition. USA: John Wiley and Sons Incorporated. 2003.

Bekke, Hans and Van der Meer, Frits. *Civil Service Systems in Western Europe.* USA: Edward Elgar. 2000.

Bell, Andrew. *Nutshells Employment Law*. 5th Edition. London: Sweet and Maxwell. 2012.

Bell, John, Boyron, Sophie and Whittaker, Simon. *Principles of French Law.* 2nd Edition.London: Oxford University Press. 2009.

Benny, Richard; Jefferson, Michael; and Sargeant, Malcolm. *Employment Law*.London: Oxford University Press. 2010.

Black, Antony. *The History of Islamic Political Thought: From the Prophet to the Present.* 1st Edition. Scotland: Edinburgh University Press. 2001.

Bourn, Colin and Whitmore, John. *Discrimination and Equal Pay.* London: Sweet and Maxwell. 1989.

Bowers, John. *Employment Law.* 4th Edition. London: Blackstone Press Limited. 1996.

Bradley, A.W and Ewing, K.D. *Constitutional and Administrative Law*. 14th Edition. London: Pearson Longman. 2006,

Brayne, Hugh and Carr, Helen. *Law for social workers.*London: Oxford University Press. 2010.

Brazier, Rodney. *Constitution Reforms Reshaping the British Political System.* 2nd Edition. London: Oxford University. 1998.

Brown, Lionel Neville and Garner, John Francis. *French Administrative Law,* 2nd Edition. London: Butterworths. 1973.

Bryman, A. and Bell, E. *Business Research Methods*, 2nd Edition London: Oxford University Press, 2015.

Bryman, Alan and Bell, Emma. *Business research Method.* London Oxford University Press, 2007.

Cane, Peter. *Administrative Law.* 4th Edition. London: Oxford University Press. 2004.

Carroll, Alex. *Constitutional and Administrative Law.* 5th Edition. London: Oxford University Press. 2009.

Casale, Giuseppe. *The Employment Relationship*. London: Hart Publishing. 2011

Chae, Anthony and Hamzawy, Amr. *Human rights in the Arab world.* USA: University of Pennsylvania Press. 2008.

Chandler, Peter. *Employment Law.* 13th Edition. London: Kogan Page Limited. 2001.

Clarke, H.W. *Constitution and Administrative.* London: Sweet and Maxwell. 1971.

Clarke, H.W., *Cases and Constitution and Administrative Law.* London: Sweet and Maxwell. 1973.

Cockain, Duncan. *Constitutional and Administrative Law.* London: Sweet and Maxwell Limited New Feter Lans. 1966.

Collins, Peter Hodgson. *Dictionary of Law.* 4th edition. London: Bloomsbury. 2004.

Collins, Robert. *Collins Robert French Dictionary.* France: Harper Collins Publisher, 7th Edition. 2005.

Cownie, Bradney and Burton. *English legal system in context.* 5th Edition. London: Oxford, University Press. 2010.

Craig, P.P. *Administrative Law.* 5th Edition. London: Sweet and Maxwell. 2003.

Curzon, Leslie and Richard, Paul. *The Longman Dictionary of Law, 7th edition.* London: Pearson Longman. 2007.

Cussani, Elizabeth. *Constitutional and Administrative Law.* 1st edition. UK: Sweet and Maxwell. 2008.

Davis, Michael. *Business Law in Egypt.* London: Kluwer. 1984.

Day, Robart. *How to write and publish a scientific paper*. 4th edition. Cambridge: Cambridge University Press. 1995.

Deakin, Simon and Morris, Gillian. *Labour Law*, 6th Edition. London: Hart Publishing. 2012.

Desdevrises, Andrew West Yvon; Domique, Alain Fenet, Marier-Clet Hrussaff, Gaurier; and Levy, Brunno. *The French legal sytem,*. 2nd edition. London: Butterworths. 1998.

Duddington, John. *Employment Law.* London: Pearson Education Limited. 2003.

Dutton, Yasin. *The Origins of Islamic Law: The Qur'an, the Muwaṭṭa' and Madinan 'Amal*. London: Routledge Curzon. 2002.

Dworkin, Ronald. *Justice for Hedgehogs.* London: The Belknap Press of Harvard University, Cambridge. 2011.

Elliott, Catherine and Quinn, Frances. *English legal system.* London: Pearson Longman. 2011.

Elliott, Catherine; Jean-Pierre, Eric; and Vernon, Catherine. *French Legal System.* 2nd Edition. London: Pearson Longman. 2006.

Elliott, Mark. *Administrative Law texts and materials.* Oxford University Press. 2005.

Emir, Astra. *SelwynsLaw of Employment,* 18th Edition. London: Oxford University Press. 2014.

Endicott, Timothy. *Administrative Law*. London, Oxford University press, 2009.

Eordham, Michael. *Judicial Review.* Volume 1, Issue 2. London. 1996.

Esposito, John. *The Oxford Dictionary of Islam.* London: Oxford University press. 2003.

Ewing, Keith and Wishart. *Working life: a new perspective on Labor Law.* London: England. 1996.

Ewing, Keith; Collins, Hugh; and McColgan, Aileen. *Labour Law Text and Materials,* 2nd Edition. London: Hart Publishing. 2005.

Fagan, Neil. *Contracts of Employment.* London: Sweet and Maxwell. 1996.

Farmer, J.A. *Tribunals and Government.* London: Weidenfeld and Nicolison. 2009.

Farran, S, Gallen, J and Rautenbach, C. *The Diffusion of law: The Movement of law and Norms around the World.* London: Routledge. 2015.

Feldman, David. *English Public Law.* London: Oxford University Press. 2004.

Fenwick, Helen and Phillipson, Gavin. *Text, Cases &Materials on Public Law & Human Rights,* 2nd Edition. London: Cavendish Publishing Limited. 2003.

Forbes, William and Hodgkinson, Lynn. *Corporate Governance in the United Kingdom.* United Kingdom:Palgrave MacMillan. 2014.

Freeman, Michael. *Alternative dispute resolution.* London: Dathmouth. 1995.

Garner, Bryan. *Black's Law Dictionary, 9th Edition*. USA: West. 2009.

Goodman, Michael. *Industrial Tribunals Practice and Procedure, 4th Edition.* London: Sweet and Maxwell. 1987.

Grant, Beryl. *Employment Law.* London: Thomson. 2002.

Gray, Hamish. *The Persistence of the Common Law.* London: Oxford University Press. 2001.

Greenberg, Janelle. *The Radical Face of the Ancient Constitution.* London: Cambridge University Press. 2001.

Griffin, Stephen. *Company Law Fundamental Principles. 4th Edition.* UK: Pearson Longman Harlow. 2006.

Griffiths, Aled. *Statutes on Company Law 2012/2013. 2nd Edition.* UK: Pearson Longman Harlow. 2012.

Grunfeld, Cyril. *The Law of Redundancy.* London: Sweet and Maxwell. 1989.

Gudgin, Graham. *Employment Problems in the Cities and Regions of the UK: Prospects for the 1980s.* London: Oxford University Press. 1982.

Halstead, Peter. *Unlocking Human Rights.* London: Hodder Education. 2009.

Hardy, Stephen and Butler, Mark. *European Employment laws- A comparative guide, 2nd Edition*. London: Spiramus Press. 2011.

Harlow, Caral. *Public Law and Politics.*London: Sweet and Maxwell. 1986.

Hepple, Bob. *Equality, the New Legal Framework.* London: Oxford and Portland. 2011.

Heringa, Aalt Willem and Kiiver, Philipp. *Constitutions. Compared – An Introduction to Comparative. Constitutional Law,* 2nd edition. Belgium: Intersentia. 2009.

Hodgson, Susan. *Answers to Tough Interview Questions, 4th edition.* London: Pearson Longman. 2011.

Holland, James and Burnett, Stuart. *Employment Law*. London: Oxford University Press. 2009.

Holmes, Ann and Painter, Richard. *Employment Law, 2nd Edition.* London: Blackstone Press limited. 1988.

Honeyball, Simon. Honeyball and Bowsers. *Textbook on Employment Law. 13th Edition.* London: Oxford University Press. 2014.

Hood, Phillips and Hudson, A.H. *First book of English law. 8th Edition.* London: sweet and Maxwell. 1988.

Humphrys, John. *Britain 1995 An Official handbook.* London: HMSO. 1994.

Ibanez, Alberto. *The Administrative Supervision and Enforcement of EC law: Powers, Procedures and Limits.*London: Oxford Hart Publishing. 1999.

Ibbetson, David. *Common Law and Ius Commune.* London: Selden society. 2001.

Ingman, Terence. *The English Legal Process,* 10th Edition. London: Oxford University Press. 2004.

Jackson, Paul. *Modern Legal Studies Natural Justice*. London: Sweet and Maxwell. 1973.

Jackson, R.M. *The Machinery of Justice in English,* 7th Edition. London: Cambridge University Press. 1977.

Jacqueline, Martin and Gibbins, Mary. *AZ Law Handbook*, 4th Edition. London: Philip Allan. 2010.

James, Judi. *You're Hired! Interview*. UK: Trotman Publishing. 2009.

Jefferson, Michael. *Principles of Employment law,* 4th Edition. London: Cavendish Publishing Limited. 2010.

Jennings, Ivor. *The British Constitution,* 5th Edition. London: Cambridge University Press. 1968.

Jill, Crystal. *Kuwait the Transformation of an Oil State.* Oxford: Westview Press. 1992.

Jones, B.L. Garner. *Administration Law*. London: Butterworth London and Edinburgh. 1989.

Jones, Dewi Llyr; Prys, Delyth and Davies, Owain llyod. *Geiriadur Termau'r Gyfraith/Dictionary of Legal Terms.* UK: Bangor University. 2008.

Kahn, Otto. *Labour and the Law*. London: Stevens and Sons. 1972.

Kalin, Walter and Kunzli, Jorg. *The Law of International Human Rights Protection.* London: Oxford University Press. 2010.

Kamali, Mohammad Hashim. *Freedom of Expression in Islam.* United Kingdom: Cambridge University Press. 1997.

Keenan, Denis and Smith. *English law,* 10th Edition. London: Pittman. 1992.

Keir , D.L , and Lindsary , David. *The Constitution History of Modern Britain since 1485*, 9th Edition. London: 1968.

Keir, D.L, and Lavson, F.H. *Case in Constitution Law*, 5th Edition. London: Oxford at the Clarendon Press. 1967.

Kelly, David; Hayward, Ruth; Hammer, Ruby and Hendy, John. *Business Law*. London: Routledge. 2011.

Kenny, Steve. *The Law Student's Handbook.* London: Oxford University Press. 2007.

Kidner, Richard. *Employment Law.* England: Oxford University Press. 2008.

Kokkoris, Ioannis and Lianos, Ioannis. *The Reform of EC Competition Law: New Challenges.* London: Kluwer Law International. 2010.

Lambert, Lee and Lambert, Erin. *The Other Kuwait.* Ohio, USA: Lambert and Associated Publishing. 1992.

Lautenberg, Dominique. *Core Statues on Employment Law*. London: Palgrave Macmillan. 2012.

Law, Jonathan. *Oxford Dictionary of Law,* 8th Edition. London: Oxford University Press. 2015.

Lewis, David and Sargeant, Malcolm. *Employment Law*. London: Oxford University Press. 2009.

Lewis, David and Sargeant, Malcolm. *Essentials of Employment Law,* 8th Edition.London: Chartered Institute of Personnel & Development. 2004.

Lewis, David and Sergeant, Malcolm. *Employment Law*. London: Oxford University Press. 2009.

Lewis, David. *Essentials of Employment Law.* London: Institute of Personnel Management. 1994.

Leyland, Peter and Anthony, Gordon. *Administrative Law,* 6th Edition. London: Oxford University Press. 2009 .

Leyland, Peter and Gordon, Anthony. *Textbook on Administrative Law,* 6th Edition. London: Oxford University Press. 2009 .

Leyland, Peter and Woods, Terry. *Administrative Law facing the future: old constraints and new horizons.* London: Black Stone Press Limited. 1997.

Libby, Robert, Libby, Patricia, and Short, Daniel. *Financial Accounting.* USA: Mcgraw Hill. 2009.

Loveit, Frank. Rawl's. *A Theory of Justice.* London: Bloomsbury. 2011.

Loveland, Ian. *Constitutional Law, Administrative Law, and Human Rights A Critical Introduction,* 5th edition. London: Oxford University press. 2009.

Mack, F.W. *The Constitution History of England.* London: Cambridge University Press. 1980.

Maclntyne, Ewan. *Business Law,* 4th Edition. London: Pearson Education. 2008.

Maitland, F.W. *The Constitutional History of England.* London: Cambridge University Press. 1980.

Malleson, Kate and Moules, Richard. *The Legal System,* 4th Edition. London: Oxford University Press. 2010.

Marson, James. *Business Law.* London: Oxford University Press. 2009.

Martin, Jacqueline and Turner, Chris. *The Comprehensive Guide to all the Facts.* London: Oxford University Press. 2005.

Martin, Jacqueline. *The English Legal System,* 5th Edition. London: Hodder Education. 2013.

Mcauslan, Patrick and Eldowney John. *Law, Legitimacy and the Constitution.*London: Sweet and Maxwell. 1985.

McCann, Deirdre. *Regulating Flexible Work.* London: Oxford University Press. 2008.

McEldowney, John. *Public Law,* 2nd Edition. London: Sweet and Maxwell Limited. 1996.

McKeown, Cormac and Holmes, Andrew. *Collins English Dictionary,* 15th edition. UK: Harpercollins Publishers. 2009.

Mcleod, Ian. *Legal Method,* 8th Edition. London: Palgrave Macillan. 2011.

Miceli, Marcia and Near, Janet. *Blowing the Whistle.* New York: Lexington Books. 1992.

Mitchell, Tony and Wortley, Natalie. *English Legal System.* London: Oxford University Press. 2009.

Moran, John Jude. *Employment Law New Challenges in the Business Environment*. USA: New Jersey. 1997.

Moses, Richard. *The Civil Service of Great Britain.* USA: Oxen New York. 1941.

Mullins, Laurie. *Management and Organisational Behaviour,* 8th Edition. Harlow: Financial Times Prentice Hall. 2007.

Nairns, Janice. *Employment Law for Business Students,* 2nd Edition. London: Pearson Longman. 2004.

Nairns, Janice. *Employment Law Statutes 2011-2012.* London: Routledge. 2011.

Novitz, Tonia and Skidmore, Paul. *Fairness at Work.* London: Hart Publishing. 2001.

O'Hare, John and Browne, Kevin. *Civil Litigation,* 12th Edition. London: Sweet and Maxwell. 2005.

O'Dempsey, Declan; Allen, Andrew; Belgrave, Susan and Brown, Jill. *Employment Law and the Human Rights Act 1998.* UK: Jordan Publishing Limited. 2001.

Oliver, Dawn. *Constitutional Reform in the UK.* London: Oxford. 2003.

Pardoe, Allan. *A Practical Guide for Employer and Employee to the Industrial Relation Act.*London: Jordan's and Sons Limited. 1972.

Philips, Hood. *Leading cases in Constitution and Administrative,* 5th Edition. London: Sweet and Maxwell. 1979.

Phillips, Gillian and Scott, Karen. *Employment law.* London: Hampshire. 2009.

Phillips, Hood. *Constitution and Administrative Law,* 7th Edition. London: Sweet and Maxwell. 1987.

Pitt, Gwyneth. *Employment Law,* 9th Edition. London: Sweet and Maxwell. 2014.

Pratt, Douglas. *The Challenge of Islam: Encounters in Interfaith Dialogues*. England: Ashgate, 2005.

Raudvere, Catharina. *Islam: An Introduction.* London: I.B. Tauris. 2015.

Rawls, John. *A Theory of Justice.* USA: Harvard University Press. 2005.

Robbins, Stephen and Coulter, Mary. *Management,* 10th Edition. London: Pearson International Edition. 2009.

Robertson, David. *A Dictionary of Human Rights*, 2nd Edition. London: Europa Publications. 2004.

Sandel, Michael J. *Justice: What's the right to do?* London: Penguin Books. 2010.

Saunders, Mark; Lewis, Philip; and Thornhill. Adrian. *Research Methods for Business Students*, 3rd Edition. London: Pearson Education. 2003.

Scott, Vivian. *Conflict Resolution at Work for Dummies.* USA: Wiley Publishing Incorporated. 2010.

Selwyn, Norman. *Selwyn's Law of Employment,* 16th Edition. London: Oxford University Press. 2011.

Shapo, Marshall. *The Duty to Act: Tort Law, Power, and Public Policy.* USA: University of Texas Press. 2012.

Slade, Elizabeth. *Tolley's Employment Handbook,* 21st edition. UK: LexisNexis. 2007.

Slapper, Gary and Kelly, David. *The English Legal System*, 10th Edition. London: Routledge Cavendish. 2010.

Smith, Ian and Baker, Aaron. *Employment Law*. London: Oxford University Press. 2010.

Smith, Ian and Randall, Nicholas. *Contract Actions in Employment Law Practice and Precedent*, 2nd Edition. UK: Bloomsbury Professional. 2011.

Smith, Ian and Thomas, Gareth. *Smith and Wood's Employment Law*, 9th Edition. London: Oxford University Press. 2008.

Steiner, EVA. *French Law "Counseil d' Etat", in English language "Council of State."* London:Oxford University Press. 2010.

Street, Harry. *Justice in the Welfare State.* London: Stevens and Sons. 1968.

Sykes, John. *Construction Claims*. London: Sweet and Maxwell. 1999.

Talbot, V. Gulf Monarchies in the New Mena Region, in Altomonte, C and Ferrara, M (eds) *The Political Aftermath of the Arab Spring: Perspectives from the Middle East and North African Countries,* Edward Elgar Publishing Ltd. 2014.

Taylor, Stephen and Emir, Astra. *Employment Law: An Introduction,* 2nd Edition. London: Oxford University Press. 2009.

Upex, Robert; Benny, Richard and Hardy, Stephen. *Employment Law,* 3rd Edition. London: Oxford University Press. 2009.

Vickers, Lucy. *Freedom of Speech and Employment.* London: Oxford University Press. 2002.

Volti, R. *An Introduction to the Sociology of Work and Occupations.*USA: Pine Forge Press. 2008.

Wade, William and Forsyth, Christopher. *Administrative Law,* 10th Edition.London: Oxford University Press. 2009.

Walliman, Nicholas. *Your Research Project,* 2nd Edition. London: Sage Publishing. 2005.

Wallington, Peter. *Butterworths Employment Law,* 15th Edition. London: Lexis Nexis. 2007.

Ward, Richard and Akhtar, Amanda. *English Legal System,* 11th edition. London: Oxford University Press. 2011.

Ward, Richard and Wragg, Amanda. *English Legal System,* 9th Edition. London: Oxford University Press. 2005.

Watson, Alan. *The Making of the Civil Law.* USA: Harvard University. 1981.

Wild, Charles and Weinstein, Stuart. *English Law.* London: Pearson Education Limited. 2010.

Willey, Brian. *Employment Law in Context: An Introduction HR Professionals,* 4thEdition.London: Pearson. 2012.

Williams, Steve and Adam-Smith, Derek. *Contemporary of Employment Relations*, 2nd Edition. London: Oxford University Press. 2010.

Williamson, M. The diffusion of Western Legal Concepts in Kuwait: Reflections on the State, the Legal Education from a comparative and Historical perspective, inFarran, S, Gallen, J and Rautenbach, C, (eds) *The Diffusion of law: The Movement of law and Norms around the World*. London: Routledge. 2015.

Winter, Tim, *Classical Islamic Theology.* London: Cambridge University Press. 2008.

Zweigert, K. and Kotz, H. *AnIntroduction to Comparative law translated by Tony Weir*, 3rd edition. London: Oxford University. 2004.

French References

Auby, Jean-Marie and Auby Jean-Bernard. *Institutions Administives.* Precis Dalloz. 1991.

Auby, Jean-Marie; Auby, Jean-Bernard; Didier, Jean-Pierre; and Taillefait, Antony. *Droit de la fonction publique: Etat, Collectivités locales, Hôpitaux,* 5th Edition. Paris: Dalloz. 2005.

Bandet, Pierre.*Le droit disciplinaire dans la fonction publique territoriale (Collection L'Actualite juridique).* Paris: Editions du Moniteur. 1990.

Bouloc, Bernard and Hartini, Matsopoulou. *Driot Penal General et Procedure Penale, 16th Edition.*Paris: Dalloz. 2006.

Braibant, Guy and Stirn, Bernard. *Le droit Adiminstratif Francais, 7th Edition.* France: Presses de sciences po et Dalloz. 2005.

Braibant, Guy. *Le droit administrative Francais.* Paris, Dalloz. 1992.

Carbasse, Jean-Marie. *Histoire Du Droit Pénal Et De La Justice Criminelle*. France: Presses Universitaires de France.2000.

Chabanol, Daniel. *La Pratique du Contentieux Administrative, 2nd Edition.* Paris: libraire de law cour de cassation. 1991.

Chantebout, Bernard. *Droit constitutionnel, 24th edition.* Paris: Dalloz. 2007.

Chapus, Rene. *Droit Administatif General Tome 2, 15th Edition*. Paris Montchrestien. 2011.

Coulet, William. *Le nouveau reglement de discipline generale dans les armees*. Revue du droit public et de la Science Politique, 1968.

Daniel, Chabonol. *La practique du contentieux.* Paris: Libraire de la conr de cassation. 1991.

De Laubadere, Andre; Gaudemet, Yves; and Venezia Jean-Claude. *Traite de Droit Administratif, tome 1, 13th edition.*Paris: Libraire Generale de Droit et de Jurisprudence. 1994.

Duez, Paul and Debeyre, Guy. *Traite de Droit Administrative.* Paris: 2005.

Esplugas, Pierre. *Conseil Constitutionnel et Service Public*. Paris: Librairie Generale de droit et de Jurisprudence. 1994.

Favorue, Louis and Philip, Loic. *Les grandes decisions du Conseil constitutionnel, 15th Edition.* Paris: Dalloz. 2009.

Ferrrari, Pierre. *les droits des Citoyens dans leurs Relations avec les Administrations.* France: Actualite Juridique Administratifs Droit. 2003.

Gaudemet, Yves. *Traité de droit administrative, Tome 2, 14th edition.*France: Librairie generale de droit et de jurisprudence. 2008.

Gazier, Francois. *La fonction publique dans le monde.*Paris: Cujas. 1972.

Georges, Philippe. Diot Public. *Concours Administratifs Deug et Licence en Droit, 11th Edition.* Paris: Dalloz. 1999.

Godfrin, Philippe and Degoffe, Michel. *Droit Administrative Des Biens, 8th Edition*. Paris: Sirey. 2006.

Gustave, Peiser.*Contentieux Adminsitratif, 14th edition.* Paris: Dalloz. 2006.

Jacques, Salmon. *Conseil d'etat.* Paris: Brylant Bruxelles. 2005.

Jeze, Gaston. *les Principles Generaux du droit Administrative, tome 1*. Paris: Dalloz. 2005.

Kalck, Pierre. *Tribunaux administratif et courts administratives d'appel.* Paris: Berger Levault. 2004.

Lebreton, Gilles. *Droit administratif general, 6th edition.* Paris: Dalloz. 2011.

Lombard, Martine and Dumont, Gilles. *Droit Administratif. 7th Edition.* Paris: Dalloz. 2007.

Long, Marceau , Weil, prosper and Braibant , Guy . *les grands Aretes de La Jurisprudence Administrative, 1st Edition*. Paris: Dalloz. 2006.

Maurin, Andre. *Driot Administratif, 6th Edition.*Paris: Dalloz. 2007.

Michel, Jean. *Les recours administratifs gracieux, hiérarchiques et de tutelle.* France: La Documentation Française. 1996.

Moreau, Jacques. *Droit administrative.* Paris: University de France Presses. 2005.

Oberdorff, Henri. *Les institutions administrative, 6th edition.* Paris: Dalloz. 2010.

Pierre, Pacter and Meline. *Soucrmamien. Driot Constitutionnel.* France: Sirey. 2007.

Pieser, Gustave. *Contentieux Administrative, 14th edition.* Paris: Dalloz. 2006.

Pieser, Gustave. *Droit Administrative General Mementos*. Paris: Dalloz. 2008.

Plantey, Alain. *La fonction publique*: *traité general, 2eme edition*. Paris: Litec. 2001.

Salon, Serge. *Delinquance et repression disciplinaires dans la fonction publique.* Paris: L.G.D.J., 1969.

Vedel, Georges and Delvolve, Pierre. *Le systeme francais de protection des admnistres contre l administration.* Paris: Sirey. 2003.

Waline, Jean. *Droit Administratif, 22nd edition.* Paris: Dalloz. 2011.

Articles

Al-Bourini, Omar Abdulrahman, "Abuse of Power: It's Nature and Basis" *Journal of Law*. Kuwait University, December 2007.

Al-Faresi, Ahmad Hamad, "Discipline in the Public Service of Civil Jobs in Kuwait, A Comparative Study" *Journal of Law*. Kuwait University. December 2004.

Al-Hullo, M. "Comment about the new Kuwait Civil Service no. 15 of 1979" *Journal of Law*. Kuwait University. 1980.

Al-Oaisi, Aad Hamoud. "The Application of Disciplinary Punishment and its Legal Justification" Research Paper. *Journal of Sharia and Law*, UAE: College of Law, April 2009.

Al-Rajhi, Saleh Abdullah. "Civil and Political Human Rights: A comparative study between Islamic Sharia and the Universal Declaration" *Journal of Law*. Volume 27 Issue 1. Kuwait University. March 2003.

Al-Rifae, Ahmed Basel. "The Liberal Democracy and the Human Rights Crisis," *Journal of law,* Kuwait University. June 2005.

Ashton, Jeanette. "15 years of Whistleblowing Protection under the Public Interest Disclosure Act 1998: Are We still Shooting the Messenger?" *Industrial Law Journal.* Volume 44 Issue 1. 2015.

Baker, Nigel, "Whistleblowing and the Law," Issue 5. *New Law Journal.* 30 Jun 2004.

Buelens, Marc, & Van den Broeck, Herman. “An Analysis of Differences in Work: Motivation between Public and Private Sector Organizations” *Public Administration Review*. Volume 67 Issue 1. 2007.

Cain, Brian. “Whistleblowing: The First Cases,” Issue 12. *New Law Journal.* 11 October 2000.

Callaghan, C. “What is a target duty?” *Judicial Review*. Volume 5 Issue 3. 2000.

Carroll, Clare. “Whistleblowing: Irelands Protected Disclosers Act 2014- Its Context and Impact,” *Compliance and Risk.* 2015.

Cawley, B. “Public Service Motivation: State of Public Service Series” *An Foras Riarachain Institute of Public Administration*. June 2013.

Dawwas, Amin. “Abuse in the Exercise of Rights in Islamic Law and the Civil Codes of Arab Countries,” *Journal of Law.* Kuwait Vol. 19 no. 1, March 1994.

Ferguson, Peter. “Whistleblowing Jurors features Common Law/ Human Rights” *New Law Journal*, 12 March 2004.

Filby, Michael. “Will the Whistleblowers Play for the FSA?” *New Law Journal.* Issue 7044. 9 August 2002.

Foster, Nicholas H. D. “Islamic Perspectives on the Law of Business Organisations II: The Sharia and Western-style Business Organisations”*European Business Organization Law Review*. Volume 11, Issue 2. June 2010.

Francis, Ronald and Armstrong, Anona."Corruption and Whistleblowing in International Humanitarian Aid Agencies," *Journal of Financial Crime.* 1 November 2011.

Frank, Sue A, "Government Employees working Hard or Hardly working?" *American Review of Public Administration.* Volume 34 Number 1. March 2004.

Frazer, Andrew, "The Employees Contractual Duty of Fidelity" *Law Quarterly Review*. 2015.

Fredman, Sandra and Spencer, Sarah, "Beyond Discrimination: It's time for Enforceable duties on Public Bodies to Promote Equality Outcomes." *European Human Rights law Review.* Issue 6. 2006.

Henik, Erika. "Mad as hell or scared stiff? The Effects of Value Conflict and Emotions on Potential Whistleblowers," *Journal of Business Ethics*. 2008.

Ibrahim, Jalal Mohammad. "The permissibility to dismiss the employee shall occur in the event of any penal crime being committed in accordance with Article 120/para(s) of Emirate's Labour Law in the United States of Emirates."*Journal of Shariah and Law.* Emirates University. March 2009.

Kadir, Rizgar Mohammad and Hassan, Heve Amjad. "The Monitoring Study," *Journal of law,* University of Kuwait. June 2011.

Larmer, Robert. "Whistleblowing and Employee Loyalty," *Journal of Business Ethics.* Volume 11. 1992.

Lewis, David, "Is a Public Interest Test for Workplace Whistleblowing in Society's Interest?"*International Journal of Law and Management.* 2015.

Lewis, David. “Resolving Whistleblowing Disputes in the Public Interest: Is Tribunal Adjudication the Best that Can Be Offered?” *Industrial Law Journal.* Volume 42 Issue 1. 1 March 2013.

Lewis, David. “Ten years of Public Disclosure Act 1998 Claims: What Can we Learn from the Statistics and Recent Research?” *Industrial Law Journal.* Volume 39 Issue 3.2010.

Lewis, David. “Whistleblowers and the Law of Defamation: Time for Statutory Privilege?” *Web Journal of Current Legal Issues.* Issue 3. 2005.

Majeed, Nudrat. “Good Faith and Due Process: Lessons from the Shari’ah”*Arbitration International.* Volume 20 Issue 1. March 2004.

Miceli, Marcia and Near, Janet. “Relationships among Value Congruence, Perceived Victimization, and Retaliation against Whistleblowers” *Journal of Management.* 2013.

Mordue, Christopher and Biddle, Pinsent. “Type and outsourcing about (Employment),” Issue 19. *All England Legal Opinion.* June 2002.

Morris, G., and Fredman, S. “Is there a Public/ Private Labour Law Divide?” *Comparative Labour Law Journal*. 1993.

Novak, Rhys; Bond, Robert and Henty Paul, “Looking to the next 12 months:10 issues for UK complains officers” *Complains and Risk.* 2015.

Opdebeek, Ingrid and De Somer, Stephanie. “The Legalty of a Combination of Disciplinary and Criminal Penalties Applied to Civil Servants in the European Sphare: An Impermissible Case of Double Jeopardy or a Legitimate Conjunction

for Tackling Reprehensible Behaviour of Public Officials?" *European Human Rights Law Review*. 2015.

Palmer, Vernon. "Mixed Legal Systems - The Origin of the Species" *The Tulane European and Civil Law Forum*. 2013.

Pritchett, Stephanie. "Whistleblowing - Avoiding the Hot Water When Others Let Off Steam," *Privacy and Data Protection Journal*. Volume 11 Issue 7. August 2011.

Ramage, Roderick. "Snippets from the Reduced Law Dictionary," *New Law Journal*. Issue 7371. 29 May 2009.

Rios, Lorena. President Erdogan's " New Turkey" *IBA Glogal Insight*. June 2017.

Rodgers, Lisa. "Public Employment and Access to the Justice in Employment Law"*Industrial Law Journal*. 2014.

Smail, Alastair. "Where are we with whistleblowing?" *New Law Journal*. Issue 7022. 8 March 2002.

Smith, Ian. "Employment: Line Up," *New Law Journal*. Issue 7483. 30 September 2011.

Smith, Ian. "Employment: Working it out," *New Law Journal*. Issue 7552. 15 March 2013.

Wilson, James. "Dear Diary Back Page Law Stories," *New Law Journal*. Issue 7515. 25 May 2012.

Yeoh, Peter. "Whistleblowing: Motivations Dereliction Self-Regulation"*International Journal of Law and Management*. 2014.

Papers, Thesis and Other Sources

Abdelhadi, Basher. “Researches and Studies in the Public Administration and Administrative Law,” Research paper. Faculty of Law. Egypt: Hulwan University. 2006.

Abdelhadi, Hamdi. “Disciplinary Sanctions,” Ph.D. thesis. Egypt: Aien Shams University. 2006.

Abdul Jayid, Ali Hassan Ali. “Extremes for Penalties and Impact of the Administrative Decision,” Master’s Dissertation, Egypt: Dar Al-Nahda. 2007.

Abdul Majid, Mahmoud Saad. “The Protection of Administrative Decision,” Master’s Dissertation. Egypt: Dar Al-Jamiaa. 2012.

Abdulhadi, Mahmoud Haji. “Discipline Penalties,” Master’s Dissertation. Kuwait University. 2004.

Al-Adamat, Mohammad Aref. “The Administration's Authority to cancel the public services under the Administrative Law,” Master’s Dissertation. (comparative study, Jordan, Kuwait, and Egypt). Jordan: Mu'tah University. 2010.

Al-Afifi, Mustafa, “Philosophy of the disciplinary punishment,” Ph.D. thesis .Ain Shams University, 1976.

Al-Ajili, Asma Abdelkadem. “The Rights for Public Employees - A comparative study,” Master’s Dissertation . Iraq: Babel University.2009.

Alam, Eman Ossama, “Corruption and the Tool of Whistleblowing,” Research paper. Egypt: Egypt University. 2009.

Al-Deen, Bilal Amin Zain, Administrative Discipline, Master’s Dissertation, Alexandria, Dar Al Fikr, Al Jamiaa, Egypt, 2010.

Al-Enezi, Saad Nawaf. “Procedures Guaranteed for Disciplinary,” Research paper, Kuwait University. 2011.

Al-Enezi, Saad Nawaf. “The Legal System for Public Employees in Kuwait,” Ph.D. thesis. Alexandria: Al-Jamiaa Press. 2007.

Al-Hamadi, Hameed Ibraheem. “Control over the Constitution Laws in United Arab Emirates State- A comparative study with Egypt, Kuwait, Bahrain.” Master’s Dissertation. Egypt: Centre of the Legal Issues. 2011.

Al-Kandari, Hani Abdulatif. “Administrative Investigation in the State of Kuwait,” Master’s Dissertation. Kuwait University. April 2010.

Al-Nahar Kuwait News paper, issued on 13th of January 2014.

Al-Rabeei, Ahmad Mahmoud. “Administrative Investigation in the Public Service, Comparative study,” Master’s Dissertation . Egypt: Dar Al-Kutoub. 2012.

Al-Sabti, Adnan Mohammad. “Legal Safeguards for Disciplinary Proceedings in the Kuwaiti and the Egyptian System - A Comparative Study,” Master’s Dissertation . Egypt: Hulwan University. 2007.

Al-Saidi, Sief Bin Salem. “Discipline System for Public Employees in the United Arab Emirates law,” Ph.D. thesis . Egypt: Aien Shams University. 2006.

Al-Sheikili, Abdulkader. “The Legal System of the disciplinary penalty,” Ph.D. thesis . Egypt University. 1983.

Al-Tahrawi, Hani Ali. “The Concept of Disciplinary Offence,” Research paper . Jordan: Al-Zarkah University. 2010.

Al-Watan Newspaper, Kuwait, issued Monday May 7, 2012.

Al-Watan Newspaper, Kuwait, issued on February 8, 2013.

Arjimind, Abdullah Mohammad. “Philosophy of Disciplinary Actions for Civil Service Workers- A Comparative study between United Arab Emirates and other countries, 3rd Edition.” Ph.D. thesis published as a book . United Arab Emirates: Dubai University. 2006.

Ayyash, Amjad Jihad Nafe. “Guarantees of Disciplinary Questioning of the Public Employee,” Master’s Dissertation . Egypt: Banha University. 2011.

Bursli, Adel Majed. “Administrative Dispute Procedures in the Kuwait Legal System,” Master’s Dissertation. Kuwait University. 2009.

Chartered Institute of Personnel and Development (CIPD). Working Life: Employee attitudes and engagement. Research Report. 2006.

See Eurostat Statistics Explained: *Public Employment France*, Revised 7 December, 2015.

Edrees, Meshari Rashid. “The Competence of Jurisdiction of the Administrative Circle in the State of Kuwait,” Master’s Dissertation, Kuwait University. 2008.

Frances QC. Freedomto Speak Up – A Review of Whistleblowing in the NHS. 2015.

Hammoud, Zahwa. “Discipline in Civil Service,” Ph.D. Thesis . Alexandria: Alexandrian University. 1984.

Karam, Ghazi. “Administrative Law in United Arab Emirates,” Ph.D. Thesis . Dubai: Brighter Horizon Publishers. 2010.

Khater, Sherif Yousef. “Public Employees in Egypt - A Comparative Study,” Master’s dissertation . Egypt: Dar Al-Fikr. 2011.

Maarefi, Abdullah A. “Evaluation System at Financial Institute in Kuwait,” Ph.D. Thesis, Commerce College, University of America at London. 2006.

Mahjoub, Tarwa Mahmoud. “Administrative Investigation,” Ph.D. thesis. Egypt: Aien Shams University. 2005.

Mahmoud, Abdullah Mohammad. “Procedural provisions for grievance,” Master’s Dissertation. United Arab Emirates: Ajman University. 2007.

Muharib, Ali Jumma. “Administrative Discipline,” Ph.D. thesis .Jordan: Dar Al-Takafa. 2004.

Public Law Project. Public Law Project Information Leaflet 3: A brief guide to the grounds. 2006.

Public Law Project. Short Series 03: An Introduction to Judicial Review. 2013.

State of Kuwait Central Statistics Bureau. Statistical review, 38th Edition. 2015.

Internet Sources

A Al-Araby, 2014 Vision for administrative reform in Egypt (Presentation by the Minister, June). Cairo, EG: Ministry of Planning, Monitoring and Administrative Reform. Available at: http://www.ad.gov.eg/Admin/EditorDocs/Governance/Public%20Administration%20Reform%20Plan%20.pdf [Accessed 26th August 2018]

Baig, Khalid, "What Does Islam Teach about Justice? Neither love nor hatred can be allowed to compromise justice," Online source: www.islamreligion.com [Accessed 11th December 2016].

Barsoum, G, *Egypt's Many Public Administration Transitions: Reform Vision and Implementation Challenges,* International Journal of Public Administration (2018) 41(10). Available at: https://www.tandfonline.com/doi/abs/10.1080/01900692.2017.1387145 [Accessed 10th July 2018].

Barsoum, G, The public sector as the employer of choice among youth in Egypt:. The relevance of public service motivation theory. International Journal of Public Administration, (2016) 39(3), 205–215. Available at: doi:10.1080/01900692.2015.1004082 (Taylor & Francis Online) [Accessed 10th July 2018].

Council of Europe. Whistleblowing: Update on Europe. 2015. Available at: https://www.coe.int/t/dgh/standardsetting/cdcj/Whistleblowers/Whistleblowers_Update%20on%20europe20%2004%202015.pdf. [Accessed 29th August 2015].

Gould, Andrew. Conflicting Imperatives and Concept Formation. *The Review of Politics.* [E-Journal] Volume 61 Issue 3. 1999, pp. 439-463. Available at: http://www.jstor.org/stable/1408463 contents [Accessed 8th July 2015].

HG.org Legal Resources. Whistleblower Law [Online]. 2015. Available at: http://www.hg.org/whistleblower.html. [Accessed 17th May 2015].

http://ajialq8.com/?p=38269 [Accessed 10th March 2017].

http://ckpblog.knowledgeplatform.com/post/Whistleblowers-in-Egypt-in-need-of-protection.aspx [Accessed 19th November 2015].

http://dictionary.cambridge.org/dictionary/english/fairness. [Accessed 8th September 2016].

http://dictionary.reference.com /browse/misdeed [Accessed 6th July 2014].

http://ec.europa.eu/social/main.jsp?catId=102[Accessed 4th August 2016].

http://www.tuw.edu/business/top-down-vs-bottom-up-management [Accessed 23th June 2017].

http://faculty.kmu.ac.ir/fs/WebSite/1/PageStructure/editor/content/586/method.pdf [Accessed 5th July 2016].

http://globalcompliancenews.com/anti-corruption/anti-corruption-in-the-united-arab-emirates [Accessed 10th December 2015].

http://hadith.islambeacon.com [Accessed 3rd April 2015].

http://humanresources.about.com/od/glossaryd/a/discipline.html[Accessed 7th March 2013].

http://islamicstudies.islammessage.com/ResearchPaper.aspx?aid=676 [Accessed 26 June 2014].

http://legal-dictionary.thefreedictionary.com/Criminal+Law [Accessed 5th September 2016].

http://library.islamweb.net/emainpage/articles/134445/the-islamic-concept-of-faith [Accessed 29th August 2016].

http://m.allarida.com/pages/news-more/2012728221[Accessed 3rd December 2015].

http://news.kuwaittimes.net/anti-corruption-body-begins-work/01/04/2015 [Accessed 27th June 2015].

http://quran.com/4/135 [Accessed August 5, 2016].

http://quran.com/5/42 [Accessed 7thSeptember 2016].

http://religion.answers.com/islam/ibn-taymiyyah-bio [Accessed 14 August 2014].

Re'em, Yair, "Motivating public Sector Employees: An Application-oriented analysis of Possibilities and Practical Tools, "Master degree in Public management. 2010.

Source: https://wwww.hertie-school.org [Accessed 8th February 2016].

http://scholarworks.49eu.ac.ae/cgi/viewcontent.cgi?article=1004&context=publi claw thesis [Accessed 6 June 2018].

http://sst5.com/readArticle.aspx?ArtlD=211&SeclD=50 [Accessed 28th January 2016].

http://timesofindia.indiatimes.com/life-style/relationships/work/How-to-deal-with-lethargic-employees/articleshow/38361843.cms [Accessed 10th July 2016].

http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023178.pdf [Accessed on 11th August 2015].

http://whistleblowers.wordpress.com/2006/06/17/public-interest-disclosureActprotecting whistleblowers-UK [Accessed 4th October 2015].

http://www.alanba.com.kw/ar/kuwait-news/incidents-issues/ [Accessed 4th January 2015].

http://www.al-islam.org/towards-better-understanding-quran-shaykh-muslim-bhanji [Accessed 10th July 2016].

http://www.aljarida.com/articles/1462409728594658200/ [Accessed on 7th June 2015].

http://www.alkharjonline.net/articles-action-show-id-1450.htm [Accessed 7th July 2016].

http://www.beyondintractability.org/essay/distributive-justice [Accessed 6th March 2014].

http://www.cipd.co.uk/hr-resources/employment-law-faqs/unfair-dismissal.aspx.2/8/2016 [Accessed 2nd August 2016].

http://www.droitetereprise.org/web/?p=208 [Accessed 20th August 2016].

http://www.educationscotland.gov.uk/scotlandshistory/20thand21stcenturies/piperalpha/index.asp [Accessed 4th January 2016].

http://www.employmentlawwatch.com/2015/02/articles/employment-france/whistleblower-protection-around-the-world [Accessed 13th June 2015].

http://www.employmenttribunals.gov.uk [Accessed August 4, 2015].

http://www.esmalloffice.com/SBR_template.cfm?DocNumber=PL05_0080.html [Accessed 1 May 2014].

http://www.fonction-publique.gouv.fr/fonction-publique-1088.com [Accessed 5th February 2016].

http://www.gcc-legal.org/MojPortalPublic/Home.aspx [Accessed 27th July 2016].

http://www.humanities.manchester.ac.uk/studyskills/assessment_evaluation/dissertations/methodology.html [Accessed 6th November 2014].

http://www.investorwords.com/3949/public_utility.html [Accessed 3rd August 2017].

http://www.islam-info.ch/en/Morality_in_Islam.htm [Accessed 22ndAugust 2016].

http://www.islamreligion.com/articles/253/viewall[Accessed 26 June 2014].

http://www.kuwait-toplist.com/information-on-kuwait/living/ [Accessed 12th January 2016].

http://www.maib.gov.uk/cms_resources.cfm?file=/HofFEfinal.pdf [Accessed 4th January 2016].

http://www.merriam-webster.com/dictionary/methodology [Accessed 6th November 2014].

http://www.moi.gov.ae apartments/generic content/human.9spx [Accessed 21th August 2016].

http://www.pcaw.co.uk/ [Accessed 5th September 2016].

http://www.planetofsuccess.com/blog/2010/how-to-deal-with-autocratic-leadership/.[Accessed 24th June 2017].

http://www.planetofsuccess.com/blog/2010/how-to-deal-with-autocratic-leadership/.[Accessed 24th June 2017].

http://www.themedilawfirm.com/PracticeAreas/MalpracticeLaw.aspx [Accessed 25th August 2014].

http://www.truebanking.com.pk/img/reports/Report-2.pdf. [Accessed 5th August 2016].

http://www.tuw.edu/business/top-down-vs-bottom-up-management/ [Accessed 23th June 2017].

http:/www.skgep.gov.ae>newsletter. [Accessed 26th July 2016].

https://ico.org.uk/media/reportaconcern/documents/1042550/protection_for_whistle_blowers.pdf [Accessed 2nd August 2016].

https://whistleblower.org/sites/default/files/TheCurrentStateofWhistleblowerEurope.pdf [Accessed on 8th December 2014].

https://www.britannica.com/topic/Gulf-Cooperation-Council [Accessed 12th September 2016].

https://www.britannica.com/topic/natural-law [Accessed 3rd September 2016].

https://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/Whistleblowers_Update%20on%20Europe_20%2004%202015.pdf [Accessed 9th September 2016].

https://www.gov.uk/whistleblowing/what-is-a-whistleblower [Accessed 2ndAugust 2016].

https://www.hertieschool.org/fileadmin/images/Downloads/workingpapers/60.pdf [Accessed 8th February 2016].

https://www.islamreligion.com. [Accessed 5th March 2014].

https://www.nidirect.gov.uk/articles/blowing-whistle-workplace-wrongdoing [Accessed 2nd August 2016].

https://www.transparency.org/ [Accessed 14th December 2015].

https://www.vocabulary.com/dictionary/deliberately [Accessed 5th August 2016].

Kallet, Richard H. How to Write the Methods Section of a Research Paper. Available at: Michaels, Ralf. "One Size Can Fit All – On the Mass Production of Legal Transplants (December 19, 2012 (Constitutional Law)" Günter Frankenberg ed., Elgar, 2013. Available at SSRN: https://ssrn.com/abstract=2191543 [Accessed 16th June 2017].

International Commission of Jurists, Egypt's Judiciary: A Tool of Repression; Lack of Effective Guarantees of Independence and Accountability, September 2016. Available at: https://www.icj.org/wp-content/uploads/2016/10/Egypt-

Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf [Accessed 20th August 2018].

Pélicier-Loevenbruck, Sophie, Decrypting the New Whistleblower Law in France, 24 May 2017 (Available online: https://www.littler.com/publication-press/publication/decrypting-new-whistleblower-law-France [Accessed 7 June 2018].

Sarshar, Mubashshir. 2008. Natural Justice and its Applications in Administrative Law [Online]. Available at: http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=mubashshir [Accessed 1st April 2014].

United Nations Report. State of Kuwait, Public Administration, Country Profile. *United Nations Public Administration Network* [Online]. 2004. Available at:http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023178.pdf?q=kuwait[Accessed 21 June 2015].

University of Waterloo. Principles of Natural Justice/ Faculty Association. Available at: http://uwaterloo.ca/faculty-association/policies-agreements/principles-natural-justice. [Accessed 1st April 2014].

Wilthagen, Ton and Frank Tros. "The Concept of "Flexicurity": A new approach to regulating employment and labour markets," *Transfer: European Review of Labour and Research.* Volume 10 Issue 2. 2004, p. 3. Available at: http://www.nvf.cz/assets/docs/80401adfbc0953f74d581d0c0a71ff37/359-0/youth-flexicurity.pdf [Accessed 23th June 2017].

www.acas.org.uk. [Accessed 9th September 2016].

www.Al-Jazirah.com. [Accessed 5th September 2016].

www.alyaum.com/article6/4/2008 [Accessed 12th September 2016].

www.cait.gov.kw [Accessed 10th March 2017].

www.Fatwa.Islam Web.net>fatwa>show fatwa 20-9-2007 [Accessed 10th July 2016].

www.kt.Com.kw/ba/tafseriah.htm [Accessed 10th July 2016].

www.law.cornell.edu/wex/contract. [Accessed 23rd July 2013].

www.lexology.com/library/detail.aspx?g=a621278a-34cb-40f0-9045-bc57d0ff5a66 [Accessed 27th July 2016].

English Appendices

Appendix A

Some Articles selected from the Constitution of the State of Kuwait

In the name of Allah, the Beneficent, the Merciful ,

We, ABDULLAH al-SALIM al-SABAH

AMIR of the State of Kuwait ,

Being desirous of consummating the means of democratic rule for our dear Country; and ,

Having faith in the role of this Country in the furtherance of Arab nationalism and the promotion of world peace and human civilization and ,

Having considered Law Number I of 1962 concerning the system of Government during the period of transition; and ,

Upon the resolution of the Constituent Assembly, do hereby approve this Constitution and promulgate it.

Article 2

The religion of the State is Islam, and the Islamic Sharia shall be a main source of Legislation.

Article 26

Public office is a national service entrusted to those who hold it. Public officials, in the exercise of their duties, shall aim at the public interest.

Aliens may not hold public offices except in the cases specified by law.

Article 29

All people are equal in human dignity, and in public rights and duties before the law, without distinction as to race, origin, language or religion.

Article 41

Every Kuwaiti has the right to work and to choose the type of his/her work. Work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavor to make it available to citizens and to make its terms equitable.

Article 109

A member of the Assembly shall have the right to initiate bills.

No bill initiated by a member and rejected by the National Assembly maybe re-introduced during the same session.

Article 163

In administering justice, judges shall not be subject to any authority. No interference whatsoever shall be allowed with the conduct of justice. Law shall guarantee the independence of the Judiciary and shall state the guarantees and provisions relating to judges and the conditions of their irremovability.

Article 169

Law shall regulate the settlement of administrative suits by means of a special Chamber or Court, and shall prescribe its organization and the manner of assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law.

Article 170

Law shall organise the body, which shall render legal advice to ministries and public departments and shall draft bills and regulations. Law shall also regulate the representation of the State and other public bodies before the Courts.

Article 171

A Council of State may be established by a law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting bills and regulations.

Appendix B

Transcript of the Questionnaire in English Questionnaire about the Discipline Procedures for the Public Employees in the State of Kuwait.

Dear Participant Sir/Madam,

I am a researcher at Bangor University in Wales (Prifysgol). My research is about the discipline procedures for the public employees and the duties in Kuwait, with reference to UAE, Egypt, UK and France. I would be very grateful, if you could spend some time answering certain questions. I have enclosed a questionnaire about the Discipline Procedures for the Public Employees, and Kuwait civil service law. If the civil service law is just for public employees in Kuwait. However, the list of questions and topics included in this questionnaire is neither exhaustive nor all inclusive. I believe that it touches on the majority of the issues that will assist me in my research.

While I would like you to provide me with answers to all the questions, and areas mentioned in this questionnaire. However, I would be grateful if you could answer the completed questionnaire within the next two weeks.

Once again thank you for your time and participation.

Sincerely yours,

Faisal AI-Haidar

02- Feb-2011

Questionnaire about the Discipline Procedures for the

Public Employees in the State of Kuwait

Welcome note

This is the questionnaire that has been distributed to conduct research for my post-graduation dissertation. I am conducting this research to analyse the discipline system and Kuwait civil service law and if the civil service law has justice for public employees in Kuwait. Please answer the questions as applicable to you. I am carried out this research by keeping all the ethical issued in mind properly. Name of participants will not be disclosed, and will be kept confidential in this research.

- **Some Questions about the Respondents**

1- **What is your nationality?**

a. Kuwaiti

b. Foreigner

2- **What is the highest educational qualification you hold?**

a. Intermediate school certificate.

b. High school certificate.

c. Diploma degree (above high school).

d. University degree or equivalent.

e. Post Graduate Degree.

- **Some information about the Job**

3- **What is your professional post in your work place?**

a. Public Employee

b. Head Section

c. Director

• Please Specify _____

4-**How many years have you been employed at your workplace?**

a. 1-2 years

b. 3-5 years

c. 6-10 years

d. 11-14 years

e. More than 15 years

- **Some Questions about Discipline Procedures and Grievance**

5-Have you been disciplined in your workplace in the past?

a. YES

b. NO

6-If your answer is yes, then please note the types of penalties you have been given in your workplace.

_____

7-If your answer for the previous question is yes, then specify the number of times you have been given a penalty in an entire year.

a. 1-2

b. 3-4

c. 5 and more

8-Do you have any handbook at your workplace that provides a list of administrative offenses?

a. Yes

b. No

- **Kuwait Civil Service Law.**

  9-Do you think that the Kuwait Civil Service Law is sufficiently clear and organised as regards to disciplinary action?

  a. Yes

  b. Enough

  c. To some extent

  d. No

10-Do you believe that under the present Kuwait Civil Service Law employees are protected at their workplace from any arbitrary disciplinary procedures when conducting his/her duties?

a. Absolutely agree

b. Agree

c. Somewhat agree

d. Disagree

- **Natural Justice and the Aims of Discipline**

11-Do you think that the Kuwait Civil Service Law applies fair and natural justice?

a. Yes

b. Just largely

c. To some extent

d. No

Thank you so much for making my research valid and for responding to my questionnaire.

Appendix D

The Transcription of the Interview in English Language

Interview No. 1

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements for my Ph.D. thesis in the field of administrative law at Bangor University in the UK. This interview will enrich my thesis by providing an important insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year Ph.D. candidate at the University of Bangor (United Kingdom). My Ph.D. thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1*:* Would you please tell me about your background and experience about the disciplinary system, and the duty of whistleblower against corruption in Kuwait?

Interviewee: This subject is at the heart of my work. I want to inform you that I am a manager in the Kuwait National Assembly, working for more than 20 years. I deal daily with the public employee, and I know the subject of discipline for the employee, and the duty to report against corruption in Kuwait.

Q2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: First, I would like to talk about the whistleblowing act against corruption in Kuwait. I believe that the code of whistleblowing in Kuwait is still not processed completely by the government; because it looks like that Kuwait government is not serious to handle this law to prevent the corruption in Kuwait. Second, about the discipline system, I think it needs some changes to be better and to protect the employee. Also, bear in mind that the Kuwait Civil Service Law No. 15 of 1979 is a really old law. These suggest that there have been many changes in the public service since 1979 until this date and year of 2013.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: I personally think that disciplinary procedures have a negative impact to be honest with you, I already received one penalty from my work. The claim was that I didn't attend a meeting that was designed by my boss who is the general secretary of the Kuwait National Assembly. I believe it was unfair to

deduct one day from my salary for a minor misconduct. I also did not get any notice for the meeting so that I could have attended it. I respect my boss and the rules of my work, but my boss does not understand my situation. The disciplinary impact made me disappointed, which made me very uninterested in working harder after I got penalized, and I plan to retire in the future. Thus, the way I felt after a deduction of one day from my salary, even other public employees might agree with me on the fact that the impact of discipline is negative. At least from what I have heard and experienced, disciplinary penalties make employees more lazy and unhappy, particularly the way of the department of legal affairs deal with the employees. In other words, the investigation by the department of the legal affair to deal with them, scares them, and results in imposing some disciplinary offences like what happened to me.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: Yes, I prefer Kuwait to have an independent administrative tribunal to handle the disciplinary penalties. This means my case will go directly to the court or the administrative tribunal which specialises only for disciplinary penalties.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: Yes, I do prefer the administrative offences to be listed so that I can avoid these offences.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: About the proposal concerning the concept of discipline, I highly recommend making an intensive training course for Managers through a judicial institution.[713]

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: The protection of the whistleblower in Kuwait, unfortunately, I could not elaborate on this law so far, because it never been implemented in Kuwait.

Q 8: In your opinion, do you think that the whistleblower should impose to disciplinary action under the Whistleblowing Act No. 24 of 2012? And how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information, will the employeeb exposed to discipline?

Interviewee: It really depends on whether the whistleblower believes that the information disclosed is substantially true. Thus, the whistleblower will be put out from any disciplinary action for him or her. I personally believe that employees should not make irrational charges of wrongdoing that are not supported by facts. Employees do not have the right to disrupt the workplace just

[713] About the judicial training institutes in Kuwait, it is not only for judges but it can also be for any public employee willing to get training in this institution. However, the details for Kuwait Institute For Judicial Studies can be seen at:
http://www.kuna.net.kw/ArticleDetails.aspx?id=2278390&language=en

because they disagree with the policy of the workplace, or they think actions of the organization are unwise. However, in this respect, employees should not be expected to go along silently when they are aware of possible wrongdoing, or when they are asked to do something they feel would violate the law or the commonly right moral standards. On the other hand, the employee will get punished and disciplined if he or she discloses the secret information, which should be confidential under Article 25/5 of the Kuwait Civil Service Law.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: In my point of view, the Law No. 24 of 2012 and Civil Service Act No. 15 of 1979 are contradictory to each other, because the Act No. 24 of 2012 or the "Whistleblowing Act" has an advantage. Its job is to solve problems against corruption. On the other hand, Act No. 15 of 1979 is like an agreement between the employer and the employee that they won't tell anything, and the employees should keep and not to disclose the secret information.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: Yes. Islam is a religion of Allah. Islam recognised natural justice for a long time, perhaps, for thousands of years and even centuries. But I am

regrettably not well-versed in Islam or more precisely, I do not have a specialist knowledge of the Islamic law.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 2

I would like to first express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system, and the duty of whistleblower against corruption in Kuwait?

Interviewee: I am very familiar with your question. Because I am a Manager working at Kuwait National Assembly for more than 25 years, and I know exquisite about the discipline procedures and the new code of whistleblowing in Kuwait.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: The advantages of the disciplinary system in Kuwait are that it improves the behaviour of an employee who does not respect the law. At the same time, the authority of disciplinary has the choice of the penalty which will be proportionate to the offence committed by the employee. However, I have no idea about the advantages and disadvantages of the whistleblowing system.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: The penalty, which is imposed by the disciplinary authority, is a means of 'correctiveness' to improve an employee's performance in his/her job and not for punishment. However, I do think that the impact of disciplinary procedures is positive for the fulfilment of the public employee.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: There is no need for an independent administrative tribunal such as in the state of Egypt for the lack of cases in Kuwait as compared to Egypt. Also, Egypt's population exceeds 90 million whereas Kuwait, there are about 3 to 4 million people.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: As of my knowledge, there are no lists of administrative offences, which leave a great deal for interpretation of what are misconducts and administrative offences. I also think that the Kuwait Civil Service Law is not sufficiently organized with its disciplinary actions and procedures and the administrative offences are not clear and precise enough. Besides, I feel sorry for the relationship between the public employees with Managers that are inconsistent in dealing with them and who are unfair to understand the problems of the public employees. Since Managers are higher than their employees, they somehow misuse their powers and refer the public employees for minor administrative offences.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: For the solutions, I can suggest to alleviate the arbitrariness of the administrative body. There is a need to create a link or a close relationship between employee and employer.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: On the protection of whistleblower in Kuwait, I have no comment on this new law, which is still not processed by the government.

Q 8: In your opinion, do you think that the whistleblower should impose to disciplinary action under the Whistleblowing Act No. 24 of 2012? And how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee exposed to discipline?

Interviewee: I do have a bit of knowledge between the new Whistleblowing Act in Kuwait and the Civil Service Law. Thus, I can say that although, Article 25 Paragraph 5 of Civil Service Law no. 15 of 1979 mentioned that it is prohibited for an employee to disclose confidential information the Whistleblowing Act No. 24 of 2014 stated the opposite of the Civil Service Law Article wherein it cited that a whistleblower who in good faith discloses organizational wrongdoing in a manner consistent with public policy will be protected from any imposition. The Whistleblowing Act Article 51 evidently stated that the employer has no right to impose any disciplinary action against the employee if the disclosure is done in good faith.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: Indeed, there is a difference and contradiction between the two laws. For the reason that the law against corruption also known as the "Whistleblowing Act No. 24 of 2012" outlined that the employee has full rights

to disclose for any misconduct on the workplace. This information about the Whistleblowing Act contradicts with Article 25 on the Civil Service Law, which states that an employee is prohibited and will be subjected to penalty or discipline if he or she discloses any confidential information.

Q 10: In your opinion, how do Islamic principles promote fairness in relation to employment and to the terms and conditions of public employees in Kuwait in particular.

Interviewee: Natural justice realized that the judges should rule the law of the God (Allah) and what proves Muhammad, who is the messenger of the God, had won for the fairest and justice among his, wives, children and among the people. That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 3

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system and the duty of whistleblower against corruption in Kuwait?

Interviewee: First of all, I am a head section working at Kuwait National Assembly. I am very pleased with this interview, and I am very enthusiastic to answer your questions.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: The system of discipline in Kuwait needs new amendments and I do not agree with the current Civil Service Law, which was promulgated in 1979 as I remember; and we are now in 2013, entering the year 2014. I think that the current civil service law is not in line and relevant with current scenarios, and as I said, the law needs some amendments to further protect the employee from the abuse of power of the employer. However, about the advantages and disadvantages facing the whistleblowing system, I believe the disadvantages for whistleblowing is that the whistleblower sooner or later, even if the law of whistleblowing stated that there is a protection for the whistleblower and nobody will know him or her, but I think one day this whistlblower will be known as a whistleblower and then he or she will get in trouble, wherein everyone is going to hate this whistleblower, please put in your mind that Kuwait is a small country with two million people.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: I noticed that most public employees get frustrated, when penalties from the administration are made against them. I am not satisfied with the department of investigation at National Assembly, and the way they deal with the

public employees. So, I think the discipline has a negative impact on the performance of the employee.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: Yes, I prefer the Kuwait government to have an independent administrative court to deal with the disciplinary procedures because as far as I know there are a lot of administrative cases against the administration.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: I hope that the Kuwait National Assembly will have a list of administrative offences, and to properly explain the duties and the rights of the public employees.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: It seems very difficult to put an end to the arbitrariness of the employer unless there is a regulation, which governs the power of the employer against the employee. As I said this regulation should be made under the amendment of the Civil Service Act to balance the situation between the duties of the employee, and duties entrusted to the employer.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: I could not talk about it because it is a new law, which is not applied yet, because to the non-completion of all procedures of that law by the Kuwait government.

Q 8: In your opinion, do you think that the whistleblower should impose to disciplinary action under the Whistleblowing Act No. 24 of 2012? And how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee exposed to discipline?

Interviewee: In my opinion, employees should realise that they must be accountable for making accusations of wrongdoing. Given the fact that the Civil Service Law No. 15 of 1979, in particular, Article 25 Section 5 prohibits the employee to disclose information. These involve disclosing the secret information made by the employee will be sanctioned and could be imposed on disciplinary action. On the other hand, I think the whistleblower should be so careful to use the tool of whistleblowing against corruption. The whistleblower should make sure that what he or she is reporting is completely true before making whistleblowing. Otherwise, I believe that if the whistleblower does not have any real evidence or proof, he or she should be imposed to disciplinary action.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the

Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: There is a conflict and contradiction in these two laws because one law that is the Kuwait Civil Service Law No. 15 of 1979 forbids any disclosure of information entirely. While the other law, Whistleblowing Act No. 24 of 2012, allows the whistleblower to report any concerns or information about the workplace and protects the employee against disciplinary action, if the disclosure is done in good faith and not for personal benefit under Article 40 of the Whistleblowing Law for protecting the whistleblower against disciplinary action.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: Yes, there is natural justice in Islam, but the question that imposes itself, there are no natural justice applied in Kuwait.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 4

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system and the duty of whistleblower against corruption in Kuwait?

Interviewee: First of all, I am happy for this interview with you as you are very excited to get Ph.D. in the field of law in the UK, so I don't mind telling you everything about the question you ask. However, I am a woman, who is working as a head section at the Ministry of Justice for the past 16 years. I know a lot of information about the discipline rules and the new Whistleblowing Act in Kuwait so go ahead and ask me the other questions. Also, I would like to say the disciplinary procedures are so complicated to provide protection for the public employees because the Kuwait Civil Service Law is not enough to handle the disciplinary procedures.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: About the advantages and disadvantages of the system of discipline in Kuwait, I think many of the public employees do not know enough about their duties and rights in Kuwait. Also, they do not have a handbook that shows the rights and obligations of the employee. They only have a law called the Civil Service Act No. 15 of 1979, which in my opinion is insufficient to clearly explain all kinds of disciplinary offences. Now, I want to talk a little bit about the whistleblowing system as a new law in Kuwait. I am not afraid to be honest and say that there is truly a corruption going on in Kuwait. So, I think there are great advantages for the whistleblowing system in Kuwait to stop people from making

corruption in Kuwait. At the same time, I am afraid to tell you, there are no disadvantages in the whistleblowing system.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: The disciplinary sanctions have made the public employee is not wanting to work hard anymore after getting a penalty from the legal department. In addition, I hope that instead of penalising the public employees. It is better to give them verbal discipline or to warn for minor misconducts and to not immediately punish them through deduction of salary or other penalties.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: Yes, I agree that Kuwait should have an independent administrative court and specialized disciplinary court.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: I support this, for it is indeed tiresome and stressing, to work with a large number of public employees, without a list to determine the administrative offences. I believe that there should also be a well-organized list of all the disciplinary offences to know all the rights and responsibilities of the public employees to follow, and in order to easily find out the breaches of professional conduct.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: For solutions and proposals on the subject of the arbitrariness of the administration. It could be done by imposing control on the administrative side through what is known as judicial control of the law and extend its control over the subject of disciplinary violation, or what is known to spend excess and abuse of right.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: For the whistleblowing law and the extent of the protection for the whistleblower, this question can be asked in the future when the Government of the State of Kuwait applies this new law, and I am certain and support the idea of giving great protection to the whistleblower who sacrifices himself or herself, in order to eliminate corruption in Kuwait.

Q 8: In your personal opinion, do you think that the whistleblower should be imposed to disciplinary action under the Whistleblowing Act No. 24 of 2012, and how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee be put to discipline?

Interviewee: I personally think it is never a good idea to punish and impose the whistleblower for speaking up as long as their intention is to have a change for the betterment, rather than blowing the whistle for personal gains. I want to say

that anyone who does not respect the law prohibiting the disclosure of secret information for his or her job, then of course he or she deserves to get disciplined.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: The Whistleblowing Act cited that an employee can report any misconduct corruption or even disclose confidential information that is considered illegal. But Article 25 Paragraph 5 of the Kuwait Civil Service Law stated that it is prohibited to disclose confidential information. Thus, they are quite contradictory to each other.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: Islam had already knew the concept of the natural justice since revealed that the Almighty God put the Koran and said in his book make justice is nearer to piety, and this is not my words but the words of the God (Lord). But, unfortunately, I do not know exactly the verse in which the God said go for justice that is closer to virtue. In other words, I would like to say that the Quran guides the court, the judge himself and the people involved always to uphold justice and fairness, this also includes any communications between people. For instance, maintenance of honesty when a person speaks to or about one another.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 5

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system, and the duty of whistleblower against corruption in Kuwait?

Interviewee: I am the head section of the Ministry of Justice and have a work experience for more than 15 years. The Kuwaiti legislative has a rule concerning the discipline procedures, but it is not enough. I consider the Kuwaiti laws run

with ideas that are very old because many articles concerning discipline were issued in 1979.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: The advantages and disadvantages of the disciplinary system that concerns the administrative offences is to know the reasons for the disciplinary offence and whether the underlying reason behind it is due to the ambiguity and invisibility of duties and functions assigned to the employee. In short, I believe that the discipline system in Kuwait is complex and unclear, and there is an injustice on the employee without a high position. On other hand, the duty for whistleblowing is a new law and, I apologize for not talking too much about it because the Government of Kuwait has still not done anything to put the law of whistleblowing into force.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it positive or a negative impact?

Interviewee: I think that the disciplinary procedures had a negative effect on the performance of the employees after the employees got the disciplinary penalty.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: I recommend that the Kuwait government should try to make an administrative tribunal and disciplinary court dealing with all kinds of disciplinary offences, like the situation in Egypt where Egypt has an independent administrative tribunal and disciplinary court.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: Since the disciplinary offences in Kuwait were not listed clear and precise enough for the public employees, some of the employees did not know their rights and sometimes they do not respect their duties and responsibilities. To conclude, I wish that Ministry of Justice should publish a small booklet and provide it free for all public employees to know in advance all their duties and rights including the list of disciplinary offences.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: The solution to reducing the abuse of the administration is that the administration should concern about making training for the employees and the Manager should arrange monthly meetings to see what the shortcomings in the workplace are.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: As for the issue of the protection for the whistleblower, I do not want to go deep into it, because I know exactly that Kuwait has not finished some legal procedures for this law to be enforced.

Q 8: In your personal opinion, do you think that the whistleblower should be imposed to disciplinary action under the Whistleblowing Act No. 24 of 2012, and how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee be put to discipline?

Interviewee: If the whistleblower's concerns are legitimate and if his or her actions are justified, I believe the whistleblower should not be imposed on disciplinary action. Even if Article 25/5 of the Civil Service Law does not allow the disclosure of information. The Whistleblowing Act gave protection and right for the employee to report possible wrongdoing within their workplace. I believe that this Whistleblowing Act of Kuwait would make employees feel confident that they will not suffer personal reprisals or punishments for disclosing matter and report perceived wrongdoing.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: Both laws do not complement each other because the Whistleblowing Act No. 24 of 2012 permits the employee to reveal confidential

matters that he or she believes to be a wrongdoing or illegal act; but Article 25/5 of the Civil Service Law prohibits the disclosure of confidential information. Moreover, I think that there is no rule, which establishes that where a conflict arises between these two duties (Duty of Whistleblowing and the Duty of Keeping Confidential Information), that states the duty of confidentiality being superior to the duty of whistleblowing against misconduct.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: I work at the Ministry of Justice, and I would like to tell you honestly that is no real justice between the employee and the employer. The investigation of the natural justice is coming throw the Islamic law, which Islamic law knows the meaning and the spirit of the natural justice.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 6

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system, and the duty of whistleblower against corruption in Kuwait?
Interviewee: Before I begin to answer your interview, I would like to introduce you that I am a head section at Kuwait National Assembly.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: With regards to the disciplinary system in Kuwait, as far as I know, some of the ministries formulated a Ministerial decree regulating the discipline to address the problems of the disciplinary system. In addition to the presence of the Civil Service Law No. 15 of 1979. To pay attention to the advantages and disadvantages of the whistleblowing act in Kuwait. I think as I said before this law is really a new law, so it seems just give it time for this new law after that, I can decide to put some advantages and disadvantages for the whistleblowing law no. 24 of 2012.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: I observed that most employees always get an excuse to be absent because they are ill, and they also support this by getting a proof from the doctor that they are sick, which is often true, though they can still work because their illness is not that much serious. Thus, the disciplinary procedures are terrible, and the public employees who get disciplined tend to become lazy and do not work hard anymore. However, the real reason for getting an excuse is that the employee has been disappointed because the administration had made a penalty against him or her.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: I prefer Kuwait to have a discipline court and specialized court for administration disputes, so the public employees can take legal action with more freedom, support, and protection. Moreover, an independent court is needed because of the large number of administrative cases instead of having just an administrative circle, which we currently have; therefore, a specialized court dealing with all kinds of administrative disputes is much suitable

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: In my opinion, the Kuwait civil service system is not clear and precise enough in stating the rights and duties of public employees and especially the disciplinary procedures. Accordingly, I believe that administrative irregularities should be defined or listed and to not leave any interpretation as preferred by the administration.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: Multi solutions and suggestions on the subject of discipline are to work hard for the unification of disciplinary offences and penalties for all the Gulf states namely Kuwait, Saudi Arabia and the United Arab Emirates, Bahrain, Qatar and Oman, and to reduce the arbitrariness of the administrative.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: The issue of the protection for the whistleblower is in the light of the new law No. 24 of 2012 concerning about whistleblowing against corruption in Kuwait is completely a new law, which has not been applied so far. Thus, I have no comments about it.

Q 8: In your personal opinion, do you think that the whistleblower should be imposed to disciplinary action under the Whistleblowing Act No. 24 of 2012, and how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee be put to discipline?

Interviewee: The Whistleblowing Act No. 24 of 2012 stated that it allowed for the employee to earn a disclosure, even if that goes against Article 25/5 of Kuwait Civil Service Law, which prohibits the employee to disclose information. In my personal opinion, I strongly believe that employees are usually aware that their actions may bring bad personal consequences, but they are still willing to take the risk and call attention to what they believe is ethically unacceptable or morally wrong, that is why they should not be imposed to disciplinary action. On the other hand, about the Civil Service Law no. 15 of 1979 under Article 25/5, if an employee does not respect this law, he or she should be punished and imposed to disciplinary actions.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the

Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: Both laws do not match or balance each other, because the Whistleblowing Law said that employees who are aware of possible wrongdoing within the workplace have a responsibility to disclose that information and they will be protected from disciplinary action but the Kuwait Civil Service Law No. 15 of 1979 clearly stated that it is prohibited to disclose any confidential information within the workplace, in which I believe the employee may face a disciplinary action if they blow the whistle or disclose information.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: Yes, in Islam there is natural justice.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 7

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system and the duty of whistleblower against corruption in Kuwait?

Interviewee: Firstly, I want to tell you that you are more than welcome to make this interview with me, and I would like to introduce myself to you. I am a counsellor (Judge) and I am still working at the Cassation Court in Kuwait at

Ministry of Justice, and I consider that the Kuwait Civil Service Law is very old which was issued in 1979, and is inadequate to manage the disciplinary offences and procedures.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: I would like to mention only the disadvantages of the disciplinary system for disciplinary sanctions imposed against the public employee even the Civil Service Law no. 15 of 1979 governs the relationship between the employee and the employer. However , As I see it, the law gives the high position employees, such as Undersecretary Assistant more protection. But simply- it is easy to impose a lot of disciplinary sanctions against ordinary employees, such as monthly deductions from salary for a minor administrative offence. At the same time, however, I am sorry to say that it is difficult for the Minister to impose sanctions on Higher Officials such as an Undersecretary Assistant. It is impossible to impose sanctions on them such as salary deductions, for any minor offences for which ordinary employees are punished for regularly. Indeed, as a Judge I have seen many administrative cases concerning salary deductions related to arbitrary decisions from the administration, and the court has used judicial review against the injustice for salary deduction, for any minor offences for which ordinary employees are punished for regularly. Indeed, as I am a Judge

I have seen many administrative cases concerning salary deductions related to arbitrary decisions from the administration, and the court has used the judicial review against the injustice for salary deduction. On the other hand, regarding the subject of the duty of whistleblower against corruption in Kuwait, as far as I know, this is a new law, and I do not want to make a lot of comments on it right now.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it a positive or a negative impact?

Interviewee: I felt that many public employees are dismissed or fired from their work just because sometimes the administration does not like him or her to work in the organisation. I substantiate this by saying that there are indeed several bad Managers in some departments and in such cases, the affairs of the employees are not followed up and no one listens to their grievances. Thus, the Kuwait Supreme Court made a decision that some of the ministry or government has an unfair dismissal for public employees. Hence, the court decided to cancel all the unfair dismissal claims and to return the public employee to work again.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: I suggest Kuwait to follow the Kuwait Constitution Article 171 which stated that "A law to assume the functions of administrative jurisdiction, rendering legal advice and drafting bills and regulations mentioned in the preceding two articles may establish a Council of State," and this council will

deal with all the administrative disputes. This is also, supported with Article 169 which said that “Law shall regulate the settlement of administrative suits by means of a special Chamber or Court, and shall prescribe its organization, and the manner of assuming administrative jurisdiction including the power of both nullification, and compensation in respect of administrative acts contrary to law.” Therefore, it is very comprehensible I want the Kuwait Legislation with the power of legislative to have an administrative tribunal and disciplinary court, and not just a room for administrative disputes as Article 169 stated in the Kuwait Constitution.

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: I agree on the civil service law as it is wherein it does not list the administrative offences, except to identify public duties, and prohibitions such as attended the disclosure of secrets in accordance with Article 25/6 of the Civil Service Law of Kuwait, and I think that the Authority's disciplinary determine what is a punishable violation.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: About the discipline system, I want to emphasise that it should be a corrective function and not punitive function for the penalty imposed on the employee. Also, I would like to add it is difficult if I try to give you any idea

how to reduce the abuse of power of the administration. This is a tough question and it is hard to give you a lot of information in a short notice for this question.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: Before I answer your questions, I would like to say something in general about the whistleblowing in Kuwait. I would really like to focus a lot about the new law Act no. 24 of 2012 establishing for anti-corruption. This law has many articles, but I will just focus about Article 22, which mentioned the corruption offences, and stated as follows:

The crimes of corruption in the scope of application of this law are the following offences:

1 - Crimes against public funds.

2 - Bribery and influence.

3 - Money laundering offences.

4- Forgery and counterfeiting offences.

5- Crimes related to the administration of justice.

6- Crimes of the endowment. Customs smuggling crimes.

7- Tax evasion crimes.

8- Crimes that obstruct the work of the Commission, or click on them to obstruct the performance of its duties, or interfere in its terms of reference, or to refrain from providing information required under this law.

9- The crimes stipulated in the Law for the Protection of Competition.

10- Any other crimes stipulated by another law as crimes of corruption.

However, I would like to emphasise about some important points, which fall under Article 39 of the law of whistleblowing in Kuwait. Thus, this article stated about the extent of the protection for whistleblower that they shall enjoy the protection for the time of submission of the communication, protection for spouses, and relatives and other people closely related when appropriate. Therefore, my conclusion this Article 39 is not enough for making some kinds of protection for the whistleblower. Moreover, I hope that the Kuwait government is going to make new amendments for this article to make more protection for whistleblower. Because in reality, whistleblowers sacrifice themselves to disclose the crime related offences about corruption in Kuwait.

Q 8: In your personal opinion, do you think that the whistleblower should be imposed to disciplinary action under the Whistleblowing Act No. 24 of 2012, and how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee be put to discipline?

Interviewee:This is a good question and I hope I will answer it as much as I can. I think it is very clear according to the Whistleblowing Law no. 24 of 2012 against corruption in Kuwait under Article No. 51 of this law about whistleblowing, that it is not allowed for the employer to make any kind of disciplinary action against the whistleblower and I think this protects the whistleblower and encourages him or her to continue to make whistleblowing against the corruption. However, according to the Kuwait Civil Service no. 15

of 1979 particularly under Article 25/5 it is forbidden or to be clearer. I will use the term “prohibit” which means it is not allowed for any employees to disclose secret information inside his or her workplace. I believe if the public employee insists on breaking this Article 25/5 he or she will be in trouble, whereby he or she will be put under the disciplinary procedures.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: This is a tough question and it is not easy to answer it in just a few sentences. However, Article 36 under the new law of the whistleblowing law in Kuwait, as the Article stated there is a duty for everyone to make whistleblowing. Hence the whistleblower does not necessarily need to be a public employee or private employee; it could be anyone or any worker. But of course, I believe there are some conditions to have the protection from the Whistleblowing Law. These conditions that are mainly the disclosure should be made in good faith and the disclosure should not be made for personal gain. I do not want to go further because I think the Whistleblowing Law is still new and is still not enforced. On the other hand, about the Kuwait Civil Service Law Article 25 Section 5, it is different than the Whistleblowing Act, in which the public employee should be careful not to disclose the secret information particularly the employer’s

business. Therefore, both of the laws do not have a contradiction between the Whistleblowing Law No. 24 of 2012 and the law prohibiting the disclosure of secret information under the Civil Service Law No. 15 of 1979, particularly Article 25, Section 5 of that law. Hence, the law of whistleblowing is a general law, where each person must report crimes of corruption and will be protected against any disciplinary action taken against him or her. However, if someone violates the law and discloses information relating to his or her work, the employee will be subjected to discipline and will not have any protection.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: This is a very serious question, and at the same time very important. From this point, I would like to say that yes, there is a principle of natural justice in Islam to achieve justice among all people and between employees. But as of currently, Kuwait still does not apply the Islamic law, except in the cases of personal issues.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Interview No. 8

First of all, I would like to express my thanks and appreciation for granting me this opportunity to conduct this interview. This interview is vitally important for the fulfilment of the requirements of my PhD thesis in the field of administrative law in Bangor University in UK. This interview will enrich my thesis by providing an invaluable insight into your work experience in the field of discipline system and whistleblowing system and prohibition to disclose the information. I would like to mention in this context that I am a fourth year PhD candidate in the University of Bangor (United Kingdom). My PhD thesis deals with the subject of public employee discipline and its relation to the duty of whistleblowing against corruption in Kuwait. The purpose of conducting these interviews is to discuss the strengths and weaknesses concerning the legal regulation of the discipline system, whistleblowing system in Kuwait and Natural Justice in Islamic religion in order to reach a mechanism to ensure the improvement and development on disciplining the public employee and the duty of whistleblower against the corruption in Kuwait. Finally, I can assure you that all personal data will be kept confidential.

Q 1: Would you please tell me about your background and experience about the disciplinary system and the duty of whistleblower against corruption in Kuwait?

Interviewee: I would like to thank you for that introduction, and I ask God to bring you success in all your efforts being made. For the subject to discipline

public employee, each organisation has its own laws which must be respected by the employee. Employees are to abide by these laws, if they do not do so, the laws will be put in place to issue the appropriate sanctions. On the other hand, I am a Judge and a counsellor. I work at the Cassation Court in Kuwait at the Ministry of Justice. My responsibility is to make justice by the law. In regards to the whistleblowing law, from my point of view, it is still undeveloped. Although it has been issued for over a year now, as far as I know there has not been any case associated to whistleblowing.

Q 2: Through your practical experience with the public employee in the field of discipline system and the duty of whistleblowing against corruption in Kuwait. What do you think are the main legal advantages or disadvantages facing the discipline system and whistleblowing system?

Interviewee: The major advantages of administrative discipline is the employee's commitment to the employer and even to the ordinary employee. For example, there is a commitment to the laws such as respecting the hours of work so to avoid discipline and other sanctions. Those sanctions followed by disciplinary procedures are warnings or being transferred from one section to another. As for the anti-corruption law or whistleblowing law, since I have previously mentioned is still a new system. Hence, I am unable to give my thoughts about it.

Q 3: From your point of view, what is the impact of disciplinary procedures on the performance of the public employee? Is it positive or a negative impact?

Interviewee: Undoubtedly any disciplinary measures are positive for the proper functioning of an organisation.

Q 4: In light of your experience, does Kuwait need to have administrative court, and disciplinary court separately to deal with all disciplinary offences?

Interviewee: I agree with this situation of establishing a special administrative court, because there is a large number of administrative issues and congestion of the court schedule .

Q 5: Do you prefer the administrative offences to be listed, clear and precise enough?

Interviewee: I agree that administrative misdeeds to be clear, frank and confined, so that there will be justice for all employees and reduce the administrative cases filed by employees. Suppose that administrative offenses are listed, employees will be able to know in advanced what is to be done and what is to be avoided. The result of such action would lead to less administrative issues and justice will prevail.

Q 6: From your point of view, what are the solutions, and proposals to reduce the abuse of power of the administration (Employer)?

Interviewee: As I have said in question 5. The creation of a list of administrative offences will limit the arbitrariness of charge, and prevent the misuse of power by either managers or Ministers, thus the employee will receive the justice that

is deserved and required by the court.

Q 7: In your opinion about the Whistleblowing Act in Kuwait, what is the extent of the protection for the whistleblower under this law?

Interviewee: Whistleblowing is a new law as I mentioned earlier. But the whistleblower, in general, must be kept confidential, awarded with financial incentive or bonus, and must be provided with a special protection for himself/herself including familial relations.

Q 8: In your personal opinion, do you think that the whistleblower should be imposed to disciplinary action under the Whistleblowing Act No. 24 of 2012, and how about the Civil Service Law no. 15 of 1979 under Article 25/ 5 for prohibiting the disclosure of information will the employee be put to discipline?

Interviewee: The first part of the question which is about whether the whistleblower should be imposed to disciplinary action or be protected for blowing the whistle will depend on the accuracy of the report. For instance, the employee who reveals incorrect information for the purpose of retaliation against his or her superior will undoubtedly be subjected to discipline. I would like to add an important point that the whistleblowing law is to combat corruption, not to spread corruption and create problems or revenge.

Q 9: From your point of view and personal experience, do you think that the law against corruption in Kuwait (Whistleblowing Act No. 24 of 2012), and the Kuwait Civil Service Law No. 15 of 1979, which prohibits the disclosure of

information under Article 25/5, are both laws contradictory or complementary to each other?

Interviewee: I would like to emphasise that the whistleblower who discloses some information against his/her employer over the matters of corruption will mean that the whistleblower is righteous in revealing corruption. In other words, the whistleblower's job is to disclose the corruption of employees and not to reveal private information for personal gain or retaliation. Therefore, I see no contradiction between the whistleblowing law and the Civil Service Law No. 15 of 1979 which prohibits the disclosure of Information.

Q 10: In your opinion, is there any natural justice (fairness) under Islamic law, and how is this fairness achieved?

Interviewee: From my experience of working at the Kuwaiti judiciary for more than thirty-five years, I perceived that natural justice only exists in Islam based on the words of God in the Quran. The Quran stated that "If you judge between people, you must judge with justice," as a Judge myself, it is my responsibility to govern people with justice. We as judges have also sworn an oath in front of the Emir of Kuwait (King of Kuwait) to respect the constitution and try as much as possible to achieve justice among people. I would like to add that the pursuit of retrospective justice is, in fact, an urgent task of human beings (employees), as it highlights the fundamental character of the new order to be established. This order is based on the rule of law and the respect for the dignity and worth

of each person.

That is the end of the interview. I would like to thank you once again and reinforce the confidential nature of all information. Also, I would be grateful if you could send me any supplementary statements, or material that could be used for my PhD thesis.

Arabic Appendices

Appendix A Some Articles selection from the constitution of the State of Kuwait in Arabic.

ملحق (A) بعض من مواد دستور دولة الكويت ذات العلاقة .

مادة (٢)

دين الدولة الإسلام ، والشريعة الإسلامية مصدر رئيسي للتشريع.

مادة (٢٦)

الوظائفالعامة خدمة وطنية تناط بالقائمين بها ، ويستهدف موظفوا الدولة في أداء وظائفهم المصلحة العامة.

ولا يولى الأجانب الوظائف العامة الا في الأحوال التي يبينها القانون.

مادة (٢٩)

الناس سواسية في الكرامة الانسانية ، وهم متساوون لدى القانون في الحقوق والواجبات العامة، لا تمييز بينهم في ذلك بسبب الجنس أو الأصل أو اللغة أو الدين.

مادة (٤١)

لكل كويتي الحق في العمل وفي اختيار نوعه.

والعمل واجب على كل مواطن تقتضيه الكرامة ويستوجبه الخير العام ، وتقوم الدولة على توفيره للمواطنين وعلى عدالة شروطه.

مادة (١٠٩)

لعضو مجلس الأمة حق اقتراح القوانين .وكل مشروع قانون اقترحه أحد الأعضاء ورفضه مجلس الأمة لا يجوز تقديمه ثانية في دور الانعقاد ذاته.

مادة (١٦٣)

لا سلطان لأي جهة على القاضي في قضائه ، ولا يجوز بحال التدخل في سير العدالة ، ويكفل القانون استقلال القضاء ويبين ضمانات القضاة والأحكام الخاصة بهم وأحوال عدم قابليتهم للعزل.

مادة (١٦٩)

ينظم القانون الفصل في الخصومات الادارية بواسطة غرفة أو محكمة خاصة يبين القانون نظامهاوكيفية ممارستها للقضاء الاداري شاملا ولاية الالغاء وولاية التعويض بالنسبة إلى القرارات الادارية المخالفة للقانون.

مادة (١٧١)

يجوز بقانون انشاء مجلس دولة يختص بوظائف القضاء الاداري والافتاء والصياغة المنصوص عليها في المادتين السابقتين.

Appendix C Transcript of the Questionnaire in Arabic

ملحق رقم (c)

استبيان بشأن رأي الموظف العام الحكومي في موضوع التأديب الإداري وإجراءاته في دولة الكويت.

تمهيد:

إن الغرض من هذا الاستبيان هو لمعرفة رأي الموظف العام الكويتي الذي يعمل بالقطاع الحكومي لمعرفة مدى أثر نظام التأديب وإجراءاته في دولة الكويت على الموظف العام وفقا لقانون الخدمة المدنية الكويتي وهل ذلك القانون يحقق العدالة . مع التنبيه بأن هذا الاستبيان ليس هو اختبار وأنه لن يسمح لأحد الإطلاع على نتائج هذا الاستبيان.

فإن الأجوبة الصادقة سوف تساعد الباحث لما يصبو إليه من نتائج.

إرشادات:

يتكون هذا الاستفتاء من (11) سؤالا وما عليك أخي العزيز وأختي العزيزة بإختيار الإجابة التي ترغب بها .

- معلومات عن نفسك:

1- ما هي جنسيتك ؟

أ- كويتي

ب- من بلاد أخرى

2- مؤهلاتك الدراسية؟

أ- أقل من الثانوية العامة

ب- ثانوية عامة

ت- دبلوم

ث- جامعي

ج- أعلى من الجامعي

- معلومات عن وظيفتك .

3- معلومات عن وظيفتك؟

أ- موظف

ب- رئيس قسم

ت- مدير إدارة

ث- أعلى من مدير إدارة

4- كم عدد السنوات التي قضيتها في هذه الوظيفة؟

أ- 2-1

ب- 5-3

ت- 10-6

ث- 14-11

ج- 15 فأكثر

- أسئلة عن اجراءات التأديب والتظلم

5- هل خضعت للتأديب من قبل؟

أ- نعم

ب- لا

6- وإذا كانت إجابتك "نعم" حدد نوع العقاب؟

.....

7- وإذا كانت إجابتك أيضا " نعم " أذكر عدد المرات في السنة الواحدة ؟

أ- 2-1

ب- 4-3

ت- 5 وأكثر

8- هل تحتوي الوزارة التي تعمل بها على كتاب إرشادي يوضح قواعد التأديب وإجراءاته؟

أ- نعم

ب- لا

- قانون الخدمة المدنية الكويتي والعدالة .

9- هل قانون الخدمة المدنية الكويتي منظم وواضح في شأن نظام التأديب الاداري ؟

أ- نعم

ب- كافي

ت- إلى حد ما

ث- لا

10- هل تعتقد بأن الموظف يشعر بأنه محمي بالقيام بواجباته ضد أي تعسف من الإجراءات التأديبية تحت ظل قانون الخدمة المدنية؟

أ- أتفق تماما

ب- أتفق

ت- إلى حد ما أتفق

ث- لا أوافق

11- هل تعتقد بأن قانون الخدمة المدنية يحقق العدالة وينص على مبادئ العدالة الطبيعية ؟

أ- نعم

ب- إلى حد كبير

ت- إلى حد ما

ث- لا

Appendix E The Transcription of the Interview in Arabic Language

ملحق رقم (E) المقابلات الإنفرادية مع موظفي القطاع العام .

المقابلة رقم (1)

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام ، وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطوير النظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : هذا الموضوع هو في صميم عملي وأريد أن أحيطكم علما بأني أنا مدير وأعمل في مجلس الأمة الكويتي منذ أكثر من 20 عاما ، و أنا أتعامل يوميا مع الموظف العام و أنا أعرف كيف أقول لكم عن موضوع التأديب للموظف ، وواجب الإبلاغ عن الفساد في الكويت .

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أود أولا أن أتكلم عن واجب التبليغ ضد الفساد فأعتقد أن قانون التبليغ في الكويت ما زال لم تتم معالجته تماما من قبل الحكومة لأنها تبدو غير جادة لهذا القانون وأتمنى أن تكون في عجلة من أمرها لمعالجة مكافحة الفساد في الكويت .ثانيا عن موضوع التأديب. أعتقد أنه هو حقا بحاجة الى بعض التغييرات ليكون أفضل لحماية الموظف مع ملاحظة أن قانون الخدمة المدنية رقم 15 لسنة 1979 فهو حقا قانون قديم جدا، وطبعا هناك الكثير من التغييرات طرأت على نظام الوظيفة العامة مقارنة مع عام 1979، وحاليا الان نحن في عام 2013 ،و صحيح أن الكثير من الأشياء قد تغيرت.

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : أنا شخصيا أعتقد أن هناك تأثير سلبي للاجرائات التأديبية و بصراحة معك تماما أنا بالفعل حصلت على جزاء بخصم يوم واحد من مرتبي بسبب لم أحضور اجتماع الذي نظمه رئيسي الذي هو الأمين العام لمجلس الامه، الذي أعتقد أنه كان من العدل أن لا يخصم يوم واحد من راتبي بسبب سوء السلوك الوظيفي .و أنا أيضا لم أخطر على هذا الاجتماع ، وبالتالي أنا لم يحضر . أنا حقا احترم رئيسي وقواعد عملي ولكن رئيسي المباشر لم يفهم وضعي .و أثر العقوبة التأديبية جعلني أصيب بخيبة أمل في عملي ، مما جعلني غير مهتم جدا على العمل بجدية، بعد أن حصلت على معاقبة وأنا أخطط في المستقبل بأن أتقاعد . في الوقت نفسه ، شعرت أن خصم يوم واحد من راتبي ، حتى موظفي القطاعات الأخرى رأيهم بأن تأثير التأديب هو سلبي ويجعلهم كسولين وغير جادين للعمل لانه يتم الاتفاق بين المسؤل المباشرو مع الإدارة القانونية للتحقيق مع هؤلاء الموظفين و تكون نتائج التحقيق ضد هم و فرض نوعا من العقوبات التأديبية الكيدية بحقهم مثل ما حدث لي.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل ومستقله للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أنا أفضل أن يكون هناك محكمة إدارية ومحكمة تأديبية متخصصة و مستقلة في الكويت للتعامل مع العقوبات التأديبية ، وهو ما يعني لحالتيأن قضيتي سوف تذهب مباشرة إلى المحكمة التأديبية ، والتي

تتخصص لجميع أنواع العقوبات التأديبية والمحكامات التأديبية التخصصية وليس للادارة شأن في ذلك ، خصوصا ادارة التحقيقات التي هي موجودة في مكان عملي ، والتي أوصت بمعاقبتي بخصم يوم واحد من راتبي فقط لأنني لم أحضر اجتماع رئيسي المباشر.

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : أنا أفضل بأن تحدد المخالفات الإدارية لتكون مقننة حتى أتمكن من تجنب هذه المخالفات.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : بشأن نظام التأديب، أنا أقترح بأن يوضع للمدراء دورة تدريبية مكثفة من خلال معهد التدريب القضائي .

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : إن حماية المبلغين ضد الفساد في الكويت للأسف لا أتمكن من التعليق على هذا القانون لانه حتى الآن لم يتم تطبيقه في الكويت.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: انها حقا يتوقف ما إذا كان المبلغ لديه دلائل جدية تبرر اعتقاده بصحة الواقعة المبلغ عنها .و أنا شخصيا أعتقد أنه على الموظفين يجب أن يبتعدوا عن البلاغات التي لا تدعمها الحقائق. وأن الموظفين ليس لديهم الحق في تعطيل مكان العمل لمجرد أنهم يختلفون مع سياسة العمل أو أنهم يعتقدون أن الإجراءات المنظمة لعملهم غير حكيمه. ومع ذلك، و في هذا الصدد، لا ينبغي أن يتوقع الموظفين للذهاب إلى عملهم واتخاذ جانب الصمت عندما يكونون على علم باحتمال وجود إساءات أو مخالفات ، أو عندما يطلب منهم أن يفعلوا شيئا وأنهم يشعرون أن القانون ينتهك أو المعايير الأخلاقية تنتهك.

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: من وجهة نظري، ان القانون رقم 24 لسنة 2012، وقانون الخدمة المدنية رقم 15 لسنة 1979 هما متناقضين مع بعضها البعض لان القانون رقم 24 لعام 2012 أو "قانون الإبلاغ عن الفساد" فيه ميزة، ووظيفته هي لمحاربة الفساد . من ناحية أخرى، فإن القانون رقم 15 لسنة 1979 هو بمثابة اتفاق بين صاحب العمل والموظف بأنه لن يقول أي شيء ويجب على الموظفين عدم افشاء المعلومات السرية .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : نعم ثم ألف نعم الاسلام وهو دين الله عرف العدالة الطبيعية منذ الاف السنين بل القرون . ولكني للاسف الشديد أنا ليس متمسك كثيرا بالاسلام أو بمعنى أدق لست متخصص بعلم الشريعة .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 2

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط

القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطويرالنظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أنا ملم بسؤالك لأنني مدير وأعمل في مجلس الأمة الكويتي منذ أكثر من 25 سنوات، و أنا أعلم جيدا حول هذا الموضوع وحول إجراءات التأديب و القانون الجديد بشأن الابلاغ عن الفساد في الكويت.

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : إن مزايا النظام التأديبي في الكويت هو يحسن من سلوك الموظف الذي لا يحترم القانون . في الوقت نفسه على السلطة التأديبية إختيار الجزاء الذي يتناسب مع المخالفة التي ارتكبها الموظف**وأنا ليس لدي أي فكرة عن مزايا وعيوب نظام التبليغ .**

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : العقوبة ، والتي تفرض من قبل السلطة التأديبية على الموظف ، هي وسيلة للتهذيب وليس للعقاب ، بل وسيلة لتحسين أدائه في وظيفته . وأعتقد أن تأثير الإجراءات التأديبية هو إيجابي لأداء الموظف العام.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : ليست هناك حاجة الى محكمة إدارية مستقلة كما هو الحال في دولة مصر لعدم وجود قضايا اداريه كثيرة في الكويت مقارنة مع مصر حيث يتجاوز عدد السكان هناك 90 مليون بينما في الكويت فتعداد السكان في حدود 3 مليون نسمة الى أربعة مليون .

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : على حد علمي ، لا توجد قوائم وتقنين للمخالفات الإدارية ، التي تترك قدرا كبيرمن التفسير بالمقصود بالسلوك المنحرف و المخالفات الإدارية . وأعتقد أيضا أنه لم يتم تنظيم قانون الخدمة المدنية الكويتي بما فيه الكفاية بشأن الاجرائات التأديبية ، و المخالفات الادارية ليست واضحة ودقيقة بما فيه الكفاية. وبالإضافة إلى ذلك ، أشعر بالأسف للعلاقة بين الموظفين ومدرائهم، الذين هم غير متناسقين في التعامل معهم و الذين هم أيضا غير عادلين لفهم مشاكل الموظفين . وخصوصا بأن المديرين هم أعلى من موظفيم و يسيئون استخدام سلطاتهم بطريقة أو بأخرى ، ويحيلون الموظفين بسبب مخالفات إدارية بسيطة وغير مهمه.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : بالنسبة للحلولالتيأرها للحد من تعسف الجهة الإدارية هو خلق صلة أو علاقة وثيقة بين الموظف وصاحب العمل.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : بشأن حماية المبلغين في الكويت ، ليس لدي أي تعليق على هذا القانون الجديد الذي لا تزال الحكومة لم تقم بمعالجته وصدور اللوائح المكملة له.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: لدي قليلا من المعرفة بين قانون الإبلاغ ومكافحة الفساد الجديد في الكويت وقانون الخدمة المدنية، وبالتالي أستطيع أن أقول أنه على الرغم من أن المادة 25 الفقرة 5 من قانون الخدمة المدنية رقم 15 لسنة 1979 والتي تحظر على الموظف الكشف عن المعلومات السرية، فان قانون الإبلاغ عن الفساد رقم 24 عام 2014 على العكس من قانون الخدمة المدنية ، حيث أن المبلغ الذي يقوم بحسن نية بالكشف عن المخالفات التنظيمية التي بطريقة خاطئه بما لا يتفق مع السياسة العامة سوف يكون المبلغ محمي من أي فرض جزاء تأديبي عليه . وأن قانون الإبلاغ ضد الفساد وبموجب المادة 51 تنص على أن صاحب العمل ليس لديه الحق في فرض أي إجراءات تأديبية ضد الموظف (المبلغ) إذا تم الابلاغ بحسن نية.

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: في الواقع، هناك فرق و تناقض بين القانونين، وذلك لسبب أن القانون ضد الفساد المعروفة أيضا باسم "الإبلاغ عن الفساد قانون رقم 24 لسنة 2012" بأن الموظف لديه الحق الكامل في الافشاء عن سوء السلوك في مكان العمل. و هذه المعلومات أو الافشاء يتعارض مع المادة 25 من قانون الخدمة المدنية، والذي تنص على أن الموظف ممنوع عليه وسيتعرض للعقوبة أو االتأديب إذا كان هو أو هي أفصحت عن أي معلومات سرية .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : العدالة الطبيعية تتحقق بأن يحكم القضاة بشريعة رب العالمين وما قام به محمد رسول الله وأعدل بين زوجاته وأولاده وبين الناس .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 3

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطويرالنظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أولا وقبل كل شيء، أنا رئيس قسم ، وأعمل في مجلس الأمة الكويتي . ويسرني جدا اجراء هذه المقابلة وأنا متحمس جدا للإجابة على أسئلتكم.

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : نظام التأديب في الكويت يحتاج الى تعديلات جديدة و أنا لا أتفق مع قانون الخدمة المدنية الحالي ، الذي صدر في عام 1979 كما أتذكر، و نحن الآن في عام 2013 وسندخل العام 2014 .و أعتقد أن

قانون الخدمة المدنية الحالي ليس في مستوى جيد و كما قلت ، يحتاج إلى بعض التعديلات لزيادة حماية الموظف من السلطة والنفوذ من استغلال صاحب العمل.ومع ذلك ، فأنه حول المزايا والعيوب التي تواجه نظام التبليغ ، أعتقد أن عيوب قانون التبليغ بأن المبلغ عاجلا أو أجلا ، حتى ولو أن هناك توجد حمايه للمبلغ ، فسيأتي يوما ويتم التعرف على المبلغ وسيحصل المبلغ على مشاكل .ويترتب عليه بأن الجميع سيكره . ولايغيب على البال بأن الكويت صغيرة وعدد سكانها يزيد على 3 ملايين .

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : لقد لاحظت أن معظم الموظفين مصابون بالإحباط العام ، عندما توقع عقوبات من الإدارة ضدهم . وأنا لست راض عن ادارة التحقيقات بمجلس الامة ، ولابالطريقة التي يتم التعامل معها مع الموظفين المحالين للتحقيق .أي أن أثر التأديب هو سلبي على أداء الموظف العام.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أنا أفضل في الكويت أن يكون هناك محكمة إدارية مستقلة للتعامل مع الإجراءات التأديبية ، لأنه بقدر ما أعرف أن هناك الكثير من القضايا الإدارية ضد الإدارة.

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : آمل أن يقوم مجلس الامة بوضع قائمة للمخالفات الإدارية التي يرتكبها الموظفون بمجلس الامة مع شرح بشكل صحيح لواجبات و حقوق الموظفين العموميين.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : أرى من الصعب جدا أن يكون هناك حدا لمنع تعسف صاحب العمل ما لم يكن هناك تنظيم يحكم وينظم سلطة صاحب العمل ضد للموظف . وكما قلت ينبغي عمل هذا التنظيم خلال تعديل على قانون الخدمة المدنية لتحقيق التوازن في الوضع بين واجبات الموظف و الواجبات الملقاة على رب العمل.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : أنا لا يمكنني أن أتكلم عن ذلك لأنه القانون هو جديد، والذي لم يطبق حتى الآن .بسبب عدم استكمال كافة اجراءات ذلك القانون من قبل حكومة الكويت.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: *في رأيي، يجب على الموظفين أن يدركون أن عليهم مسؤلية الابلاغ عن السلوك الشائن والفساد ، وانه يمنع من اتخاذ أي اجراء اداري يتخذ بحقهم . واما وعلى ضوء قانون الخدمة المدنية رقم 15 لسنة 1979، ولا سيما المادة 25 الفقرة 5 منه يحظر على الموظف الكشف عن المعلومات. هذا يعني التهم الخبيثة أو المتهورة وافشاء المعلومات السرية يترتب عليها فرض الاجرائات التأديبية على من قام بالافشاء .* ***من ناحية أخرى ، أعتقد بأنه ينبغي أن يكون المبلغ دقيق جدا عند استعماله اداة التبليغ ضد الفساد ، ويجب على الشخص التأكد بأن مايبلغ عنه هو تماما صحيح قبل أن يقوم بالابلاغ . وأعتقد بأنه اذا لم يكن لدى المبلغ أي دليل حقيقي أو اثبات . فانه سيخضع للاجراءات التأديبية اذا كان موظفا .***

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: هناك تعارض في هذين القانونين فقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، يحظر على الموظف الكشف عن المعلومات كليا، في حين أن القانون الأخر (قانون الإبلاغ عن الفساد رقم 24 لسنة 2012) يسمح للموظف الإبلاغ عن أي مخالفات أو معلومات حصلت في مكان العمل، وسوف يحمى الموظف من اتخاذ أي إجراءات تأديبية ضده إذا تم الكشف والابلاغ بحسن نية وليس لمنفعة شخصية. وبوجود دليل وبصحة الواقعة المبلغ عنها .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : توجد عدالة طبيعية في الاسلام ولكن السؤال الذي يفرض نفسه لاتوجد عدالة طبيعية مطبقة في دولة الكويت .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 4

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين

وتطوير النظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أولا وقبل كل شيء، أنا سعيدة جدا لهذه المقابلة معكم و نحن متحمسون لك من أجل أن تحصلون على درجة الدكتوراة في مجال القانون في المملكة المتحدة لذلك انا سعيد جدا ان اقول لكم كل شيء عن مسألة ما تسألون عنه . ومع ذلك ، أنا امرأة ، أعمل رئيسة قسم في وزارة العدل وخدمتي في العمل 16 عاما، و أنا أعرف الكثير من المعلومات حول قواعد التأديب وقانون التبليغ الجديد في الكويت لذلك تفضل بأسلتك وأي أسئلة أخرى .و أيضا ، أود أن أقول أن الاجراءات التأديبية معقده في الكويت و ذلك لعدم توفير الحماية للموظفين العمومين ، لأن القانون الكويتي الخدمة المدنية ليست نصوصه كافية للتعامل مع الإجراءات التأديبية.

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : مزايا وعيوب نظام التأديب في الكويت فانا أعتقد بان كثير من الموظفين لايعرفون كثيرا عن واجباتهم وحقوقهم ولايوجد في دولة الكويت كتيب ارشادي يبين للموظف العام حقوقه وواجباته سوى وجود قانون يسمى قانون الخدمة المدنية رقم 15 لسنة 1979 والذي في رأيي غير كافي لبيان وشرح كافة الجرائم التأديبية بشكل واضح .الان ، أريد أن أتحدث قليلا عن نظام التبليغ الذي هو قانون جديد في الكويت .وأكون معك صريحا بوجود فساد في دولة الكويت . لذا ، أعتقد أن هناك مزايا كثيرة في نظام التبليغ لوقف الفساد في الكويت ،وفي نفس الوقت أود أن أقول بأنه لا توجد مساوئ في نظام التبليغ .

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : العقوبات التأديبية تجعل الموظف العام لا يريد أن يعمل بجد بعد الآن بعد تعرض لعقوبة جزاء من الادارة القانونية . وبالإضافة إلى ذلك ، وآمل أنه بدلا من معاقبة الموظفين العموميين ، فمن الأفضل أن نعطيهم ارشادات لفظية وتنبيهات بدلا من معاقبتهم على الفور من خلال خصم من الراتب أو غيرها من العقوبات.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أنا أوافق إذا الكويت سيكون لها محكمة ادارية مستقلة و محكمة تأديبية متخصصة.

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : أنا أؤيد هذا ، ومؤكدا ، أن تحديد المخالفات الادارية للعمل مع عدد كبير من الموظفين العموميين لابد منه ،ومن دون لائحة لتحديد المخالفات الإدارية يكون العمل مملولا بد أن يكون هناك تحديد لكل المخالفات التأديبية وأن تنظم بشكل صحيح، من أجل معرفة جميع حقوق ومسؤوليات الموظفين العمومين ، ومن أجل معرفة ما يخالف السلوك الوظيفي.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : بالنسبة للحلول والمقتراحات عن موضوع تعسف الجهة الادارية يكون ذلك عن طريق فرض رقابة على الجهة الادارية عن طريق ما يعرف بالقانون رقابة القضاء وبسط رقابته على موضوع المخالفة التأديبية أو ما يعرف بقضاء الغلو والتعسف في استعمال الحق.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : بالنسبة الى قانون المبلغين عن الفساد و مدى الحماية للمبلغ ، يمكن أن يتم طرح هذا السؤال في المستقبل عندما تطبق حكومة دولة الكويت هذا القانون الجديد و أنا واثق من إعطاء حماية كبيرة إلى المبلغ الذين يضحي بنفسه أو بنفسها من أجل محاربة الفساد في الكويت.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: أنا شخصيا أعتقد انها ليست ابدا فكرة جيدة لمعاقبة المبلغ في شأن الابلاغ عن جرائم الفساد طالما نيته هو أن يكون هناك تغيير للأفضل للجميع،ومحاربة الفساد بشرط أن لا يكون الابلاغ لتحقيق مكاسب شخصية. أما من يقوم بافشاء معلومات العمل فيجب أن يعاقب ويخضع للتأديب .

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: في قانون الإبلاغ عن المخالفات يمكن الإبلاغ عن أي نوع من سوء السلوك والفساد أو حتى الكشف عن المعلومات السرية اذا كانت مخالفة للقانون ، ولكن تنص الفقرة 5 من قانون الخدمة المدنية الكويتي في المادة 25 منه أنه يحظر الكشف عن المعلومات السرية، وبالتالي فان قانون التبليغ وقانون حظر افشاء المعلومات فهما قانونين متناقضين من وجهة نظري الشخصية تماما مع بعضها البعض.

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : الاسلام عرف العدالة الطبيعية منذ أن أنزل الله سبحانه وتعالى القران وقال في كتابه أعدلوا هو أقرب للتقوى وهذا الكلام ليس كلامي ولكن كلام رب العالمين وللاسف الشديد لاأعرف بالضبط السورة التي قال الله فيها أعدلوا هو أقرب للتقوى .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 5

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطويرالنظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أنا رئيس قسم ولدي خبرة عمل أكثر من 15 عاما من العمل في وزارة العدل في الكويت . والمشرع الكويتي قام بتنظيم إجراءات الانضباط ، لكنها ليست كافية.و أرى أن قانون الخدمة المدنية قانون قديم ، وكثير من نصوصه قديمة وخصوصا المتعلقة بالانضباط حيث أصدرت في عام 1979.

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : ما يتعلق بالمزايا والعيوب في النظام التأديبي ذلك النظام الذي لايكتفي ولايتوقف عند حد التأكد من ثبوت ارتكاب الموظف للمخالفة التأديبية توطئة لمعاقبته عليها بل هو ذلك الذي يتجاوز حدود هذا المنظور الضيق لمعرفة أسباب ارتكاب المخالفة التأديبية وما إذا كان السبب الكامن وراء ذلك يرجع الى

سوء تنظيم المرفق التابع اليه الموظف العام أم بسبب غموض وخفاء الواجبات والاختصاصات المكلف بها الموظف العام . وباختصار أرى أن نظام التأديب في الكويت معقد وغير واضح وفيه ظلم على الموظفين العادين الذين من دون مستوى القيادين مثل وكيل وزارة مساعد ووكيل وزارة . أما واجب التبليغ عن الفساد والقانون الجديد الصادر بشأن التبليغ فانا اعتذر عن الكلام بشانه الا أن تقوم حكومة الكويت بشكل جدي تصدراللوائح المكملة لهذا القانون لكي يدخل في حيز التنفيذ.

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : أعتقد أن تأثير الإجراءات التأديبية على أداء الموظفين كان له تأثير سلبي من بعد حصول الموظفين على عقوبة تأديبية.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أقترح بأن الحكومة الكويتية عليها أن تعمل محكمة ادارية و محكمة تأديبية للتعامل مع جميع أنواع المخالفات التأديبية ، مثل الوضع في مصر .لديها محكمة ادارية مستقلة ومحكمة تأديبية متخصصة .

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : لم يتم تقنين المخالفات التأديبية في الكويت ، ولم تكن اضحة ودقيقة بما فيه الكفاية للعاملين بالقطاع العام ، وبعض منهم لم يكن يعرف حقوقه ، وأحيانا لا يتم احترام واجباتهم ومسؤولياتهم . وفي الختام ، أود أن تقوم وزارة العدل بأن تنشر كتيبا صغيرا وتقوم بتوفيره مجانا لجميع موظفي القطاع العام من أجل أن يعرف الموظفين العموميين مقدما جميع واجباتهم وحقوقهم ، بما في ذلك قائمة من المخالفات التأديبية.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : الحل للحد من تعسف الجهة الادارية، يتعين على الإدارة عمل دورات تدريبة للموظفين وخصوصا لرؤساء الاقسام والمدراء وحتى وكيل الوزارة ومساعديه وكما ينبغي على المدير عقد اجتماعات شهرية لكي يرى ما هي أوجه القصور في مكان العمل.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : بالنسبة لموضوع حماية المبلغ ، أنا لا أريد أن أخوض في ذلك لأنني أعرف بالضبط أن الكويت لم تقم بإنهاء بعض الإجراءات القانونية المتعلقة لهذا القانون ومن ثم لم يدخل هذا القانون إلى حيز التنفيذ .

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: إذا كانت اهتمام المبلغين هي مشروعة ولها ما يبررها، أعتقد أنه ينبغي ألا تفرض على المبلغ الإجراءات التأديبية. ولئن كانت المادة 5/25 من قانون الخدمة المدنية لا يسمح بالكشف عن المعلومات وبمعاقبة الموظف، أعطى قانون التبليغ الحماية اللازمة للمبلغين عن المخالفات في الكويت والحق للموظف أن يبلغ ضد جرائم الفساد الموجودة داخل أماكن عملهم. وأعتقد أن هذا القانون الإبلاغ عن الفساد في الكويت من شأنه أن يجعل الموظفين يشعرون بالثقة بأنهم لن يتعرضوا للانتقامالشخصي أو الى العقوبات التأديبية بسبب الكشف عن جرائم الفساد مثل الكشف عن جرائم الرشوة .

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: هذين القانونين لا يكمل كل منهما الآخر فالقانون رقم 24 لسنة 2012 بشأن التبليغ عن الفساد يسمح للموظف للكشف عن المسائل السرية اذا كان هناك مخالفات أو عمل غير قانوني، ولكن المادة 5/25 من قانون الخدمة المدنية يحظر على الموظف الكشف عن المعلومات السرية. وعلاوة على ذلك، وأعتقد أنه لا توجد قاعدة تنص على أنه عند نشوء نزاع بين اثنين من هذه الواجبات (واجب الإبلاغ عن الفساد ، وواجب الحفاظ على المعلومات السرية وعدم افشائها)، يكون واجب السرية وعدم الافشاء أعلى من واجب المبلغين عن المخالفات ضد سوء السلوك والفساد .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : أنا أعمل كما قلت لك بوزارة العدل وأقول لك بكل صدق لاتوجد عدالة حقيقية بين الموظف ورئيسة وان تحقيق العدالة الطبيعية هي بتطبيق الشريعة الاسلامية التي هي تعرف معنى وروح العدالة الطبيعية .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 6

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط

القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطويرالنظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : قبل أن أبدأ في التحدث معك ، أود أن أعرض لكم أنني رئيس قسم في مجلس الأمة الكويتي.

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : فيما يتعلق بالنظام التأديبي في الكويت ، والذي هو بقدر ما أعرف فان بعض الوزارات تقوم باصدار قرارات وزاريه تنظم موضوع التأديب لمعالجة الخلل بنظام التأديب بالإضافة إلى وجود قانون الخدمة المدنية رقم 15 لسنة 1979. وأما عن موضوع المزايا والمساوئ بشأن قانون التبليغ ، فاعتقد بأن التبليغ هو في الحقيقة قانون جديد ، ولابد من اعطاء هذا القانون الوقت الكافي للحكم عليه وتقرير المزايا والعيوب على قانون التبليغ رقم 24 لسنة 2012 لاحقا .

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : لاحظت أن معظم الموظفين يحصلون دائما على ذريعة للتغيب بحجة المرض ، و أنهم يدعمون موقفهم أيضا هذا عن طريق الحصول على دليل من الطبيب أنهم مرضى ، التي غالبا ما تكون صحيحة، وأنهم ليسوا بمرضى وقادرين على العمل ، ولم يصابوا بمرض خطير يلزمهم بأن لايعملوا . وهكذا، فإن الإجراءات التأديبية صعبة حقا و الموظفين العموميين الذين حصلوا على اجرائات تأديبية أصبحوا كسالى ، ولا يعملون بجد. ومع ذلك، فإن السبب الحقيقي للحصول على ذريعة التمرض والتغيب بسبب أن هؤلاء الموظفين حصلوا على خيبة أمل لأن الإدارة قدمت ضدهم عقوبة.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أنا أفضل أن يكون بالكويت محكمة تأديبية و محكمة متخصصة للمنازعات الادارية ومستقلة ، لكثرة القضايا الادارية ولا يمكن ان تقوم المحكمة بالفصل بهذا الكم الهائل من القضايا عن طريق دائرة ادارية بدلا من محكمة كامله متخصصة بالمنازعات الادارية .

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : أنا أرى أن نظام الخدمة المدنية الكويتي ليس واضح ودقيق بما فيه حد الكفاية، في تبيان حقوق وواجبات موظفي القطاع العام ، و خصوصا الإجراءات التأديبية . وعليه أرى بأن تحدد المخالفات الادارية ولا تترك لتفسير ومزاج الجهة الادارية .

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : موضوع الحلول والاقتراحات في موضوع التأديب العمل الجاد في توحيد المخالفات التاديبية والعقوبات على كافة دول الخليج وهي الكويت والسعودية والامارات والبحرين وقطر وعمان .وذلك للحد من تعسف الجهة الادارية.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون؟

الضيف : إن موضوع حماية المبلغين في ضوء القانون الجديد رقم 24 لعام 2012 المتعلقة حول التبليغ ضد الفساد في الكويت هو قانون جديد ولم يطبق حتى الان وليس لدي أي تعليق حول هذا الموضوع.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: قانون الإبلاغ عن المخالفات رقم 24 من عام 2012 ذكر أنه يسمح للموظف بالابلاغ ، حتى لو كان ذلك يتعارض مع المادة 25 / 5 من قانون الخدمة المدنية الكويتي، الذي يحظر على الموظف الكشف عن المعلومات. في رأيي الشخصي، أعتقد بقوة أن الموظفين عادة ما يكونون على دراية بأن أعمالهم بشأن الابلاغ قد تجلب عواقب سيئة عليهم وتدخلهم بمشاكل مع الناس ، ولكنهم على استعداد لتحمل المخاطر ولفت الانتباه إلى ما يعتقدون بأنه غير المقبول أخلاقيا أو خاطئة من الناحية الأخلاقية، وهذا هو السبب في عدم فرض الاجراءات التأديبية على المبلغ .وما يتعلق بقانون الخدمة المدنية رقم 15 لسنة 1979 وعلى وجه الخصوص المادة 25 / 5 يجب أن يعاقب من يقوم بافشاء المعلومات السرية من أجل الحفاظ على سرية المعلومات لاهميتها وان تتخذ الاجرائات التأديبية على من يخالف القانون ويفشي اسرار العمل .

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: كلا القانونين لايتطابقان أويحققان التوازن بين بعضها البعض، وذلك لأن قانون الإبلاغ عن المخالفات ذكر بأن الموظفين الذين هم على بينة من إمكانية وقوع المخالفات في مكان العمل يتحملون مسؤولية الكشف عن هذه المعلومات، وأنهم سوف يكونون محميين من الاجراءات التأديبية ولكن قانون الخدمة المدنية الكويتي رقم 15 لعام 1979 في المادة 25 / 5 تنص بوضوح على أنه يحظر على الموظف الكشف عن أي معلومات سرية في مكان العمل، والتي أعتقد قد يواجه الموظف إجراءات تأديبية إذا قام بالكشف والافشاء عن المعلومات السرية.

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : نعم في الاسلام توجد العدالة الطبيعية .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 7

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطوير النظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أولا ، أريد أن أقول لك إنك مرحب بك جدا لعمل هذه المقابلة معي و أود أن أقدم نفسي لكم ، أنا مستشار(قاضي) و أنا ما زلت أعمل في محكمة التمييز في الكويت و أنا أعتبر بأن قانون الخدمة المدنية الكويتي قديم جدا والذي صدر في عام 1979 ، و غير متناسقة نصوصه في شأن الإجراءات التأديبية. **وأما عن موضوع قانون التبليغ في الكويت فهو قانون جديد ولا توجد حتى الان قضايا تتعلق بهذا القانون الجديد أي قانون التبليغ ضد الفساد .**

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أود أن أذكر فقط مساوئ النظام التأديبي لفرض عقوبات تأديبية ضد الموظف العام وأن قانون الخدمة المدنية رقم 15 لسنة 1979 والذي يحكم العلاقة بين الموظف وصاحب العمل ولكن كما أرى ، فإن هذا القانون يعطي بعض الموظفين أصحاب المراكز العالية مكانة عالية ، مثل وكيل الوزارة والوكيل المساعد و المزيد من الحماية لهم ولكن الموظف البسيط أو العادي من السهل فرض الكثير من العقوبات التأديبية ضده أو ضدها مثل الاستقطاعات الشهرية من الراتب بسبب مخالفات إدارية طفيفة. في نفس الوقت ، آسف أن أقول أنه من الصعب على الوزير بأن يتم خصم أي أموال من راتب الوكيل المساعد حتى في حالة ارتكاب مخالفة إدارية كبيرة والتي هي في رأيي غير عادلة تماما تلك المفارقة وهذا هو السبب وأنا قاض لقد رأيت العديد من القضايا الإدارية المتعلقة حول الاستقطاعات من الراتب المتعلقة بقرارات تعسفية من الادارة والمحكمة تستخدم حق الرقابة القضائية ضد الظلم من خصم الراتب.أما بالنسبة لموضوع واجب المبلغين ضد الفساد في الكويت فهو قانون جديد و أنا لا أريد أعمل الكثير من التعليقات على ذلك ، ولكن، في وقت لاحق إذا سألتني عن قانون التبليغ في الكويت سأرد عليك ، وأود بالتأكيد الإجابة على اسئلتكم الاخرى إن وجدت . لأنه كما قلت هذا هو قانون جديد.والذي لم يطبق حتى أقدم رأي بعرض المساوئ أو المزايا بشأن قانون التبليغ في الكويت .

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : لاحظت أنه يتم فصل العديد من الموظفين العموميين من عملهم لمجرد أحيانا أن الإدارة لا تحب له أو لها للعمل في الوظيفة . وهذا يعود بأن هناك في الواقع العديد من المديرين تعاملهم وتصرفاتهم سيئة في بعض الإدارات و في مثل هذه الحالات ، لا يستمعون إلى تظلمات مرؤوسيهم . وهكذا، أصدرت محكمة التمييز ضد بعض من الوزارات أو الجهات الحكومية التي تقوم بالفصل التعسفي لموظفي القطاع

العام . وبالتالي ، قررت المحكمة إلغاء جميع دعاوى الفصل التعسفي للعودة الموظف العام المفصول من العمل إلى العمل مرة أخرى.

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أقترح بأن تقوم حكومة الكويت بتطبيق المادة 171 من الدستور الكويتي و التي تنص على أن " يجوز بقانون إنشاء مجلس دولة يختص بوظائف القضاء الاداري والافتاء والصياغة و سوف يقوم هذا المجلس بتعامل مع جميع المنازعات الإدارية . ويدعم هذا أيضا مع المادة 169 التي قالت يجب أن " ينظم القانون الفصل في الخصومات الادارية بواسطة غرفة أو محكمة خاصة يبين القانون نظامها و كيفية ممارستها للقضاء الاداري شاملا ولاية الإلغاء وولاية التعويض بالنسبة إلى القرارات الإدارية المخالفة للقانون. " ولذلك فمن مفهوم ذلك أحث المشرع الكويتي بأن يعمل محكمة إدارية ومحكمة تأديبية ، وليس مجرد غرفة لتسوية المنازعات الإدارية كما جاء في المادة 169 في الدستور الكويتي.

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه

الكفاية ؟

الضيف : أنا مع قانون الخدمة المدنية كما هو ثابت من عدم تحديد المخالفات الإدارية باستثناء تحديد الواجبات العامة والمحظورات مثل حضر إفشاء الأسرار وفقا للمادة 6/25 من قانون الخدمة المدنية للكويت و أنا أعتقد أن للسلطة التأديبية تحديد ما يعد انتهاكا يعاقب عليه القانون.

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : حول نظام التأديب ، أريد أن أؤكد أنه ينبغي أن يكون التأديب وظيفة تصحيحية تهذيبية وليس وظيفة عقابية توقع على الموظف. أيضا ، أود أن أضيف أنه من الصعب حقا إذا أنا أحاول أن أقدم لكم أي فكرة عن كيفية الحد من تعسف وسوء استعمال السلطة من قبل الجهة الادارية و هذا السؤال صعب الاجابة

عليه و انه من الصعب أيضا ان أوفيدك بالكثير من المعلومات بشأن هذا السؤال في وقت قصير عن طريق هذه المقابلة معي.

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون ؟

الضيف : قبل أن أجيب على أسئلتكم أود أن أقول شيئا عاما عن قانون التبليغ في الكويت . أود حقا أن أركز على القانون الجديد رقم 24 من عام 2012 بشأن مكافحة الفساد .وفي هذا القانون الكثير من المواد ولكن سوف أركز فقط حول المادة 22 التي ورد فيها ذكر جرائم الفساد ، وهي التالية عرضها ومن دون شرح وسوف أقرئها على مسامعكم:

1 -جرائم الاعتداء على الأموال العامة.

2 -الرشوة والنفوذ.

3 -جرائم غسل الأموال.

4 -التزوير و جرائم التزييف. الجرائم المتعلقة بسير العدالة . جرائم الكسب غير المشروع . جرائم التهريب الجمركي . جرائم التهرب الضريبي.

5 -جرائم إعاقة عمل الهيئة العامة لمكافحة الفساد ، أو الضغط عليها لعرقلة أداء واجباتها أو التدخل في اختصاصاتها أو الامتناع عن تزويدها بالمعلومات المطلوبة بموجب هذا القانون.

6 -الجرائم المنصوص عليها في قانون حماية المنافسة . أي جرائم أخرى ينص عليها قانون آخر بوصفها جرائم الفساد.

ومع ذلك ، أود التأكيد على النقاط الهامة أيضا بموجب المادة 39 من هذا القانون عن مدى حماية المبلغين عن الفساد إذ يتمتع المبلغ بالحماية من وقت تقديم البلاغ وتمتد الحماية لزوجه وأقاربه وسائر الاشخاص وثيقي الصلة به. و آمل أن تقوم الحكومة الكويتية بعمل التعديلات الجديدة لهذه المادة 39 لتقديم المزيد من الحماية للمبلغ . الذي هو يقوم بالتضحية في الكشف عن جرائم الفساد في الكويت.

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف: هذا سؤال جيد وآمل الإجابة عليه بقدر ما أستطيع. وأعتقد أنه واضح وذلك وفقا لقانون الإبلاغ عن المخالفات رقم 24 لسنة 2012 لمكافحة الفساد في الكويت و بموجب المادة رقم 51 من هذا القانون عن المبلغين عن الفساد ، لا يجوز لصاحب العمل تقديم أي نوع من الإجراءات التأديبية ضد المبلغين وأعتقد أن هذا يحمي المبلغين وتشجيع لهم لمواصلة الافشاء عن المخالفات ضد الفساد. ومع ذلك، وفقا لقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979 ولا سيما بموجب المادة 5/25 التي تمنع الافشاء ولكي أكون أكثر وضوحا سوف استخدم مصطلح "prohibitation" مما يعني الحظر أي لا يجوز للموظف أن يقوم بالكشف عن معلومات سرية داخل مكان العمل. وأعتقد إذا كان الموظفٍ العام يصر على كسر هذه المادة 5/25 أي مخالفتها عمدا وبسوء نية فانه سوف يكون في مأزق ويدخل في طائلة مخالفة القانون وعدم احترامه ، ويضع نفسه تحت ظل الإجراءات التأديبية.وتتم معاقبته وفقا للعقوبات التأديبية المنصوص عليها في قانون الخدمة المدنية الكويتي .

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف: هذا سؤال صعب، وأنه ليس من السهل الإجابة على هذا السؤال في بضع جمل. ومع ذلك، تنص المادة 36 بموجب القانون الجديد أو قانون الإبلاغ عن الفساد في الكويت، والمادة هناك تنص على أنه واجب على الجميع وعلى كل شخص بالابلاغ عن الفساد ، وبالتالي المبلغ لا يحتاج بالضرورة إلى أن يكون موظف عام، فإنه يمكن أن يكون أي شخص موظف يعمل بالقطاع العام أو بالقطاع الخاص وبشكل عام أي عامل يمكن أن يقوم بالابلاغ عن الفساد . ولكن بالطبع وأعتقد أن هناك بعض الشروط لابد من

توافرها في المبلغ حتى يحصل على الحماية وهذه الشروط هي أن يتم الكشف بحسن نية ويجب أن لا يتم الكشف لتحقيق مكاسب شخصية. وأنا لا أريد أن أذهب أبعد من ذلك لأنني أعتقد أن قانون الإبلاغ عن الفساد لا يزال قانون جديد ولم يدخل حيز التنفيذ . ومن ناحية أخرى، حول المادة 25 من قانون الخدمة المدنية الكويت بند 5، فإنه يختلف تماما عن قانون الإبلاغ عن الفساد ، والتي ينبغي أن يكون الموظف العام حريص على عدم الكشف عن المعلومات السرية وخاصة أعمال رب العمل. وبالتالي لايوجد تناقض بين قانون الافشاء رقم 24 لسنة 2012 وقانون حظر افشاء المعلومات وفقا لقانون الخدمة المدنية رقم 15 لسنة 1979 وعلى وجه التحديد المادة 25 بند 5 من تلك المادة . فقانون الافشاء فهو بمثابة الشريعة العامة ويجب على كل شخص أن يبلغ عن جرائم الفساد وسوف يخضع المبلغ الى حماية وضد اتخاذ أي اجراءات تأديبية بحقه أما من يتعمد في مخالفة القانون ويقوم بافشاء المعلومات المتعلقه بعمله وهي سرية بطبيعتها فان الموظف المخالف سوف يخضع للتأديب وتطبق عليه العقوبات التأديبية وليس له أي حمايه من اتخاذ الاجراءات التأديبيه بحقه .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : هذا سؤال جدا خطير وبنفس الوقت غاية في الاهمية . ومن هذا المنطلق أقول نعم وألف نعم بأن دين رب العالمين به مبدأ العدالة الطبيعية ويحقق العدالة بين الناس أجمعين وبين الموظفين . ولكن دولة الكويت الحبيبة الا الان لا تطبق الشريعة الاسلامية الا في قضايا الاحوال الشخصية .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .

المقابلة رقم 8

في البداية أود أن أشكرك على إتاحة هذه الفرصة لي لاجراء هذه المقابلة معكم و التي تعتبر مهمة جدا لي لاستكمال بحثي لنيل شهادة الدكتوراة في مجال القانون الاداري من جامعة بانكور بالمملكة المتحدة

البريطانية. وأحب أن أشير في هذا السياق ، بأني طالب في مرحلة الدكتوراه ، وفي السنة الرابعة بالجامعة المذكوره ، وأن فكرة بحث الدكتوراه تتناول موضوع تأديب الموظف العام وعلاقته بواجب التبليغ عن الفساد في الكويت وحظر افشاء المعلوومات ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . وكذلك سوف تساهم حضرتكم في اثراء بحثي من خلال الاستفادة من خبراتكم العملية في مجال تأديب الموظف العام وواجب نظام التبليغ عن سوء السلوك والفساد . وأن الهدف من هذه المقابلة هي من أجل معرفة نقاط القوة والضعف فيما يتعلق بالتأديب الاداري للموظف العام وعلاقته بواجب التبليغ ضد سوء السلوك والفساد ، ومعرفة مبدأ العدالة الطبيعية في الاسلام . من أجل الوصول إلى ألية تضمن تحسين وتطوير النظام القانوني بشأن تأديب الموظف العام وواجب التبليغ عن الفساد وتطبيق مبدأ العدالة الطبيعية في الاسلام . وأخيرا أطمئنكم بسرية بياناتكم الشخصية .

س 1: هل من الممكن لو سمحت أن تحدثني قليلا عن خبرتكم بشأن نظام تأديب الموظف وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : أحب أن أشكرك على هذه المقدمة ، وأسئل الله لك بالتوفيق في جهودك المبذولة ، أما بالنسبة لموضوع تأديب الموظف العام فان لكل جهة عمل لها قوانين خاصة بها ويجب أن يحترمها الموظف ، وأن يلتزم بهذه القوانين والا سوف تطبق عليه القوانين المتبعة ، وأنا كدوري كقاضي ومستشار بمحكمة التمييز الكويتية وهي جهة قضائية تحقق الحق والعدالة وفقا لما ينص عليه القانون . وأما عن قانون التبليغ فهو من وجهة نظري فهو قانون جديد ولم يتم على اصداره سنة ولم تتداول أي قضية تتعلق بتبليغ عن الفساد على حسب علمي أمام المحكمة .

س 2: ماهي في اعتقادكم من خلال خبرتكم الحكومية وتعاملكم مع الموظف العام أهم المزايا أو العيوب القانونية على نظام تأديب الموظفين وواجب التبليغ عن الفساد في دولة الكويت ؟

الضيف : من أهم مزايا التأديب الاداري يتمثل في التزام الموظف رئيسا كان أم موظف عادي ، المهم هو التزامهم بالقوانين وساعات العمل على سبيل المثال ، حتى يتفادوا التأديب وما يترتب على التأديب من

عقوبات وانذارات تتبعها التنزيل من تقيم اداء الموظف السنوي . أما عن قانون التبليغ فهو كما قلت سابقا هو نظام جديد .

س 3 : من وجهة نظرك ، ما هي تأثير الإجراءات التأديبية على أداء الموظف العام . هل هو إيجابي أو تأثير سلبي ؟

الضيف : هي بلا شك أي الاجراءات التأديبية هي ايجابية لحسن سير العمل على الوجه الاكمل على قدر المستطاع .

س 4: في ضوء خبرتكم ، هل الكويت في حاجة الى المحكمة الإدارية و المحكمة التأديبية بشكل منفصل للتعامل مع جميع الجرائم التأديبية ؟

الضيف : أنا أويد هذا الوضع في انشاء محكمة ادارية خاصة فقط للقضايا الادارية وذلك بسبب كثرة القضايا الادارية وازدحام جدول المحكمة بها .

س 5: ماهو رأيك بأن تكون المخالفات الادارية محددة ومحصورة ومقننة وان تكون اضحة ودقيقة بما فيه الكفاية ؟

الضيف : أنا أويد أن تكون المخالفات الادارية واضحة وصريحة ومحصورة ، حتى تعم العدالة على جميع الموظفين ، وتحد من القضايا الادارية المرفوعة من الموظفين . وبتحديد المخالفات الادارية يعرف الموظف ماله وما عليه ، وبالتالي تقل القضايا الادارية وتعم العدالة .

س 6 : من وجهة نظرك ماهي الحلول والمقترحات للحد من تعسف الجهة الادارية وتفعيل نظام التأديب ليكون للتهذيب وليس للعقاب ؟

الضيف : كما قلت سابقا أن تحديد المخالفات الادارية تحد من تعسف المسؤول سواء مدير أو وكيل وزارة ، وبالتالي يحصل الموظف على العدالة كما يرجوها ويطلبها من المحكمة .

س 7 : بالنسبة الى قانون التبليغ في الكويت ، ما هي مدى حماية المبلغ عن الفساد بموجب ذلك القانون ؟

الضيف : هو قانون جديد كما ذكرت سابقا ، لكن المبلغ بصورة عامة لابد أن يحاط بسرية تامة وتكون له حماية خاصة له ولاسرته ويمنح مكافأة مالية تشجيعية .

س 8: في رأيك الشخصي، هل تعتقد أن المبلغ ينبغي فرض اجراءات تأديبية عليه بموجب قانون الإبلاغ عن المخالفات ومكافحة الفساد رقم 24 لعام 2012، وكيف حول قانون الخدمة المدنية رقم 15 لسنة 1979 بموجب المادة 5/25 والتي تمنع الكشف عن المعلومات فهل سيخضع الموظف للتأديب؟

الضيف : أما الشق الاول من السؤال فلابد أن يكون على المبلغ عقوبات تأديبية ان ثبت عدم صحة بياناته التي أبلغ عنها . أما الموظف الذي يكشف بيانات غير صحيحة لغرض في نفسه أو انتقاما ضد رئيسه فانه بلا شك يخضع للتأديب وأحب أن أضيف نقطة هامة بأن قانون التبليغ هو لمكافحة الفساد وليس لنشر الفساد وخلق المشاكل والانتقام.

س 9: من وجهة نظرك وخبرتكم الشخصية، هل تعتقد أن قانون مكافحة الفساد في الكويت (قانون الإبلاغ عن المخالفات رقم 24 لسنة 2012) وقانون الخدمة المدنية الكويتي رقم 15 لسنة 1979، و الذي يحظر الكشف عن المعلومات بموجب المادة 5/25، هل كلا القانونين متناقضين أم يكملان بعضهما البعض ؟

الضيف : أحب أن أوكد هنا بأن المبلغ هو الذي يكشف عن المعلومات المشينة والمخالفة للسلوك ضد صاحب الفساد . وبمعنى أخر المبلغ هنا في حقيقته يكشف عن فساد قد حصل ولديه الدليل على ذلك الفساد وليس المبلغ يكشف معلومات خاصة برئيسه وانما المبلغ هو الذي يكشف فساد الموظفين وليس كشف معلوماتهم . وباختصار أن أرى ليس هناك أي تناقض ما بين قانون التبليغ وقانون حظر نشر المعلومات .

س 10: في رأيك، هل هناك أي عدالة طبيعية (انصاف) في ظل الشريعة الإسلامية، وكيف يتحقق هذا الإنصاف؟

الضيف : من خبرتي الطويلة في سلك القضاء الكويتي لاكثر من خمسة وثلاثين عام ، أرى وهذا من وجهة نظري الخاصة أن العدالة بصورتها الطبيعية لا توجد الا في الاسلام لقول الله في القران فاذا حكمتم بين الناس أن تحكموا بالعدل . والكلام موجه الينا كقضاة ومن الذي يحكم بين الناس الا القضاة . ونحن بدورنا كقضاة حلفنا اليمين أما حضرة أمير الكويت بأن نحترم الدستور ونعدل بين الناس ، ونحاول على قدر المستطاع تحقيق العدالة بين الناس .

هذه هي نهاية الاسئلة أود أن أشكركم مرة أخرى ، وأؤكد على الحفاظ على سرية الشخصية ، وإذا كان لديكم أي معلومات ، أو مقالات قد استفيد منها في بحثي ، الرجاء تزويدي بها .