

## **Functional Neutrality and its Impact on the Employee's Right to Establish Political Parties and their Membership: A Comparative Study**

Ayed Mousa Ali Al-Ardawi<sup>1</sup>, Dr. Waleed Marza Hamza Al-Makhzoumi<sup>2</sup>

### **Abstract**

*According to the public service relationship, the public employee has some rights and benefits, and as a citizen he has many other rights, including the right of establish and join political parties, with the aim of confirming the duty of neutrality in this field and based on that relationship, some restrictions were imposed on this right, as an attempt to remove the influence of Partisan and political affiliation in the public service, and spreading the principle of equality in the use of public facilities, as the legislator assumed the lack of this neutrality among some of partisan employees; Therefore, he resorted to legislating legal texts that prevent the practice of partisan and political activity in the public service, or the use of its capabilities to support a specific political party or its members or promote its philosophy in the public service, as well as trying to limit the harm to the employees based on their different partisan tendencies and affiliations and against them bias.*

**Keywords:** *Duty of functional neutrality, Equality, functional strike, political parties, Public service.*

### **Introduction**

After the spread of democratic systems that allow for political pluralism, and the spread of political parties with different and diverse intellectual and philosophical orientations, the issue of functional neutrality began to appear for discussion, which we find that it is a duty of the public office that has risen to be an important principle of its principles, and the need for this neutrality emerges when the public official exercises his functions and work without bias to a particular party or against it, or to a region or group with specific partisan tendencies or against it, leaving behind all the effects of the employee's political affiliation, emotional and psychological. The efficiency of the administration is professional, objective and professionalism of its elements, their neutrality and their ability to be free from the pressure and impact of their interests and feelings during the exercise of administrative activity, and the liberation of job work from all this; with the aim of ensuring justice and equality in dealing between the employees and the employees or among the employees themselves, without favoritism or exclusion, and in a way that facilitates the task of administration by serving all the employees and earning their trust.

First- The importance of the study: The subject of the study relates to an important right of the employee as a citizen of the state, and has a serious impact on the way public services are provided. The right of the employee to practice political activity collides with

---

<sup>1</sup> Faculty of Law, University of Baghdad, aed.mousa1202a@colaw.uobaghdad.edu.iq

<sup>2</sup> Faculty of Law, University of Baghdad, Dr.waleed@colaw.uobaghdad.edu.iq

the extent of his neutrality in dealing between parties and not granting privileges and preferences to the party that he establishes or is a member of or to his followers and popular base, and this has an impact on the provision of public services for all away from political tendencies and affiliations.

Second- The problem of the study: The study assumes that there are negative effects of the political affiliation of employees on the work of their jobs, as they are human beings with different tendencies and affiliations; reflected in their different behaviors and behaviors, which requires the identification of areas of this and the statement of legal and jurisprudential treatments.

Third- The objective of the study: The study aims to clarify the concept of neutrality and indicate its effects on the public service, follow up on legal remedies in this regard, indicate their shortcomings or deficiencies, and make the necessary recommendations with the aim of addressing them.

Fourth- The hypothesis of the study: The study assumes the need to neutralize the political affiliation of employees and isolate its impact from job work, by regulating the dealings and behaviors of employees with sympathizers or between them and their superiors; to ensure the rights of all and provide services without discrimination.

Fifth- Methodology of the study: To highlight the study in an integrated manner; we saw the reliance on the descriptive analytical approach to theories, principles and legal texts that relate to its subject, as well as the collective approach, which suits the subject of the study in our estimation.

Sixth- Structure of the study: The subject of the study will be addressed in two requirements according to the following plan:

The first requirement: Definition of functional neutrality.

The second requirement: Effects of neutrality on the employee's right to establish political parties and their membership.

The first requirement

Definition of Functional neutrality

Functional neutrality is a vague concept that has different meanings and faces and its forms and areas of application vary according to the narrowness and breadth of the administrative function. It also relates to all branches of law, almost all public utilities and administrative functions. The legislator did not address it by definition, neither in Iraq nor France. Therefore, we will try to define it in language and terminology as follows:

1- The linguistic definition of functional neutrality

The term consists of two words, so we will deal with them separately by definition. As for the term neutrality, it has been mentioned in the Arabic language in several meanings mentioned in different dictionaries and lexicons, and we will deal with what comes close to it from our legal research as follows:

Neutrality was defined by Abu Al-Nasr Ismail Al-Jawhari in the slant and he said: that he is distant from the thing in the sense that he is distant from it, and neutrality is defined by the lexicon of the collective meanings that he is not inclined to any of the parties to the dispute, and that the neutral is the one who does not take sides with either party, and that the neutral of the person means stopping his dispute, and the neutral of the matter means avoiding it and did not interfere in it.

The neutral is the person who does not belong to any of the political parties, and it was mentioned in the Arabic dictionary that the obligation of neutrality is the refusal to take a certain position, while the surrounding dictionary defines the neutral as the person who is not obsessed with personal feelings and emotions.

In the French language, we find the Latin term (Neutre) itself about the neutral and the term (Neutralité) means the neutral, and its origin goes back to the Latin term (Neutralise) because the French language is one of the subsidiary languages of the Latin language, and here means not leaning or bias towards a particular party or situation; that is, the will to refrain from bias and the desire for impartiality and objectivity is realized, but in the English language, it comes with almost the same French meaning, the term of English neutrality is (Neutrality) and neutral is (Neutral), which is the person who does not support or belong to any party to a war or argument...etc.

As for the term (job), it is a name attributed to the term (job) and its origin is the verb (employed), which has multiple meanings, including work attribution. As for the term employment, it means operation and use, which we mean in the field of our research is the public job, which includes employees of permanent staff in all authorities and public facilities in the state and others, which has different concepts such as the American concept that does not distinguish it from work in the private sector, and the European concept that makes it a stable public service with a special system in which it enjoys guarantees and privileges in exchange for performing duties and avoiding prohibitions.

## II. Terminological definition of functional neutrality

The duty of functional neutrality is one of the important and necessary duties in the public office; the fact that the employee is ultimately a person with tendencies, desires and preferences in all areas of life, and all of this is reflected in his opinions and behaviors, and clarifying the concept of the duty of functional neutrality will protect the employee from the many negatives that may accompany his non-observance inside and outside the public office, and control the behaviors of public officials and direct their material and legal actions, which will not be the goal of social justice and the national interest, away from the effects of various personal nodes and beliefs, and protect the public office from the negatives of religious proselytism, political promotion, and discrimination between beneficiaries.

The legislator and the administrative judiciary did not address the task of defining the duty of functional neutrality, because this is not at the core of the work of the first, which is the development of provisions, while the latter is based on the texts developed by the first (the legislator) by issuing its fatwas and rulings. Therefore, jurisprudence has assumed the task of defining functional neutrality, and there have been many jurisprudential attempts in this regard, because setting a specific definition of the term functional neutrality is not easy; to change it according to the philosophy of the state and the difference in public utilities in it, so there have been many definitions and we will try to discuss them as follows:

1. Some jurists have defined it as a similar duty of reservation known in the public service, that is, "the obligation of public officials not to express their opinions publicly, which raises public sentiment, and affects the necessary consideration and respect for the public service." The focus here was on the public aspect of freedom of expression to protect the reputation of the administration, although neutrality may be related to the performance of job duties, the application of laws, and the protection of employees from injustice and abuse.

2. Some other jurisprudence defined it as "not leaning towards a party or party, and objectivity in that the employee performs his duties and works within the scope of what the public office requires, according to principles and opinions based on objective arguments that do not change according to any personal tendencies" and without this leading to the administration party; which leads to discrimination between the employees or employees on the basis of loyalty, political affiliation and the emergence of cases of corruption and nepotism.

3. As defined by other jurisprudence as the performance of service, and cooperation with the existing government; so that the employee implements the policy and directives of the existing party without being affected by his political loyalty if he is opposed, as the administration is not sound without political neutrality.

With these two definitions, the focus was on one aspect of neutrality, which is the political aspect, and the omission of its other aspects.

4. As for others, they defined it as "the employee's exercise of his job impartially and objectively away from personal whims, without political, philosophical, or religious discrimination, and refraining from advertising, promoting his own opinions, or profiting from public office."

The latter definition neglected the impact of functional neutrality on the rights and freedoms of employees and mercenaries, while the French jurist Jacques Robert states that the protection of rights and freedoms can only be guaranteed if public facilities are neutral.

In light of all that has passed, we see that the duty of functional neutrality is to abide by the performance of job duties and duties impartially and objectively, to treat beneficiaries and employees equally and fairly without discrimination because of multiple affiliations or differences, and to always target the public interest without exploiting the job arbitrarily by restricting rights and freedoms or profiting and promoting any thought or orientation.

As for the public office, it has an objective concept represented in the competencies and activities practiced by employees without regard to who occupies it, as in the United States, and it also has a formal concept represented in the profession that has a special legal system that distinguishes it from other professions, and is characterized by permanence and continuity; where individuals devote themselves to it in exchange for guarantees and privileges that they enjoy, as in Europe and the Arab world.

Neutrality is of two types. The first is: positive neutrality, which means working impartially and objectively in accordance with the laws, without bias for political and other considerations. This is shown in the way of dealing with employees and sympathizers with equality and justice and serving them all without exclusionary or preferential discrimination. The second type is negative neutrality, which means refraining from supporting any party at the expense of the public interest or any other party, and not being driven by personal interests and tendencies contrary to the requirements of the public interest. This is shown by refraining from benefiting from public office and exploiting it for personal interests, and abandoning favoritism and bias for or against some.

### The Second Requirement

Impartiality has affected the employee's right to establish and membership of political parties

There is a close relationship between the political and administrative realities in the state, so it has become difficult for employees to isolate themselves from the political field. There are also attempts by the ruling and opposition political parties to take over administrative functions and stabilize their members in order to ensure their loyalty and reward them for their efforts in the previous stages of governing. Therefore, the importance of the duty of functional neutrality emerges as a means of distancing the administration and its employees from political corruption, which some define as "deviation from the specific approach of the literature of the bloc, party or political organization as a result of the sense of eternity or being the only and greatest". It also has a role in reducing the effects of politics and the parties playing in it on administrative work, although it is recognized that this is difficult as a result of the prominence of the

political aspect of the government. Neutrality works to achieve cooperation and harmony between the administration and the government, regardless of the political affiliation of the latter, especially in light of democratic systems characterized by multiparty, as well as functional neutrality leads to achieve a balance between the freedom of expression of political orientations and tendencies within the public function on the one hand, and the protection of the public interest on the other.

In general, the employee is prohibited from belonging to illegal parties such as the rest of the citizens; the fact that the parties in general have a great role in changing the existing systems of government and fueling popular feelings against them, and some of them may take democracy as a way to change the regime and destroy the state from within and return to dictatorship, as happened in the case of the German National Socialist Workers' Party, which enabled the Nazis and their leader (Adolf Hitler) to reach power in democratic elections; but they turned against democracy afterwards and built a dictatorial authority and destroyed Germany and brought it back, so we in Iraq support the constitutional text to ban the Baath Party and racist, sectarian and takfiri parties and prevent them from political work; because we see its noble goal of protecting the existing regime and banning evil from the state in all its pillars, the most important of which is the people who drained the scourges in previous eras.

As for the extent of allowing the establishment and membership of legitimate political parties for employees, it varies according to the experiences of countries, their systems and laws, as the duty of functional neutrality has multiple effects on the right of employees to establish parties and their membership, as we will see through the research and as follows :-

#### I. Impartiality affected the employee's right to establish political parties and their membership in France

It is known that the French Constitution of 1958 guaranteed multi-partyism, through its approval of the participation of political parties and organizations in democratic life, and the French legislature also allowed all employees to exercise the right to belong to all legitimate French political parties, with all their political orientations and doctrines, even communism, and considered that this does not affect the establishment and permanence of the functional association, but in return it prevented them from belonging to separatist parties and considered this a disciplinary violation.

It is also prohibited in France to differentiate and discriminate between applicants for public office according to their different opinions and orientations. The legislator did not arrange for these opinions to have any impact on their career. Article (13) of the order issued on February 4, 1959 prohibited the inclusion of any reference to the personal file of the employee for his political, philosophical or religious views and orientations. This trend was then repeated in the law of July 13, 1972 on military service, which in Article (26) prohibited referring to the political opinions of the employee in any administrative papers. The same approach is repeated in Article (18) of the law of July 13, 1983, where Article (6) of it explicitly affirmed this right for employees by saying that "Freedom of opinion is guaranteed to employees and no distinction can be made between them for reasons related to their opinions.....Etc. " As for the French Public Service Law No. (634) of 1983, it repeats and determines all that is stated in the previous constitutional and legal texts, as it stipulates that "freedom of opinion is guaranteed to employees, and no distinction can be made between them for reasons related to their political, trade union, philosophical, ethnic or gender opinions ", and stipulates that " it is prohibited to refer in the employee's file or in any administrative document to his political, trade union, religious or philosophical opinions or activities ", as Article (7) of the law states that This does not detract from the duty of loyalty to the government, and this allows the French employee to belong to parties and practice party activity effectively, so that some of them have graduated and reached leadership positions in them, and the French employee may

participate in electoral campaigns and party propaganda provided that he moderates and does not attack or incite the government. In this regard, Article (50) of the French Electoral Law establishes a general rule that applies to all employees, according to which all members of the public or local authority are prohibited from distributing election cards, disclosing their party political affiliation, or distributing leaflets to a candidate. These tasks are for the election committee, which It is composed in a way that ensures its integrity and objectivity, and employees must not exploit their powers and job descriptions in promoting candidates or insulting others, as this takes them out of my duty of neutrality and moderation, which they must adhere to during electoral propaganda, otherwise they will be subject to disciplinary punishment, and this rule was approved by the French Council of State, and its judiciary is old and stable in this regard and with multiple provisions, including the ruling of (Terrisse) on January 31, 1919, the ruling of (Bouzanquet) on January 11, 1936, and the ruling of (Magrin) on February 20, 1952, It has been established in France under these provisions the right of the administration to prevent the employee from carrying out any act that raises doubts about his neutrality or loyalty, and even his observance of the duty of presidential obedience; based on the duty of the administration to ensure the proper functioning of the public utility regularly and steadily, and the French Council of State has tried to reconcile respect for the right of expression of opinion, including political opinion, with the principle of the proper functioning of the public utility regularly and steadily, in a way that supports democracy and protects the public utility from any harm that may result from the exercise of this right, the Government Commissioner (Laurent) explained in the 1955 Guille ruling and (Gilles) is one of the local leaders of the French Communist Party In Haute Marne, he was working as an inspector at the Academy of Education, and the administration summoned him to investigate in order to ensure that he was not biased when performing his job under the influence of his party affiliation. The investigation concluded with his innocence of the charge and any other functional error. However, he was dismissed from his job on the pretext that his political views and tendencies were incompatible with the public service. Commissioner Laurent ended up ruling the illegality of the dismissal decision, based on the texts of the Declaration of the Rights of Man and the French Citizen and the preamble to the 1946 Constitution, and the precedents of the Council of State with the provisions of Tessé. of 1953 and (Burrell) of 1954, and the Commissioner stated that the employee may not be dismissed without his fault, and Commissioner Laurent distinguished between the freedom of the employee inside and outside the public facility, and allowed the administration within the facility to prevent the employee from carrying out every act that could raise doubts about his neutrality and political loyalty, and does not take into account the duty of presidential obedience. He considered that this is a functional error that requires punishment, and he also clarified that the wide scope of the views of the public employee is outside the public facility, and he restricted it to this area with the duty of reservation, which increases the degree of commitment to it exponentially with the high level of the job held by the public employee, This was preceded by the French Council of State inventing the duty of reservation in the case of the secretary of the mayor (Terrisse) in 1919, who was dismissed from his job because of his participation in one of the electoral campaigns, where the Council considered the need for the employee to reserve his political views outside the public facility, and then the provisions that proved the duty of reservation until the French legislator laid the legal basis for it in the decree regulating the judiciary issued on 22/12/1958, which obligated them to be politically neutral and prohibited them from declaring any political views contrary to this duty, and then the same was imposed on employees of the administrative judiciary represented by the French Council of State in the law issued in 1963, and the same order was repeated in the system for the military personnel issued in 1972.

The French legislator also excluded the occupants of some public positions that require full loyalty to the government from the right to practice political activity and prevented them from doing so, such as ambassadors, governors and policemen.

We believe that the experience of the French legislator, despite its sobriety and maturity, is criticized because it allows members of political parties hostile to the existing political system to assume office. These will be destructive forces that gnaw at the body of the administration from within. Therefore, this approach has not been emulated in many Western countries such as Germany, Britain, the United States and the Netherlands, which still prevents adherents of communist ideas from assuming public positions until the present time.

## II- The effects of neutrality on the employee's right to establish political parties and their membership in Iraq

Before 2003, the dictatorial regime enshrined the control of the party of power over the public service, imposed its membership on all its occupants and prohibited belonging to the rest of the parties, and this was confirmed by Article (19/1) of the Political Parties Law No. (30) of 1991 repealed, and it is known in Iraq that after the change of the system of government and the form of the state in 2003, Iraqi employees were allowed to establish new parties or the membership of those who resumed their political activities inside Iraq after the change, especially after the spread of individual freedoms and the general orientation of the democratic system and practices, in light of the legislative silence on regulating this right for state employees in the amended Law on Discipline of State and Public Sector Employees No. (14) of 1991 and other relevant laws, and when the Iraqi State Administration Law for the Transitional Period of 2004 was repealed, it guaranteed in Article (12) of it "Equality among Iraqis without discrimination on the basis of gender, opinion or belief.. Etc." As for Article (13/c), it guaranteed the freedom to form political parties and their membership to all.

We also find that the Constitution of the Republic of Iraq of 2005 in force has adopted the democratic system and multiparty and political pluralism in its preamble, which included "... through a federal, democratic, pluralistic republic..." This provision is consistent with Article (39), which sets the constitutional basis for the right to establish political parties and their membership, when it stipulates that "First, the freedom to establish associations and political parties, or join them, is guaranteed, and this is regulated by law. Second: No one may be forced to join any party, association or political body, or forced to continue to be a member.

With the promulgation of the Political Parties Law No. (36) of 2015, as amended, it was possible for all citizens to establish parties and their membership under Article (4/I), which stipulates that "citizens, men and women, have the right to participate in establishing, belonging to or withdrawing from a political party". This includes all state employees. Article (4/V) of the law also prohibits discrimination, exposure or accountability of citizens because of their party affiliation, if these parties are legitimate and legal, as the law in Article (5) stipulates that the establishment of the party must be on the basis of citizenship, in a manner that does not contradict the provisions of the Constitution and prevents the establishment of parties on the basis of intolerance, racism, takfir and terrorism. It also prohibits the promotion of the idea and approach of the banned Baath Party, and the party taking the form of military organizations. The various constitutional articles that provide for the peaceful transfer of power, and prevent the formation of militias, as well as those that prohibit the military from practicing political work, reinforce the existence of this restriction, which confirms the necessity of establishing parties without militias and military wings ().

Article (9) of the law has specified many conditions for the establishment of parties related to age, health, moral and political merit, the most important of which is that the individual "shall not be a member of the judiciary, the Integrity Commission, the Independent High Electoral Commission, the High Commission for Human Rights, members of the army, the internal security forces, the intelligence service and the security services." Those who belong to a political party shall be able to withdraw from it, or leave

the job in these bodies. The employees of these bodies are prevented from belonging to parties and not only establishing them, and all parties are prohibited from attracting them. The law determines the penalty of imprisonment for a period not exceeding one year for anyone who attracts them or practices party activity and organization within the state institutions. Article (48) of the law also criminalizes the combination of these jobs and party work, and punishes those who do so from the categories of employees specified above with a penalty of imprisonment for a period ranging from six months to a year or a fine of up to ( 5,000,000) five million dinars, or one of these two penalties, with the provision of lowering the job grade.

After the constitutional and legal permission of the multiple nationality of the Iraqi individual, the multi-national employee can belong or participate in the establishment of political parties in all countries of nationality. The question that arises on this occasion is what is the ruling if this employee belongs to ideologically contradictory parties in two different countries, and what is the ruling if he belongs in Iraq or in another country to a party that is hostile to Iraq or Islam and Iraqi nationalities and minorities or aims to harm the unity of Iraq or change its democratic system? Is it possible to revoke his Iraqi nationality if he is naturalized and not of Iraqi nationality?

To answer this, we must follow the reasons adopted by the Iraqi legislator to ban and legalize political parties, as well as follow the provisions of the Iraqi Nationality Law in this regard, as follows:

We believe that the provisions of the Constitution of the Republic of Iraq of 2005 in force and the federal Iraqi laws that regulated the work of political parties have drawn the limits of the legitimate party ideology in Iraq and adopted the following:-

1. That the party respects political pluralism, belief in the democratic system and the peaceful transfer of power, and follows democratic methods in party life inside and outside the party, and works to achieve its legitimate goals by democratic means, respecting human freedoms and rights, not confiscating and attacking them, and not resorting to violence, terrorism, threat, temptation, blackmail, and theft of state funds, other parties, unions, federations, and non-governmental organizations.
2. Not to violate the principles of the party and its goals, programs and activities with the rulers of the constitution, law, public order and public morals, and to respect the rule of law, and not to be among the founders, leaders or members of the party who are proven by a judicial ruling that it is necessary to advocate or participate in any way to promote ideas that contradict the provisions of the constitution.
3. The establishment and activity of the party shall not take the form of military or paramilitary organizations, nor may it be associated with any armed force or carry out military or paramilitary activity, and not to possess, possess and store weapons and explosives in any headquarters or site belonging to the party in violation of the law.
4. That the party does not threaten the security of the state or prejudice the territorial integrity, sovereignty and independence of the state and respect and maintain the independence of the judiciary and all independent bodies and agencies and loyalty to the system of government, which includes respecting government policies and not supporting secessionist demands or establishing relations with enemies of the state, as Germany has already punished its employees who joined the Polish Party or the Rhine Party as parties aiming to secede parts of German territory.
5. That the party does not aim to interfere in the internal affairs of other countries in a way that affects the interests of Iraq and its relations with these countries, and that it does not receive funds and gifts from external parties directly or through intermediaries, and that the Department of Parties is aware of its external activities and its relations with non-Iraqi political parties and organizations.



6. That the party is not racist or sectarian, and works to promote national unity and not to sow discord and discrimination between national components, or prejudice civil peace, and to ensure the rights of nationalities and minorities and all components of the Iraqi people, and not to establish parties with the aim of harming them or infringing their rights, and that the party respects the principle of equality and equal opportunities when assuming power or participating in it, and to maintain the neutrality of the public office and not to exploit it for partisan gains.

7. That the party should not be a terrorist, and renounce violence and terrorism, and the law has prohibited the establishment of parties on the basis of racism, intolerance, takfirism or terrorism or the promotion of the ideology and approach of the banned Baath Party, and the non-exercise of clandestine activities that violate the declared party's approach.

As for the Iraqi Nationality Law No. (26) of 2006, as amended, under Article (15), it allows the Minister of Interior to withdraw Iraqi nationality from its non-Iraqi acquirer if he undertakes or initiates a dangerous act against the security and safety of the State.

In light of this, we see that it is permissible to revoke the acquired Iraqi nationality of a foreigner in the event of violating any of the above principles, especially in the case of belonging to separatist or banned parties. These conditions are supposed to govern the work and political party theory throughout Iraq, and that Iraqi parties do not deviate from them in thought and behavior.

In light of everything that has happened to us above, we find that the employee's right to establish political parties and their membership is affected by the legal regulation that aims to maintain the duty of functional neutrality as follows:-

1. To ensure functional neutrality, the legislator may resort to depriving some employees of the right to establish political parties and their full membership, depending on the type of job and its importance, especially in jobs that require neutrality and full loyalty, as stated in the effective ethnic political parties law, which prohibited judges, military and security personnel and employees of some independent bodies from exercising this right completely.

2. Another important effect is to prevent citizens and all employees from establishing and belonging to illegal political parties, especially those that target the security and unity of the country or violate the provisions of the Constitution and the law, such as the banned Baath Party, terrorist organizations, and other formations that threaten security, and are hostile to the existing political system.

3. Preventing all employees from practicing party activity during official working hours or within state institutions, and not to violate the principle of the proper functioning of the public facility regularly and steadily, and to stay away from everything that may hinder the achievement of the public interest, and to satisfy the needs of all beneficiaries with neutrality, integrity and justice.

4. The duty of functional neutrality may also limit affiliation with parties and organizations that have positions and issues that conflict with the interests that the public facility in which the employee works is working. An employee who works in the Ministry of Women, Human Rights or the Environment will be embarrassed when belonging to a party or party that stands against these issues.

Violating the principles governing party work and violating the legal provisions governing the right of the public employee to practice party activity violates the authority of the job; it will inevitably lead to raising his disciplinary responsibility as well as his civil and criminal responsibility, if necessary.

We may respond to those who say that depriving the employee of some of his rights affects the principle of equality among citizens, and we see the opposite; that the

Constitution and the law allow the regulation and restriction of rights to protect important interests, and that the Iraqi Constitution itself prevented some categories of employees from exercising these rights during the establishment of the job association, as in the case of the multinational employee assuming high positions, because the interest of the public utility is the basis for adhering to the duty of functional neutrality. Therefore, the employee must carry out his work impartially, objectively and without raising a party or a politician.

In addition to the Political Parties Law in force in 2015, the Iraqi legislator regulates some aspects of party functional neutrality in explicit and clear texts, as well as some other laws, as in the text of Article (1) of the Independent High Electoral Commission Law No. (31) of 2019, which entrusted the management of the electoral process to the Commission as a "professional, independent and impartial" body. The legislator also stipulated that those nominated for membership of the Board of Commissioners of the aforementioned High Commission must be politically independent, and the same condition was required for membership of the Board of Commissioners of the High Commission for Human Rights under Article (8/e) of its Law No. (53 ) of 2008 (). Law No. (31) of 2019 required the employees of the Electoral Administration to be impartial in this task.

In the field of media career, the Iraqi Media Network Law No. (26) of 2015 has included the obligation of the Chairman and members of the Board of Trustees and the staff of the Network to stand at the same distance from all political parties, and serve the interests of the Iraqi people in all its spectrums, and to work independently, impartially, impartially and objectively, and to reflect the various political, philosophical, religious and scientific opinions and trends, in a comprehensive, neutral and objective manner, and to deal with all events comprehensively, impartially and objectively. On the military side, Article (74) of the Military Penal Code No. (19 ) of 2007, as amended (), punished by imprisonment for a period of (5) years every soldier found in a political meeting or affiliated with a political organization or participated in a demonstration or incited others to do so or publish political writings or delivered a political speech. The Military College System No. (1 ) of 2020 () also stipulated the individual's admission to the Military College not to any party, movement, current or political party.

We also find that the rules of conduct for state employees, the public sector and employees of the mixed sector No. (1) of 2006 obligated employees that their political obligations and activities do not affect the performance of the job duty with full impartiality and non-discrimination between citizens on the basis of gender, nationality, religion, color, political beliefs and any other criteria contrary to the law.

Because these references are insufficient, we call on the Iraqi legislator to include in the draft federal civil service law clear and specific provisions that regulate and confirm functional neutrality and indicate the limits of the right to establish political parties and their membership to the employee, because despite his status, he remains a citizen of this country who interacts and is affected by everything that takes place in it, especially since conditions have been created for this after the demise of the dictatorial regime, and the adoption of a pluralistic democratic system.

### **Conclusion and recommendations:**

After completing the study of (functional neutrality and its impact on the employee's right to establish political parties and their membership), we reached the following

First: Conclusions:

1. The importance of regulating the duty of functional neutrality in the party and political field and the need to regulate it legally by drawing borders and setting

restrictions in a manner consistent with the nature of the existing political system, and the nature, seriousness and importance of the functions assumed by the public official.

2. There is a great need to neutralize the political affiliation of the employees, remove its influence from the public service, isolate the latter from political differences and differences, spread harmony and harmony among its employees, and focus their efforts to achieve the public interest and serve everyone with equality and justice.

3. The need to protect the public employee from the arbitrariness of the administration and its presidents by excluding them from their jobs or harming them because of their affiliation or lack of party and political affiliation has become clear, which requires the removal of political considerations from the public service in the disciplinary field in particular.

4. Turning a blind eye to the impact of political considerations on the public service, and allowing these considerations to put the employee and the mercenary under pressure, will spread nepotism, nepotism and corruption in the public service, keep them away from achieving the public interest and create a large gap between the majority of the people and the ruling administrative and political class.

Secondly: Recommendation:

1. Develop legal texts that clarify the limits and indicate the restrictions that regulate the right of the public official to establish political parties and their membership in a manner consistent with the nature of the pluralistic democratic political system, and add some other functions to the categories of employees who have been prevented from exercising this right under the provisions of the Political Parties Law in force, such as diplomatic posts and the positions of advisors and assistant advisors in the State Council, undersecretaries of ministries and general managers in all state institutions.

2. Obliging employees to be free from the effects of political affiliation, not to grant privileges or services based on them, and to focus on serving and treating all beneficiaries equally and fairly without marginalization, exclusion, preference and discrimination except under the provisions of the law.

3. Work to protect independent and partisan employees (in the cases permitted by law) from targeting and arbitrariness based on their political affiliation or non-affiliation, and to impose the most severe penalties against those who exploit the public office to liquidate litigants and harm others.

4. A firm and clear criterion must be established to distinguish a professional career strike from a political strike, and to determine the trade union activity of the professional to be adopted administratively and judicially; in order to contribute to facilitating the task of the administration by punishing those who violate their functional neutrality and use trade union work and job strike for political and partisan purposes.

## References

FIRST Books: Books

1. Abi Al-Nasr Ismail bin Hammad Al-Jawhari, Al-Sahah, Taj Al-Lughah and Sahah Al-Arabiya, Revised by Dr. Mohamed Mohamed Tamer et al., Dar Al-Hadith, Cairo, 2009.
2. Dr. Ahmed Abdelghani Mohamed Abdelkader, Public Officer's Exercise of Freedoms in Positive Systems, Comparative Study, Arab Studies Center for Publishing and Distribution, First Edition, Egypt 2018.
3. Rabab Ibrahim Khalil, The Scope of Discipline in the Public Service, Al-Ani Press, Dr. i., Baghdad 2016.

4. Majd Al-Din bin Yaqoub Al-Fayrouzabadi, Al-Muheet Dictionary, Reviewed by Anas Al-Shami and Zakaria Jaber, Dar Al-Hadith, First Edition, Cairo, 2008.
5. Dr. Anwar Khalaf Al-Yahya Al-Abdullah, The Extent to which the Public Official Exercises Political Rights and Freedoms, A Comparative Study, Dar Al-Kutub wa Al-Arabiya Studies, without Edition, Egypt 2017.
6. Dr. Daoud El-Baz, The right to participate in political life, without edition, Dar Al-Fikr Al-Jami, Egypt, Alexandria 2006.
7. Dr. Abdullah Talba, Principles of Administrative Law, Al-Rawda Press, 11th Edition, Syria Damascus 2008.
8. Dr. Othman Salman Ghailan, Ethics of Public Service, without a publishing house, filing number at the House of Books and Documents in Baghdad (392) for the year 2011.
9. Dr. Osman Salman Ghailan, The Employee's Duty of Political Neutrality, Book Press, First Edition, Baghdad 2011.
10. Dr. Osman Salman Ghailan Al-Aboudi, The Public Officer's Duty of Political Neutrality and its Applications in Public Service Affairs, without Publisher, 1st Edition, Baghdad 2011.
11. Dr. Raafat Desouky, Political and Digital Freedoms for Public Officials, Legal Books House and Stat Publishing and Software House, Egypt 2010.
12. Dr. Mossadeq Adel Taleb, Explanation of the Political Parties Law No. (36) of 2015 Comparative Analytical Study, Al-Sanhouri Library, First Edition, Beirut 2016.
13. Dr. Abda Mohammed Fazaa Al-Sayadi, Career Neutrality of Policemen, A Comparative Study, Dar Al-Nahda Al-Arabiya, Dr. i., Cairo 2013.
14. Nasreddin Saadi Khalil, The Multiplicity of Disciplinary Authorities and its Effects, Dar Al-Nahda Al-Arabiya, 1st Edition, Cairo 2009.
15. Modern Oxford Dictionary, Oxford University Press, Oxford 1998, p. 500.

Second: Theses

1. Aladdin Balawahid, Principle of Management Neutrality, Master thesis submitted to Mohamed Boudiaf University in Messila, Algeria in 2019.
2. Alaa Mustafa Al-Youssef, Neutrality and its impact on the dignity of public office, Master's thesis submitted to the Faculty of Law at the Islamic University of Lebanon, Lebanon 2020.
3. Omar Haddadi and Ahmed Amiri, Employment Policy in Public Institutions, Master's thesis submitted to the Faculty of Law and Political Science at Ahmed Derayah University - Adrar, Algeria, in 2020.
4. Omar Mustafa Najm, Legal Framework for Functional neutrality , Master's thesis submitted to the Faculty of Law at the Islamic University of Lebanon, Lebanon 2021.
5. Fatima Zahra Firm, Public servant and the principle of the neutrality of the administration in Algeria, Master thesis submitted to the Faculty of Law at the University of Algiers in 2004.
6. Dr. Farhat Mohammed Al-Subki, Administrative Control and Functional Neutrality (Comparative Study), PhD thesis submitted to the Faculty of Graduate Studies at the Egyptian Police Academy, Egypt in 2002.
7. Zafer Maher Khabbaz, The employee's commitment to political neutrality between text and practice, Master thesis submitted to the Faculty of Law at the Islamic University of Lebanon, Lebanon 2021.
8. Hind Abdul Enad Al-Dulaimi, Neutrality of Public Servant in Iraq (Comparative Study), Master Thesis submitted to the Faculty of Law and Political Science at the University of Kirkuk in 2017.

Third: Published Research & Studies

1. Dr. Ismail Bouguerra, on the guarantees of achieving the principle of the neutrality of management in public facilities, a research published in the Journal of Law and Political

Science issued by Abbas Laghour University in Khenchela, Algeria, Issue (13) issued in January 2020.

2. Hussein Akla Ali Abdullah Al-Khafaji, The Principle of Functional Neutrality in the Light of the Law of Governorates Not Organized in the Region No. (21) of 2008, as amended, a high diploma research submitted to the Faculty of Law, University of Mosul, Mosul 2020.
3. Dr. Maha Bahgat Younis, The Constitutional and Legal Organization of the Foundations of Combating Corruption under the Constitution of the Republic of Iraq for the year 2005, research published in the Journal of Legal Sciences issued by the Faculty of Law, University of Baghdad, Volume (30) Number (2) Part (2) of 2015.
4. Dr. Rasha Mohammed Jaafar Al-Hashemi, The Multi-Party System and its Role in Democratic Life, research published in Al-Fateh Magazine issued by Diyal University, Issue (26) of 2006.
5. Dr. Taghreed Mohammed Qaddouri Al-Nuaimi, Legal Regulation of Delayed Employment and its Application in Iraqi Legislation, Research Published in Tikrit University Journal of Law, Volume (4) Issue (1) Part (2) of 2019.
6. Dr. Aziza Al-Sharif, The Principle of Functional neutrality, Research published in the Journal of Administrative Sciences, First Issue December 1982.
7. Ali Dohi Attafa, The Employee's Right to Belong to Political Parties, Comparative Study, Research Published in the Journal of Thesis for Legal Studies, Volume (5) Issue (3) issued in May 2020.
8. Ali Majeed Al-Oqaili, Freedom of belonging to political parties between restriction and release, published in the Political and International Journal issued by the Faculty of Political Science at Al-Mustansiriyah University in Baghdad, No. 37 and 38 issued on June 30, 2018.
9. Raed Oufi Hussein and Hussein Talal Malallah, Public Officer Neutrality in the Public Service, Research published in the Journal of Tikrit University Law, Eighth Year Volume (6) Issue (20), June 2016.
10. Dr. Youssef Fendi Shabbat, Manifestations of Political Freedom for Public Officials, Comparative Study, Research published in the Journal of Security and Law issued by the Police Academy in Dubai, United Arab Emirates, Volume (17) Issue (1), January 2009.
11. Mohammed Ibrahim Humaid and Kamal Abdullah Ahmed, The right to hold public office A comparative study, a research published in the Journal of Graduate Studies issued by the Faculty of Graduate Studies at the Sudanese Nile University, Volume (15) Issue(2) for the year 2020.
12. Mushtaq Taleb Nasser, The Scope of the Public Official's Exercise of His Right to Belong to Political Parties, Comparative Study, Research Published in the Journal of the Letter of Rights issued by the Faculty of Law, University of Karbala, Issue (2) of 2021.
13. Dr. Sarra Harith Abdul Karim Al-Shawi, The Legal System of Electoral Campaigns, Comparative Study, Research published in the Journal of Legal Sciences issued by the Faculty of Law, University of Baghdad, Volume (37) Number (2) of 2022.

#### IV. Laws & Legislations

##### A. Constitutions:

1. The 1958 Constitution of France in force.
2. The Iraqi State Administration Law for the Transitional Period of 2004 was repealed.
3. The Constitution of the Republic of Iraq of 2005 in force.

##### B. Laws:

1. French public service law (634) of 1983.
2. The Law of Discipline of State and Public Sector Employees No. (14) of 1991 as amended.
3. Iraqi Political Parties Law No. (30) of 1991 repealed.
4. Iraqi Nationality Law No. (26) of 2006 as amended.

5. Military Penal Code No. (19) of 2007 as amended.
6. The High Commission for Human Rights Law No. (53) of 2008.
7. Iraqi Media Network Law No. (26) of 2015.
8. Political Parties Law No. (36) of 2015 as amended.
9. The law prohibiting the Baath Party, entities, parties and racist and takfiri activities No. 32 of 2016 in force.
10. The Independent High Electoral Commission Law No. (31) of 2019 in force.

NS.Regulations and Instructions: Regulations

1. Code of Conduct for State Employees, the Public Sector and Employees of the Mixed Sector No. (1) of 2006.
2. Military College Regulation No. (1) of 2020.