

**The Discipline of Public Employees  
in the United Arab Emirates  
A Comparison between the  
Gulf Cooperation Council Countries  
(G.C.C.)**

Submitted by  
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To

The University of Newcastle  
as a thesis for  
The Degree of Doctor of Philosophy in Law  
in the Faculty of Law  
1998

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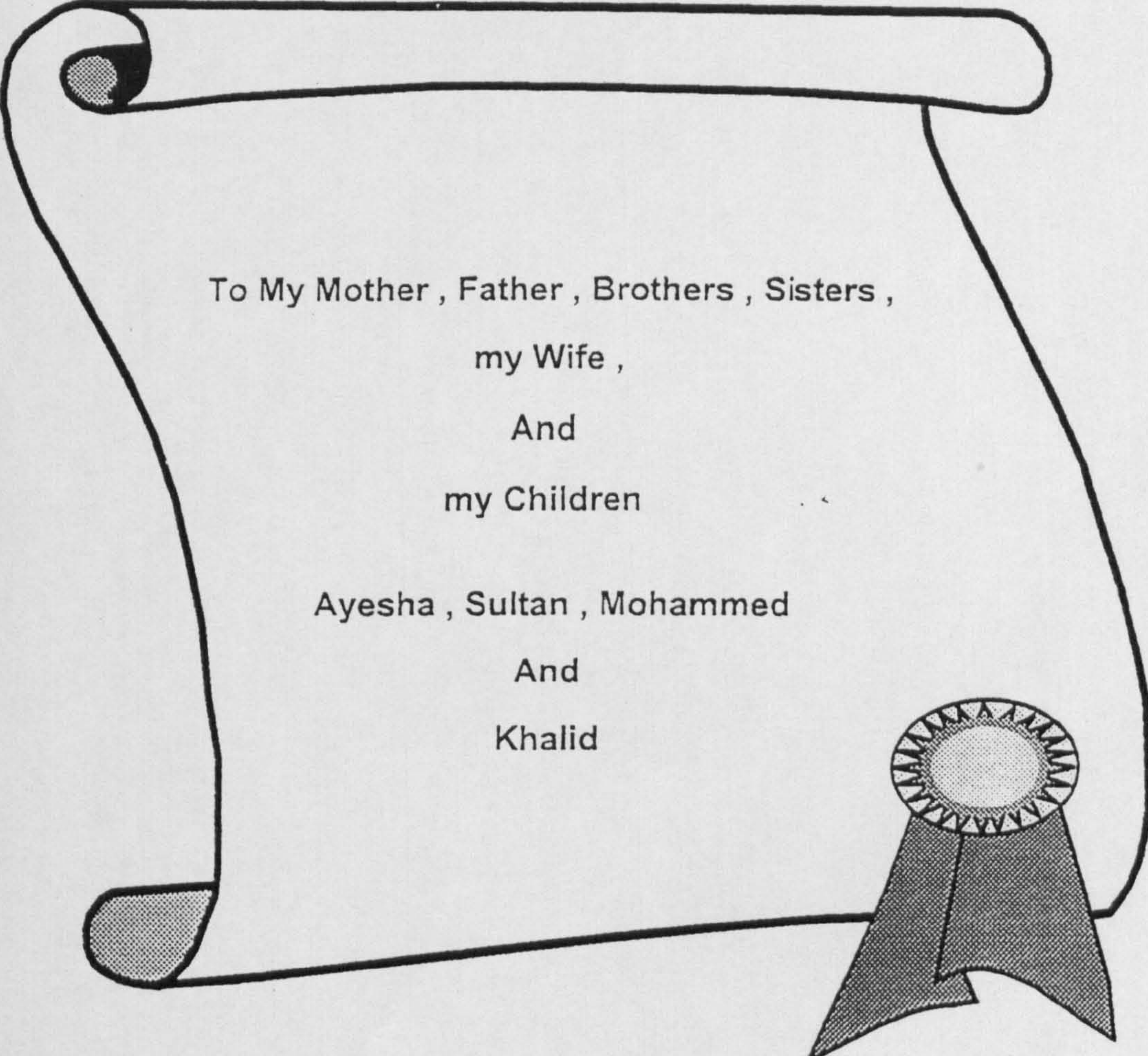
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Signed.....



*In the Name of God, Most  
Gracious, Most Merciful.*



To My Mother , Father , Brothers , Sisters ,  
my Wife ,

And  
my Children

Ayesha , Sultan , Mohammed

And  
Khalid

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## Transliteration

The brief transliteration of some Arabic letters which follows is designed both to help English readers pronounce some of the Arabic names included in the text and also to aid Arabic speakers in the accurate pronunciation of original names with which they may not be familiar. Symbols of Sounds in the Standard Classical Arabic:

### a) *The Consonants:*

Arabic		English
ء	' =	a glottal stop
ب	b =	a voiced bilabial stop
ت	t =	a voiceless dental nonemphatic stop
ث	th =	a voiceless dental fricative
ج	j =	a voiced palatal fricative
ح	h =	a voiceless pharyngeal fricative
خ	kh =	a voiceless uvular fricative
د	d =	a voiced dental non-emphatic stop
ذ	dh =	a voiced dental non-emphatic fricative
ر	r =	a voiced alveolar trill
ز	z =	a voiced denti-alveolar fricative
س	s =	a voiceless alveolar non-emphatic fricative
ش	sh =	a voiceless palatal fricative
ص	ṣ =	a voiceless alveolar emphatic fricative
ض	ḍ =	a voiced dental emphatic stop
ط	ṭ =	a voiceless dental emphatic stop
ظ	ẓ =	a voiced dental emphatic fricative
ع	' =	a voiced pharyngeal fricative
غ	gh =	a voiced uvular fricative

فائض طاب من ه و ح

f =	a voiceless labio-dental fricative
q =	a voiceless uvular stop
k =	a voiceless velar stop
l =	a voiced alveolar lateral
m =	a voiced bilabial nasal
n =	a voiced alveolar nasal
h =	a voiceless glottal fricative
w =	a voiced labio-velar semi-vowel
y =	a voiced palatal semi-vowel

### b) *The Vowels*

u =	a short close back rounded vowel
ū =	a long close back rounded vowel
a =	a short open vowel
ā =	a long open vowel
i =	a short close front unrounded vowel
ī =	a long close front unrounded vowel

**PAGE  
NUMBERING  
AS ORIGINAL**

## ABBREVIATIONS

Art.	Article
edn.	edition
e.g.	exempli gratia, for example
GCC	Gulf Co-Operation Council
ibid.	ibidem, in the same place
i.e.	id est, that is
n.d.	no date
n.p.	no place
op.cit.	opere citato, in the work cited
p.	page
pp.	pages
Prov. Const.	Provisional Constitution
UAE	United Arab Emirates
UK	United Kingdom
USA	United States of America
viz.	videlicet, namely
ccp	Code of criminal procedure

the death of the Prophet, Peace be Upon him. See also fiqh.

Ifta'a

Deliverance of fatawa, office of the Mufti.

Dirham

The U.A.E. Currency.

Al-Emir

The Ruler of an Arab Gulf State.

Hijra

Islamic Calendar.

Malik

The Founder of the Maliki School of Thought.

PBUH

(Peace Be Upon Him) is a traditional verse which should be said after mentioning the Prophet Mohammed's name.

Quran

The Holy Book of the Muslims consisting of the revelations made by God to the Prophet Mohamed, Peace be Upon him, during his Prophethood of about 23 years. The Quran lays down the fundamentals of the Islamic faith, including beliefs and all aspects of the Muslim way of life.

Qudsi

A Hadith said by God and narrated by Prophet Mohammed (PBUH).

Sharia

Refers to the divine guidance as given by the Quran and the Sunnah and embodies all aspects of the Islamic faith, including beliefs & practices.

Shurta

Police.

Sunnah

After the Quran, the sunnah is the most important

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i.e.	id est, that is
n.d.	no date
n.p.	no place
op.cit.	opere citato, in the work cited
p.	page
pp.	pages
Prov. Const.	Provisional Constitution
UAE	Unite Arab Emirates
UK	United Kingdom
USA	United States of America
viz.	videlicet, namely

## ABSTRACT

Prior to independence, there were no clear regulations regarding the discipline of public office available in the United Arab Emirates and other countries of the Gulf Co-Operation Council. However, the post-independence era has witnessed great developments in political, economic, social and legal fields. Particular attention was accorded to public office as new laws regulating public office were promulgated in which the duties and rights of public servants were defined and a certain disciplinary system evolved.

Against this background, the researcher examines the current disciplinary system in the United Arab Emirates with the purpose of pinpointing its deficiencies and limitations and proposing means for rectifying the same, as this would lead to a higher level of performance in the public service.

The present thesis, which falls into eight chapters, begins by reviewing the developments that have taken place in the country in various fields. It then examines the Islamic perspective of the public service and reviews the early beginnings of its evolution. The study then discusses the duties and responsibilities of the public servant as per the current Public Service Law. It further deals with the various aspects of disciplinary accountability including disciplinary bodies, penalties and proceedings with special reference to the said law. This theoretical

background is followed by an investigation of the actual implementation of the said law in particular those provisions pertaining to disciplinary accountability. For this purpose, a questionnaire was administered to a representative sample of 305 public servants of the United Arab Emirates. Personal interviews were also conducted by the researcher with a number of high-ranking government officials. The results of the questionnaire and interviews are then analyzed.

Some recommendations and suggestions aimed at improving the U.A.E. Civil Service regulations and practices especially in the disciplinary domain are made in the final chapter.

# CHAPTER I

## 1. INTRODUCTION

A Public Servant is viewed by people as a representative of the state, a mirror through which its entire system is reflected. This special status of the public Servant emanates from the fact that he constitutes both the state's mind and its executive instrument.

The disciplinary system is an integral part of the Public Service system; thus developments made in the Public Service have always had a direct bearing on the disciplinary system. Historically, the Public Service started as a kind of personal relationship between the ruler and some citizens selected by the ruler on grounds of trust. Such citizens enjoyed few rights and they could be dismissed whenever the ruler wished. This was the case in absolute power systems as well as in the system which was applied for a long time regarding the division of war spoils in the UAE territories which now form the UAE. A similar situation prevailed during the reign of Mohammad Ali and his successors in Egypt at the end of the last century. In such systems, there was a lack of a disciplinary procedure based on such modern notions as responsibility and accountability. The ruler who was the highest administrator was in total control. He could keep a Public Servant in his job, dismiss him or inflict a penalty on him as he wished. The Public Service was, at that time, the exception rather than the rule. The intervention of the state in the life of the community was

very limited and the Public Service was confined to such areas as defense, internal security and the judicature. Other fields of activity were run privately by individuals.

At the beginning of this century, however, there was a call for a greater intervention of the state in the affairs of the society. The functions of the state grew and spread consequently to various economic and social fields. The role of the Public Servant who was considered the backbone of the state's administrative activity, was enhanced accordingly. Attitudes towards the Public Service and Public Servants also changed. The Public Service became a duty rather than a privilege and the Public Servant was no longer a 'master' but a 'servant' of the people. Modern states have paid even greater attention to the Public Service and the Public Servant in recent times. The twentieth century may be described as the 'Century of the Public Servant' owing to the great importance attached to Public Service.

In the Arab Gulf states, an organised Public Service was a recent development. During the British rule of the region, the British Public Service system was kept intact in some Emirates, whereas in others no Public Service system was initiated. This situation continued until those Emirates achieved independence at various times during the 1960s and 1970s.

### 1.1. Aims of the Study :

This study is concerned with the disciplinary accountability of Public Servants with special reference to the Arab Gulf states. The subject deserves particular attention since a clear concept of disciplinary accountability is still lacking in most of those states. It may be noted that more than 26 years have elapsed since the



independence of those states yet Public Servants in such states still feel rather insecure as their duties and rights have not been clearly defined. The problem has been aggravated by the fact that no administrative tribunals are available in those states. It is worth mentioning that, to the knowledge of the present researcher, no systematic study of disciplinary accountability in the UAE Public Service system, has been made as yet. In dealing with the subject, the researcher draws on his experience as Prosecuting Attorney in the UAE. Such experience made the researcher more aware of the great need for securing the rights of a Public Servant and his stability so that he can devote all his energies to work.

The researcher will make a comparative study of the Public Service systems in the Arab Gulf states. The results of the study will enable the researcher to pinpoint shortcomings and limitations in the Public Service systems of the Gulf states and propose ways for their development. In his discussion of the implementation of the UAE Public Service Law and in particular those provisions that pertain to disciplinary accountability, the researcher will consider actual disciplinary cases and examine the decisions taken by the Disciplinary Council regarding those cases. In addition, the researcher will assess the UAE Public Servants' opinions as regards the Public Service Law, in particular those provisions pertaining to their rights and duties. A special questionnaire has been designed for this purpose. Some recommendations based on the findings of the study will be put forward to the highest authorities in the UAE. These recommendations, it is hoped, will contribute towards achieving greater security and stability for Public Servants in the UAE.

## 1.2 Assumptions of the Research :

- A. The UAE Public Service system draws heavily on other Arab systems without considering the specific characteristics of the Gulf region and the UAE society.
- B. Many Public Servants in government utilities in the UAE were not well-acquainted with the Public Service regulations and they were therefore rather ignorant of their duties and rights.
- C. Although no administrative tribunals exist in the UAE, Public Servants have tended to resort to the courts, thus reflecting a greater awareness of their duties and rights.
- D. Twenty-five years have elapsed since the promulgation of the UAE Public Service Law, yet Public Servants are still striving to achieve a greater security of their rights.

## 1.3 Organization of the Thesis :

In the light of the aims specified above, the present study has been divided into seven chapters.

In the introductory chapter, the main assumptions of the study are presented and its aims are defined. This is followed by an outline of the economic, social and legal developments that have taken place in the UAE over the past few decades. A brief description of the administrative entities that emerged prior to and after the formation of the UAE Federation is then made. The chapter ends with a close look at the concept of "Public Service" in Islam and discusses the duties and responsibilities of the public servant in the light of Islamic Sharia.

Chapter II discusses the concept of 'Public Servant' in comparative jurisprudence as well as in the public service laws of the Gulf Cooperation Council states. It also examines the duties of Public Servants under those laws. The civil and criminal responsibilities of the Public Servant are further elucidated in this chapter.

Chapter III deals with the types and components of administrative wrongdoing calling for disciplinary action and defines their scope under the legislation of the GCC states.

Chapter IV is concerned with the causes that may impede disciplinary accountability of a public servant.

Chapter V deals with the legal base of the disciplinary authority in the light of the relationship that links the Public Servant with the state as defined in the civil service laws of the GCC countries.

Chapter VI examines the legal organisation of the disciplinary authorities in the UAE and other G.C.C. countries. It then focuses on the formation of the disciplinary courts in the UAE Civil Service Law as well as the proceedings followed in the disciplinary cases.

Chapter VII discusses the questionnaire designed by the researcher and administered to a sample of 305 public servants working in federal ministries and local departments in the UAE. The main purpose of the questionnaire was to assess the Public Servants' opinions regarding their rights and duties as stipulated in the Public Service Law as well as the manner in which provisions pertaining to disciplinary accountability have been implemented in actual reality. The results of the questionnaire are then analyzed. Finally, a summary of the findings of the study is made and some recommendations and suggestions for future changes in the UAE Public Service system are proposed.

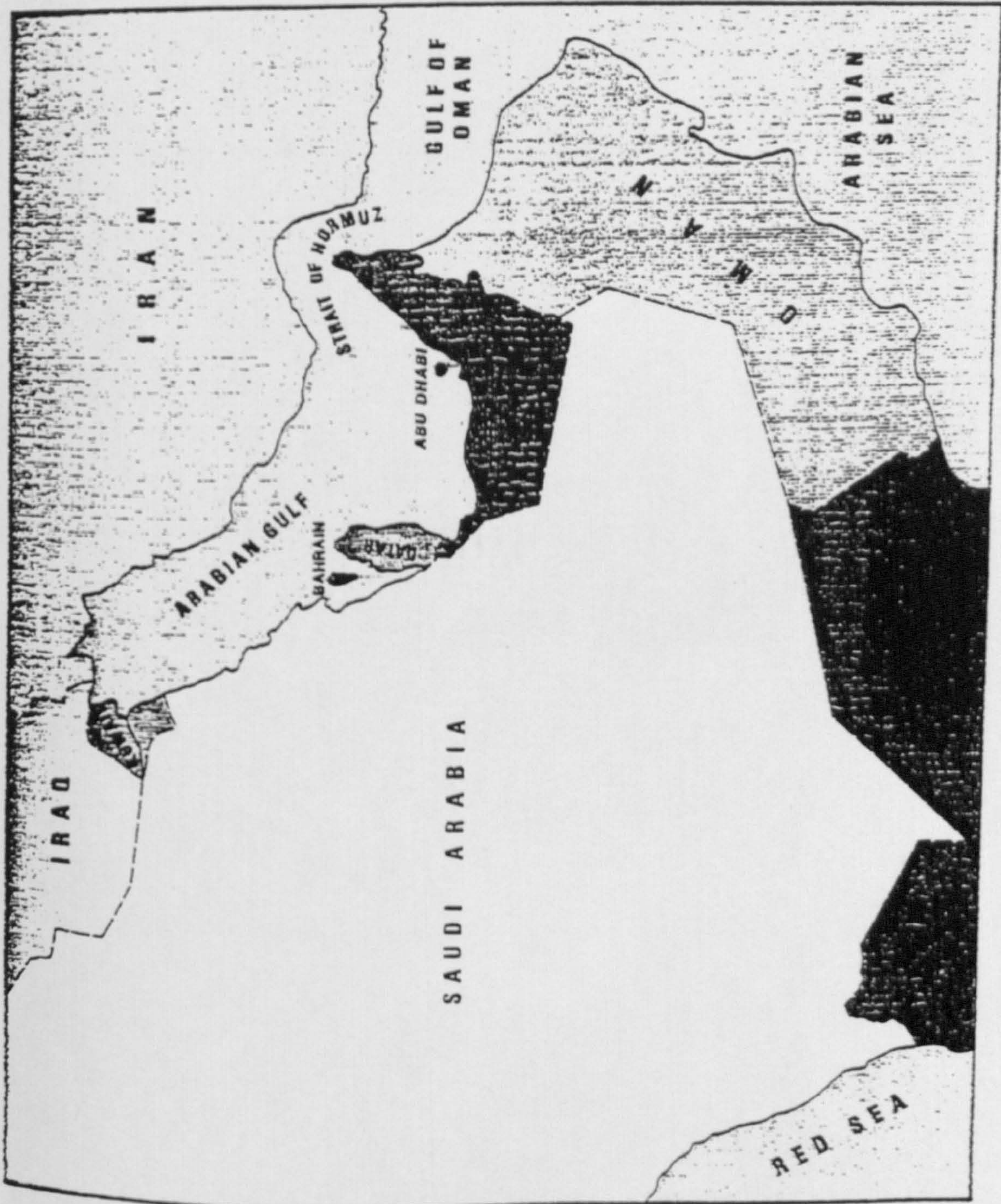
#### **1.4 The United Arab Emirates in Outline**

##### **1.4.1 Location and Area :**

The UAE is located on the south-eastern coastline of the Arabian Peninsula on the Arabian Gulf between latitudes 22 and 26 north and longitude 50 and 56 east. It also has a small coastline on the western shores of the Gulf of Oman, where the Emirate of Al-Fujairah is situated. The Emirates have 700 kilometers of coastline, 100 kilometers of which lie on the Gulf of Oman, bordered by Saudi Arabia and Qatar to the west, by Saudi Arabia and Oman to the south, by the Arabian Gulf to the north and northwest and to the east by the Gulf of Oman and Oman. Its location lies at the heart of the Arabian Gulf.(1) Therefore the UAE occupies an important strategic location.

# MAP OF THE GULF ARAB STATES

MAP  
Figure 1.1



The country, with the exception of the islands, covers an area of 77,000 square kilometers, so from this point it ranks as the third largest after Saudi Arabia and Oman within the GCC.(2)

The seven Emirates are not the same in size: from largest to smallest they are Abu Dhabi, Dubai, Sharjah, Ras Al-Khaimah, Al-Fujairah, Umm Al-Quwain and Ajman.(3)

The city of Abu Dhabi is an island. It is the capital of the Emirate of Abu Dhabi and the temporary capital of the UAE. 70% of its total area is covered with desert while the rest is fertile land and mountains. The city of Al-Ain belongs to Abu Dhabi; the only university of the UAE is located in this city.

Dubai among the UAE is considered as the biggest center for trade; it is called the market of the Arabian Gulf or the market of the Middle East.(4)

Sharjah is located toward the middle of the UAE. This Emirate, bearing in mind its wealth and comparing it to the other Emirates, is the most developed.

Ras Al-Khaimah owns the most fertile land, so its population is heavily dependent on agricultural activities. It provides the UAE with its products.

Al-Fujairah is the only Emirate which has not got any access to the Arabian Gulf because of its entire location on the Gulf of Oman. This Emirate can be described as the mountainous Emirate.

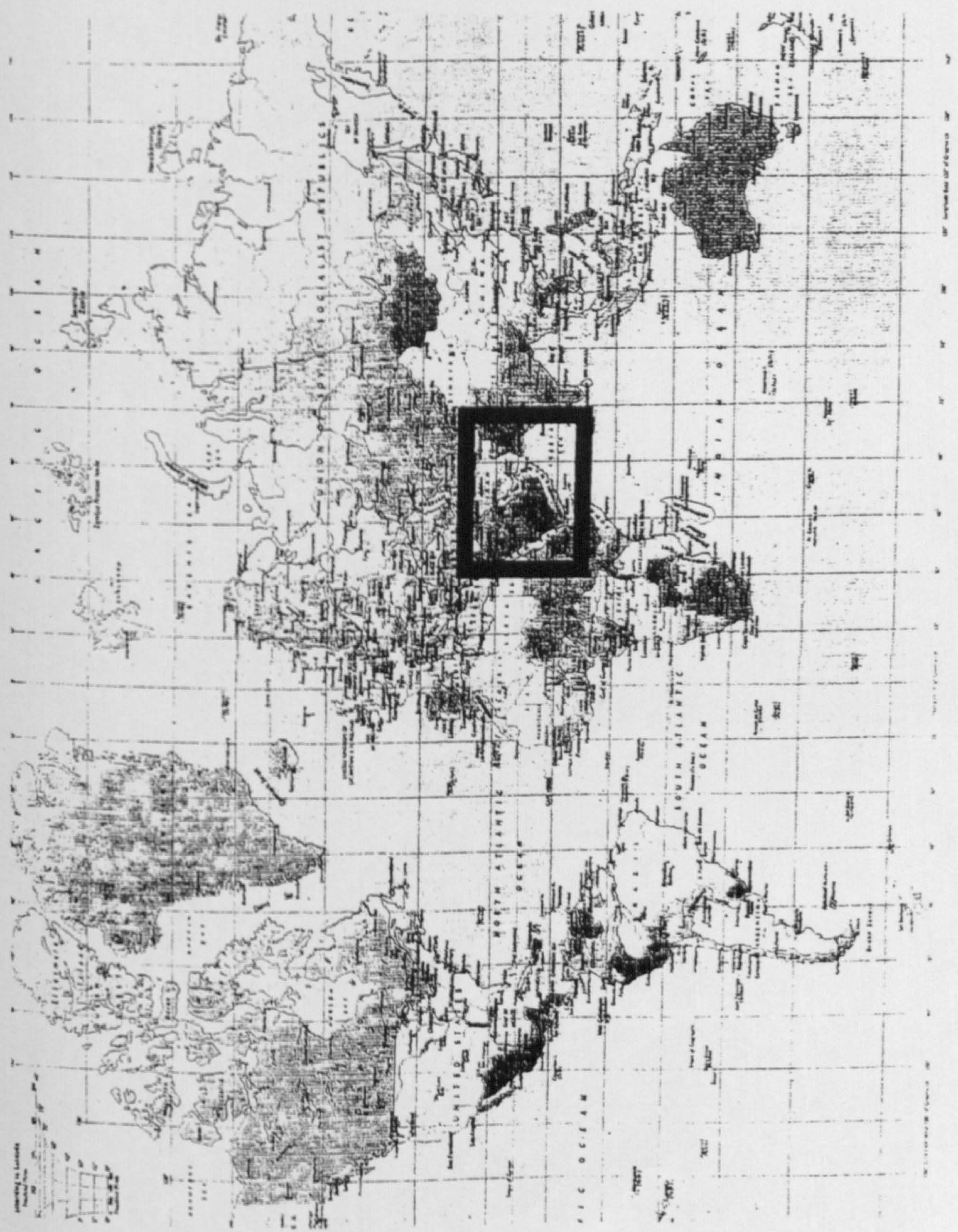
In Umm Al-Quwain, fishing is the main occupation of its inhabitants. It is believed that natural gas has recently been discovered there.

Ajman is the smallest and poorest Emirate in the UAE.

#### 1.4.2 Climate :

The UAE is located in the Arabian Gulf so it shares nearly the same climate with the other Arab countries. Summer in the UAE is long, hot and humid. Temperatures during the summer can reach 49C (120F). The winter is short and compared to European countries may be considered as summer. Its temperatures, which reach 27.7C, are pleasant with a minimal rainfall. December and January are the months with the most pleasant temperatures and most rain falls in the winter months from November to April. Winter sunshine averages eight hours per day and eleven hours a day in the summer. The area also witnesses the spread of fog especially in February, June, as well as September. The geographical position makes it subject to frequent dust storms.(5)

# LOCATION OF THE GULF ARAB STATES IN THE WORLD





**Table No. 1**

**The Land Area of the UAE (Inc. Islands)**

<b>Emirate</b>	<b>Miles</b>	<b>Kilometers</b>	<b>%</b>
Abu Dhabi	28,000	73,000	87.6
Dubai	1,500	3,900	4.6
Sharjah	1,000	2,600	3.1
Ras Al-Khaimah	650	1,700	2.0
Fujairah	450	1,200	1.4
Umm Al-Quwain	300	800	0.9
Ajman	150	400	0.4
<b>Total</b>	<b>32,050</b>	<b>83,000</b>	<b>100%</b>

Source: Malcolm, C.P. The United Arab Emirates: A Venture in Unity. Croom Helm, London, 1986, p.6.

### 1.4.3 Population :

Prior to the discovery of oil in the region, the population was 70,000.(6) The discovery of oil encouraged immigration to the country which nowadays has a population of around two million.

The last census showed that the population in December 1985 was 1,622,464 persons, distributed as follows: Abu Dhabi 670,125, Dubai 419,104, Sharjah 268,723, Ras Al-Khaimah 116,470, Ajman 64,388, Al-Fujairah 54,425, Umm Al-Quwain 29,299 .(7) In December 1993, the UAE population was estimated at 2,083,100 persons.(8)

UAE citizens comprise less than twenty percent of the population because foreigners make up between 80 to 85 percent.(9) Having said that, most foreigners are male and workers. This is due to the fact that most foreigners leave their families in their home countries to have a better opportunity to earn money. Although the cost of living in the UAE is high and the workers' salaries are low, foreigners have been attracted by the opportunities offered due to the rapid development of the country.

Abu Dhabi and Dubai posse most of the UAE population. Among the GCC states, Saudi Arabia ranks first, followed by Kuwait, then the UAE, Oman and Bahrain.(10).

**Table No. 2**

**An Estimation of the Population of the UAE in 1998**

<b>Emirate</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Abu Dhabi	744,000	327,000	1,071,000
Dubai	547,000	241,000	788,000
Sharjah	294,000	170,000	464,000
Ajman	89,000	60,000	149,000
Umm Al-Quwain	24,000	17,000	41,000
Ras Al Khaimah	93,000	65,000	158,000
Fujairah	53,000	35,000	88,000
<b>Total</b>	<b>1,844,000</b>	<b>915,000</b>	<b>2,759,000</b>

Source: Ministry of Planning Estimates 1998.P.11

**1.4.4 Political Development :**

On the second of December 1971, a new nation was born, the United Arab Emirates (UAE). The country is a federation comprising seven emirates. From west to east they are: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Quwain, Ras Al-Khaimah and Al-Fujairah, each being independent; they were formerly in a treaty relationship with the United Kingdom. From the beginning of the 19<sup>th</sup> century, the area as whole was important to the British in their strategy for the defence of India. The British

government treated each Emirate as individual. Prior to federation, these Emirates were called Seven Shaikhdoms because each Emirate was governed by a Shaikh (a Shaikh is the chief of a tribe), or Trucial States, for the reason that they were bound by treaties with Britain for their defence and foreign affairs, or the Omani Coastal Emirates, since they were located on the Oman coast.(11)

During the life of prophet Mohammad, the Gulf region embraced the religion of the Islam.(12)

In the sixteenth century, the Portuguese invaded the region and occupied several islands and a number of areas. The Portuguese occupation was bitterly resisted, so they left the whole region open to other foreign powers who vied with one another for possession of the resources of this part of the world. Chief among them were Holland, Britain and France, whose trade rivalries degenerated into conflicts of military and strategic interest. Eventually the British prevailed, and established a privileged relationship with the Emirates of the region individually; these Emirates later become known as the Trucial States.(13)

The seven Emirates became independent on December 1, 1971.(14) One day later, six of the emirates agreed to form a federation called the United Arab Emirates (UAE); Ras Al-Khaimah joined the union two months after it was formed (February 10, 1972).(15) It is worth noting that the British government indicated its intention of withdrawing on January 16, 1968 when the Minister of State visited the seven Emirates, Iran, Kuwait and Saudi Arabia, stating that Britain would withdraw before the end of 1971.(16)

In 1968, the seven Emirates, along with Bahrain and Qatar signed an agreement in principle to form a "Federation of Arab Emirates" but this federation did not last long. In 1971 Bahrain and Qatar decided on separate independent statehood.(17)

The Trucial States existed for a hundred and fifty years having a special relationship with Britain (1820-1971). During this period several treaties were signed between the British government and every ruler of each Emirate independently. Although their rulers retained full control over all internal affairs, the spokesman for the British government always referred to the Emirates as the "Independent State under British Protection", but the treaties which were signed did not show complete independence for the Emirates.(18) The British government hoped these treaties would prevent other countries laying claim to authority over the Emirates. The Emirates did not have enough power to protect themselves, so Britain provided military policing for that, and also to stop attacks on her ships, i.e. to keep peace in the Gulf.(19)

Subsequent to the establishment of the UAE, the ruler of Abu Dhabi was elected as the first president by the Supreme Council, which consisted of the seven rulers.. He was to hold this position for a period of five years, to be re-elected as often as the Supreme Council wished.(20)

After independence, the UAE on December 6, 1971 joined the Arab League of States, and three days later joined the United Nations Organization. On May 25, 1981

the Gulf States (Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, UAE) signed an agreement to become members of the Gulf Cooperation Council (GCC).

According to the UAE Provisional Constitution, the UAE is a federation headed by a president and endowed with three main state organs, the Supreme Council, the National Council and the Council of Ministers or Cabinet. The highest legislative power in the UAE is the Supreme Council whose members are the seven rulers, each member of the Supreme Council having a right of one vote in every meeting. This body elects among its members the President and the Vice President, who serve for five years in renewable terms. The President appoints the Prime Minister, and the President, with the Prime Minister, appoints the Ministers or Cabinet. The Supreme Council designs and sets the general policy at internal and external levels; these decisions must be agreed by the majority of members in order to be passed. Abu Dhabi and Dubai have the right of veto. The Federal National Council is also an important constitutional body whose members are elected by each Emirate. The UAE Provisional Constitution states that each Emirate is entirely free to select from its nationals its representatives for the Federal National Council in whatever fashion it chooses. There are 40 members of the Council, (Abu Dhabi 8, Dubai 8, Sharjah 6, Ras Al-Khaimah 6, Ajman 4, Umm Al Quwain 4 and Al-Fujairah 4).

The President of the UAE, with the approval of the Federal Supreme Council, can dissolve the Federal National Council by decree.(21)

Abu Dhabi is the temporary capital which, along with Dubai, is considered the biggest and richest of the Emirates because of the quantities of crude oil produced and the corresponding increase in business activity.

Islam is the official religion in the UAE. It is also a main source of legislation and the official language is Arabic.(22) Therefore most of the legislation is based on Islamic law. All laws are published in Arabic and the decisions by courts are issued in Arabic.(23) It should be borne in mind that although the official language is Arabic, expatriates use different languages: English, Urdu and Farsi are widely spoken but Arabic and English are mostly used in business and commerce.

The Provisional Constitution granted complete rights to every Emirate over its region and its resources, while every one of them has to pay the Federal Government its share with regard to its resources.

Although every Emirate has the right to legislate for itself, they are bound to collaborate on statutes for the purpose of unifying them.(24) On the other hand, the Federal Legislative Authority is directed to publish the Federal Law with all deliberate speed to replace the local laws, particularly those in conflict with the Constitution, and whenever any local law conflicts with Federal Law, the latter is implemented.(25) Article 121 of the Provisional Constitution has stated that there are some important areas of codification which do not allow local government the exclusive legislative authority; intellectual property is one of these rights.(26)

The monetary unit of the UAE is the "Dirham" (DH). Conversion rates are always maintained at c: US\$ 1.00 = DH 3.67, since the Dirham is tied to the US Dollar.

#### 1.4.5 **Economic Development :**

Oil is the mainstay of the economy in the UAE. Before to this development, trade was very poor with seafaring and minor agriculture the main occupations of the UAE inhabitants, because the country is characterized for the most part by a highly arid and semi-desert climate.

After oil, trade was and still is the important source of livelihood for the UAE.

All the Emirates have the facility of developed ports, which ease the procedure of the import and export of goods; this has made them stations for transit goods to neighbouring countries.

The UAE's position and status as a major oil producer give the federation special importance in the region; it is located midway between the producing markets and the consuming nations along today's international trade routes.

The use of oil revenue has permitted the stimulation of other sectors of the economy, namely industry and agriculture.

The UAE is the second largest consumption market in the Gulf after Saudi Arabia.(27)



The UAE depends heavily on imports for its development needs. The spending ratio varies from one Emirate to another. Abu Dhabi is the UAE's biggest oil producer, and Dubai, Sharjah, and Ras Al-Khaimah also produce oil. These Emirates retain greater control over their separate economies, while Al-Fujairah, Umm Al-Quwain and Ajman have no oil income and rely on federal allocation; without federal spending and with the lack of any oil income and other sources, it would not be possible nowadays for them to operate their different sectors.

The difference in development in the Emirates shows that the UAE has not united economically. "The UAE economy is a fragmented economy. Each emirate has the right to have full control over its own natural resources and national wealth and the formation of its own economic policies."(28)

Economically Abu Dhabi and Dubai lead the UAE; Abu Dhabi is the richer but Dubai is the more experienced in trade and commercial activity, with low tariffs and an absence of restrictions attracting traders to Dubai for many years. By virtue of their large population and resources, they are the dominant Emirates. Dubai being considered the major conventional centre in the Middle East and western companies regarding it as their "Shop Window" in the Arab world.(29)

The UAE as a whole encourages business: the absence of income tax laws for corporations or individuals and other facilities which are granted in Federal Law No. 1 of 1979 (reduced cost for land use and building rental, supply of electricity and water and exemption from cost duties), has given rise to business activities. The

considerable liberal environment, the pro-business policy of the UAE government and advanced communications ensure it as the ideal place to do business in the world.

With regard to agriculture, despite the nature of the land, most of which is covered with desert, the federal government does not hesitate in encouraging the nationals by giving them loans, free land, and free instruction. In return, it buys agricultural products from them at an encouraging price. For these reasons, agriculture in the UAE has shown a remarkable development compared to pre-independence days.

To sum up, it can be said that the UAE in the two decades since its independence has witnessed a great development as one of the worlds' fastest-growing states. However, this development, has resulted in there being far more foreigners than nationals which may create considerable economic, social and political problems.

#### **1.4.6 Development of the UAE Legal System :**

Until the beginning of the nineteenth century, when the British government gained power over the region, the legal system was based on the traditions of the desert, sea and custom. However, the society was small and the ruler acted as a judge in solving disputes between people.(30)

Bearing in mind that Shari'a judges voluntarily practiced judgments between people in their homes, these judges were recognized by the Rulers and the Rulers often used to send people who had disputes to them. It is worth mentioning that Saudi Arabia, which was the wealthiest country in the region, helped the Emirates in this sphere, either by sending Shari'a judges or by paying salaries for people to be appointed Shari'a judges in these Emirates.

Once the British had control over the region, two types of court appeared:

- (1) The Ruler's courts, which used to base their decisions on Shari'a law in accordance with custom, and other legislation which were issued by decree from the Ruler. These courts only dealt with Muslim cases i.e. where both parties were Muslims.
- (2) British courts, which were administered by political agents and dealt with all types of cases where at least one party was foreign (British or a non-Muslim subject); these courts formed their decisions on general principles, customs, and British law and order.(31)

From 1966, some of the Emirates started establishing national and local courts but they did not have a written law; their judges used to be citizens of one of the Arab countries, who had studied law at a university. They adjudicated in cases which came before them according to their understanding of General Law and what they had studied. Therefore, in the absence of national law and with the existence of a multifaceted legal system, the judges who were from different countries used to make laws relying on different jurisdictions; so it came about that the duty of the judges

was to create laws. The courts and the judges continued to function within both national and British traditions of justice until independence in 1971.(32)

Until 1997 the UAE had a Provisional Constitution. It was renewed four times: each five years from the second of December 1971. The Provisional Constitution stated that Shari'a "Islamic Law" is a principal source of legislation.(33) The permanent Constitution was introduced on ( 2<sup>nd</sup> of December 1996 ).

It has set up a Federal Supreme Court, which is the constitutional court in the Union as well as the ultimate appellate court on questions of federal legislation. "This court is a constitutional court comparable to the *Bundesverfassungsgericht* of the Federal Republic of Germany ".(34)

Federal Law No.6 of 1978 set up the Federal courts. It states their sources of law in Art.8: "The Federal courts shall apply the provisions of the Shari'a 'Islamic Law' Union laws, and the other local laws in force, just as they shall apply those rules of custom and general legal principles which do not conflict with the provisions of the Shari'a ".

By issuing Federal Law No.6 of 1978, most Emirates gradually integrated their national courts to become federal, the exceptions being Dubai and Ras Al-Khaimah who kept their national courts intact. All Emirates, however, implemented their national laws beside the federal laws in their courts.

After the Union Law No.17 of 1978 was issued, it procured the chance of supervision for courts to interpret the law and base their decisions on Union law and not according to the judge's understanding of General Law; so the judicial system changed from setting up to unifying legal principles.(35)

Since legislating federal law in its different aspects requires considerable time, the Provisional Constitution granted the local government in each Emirate (Art.149 ) the power to legislate in the area listed in Art.121, provided that such legislation does not violate Art.151. Art.151 also stipulates that the provisions of the Federal Constitution are superior to the Constitution of the individual Emirates and that federal legislation supersedes the laws of the Emirates. "The provisions of this Constitution shall prevail over the Constitution of the member Emirates of the Union and the federal laws which are issued in accordance with the provisions of this Constitution shall have priority over the legislation, regulations and decisions issued by the authorities of the Emirates. In case of conflict, that part of the inferior legislation which is inconsistent with the superior legislation shall be rendered null and void to the extent that removes the inconsistency. In case of dispute, the matter shall be referred to the Supreme Court for its ruling ".(36) At the same time, Art.150 directed the federal legislative authority to publish the Federal Law with all deliberate speed to replace the local laws, particularly those in conflict with the Constitution. The Emirate of Ras Al-Khaimah seized this opportunity and enacted its own trademarks statute in 1974, but it restricted its application to its own territory.(37)

The Union legislator provides that all valid laws in each Emirate remain in force unless modified or replaced by or under the Federal Constitution.(38)

There are two types of courts which exist in every Emirate i.e. Shari'a and civil courts, both of which may deal with criminal or civil cases. Shari'a courts apply Islamic Law, Federal laws and the statutes of the Emirates in which they are located, while the civil courts apply statutes and in the absence of statutes are required to apply principles of justice, equity, good conscience and the general rules of justice. They have to orient themselves to Islamic Jurisprudence in addition to local custom and public order or public morals and natural law.(39) The competence of each court varies in each Emirate; in some Emirates the Rulers have the authority to assign a dispute to the civil or Shari'a court while in others the Chief Justice has this authority. This situation will continue until the enactment of a federal judicial code, the codes of procedures for the civil courts and criminal courts which determine the competence of each court. In March 1992 the Code of Procedure for the civil courts was issued, and other draft laws are under review, which hopefully will take the judicial system some way forward.

Until 1978 cases were not appealable, but since then, once the civil courts in Abu Dhabi, Sharjah, Ajman, and later Umm Al-Quwain had become federal, their decisions at the trial and appellate levels have been appealable i.e. the trial to appeal court and the latter to the Federal Supreme Court.(40)

Dubai and Ras Al-Khaimah have their own appellate courts. Recently cases in these two Emirates became appealable before Supreme Courts (high courts or third courts), while before that, the Rulers in each Emirate were in charge of confirming the judgment or returning it to the trial court. The situation in Ras Al-Khaimah has

remained as it was, while Dubai has established its own Supreme Court .The law establishing this court was issued on February 6, 1988 and came into effect on April 15, 1988.(41)

The UAE has not yet completed its legal system. The reasons for not having an integrated and fully consistent legal system are that, firstly the UAE, compared to other countries, has only recently been established; secondly, its social structure slows down legislation since its inhabitants have tribal customs and it is difficult in a short time to change the law from individual laws in each Emirate based on tribal custom and Shari`a law to federal law. In addition to that, the desire of the individual Emirates to preserve their separate identities and prerogatives has prevented full federal integration. However, the Provisional Constitution has stated that by enacting any federal law, all courts, either federal or local, are obliged to implement the federal law, and if any local law overlaps with a federal law, the latter must be implemented. Furthermore, the UAE Provisional Constitution has ordered all Emirates to work together in harmonizing their statutes to different extents for the purpose of unifying them.(42)

The legal system in the UAE is a civil, criminal and Islamic law system. The Federal Supreme Court decisions are considered as establishing principles, so the judges must not disobey these decisions, while decisions of other courts are treated as a model or guide to assist the judges to reach their judgments.

Since the establishment of the UAE in 1971, the federal government has been working very hard to complete the legislation system. It enacted some legislations while others are in progress.

Examples of legislation which have been published are: the Regulation of Industry and Industrial Affairs ( Federal Law No.1, 1979); the Establishment of a Central Bank and Banking (Federal Law No.1, 1980); Labour Affairs (Federal Law No.8, 1980) Commercial Agency Business (Federal Law No.18, 1981); Maritime Law (Federal Law No.26, 1981); Regulation of Insurance Business (Federal Law No.9, 1984); Civil Transactions Code (Federal Law No.5, 1985); Penal Code (Federal Law No.3, 1987); Trade Mark Law (Federal Law No.37, 1992); Protection of Intellectual Works and Copyright Law (Federal Law No.40, 1992); Patent, Design and Industrial Design Law (Federal Law No.44, 1992) and Commercial Transactions Code (Federal Law No.18. 1993). In addition to other federal laws, 350 laws have been published.(43)

To conclude, it can be said that the legal system of the UAE was, in the first instance, very simple because the society was small, and the pattern of life was simple; secondly, British order and law played an important role in filling the gaps in the local legislative system; thirdly, Shari'a law was and still is the major source of legislation and most laws are based on Islamic law; fourthly, in the absence of federal law and due to the existence of a multifaceted legal system the judges who were from different countries used to create laws relying on different jurisdictions.



## 1.5 The Rise of the Administrative Entities prior to the

### Formation of the UAE Federation :

In order to present a clear picture of the entities that had existed prior to the formation of the Federation in 1971, it is important to present a brief description of the set-ups that had existed in each of these Emirates until the Federation came into existence.

#### Abu Dhabi:

Until 1966, a traditional tribal system had existed in the Emirate, whereby the ruler was the absolute authority and the government was entirely his lone privilege. The Emiri court ran all the affairs then.(44) This meant that there existed at the time no modern form of government.(45)

However, the signs for establishing the nucleus of such institutions were promising when the plans to form the Municipality came into existence in 1962, although no further developments to this institution took place. In 1969, the Al-Ain Municipality came into existence.

The government entities started to form in Abu Dhabi when Sheikh Zayed Bin Sultan Al-Nahyan took over as ruler in 1966. These institutions started to develop and a number of specialised councils were then founded among which were the Abu Dhabi Investment Authority and the Planning Board. Despite those developments, legislation matters remained as they were, as the ruler continued to exercise the

enforcement of laws and decrees, except for what started to become ad hoc laws by the Sheikhs of the ruling family who started to head certain departments.(46)

Sharab states that “as soon as Sheikh Zayed succeeded as ruler in 1966, a revolution in almost every aspect of administration took place in the Emirate. This caused an immediate increase in government employees from 2000 to 15,000.”(47)

### **Dubai:**

The administrative set-up in Dubai was no different from that of Abu Dhabi. The ruler, again, was the head to whom all cases amongst tribes were referred for resolution.(48) However, the central location of Dubai amongst all Emirates made it more of a commercial centre than others. Administrative and institutional entities were therefore formed but remained under the control of the ruler who also enforced laws and decrees and made decisions.(49)

The ruler had a number of advisors despite the existence of a proper Council of Ministers.(50)

In 1961, the decree to establish a municipality was issued, and an advisor was brought for this purpose to supervise the number of employees which rose from 30 to 120.(51) A Chamber of Commerce had already existed since 1957 in Dubai.(52)

### **Sharjah:**

The administrative body in Sharjah also falls under the authority of the ruler and so does the executive body. The administrative entities had started in Sharjah earlier than in other places as the municipality came into existence in 1927, with a small number of labourers, foremen and an administrative assistant.(53) Sharjah also witnessed the rise of a number of institutions the heads of which reported directly to the ruler, with an executive council supervising all of them.(54)

### **Ajman:**

In Ajman, the ruler was the head of all institutions in the Emirate and he was the supreme authority, with two bodies assisting and advising him, the Emiri Court and the Legal Advisor's Office.

The way of governing in the Emirate of Ajman was very simple: the ruler appointed a number of heads of departments and these used to report to him.(55)

The Ajman Municipality was also founded in 1868 by an Emiri decree and the Municipality Council was formed of 7 members, according to the decree, or any other number as decreed by the Emir.(56)

### **Ras Al-Khaimah:**

The situation in Ras Al-Khaimah was no different from other Emirate: the ruler was in total control of every authority.

The Municipality of Ras Al-Khaimah came into existence in 1958 when the number of employees was 20 persons. The work of the municipality started by issuing a number of regulations, and was later on decreed to be a legal entity in 1969. The first municipality was formed of 10 persons and was run in a primitive manner with a limited number of workers.(57) A number of departments(58) were also founded in the Emirate, under the chairmanship of the supreme authority of the ruler.(59) The heads of the departments were appointed by a similar Emiri decree, but the duties were regulated by a decree of the crown-prince.(60)

### **Umm Al Quwain:**

The ruler in the Emirate was in total control of every authority. The head of every institution was appointed by the ruler and a report regarding each department was directly passed to the ruler by its head. Two special bodies, namely the Ruler Department and Legal Adviser's Office assisted the ruler. The Ruler Department was in charge of drawing the public policy for the Emirate, i.e. the foreign affairs and controlling the administration of the various departments. (61) The first municipality was established in Umm Al Quwain in 1968.(62)

Therefore it can be said that the ruler was the supreme authority who was on the apex of a pyramid ruling and administering the Emirate and the way of governing the Emirate was simple.(63)

### **Fujairah:**

As the ruler was the supreme authority in ruling and administering the Emirate, it seems that the Emirate of Fujairah was governed like the other Emirates and there were no complications in the way of governing.(64)

The first administrative body was founded in 1968, when the administrative entities were formed. These were chaired by appointees from the ruler. The appointees were required to report directly to the ruler of their departments.(65)

The Municipality of Fujairah was set up informally in 1967 with one employee. In 1968, its employees had increased to four and then the Emiri Decree formed the first municipality council comprising sixteen members who were chosen by the ruler.(66) At the same time, a separate municipality was formed for the city of Deba.(67)

## **1.6 The Emergence of Post - 1971 Administrative Entities and the Birth of the UAE Federation**

The Rulers of the Emirates decreed, on 18<sup>th</sup> July, 1971, the birth of the federation comprising the emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-

Quwain, and Fujarah. The emirate of Ras Al-Khaimah joined later, around 10<sup>th</sup> February, 1972. The Federation was called the United Arab Emirates.

When the UAE state is discussed, two aspects should be considered, there are as follows:

1. The Local Aspect.
2. The Federal Aspect.

In the local area, the UAE has witnessed, since the birth of the Federation, tremendous developments at the administrative level. The following paragraphs, give a brief review of such developments in each of these Emirates.

**A. Abu Dhabi Emirate:**

The Abu Dhabi Emirate has undergone an unprecedented development in nearly all aspects of life. This was also strengthened by the developments in the oil resources that comprised the backbone of the economy. The Emirate modernized its local way of government and life by a series of decrees that regulated every aspect of life in both Abu Dhabi city and Al-Ain, as well as other settlements. The municipal councils were reshuffled.(68)

In 1971, Law No.1 was issued reorganizing the governmental system was issued and local government departments were integrated in federal ones, while others were transformed to local departments. Thirteen departments emerged consequently and the executive councils functions were also laid down. (69)

**B. The Emirate of Dubai:**

Dubai Emirate also witnessed dramatic developments in all aspects and the number of local departments increased noticeably. The municipal council was also reorganised in 1974, and has continued to develop in an accelerated manner since then.(70)

**C. The Emirate of Sharjah:**

In this Emirate, the trend was towards integrating its local departments and functions into federal instruments and, to that effect, an Emiri decree was issued in 1975 amalgamating these local departments into the federal ones; all these departments are supervised by the executive Council of the Emirate.(71)

In the Federal area, under the UAE Federation, a number of administrative entities have emerged and constituted the nucleus of the federal system.

**1. The Supreme Council of Rulers:**

One of the important entities that has emerged is the Supreme Council of Rulers which consists of the rulers of the seven Emirates, or, in their absence, their deputies.(72)

Article 47 of the UAE Provisional Constitution has defined the functions of the Supreme Council. "The Supreme Council of the Union shall exercise the following matters:-

1. Formulation of general policy in all matters invested in the Union by this Constitution and consideration of all matters which lead to the achievement of the goals of the Union and the common interest of the member Emirates.
2. Sanction of various Union laws before their promulgation, including the Laws of the Annual General Budget and the Final Accounts.
3. Sanction of decrees relating to matters which by virtue of the provisions of this Constitution are subject to the ratification or approval of the Supreme Council. Such sanction shall take place before the promulgation of these decrees by the President of the Union.
4. Ratification of treaties and international agreements. Such ratification shall be accomplished by decree.
5. Approval of the appointment of the Chairman of the Council of Ministers of the Union, acceptance of his resignation and his removal from office upon a proposal from the President of the Union.
6. Approval of the appointment of the President and Judges of the Supreme Court of the Union, acceptance of their resignations and their dismissal in the circumstances stipulated by this Constitution. Such acts shall be accomplished by decrees.
7. Supreme control over the affairs of the Union in general.



8. Any other relevant matters stipulated in this Constitution or in the Union laws. “(73)

## II. The UAE President and his Deputy:

Article 54 of the UAE Provisional Constitution has defined the powers of the President and his deputy as follows:

“ The President of the Union shall assume the following powers:

1. Presiding the Supreme Council and directing its discussions.
2. Calling the Supreme Council into session, and terminating its sessions according to the rules of procedure which the Council shall decide in its bye-laws. It is obligatory for him to convene the Council for sessions, whenever one of its members so requested.
3. Calling the Supreme Council and the Council of Ministers into joint session whenever necessity demands.
4. Signing Union laws, decrees and decisions which the Supreme Council has sanctioned and promulgating them.
5. Appointing the Prime Minister, accepting his resignation and relieving him of office with the consent of the Supreme Council. He shall also appoint the Deputy Prime Minister and the Ministers and shall receive their resignations and relieve them of office in accordance with a proposal from the Prime Minister of the Union.
6. Appointing the diplomatic representatives of the Union to foreign states and other senior Union officials both civil and military (with the exception of the President and Judges of the Supreme Court of the Union) and accepting their resignations and dismissing them with the

consent of the Council of Ministers of the Union. Such appointments, acceptance of resignations and dismissals shall be accomplished by decrees and in accordance with Union laws.

7. Signing of letters of credence of diplomatic representatives of the Union to foreign states and organisations and accepting the credentials of diplomatic and consular representatives of foreign states to the Union and receiving their letters of credence. He shall similarly sign documents of appointment and credence of representatives.
8. Supervising the implementation of Union laws, decrees and decisions through the Council or Ministers of the Union and the competent Ministers.
9. Representing the Union internally vis-à-vis other states and in all international relations.
10. Exercising the right of pardon and commutation of sentences and approving capital sentences according to the provisions of this Constitution and Union laws.
11. Conferring decorations and medals of honour, both civil and military, in accordance with the laws relating to such decorations and medals.
12. Any other power vested in him by the Supreme Council or vested in him in conformity with this Constitution or Union laws." 74)

### **III. The Council of Ministers :**

Article 60 of the Provisional Constitution has described the Council as the executive authority which is responsible for dealing with all the domestic and foreign affairs of the Union.

“The Council of Ministers shall, in particular, assume the following powers:

1. Following up the implementation of the general policy of the Union Government, both domestic and foreign.
2. Initiating drafts of Federal laws and submitting them to the Union National Council before they are raised to the President of the Union for presentation to the Supreme Council for sanction.
3. Drawing up the annual general budget of the Union, and the final accounts.
4. Preparing drafts of decrees and various decisions.
5. Issuing regulations necessary for the implementation of Union. Laws without amending or suspending such regulations or making any exemption from their execution. Issuing also police regulations and other regulations relating to the organisation of public service and administrations within the limits of this Constitution and Union laws. A special provision of law or the Council of Ministers, may charge the competent Union Minister or any other administrative authority to promulgate some of such regulations.
6. Supervising the implementation of Union laws, decrees, decisions and regulations by all the concerned authorities in the Union or in the Emirates.
7. Supervising the execution of judgments rendered by Union Law courts and the implementation of international treaties and agreements concluded by the Union.

8. Appointment and dismissal of Union employees in accordance with the provisions of the law, provided that their appointment and dismissal do not require the issue of a decree.
9. Controlling the conduct of work in departments and public services of the Union and the conduct and discipline of Union employees in general.
10. Any other authority vested in it by law or by the Supreme Council within the limits of this Constitution.(75)

There are also some other entities that have emerged since the birth of the Federation including the following, without there being any limits on the entities that can be created:

1. The UAE National Council. It is constituted of forty members appointed by the seven Emirates according to the Supreme Council's Decree Nos. 2 and 3 of 1972.
2. Establishment of the Monetary Council per Federal Law No.2 of 1973, amended by Law No. 10 of 1980.
3. Establishment of the National Investment Bank per Law No.10 of 1974.
4. Establishing the UAE University per Law No.4, 1976.
5. Establishing Specifications, Standards and Quality Assurance Department per Law No.13, 1980.
6. Establishing the Architectural Planning Authority per Law No.13, 1980.
7. Establishing the General Emirates Petroleum Corporation per Law No.16, 1980.
8. Establishing the General Secretariat of Municipalities per Law No.2, 1980.

9. Establishing the Real Estate Bank per Law No.1, 1981.
10. Establishing the Customs Authority per Law No.10, of 1982.
11. Establishing the Police College per Law No.1, 1985.

## 1.7 The Public Service in Islam

The emergence of various forms of administration has coincided with the formation of political entities; with the emergence of administration, the new term 'Public Service' began to be used. The concept of 'Public Service' has been known since ancient times; it dates back to the time of the Greeks and Romans. (76) However, the term has acquired a more specific meaning in modern administration science.

With the advent of Islam, the notion of 'Public Service' became even more explicit. The Islamic theory of public service revolves around certain key concepts elucidated in several verses of the Holy Quran. e.g.

58. **God** doth command you  
To render back your Trusts  
To those to whom they are due ;  
And when ye judge  
Between man and man,  
That ye judge with justice :  
Verily how excellent  
Is the teaching which He giveth  
you !  
For God is He Who heareth  
And seeth all things.

﴿ ٥٨ ﴾ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا  
الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ  
بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ  
اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ  
اللَّهَ كَانَ سَمِيعًا بَصِيرًا

59. O ye who believe !  
Obey God, and obey the Apostle,  
And those charged  
With authority among you.<sup>100</sup>  
If ye differ in anything  
Among yourselves, refer it  
To God and His Apostle,  
If ye do believe in God  
And the Last Day :  
That is best, and most suitable  
For final determination.

﴿ ٥٩ ﴾ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ  
وَأَطِيعُوا الرَّسُولَ وَأَطِيعُوا  
الْأَمْرَ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ  
إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ  
تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ  
ذَٰلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

According to Islam, a public servant is subject to two forms of accountability. First, accountability before Allah : a public servant will be punished on the Day of Judgment for his excesses or failure to perform his duties. Such acts are considered as 'a breach of trust' in Islamic Sharia. In this way, the Islamic state may ensure that public servants will observe their duties since they know that their acts are always monitored by Allah. Thus, unlike the case in the English tradition (see A.G. for Hong Kong v. Reid.[1994] 1 ALL.E.R.1), Public Service is always of a fiduciary character. Second, there is administrative accountability before the public servant's superiors. Some examples of this form of accountability will be mentioned in the course of discussion of the Islamic perspective of the duties and prohibitions of the public servant.

The job classifications which were applied in the early Islamic state are different from those used in present administrative systems. It must be pointed out that even in those early days, the Islamic administrative system included different classes of jobs. Among these are the so-called 'leading' jobs (examples : the caliph, ministers, advisers, walis - or rulers of provinces - and judges) as well as 'ordinary' jobs like clerks for such affairs as kharaj 'soldiers' and 'grievances'. There were also other jobs such as 'the policeman' and 'the postman'.(77)

The question that may be raised now is as follows : How does the Islamic administrative system define the public servants duties and prohibitions? A related question : To what extent are such duties and prohibitions different from those found in modern administrative systems? The answers to these two questions will be discussed in the next section. It may however be noted at this point that in both

Islamic and modern administrative systems, the public servant's duties and prohibitions constitute the general framework within which he performs his job. Such duties and prohibitions are, however, expected to be more carefully observed under the Islamic System than previously encountered in the modern administrative system. The Islamic system ensures greater scrutiny due to the existence of two forms of accountability, as mentioned above.

### Duties and Prohibitions of the Public Service in the Islamic System

One of the important distinctive features of Islamic Sharia is that it precisely defines what a Muslim should seek to do in his life and what he must avoid doing. As stated in the Holy Quran:

119. Why should ye not  
Eat of (meats) on which  
God's name hath been  
Pronounced, when He hath  
Explained to you in detail  
What is forbidden to you—

﴿۱۱۹﴾ وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِّرَ عَلَيْكُمْ أَنَّهُ حَالَمٌ  
وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ

In addition, the assignment of duties in Islam takes into consideration the Muslim's ability to perform them. Prophet Muhammad, Peace be Upon Him, instructs Muslims to execute his orders, to the best of their ability, and refrain from doing any of the prohibitions cited by him. However, the intended meaning of 'ability' varies from one situation to another depending on the type of order to be executed and the conditions of the Muslim entrusted with the order. Related to this is the fact that Islamic Sharia stresses the importance of assigning a duty to a person who is most competent to perform it. In fact, Islam considers the assignment of duties to incompetent people as a sign of decline and termination of life. Prophet

Muhammad, Peace be Upon Him, points out that if and when duties are assigned to incompetent people, the Day of Judgment is then imminent.

Based on these principles, the duties and prohibitions of the public service in Islamic legislation may be defined as follows :

1. **Protection of Islam and Implementation of the Sharia Provisions**

Although this duty is generally assigned to all Muslims, public servants, by virtue of their position, are particularly asked to observe such a duty. This duty entails the implementation of the provisions of Islamic Sharia enshrined in the Holy Quran and the sayings and deeds of Prophet Muhammad, Peace be Upon Him. This does not however justify the misuse of the public service or the hindrance of work under the pretext of implementing the Sharia stipulations. It is worth mentioning that there are two types of the Sharia stipulations: first, explicit stipulations, which are not open to different interpretations and should never be contravened by Muslims, and therefore, provisions of the public service in an Islamic country should be consistent with the explicit stipulations of the Sharia; second, stipulations which may have different interpretations. These stipulations may only be interpreted by competent people who meet certain conditions defined in Islamic jurisprudence. The interpretations offered should be based on certain principles as specified in the Sharia. As for the public service, the highest authority in a government utility may consult those competent people regarding the interpretation of the relevant Sharia stipulation. It may be



further noted that if a public servant discovers a clear contravention of Islamic Sharia in any of the public service provisions, he should draw the attention of the administration to such contravention. If the administration does not amend that provision in conformity with the Sharia, then the public servant should not abide by such a provision.

## 2. Performance of Work with Highest Precision

In view of the contractual relationship between the public servant and the administration, the public servant is obliged to perform the duties assigned to him in return for a fixed salary or wage as defined in the contract. This kind of commitment is emphasized in some verses of the Holy Quran e.g. as in al-Asra' verse No.34, "When you make a commitment, you have to carry your commitment out. The commitment is a contract and obligation". Prophet Muhammad, Peace be Upon Him, points out that a Muslim should implement his obligations except those prohibited in Islam.

In addition, Islam urges its followers to perform their work in the best manner possible. For example, Prophet Muhammad, Peace be Upon Him, states that Allah would love to see His worshippers performing their work with utmost precision. It may be noted that current public service legislations do not allow a public servant to perform another job outside the official working hours except by the permission of his immediate executive. However, Muslim scholars maintain that a public servant is free to work outside the official working hours and utilize such time for his benefit provided that he

not perform another job identical or similar to his original one as this may lead to the disclosure of the secrets of the original work. In this respect, Ibn Taimiyya (78) the most eminent Islamic Scholar, points out that every individual should perform what he has committed himself to perform for others.

### 3. Honesty

Islam instructs its followers to be honest in their conduct. This particularly applies to public servants. There are also direct and explicit commands in the Holy Quran not to be dishonest e.g.

27. ﴿٢٧﴾ ye that believe !  
Betray not the trust  
Of God and the Apostle,  
Nor misappropriate knowingly  
Things entrusted to you.<sup>120</sup>

﴿٢٧﴾ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ  
وَالرَّسُولَ وَتَخُونُوا أَمْسِكُمْ وَأَنْتُمْ  
تَعْلَمُونَ

Dishonesty in the public service may take the following forms :

#### (a) Utilizing one's job for personal benefits

It was narrated that the Prophet, Peace be Upon Him, appointed a man from the Azid tribe to be in charge of alms. This man came to Al Madina with the alms collected. He gave a part of the alms to Bait Al Mal (Finance House) and took the other part for himself, claiming that it was given to him as a gift. The Prophet, Peace be Upon Him, criticized this behaviour strongly, pointing out that on the Day of Judgment this man would be carrying on his neck all he

had taken for himself whether it was a bleating goat or a grunting camel. This incident clearly indicates that Islam has always attached great importance to honesty in a Muslim's performance of his public duty.

(b) Gaining Personal benefits at the expense of the public service

This is considered in Islam as dishonest behavior. The Prophet, Peace be Upon Him, points out that it is a dishonest act for a Muslim ruler to appoint someone in a job while he knows that there is another one who is more competent than him. Along these lines, Omer Ibn al-Khattab, the second caliph following the death of the Prophet, considers the appointment of someone in a job on the grounds of family and personal relations as dishonesty to Allah and the Prophet, Peace be Upon Him (79).

4. Obedience to Superiors and Execution of their Orders

This duty has been defined in the Holy Quran e.g.

59. O ye who believe!  
Obey God, and obey the Apostle,  
And those charged  
With authority among you.<sup>100</sup>

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ  
وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ  
مِنْكُمْ ﴾

Obedience is here applied generally to whoever is placed in charge of Muslim affairs. However, there is a clear limit to such an obedience. In his interpretation of the verse just mentioned, Ibn Kathir points out that no obedience should be shown to any human being in matters that are inconsistent with Allah's commands. It was narrated that the Prophet, Peace be Upon

Him, sent an Army Regiment on a mission and appointed a man from Al-Ansar, the Prophet's followers from Al-Madina, as their leader, ordering them to obey him. The leader raged in anger for some reason and ordered his men to collect firewood. He set fire to it and ordered his men to go into it but they refused. When this incident was later reported to the Prophet, Peace be Upon Him, He pointed out that if these men had gone into the fire, they would not have come out of it. He added that obedience should be shown only in matters that are beneficial to Muslims. Islam has therefore ordered its followers to obey their superiors but to set limits for such obedience.

### Discipline of Public Servants in Islam

As in positive legislation, the disciplining of public servants in Islam is effected on grounds of the breach of a duty or the commitment of a prohibited act. There are however some major differences as will be shown in our discussion of the various stages through which the disciplinary system in Islam has developed. These stages may be described as follows :

First Stage : Era of the Prophet (1-11) - (622-633)

In this stage the Prophet, Peace be Upon Him, was the sole source of disciplinary actions. The Prophet has a distinctive status defined in the Holy Quran e.g.

3. Nor does he say (aught)  
Of (his own) Desire.

4. It is no less than  
Inspiration sent down to him :

⑤ وَمَا يَنْطِقُ عَنِ الْمَوْتِ

⑥ إِنَّ هُوَ إِلَّا وَحْيٌ يُوحَى

The disciplinary actions taken by the Prophet, Peace be Upon Him, set an example for Muslims to follow in similar cases. For example, a man named Ibn Allutbiyya was appointed to be in charge of collecting Al-Zakat. The man was later dismissed from his job because of his dishonesty.

Second Stage : The Era that follows the Death of the Prophet

(11-40) - (633 - 661)

At this stage, the public service system expanded and the concept of discipline became more explicit. Of particular importance in the custom of Arabic countries was the establishment of the grievances department to which the following duties were generally assigned (80).

- (a) To look into the excesses practiced by the Muslim rulers (Walis) in provinces. The person in charge of the grievances department are to monitor the behaviour of these rulers as well as the conditions under which Muslims live and look into any injustices noticed. Great powers were entrusted to the person in charge of grievances, including the transfer and dismissal of rulers in the provinces if they committed great wrong doings.
- (b) To inspect tax collection and ensure that tax collectors operate according to the regulations in force.
- (c) To monitor the conditions of public servants working in various departments and the disputes that arise between them and their respective departments.

- (d) To receive complaints submitted by public servants.
- (e) To give back Monies illegally taken by the rulers or other individuals to their proper Owners.

Numerous examples of disciplinary actions taken at this stage against the rulers who committed administrative violations including the dismissal, by Omer Ibn Al-Khattab, the second Caliph in Islam, of the great Muslim leader Khalid Ibn Al-Walid from his position as Army Commander. The dismissal by the second Caliph of the governor of Hims Province he confiscated illegally procured money previously taken by some governors of the provinces. In applying these disciplinary actions, Omer Ibn al-Khattab proceeded from the basic notion that the dismissal of a ruler in a province is much easier to effect than the replacement of the subject in that province by others. (81) In addition, two main procedures were observed by Omer Ibn Al-Khattab in disciplinary matters :

- (i) Conducting investigation procedures in public and seeking the opinions of experienced people on the matters under investigation.
- (ii) Applying the principle that a public servant is innocent until proven guilty.

## Conclusion

Discipline in Islamic Sharia is based on certain principles which are different from those applied in positive laws. In the early days of Islam, the conduct of public servants was monitored in two ways: first, the monitoring by Allah of their acts, a type of monitor to which Muslims give utmost consideration; second, the monitoring exercised by individual Muslims on the conduct of public servants and their submission of grievances to the Caliph in cases of injustice or any other wrong doing. It is believed that these two types of monitor will place effective controls on the conduct of public servants. They also ensure that only competent people are selected for the various jobs as decreed in the Holy Quran e.g.:

26. Said one of the (damsels):  
"O my (dear) father I engage <sup>1346</sup>  
Him on wages: truly the best  
Of men for thee to employ is  
The (man) who is strong and  
trusty" <sup>1324</sup>

قَالَ لِحَدِثِهَا بِنْتِ اسْتَجِرْتُهُ لِي  
خَيْرَ مَنْ اسْتَجَرْتُ الْقَوْمِ الْاِيْمِيْنَ

In addition, the main duty of public servants, as emphasized in Islam, is to render services to their fellow Muslims. The Prophet, Peace be Upon Him, points out that he does not appoint rulers (Walis) to flog their Muslim followers, or improperly take their money but to educate and serve them.(82) Discipline is applied if a public servant fails to perform the duties assigned to him. This idea has been expressed as early as the time of Abu Bakr Al-Siddiq, the First Caliph in Islam, who pointed out to Vazid Ibn Ali Sufyan, ruler of Syria, that he appointed him as ruler in order test

him and that if he performed well, he would be kept in office or promoted to a higher position but if he failed to perform his duties, he would be dismissed .(83)

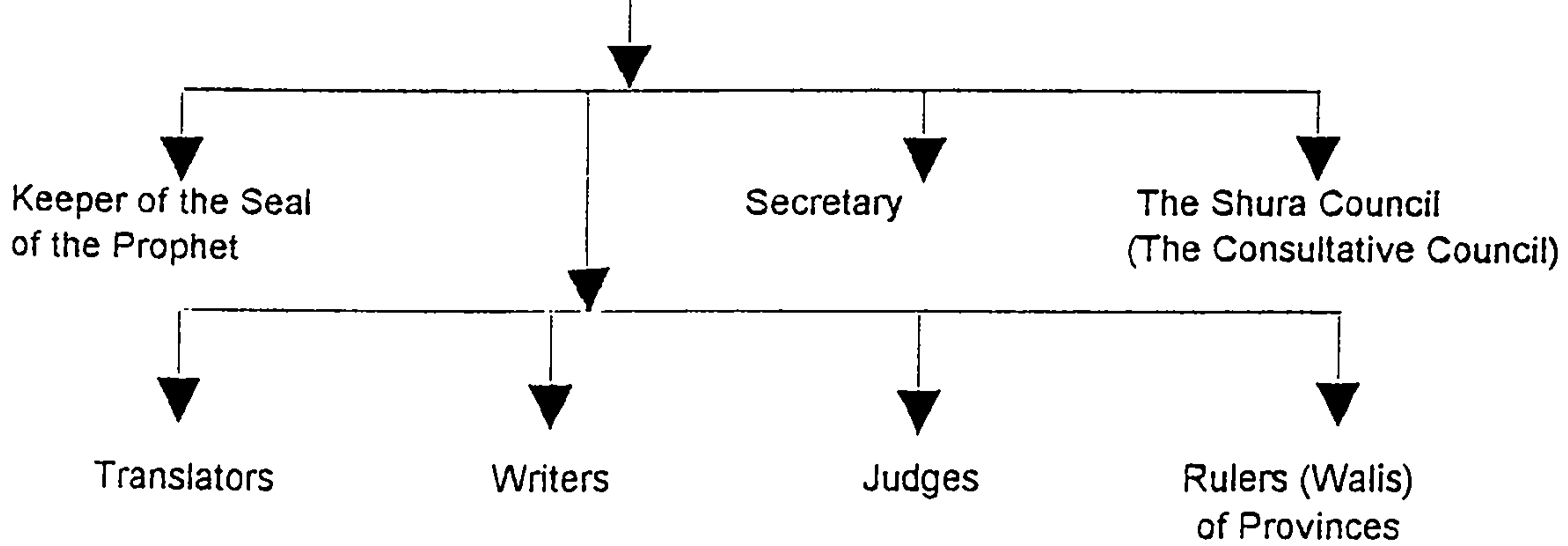


**TEXT BOUND  
INTO  
THE SPINE**

**Figure 1. Organization of the Administrative (84)  
Posts Throughout the Five Eras of the Islamic State  
( 1-11 H. Corresponding to 622-633 A.D.)**

**1. Era of the Prophet**

1. Head of State (The Prophet, Peace be Upon Him)

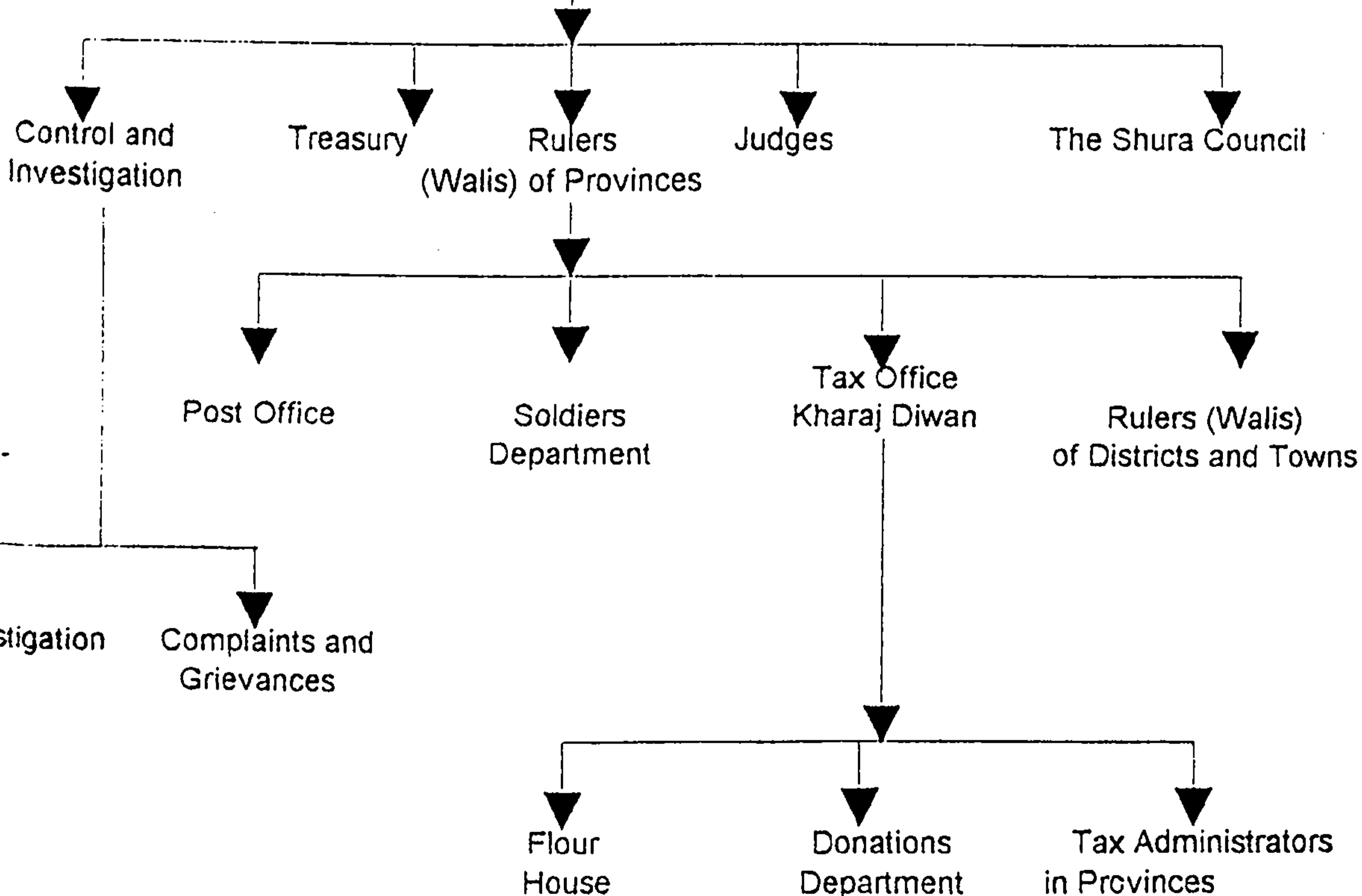


**2. Era of the First Four Caliphs ( 85 )**

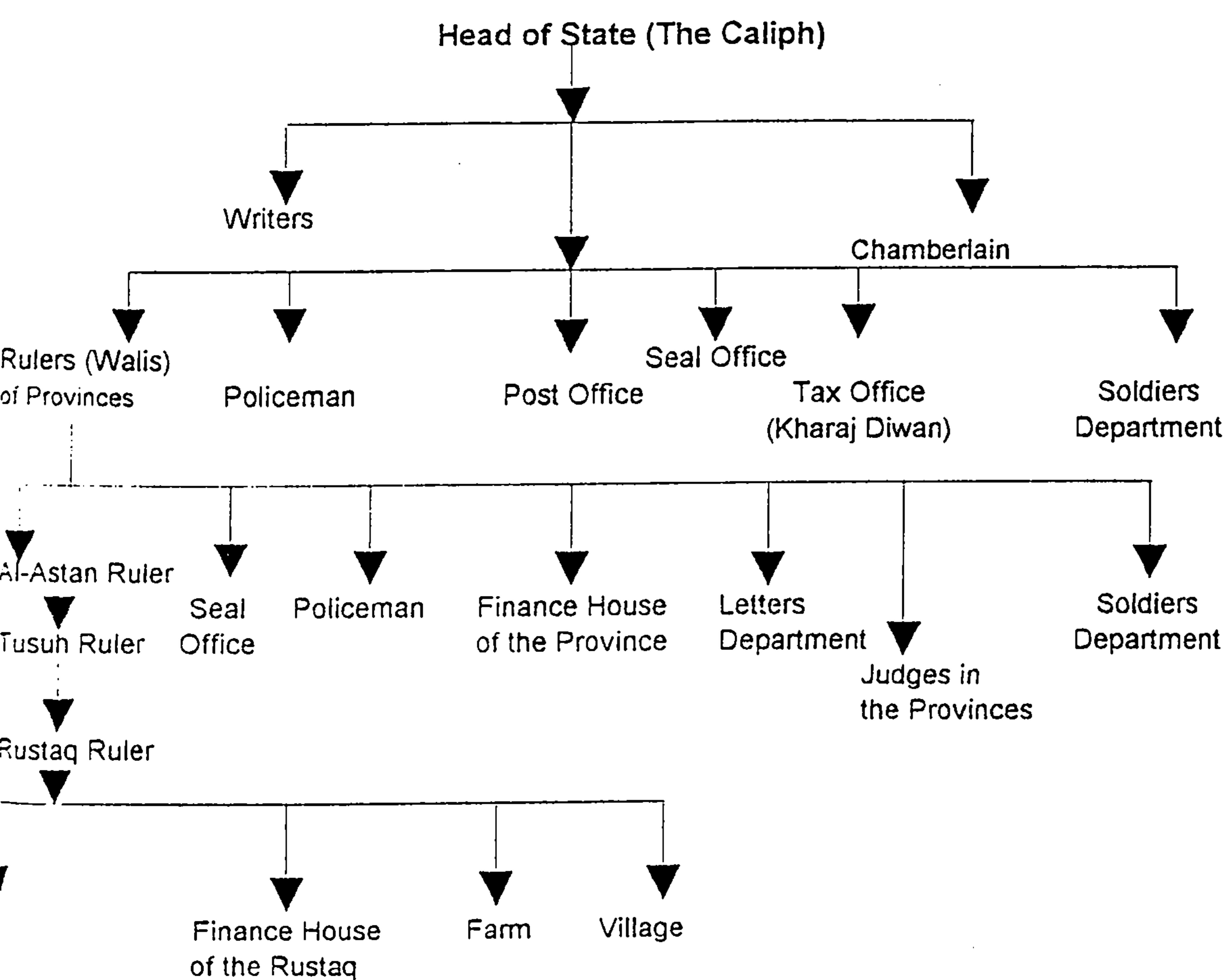
**Following the Death of the Prophet**

( 11-40 H. Corresponding to 633-661 A.D.)

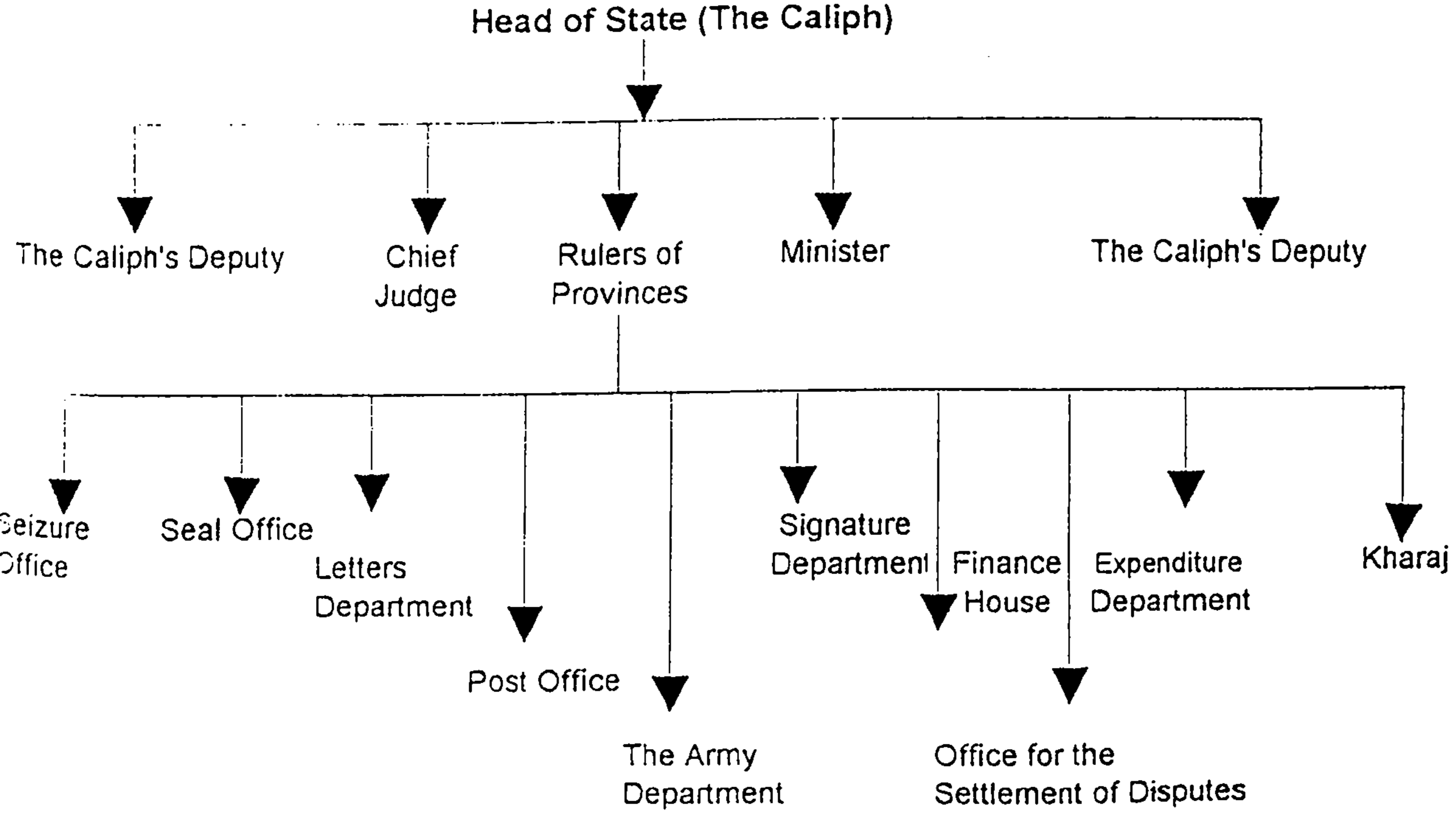
Head of State (The Caliph)



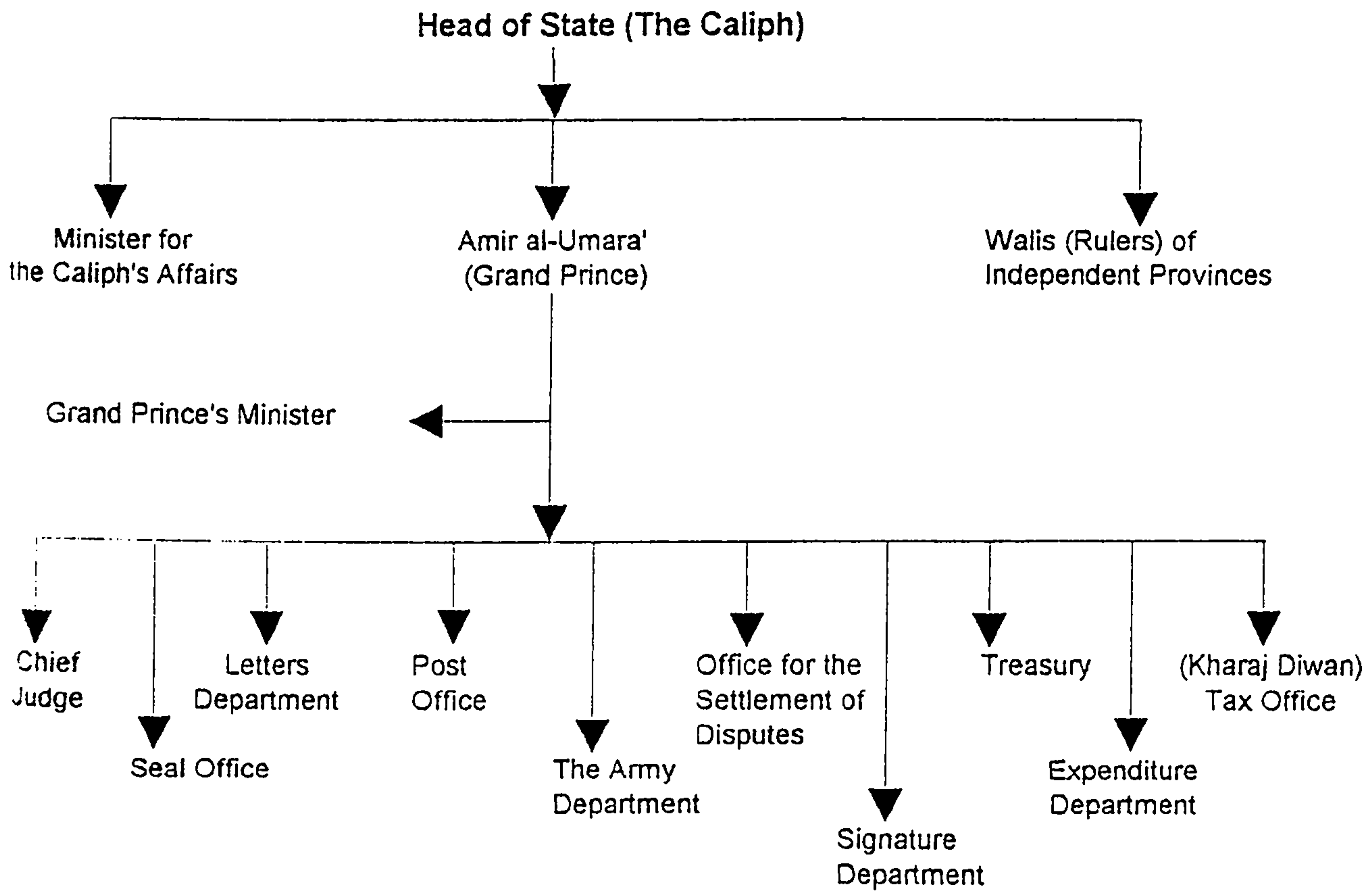
**3. The Ommiad Era (86)**  
 ( 40-132 H. Corresponding to 661-750 A.D.)



**4. The Abbaride Era (87)**  
 (132-656 H. Corresponding to 750-1258 A.D.)



**5. Era of Independent Provinces and the Growing Influence of Minorities (88)**



## NOTES-CHAPTER I

1. Bashir, E., *op.cit.*, pp.17-22. Non-responsibility for Criminal Accountability in the Islamic Sharia and Man—made Laws. The Public House for Publishing and Distribution, First Edition, 1986. National Bookstone.
2. *Al-Khaleej*, a UAE Arabic Newspaper, August 5, 1990, p.8.
3. The UAE Ministry of Information and Culture, Dawlat Al-Emarat Al-Arabiah Al-Motaheda. Haqaeq wa Arqam, (UAE, Facts and Numbers), 1991, *op.cit.*, p.31.  
See Table No.1.
4. Al-Hamadani, A.H., *Dawlat Al-Emarat Al-Arabiah Al-Mottahada, Nashateha Wa Tatavoreha*, (The UAE, its formation and development), Maktabat Al-Mulla, Al-Kuwait, 1966, p.98, (In Arabic).  
Abu Al-Majid, A. and others, *Dawlat Al-Emarat Al-Arabiah Al-Mottahada, Derasah Masheiah Shamelah*, (The UAE, a comprehensive survey study), Al-Sharekah Al-Masreiah Leltabahh wa Al-Nasher, (Cairo), 1978, p.487 (In Arabic).  
*Al-Khaleej*, a UAE Arabic Newspaper, August 5, 1990, p.8.
5. Rosmarie, S.Z., *The Origin of the United Arab Emirates*. The Macmillan Press Ltd. London, 1978, p.2.
6. Al-Sabah, A., *Sokan Dawlat Al-Emarat Al-Arabiah Al-Motahada*, (Population of the UAE), Matbaat Al-Mulla, Al-Kuwait. 1979, pp.29-31, (In Arabic).
7. *Al-Khaleej*, A UAE Arabic Newspaper, January 14, 1986, p.3.
8. *Al-Ettihad*, A UAE Arabic Newspaper, March 11, 1994, p.1.  
for more details see Table No.2.
9. 'United Arab Emirates', *Merri Report*, Croom Helm and the Middle East Research Institute, University of Pennsylvania, (USA), 1985, p.47.
10. *Al-Khaleej*, A UAE Arabic Newspaper, January 14, 1986, p.5, and August 5, 1990, p.8.
11. George, L., *The Middle East in World Affairs*,(4<sup>th</sup>edn.),Cornel University Press. Ithaca and London, 1980, p.676.

12. Qasim, J.Z., *Emarat Qadimah wa Dowal Haditha, Dawlat Al-Emarat, Drasah Mashiah Shamelah*, ( The Emirates in the past and new countries, the UAE, a comprehensive survey study), Maahad Al-Bohooth wa Al-Derasat Al-Arabiah, Cairo, 1978, p.28, (In Arabic).
13. The UAE Ministry of Information and Culture, United Arab Emirates,. the UAE Ministry of Information and Culture publication, n.d., p. xvii  
The UAE Ministry of Information and Culture, *Dawlat Al-Emarat Al-Arabeiah Al-Motahedah, Haqaeq wa Arqam*, (UAE, Facts and Numbers), Wazarat Al-Ealam wa Al-Thaqafah, Dar Al-Furair Letebaah wa Al-Nasher, Dubai, Al-Emarat Al-Arabeiah Al-Motaheda, 1991, p.31, (In Arabic).
14. David, E.L., *The Persian Gulf*, West View press, Bolder, Colorado, 1978, p.35.
15. *The UAE Official Gazette*, No.2 March 1992.
16. Bashir, E., *Dawlat Al-Emarat Al-Arabeiah Al-Mottaheda, Masirat Al-Ettehad wa Mostawbalehi*, (UAE, route of unity and its future), Dar Al-Ketab Al-Arabi, Beirut, 1982, pp.22-26, (In Arabic).
17. *Ibid.*
18. Al-Baharnah, H., *Arabian States, Their Legal and Political Status and their International Problems*, (2<sup>nd</sup> edn.), Beirut, 1975, pp.25-30.
19. Hervert, J.L., "International Relations of Arabia " , *The Middle East Journal*, January 1974, pp.35-52.
20. Art 52, Prov. Const., *The UAE Official Gazette* No. 1 December 1971.
21. Federal Decree No. 44 of 1972, *The UAE Official Gazette*. No 3, May 1972.
22. Art7 of Prov. Const., *The UAE Official Gazette* No.1, December 1971.
23. *Ibid.*
24. Art. 118, Prov. Const., *The UAE Official Gazette* No.1, December 1971.

25. Art. 150, 151, Prov. Const., *The UAE Official Gazette*, No.1, December 1971.
26. Art. 121 Prov. Const., *The UAE Official Gazette* No.1, December 1971.
27. Al-Hamdani, A.H., *op.cit.*, p.99.
28. Abdulla, M.I.M., *Advanced means of preparing the public budget and their utilisation in Modernising the public budget in the United Arab Emirates*, Ph.D. thesis, EXETER University, 1991, p.28.
29. Rendym W., *Gulf Trade and Finance*, Graham & Tratmon, London, 1987, p.109.
30. Clauad, M., *Zavid Falcon of the Desert*, Abu Dhabi: Ministry of Information 1975, p.30.
31. Al-Hosani, A., *Constitutional and judicial organization in the UAE*, Ph.D. thesis, EXETER University, 1989, pp.40-42.
32. *Ibid*, p.43.
33. Art.7 of Prov. Const., *The UAE Official Gazette*, No.1. December 1971.
34. Heard-Bey, F., *From Trucial States to United Arab Emirates*, Longman, London and New York. 1982, p.378.
35. Helal, A.R., *Majmooat Al-Ahkam Al-Sadera men Al-Mahakem Al-Estenaf Wa Al-Naqd, Dawlat Al-Emarat Al-Arabiat Al-Mottahedah, 1970-1980*, (The complete decisions of Appeal Courts and High Court in the UAE between 1970-1980) , Al-Matbaat Al-Asreiah, Dubai, UAE, n.d., pp.5-10, (In Arabic).
36. Art.151 of the UAE Prov. Const., *The UAE Official Gazette* No.1, December 1971.
37. *Official Journal of Ras Al-Khaimah*, No.7 March 1, 1974.
38. Art. 148 of the UAE Prov. Const., *The UAE Official Gazette*, No.1, December 1971.

39. Art. 8 of the Federal law No.6 of 1978 establishing the federal civil courts, *The UAE Official Gazette*, No.58, January 1978.
40. Federal Law No.17 of 1978, *The UAE Official Gazette* No.64, December 1978.
41. Dubai Government, 'Qaanoon Tashkil Mahkamat Al-Tamyeez Dubai: Qanoon raqam 1 of 1988 ' (Dubai Supreme Court Institution Law No.1 of 1980), *Majalat Al-qada wa Al-Tashreea*, (Journal of Judiciary and Legislation), Al-Adad Al-Awwal, January 1992, (In Arabic).
42. Art.118 Prov. Const., *The UAE Official Gazette* No.1, December 1971.
43. The UAE Ministry of Information and Culture, Dawlat Al-Emarat Al-Arabeiah Al-Mottahedah, Haqaeq qa Arqam, (UAE, Facts and Numbers), Dar Al-Gurair Letebaah wa Nasher, Dubai, 1993, p.216, (In Arabic).
44. Sharab, *op.cit.*, p.74.
45. *Ibid*, Al-Qassimi, *op.cit.*, p.164. and Al-Kabisi, Amer." *The Public Administration and Development the UAE*, First Edition, Al-Khaleej Publisher, Sharjah, 1982, pp.79-82.
46. Tabtabai, A., *Qanun Al-khidma Al-Mudaniyya Al-Kuwaiti Al-Jadid: Dirasa Tatbiqiyya liqararat Majlis al-Khidma Al-Madaniyya wa Fatawi Diwan Al-Muwazzafin wa Idarat Al-Fatwa wat-Tashri -6* (The New Kuwaiti Civil Service law : An Applied study of the Decisions of the Civil Service Council and Legal Opinions - Fatawai of the Personnel Department and the Department of Legal Opinions and Legislations) Matbaat Dhat Al-Satasil, Kuwait University, 1983 and Al-Helow, Majed, Ragib, *Organization of Administration Authority and public Employment in the United Arab Emirates a comparative study*, Al-Bayan Commercial Publisher, 1989, p.50. Bateekh. Ramadan Mohammed and Shams Mergani, *Administrative law. In the UAE A study between civil systems and Islamic law, Vol.I.* Al-Nakheel Publisher, Ras Al-Khaimah, 1990, p.128.
47. Sharab, *op.cit.*, p.75.
48. Bateekh, *op.cit.*; Ali, *op.cit.*, p.132. and Sharab, *Ibid*, p.78.
49. Bateekh, *op.cit.*, p.132.
50. Sharab, *op.cit.*, p.79.
51. Al-Kabisi, *op.cit.*, p.84. and Al-Helow, *op.cit.*, p. 51.



52. Ali, *op.cit.*, p.78.
53. Ali, *op.cit.* , p.327; Bateekh, *op.cit.*, p.132 and Ali, *op.cit.*, p.133.
54. Al-Kabisi, *op.cit.*, p. 86; Bateekh, *op.cit.*, p.176 and Tabtabai, *op.cit.*, pp.152-53.
55. Tabtabai, *Ibid*, pp.158-159; Bateekh, *Ibid.*, and Ali, *op.cit.*, p.134. Al-Helow, *op.cit.*, pp.52-53.
56. Bateekh, Ramadan Mohammad, *The Local Administration in the Federation Systems : An Analytical Study and Application in the UAE*, the Economist publisher, Dubai 1988, p.177.
57. Ali, Shams Mergani, *Appearance of Administrative Organization* , Al-Qods Bookshop, Al-Ain, UAE. Without date, p.327.
58. Bateekh, *op.cit.*, p78 and Alkabisi, *op.cit.*, p.86.
59. Bateekh, and Ali, *op.cit.*, p.133.
60. *Ibid*, p.327.
61. Tabtabai, *op.cit.*, p.157.
62. Ali, *op.cit.*, p.328.
63. Tabtabai, *op.cit.*, pp. 158-159.
64. Al-Kabisi, *op.cit.*, p.90 and Bateekh, *op.cit.*, p.178.
65. Tabtabai. *op.cit.*, pp.158-159.
66. Al-Helow, *op.cit.*, p.53 and Bateekh, and Ali, *opcit*, p.134.
67. Bateekh, *op.cit.*, p.179.
68. Al-Helow, *op.cit.*, p.88.
69. Bateekh, and Ali , *op.cit*, pp.139-140.
70. *Ibid*, pp.130-131 and Al-Helow, *op.cit.*, p.50.
71. *Ibid*, p.132 and p.51.
72. *Ibid*, p133 and p.151.
73. Article 46 of the UAE Provisional Constitution.

74. Article 54 of the UAE Provisional Constitution.
75. Article 68-93 of the UAE Provisional Constitution.
76. Ali Sharif, *Usal al-Idara al-Ama* (Origins of Public Administration) Alexandria, 1978, p.55.
77. Nejdat Khammash, *Al-Stram fi Sadr al-Islam* (Syria in Early Islam) Dar Tallas li-Nashr, Damascus, 1987, pp.219-260.
78. Ibn Taimiyya, *Al Siyasa Al-Shariyya ft Istah Al-Rat War-Raiyya* Dar al-kutub al-Arabiyya
79. Al-Shibant, Mohammed Abdulla Al-Khidma, *Al-Madaniyya 'ta daw' al-sharia al-Islamiyya* (The Civil Service in the light of Islamic Shariya) 1984, P.61.
80. Al-Tamawi, Suleiman, *Omer Ibn al-Khattab and the Fundamentals of Modern Politics* (In Arabic) 1969, P.125.
81. Al-Shiftami, *op.cit.*, p.66
82. Basyooni, Abdul - Ghani *Fundamentals of Public Administration Science* (In Arabic) Beirut, P.64.
83. *Ibid.*
84. *Ruling Administration System in Islamic State*, Dar Alam Al Khutub for publication and distribution - Riyadh, Second edition 1405 H/1984 A.D.
85. *Ibid.*
86. *Ibid.*
87. *Ibid.*
88. *Ibid.*

## CHAPTER II

### THE PUBLIC SERVANT IN THE LAW OF THE GULF CO-OPERATION COUNCIL STATES

#### 2.1 INTRODUCTION

Administration authorities are usually entrusted with supervising the common policy of a state and the running of its public facilities by employing a large number of employees normally called public servants. These employees are always subject to a system that organizes and regulates their tasks.(1) However, most laws and regulations have failed to deal with the concept of a public servant and many legal systems have found it sufficient to identify individuals who are to be included in the legislative of public service while not defining their status and the nature of their duties. Such an attitude may be attributed to the difficulties and barriers that hinder the legislative bodies when trying to formulate a definition. Needless to say, these difficulties do not only emanate from differences of opinion about a public servant between the Administrative Law and the Civil and Penal Laws, but also to attitudes emanating from an understanding that differs from one country to another and from time to time. This, of course, may be due to the conditions of work in public facilities or to the desired attainable objectives of public service and the different approaches to its controls and ways of improvement. (2)

This of course leads to ambiguities and discrepancies amongst legislators themselves and amongst those entrusted with defining the working relationships in the legal and administrative entities. (3)

Different descriptions, constraints and regulatory variables necessary for defining a Public servant have emerged in different jurisprudential traditions. However, many of these variables are common to a large number of countries in the light of their semi-similar legal approaches. In this respect, Dr. Fuad Al-Attar considers the term Public servant to be applicable to “those entrusted with permanent duties in the service of a public facility managed by a representative of the Public Law”. Dr. Hanna Nidda sees the Public servant, however, as “any person whose permanent duties relate to a public facility of the state or one of its lawful entities.”

In Egypt, the Supreme Administrative Court views a public servant as “someone who operates under the stipulations and regulations of public service governed by laws and by-laws, and his work relationship with the state is characterized by stability and durability to operate a public facility directly and under the supervision of the state.” Such a relationship does not constitute an adhoc relationship governed by a service contract of the private laws. By contrast in common law countries such as the United Kingdom a public servant is basically governed by the same general law as a private employee except where some particular statutory or royal prerogative rule applies. Except in the case of Saudi Arabia where all cases are heard in Sharia courts, the public service codes are comprehensive and because they are dealt with in the civil courts are not directly influenced by Islamic law concepts. The main external influence upon

the public service codes is that of the civil law which reached the Gulf States through the influence of expatriate lawyers and officials mainly from Egypt. There has been relatively little common law influence and during their rule the British took little interest in internal institutions.

According to the common features of the public service codes a public servant must enjoy the following conditions:

1. That his duties are permanent rather than temporary or of limited duration. This includes job trainees whose training is a technical matter that relates to the permanent job, whereas part-time workers are not deemed as Public servants in view of their limited-duration service.
2. That a person's service is rendered in a public facility with lawful identity rather than in private entities of companies or factories.
3. That the public facility has to be run by the state and under its supervision, its administrative entities and its representatives.(4)

## **2.2 Public servants in the Laws of the United Arab Emirate and the Gulf Co-Operation Council States**

The Civil Service Law of the United Arab Emirates, particularly Law no. 8 of 1973, categorizes civil servants as employees and lower grade employees or senior staff, and junior or low ones. " Any appointment within the senior, higher, or intermediate level as shown in a schedule of the relevant order where

is this schedule is classified as an employee whereas junior or low-grade employees are appointed in any sub-category of cycle 4 of the schedule”.(5)

We notice that the legislator in the UAE differentiates between two categories of public servants in accordance with defined distinctions of the pertinent law based on a grade system. The terminology does not reflect the alienation of a job holder from public service but draws upon the grade system alone. Hence, we get the category of an employee and a low-grade employee. However, both categories are paid out of the General Budget of the State. The above-mentioned law therefore stipulates that: “The Articles of this law shall be applicable to all employees and low-grade employees of the United Arab Emirates, particularly civil ones who are paid out of the General Budget of the State.”

The Law clearly excludes employees who do not fit into the definition laid by the Civil Service Commission, which is reflected in Article 1 and specifically refers to “Civil Servants”. The relevant part of the Article reads: “This excludes all other categories that are covered by other specific laws and regulations in accordance with their stipulations.” It thus excludes a large number of categories of employees, a fact which confirms our initial assumption of the absence of a proper and a definite concept of a Public servant.

### **2.2.1 The Public servant in the Law of Saudi Arabia**

The civil service laws of the Kingdom of Saudi Arabia make a similar distinction between employees and low-grade employees, but unlike the UAE,

the distinction is not based on hierarchical classifications but on the nature of the jobs performed.

Low-grade employees are workers of a manual nature, and holders of very low educational standards such as primary education.(6)

### **2.2.2 The Public Servant in the Omani Law**

The concept of Public Service in the Sultanate of Oman has taken a different direction from those of the UAE and Saudi Arabia. Article 2 of the Sultanate Decree no. 8/80 regulating civil service defines a civil servant as any employee , regardless of grade, rendering service to the Sultanate and who is paid out of the Public Treasury.

Although the law included low-grade employees in the definition of a civil servant, it limited them to the condition of being paid out of the Public Treasury. If we review Article 1 of the said Sultani Decree, we notice that it stipulates that “The Articles of the Law shall only apply to employees of the administrative body of the Sultanate, but shall exclude those employees of specific contracts, laws or decrees, which regulate their status in accordance with the contents and stipulations of such contracts, laws or decrees.”(7)

### **2.2.3 The Public Servant in the Qatari Law**

In the State of Qatar, the civil service laws are similar to those of the United Arab Emirates with a slight terminological difference regarding “low-grade employee” substituted in Qatar by the term “Labourer”.(8)

#### **2.2.4 The Public Servant in the Kuwaiti Law**

Until the enactment of Law No. 15 of 1979, Kuwaiti Law had been similar to that of the United Arab Emirates. However, since the enactment of the said law, the distinction between an employee and a low-grade employee has disappeared. Article 2 of the Law reads “An employee is a Public servant in any of the Government bodies despite the nature of title of his job.”(9)

It is therefore clear that the concept of the Public servant in the member states of the Gulf Cooperation Council is subject to some conditions that relate to the grade level of the Public servant, the nature of work performed, or to the type of job. Hence, there is lack of uniformity as to the definition of the Public servant.

#### **2.3 Duties and Responsibilities of the Public Servant**

Public Service is a privilege granted to the public servant's rather than a right. It is not intended to make available to the occupant the ways and means whereby he can obtain his living or provide him with some benefits and entitlements. It is in fact intended to make available a body of people that are delegated with running the facilities of the state to achieve its main objective of extending its services to the public.(10)

Public Service is one form of National Service aimed at the common interest of the public alone.(11)



As Public Service entitles a public servant to privileges, he should therefore obligatorily and morally carry out the duties entrusted to him, which are determined by the nature of the task, its position in the hierarchy and the state's ranking of the task. Such nature and ranking may be affected by the economic, political and social circumstances dominating the society. At the outset, however, I would like to point out that, in principle, there exists a distinction between different duties from the penal and disciplinary point of view.

In this respect, there are certain duties the violation of which does not constitute a reason for disciplinary action. Such duties are of an administrative nature and morality. They are not subject to disciplinary action but are rather dealt with through a process of promotions, compensations and incentives. Another category of duties does, if violated, constitute an area of disciplinary action and may not only be subject of personal penalties but may involve further civic or criminal responsibilities. This aspect will be discussed later on (refer to Chapter IV). Disciplinary action relates to conduct that interferes with the proper performance of the job. In order to explain a public servant's duties the violation of which requires disciplinary action and carries civic or criminal responsibilities, we have to deal with the following two aspects.(12)

1. The duties that are intrinsic to the job and are related to it;
2. The duties that are indirectly related but pertain to the reasons external to it.

## **2.3.1 The Duties that are Intrinsic to the Job and are Related to It**

### **2.3.1.1 Job Related Duties**

This type involves a large number of duties such as:

#### **2.3.1.1.1 Job Performance**

A Public Servant is obliged to perform his duties and should never refrain from doing them or in anyway delegate others to carry them out on his behalf except where the law permits. His commitment derives from his general status which entitles him to his personal right of doing the tasks entrusted to him and making the decisions pertaining thereto. Such duties are subject to change by means of subsequent laws or regulations with which he has to comply.(13)

A Public servant's obligation goes beyond performing the duties of the task and embraces his commitment to allocate and utilize every single moment of the working hours of the establishment. This has to be taken for granted even if it is not expressly stated in law, being an implied requirement of the Islamic fiduciary Notion of public service. Hence, time-keeping and compliance to working hours ensure that Public Service is carried out and the public facility is attended to.

A Public servant cannot therefore absent himself from his duties without an acceptable reason as he is morally and lawfully obliged to accomplish his duties and achieve the objectives of his assignment.(14)

A Public servant's performance must, in the first place, be constructive and done conscientiously to ensure completion of his tasks within a reasonable time. It

is only by this realization that the common objective and public interests are achieved away from selfishness or exploitation of the job circumstances for personal gains unrightfully acquired.(15)

Dedication and conscience in doing a job entrusted to a Public servant require that he observe time-keeping on arrival and on leaving and full application of himself during working hours. He should also refrain from using company time for his own personal gains or wasting it in non-related businesses. A Public servant carefully selects his residence for its proximity to his place of work in order to get to his work without unjustifiable delays. Protection of the property of the state is another sign of honesty and caring.(16)

Integrity in Public Service also requires that a Public servant be impartial in dealing with his subordinates so that he does not show injustice to some and favoritism to others. Decency should prevail in all his dealings with them, and he has always to remember that the privilege of supervising is another form of national service which should assume that he is required to treat people's formalities and demands with fairness and equality.(17)

In a Public Service environment, cooperation rather than coercion is required, not only with a Public servant's supervisors but also with his equals, his colleagues and subordinates. This manifests itself in two ways:

1. Abstaining from any form of conduct that impedes the progress of work, including the holding of information or distorting any or some of it when required.

2. Rendering of his best experiences and readiness to provide information and knowledge that foster easy and swift accomplishment of objectives.(18)

In addition to the above, the Public servant should familiarize himself fully with all legal aspects and instructions that relate to his job to ensure satisfactory performance and avoidance of any unnecessary inquiries or disciplinary measures in case of a wrong doing resulting from ignorance of the circumstances of the job.(19)

#### **2.3.1.1.2 Compliance with and Abidance by Superior Orders**

Public Service may be classified into two categories of superiors and subordinates, each with his powers and responsibilities. The success of an organizational structure depends on the extent of and the nature of the instructions required for operating a public facility.(20)

Whereas compliance with orders and abidance by the instructions that pertain to a job form the basis of running a public facility, the legislature has not ignored the terms of reference each supervisor or subordinate must have. In Egypt, the question of compliance with the orders is viewed by the Supreme court as a primary requirement which a subordinate must always observe while he is performing a job. The Court views superiors as people who have more experience and ability to lead, in order to support the unity of the establishment that is characterized by a hierarchy of employees and their supervisors, who are

led by an ultimate superior. Subordinates should hold their ultimate leader with esteem in as much as he himself is careful to maintain such esteem of his subordinates, who should be penalized if they violate such relationships.(21)

Compliance should not be exercised outside the boundaries of work to the extent of its becoming a must, except where a subordinate's way of life affects his performance, and in this case his attention may be drawn by his superiors. Compliance, abidance, submission and obedience which characterize the relationship of a subordinate and his superior require that the following parameters be observed:

1. Carrying out and fully implementing the instructions of the superior;
2. Observing and holding with esteem the superior's subsequent decisions of amending, suspending or canceling his previous instructions;
3. Showing respect and esteem to the superior in as much as a reciprocal relationship between both should exist.(22)

Compliance and abidance of the Public servant by the orders and instructions issued to him by his superiors should not be interpreted as deprecating or humiliating him or deterring him from giving his opinions even if he has to contradict and oppose his superior's views so long as this is within his compliance with the legalities of his job.(23)

If the public servant is assured of the correctness of his viewpoint, courageous and frank in extending his opinion before his superior without deviating, deflecting or turning away, provided his attitude is consonant with a respectful relationship to his superior, he can convince his superior of his opinion and accordingly to adopt it; at the same time, the public interest will be benefited and well served. Furthermore, truth is

always derived from dissidence of opinions, and cannot be achieved unless through force and strength of arguments. If the issue has gone beyond the stage of research and discussion to the stage of execution, he should not disagree with his superior or create difficulties to deter or hinder the stated decision.

In this connection obedience is a must and hence a public servant is answerable. Does it follow therefore that the public servant should obey and respect an order issued by his superior even if that order is illegal?

As to the extent of a Public servant's compliance with improper and illegal orders and instructions issued to him:

1. He should implement and obey his superior's orders blindly without discussing their legality;
2. He should refuse and abstain from carrying out illegal and improper orders;
3. He should refrain from carrying out clearly illegal instructions that may result in tangible damages such as committing a crime, but should obey orders and instructions of no tangible damages provided he draws the attention of his superior to the consequences which the latter should be accountable for.(24)

The first and second opinion are based on two reckless conflicting principles which are: the respect of the principle of legality as well as superior orders, hence these two principles do not present a reasonable solution. The principle of legality confers on the public servant the right of the supervision of legality of the orders issued by his superiors as well as the execution of the legal ones and the non execution of the illegal orders. The matter results in upheaval, confusion and the spreading of disorder; on the other hand, we see that

it is unreasonable to impose the other principle of the absolute obedience to the extent of passive obedience that requires that a public servant executes the given orders dictated to him even if they are breaking the law, invalid or illegal even possibly constituting contravention, violation or a criminal crime. (25) In this connection Dr. Al Attom is leaning towards and preponderating the third opinion and thinks that it is more desirable and suitable for the reason that it is logical and rational; this opinion gives consideration to the probabilities related to the subject matter and gives the public servant the right of the expression of his opinion and transfers to the superior the responsibility of the consequences ensuing from the execution of such an order. Dr. Al Attom believes in the importance of public interest; that is to say, that the disobedience as expounded in the first opinion may lead to the disorder of the public utility, while blind execution and obedience will make the work mechanical; this may finally result in wasting and ruining the public interest.

Obedience to superiors is a rational and logical issue that suits the system or approach and the ground of the administrative organization of the positions: that is to say that positions are arranged through a structural hierarchy on the top of which is the administrative president with the rest of the positions being distributed according to their responsibilities and assignments; each one occupies a level of the hierarchical structure and is hence subject to the supervision of the top position and at the same time supervises the subordinate positions and so forth.

This administrative hierarchy is the source of presidential authority, the most important features and privileges of the same being obedience which includes many

matters. The most important of these is the right of the superior to accredit the work of his subordinates, amending, canceling or suspending it as well his right to issue orders and prohibitions in relation with the work and the way of its execution. In consideration of the privileges and features of the presidential authority, the obedience and respect of orders by subordinates are important.

It is worth noting that the Civil Service laws in the AGCC are congruent; in other words, that there is similarity and correspondence between their provisions. In relation with the contents of this duty, the provision of Article (57) of the Civil Service Law in UAE provides that the public servant shall perform by himself the work entrusted to him and that it is to be performed exactly, precisely and with honesty; moreover it assigns the work hours to the performance of his functional duty and that he give his full attention to the laws, regulations and the instructions of his superiors and that he spend the state's money with due honesty and care. Further it is prohibited for him to commit any act or omission incompatible with the duties of his position or to adopt a behavioral attitude conflicting with the general requisite morals, and exigencies of the integrity of the position. In general the same is congruent with the provision of Article 11(D) of the Saudi Civil Service Law, Article (57) of the Qatar State Public Civil positions law, Article (24/3) of the Kuwaiti Civil Service and Article 62(G) of the Oman Civil Service Law.



### **2.3.1.2 Passive Duties**

In respect to compliance and abidance, passive duties are no different from positive ones, a fact which justifies considering them as duties. Such duties constitute the “don’ts” that a Public servant must refrain from carrying out.

Passive duties as considered in this study include the following aspects:

#### **2.3.1.2.1 Confidentiality of the Job**

In this respect, a Public Servant must refrain from divulging or disclosing secrets, information or confidential documents he may be able to see or hear about while performing his duties. This provision must extend and remain in force even after he resigns or quits the service, until such confidentiality is no longer applicable.(26)

This requirement of confidentiality is a general requirement and applies to all Public servants whether they have or have not yet been sworn to perform the duties of their Public Service.(27)

The confidentiality requirement however, differs from one Public Service to another, and even in the same Public Service, it differs from one task to another and from one time to an other.

Examination papers, for example, must be confidential and should remain so by the person who prepares the tests; the same applies to the reviewer and the typist of the test papers. Information obtained about other employees or citizens

should also remain private and should be treated in confidence. Some tasks also are deemed confidential per instructions of statements thereto.

Some other tasks however, do not necessarily require to be considered confidential including those of a nature common to a large sector of employees, and can be obtained from sources other than the postholder or task performer.

A Public servant and an employee must also consider confidential all matters within his reach and knowledge, whether these pertain to his task, to the section where he works, or other sections and departments, even if he does not have loyalty to these sections and departments.(28)

Many legislation include statements that bind their employees to observing confidentiality of information within their reach. Some even bind them not to take up a similar post or task to that he had been performing at the time of his resignation until a certain time has elapsed. This stipulation is emphasized in most legislation such as the French Civil Service Law per Article no. 10; the Belgian Civil Service Law per Article no. 9; the Egyptian Law per Article 77 / 5; the Syrian Civil Service Law per Article 23 / 3; and the Jordanian Civil Service Law per Article 78 / B.

The Gulf Cooperation Council States also laid emphasis on the same in their pertinent laws. This was stipulated in Article 62 / A of the UAE Civil Service Law; Article 12 / E of the Saudi Civil Law; Article 25 / 5 of the Kuwaiti Civil Service Law; Article 60 / 2 of the Qatari Public Service Law and Article 63 / E of the Civil Law of the Sultanate of Oman.

The confidentiality requirement, however, becomes null and non-applicable under the following circumstances:

1. By clearance and permission of the competent authorities and subject to its conditions;

2. Where the victim or the party that sustained the damage expressly rather than inferentially permits this disclosure.(29)

#### **2.3.1.2.2 Abstention from Conduct Expressly Stated**

Legislation which require a Public servant to refrain from certain aspects of conduct draws upon the view that some forms of conduct do not conform with and are in violation of the duties and responsibilities of a Public servant. These forms of conduct also infringe the identity and integrity of a task. Therefore, the legislators seek to protect public service on the one hand and ensure the preservation of public interests, on the other. The legislators have identified a number of these and included them in their Civil or Public Service Laws. These include but are not limited to the following exemplary forms:

1. Infringement on and violation of the provisions stated in laws, regulations in force;
2. Failure and negligence that may lead to loss of public rights;
3. Photocopying of restricted documents or removal of such documents from files;

4. Violating public safety procedures;
5. Performing another job simultaneously with his current job whether this is paid up or gratuitous, without express permission of the employing party;
6. Violating the integrity, decency and honesty of his job;
7. Utilizing his responsibilities for personal gains or on behalf of other parties in a manner that contradicts with the legality of the job;
8. Jeopardizing the security and stability of the workforce;(30)
9. Violating stipulations restricting certain public activities such as candidacy to elections, freedom of expression, enrollment in political parties, etc.;
10. Instigating riots, strikes and sit-ins.

### **2.3.2 The Public servant's Non-Job Related Responsibilities**

The duties and responsibilities of a Public servant and the authority vested in him may very often influence and restrict his conduct as well as constitute an external control over his dealings outside the domain of his job. Such influence may extend

to his personal life in order to maintain the image of his role as a Public servant and to the reputation of the organization to which he belongs.

We have mentioned earlier that disclosure of information constitutes one of these limitations of a Public Servant's conduct. I would like to add the following limitations:

1. A Public servant must always realize that he holds a dignified job of reputation which the legislators have not failed to state expressly in the duties of the Public servant.
2. He must always exercise integrity and disinterest in performing his duties as these constitute a form of trust delegated to him. Violation of integrity codes and exercise of prejudice by a Public servant normally lead to withholding any further trust in him and would defame his reputation as a trustworthy Public servant.(31)

These two limitations of a Public servant's conduct have been stipulated in several legislation: Article 62 / 5 of the UAE Civil Service Law states that a Public servant should refrain from performing any act that violates the decency and esteem of the job he holds. This is considered a general duty which a Public servant should observe in his personal conduct throughout his life. Likewise, the Egyptian Supreme Administrative Court ( Ruling No. 1587 issued on 24 December 1966 ) emphasizes that a Public servant should maintain a good

reputation without which he may lose people's trust and this would have negative consequences on the Public servant. It adds that the image of a Public servant may be negatively affected if doubts are cast on his reputation, even though there may be no sufficient evidence available to support the allegations.

The other limitation relating to integrity and disinterest which a Public servant has to exercise in performing his duties has been stipulated in various legislation. Article 62 / 3 of the UAE Civil Service Law, for example, requires a Public servant to refrain from performing, outside the domain of his job, any private work ( e.g. to lease a property ), paid up or gratuitous, with the aim of exploiting such work in performance of his public service. Meanwhile, Article 60 of the said Law does not permit a Public servant to perform any work after the official working hours except with the permission of the Minister concerned. Violation of this stipulation may render a Public servant subject to disciplinary action. The same stipulation has been expressly stated by the Supreme Administrative Court.

## **2.4 The Public servant's Accountability**

The responsibilities of a Public Servant originate from the commitment which the Public Service imposes upon him or it may be the circumstances of the task that also require such commitment.

A Public servant's commitment pertains either to his performance which manifests itself in carrying out the instructions of his superiors, or in most cases to his accountability for his conduct.

Commitment of a Public servant also refers to the duties referred to earlier, and any infringement of such commitment would call for civil, criminal or disciplinary accountability.

I shall discuss here the disciplinary accountability which is the first and foremost aspect of a Public servant's commitment. However, I must indicate that imposing any of these individual measures does not necessarily mean that the other two cannot be imposed or applied as there are no clear-cut separations between infringements pertaining to this or that nature and the civil and the criminal forms of wrongdoing.

The extent of the nature of the forms of wrongdoing differs in the light of prevailing social, economic and political systems of a country. However, disciplinary accountability may be achieved independently from other forms of accountability.(32)

#### **2.4.1 The Disciplinary Measures of Public Service**

Disciplinary action helps in reminding a Public servant of his duties, and just as a diligent and outstandingly performing person is recognised by material and moral incentives, it is necessary to punish a careless Public servant for his negligence for it is inevitable to "show the sword of the caliph and his gold too", incurring discipline and incentive.(33)

The purpose of disciplinary action is to streamline and control the conduct of a Public servant in a manner that ensures continuity of the running of a public

facility without any interruption or breakdowns. Compliance with the instructions of superiors by the Public servant means that he has done his duties and thus his accountability is relinquished, and the superior has to be accountable for the instructions given by him.(34)

The aforementioned is the general principle of disciplinary accountability which reflects the Public servant's responsibilities to his organisation of which he happens to be a part.(35)

The concept of disciplinary accountability therefore refers to the administrative violation by the Public servant in a manner that interrupts the normal operating conditions of a public facility.(36)

#### **2.4.2 Civil Responsibilities of a Public servant**

The civil responsibility of a Public servant is determined by principles which, if violated, result in damage that has to be rectified by the erring party.

As mentioned earlier, disciplinary action may not exclude any of the other two actions, as violation of duties may affect the civil responsibilities in addition to the disciplinary aspects. This is because of the overlapping nature of the relationships of a Public servant's conduct and other parties that deal with the organisational and administrative set-ups.



Civil responsibilities are determined by the Civil Law which may differ from one country to another.

In most Arab countries the common principle of a Public servant's accountability for his personnel wrongdoing has determined that for civil responsibility to exist, there should be a wrongdoing, damage and causality.

The UAE Civil Transactions Law No.5 of 1985 included an abundance of Articles that define the extent of civil responsibility. There appear to be no special exemptions relating to public servants except in relation orders (below). The following Articles and their stipulations respectively show the intention behind them:

**Article 282:**

“Any damage caused unto others imposes accountability on the wrongdoer and compensation thereto.”

The requisite of this article is that if the act leads to a damage in itself, it has to be compensated for, and the act is prohibited in the light of its results, that is to say the consequences of it should be shouldered by he who commits it. If he who commits it is incompetent, the same shall not affect the act since it causes damage to a third party. The legislator places the accountability absolutely whether, it is committed by he who is not entrusted with the damage and the law in no way lift, the compensation in this case, save with a guarantee of his money. The responsibility of he who orders another is a pecuniary one, not based on wrongdoing but on damage; therefore, it is not a requirement of pecuniary responsibility that he who commits a wrongful act should be competent.

### **Article 283:**

1. "Damage may be directly incurred or by causality."
2. "Direct damage must be compensated, whereas damage by causality must be intentional or resulting in damage."

This article expounds the ways of damage either directly or by causation, that is to say a direct damage is caused if the act damages the thing itself and the damage by causation is when the act causes damage to a thing other than that which the act relates to. No condition is required for the direct act but the mere infliction of the damage can give rise to liability of the intention but in the case of causation it is conditional that once trespass and intention are established in this connection, the wrong doer has no right to commit the act resulting in the damage; however in both cases the act should cause the damage.

For instance if a public servant who is in charge of a warehouse for keeping state's property lights a fire to warm himself and accordingly sets the warehouse on fire then in this case he shall be in the wrong. It also seems that under the head of direct damage a public employee may be liable even where carrying out a lawful act, whereas in English law for example there is no liability for acts carried out without negligence under statutory powers except where the statute creates a cause of action.

### **Article 289:**

1. "A wrongdoing is attributed to the wrongdoer not to the superior unless the wrongdoer is coerced to carry out the act that caused the damage."

2. “A Public servant may not be accountable for damage incurred through orders of his superior when compliance constitutes a duty or he thought it was a duty, provided he can prove that his compliance was justifiable and that he exercised care and attention while performing the task.”

The first paragraph of this article can be illustrated by the case of an individual who installs a building according to an order issued to him by another individual. It stipulates for the lifting of the responsibility from the doer who is compelled by the person who ordered him. Coercion can be practiced in various ways. However not all coercion is considered as a cause for lifting the responsibility from the wrongdoer and transferring it out to another. Only coercion necessitating and pressing the act is considered as a cause thereof. The second paragraph expounds the case of a public servant and provides that he shall not be responsible unless he does an act in execution of an order issued by his superior, where the obedience of this order is a must or where the public servant subordinate believes that it is a must. The obedience of the subordinate is not a must unless the act he is ordered to do is legal or the subordinate believes it is legal, if the order is illegal a public servant shall be responsible unless he proves that at the time of doing the act, he believed that the act done was legal, by establishing that he took all the necessary precautions, closely examined and paid great attention to doing the work as well as having reasonable cause or reason to believe that the act is legal.

### 1) **Negligence-Related Responsibilities**

Negligence-related responsibility involves a general principle which considers all that causes illegal damage to others shall cause to be held the

wrongdoer accountable and shall be rectified by him. Negligence-related responsibilities may literally mean negligence, inattentiveness, lack of caution or the like, which involves deviation from the norms that are required to avoid the wrongdoing. In the extended sense of the concept, it involves a legislative sense which may be attributed to any illegal or prohibited act whether conducted intentionally or accidentally.

In French legislation, for instance, the term 'Responsibilities delictuelles' is used to denote not only the civil and criminal acts but also semi-criminal acts leading to causation of harm unintentionally.(37)

## 2) Contractual Obligations

This type of obligation requires that a contract between parties has been drawn and where one party violates the terms of the contract, the other party has been affected by loss and has sustained damage. Any damage sustained by a party prior to the conclusion of the contract would not entail any contractual responsibilities, but there might be some sort of negligence or breach of duty (tortuous liabilities) that may have emanated from preparations to draw and conclude the contract would entail contractual responsibilities.(38)

Negligence and failure to perform any obligation is therefore a legal one, whereas contractual failure bases itself on the terms of a contract that both parties have agreed to.(39)

Both failures, however, imply damage to one or the other parties and a wrongdoing that entails and involves the act itself and recognition by the doer himself.(40)

Responsibility and accountability for a wrongdoing involve two elements that may be related to the common welfare or the facility itself or to personnel, as explained below:

a) **Failure of Management**

This type of failure normally relates to negligence or incapacity of the public utility, that is to say that it is connected and linked to the assignments of the position; however this wrongdoing is generally not accompanied with bad faith, therefore the management is solely responsible for paying the compensation although it lies within the jurisdiction of the administrative justice. The wrongdoing caused by the position is not committed by a subordinate acting outside his terms of reference when the wrongdoing was committed, but is necessarily related to the position; without it the subordinate could have not committed the wrongdoing; hence the position was necessary to commit the wrongdoing. In this regard the determination of the failure of management and the accountability of the administration for it, shall not prevent the accountability of the public servants of the concerned administration directly for the commission of this wrongdoing, that is to say that the administration may hold them responsible each on his part and discipline them; however accountability may be taken against some of the public servants and not the others, following the rule of causation between the wrong doing and the wrong doer and whether the same is direct or indirect. The imposition of the penalty is based on the above said idea of the determination of the relation of the wrongdoing to the public servant.

To summarise the situation, on the whole failure of management arises where there has been a collective failure of a group within the organisation. The group can be collectively liable; there can also, of course, be disciplinary proceedings against individuals within the group.

b) **Personal failure or wrongdoing**

This type holds an individual accountable and he should therefore meet the compensation from his own assets in accordance with normal and ordinary jurisprudence.(41)

Arguments, however, arise around classifying both types of failure and wrongdoing, and several criteria were proposed to distinguish between such types. The most important criteria are as follows:

**Assessment and degree of failure**

A number of authorities, including Jeze, have stated that the personal failure is assessed according to the extent that when such a failure arises an extraordinary wrongdoing in terms of an employee while performing a job.(42)

This opinion is nevertheless contested because it excludes some wrongdoing that may be serious, while classifying others as management failures irrespective of their seriousness.(43)

The second criterion is that which is classified as personal and is attributed to whims which Laferriera ascribes to human weakness, whims and unawareness.(44) A wrongdoing is deemed personal if it bears individualistic qualities. It should be interpreted in terms of the objectives behind the wrongdoing. A person is therefore accountable if the act he commits is aimed at personal gains. Where investigation shows that damage has been incurred due to personal gains, the person committing the act is held accountable. In a case adjudicated by the Egyptian Administrative Court on 3 / 11 /1965,an employee committed an offense against another by beating him in a public highway while they were working on a public utility. The offender chased the victim on the highway, causing the latter to panic and fall on the highway where he was knocked down by a car. The offender was tried for a criminal offense and was required to pay blood money to the victim's heirs. The Court deemed the wrongdoing to be personal and the offender was accountable and required to meet the compensation from his own personal belongings.

Another criterion is the objective or the end at which the wrongdoer has aimed at while inflicting the damage. If this end is seen to be one of opportunism and gains that have nothing to do with the job by utilising his powers, he shall therefore be accountable, according to Duguil. The resolution of Zimmerman on 27<sup>th</sup> February 1903 was based in this opinion.(45)

The fourth criterion is the one that relates to a lack of loyalty to the job, on which Hauriou comments that if the wrongdoing affects the facility or utility if it is

made within the context of the jobs, but where it can be morally or materially excluded from the utility, the wrongdoing is then personal.(46)

Having said the above, there is a general consensus that none of the above criteria can be considered final and sufficient to determine the accountability of an employee, but they are all used together for reference.

### **2.4.3 The Criminal Responsibility of a Public servant**

Criminal Responsibility of a Public Servant has witnessed historical development in line with human development itself. New laws have added more specific and clearer interpretations of the concept of criminal accountability. Concepts like awareness, freedom of choice, deliberation and capability have emerged to determine criminal accountability in general. The basic principle that is now accepted generally maintains that criminal responsibility can only be determined by express legislation and punishment can only be applied subsequent to this determination and people's awareness of the crime. Controls have already been laid for the behavior of judges in determining criminal conduct and enforcing the appropriate punishment.(47)

Criminal responsibility can only be determined subsequent to the committal of a crime of disobedience of a legislation that has already been enforced, and therefore deserves a penalty, but where a penalty is not enforced, the conduct is then not in the realm of criminal behavior.(48)



Criminal responsibility may only be determined if the conditions defining such conduct are prevalent and felt. A crime is only so if the person committing it is a sane human being of freewill and mature, and if it is deliberately and knowingly committed.(49)

When it is proven that a Public Servant has committed a violation that necessitates a penalty, he has to be accountable whether the violation relates to his public duties or the things relating to the external environment.

When the violation relates to his duties, it should be treated in line with the penal code relating to the violation. The fact that he is a Public servant may even require more severe punishment.(50)

All legislation that concern the penal codes stipulate that “there is no crime that is not clearly stated just as there is no punishment that is not clearly stated”. Therefore, penal codes have been stipulated. Article 63 of the Egyptian Penal Code states that “a crime by a civil servant may not be considered so under the following circumstances:

1. In cases where the criminal behavior is undertaken in execution of an order or instructions by a superior when the civil servant considers his obedience to his superior is essential or believes he has to implement the order or instructions.
2. In cases where unintentionally he commits a wrongdoing in compliance with laws and regulations, or when he is under the

impression that such a conduct pertains within his duties and terms of reference.

In any case, a Public servant must ensure that he has not committed the wrongdoing without having firmly believed in the legality of his conduct when he performed the wrongdoing, and that he has based his conduct on acceptable reasons and attributes.(51)

In the United Arab Emirates, we notice that Article 2 of Federal Penal Law no. 3 of 1987 stipulates that “No human being may be blamed for criminal conduct of another, and an accused is innocent until proven guilty.”

Article 4 of the same Law stipulates that “No criminal conduct exists as stated in the Law and under circumstances and conditions therein. Criminal behavior is dealt with in line with the relevant and appropriate penalty unless otherwise stated.”

This confirms the principle that crimes and penalties are determined by a statement. Article 54 of the aforementioned Penal Law also confirms the same principle that “It is not a crime that takes place in execution of the instructions and stipulations of Shari’a law when undertaken by a duly authorised person .”

Article 55 explains a crime that may be committed by a Public servant by stating that “A crime is not so if undertaken by a Public servant or a person delegated to carry out a Public Service under the following circumstances:

1. When the wrongdoing or crime is done in execution of an order by a superior to a subordinate who has to comply with this order.
2. When it is unintentionally or accidentally undertaken in execution of the laws.”

Generally speaking, most of the laws around the world, eg. Egypt and UAE, do not consider an act criminal when a person commits a crime without awareness, will, discretion or of tender age. So, from the above mentioned, criminal liability can be defined as that liability of a live person for a prohibited act when he acts voluntarily with the knowledge of meaning and result of that act.(52)

#### **2.4.4 Disciplinary, Civil and Criminal Accountability**

##### **Comparison and Contrast**

There is a consensus amongst law makers that accountability involves infringement, wrongdoing or damage that may be disciplinary, civil or criminal. Disciplinary accountability pertains to an infringement in performance thus affecting the smooth operation of a job. Civil accountability bases itself on the agreed principle that he who causes the wrongdoing has in fact caused damage to others. Criminal accountability, on the other hand, bases itself on the axiom that holds the person alone responsible for his illegal acts that are committed knowingly and willingly while being aware of their degree and results. The three

principles therefore, in essence, bear some similarity in the sense that they stress the wrongdoing and its results.

If we were to highlight the differences however, we have to consider that these differences originate from two types of accountability, namely the disciplinary and the legal, the latter being inclusive of the civil and the criminal. This inclusion bases itself on the closeness of ties between the employee on the one hand and the employer and the wrongdoing on the other hand. It also considers the extent of relatedness of the wrongdoing to the nature of the job performed. Disciplinary accountability relates to the job and the workplace, while legal accountability relates to an external framework of responsibility.

Civil accountability, as mentioned earlier, involves failure or wrongdoing or contractual responsibility as infringement of any of these requires compensation that is subject to assessment of damage. The employee's relationship with his management is a contractual one. This leads to an overlap in determining the disciplinary and the civil responsibility as they relate to ordinary employees. When we deal with the disciplinary accountability as it relates to a Public servant from a contractual accountability, we have to differentiate between this and the civil responsibility based on the following:

Disciplinary accountability is governed by the employment policy and its rules and codes.

Disciplinary accountability relates to the employee's commitment to the duties of his job and the smooth performance of this job. Civil accountability, however, relates to the results of a wrongdoing and the extent of damages and

compensations thereto. The same facts may give rise to both but the purpose of the accountability is different .

Disciplinary committees and administration tribunals are normally delegated with these disciplinary matters, whereas ordinary civil courts deal with matters of civil accountability based on the ruling that the infringement requires a compensation.

Civil accountability and criminal responsibility pertain to the realm of the legal accountability which involves a breach of the rules stipulated by the law that require an employee's actions to comply with a stable and coexistent society. A wrongdoing then would relate to damage inflicted on others, or on a public utility, thus deserving compensation in the case of civil accountability, or punishment in the case of criminal accountability. Intention of damage or lack of it is ignored in civil cases and misconduct or breach forms the basis of the case.(53)

Both civil and criminal accountability may sometimes combine in one case if a breach involves the public interest or an individual, such as crimes relating to murders, beating, robbery, blackmail, libel or assault.

Civil accountability may arise where a legal violation may lead to damage that may not be penalised by the criminal law such as damage caused to the property of others unintentionally.

Criminal accountability may arise where a violation leads to damage in cases such as contemplation of murder or the carrying of arms. Damage, however, may not have to exist to determine legal accountability, but it can be where the

wrongdoing is considered as a cause of damage on the basis of the cause and effect principle.(54)

The framework of civil accountability encompasses a wider aspect than does the framework of criminal accountability, since the latter bases itself on violations to criminal codes while the former arises from violations to the legal duties of a person, which are numerous.(55)

Civil and criminal accountabilities may be compared as follows:

1. Criminal accountability involves damage to society, whereas civil accountability involves damage to the interests of one person or more.
2. Criminal accountability involves violation of a legal duty that is protected by statement in the penal law, whereas civil accountability involves violation to the legal duties that may not be stated in the penal laws.
3. With respect to the authority dealing with either of the violations, crimes of criminal accountability are the responsibility of the state and its competent powers, such as criminal courts. Civil accountability is the responsibility of the party to whom the damage has been caused. They are the domain of civil courts.
4. As far as the penalty is concerned, criminal cases are penalised even in the form of financial fines, whereas the civil cases require compensation to the victim sustaining the damage.(56)

5. As far as the results are concerned, criminal cases result in punishment that is aimed at deterring recurrence.

## **Conclusion**

From the previous discussion in this chapter, we may draw the following conclusions:

- (a) The economic, social and political systems in a country play an important role in defining the concept of Public servant in public service laws.
- (b) Civil courts adjudicate in disciplinary cases which are referred to them by the disciplinary authority only if there is a link between the disciplinary accountability and the compensation arising from such accountability.
- (c) Inflicting disciplinary punishment emanating from breach of civil responsibility does not release a person from civil and criminal accountabilities as there are no clear-cut boundaries between a disciplinary 'mistake' and a civil one.

## NOTES-CHAPTER II

- (1) AL Hilou Majed, *Organising Administrative Powers and Public Service in the UAE: Comparative Study*, 1409 Hijra, 1983, Dr. Al-Bayau Commercial Printing Press, Dubai, p.55.
- (2) AL-Itoum, Mansour Ibrahim, *Disciplinary Accountability of a Public servant: Comparative Study of Disciplinary Codes in Jordan, Syria, Egypt and France*, 1404 Hijrah, 1984, First Edition, Al-Shary Puinting Press, Beirut, p.9.
- (3) Al Hilou, *op.cit.*, p.75.
- (4) Abdul Hadi, *Studies of Researches in Public Administration and Admin. Law*, 1483 Hijra, 1983, First Edition. Hittin Printing Press, Al-Furgan Publishing & Distribution, pp.75-77.
- (5) *The Official Gazette*, Federal Law, No.8, 1973, UAE.
- (6) Habeich, Fawzi, *Public Service and Personnel Management*. Arab Organisation of Admin. Sciences. Arab League. 1981 Issue No. 262, p.47.
- (7) "Regulating the Admin. Body of the State, the Civil Service Law, Executive Regulatory Bulletin of Civil Service Law", November 1985, Sultanate of Oman, Personnel Affairs Directorate. Printed and published by the Omani Gazette Press.
- (8) Habeich, Fawzi, *op.cit.*, pp.46,47.
- (9) AL-Hilou, Majed, *The Kuwaiti Admin. and Civil Service Law*, First Edition 1400 Hijra, 1980. Zat Al-Sahasel Publishers, Al-Hayat Printing Press, Beirut., p.174.
- (10) Al-Hilou, *op.cit.*, p.45.
- (11) The Provisional Constitution of the UAE, Article 35.



- (12) Al-Itoum, *op.cit.*, p.39.
- (13) *Ibid*, pp.40-41 and Ibrahim AL-Sayed Mohamed, *Interpreting the Civil Service System of the UAE, 1978*. Printed by Ministry of Information and Culture, Distributed by Information Dept. - UAE , p.287.
- (14) Al-Hilou, *op.cit.*, pp.246-247; Al-Itoum, *op.cit.*, p.41; Ibrahim, *op.cit.*, p.288 and Basyouni Abdul Ghani, *Administrative Law*, AL-DAR Al-Jamia Printing, 1992, p.38.
- (15) AL-Sherif Aziza, *Disciplinary Codes and their relationship with other penal systems*, Dar Al-Nahdu Al-Arabia Publishers. Cairo Printing and University Book Publishers, 6/3/1983, p.171.
- (16) AL-Tabatabai Adel, *The New Civic Service Law: Applied Study of Civil Service Committee Decisions, and Opinions of both Civil Commission and Fatwa and Legislation Depts*, Kuwait University, Zat Al-Salasel Publishers, 1983, pp.231-233 and Habeich Fawzi, *Arab Organization and Administrative Sciences, Civil Servant: Right and Responsibilites*, 1982, Issue No:267, p.10.
- (17) AL-Tabtabai, *op.cit.*, p.232 and Al-Itoum , *op.cit.*, p.52.
- (18) *Ibid*, p.51.
- (19) *Ibid*, p.233.
- (20) *Ibid*, p.233 and p.46.
- (21) "The Supreme/ Court Judgement", 5 / 6 / 1965, Section 10, p.1553 and AlSherif, *op.cit.*, p.180.
- (22) *Ibid*, pp.241-242 and Al-Itoum, *op.cit.*, p.46.
- (23) *Ibid*, p.242.
- (24) *Ibid*, p.47.

- (25) Al Sayyid M. Ibrahim, *op.cit*, p.243
- (26) Afifi Mustafa Mahamed, *Fundamentals and Principles of Public Administration: Theoretical and Applied Study of Admin. problems in the UAE of Foreign Countries*, part II, Second edition, 1991. Al-Bayan Commercial Printers, Dubai, p.336.
- (27) Al-Sherif, *op.cit.*, pp.214-215.
- (28) Al-Itoum, *op.cit.*, p.53 and Al-tabtabi, *op.cit.*, pp.247-253.
- (29) Al Sherif, *op.cit.*, pp .202-216 and Al-Itoum, *op.cit.*, p.253.256.
- (30) Afifi, *op.cit.*, pp.337-340.
- (31) Al-Sherif, *op.cit.*, p.65.
- (32) Jaafar Mohammed Anas Qasem, *Principles of Public Service and their Applications in the Algerian Legislation*, Morante Brothers Press, 1982, p.152.
- (33) We note here what was mentioned earlier concerning the Puublic Servant's Obedience to his superiors, even if it involves a violation ( see pp.15-17).
- (34) Ajailah, Ahmed Issam, *Obedience to Superiors and its extent in Public Service: Administratively, Disciplinary, Criminally and Civilly*, the World of Books Publishers, p.257.
- (35) Al-Sherif, *op.cit.*, p.84.
- (36) Hogg, *Liability of the Crown*, 2<sup>nd</sup> ed.,1989; Wade and Bradley, *Constitutional and Administrative Law*, 11<sup>th</sup> ed., 1993, Longman, p.749et. req.; *M v Home Office* [1993] 3 All, E.R. 537.

- (37) "Arbitration Court Judgement", 13 / 12 / 1879, p.803, Mestere, Financial Accountability in French Law; Ajailah, *Ibid*, pp.310-311; Al-Sherif, *Ibid*, pp.70-72 and Abdul Barr Abad Al Fattah, *Civic Responsibility of Government and Public Sector Employees* , 1989. Dar Al-Nahda Al-Arabia Publishers, pp.32-38.
- (38) *Ibid*, p.43.
- (39) *Ibid*, pp.15-16.
- (40) "Disciplinary Codes and their Relationship with other Penal Codes" Al-Sherif, Aziza, *Ibid*, p.71.  
It is noted that the first country to recognise self-interest, utility and personal wrongdoing acts was France.
- (41) Al-Hilou Majed, *Administrative Jurisprudence*, Al-Dar Aljmia Printing, 1985, p.478.
- (42) Al-Sherif, *op.cit.*, pp.77-79; Administrative Jurisprudence 88 / 5 / 2 / C of 2 / 2 / 1950, Fourth year group, p.304.  
Hearing case of 29 / 6 / 54, p.956.  
Judgement 464 / 5 / 3 / C of 7 / 2 / 1951, fifth year group, p.584.  
Judgement in both cases of 1142 / S / 5 / C of Hearing of 7 / 11 / 1954, Ninth year group, p.10.  
Secondary Principles Group decided by the Administrative Jurisprudence Court during 15 years in 64 / 65, part 1, pp.648-675 and Al-Hilou, *op.cit.*, p.478.
- (43) The principle of discriminating amongst these opinions was considered by the Egyptian Administration Court on 6 / 6 / 1959 in Case No. 928; Al-Sherif *op.cit.*, pp.76-77 and Al-Hilou *op.cit.*, p.478.
- (44) *Ibid*, p.479.
- (45) *Ibid*, p.480.
- (46) Basheer Jumae Mohamed, *Non-Responsibility for Criminal Accountability in the Islamic Sharia and Man-made Laws*, the Public House for Publishing and Distribution, First Edition, 1986. National Bookstone, pp.20,26,27 and Al-Shawi Tawfig Mohamed, *Lectures on Criminal Codes in the Arab Countries*, Arab World Studies Institute, Arab League. Dar Al-Hana Printing, 1954, Egypt, p.19.

- (47) *Ibid*, and Al-Bandari Abdul Wahab, *Disciplinary and Criminal Accountability of Civil Servants in the State and in the Public Sector*, 1972, Al-Alamia Printing, Cairo, p.14.
- (48) *Ibid*, pp. 47-59.
- (49) Al-Sherif , *op.cit.*, p.18 and Yakan Zuhdi, *Administrative Law*, Al-Asriya Publishers, Beirut, parts 1 & 2, p.379.
- (50) *Ibid*, p.18.
- (51) Articles 60-64 of the Penal Law, UAE.
- (52) Articles 234, 236, 238, 240-247 of the Penal Law, UAE and Basheer, *op.cit.*, p.20.
- (53) Naqeeb Atef. *The General Theory of Accountability Enumerating from Personal Acts*, Diwan Al Matbu at Al Jamiyya, Algiers, 1984, pp. 19-20.
- (54) Al-Khalili Rujuib Ebrahim, *Civic and Criminal Disobedience Accountability in Socialist Societies*, Al-Alamiyah Printing, Cairo, 1967, pp.1-2.
- (55) Morcos Suleiman, *Civic Accountability in Arab Societies Technologies*, part 1, General Rules, 1971, Arab Studies and Research Institute, Arab League, 2<sup>nd</sup> Edition, Al-Jabalawi Press, p.5.
- (56) *Ibid*, pp.5-6 and Fahim Adel Sayed, *General Theory of Criminal Accountability in Crimes Committed and Affecting Public Property - Baghdad Criminal Law*, Part 1, Haddad Press, Basra, Iraq, 1967-1969, pp.31-38.

## CHAPTER III

### IMPLICATIONS OF DISCIPLINARY ACCOUNTABILITY

#### 3.1 Framework

We have previously indicated that conduct calling for disciplinary action refers to an employee's contravention of the normal conditions of work in a manner that leads to its interruption. We have also mentioned that as far as the three types of accountability are concerned, the law agrees that accountability considers the contravention, the wrongful act and the damages. Therefore we may say that within the context of disciplinary accountability, the basic assumption is that a public servant physically exists at the work location and his wrongful act has led to the interruption of the normal operations of work. Disciplinary accountability may be a personal, combined or joint accountability.

A public servant's wrongful act may be attributed to his pre-engagement, in service or post termination of service. This is shown in the forthcoming exposition.

##### 3.1.1 Employees Accountability for Pre-service Actions

As an employee's relationship with his work does not exist prior to engagement, his accountability should not be viewed in terms of what has happened earlier. However, wrongful acts may have formed the basis for such a

work relationship to ensue. This may entail abuse of appointment procedures, the circumstances leading to them, or the terms and conditions pertaining thereto. In this case, disciplinary accountability cannot be required directly of an employee although he may have to answer civil, or criminally for the damage that such an inadequate procedure has led to. The management may then take what it finds appropriate as far as the inter-relatedness of these things and the extent of the effects of the appointment procedure on the work itself. This may include withdrawal of the appointment or discharge of the employee without recourse to disciplinary action procedures(1) as discipline essentially relates to the employee's hierarchy in the establishment; an employee is therefore not accountable for pre-engagement actions as his terms of reference would not have existed then.

Some French administrative lawyers believe, however, that an employee may be held accountable for pre-engagement actions which were in violation of his terms of reference and duties. The above has also been highlighted by Dr. Al-Tamawi referring to Professor Alian Planteq (2) but the legislature has to consider pre-engagement conduct which violates his duties as an employee. This was supported by the State Council of France in the case of Savail on December 5<sup>th</sup>, 1930 (3).

### **3.1.2 Post-Termination Wrongful Conduct Accountability**

In view of the fact that disciplinary liability is basically linked with the employment tie or relationship, the general principle or rule (4) is that what was

committed by the public servant after the disconnection of this link cannot be questioned; in this regard, the Egyptian supreme administrative court sustained and confirmed this meaning, although it decided that the origin of the disciplinary action is the connection with the position, but the relation with the position of disconnected-disciplinary action shall be of no avail. To put it in other words, what you do fails to achieve what you want.

However, it happens that some wrongdoing or mistakes may be committed by the public servant after the disconnection of the position tie but, at the same time, it has a positive and definite relation with the position. For instance, the divulgence or disclosure of the secrets relating to the position; hence, it is not possible to discipline the public servant by applying the general rule in questioning his discipline. However, where these violations are related to an issue, having something to do with the service, it may be possible on this ground to question the public servant's discipline even after the disconnection of the position tie. Moreover, some of the civil service laws cover such practices even after the termination of service.

The aforesaid meaning is confirmed by Dr. (Al Tamawi) (6). He indicated the fact that the public interest requires so public servants to shoulder such responsibilities that this necessitates tailing and following them closely for the public sake even after they have left the service, for instance, it may oblige or make it necessary for public servants not to divulge or disclose the matters that came to

their knowledge by virtue of their positions or through the same even after they have left the service.

It is not possible to question the public servant for the violation or breach of this obligation after the termination of the service otherwise the legislation will be set according to obligation whilst being fundamentally flawed and, therefore, open to ambiguous interpretations.

In the matter of questioning the civil servant after termination of service jurist's opinions differ, that is, in respect to the prohibition concerning certain practices pertaining to the law. However, this does not mean that it is possible to follow illegal practices after the termination of the service.

Article 62 of Federal Law No. 8 of 1973 concerning public service in the Federal Government of the U.A.E states that, "a public servant shall be prohibited from disclosing confidential information to which he has access by virtue of appointment". In connection with the same, Article 63 of the Royal Order, 8/80 of the Omani Civil Service, in para. (j) stipulates that "disclosure of confidential information by privileged employees may not be tolerated".

The Saudi Arabian Civil Law also stipulates the same per Royal Order 49 of 10/7/1397, where Article 12 of the law of stipulates that, "confidential information accessed to the employee may not be disclosed subsequent to termination of service".



In Kuwait, Article 25 of Law 15 of 1979 concerning civil service stipulates in paragraph No.5, that “an employee may not disclose any information of confidential nature, per circulars issued to this effect or publicity of any sort except by written permission of the Minister, which remains in force subsequent to termination of service”.

In the state of Qatar too, Article 60 of the Civil Law stipulates, as in Saudi Law, that “such disclosure of confidential information may only be by prior consent which remains in force subsequent to termination of service”.

Hence the legislation's of the AGCC (The Arab Gulf Cooperation Council) stating the prohibitions on the issues subject to prohibition even after the termination of the employment tie or the relationship and whether the provision covers the duration of the same after the public servant has left the office or not have provided for that. The situation is the same on the account that divulgence may sustain damage directly or indirectly vis-à-vis the position or the office.

In this connection, consultant Al Bandari (7) thinks that the public servant should not be questioned on a matter of discipline after abandoning or leaving the service when he says as far employees in the public sector are concerned we (the consultants) argue that civil servants' should not be subject to disciplinary questioning after leaving, or abandoning, the service: and that this should be a general and absolute principle without exception. Whatever the case may be possible to question them for the wrongdoing at the time they were in office or service, it is rational not to be questioned for those committed after the termination of their service. I believe that the opinion preponderated by counselor Al Bandari,

may indicate one of the systems or methodologies of administrative law in this regard. Counselor Shaheen insists that an employee may not disclose any information accessed to him by the privilege of his appointment, particularly when this is confidential, without express permission, and this remains in force following termination of service. This, however, is outside the realm of disciplinary action in view of the cessation of relationship unless damages are sustained owing to this disclosure which may require civil or criminal action that becomes the jurisdiction of civil law. It all depends, however, on the stipulations of the law and the extent of its enforcement to cover post-termination of service (8).

In some G.C.C. states i.e. Kuwait, Saudi Arabia and Qatar, extension of enforcement applies to post-termination of service (9), whereas in the UAE and Oman the enforcement is implied (10). Article 181/3 of Federal Law No. 8 of 1980, in relation to Re-regulation of labour relations in the UAE stipulates that without prejudice to any severer penalty provided for in any other law, a penalty of imprisonment for a period not exceeding six months and a fine not less than three thousand dirhams and not exceeding ten thousand dirhams or either of these two penalties may be given to any official entrusted with implementation of the provisions of this Law, if he divulges, even after termination of his services, any secret of work, industrial invention, or any method of work, which came to his knowledge in his capacity as such an official. The legislation has therefore imposed that an employee may not be reinstated or employed prior to the lapse of a 6-month period so that his new employment may not interfere with the necessity to disclose the confidential information of his previous employment. To this effect, Ministerial

Order 1423/1 of 1977, of the UAE, stipulates that an employee leaving the service of the government may not be re-employed before the lapse of a 6-month period from termination of service. This orientation of the G.C.C. countries is in line with the objectives behind the prohibition of reinstatement considering the appropriateness of the ends and causes of both termination and reinstatement as basic to the legislative system of the state.

### **3.1.3 Ex-Employee Disciplinary Accountability for Conduct While In Service**

As previously mentioned, disciplinary action can usually be taken only where the person is an incumbent employee. However where violation has occurred during the service period, the matter is dealt with differently by various legislatures. This is likely to arise where an employee acquires property during his employment which he retains afterwards. The UAE Federal Law No. 8 of 1973 stipulates in Article 61 that “an employee may not have individual interest, directly or indirectly in works and contracts of the Ministry of his employment”. Article 62 of the same law requires the employee to observe the following prohibitions:

Retaining in his possession any original official document, even though the document relates to some work delegated to him”.

“that he leases or rents real estate or land or otherwise than for the purpose of utilizing land in the department of his employ, particularly where this is relevant to his duties”.

Article 25 of Order No. 15 of 1979 regarding civil service in Kuwait highlights the prohibitions an employee must observe, such as:

“purchase or rental, directly or indirectly of real estate or moveable property from the government department of his employ, and he may not sell or lease the same to the same department of his employ, and he may not sell or lease the same to the same department”, “that he may not have an interest, directly or indirectly in contracts and tenders that relate to any government department requirement”.

In Article 6 of the same law it is also stipulated that:

“He may not retain in his possession any originals or copies of official documents, whether this be paper, recorded tapes, films or the like, which relate to the department of his employ, even if a particular assignment delegated to him personally”.

The Qatari Civil Service Law also highlights and stipulates what is construed to be prohibitive measures to undertaking similar activities. Para. 3 of Article 60 of the law stipulates:

“that an employee may not retain in his possession an original official document including that relating to an assignment delegated to him personally”.

Article 61 of the same law resumes:

“That he may not undertake any trading or business activities, and particularly where he may have interests in contracts, works, movable, or tenders that relate to his department of employ”.

The outlook in the Saudi Civil Service Law as decreed by Royal Order 49 of 10<sup>th</sup> July 1397 (Hijrah) is somewhat different.

Article 12 of the law stipulates that, “an employee may not misuse his authority or appointment for personal interests”.

Article 13 of the law stipulates that, “an employee must refrain from undertaking trading activities directly or indirectly”.

The Royal Omani decree No. 8/80 stipulates in para. (k) of Article 63 that the prohibitions include, “that employees may abuse and misuse their authority for personal gains”.

As we compare these legislation in the various G.C.C states, we realise that the UAE, Kuwait and Qatar have a lot of similarity in their outlook on the matter, particularly in connection with retention of original documents and having an interest in works, contracts and tenders of his government department’s employ. The Kuwaiti legislation is broader in the sense that it does not only limit such interests to the department of his employ, but to all government departments as well. This is intended to protect the employee himself against any suspicions of dealings and to curb misuse of authority by an employee. Therefore the law was in many ways more general and restrictive to illegal behavior”(9).

The Qatari law is also broader in its limitations and prohibitions and generalises such conduct to any and all government departments as may be legally or administratively seen appropriate.

As far as the Saudi and Omani laws are concerned, we may assume here that they also tackle the matter along the same lines as the UAE, Qatari and

Kuwaiti laws, particularly as they strictly prohibit an employee from misusing and abusing his authority, or undertaking trading activities directly or indirectly, in works, contracts, tenders, purchase or lease relating to government departments. An employee's misuse of authority may also be embodied in his retention of any official documents, even those relating to an assignment required of him personally. The Omani law may be deemed the most concise and precise of all as it emphasizes prohibiting an employee from misusing and abusing his official appointment for personal gains.

Now how can an ex-employee be accountable for his wrongful acts of his in-service period? Would he be held accountable during the post-termination period? The answers to these questions may be a subject of argument as there are conflicting principles. The employee should be an incumbent to be held accountable and the enforcement of disciplinary action in the post-termination period would be ineffective despite the civil or criminal accountability. In this respect the following parameters may be highlighted:

1. Accountability of an individual essentially ceases upon discontinuation of employment.
2. If investigation of misconduct by an employee has begun prior to termination, this may continue during post-termination.
3. If employment of an individual ceases for reasons other than disciplinary action, and in the meantime violations have been discovered, the authorities may pursue a civil or criminal proceeding as appropriate.

4. If found guilty of pre-termination violations, penalties may be imposed and enforced by deductions from pension or benefits as may be appropriate. This may take the form of a civil action for compensation affecting pension allowance or benefits. This accountability may be explained in terms of violation by an individual of the ethical norms of employment, and if by privilege, an employee becomes in possession of official documents for which he may be disciplined, then the same applies when he leaves the service when the same documents may be used for embezzlement or blackmail. The civil action may also extend to effect the termination of all contracts or tenders concluded during his employment if these are deemed to be dangerously affecting the department. The whole argument bases itself on the axiom that "No damage is done, no penalty is then applicable", but where there is damage, penalty becomes a must.

If we are to accept Counselor Bandari's opinion that an ex-employee may not be held accountable for wrongful acts while in service (10), when no investigation had been commenced prior to termination, therefore we may not be in a position to question his mistakes during the previous period. Bandari, however, is supported by the points of view of the Egyptian Supreme Court (11). These judgments are in favor of exempting an ex-employee from his responsibility while in service, a fact which makes it known to some employees making such mistakes that when they leave they will not be held responsible. This principle unfortunately allows for wrongful actions and must be altered to curtail these actions strictly. An

employment relationship must not be the only criterion for accountability, otherwise the balance of justice will remain shaken and incomplete (12).

The principle of accountability of an employee during the post-termination period for his wrong doings during the in-service period must not be violated, and exceptions should not exist. We cannot justify, on the basis of the above principle, the wrongful actions of two employees who have simultaneously committed the same mistakes, but for some reason, investigation is commenced prior to termination of the one but not the other, The latter may have decided to quit his job for this reason only.

In Al-Tamawi' opinion, "Disciplinable crimes may not be detected, particularly those of a financial nature, until a long time may have elapsed. Some people who should have been held accountable may have left their employ by the time of discovery, and it would not be in the interest of the department to let them get away with it when the other incumbent colleagues may be held accountable for the same actions (13). Shaheen however believes that "leaving an employ should not be legally acceptable as an excuse for acquitting a wrongful doer for his violations unless the period of grace itself has lapsed" (14)

An employee may be held accountable for his wrongful actions that relate to his job and those that do not relate to his job. Most legislatures agree that an employee should be held accountable for his actions within his work environment and outside it when this affects his performance (15). However, some disagree on



the above principle particularly when the wrongful actions are committed during a period of temporary suspension of duties while on leave or secondment or temporary dismissal and suspension. The accountability of an individual stands, however, as long as there exists a work relationship whether this is work for pay or of a voluntary nature. In this connection, the Supreme Court has ruled that an employee who volunteers to carry out work for a colleague who happens to be absent from duty bears responsibility for the work accomplished. A violation must be accounted for and a volunteer's negligence must not be tolerated, (16), irrespective of the circumstances that made the volunteering employee carry out work on behalf of his absenting colleague, whether he was qualified or not (17).

#### **3.1.4 Disciplinary Action may be Individual, Combined or Joint**

Discipline is a form of the code of the penalty and reward applied in line with Heavenly revelation or various religions. In the Kuranic Scriptures, this is expressly shown in Verse 21 of Al-Tour Chapter that "All creatures are accountable for what they have undertaken" i.e.. punishable as well as rewardable. In the Al-Anam chapter, Verse 164, God says "A self is only what it is and will not be accountable for the wrong doings of another". Therefore, an individual may not be held responsible for the actions of another, be these good or evil actions, and likewise an employee may not be held responsible for the mistake of another unless he has contributed to a violation (18).

Individual actions are then viewed singly unless interconnected to a cause emanating from the intentions, intervention or contribution of another individual. Where joint action or collaboration leads to a wrongdoing, the consequences are then to be borne jointly. Collaboration, however, is not analogous to joint action owing to the following:

#### **3.1.4.1 Combined Accountability**

What is important in this type of concept is the relatedness of a wrongdoing of an incumbent to the lack of supervision of his managers, which in this case bears a sense of collaboration. An instance of this would be the negligence of a school-master in supervising the secretarial duties which may be wrongly done (19). The Supreme Court has ruled that if damage sustained is owing to the administrators' negligence and the incumbent himself, the judge may divide the accountability of each party and decide compensation. However, the civil accountability will be blamed on the incumbent himself (20).

The judgment emphasized that, "a wrongdoing may be due to different causes such as negligence, desertion, delay or lack of expression...etc., and an individual's moral responsibility may be assessed and management may be blamed if a tangible intervention by it is felt in a manner that reflects on its negligence of supervising the activity and damage is sustained accordingly"(21).

### **3.1.4.2 Joint Accountability**

I am going to highlight here the joint responsibility of individuals where a wrongdoing is committed by more than one person, equally sharing completion of work with others. An example of this would be a board of medical consultants. In this instance, where the board proves to be erroneous in determining the fitness of an individual, for example, and such a decision leads to damages, the responsibility is shared and the accountability is joint. A committee that also approves the compliance of materials to specifications set is also held jointly accountable (22). The Supreme Court has ruled that both defendants, having jointly undertaken inspection and determination of compliance of delivered sprinklers to specifications, are held jointly accountable for this acceptance of delivered materials which have proven to be mechanically faulty. They have, therefore, violated their duties and contravened the standards required of them. Both are therefore held responsible, irrespective of the penalty each will have to sustain”(23).

### **3.2 Components of Disciplinary Accountability : Preliminary**

A crime can only exist if its three components exist. These comprise, the legal aspect, the material and the moral aspects. Accountability can therefore only exist if the crime has been identified, and mental awareness and choice have been committed voluntarily or involuntarily. Personal circumstances and assessments of the targeted object are also very important (24).

In view of the above, we find it necessary to explain the following aspects relating to accountability for an action:

1. A crime warranting discipline.
2. A wrongdoing warranting accountability/discipline.
3. Criteria for accountability and disciplinary action.

### **3.2.1 A Crime warranting Disciplinary Action**

In order to explain this aspect, a definition of this type is necessary and its components and classification are very important.

A crime calling for discipline is viewed from various perspectives. What may be a violation calling for discipline by one employee may not be the same if committed by another. An employee may not divulge the confidentiality of his job and may therefore be disciplined, while his superior may be allowed to give releases in the papers on the same subject. This criterion takes the individual's status into consideration, and looks at the particular circumstances in the light of the effect on the job. Therefore, a criminal violation calling for discipline may be assessed in terms of the intensity of the violations, which calls for accountability. As was said by the Supreme Court, "it is an administrative violation that disrupts the smooth running of a function"(26).

A criminal violation calling for discipline may be viewed as accountability that also calls for discipline and this can only exist in the circumstances of the crime itself.. Legislatures have in this respect resorted to using different terminology to refer to the wrongdoing of an employee and thus calling for disciplinary action. Amongst these are terminology like, “Crimes Warranting Discipline”, “Violations Warranting Discipline”, and “Administrative Guilt”, which essentially mean the same (27).

### **3.2.1.1 Components of Criminal Action Warranting Discipline**

There are two main points of view that are important in respect of this type of conduct.

A. A point of view which considers three components of a crime calling for discipline, which is believed to be accepted by a large number of administrative legislatures (28), particularly amongst French jurisprudence which has influenced Egyptian law (29). These have however disagreed on defining these components.

Two points of view have in this respect arisen amongst them:

1. that the components comprise the individual employee who commits the wrongdoing, the material part which involves the positive or negative action of the employee and the moral aspect which involves premeditation by the perpetrator.
2. that the legal side of the issue must expressly include a statement describing the unlawfulness of such an act while the other two components of No. 1 above exist. This opinion makes it a precondition

to stipulate in the law that the act is wrongful and punishable, otherwise an act which may be deemed wrongful by some may not be viewed so in the absence of such express stipulation.

**B.** The other point of view takes the assumption that a crime comprises two components only. However, agreement on the definition of these two components does not exist (30). For some, these two components are:

1. the status of the employee
2. the wrongdoing or administrative violation (31)

For others they include:

1. the material aspect: positive or negative results
2. the moral aspect, whether predetermined or not (32)

Where an employee commits a wrongful act intentionally, the moral aspect is dominant. In this connection, Dr. Maged Al-Helow (33) assumes "that premeditation of an authority is a requisite for the moral aspect to be available in a crime situation, whether this be intentional or voluntary. A crime calling for discipline is based on a wrongful act happening. It cannot exist without the intention to do the activity of work itself, however, when an individual's will is dominated by a force measures such as acts of war, sickness, material, moral or written coercion of his superiors, a crime then does not exist". However, he believes that the three components of a criminal behavior must include the legal stipulation that prohibits the occurrence of the crime. An employee only may not be sometimes accountable for a violation or a wrongful action, as discipline cannot be required without the presence of the wrongdoer. Therefore, a violation

warranting discipline has three components: the legal, the material and the moral, as will be discussed below.

### **3.2.1.1.1 The Legal Component**

The legal aspect of criminal law indicates that a crime or a punishment may not be applicable without a legal stipulation, which requires the following:

1. that the legislative authority shall be the competent party that decides the intensity of the violation and the applicable punishment thereto.
2. That the judicial authorities are the competent party that may enforce the punishment decided by the legislative authority (35).

An act that is therefore committed and is proven wrongful in a criminal sense may only deserve the applicable punishment as outlined by the legislative body, and a judge is then required to comply with the criteria of type and intensity (36)

Administrative law has however differed in opinion with respect to whether this also applies to the disciplinary aspects of such a crime and two points of view have emerged.

A. That the administrative law does not need to define the nature of the wrongdoing nor provide for independent adjudication. Therefore, it was not deemed necessary for the legislative or the administrative authorities to enact or produce lists of crimes that an employee may be disciplined or penalised for, and a proof of the employee's violation of his duties would therefore be sufficient. In

this respect, Gerard (37) assumes that “the principle of disciplinary action violates the principle of legality of penalties and crimes; the management, therefore, is the sole disciplinary body that may be capable of assessing things in a manner that the criminal law lacks”. Dr. Aziza Al-Sharif goes along with this assumption as she believes that “although this principle is of tremendous importance in public life by securing people’s protection against any arbitrary decisions by the ruling party, we cannot by any means enforce the same instances involving an administrative violation” (38).

In connection with this, Dr. Abdul Fattah Hassan assumes that “a wrongful doing calling for discipline is different from a criminal act in the sense that it does not fall under the jurisdiction that stipulates that “no crime is deemed so unless expressly stated, as an authority that holds the disciplinary action may consider an action, positive or negative, by the employee while performing his duties calling for discipline so long as this action does not comply with the duties of the job” (39). This is supported by the view of Dr. Mohid Al-Malt who assumes that “the legal component should be excluded from a crime calling for discipline as the illegality of an action is judged by examining the duties of the job, and that for the legal component to be considered in deciding criminal conduct may also be applied to the moral component, which strips a crime then of all its components. What is important is that even if the employee is not aware of the illegality of an action, his committing of the wrongful act must not exclude the moral component of it” (40).

In view of the principle that ‘a crime may not be deemed so without an express statement’, the administrative legislature has outlined certain controls that are to be used as guidelines in dealing with disciplining a wrongful incumbent (41).



1. That an employee's action is a disciplinable form of a wrongful action rather than just any action.
2. Observing the moral aspect and tradition while performing the act.
3. Setting out express statements of wrongful actions, which may be up to the authority to decide the extent of a violation without limiting itself to the Penal Code.
4. Confirming the occurrence of a violation, positively or negatively, and in this case the disciplining authority is bound to support its views by actual wrongful occurrences committed by an employee.

Another control was laid by Dr. Al-Tamawi who assumes that "authorities that have the power of enforcing disciplinary action should consider the various controls of public service in terms of duties and responsibilities of an employee, in the light of which a wrongful action may be determined" (42). The Supreme Administrative Court in Egypt on the basis of the last principle ruled that, "the disciplinary court as the competent authority must abide by the legal stipulations and base its judgment accordingly, in terms of determining as administrative wrongful act and the appropriate penalty of it" (43).

The opinion of many that a wrongdoing or the failure of an employee to comply with the terms of an appointment has been proven when no stipulation is expressly stated to define a crime implies a number of things (44):

1. If the legislature has expressly prohibited certain actions, this does not mean that others can be undertaken. The objective of the express prohibition is to guide the employee and alert him to the dangers behind undertaking them and an orientation to avoid them.

2. The defining and highlighting of actions that constitute criminal conduct and therefore are to be avoided by employees is a matter left to the discretion of the disciplinary authority that is monitored by the administrative legislature. The Supreme Administrative Court has ruled regarding this and outlined that, “the decision reached by the court assessment of criminal conduct is based on what the administration authority deems so, and to its evaluation of an employee’s violation hereto” (45).
3. The interpretations and circumstances of a criminal conduct may be flexible in the sense that, unless this is expressly stated, the conduct itself is subject to changes of time and social conditions, as what may be a violation at a certain time may not be so at another time.
4. There should not exist any connection between an undertaking calling for disciplinary action and the disciplinary action itself, and the authority has the final say in matching a violation and a penalty. It can decide whether an undertaking has been negatively or positively a violation of a code, according to which a penal action is taken.

**B.** The other point of view implies that the legal component assumes only that a criminal act has been committed, despite the fact that actions calling for disciplinary measures are not subject to the principle that assumes only that “a penalty is only deserved when a crime has been committed where this is expressly stated”. This derives from the essence of the disciplinary action which is a separate legal code in itself, with different purposes from the criminal code. This point of view requires that the disciplinary offense be separately defined and stated as is the case for example in the English practice. The other aspect derives also from the

fact that the legal component of a wrongdoing calling for disciplinary action may be different from that of a criminal conduct. Legal stipulations are not always the only sense of a disciplinary code if we consider that both the administrative and the legal authorities are delegated with drawing up the disciplinary measures with binding rules and regulations(46). However even under this view evidence from any criminal proceedings can be used in the disciplinary proceedings.

Therefore, the legal component of a wrongdoing calling for disciplinary action may take the following forms: (47)

1. A legal stipulation: this is a constitution, a by-law, or rules and regulations, which define certain conducts that comprise a wrongdoing calling for discipline.
2. A legal statement or regulatory requirement defining the duties of an employee and his compliance to them and the violations thereto.
3. A legal stipulation or a regulatory requirement that defines prohibitions whether those pertain to the work or not. Any violation thereto calls for disciplinary action.
4. A conventional practice used and followed by the management, well known to the employee, whereby any violation of that becomes unacceptable and calls for a disciplinary action. However, a conventional practice must have the following elements:
  - A. that it is publicly known and is continually and regularly practiced by management.
  - B. that it may not be in itself a violation to an outstanding regulation or law

Therefore, for the disciplinary action to be implemented it would be

necessary to establish a legal component which may be detected in one of the following:

1. The legislation itself, where undesirable and punishable conduct is expressly defined by the laws and by-laws, and where any contravention becomes a violation, whereas duties to be complied to are also expressly stated.
2. The jurisprudence that sets legal controls defining actions calling for disciplinary measures , by enforcing monitoring controls that have the power of deciding a violation and the applicable disciplinary action, or by exercising its own disciplinary authority particularly in countries where courts of this type exist.(48)

This point of view has been favored by Dr. Othman who assumes that “the legal component is a must for a criminal conduct calling for discipline to exist, and that despite the fact that disciplinable violations are subject to a principle that ‘no crime is so without express stipulation’, the disciplinary code remains a legal system.(49)

In summary, it is to be mentioned that the legislators have followed and taken two points of view in accepting the legal component of a criminal action calling for disciplinary measures, the first being an external cause but without necessarily any definite rules, and the second being that a separate legal component is a must for a disciplinary offense to exist.

In the following section, I shall review the laws and regulations that relate to criminal conduct calling for disciplinary action and the penalties applicable

thereto in the G.C.C. states in order to explain the bases followed by legislators in these countries in their efforts to draw up pertinent laws.

**1. The United Arab Emirates**

The duties to be performed and the prohibitions to be avoided by a public servant are expressly stated in Articles 57,59,60,61,62 and 110 of the Federal Civil Service Law No. 8 of 1973. Articles 64,66,67,68,69,70,86,95,106 and 108 of the same law also stipulate the penalties and disciplinary action to be taken as and when a public servant is in violation of the duties and obligations required of him (50). (Please see Appendix No.2).

**2. The State of Kuwait**

In Kuwait, the legislators have pursued the same attitude as that of the UAE Articles 24,25 and 26 of 1979 concerning civil law state the duties to be complied to by a civil servant and the prohibitions to be avoided. The applicable penalties and disciplinary actions are also stated expressly in Articles 65,66,68,70,73,74,81 and 82 of the same law (51).

**3. The State of Qatar**

Fairly similar stipulations are expressly laid down in Qatari law.

Articles 57,58,59 and 60 of the Civil Service Law expressly state the duties of a public servant, whereas Articles 62,64,65,72 and 73 expressly state the applicable penalties and disciplinary actions enforced in any violations of those stipulations (52).

**4. The State of Bahrain**

In Bahrain, too, similar statements and stipulations are included in paras. 37,38,39,42,43,44,46,48 and 49 of the Civil Service Law whereas prohibitions are

expressly stated in paras. 40,41,50,51,52,53,55,56 and 58 and applicable penalties and disciplinary actions are defined for violations accordingly (53).

##### **5. The Kingdom of Saudi Arabia**

In Saudi Arabia, the case is a little bit different from other states. The Saudi Law of the Civil Service issued by Royal Decree No. 49 of 10/7/1397 of Hijra stipulates the duties and obligations of a public servant in Articles 11,12,13,14 and 15.(55) However, the Law does not stipulate the penalties and disciplinary actions in case of violation.

From the above, we can conclude that in dealing with disciplinary offenses, the administrative law in the G.C.C. countries have not uniformly adopted the same attitude of the criminal law that 'no crime may be construed without an express statement'.

In order to protect human rights, the criminal law insists on defining the types of crimes even individually, together with the applicable penalties. The objectives of this are to ensure that justice is served in the administration of the law. The disciplinary code, however, considers punishable conduct as being different from time to time and from one person to another (56). In this respect, Dr. Al-Tamawi assumes that "the law addresses each public servant differently and as circumstances prevail; what may be considered a disciplinable criminal conduct to some may not be to others, even within the same category of employees, the degree may be varying and is relevant to the nature of the work performed and the degree of responsibility an employee may be entrusted with, his level of education...etc." and that "a disciplinable criminal conduct may vary with the place, the time and the culture of the state" (57). This attitude is supported by

Francois Le Berriet as indicated in a dissertation submitted on the relativity of employee's duties and types(58).

However, some legislators have found it necessary to lay down guidelines, in general terms, for the duties such as stating expressly that an employee must refrain from conduct which is misdemeanant, derogatory, violating to duties and non-dignifying. Sometimes, this express statement is definitive of certain duties and prohibitions such as gambling. This does not mean that other forms such as lottery are acceptable, but the importance of the former is highlighted, whereas the other forms are treated as duties and prohibitions. The same may be said regarding penalties and disciplinary actions.

Therefore, I intend to say here that this principle has been adopted in relation to particular circumstances as far as the administrative law is concerned. The method of application, however, is different from that of the criminal law which accepts definitive details in each of the cases of criminal conduct and to applicable penalty. The administrative law exercises this attitude in a general and more comprehensive manner.

By contrast, the Italian and German schools of legislation have defined disciplinable and penalisable actions as well as applicable penalties for each of the wrongdoing committed in accordance with their degree and intensity (59). This, according to these legislators, would bind the action of the superiors and would give employees an opportunity to familiarize themselves with the prohibitions so that they can avoid them. The Argentinean legislation adopted the same line of

thought and defined a list of wrongdoing and applicable penalties (60). It has therefore been argued that although a disciplinary code has not been fully developed it would still be possible to state prohibitions that should be avoided by a public servant (61). Professor Max Gilbert believes in this respect that a wrongdoing calling for disciplinary action may one day be equated with and analogous to criminal action (62). This opinion is not reliable in view of the difficulty involved in defining the scope of disciplinary wrongdoing and the difficulty in enforcing controls which would include all types (63). The legal component of a criminal act is conceptually different from wrongdoing that call for disciplinary action. Counselor Bandari supports this opinion and assumes that “disciplinary and penal measures and the consequences may not be enforced unless express statement thereto are stated as is the case with criminal penalties. As these penalties apply reins to the rights of an employee and to the benefits he is guaranteed by regulations and by-laws, this means that the disciplinary authority, whether administrative or judicial, may not select the penalty measures which it wishes to enforce but has to choose from those set by the legislator” (64).

#### **3.2.1.1.2 The Physical Component**

This component is concerned with behavior and refers to all material and tangible elements of a criminal conduct or a disciplinable action, which may be perceived and may be positive or negative manifestations of violating the requirements of public service (65). It is deemed tangible because it influences the surroundings as a result of the wrongdoing, which gives this component its particular importance.



In this connection, Dr. Aziza Al-Sharif believes that, “this component has its importance in administrative violation, just as it is of the same importance in a criminal act, and without this material manifestation, the employees sector and the public would not be upset and rights that have to be protected may not be infringed upon. Without this material evidence, an employee may not be questioned. Administrative law is in a way right to penalise for thoughts and ideas that are not manifest, and to enforce a penalty for the positive or negative manifestations of the act. No one can argue the admissibility of a material manifestation in an administrative violation, not only for the manifestation per se, but because the disciplinary accountability, similar to criminal accountability, is a personal responsibility in itself and an employee must be proven to be related to it. An administrative violation is not a mere presumption, but must be proven. Therefore, an employee’s sustenance of a penalty that is not proven is utterly unjust because of the absence of the material manifestation” (66).

The material evidence component is conditional upon the following three factors:

1. That it may be a material act in the positive or the wrong direction. In the Lebanese legislation, the State Advisory Council assumes that “an employee’s verbal assault or offensive address that contravenes the conventional and accepted norms may be disciplined as a legal measure taken” (67). An action may be individual such as the case of someone retaining an original document, or releasing a statement contrary to the facts, or a multiplicity of actions that may be recurrent and within a limited period of time, which calls for severe penalties, or

the actions may be different in nature, and in this case management may enforce a more severe punishment. (68). The above will be dealt with in detail later.

2. An action by an employee may reflect externally and become tangible. Ideas and beliefs that are not accompanied by actions may not be penalised (69). The Lebanese Advisory Council has ruled that an employee who holds beliefs and ideas shall not be penalised, which is protected and guaranteed as freedom of expression, and protected by the constitution. The above decision also advocates that, for a penalty to be enforced, an employee has to be proven to be attending party political meetings or to pay subscriptions or to recruit for the party and for the meetings or to exercise any of its activities (70).

The Egyptian Supreme Court also took the same path when it decided to reinstate an employee in his job as his charges were no more than having a political belief without being a member of a political party or participating in party meetings or in election campaigns, which does not jeopardize the smooth running of a public facility. The mere meditation and planning that precedes the actual undertaking of a crime are, by law, not punishable in the disciplinary law. Dr. Othman supports this by saying that, "the disciplinary law is not justifiable in enforcing any penalty on mediations that precede the criminal act itself. However these acts do constitute at a later stage the material evidence

of a committed crime and penalty is then deserved. An example of this would be an employee's retaining of paper and printing materials for circulars printed and circulated later on. In this case he is only penalised if the circulation is completed; however he may be subject to questioning for a conduct involving violation of the duties of the job. (71). In the criminal law, preparations and contemplation of a crime is part of the crime itself, unlike the disciplinary law. The former considers the crime itself as an external manifestation of intentions which resembles a violation to the duties of a person's job. (72).

3. That the act must be specific and defined rather than a generalised one. In this respect, the French Council of State declined to sustain a disciplinary decision (73), on the basis that the "defendant was not accused of definite or specific charge (74). The Belgian Council of State also quashed some disciplinary actions on the basis that the imposed penalties were not matched with definite actions that could be deemed as contravening the a normal functions of a job. (75). The decision was based on the assumption that a disciplinary action was only deserved for and enforced if such a penalty requires a proof that the individual committed the violation and this violation is not shared with others. If this cannot be proven, penalty cannot be justified. In this regard the French administrative court ruled that accusing a public servant without a definite charge is considered as miscarriage of Justice(76).

### 3.2.1.1.3 The Mental Element

The mental element is the intention associated with the conduct in question . This might either be intention as to the action, for example, where an employee deliberately stays away from work, or intention as to the consequences of the action as for example where the employee knows that his absence will cause serious damage. In this context the concept of 'wrongfulness' refers to conduct irrespective of intention. In respect of criminal liability the writer suggests that the element of intention required in the case of an administrative offense should be the same kind of *mens rea* as in the case of an ordinary criminal offense, that is, both kinds of intention should normally be required. This is because the purpose of the criminal law is to secure personal accountability for wrongdoing whereas disciplinary regulation is primarily concerned with incentives towards efficiency.

Dr. M.J.Al-Malat takes a similar view (77) saying that if an intention goes to activity only, without the intention as to result, there is wrongdoing without intention so the employee should not be criminally liable although he might be liable at a disciplinary level. For example an employee who accidentally takes a file home may be liable in disciplinary proceedings but would be criminally liable only if he knew the file was confidential and intended to remove it from official premises.

However Art 43 of the UAE Federal Law no 3 of the year 1987 makes a person liable whether he acts intentionally or wrongfully unless the offense is

expressly preconditioned upon premeditation. Art 38 of the same law explains that premeditation relates to the result which the offender knows will follow from his actions whereas 'wrongdoing' includes negligence or non-attention, recklessness, rashness, thoughtlessness or non-abidance by the rules, regulations and orders.

The criminal component of a disciplinary offense is about accountability not liability. Therefore, the moral element is of great importance. The intention of the legislator is to search for the person in whose mind there has been a breach of duty and so to award an appropriate penalty (78). In civil cases by contrast compensation is the main purpose. In relation to disciplinary proceedings of a non-criminal kind for example absenteeism neither intention nor damage is necessary for liability but both element are important in determining the appropriate penalty (79).

#### **3.2.1.1.4 Personal Status**

There is also the question of personal status. Consistently with the aim of public service law of protecting the integrity of the collective entity that is the State, a public employee is accountable in criminal and disciplinary proceedings irrespective of geographical factors such as where the act was committed. It is also irrelevant whether the employee is a citizen or an alien (80).

### **3.3 Classification of Disciplinable Crimes**

Jurists differ in opinion in relation to classification, categorization and separation of crimes pertaining to administration. The objective of this classification is intended to group under each category or type the largest number of crimes possible particularly where these have some sort of connection or similarities. This may also be intended for the enforcement of homogenous penalties for them to avoid any unintended injustice and to eliminate the chaos of the selection of penalties by the disciplining authorities. Accordingly, there have emerged a number of classifications that have taken into consideration the motives and components of a crime, its seriousness and its essence. These classes include crimes of a financial nature, administrative ones, defined and classified crimes and others that are not definitely described. The classes also include temporary but disciplinable ones, others of a continuous nature and some that are considered of a criminal nature (81). The classification of crimes in relation to the motives and components also involves those of a legal nature, crimes of a material nature and others of an individual or personal description.

#### **3.3.1 Classes Based On Legality**

Disciplinable crimes are classified into defined and described crimes and undefined crimes as far as legality is concerned.

### **3.3.1.1. Classified and Defined Crimes:**

This type also includes three types of crime.

1. Crimes defined by the penal laws which characterize nearly all penal laws of most countries. In the UAE, for example, Chapter 2 of Vol. 2 on job-related crimes in the Federal Law of No. 3 of 1987, describes in detail crimes such as bribery, misuse of power and authority. Articles 234-247 of the said law are designated for this type of crimes. These crimes by a public servant also recur in other Articles of the same law particularly in Articles 102\D, 155, 157, 159, 219, 224-228, 231, 258, 272-273, 283, 344\7 and 379 (82) (please see Appendix No. 7). This detailing of the Penal Law concerning public servants stems from the emphasis the state lays on competence, integrity, flexibility and performance expected of him, as public service is a privilege rather than duty. A public servant is also essentially a citizen first and foremost before he is considered an employee, and therefore, in this connection, Dr. Al-Tamawi assumes that, "a public servant is a citizen first and then an employee and the former supersedes the latter. Therefore a citizen is held accountable before the penal law as and when he commits a crime defined by the penal law" (83). Al-Tamawi believes that a crime calling for the discipline of a servant calls for severe punishment because he has violated the acceptable norms of a citizen who has been privileged by being given the job (84). Article 102 of the Federal Penal Law No. 3 of 1978 stipulates the following in

this regard, "Considering the circumstances that the law may view in connection with imposing more severe penalties, the following may be deemed a reason for enforcing such penalty that a crime has been committed by a public servant misusing and abusing his authority unless otherwise stated by the law".

2. The second type of these crimes is expressly stated in the pertinent laws which include the following:

a. Civil or public service law, which has been discussed earlier in the G.C.C states (85) (please refer to Section 2.5)

b. The labour law:

Federal Labour Law No. 8 of 1980 of the UAE expressly states that instances of these crimes and their applicable penalties, per Article 181 of the law which stipulates that, "without prejudice to any penalty that may be more severe in other laws a penalty involving imprisonment not exceeding 6 months, and a fine of not less than 3000 UAE Dirhams and not exceeding 10000 Dirhams, or both may be enforced in the following cases:

- Violation to any express statements of this law, its by-laws, or executive orders pertaining thereto.

Any public servant required to implement this particular law but violates it by disclosing confidential information of his work, industrial invention or other things he may have viewed or which may have been disclosed to him by virtue of his position, even subsequent to termination of employment. Para. 3 of the same



Article emphasizes the role of a public servant who is required to implement the stipulations, the regulations, the by-laws and executive orders pertaining thereto. The Labour Law also contains a multiplicity of obligations and commitments that have to be observed including regulations pertaining to issue of a labour permit per Article 13, cancellation of permit per Article 15, labour inspection procedures per Articles 166-168, 170, 174, 175, 176, and 179. Penalties enforced on violators of this stipulation are dealt with in para. (a) of Article 181 as indicated earlier, without prejudice to the penalty that may be severer in another law (86)

c) The Judicial Authorities Law

The above Law comprehensively deals in detail with the duties and prohibitions imposed upon judges in the UAE Article 35 of the Law prohibits any judge from undertaking any trading or other activity that jeopardizes the integrity, independence, and honour of the judicial system. Article 36 of the law also prohibits a judge from divulging secrets or information pertaining to hearing sessions or even from giving his own personal opinions on cases before him to others. Article 38 stipulates that no relationship, up to 4<sup>th</sup> degree relationship, should exist among judges of a certain department. The Law also contains stipulations on some penalties, as included in Article 49, including reprimand, freeze of promotion and transfer to another non-judicial appointment at lower grade and salary (87).

**d) The UAE University Regulatory Laws and by-laws**

The duties and prohibitions to be observed by the teaching staff members at the university are stressed in the by-laws pertaining thereto per Articles 62-64, 66 and 67, and the applicable penalties pertaining to the violations thereto are also detailed in Article 74 of the said by-laws. These penalties include reprimand, suspension of part or all the salary for a period not exceeding 6 months, termination of service with or without all or part of the pension and compensation, and end of service benefits (88). The by-laws have also vested unlimited authority in the Chancellor of UAE University in respect to suspension and referral for inquiry and investigation about any staff member for a period not exceeding 6 months which can be extended by a decision by the Disciplinary Board; the staff member is also subject to suspension of 50% of the monthly salary.

**e) The UAE Council of Ministers Order**

The Order concerning the UAE Council of Ministers was, at the time of its enactment appended by a table of duties and prohibitions as well as administrative disciplinable violations and the penalties thereto. In particular, the Order included detailed regulations regarding reporting to duty in three separate categories: (89)

- 1) working hours violations
- 2) signing-in violations
- 3) physical presence at location

All of the above are detailed in the Order and prohibitions are given separate prominence and define the penalty which is applicable and enforceable subsequent to violations.

3. The third type of crimes include those crimes expressly stated in the penal by-laws. Certain governmental bodies and governmental departments issue, from time to time, regulations and by-laws of violations and their applicable penalties, as well as authorities that are vested with the right of enforcing the disciplinary action. These are sometimes circulated and posted on notice-boards so that employees can act accordingly in order to avoid accountability. These are also common to other countries like Egypt according to Dr. Al-Tamawi who points out that several of such bulletins are issued regularly by the official authorities and economic departments, such as :

Order No. 1933 of 1965 concerning penalties of Cairo governorate employees

Order No. 133/1966 concerning High Dam employees

Order No. 33/1967 concerning Ministry of Agriculture and land Cultivation employees

Order No. 22/1967 concerning Customs employees.

Order No. 10/1968 concerning inquiries, discipline and penalties of High Dam employees (90)

The above mentioned are by-laws of penalties that have similarity in respect to the principles that form their bases, and are in many ways, essentially similar in the type of crime committed and the penalty enforced. They all derive from the disciplinary code that deals with the wrong-doing of a public servant within the general context of a job or a public service type, or derive from the Civil Service Law despite the likely availability of some differences in the classifications of crimes and in defining the penalties in these by-laws and the public or general law. This is due to the extent of relatedness of violation on the smooth running of the facility.

### **3.3.1.2 Non-Defined Crimes**

This type of crime includes any type of violation to the duties of the public service or contravention other than those expressly stated in the classified type of crime, and leaves it to the discretion of the disciplinary authority to take the necessary decision and to apply the penalty that it deems appropriate. These types of crime are not defined as the duties of a public servant; neither are they defined except by generalizations in the public service law. This however is explicable in terms of reviewing the articles defining the duties and prohibitions of a public servant (91)

### **3.3.2 The Physical Element:**

I have mentioned earlier that crimes calling for disciplinary action are divided into different types, namely, positive and negative, simple and compound, internal and external and temporal and continuous, as briefly discussed below.

#### **1. Positive Crimes**

This type implies any act or conduct by the employee in violation of an expressly stated law or in contravention with the duties of the job. This is also represented in a material act such as divulging the confidentiality of the job, undertaking trading, destroying documents or files...etc. (92).

#### **2. Negative Crimes**

This is represented in an employee's abstention from performing or undertaking action that is required of him by the law or the regulations set out by management. It involves disobedience of orders and instructions or lack of co-operation with colleagues in the interest of the work (93).

#### **3. Simple Crimes**

These represent material and tangible crimes of one occurrence such as lack of time keeping, undertaking of trade and business and divulging of work secrets.

#### **4. Compound Crimes**

The material component of this type of crime comprises more than one occurrence such as recurring absence and leave without permission which may

affect the smooth running of work, or failure to meet the required tasks resulting in material loss to the state and must therefore be compensated.

### **5. Crimes of Habitual Recurrence**

These crimes include the perpetrator's repeated actions of the same crime of a negative nature manifesting in material evidence. Crimes of recurrence differ from crimes of negligence in which each crime is undertaken independently from the other and results in a penalty for each occurrence but at the same time the imposition of a more severe penalty every time it is repeated. Habitual recurrence involves the undertaking of the same crime within a certain period of time (94). Crimes of habitual recurrence also differ from compound crimes although in both types the material evidences are multiple, independent and sequential which makes a single recurrence only an insufficient instance of the material component. The difference in this case is that the type and nature of these crimes are different. In compound crimes, the material components of a crime are not necessarily the same, whereas in the habitual recurring ones the action is repeated (95).

### **6. Internal and External Crimes**

This type includes those committed by the employee at work and outside, and within the state as well as outside it. Site crimes are those committed at work without considering their relatedness to the nature and type of the job, such as a doctor smoking inside a hospital building, or the collection of donations without prior permission or the distribution of circulars. Crimes of an off-site nature are those committed by the employee outside the work location such as gambling,

concluding contracts relating to the job for personal gain, provoking strikes and the like (96).

The crimes committed by an employee outside the state involve those committed by an employee who is on an official mission within a delegation and is required to decently represent his country. Penalty is in this case very severe for his misdemeanor which may involve taking part in demonstrations, strikes, divulging of secrets or grave misconduct (97).

#### **7. Crimes of a Temporal Nature**

This type involves crimes that are committed and ended simultaneously, whether negative or positive, internal or external. They involve crimes like issuing a wrong document or assault on others verbally or physically (98).

#### **8. Crimes of Continuous Nature**

These include crimes of a renewed or recurring nature, such as failure to observe time keeping or negligence at the job (99).

### **3.3.3 The Personal Element**

I have briefly discussed this element of disciplinary crimes. Administrative law considers the intensity and severity of the penalty enforced. This is nearly analogous to the line of thought on the criminal law in this respect. Accordingly criminal actions are subdivided into crimes, felonies, and violations that deserve different penalties. Some of these crimes are of a simple nature, others of a serious nature and a third type of a more severe or grave nature which will be detailed

later, since the whole issue rests upon the availability of punishments of a disciplinary nature that match each type of crime, with the different penalties of each crime, with the perpetrator, the circumstances and the consequences.

Simple crimes are those resulting from negligence that do not affect the public or state interests, which involve things like carelessness about appearance, non-presence of the employee at work or lack of time-keeping which, however, may not hinder the progress of work (100).

Crimes of a serious nature are committed with intent or purposeful negligence, which may jeopardize the public interest and may result in material losses to the state (101). These may include things like provoking disobedience to orders pertaining to the work, violating financial procedures of controls of the budgetary system, or leaving the work site at the time of opening tenders.

There are also a crimes of a grave nature, which call for disciplined action involving termination and summary dismissal. These are divided into three types(102):

1. This type includes crimes that are disciplined by summary dismissal, as defined and stated in Article 92 of Federal Civil Law No. 8 of 1973 of the UAE, stipulating that "an employee's service is terminated by the force of the law in cases of joining the service of a foreign country without express permission of the competent authorities ". this is viewed by the law as a grave crime which may involve disclosure of



secrets that may jeopardize the national interest. Therefore, termination of service is a deserved and ultimate penalty.

2. Disciplinable conduct that constitutes a crime in terms of the criminal Law. This is also deemed to be of a serious nature. Article 30/14 of the Civil Service by-laws of the Kingdom of Saudi Arabia stipulated by Royal decree 49/1397 (Hijrah) that, "an employee is dismissed by the force of the law under the following conditions:

- a. If he is convicted of any Shari'a crime.
- b. If he is sentenced for a period exceeding one year.

Article 30/16 of the by-laws included an interpretation of the statements

of Article 30/14, that," Shari'a enforced penalty that warrants dismissal

includes any Shari'a ruling by a competent judicial authority that the crime committed actually warranted the sentence of a Shari'a penalty ".

The relatedness of both a disciplinary wrong-doing and a criminal conduct is prominent in this case and warrants termination of the service. Along the same lines, para. 52/6 of the Civil Service Law of Bahrain also stipulates that," an employee convicted for criminal conduct may be disciplined by summary dismissal from service subsequent to completion of trial ".

3. This type of crime involves those crimes misdemeanant integrity and virtue which is stipulated in nearly all civil service codes, and is deemed sufficient reason for termination of service. In the UAE para. 8 of Article 89 of the Federal Civil Service Law No. 8 of 1973 stipulates that, "termination is inevitable for acts of dishonesty and non-integrity...etc.". This is similarly stipulated in the Saudi civil service by-laws mentioned earlier, and Article 30/14/B which stipulates that, "termination is an ultimate and inevitable action for undertakings involving dishonesty and non-integrity". The Kuwaiti Civil Service Law also stipulates in Article 32/5 that , "an employee is dismissed for acts of dishonesty and disintegrate ". The same is true in the Qatari Public Service Law (Article 75/6) and the Omani Civil Service Law per Article 84/H, where the penalty is termination for an act of criminal nature involving integrity and honesty . The UAE Department of Fatwa and Legislation defines such acts involving integrity and honesty as "crimes that arise out of misdemeanor, deviation of morals, submissiveness to whims and instincts, which deride a person and strip him of all noble meaning and consequently cannot be a person of trust " (103).

The definition of crimes involving integrity and honesty however constitutes a realm of disagreement amongst legislators in view of the different terminology used(104).

What matters here is the conformity of the terminology with what the enforcement authorities consider a violation to integrity, virtue and honesty deserving termination of service as a disciplinary measure (105). Some thinkers have attempted to define a number of such acts that involve demeaning of integrity, honesty and honour. In Dr. Othman's opinion, crimes may constitute three types (106):

- those generally agreed as misdemeanant to honour, honesty and integrity such as theft, or meditating theft; forgery, opening gambling clubs, cheating on weights.
- those not demeaning to honour and integrity such as political crimes, possession of unlicensed weapons and the like.
- Another type that falls in between, such as wasting of movable including those belonging to the wife, wasting of things put in custody, false cheques and the like.

Crimes generally viewed as misdemeanant to the honour, honesty and integrity are those more connected with morals, personality, social values, social status, which are linked with moral rather than material values (107). A further distinction can be made between financial and non-financial matters (108).

1. The Separateness of the disciplinary body in both cases, as violations involving financial matters are the concern of the court, while non-financial violations are the responsibility of the management.
2. Non-uniformity of disciplinary measures enforced for the different violations (109).

There are other divisions that pertain to different schools of administrative thought. According to Dr. Al-Malt, "numerous categories exist for different thinkers, and the main factor that should be considered should take into account the duties of the job. These may be divided into two distinctive types (110):

1. Those involving the duties of a public servant outside the work environment.
2. Those involving a public servant's main job, and his terms of reference to the work.

The above has been dealt with previously (11) (please refer to Section 2.4 ).

These divisions by administrative and legal thinkers involve positive and negative aspects or, in the other words, have their pros and cons. No single division is common to administrative law legislators because of the variety of administrative crimes and circumstances. Efforts center around determining equitable treatments and enforcing fair penalties in pursuit of justice, and laying controls on the management's authority to enforce appropriate disciplinary measures. Based on the aforementioned principles the Council of Ministers of the UAE, for example, has issued orders that would regulate working hours of employees and defined improper conduct that deserves discipline as well as set the appropriate penalty(112).

### **3.4 Forms of Administrative Disciplinable Wrongdoing**

Like criminal conduct, an administrative wrong doing may be the result of intent, or the result of accident and consequently termed intentional in the former

and accidental in the latter (113). The following is a brief explanation of these two types:

### **3.4.1 Wrongdoing of Intent**

This implies predetermination of the perpetrator to commit a violation of the law (114). A wrong doing of intent, therefore involves two important elements.

1. The perpetrator's full awareness and knowledge of his action, for example, absenting from duty for no reason, knowing that working days absented are neither public or company holidays or part of his contractual leave (115), the law stipulates that a person absenting from duty subsequent to his leave for a period of thirty days be deemed as having resigned.
2. Awareness and knowledge that the act committed is a violation of the law. However, ignorance of the law does not always exempt him from his accountability and disciplinary proceedings. This has been dealt with in 3.2.1.1.3.

### **3.4.2 Unintentional Conduct**

This refers to the conduct of a public servant who does not exercise the caution that is required while performing a job (116). The wrong doing as such may take place due to oversight as in the case ruled by the Supreme Court when oversight relating to recording the numbers of water sprinklers at delivery made it easy for perpetrators to have them replaced by others, thus necessitating disciplinary action (117). Accidental wrong doings are attributed mostly to negligence, and some just refer to them as wrong doings without specific

reference to intent or accident. Negligence, lack of vigilance, avoidance of precautionary measure and slackness in exerting the necessary effort while performing a job make an employee accountable and disciplinary action is required. The Supreme Court ruling therefore rested on the assumption of the procrastination of an employee in drawing the attention of his superiors to the archives; employees refraining from advising him on a subject on file for over three years was held to be beyond acceptance and therefore deserved to be disciplined (118).

The Supreme Court also ruled that failure to follow the regulations of the warehouse on receiving materials constitutes an administrative contravention which deserves disciplinary action which will not be affected by proof of receiving the materials (119). It is worth noting that in this case damage does not necessarily have to occur to deserve disciplinary action although by permitting such an error to occur would result in some damage (120).

### **3.5 Assessment Criteria of an Administrative Wrongdoing**

This is determined by the degree of conduct of any normal person in a normal situation in social life (121). Legislators of administrative law have differed amongst themselves regarding the attitude to be taken in assessing this type of conduct, and whether that can be considered on the basis of personal or objective criteria. This may have to be detailed for the sake of clearer explanation.

#### **1. The Personal or Individual Criterion**

This is the matrix whereby a human conduct is judged on the basis of his normal conduct judged by the standards which he or she actually professes when immersed under similar conditions as to whether he has failed in his duties or has

not taken the necessary precautions or is otherwise negligent (122). According to this criterion a conduct is in violation of the duties of a job where this conduct is less accurate, less careful or less normal than it usually is in normal circumstances. This is similar to the standard applied by English Law to the fiduciary responsibilities of unpaid company directors.

## **2. The Objective Criterion**

This refers to the means whereby a hypothetical individual's normal conduct is adhered to and is used as a control for accuracy and cautiousness (123). In other words, an employee's slackened conduct may be judged against the conduct of another of medium competency and of the same group, or specialization (124). According to this criterion, the performance of a non-specialized physician is judged normally along the lines of similar non-specialized physicians. Many legislators have adopted this criterion as the standard in the pertinent philosophies or jurisprudence in the areas of punitive, criminal or civil affairs but the personal criterion test applies more often in disciplinary proceedings(125). This is similar to the higher standards in English Law expected of a trustee.

The personal criterion can be considered a fair means of relating a legal wrongdoing and a moral one. An individual is judged upon his own merits and criminal conduct and his accountability is judged in view of his alertness and competence. An objective criterion, however, ensures the stability of circumstances and control of legal relationships. Whereas the personal criterion considers the conditions of a wrongdoer, the objective criterion deals with the general external conditions such as time, place and status of the wrongdoer (126).

The objective criterion may have greater weight over the personal, which probably derives from the following:

1. The personal criterion may be considered a fair one, but it only emphasizes the ego of the wrongdoer himself, since his improper actions or wrongdoing are measured on the basis of his previous actions. If he, for example, is used to negligence and inaccuracy, carelessness and non-compliance to the law, the measuring of one instance is therefore insufficient to ensure justice or public interest.
2. The personal criterion differentiates amongst public servants in their accountability without paying attention to the law. Accordingly, a negligent public servant may sometimes be luckier than a diligent one so long as the wrongdoing of either of them is judged in terms of the normal acceptable performance or standard. This is, of course, unfair because it contradicts the principle of rewarding a public servant of outstanding performance and punishing another who is negligent and careless (127).
3. The objective criterion depends on judging public servants on the basis of normal conduct of people in normal circumstances, therefore equity and justice are better served and public interest is not jeopardized.
4. The objective criterion depends on status and hierarchy in public service, and judges a public service upon its nature, rank, importance, social and moral status. A public servant of medium rank is therefore different from another of a higher status or managerial position. The



same applies to educationists who undertake as their aim the educating and teaching of the future generation (128).

5. The objective criterion considers external and general circumstances of the environment of the public servant at the time of the violation. These are termed observable elements and involve the time and place of the work, and available resources. Therefore the measuring of an employee's violation is in relation to the average public servant assumed to be in the same circumstance of the violating public servant (129).
6. The subjective criterion is deemed to be very taunted in judging people, and is somewhat incapable of properly identifying the personal circumstances of a violating public servant (130).
7. In order to ensure that justice is served, it is desirable that the personal or psychological circumstances of a public servant be considered and examined such as health conditions or other factors that relate to his intent and actions, which would have affected him. If a violation, for example, is committed by a public servant under circumstance of ill health, the measures applied in judgment would also have to consider another average public servant under the same circumstances in order to be fairly measured. This is owing to the fact that punitive measures are intended essentially to curtail wrongdoing of the public servant himself and to set example to others. Therefore, the personal circumstances must be accounted for to determine the extent of their influence on the manifested action (131).

The above approach has been adopted in the UAE and in most G.C.C. states. In the UAE, for example, Article 55 of the Civil Service Law, stipulates that “the Minister is empowered with the authority to consider a public servant’s extended absence of thirty days beyond contractual leave as said earlier, not to be grounds for termination, if the public servant provides acceptable reasons for his absence. This empowerment takes into consideration the personal circumstances that affect the public servant’s compliance to work regulations, such as illness or travel”. The Article states that “the competent Minister may, according to his discretion, consider a public servant’s service continued and not to have been terminated if he deems the reason given for absence to be acceptable...etc.”. This approach gives consideration to the public servant’s circumstances when discussing his case.

In the state of Qatar, the legislator has adopted the same principle. Article 56 of the Civil Service Law empowers the departmental head with the authority of examining the circumstances and the appropriate measures thereto. The Article reads “any public servant not reporting to duty immediately after the end of his contractual leave shall have his salary suspended as of the day following the contractual leave without prejudice to the punitive accountability. However, the divisional head of the competent department may, to his discretion, determine as to whether absence is justifiable and accordingly authorize the release of suspended salary, provided a balance of leave in favor of the public servant is available, and provided the absented period does not exceed fifteen days and acceptable reasons of absence are given...etc.”. A departmental or divisional head is therefore empowered with the authority to consider the personal circumstances of a public

servant and therefore release the public servant of his accountability and of any punitive actions that might have been otherwise necessary.

## **Conclusion**

The main conclusions of this chapter may be summarized as follows:

1. There is a great deal of similarity between the legislation of all Gulf states in particular the UAE, Kuwait and Qatar regarding limitations and prohibitions on the Public Servant.
2. In dealing with administrative wrongful acts, the UAE Law as well as the laws in all other Gulf states have not applied the principle normally followed in criminal Law, namely 'no crime and no punishment without an express statement thereof'. This may be ascribed to the fact that administrative wrongdoing are different, in nature, from criminal offenses.
3. The standard of responsibility applied in the Gulf states in disciplinary proceedings is the subjective standard.

## NOTES-CHAPTER III

1. Al-Tamawi , *Administration Jurisdiction*, Vol. 3: Discipline, Al-Fikr Al-Arabi Publishers
2. Al-Tamawi, *op.cit.*, pp. 58-60, 65 and Othman Molid Mukhtar, *Criminal Conduct Calling for Discipline*, First ed. Dar Al-Fikr-Arabi, 1973 p. 180-1
3. Al-Loze, *Anthology 1938*, Part 3, p. 38
4. Al-Tamawi, *op.cit.*, p. 66
5. Supreme Court ruling January 1966, Section 11, p. 238  
Anthology of Principles of the Supreme Court, (Technical Section), Public Printing Affairs, 1968
6. Al Tamawi, *op.cit.*, pp. 67-8.
7. Bandari Adbul Wahab, *Criminal and Disciplinary Accountability*, Second ed. Al-Alamiyah Publishing, Cairo, 1972 p. 34
8. Bandari, *op.cit.*, p. 29
9. *Kuwaiti Fatwa and Legislation: A Compendium of Principles - Vol. 3*, compiled by Molid A. Aitah, 1979, p. 57
10. Bandari, *op.cit.*, p. 29
11. Supreme Court Judgment No. 843/8 of January 1<sup>st</sup> 1966 Section. 11, p. 230  
Judgment No. 512/9 of April 4<sup>th</sup> 1967 p. 69
12. Judgment No. 395/5 of November 26<sup>th</sup> 1960, Anthology of Legal Principles- Technical Office
13. Al-Tamawi, *op.cit.*, p. 68

14. Shaheen, *op.cit.*, p. 28
15. Judgment No. 991/44 of June 30<sup>th</sup> 1973 (Supreme Administrative Principles Anthology 4/3904-3906) and Naggar , *Termination of Service*, p. 206
16. Judgment 633/9 of October 27<sup>th</sup> 1968 (Supreme Court Anthology Rules 3/2251)
17. Al-Tamawi, *op.cit.*, pp. 68-70
18. Shaheen, *op.cit.*, p.110
19. Bandari, *op.cit.*, p.37
20. Judgment No. 1303/8 of December 31<sup>st</sup> 1966 (Anthology No. 3/2241-2242)
21. Judgment No. 5/5 of June 21<sup>st</sup> 1978 (Supreme Administrative Court)
22. Judgment No. 799/19 of February 23<sup>rd</sup> 1974 4/3928-2930
23. Judgment No. 468/2 of December 8<sup>th</sup> 1956, Section. 2 p. 177 (Anthology of Legal Principles - Technical Office)
24. Bandari, *op.cit.*, p.39
25. Judgment No. 636/9 of December 9<sup>th</sup> 1967, Supreme Administrative Principles 4/3900
26. Judgment 244/15 of April 28<sup>th</sup> 1973, 4/3900-3903, *op.cit.*
27. *Ibid.*

28. Al-Tamawi, *op.cit.*, pp.38-39 and Anthology of Administrative Regulations, Supreme Administrative Court December 37<sup>th</sup> 1958, Section. 40, p. 458
29. Hassan Al-Fatah, *Discipline in Public Service*, Cairo, 1964 p. 79
30. Zahwa , *Disciplinary Action*, PhD Dissertation 1971 p. 33
31. Al-Tamawi, *op.cit.*, p. 41
32. Al-Tamawi, *op.cit.*, p.50
33. Al-Hellow, *op.cit.*, p. 46
34. The French Charter of Rights, 1789
35. Al Sharif, A, *Disciplinary codes and their relationship with other penal systems*, Dar Al Nahdi Al Arabia Publishers, Cairo Printing and University Book Publishers, 1988, p.131.
36. Husni Mahmood Nageeb, *Penal Code Interpreted*, p. 78
37. Viche Gerard, *La Sanction Professionnelle*, These Montpellier 1948
38. Al-Sharif, *op.cit.*, p. 132
39. Hassan, *op.cit.*, p. 132
40. Al-Malt Mohid Jawdat, *Public Servants' Moral Responsibility*. 1967 p. 80
41. Sharif, *op.cit.*, pp. 135-138
42. Al-Tamawi, *op.cit.*, p. 72

43. Anthology Of Legislative Principles, Judgment Of November 11<sup>th</sup> 1961, 7<sup>th</sup> Year, Technical Office, p. 27
44. Othman, *op.cit.*, p. 194-195
45. Court Ruling Of December 24<sup>th</sup> 1966/12, p.480
46. Asfour Mohid, *A General Theory Of Disciplinary Action*, p. 120
47. Othman, *op.cit.*, p.167
48. Asfour, *op.cit.*, p.120 and Othman, *ibid*, p. 168
49. *Ibid.* p. 160
50. The Civil Service Law No. 8. of 1973 (The State of UAE)
- 51.. The Civil service Law No. 26. of 1979 (The State of Kuwait).
52. The Civil Service Law No.60 (The State of Qater).
53. The Civil Service Law No.49 (The State of Bahrain)
54. The Civil Service Law No.49 of 10/7/1397 H (The Kingdom of Saudi Arabia)
55. Please Refer To Relevant Appendices As Itemised In The Text
56. Al-Tamawi, *op.cit.*, p. 39
57. *Ibid.*, p. 94
58. *Ibid.* , p p.94,135 of The Dissertation
59. *Ibid*, p.196 and Al-Sharif, *op.cit.*, p. 142
60. Barakat Omar Fuad, *Disciplinary Authority*, pp.76 , 101-2

61. Al-Tamawi, *op.cit.*, p. 97 and Zaki Ismail, *Employees Appointments, Promotions And Discipline*, 1936 p. 104
62. *Ibid*, p.97
63. Naggar, *op.cit.*, p.204
64. Bandari, *op.cit.*, pp.29-30
65. Shaheen, *op.cit.*, p.135 and Al-Sharif, *op.cit.*, p. 157
66. Naggar, *op.cit.*p. 21 and Al-Sharif, *op.cit.*, p. 157
67. *Lebanese Advisory Council Decision Of May 30<sup>th</sup> 1970* Phd Dissertation Of Zuhoud A. Wahab Hammoud, *Discipline In Public Service*, p. 68
68. Zahwa, *op.cit.*, p. 69; Mustafa, *op.cit.*, p. 249 and Rashid Ali, *Notes On Criminal Code, 1960*
69. *Lebanese Advisory Council Decision July 4<sup>th</sup> 1972, Administrative Compendium 1972* p. 215, As Quoted By Dr. Zahwa
70. Court Ruling No. 833/23 of February 11<sup>th</sup> 1978, *Administrative Compendium* 4/4140-4141
71. Othman, *op.cit.*, p.148
72. *Ibid.*, p.72
73. Al-Hilo, *op.cit.*, p. 546, and Al-Tamawi, *op.cit.*, p. 80
74. *Ibid.* p. 80



75. Othman, *op.cit.*, p. 150
76. *Ibid.* p.150
77. Al-Malt, *op.cit.*, p. 81
78. Al-Sharif, *op.cit.*, p. 35
79. Bandari, *op.cit.*, pp. 41-2 and Al-Malt, *op.cit.*, p. 81
80. Othman, *op.cit.*, pp.178-9
81. Al-Naggar, *op.cit.*, pp. 23-4 and Othman, *op.cit.*, p.257 Et Seq.
82. Federal Law No.3 of 1983 UAE
83. Al-Tamawi, *op.cit.*, p.99
84. *Ibid.* p. 21
85. *Ibid.* p.
86. See Appendix 8
87. Law No. 3/1983 -Federal Judicial Authority
88. Federal Law No. 4/1976 UAE University Organisation
89. Council Of Ministers Order No. 3/1988 Concerning Working Hours In  
Ministeries  
And Government Departments
90. Al-Tamawi, *op.cit.* , p. 104

91. Othman, *op.cit*, pp. 231-2
92. *Ibid*, p.259
93. *Ibid*, p.260
94. *Ibid*. p. 264
95. *Ibid*. p. 259
96. *Ibid*. p. 273
97. Supreme Court Ruling Of February 26<sup>th</sup>, 1966 p. 468
98. Othman, *op.cit* , p.346
99. *Ibid*. p.347
100. Othman, *op.cit* , p.305
101. *Ibid*. p. 15
102. *Ibid*. p. 290
103. Fatwa And Legislation Department No. 33 Of November 28<sup>th</sup>, 1978
104. Al-Naggar, *op.cit*, pp.26-7  
Naghawri, *op.cit*, p.102  
Supreme Administrative Court Ruling No. 11/10 Of November 5<sup>th</sup> 1966  
Anthology No. 4/4129-3130
105. Supreme Administrative Court Ruling No. 232/12 Of May 27<sup>th</sup>, 1972  
Anthology  
No. 4/4130

106. Othman, *op.cit*, pp.295-304
107. Ruling No. 492/15 Of January 22<sup>nd</sup> 1972; Ismail Khamis. Encyclopaedia Of Discipline, Modern Press 1988 p. 83
108. Supreme Administrative Court Ruling No. 174/8 Of June 21<sup>st</sup> 1966, Anthology Of Administrative Principles 4/3898
109. Othman, *op.cit*, pp.315-320
110. Al-Malt, *op.cit*, pp.101-102
111. *Ibid.* p.
112. *Ibid.*
113. Supreme Administrative Court Ruling 1412/8, Of January 26<sup>th</sup>, 1963
114. Bandari, *op.cit*, p.43
115. Civil Service Council Order, UAE Session No. 340, Principle No. 30
116. Bandari, *op.cit*, p.46
117. Ruling No. 799/19 Of February 23<sup>rd</sup> 1974 (19-17-165)
118. Ruling No. 222/10 Of May 10<sup>th</sup>, 1969 (14-92-688), Anthology Of Supreme Administrative Principles 14/3931
119. Ruling No. 561/16 Of June 2<sup>nd</sup> 1973 (18-17-112), 4/3931-3932
120. Bandari, *op.cit*, pp.46-7  
Shaheen, *op.cit*, pp.199-201

121. Tutunyri, Al-Salam, *Obstructs To Criminal Accountability*, Arab Research Centre, 1971, p.83.
122. *Ibid.* p. 88  
Bandari, *op.cit*, p.52
123. Tutunyri, *op.cit*, p.89
124. Bandari, *op.cit*, p.54
125. *Ibid.*
126. *Ibid.* p. 53  
Al-Malt, *op.cit*, p.86
127. Bandari, *op.cit*, p.53  
Tutunyri, *op.cit*, p.89
128. *Ibid*, p. 55 and Supreme Administration Court Ruling No. 1921 Of Novermber 10<sup>th</sup> 1962, Anthology Of Legal Principle p. 32
129. Bandari, *ibid*, p. 56
130. Tunji, *op.cit*, p. 90
131. Bandari, *op.cit*, p.59

## **CHAPTER IV**

### **IMPEDIMENTS OF** **DISCIPLINARY ACCOUNTABILITY**

By “impediments of disciplinary accountability” we mean the reasons that may arise and change the conditions of a public servant committing a disciplinary offense and which consequently remove accountability. These impediments may take one of the following three forms:

1. Conditions that may arise and, according to the circumstances in which a wrongful act is committed, strip it of its criminal character thus transforming it into “a permissible act”. Such conditions are referred to as “permissibility conditions”.
2. A disciplinary offense may be committed and no permissibility conditions exist, yet the perpetrator of such an offense is not held responsible due to certain impediments related to his character or behavior which restrict his freedom of choice. These may be termed “impediments of accountability”.
3. A disciplinary offense may be committed and no permissibility conditions or impediments of accountability exist, yet there may be reasons which deter punishment. These are called “impediments of punishment”.(1)

The three forms of impediment of disciplinary accountability will be discussed in detail below.

## **4.1 Conditions of Permissibility of an Act**

These conditions relate to the act committed and its tangible character hence they are termed “material conditions”.

There are three forms of permissibility conditions:

1. That the act is committed in the context of exercising a legitimate or legal right.
2. That the act is committed in the context of performing a legal duty.
3. That the act is committed in the context of exercising the legitimate right of self-defense.

### **4.1.1 Exercise of a Right**

Linguistically, ‘right’ is the opposite of ‘wrong’. It indicates, as Arab lexicographers (2) point out, the validity of a certain matter or act. Therefore, if a crime is committed in the context of exercising a legal right, it is no longer described as a crime; it becomes a permissible act.

Article 53 of the Federal Penal Law of 1987 reads: “an act committed with good intention and in exercise of a legal right shall not be considered a crime”. The same Article sets the following three conditions for stripping an act of its criminal character

- That the act should be committed with good intention. Responsibility for an act committed in exercise of a right rests on the intentions of the performer of the act.

- That the act is committed in exercise of a right determined by law.
- That the act is committed within the precise scope of the right exercised by the performer of the act. Any excesses made with good or bad intentions hold that person responsible and penalty may be imposed on him. Good intention may be taken as a reason for commuting a penalty as stipulated in Article 59 of the UAE Penal Law No. 3 of 1987.

The same principle i.e. exercise of a right, has been adopted in administrative law. Many public service laws have laid down stipulations concerning the right which a public servant is entitled to exercise. As Bandari (3) points out, "This principle which is followed in the administrative field is quite logical. It would be unacceptable for a legislator to determine certain rights for a person and then punish him for the acts he commits in his exercise of those rights".

The UAE Civil Service Law has determined, in general terms, the rights of a public servant leaving out the detailing of such rights to be dealt with in the regulations of the various government facilities. It is worth mentioning that the public servant enjoys special rights which are closely related to his job including the right to carry out administrative instructions, the right to have different kinds of leave, the right to express his opinions regarding the job he performs, the right to make a complaint and submit a grievance in accordance with a prescribed legal procedure. The UAE Constitution stipulates specific rights for the public servant (Articles 14, 15, 16, 17, 18, 19, 20, 21, 22, and 25-44). Several personal rights have been also stipulated in other laws for both public servants and non-public servants.

The above rights, if exercised within their proper legal framework and if they do not conflict with the rights of others or with the public interest, may deter accountability. Of these, the most important are the right to free expression of opinions, the right to make a complaint and submit a grievance and the right to have recourse to the judicial authorities. In this connection the public servant's right to free expression of his opinions is essential for accomplishing the public interest and improving performance of work. The Egyptian Supreme Administrative Court ruled that "frankness in expressing one's opinions for the sake of public interest is necessary while hypocrisy, insincerity and cowardice only jeopardise the public interest. The public servant should not be blamed for expressing his personal opinion regarding a certain matter or striving to persuade his superior to adopt it so long as he does so with good intention. A public servant may further disagree with his superior over a particular issue. Truth always comes about through differing opinions, arguments and counter-arguments, evidence and counter-evidence".(4) However, the right to free expression of opinion is not absolute; it is constrained by the requirements of the public service including good conduct as well as reverence and respect of the superiors.(5)

- The right to make a complaint and submit a grievance is also guaranteed in the UAE Constitution. Article 41 stipulates that "any person may lodge a complaint before the competent authorities including judicial ones, against any violations of rights and freedoms stipulated in the Constitution." This particular right applies, first and foremost, to the public servant as he is entrusted, by law, to implement regulations and it would be therefore natural that he should enjoy the rights related to the



performance of his job. This general rule encompasses all forms of complaint including those pertaining to disciplinary actions taken against public servants. Article 84 of the UAE Federal Civil Service Law No. 8 of 1973 reads, "A public servant may submit a grievance against the decisions issued by the Disciplinary Council inflicting such punishments as suspension of his work and non-payment of his salary, etc.". Similar stipulations exist in civil service laws of other GCC states. For example, Article 74 of the Omani Civil Service Law No. 8 of 1980 has stated that "grievances may be submitted to the head of the administrative unit concerned within thirty days of notification thereof".

It is important to note that there should be some controls and restrictions on exercising this right in order to avoid any excesses that may undermine the legitimacy of such a right. Counselor Bandari (6) has laid down two conditions for the public servant's exercise of the right to lodge a complaint and submit a grievance. The first is a procedural condition. A complaint should be lodged and a grievance submitted to the competent authorities in accordance with the defined procedure and through the proper channels. If not, the complaint will be considered illegal and a disciplinary penalty may be inflicted on the public servant submitting it. The Egyptian Supreme Administrative Court determined in a ruling that "if a public servant does not observe these formalities and if his complaint has been submitted to a non-competent authority, it will then be considered as having lost its way or missed its target and will consequently have no legitimate basis. It will, in fact, be considered an illegitimate and disgraceful act which constitutes a disciplinary violation regardless of any reasons that may be given to justify such a violation".(7)

The second condition is an objective one. A complaint should be consistent with good manners, it must not contain abusive words or pose a challenge to the public servant's superiors. In a ruling issued by the Supreme Administrative Court (8), the Court pointed out that "although the public servant's right to lodge a complaint is guaranteed, it does not permit him to use the complaint as a pretext to libel his superiors or be audacious. If he so behaves, he will be accountable for his conduct which violates his duties that require him to show respect and reverence to his superiors." (9)

The public servant's right to submit a complaint against any violation of his rights may be further extended to include informing the authorities about any violations that come to his notice even if such violations are committed by his superiors. In reporting such violations, however, the public servant should observe his duties by showing respect and reverence to his superiors; he should not be motivated by the desire to libel his superiors or call their integrity into question; his ultimate goal should be to serve the public interest. (10)

- The right to have recourse to the judicature is, as indicated above guaranteed in the UAE Constitution (Article 41). A public servant may exercise this right even if it leads to causing damage to his superiors or calling their actions into question so long as this serves the public interest. However, a complaint may be submitted to the judicial authorities only by a public servant whose integrity is not questionable. Such a complaint should be based on facts and must be submitted with good intentions, not for libel or malicious purposes.

#### 4.1.2 Performance of a Duty

The duty of a public servant includes the actions that he is bound, by law, to perform and for which failure to perform is punishable whether or not he derives personal gains from non-performance of those actions..

I shall deal here with two important duties of a public servant, namely, obedience to his superiors and implementation of laws and regulations.

- A. A public servant must obey his superiors' orders provided that they do not constitute a violation of the law, in which case he has to draw his superiors' attention to it. Failure to do so does not impede or deter accountability as stipulated in Article 64 of the UAE Civil Service Law: "A public servant shall not be exempted of disciplinary penalty unless it has been proven that the contravention related to his job has been committed in implementation of a written order issued by his superior whose attention has been drawn to the contravention in which case accountability shall fall on the person issuing the order".

It has to be emphasized, however, that obedience to the superiors is considered one of the most important duties of a public servant and one which he must observe in all matters that are consistent with the law. It ensures efficiency of work and maintains the unity of the administrative utility which is based on gradation of posts. A public servant's refusal to obey his superiors' orders or to suspend implementation thereof until they look into his grievances is considered a legal violation. Meanwhile,

obedience to the superiors cannot be taken as a reason for the permissibility of an act committed by a public servant unless he is ordered, in writing, by his superiors to do so providing such an act does not constitute a crime.

- B. As regards the implementation of the laws and regulations which determine the terms of reference of particular jobs and the specific duties of public servants in a government facility, a public servant cannot be held accountable for the consequences thereof unless he knows that such consequences will negatively affect the public interest or result in damage.

#### **4.1.3 Exercising the Legitimate Right to Self-Defense**

This right has been determined in the UAE Federal Penal Law No. 3 of 1987 (Vol. 2, Part 2, Section 3). It is a legally permissible act in the criminal, civil or administrative field. However, the said Law has laid down four conditions for the exercise of the right to self defence .(11) They are as follows:

A. That there is a danger of assault on the public servant which will jeopardise the safety of his body, money and belongings or debase his character. The public servant cannot however exercise this right in case of insult or abuse.

B. That the assault has actually begun in a form of premeditated act. A threat of assault does not legitimise the exercise of the right to self-defense.

Likewise, exercise of such a right is not legally permissible if the assault has ended.

- C. That the exercise of the right to self-defense is necessary to repel an assault. Exercising such a right is not however legally permissible if an assault can be prevented with the help of the administrative utility.
- D. That the right to self-defense is exercised to the extent which makes it possible to repel an assault without excesses or intent of revenge.

The above conditions which are laid down in the criminal law have been also mentioned in administrative law due to the similarity between criminal and administrative laws in terms of the need for such conditions to ensure that the acts committed in self-defense are legally permissible.

#### **4.2 Impediments of Accountability**

Disciplinary accountability, and for that matter any other accountability, is based on a person's free choice to commit an act and his awareness of the consequences arising from such an act. A public servant with a mental disorder, for example, cannot be held accountable for his acts simply because he is not aware of what he is doing. Similarly, a public servant's absence from work due to floods that prevented him from reaching the work site cannot render him accountable since he did not choose to be absent. In other circumstances, a public servant may commit an act out of sheer necessity and this constitutes an impediment of accountability if the legal conditions thereof are available. (12)

Some jurists include and embody obedience of the administrative executives as a bar to impediments of accountability (13) but this is debatable and controversial; the reason for the impediment of responsibility is not linked or connected with the personality of the doer because there is a reason to remove from the act itself the description of the crime which is considered to be the execution of duty by the boss's order; hence it is not possible to mention or state obedience of the superiors as one of the reasons or causes of impediment of disciplinary actions.

### **4.3 Impediments of Punishment**

Impediments of punishment are similar to impediments of accountability in that both are linked with the character or behaviour of the person committing the act and neither strips the act of its illegality. However, punishment is not inflicted on a person if any of these impediments or permissibility conditions exist in a particular case.

Jurists of administrative law have mentioned several impediments of punishment, such as, contravening the law by a public servant on the basis of an order issued by his superior. (14) There seems to be some intervention in the classification as noted in the references of the administrative law. That is, the act does not specify what constitutes a crime that cannot be included within the impediment of the disciplinary actions or penalties as mentioned above. If the act is legalised , then the removal of the description of the crime from law,

means therefore, that the law assumes no responsibility for its perpetration. Therefore, with all the more reason there will be no punishment.

What can be mentioned and stated within the bars to punishment as known in the criminal law are pardon or the repealing or canceling of the provisions incriminating the act or dropping or withdrawing the decision of conviction (disciplinary) canceling the disciplinary action, in addition to prescription and death. As a whole, these are the causes barring punishment; however there are other causes linked with the public employee himself, such as if he is laboring under mental infirmity, mental or psychological illness. In this connection the criminological and administrative references have expatiated at length, and elaborated, on these bars and prohibition of punishment. Since these references are clear and concise. I find no need to add more on the subject (15).

#### **4.4 The non prohibitory causes for liability**

After setting out the causes of legalization sanctioning and prohibitions of liability and punishment, I would like to point to some other causes which are not acceptable to deter or prohibit the liability:

- ignorance of the law and the organisational regulations of the work is not an excuse to justify the violation of the law hence the disciplinary liability cannot be lifted from the public employee for the reason that he is obliged to perform his work with the utmost care and attention and to endeavor to know the laws and the organisational regulations before starting the work so as to perform it in the required manner.

- The continuation and flow of the work, contrary to what the provision prescribes, will not justify the public employee in violating the provision nor in the dropping of the liability.
- Non-acquaintance with the work requires a certain description or acquaintance of a particular legal system; no justification shall be accepted whatsoever the case may be.
- If the public employee is not incumbent and hence he performs the work in that capacity by way of deputation or cooperation with his colleague and commits wrongdoing in this work, he shall be liable for that and he will not be able to claim against any accusation of incompetence, negligence or recklessness due to his lack of familiarity with the work and shall be disciplined and punished accordingly.
- Oversight is a kind of wrong and hence a wrong entailing liability; it is considered too as a presumption of negligence in performing the duty as well as non attention to the performance of the same.
- To be overloaded with work may be an extenuating circumstance as per the conviction of the administration; however, it is not considered as a cause for the justification of dropping the disciplinary action.
- Feigning of an illness without proof in the ways prescribed by the law shall not bar disciplinary liability.

Claiming to live or reside far away from the place of work is not considered as an excuse for dropping the liability; the public employee



should secure a suitable residence to live in: accordingly, it is suitable to have a residence near to the place of work.

- The allegation that the administration decisions are avoidable will not be considered as an excuse for non-execution of the same in the manner issued thereof; in other words, he has to obey all the orders and instructions issued by his boss. If he believes that they are illegal he has to call attention to that in writing if the boss insists on his opinion he has to execute it without giving any consideration to the allegation that the decisions are avoidable and therefore the dropping of the disciplinary liability.
  
- Motives, drives or inducements towards commission of the act will not bar liability, if the public employee claims or alleges that he engages in another capacity additional to his original work without obtaining permission from the administrative authority because he searches for better situation and offering his contribution to greater productivity beneficial for the state. Therefore, his motive or inducement shall not be deemed reason a defence to disciplinary liability. To stop, cease or discontinue the violation, reforming it, making it, right or making good after its commission shall not bar the disciplinary liability if the employee quits, ceases or gives his job up in contravention to the law and then resumes his job. Resumption of the job shall not bar or prohibit the administration from questioning him about the cause or reason behind the discontinuation of work.

## NOTES-CHAPTER IV

- 1) Bandari, *op.cit*, p. 73.
- 2) Al-Fairzbadi, *Al-Qamoos Al-Muheet* (The Comprehensive Dictionary) Vol. 3, p. 228 Ibn Faris, *Mu 'jam Maqayees Al-Lugha* (Dictionary of Language Analogies)
- 3) Bandari, *op.cit*, p.78
- 4) Ruling No. 480 dated 15 May 1965.  
*ibid*, p.83
- 5) Ruling No. 955 dated 14 December 1968.  
*ibid*, p. 84.
- 6) *Ibid*, pp.84-85
- 7) Ruling No. 1456 dated 23 January 1965  
*ibid*, p. 85.
- 8) Ruling No. 991/14 dated 30 June 1973 *Compendium of Principles*, Cairo, 1985
- 9) Egyptian Supreme Administrative Court Ruling No. 21/10 dated 24 May 1969, Ruling No. 1137/14 dated 22 January 1972 and Ruling No. 1213/9 dated 3 June 1967. *Compendium of Principles*.
- 10) Supreme Administrative Court Ruling No. 917/11 dated 18 February 1961

- 11) *Ibid*, pp.88-91 and  
Shaheen, M., *op. cit.*, p. 113
- 12) Shaheen, *ibid*, pp. 113-115 and  
*ibid*, pp. 92-109
- 13) *Ibid*, pp. 109-113
- 14) Sadiq, Samir, *Decisions and Provisions of Discipline* (in Arabic), p. 74
- 15) Bandari, *op.cit.*, pp. 18-25  
Sadiq, *op.cit*, pp. 69-73  
-Afifi, Mustafa, *The Philosophy of Disciplinary Punishment* (in Arabic),  
p. 365 (1990).
- 16) Bandari, *op.cit.*, pp. 113-125

# CHAPTER V

## THE LEGAL BASIS OF THE DISCIPLINARY AND PENAL AUTHORITY IN THE UAE

The legal basis of the disciplinary and penal authority is determined in the light of the legal relationship linking the public servant with the state. However, this is a controversial issue. Several theories have emerged in an attempt to define the legal basis of the disciplinary and penal authority. Some of these, viz. contractual theories, are derived from the rules of the civil law (1) while others, viz. organizational theories, have originated in the rules of the administrative law. Some jurists believe, however, that contractual theories are in fact derived from the common law (2). These theories i.e. contractual and organizational, will be discussed below.

### **5.1 Contractual Theories**

The idea of the social contract dominated political thought for three centuries i.e. that the organization and administration of society depended on the free will of the individuals. In other words, society is created as a result of

a contract concluded between the individuals, or between the individuals and a ruler. Meanwhile, society exercises all the sovereign rights over its members, especially the right of inflicting a penalty (3).

In this connection, Dr. Barakat (4) points out that most of the political jurists are of the opinion that the contract is not only considered as the basis of the states authority but also as the basis of the authority in smaller units such as the family, the province and the municipalities. The theory of the social contract was later abandoned but jurists continued to believe that the relations in private societies are organised according to a contract. This contract is sometimes referred to as a companies contract or a hire of services contract depending on the type of society. In all cases, the contract is binding to both parties, one party is obliged to render the services and pay the salaries to satisfy the material and moral needs of the individuals and in return the other party is obliged to participate in public work doing its best to achieve the smooth running of public utility. Therefore, any mistake committed by one of the individuals is considered as a breach of the contract and the other party has the right to punish that individual. Solon notes that the contractual theory which depends on principles set out as a result of the French Revolution has been used as the basis of the disciplinary authority exercised by the state over its employees or the private sector on workers (5). Therefore the contractual theory rests on the assumption that the relationship which links the public servant with the state is a contractual one in which the two parties should observe their obligations. The disciplinary authority is created from the contract concluded between the two parties on the grounds of the breach of the

public servant of his contractual obligations (6). Administrative jurists have disagreed over the character of the contract concluded between the administration and the public servant. Some view it as a contract of the private law, in which case the disciplinary penalty relates to the contravention or non-implementation of the contract. Others, however, view it as a contract of the common law, since the nature of the contract is determined in accordance with the specific interests defined therein.

In this case, the aim of the disciplinary authority will be to protect public interest (7).

I shall discuss briefly three contractual theories: the theory of the civil contract, the theory of the contract of the common law and the theory of the public utility.

### **5.1.1 Theory of the Civil Contract**

This is one of the oldest contractual theories as (Stainof) indicated that it may referred due to the non development of the theory of administrative law at that time. This theory depends on the existence of a Civil Contract between the public employee and the state, where the first exerts his efforts whereas the latter executes obligations promised. These efforts and obligations govern the provisions of the contract concluded between the two parties towards the attainment of the public interest of society (9).

## Criticism of the Theory

Those who advocate this theory believe that the relationship between the public employee and the state is basically built upon an agency contract if the work to be exercised by the public employee is a legal contract. If the work to be exercised is a physical one, sometimes the contract is described as one of the unnamed contracts, that is to say the public employee is considered to be in a subjective legal position, hence the state appears as an employer in this contractual relationship and the employee is subject to the normal ordinary legal rule, if he breaches the obligations provided for in the contract or commits a wrongdoing. In this case he shall be considered as breaking his obligations and therefore the state shall have the right of inflicting the penalty, since the disciplinary authority derives its authority from the infliction of the penalty based on the contract concluded with the public employee.

Criticism of the Civil Contract Theory has put forward the new philosophy of administrative law plus new theories that limit the relationship between public employee and his employer, that is, the state, by arguing that the Civil Contract Theory is neither formal nor substantive within contracts defining the terms of employment. It is conditional that there should be an offer on acceptance after negotiations, to be conducted between the parties to

agree to the condition of the contract. Obviously there is no such practice because the relationship of the public contract is completed according to the decision of the appointee without the consent of the public servant. As for the substantive phase or aspect, the civil law provides that the contract is the law of the contracting parties; that is to say a party to the contract may not amend the contract save with the consent of the other party, whereas the rule in accordance with the common law authorizes the administrative authority to amend the conditions of the employment at its own discretion and that is in some cases alongside special conditions, without the public employee having any right of objection that he has a vested right to be treated by the law governing his appointment. However, what is stated by the authority in the contract binds it. The origin of the effects of the civil contract is confined to its parties only where the breach of contract by the public employee in the execution of his duties renders him responsible to the citizens of the state. However, these individuals are not parties to the contract (10).

### **5.1.2 The Theory of Public Law or the contract of Public Employment**

This is one of the modern theories expounded by the jurists of contractual theories in their endeavors to sustain the idea of contracting in the relationship between the Public Servant and the state and giving it a lenient characteristic over the contractual theories. The gist of this theory depends on the consideration that the relationship between the public employee and the state enters into the scope of public law. This relationship is organized by a



contract of public law; that is to say, the end and the objective of the disciplinary authority is to protect and perceive the public interest. If the case is so formulated then the administration can amend the contractual provisions through its own will as per the principle of the vulnerability of amendment. Therefore, meeting the needs and interests of the people, this is arguably the case in the English law.

Those who advocate this theory add that the public employment contract is characterized by some particulars which are different from the private law contract. One of these characteristics is that the parties to the contract are not equal, as is the case with the parties of the ordinary civil contract. This means there is a distinction between the public law contract (the contract of the public law) and contract of the private law, i.e. the inequality between the parties in the public law contract where the state alone determines the conditions of the contract to achieve the public interest and to secure its good running of the public utilities. The state benefits from this contract by determining the competence of the public employee and service system thereof as per the nature of the state hierarchy (12).

The French Council of state adopted this theory at the beginning of this century. It ruled that the Moroccan workers, by breaching their contract with the French state, in contradiction of their conduct with the running of the public utility, had broken and severed all the legal ties connecting them with

the state, thus depriving them of the employment rights derived from the public employment contract (13).

The theory also rests on the fact that the state only can determine the conditions of the public service in order to attain the public interest and the smooth running of the public utility without the prior consent of the public servant (12). The French State Council adopted this theory at the beginning of this century which ruled that the employees who went on strike violated the legal relationship that linked them with the state and, as a result, they had to be deprived of the employment entitlements derived from the contract of public service (13).

### **Criticism of the theory**

This Theory has been criticised for being unclear. Dr. Melaykah Al Saroq observed The jurists had deserted this theory. For its obscurity and insufficiency and that the relationship between the public employee and the State is not only one of mutual obligations but that there is an organised relation, the end of which is the public interest. Moreover this theory is only a fabrication of the previous theories in order to justify as suitable the relationship between the public employee and the administration(14).

### **5.1.3 The Theory of the Public Utility Contract**

The gist of this theory is not different from the public law. This theory, however, is based on the public utility contract which derived its grounds from the private law, where the state is subject to it in its capacity of being the executor of the disciplinary authority in its right of control and supervision over the public employee (15). German jurisprudence adopted this theory. Glenick states that according to the contract of the public utility, the public servant is subject to the authority of the utility as any defined authority obliged by the rules of the law. However, the orders are not directly executed as per a substantive law but according to a personal right acquired as per the contract from which the special authority of the head of the utility is derived (16). Disciplinary action is not based on the power of the state, as it is not the only power which has the right to take disciplinary action. There are many private bodies which have the same right as well. In addition, the state cannot compel the public servant to perform his duties and if he refuses to do so, the most severe penalty that can be imposed by the disciplinary authority is to dismiss him. Since the relationship between the state and the public servant emanates from an act or a contract of common law, the said act or contract constitutes the basis of the disciplinary authority which authorizes the state to request its public servants to perform their duties in the best way possible. This is the contractual conception of the states disciplinary authority. Jurist Lapan is of the opinion that the duty of obedience emanates from the legal nature of the contract of the public

utility since the correct character of the disciplinary authority exercised by the state over its public servants is derived from the contractual relationship between two parties (17). Lapans attitude differs from that adopted by other advocates of the theory of the public utility. He tried to combine the theory of public utility, the theory of the civil contract and the theory of the public employment contract to avoid the criticisms mounted against the contractual theories. However, all the contractual theories were subjected to criticism as they overlooked the fact that the relationship between the public servant and the state is not only based on mutual obligations but there is also a disciplinary relation whose aim is to serve the public interest and ensure the smooth running of the public utility, and the breach of this aim will justify imposing a penalty by the competent disciplinary authority. Therefore, some jurists abandoned the contractual theories and refused to consider the relation between the state and the public servant as contractual (18).

## **5.2 Organisational Theories**

As a result of the criticism mounted against the contractual theories, new theories have emerged. The latter are based on the idea that the relationship between the state and the employee is not a contractual one as the employee derives his rights and obligations from the laws and regulations directly organising the public service. New regulations do not affect the status of the public servant unless they are issued by law or they include new privileges involving financial obligations on the treasury, in which case the

new regulations come into effect from the date of issuance, unless they are intended to be effective retrospectively (19). If the legal status of the public servant is based on the regulations, the state only will determine the needs of the public utility; the state will determine, at its discretion, the status of its public servants and their legal positions and amend these aspects at any time it deems appropriate.

The basic notions underlying organisational theories are the following (20):

1. The legal status of the public servant is determined by general abstract rules according to which all public servants of one cadre are treated and the public servant and the administration may not agree to violate those rules.
2. The authority concerned with determining the legislation and regulations organising the public service can amend the legal status of the public servant which is derived from those regulations and the public servant does not have the right to protest against such amendment on the grounds that it should not be applied retrospectively or affect acquired rights.
3. Public servants are obliged to secure the good running of the public utility and consequently they are not allowed to go on strike.
4. The decision of appointment in the public service takes effect from the date of issue thereof and does not depend on the consent of the public servant.

The latter is not permitted to quit work prior to the acceptance of his resignation. The commencement of the relationship following the issuance of the decision of employment indicates that the public servant has been found to be eligible to take on the responsibilities of the public service including the disciplinary one.

5. The disciplinary authority depends on the status of the employee which is determined by the regulations in force. Advocates of the organisational theories have agreed on the main foundations on which such theories should be based. They have, however, disagreed on the legal basis of disciplinary authority. As a result, a number of theories have emerged. These are the theory of the establishment, the presidential theory and the state authority theory. Each of these theories will be discussed below (21).

### **5.2.1 The Theory of the Establishment**

This theory is introduced by jurist Moris Horuo (22) who states that the law and the contract are legal facts: the contract is a sign of the accord between the will of persons whereas the law is a manifestation of the sovereignty of the state. The theory of the establishment has three main elements:

1. A common idea to be achieved by a group of individuals.
2. Principles and rules that govern the conduct of the group to achieve the end.

3. Disciplined authority that serves the idea and achieves its end and secures its continuity in an independent form apart from the individuals taking care of it.

The creation of the establishment along these lines requires the presence of a hierarchy of powers built into it. Thus a penalty does not entail a personal interest for the manager and the public service is not based on contractual relationship but on the principle that the obedience of the public servant to a higher authority will achieve the interest of the group. The state enjoys the highest status in this organisation, as Horuo states, and the public servants exercise the state authority in its various organs (22). The organizing authority in which the notion of the establishment is based has the right to curb any violations committed by individuals. The relationship between the members and their organisations is not based on equality but on the rules of the establishment which constitute collectively the law agreed upon to achieve the required end; hence the essence of disciplinary action rests on the breach of this end (23).

### **Criticism of the Theory**

Although the theory was enthusiastically received by French and Egyptian administrative jurists (24) it was strongly criticized by others and

was later abandoned (25). It was described as vague; it mixed up criminal and disciplinary penalties. Dr. Al-Sheikhly (26) summarizes the main criticisms:

1. This theory is not a pure regulatory theory but a contractual one similar to the theory of the social contract and its proponents combined contractual and regulatory elements.
2. It takes a broad conception of penalty to which all citizens including employees are subjected without making any distinction between the disciplinary action and criminal penalty.
3. The theory justifies the presence of disciplinary authority in private establishments, commercial companies, artistic societies and sports clubs on the grounds of curbing any breach of their activities which causes damage or which conflicts with their interests and objectives. The disciplinary authority of the state, however, is basically different from this conception since in the case of such an authority good intentions and the damage caused are not considered.
4. The disciplinary provisions of the public service are regulated by the public law and the state acts toward its employees in the capacity as a sovereign body that possesses the authority of disciplining and incrimination.



### **5.2.2 The Theory of Presidential Authority**

This theory is based on the notion that disciplinary action is the competence of the presidential authority and since the administrative head is responsible for the smooth and regular running of the public utility; he has the right to use all means to achieve this end. One of these means is the right to take disciplinary actions as an effective way to enforce the orders of presidential authority (27). This theory has emerged from the establishment theory as the relationship between the boss and the subordinate is not based on contractual grounds but on presidential authority which has the right to take disciplinary actions. In this connection, the jurist Roger Gregoire (28) says that the essence of leadership is supervision and the issuance of orders and the follow-up of the same. It is therefore necessary for anyone who gives orders to be provided with disciplinary powers that would enable him, in extreme cases, to impose those orders on the employees. Moreover, good leadership requires that presidential authority be provided with great powers including the right to instruct employees and supervise them as well as to hold them accountable for the mistakes they commit. In this way, the close link between authority and responsibility, which is a major principle of public administration law, can be accomplished (29).

However, the presidential theory was considerably amended. In this respect, Dr. Al-Sarookh (30) points to the intervention of the legislator to provide disciplinary safeguards to limit the excesses of the presidential authority by giving disciplinary powers to the judicial authorities. In addition, the legislator compelled the presidential authority to consult a joint body prior to inflicting or imposing disciplinary action, and restricted its competence to the imposition of light penalties. As for heavy penalties, they were referred to independent bodies including judicial authorities and therefore this theory lost most of its ingredients which eventually led to its abandonment.

### **Criticism of the Theory**

The following criticisms have been cited against this theory:

1. Disciplinary authority is not synonymous with presidential authority as there are a number of penalties which are not the competence of presidential authority as is the case in judicial systems and therefore disciplinary action is not an absolute right of presidential authority.
2. The filing of a disciplinary case is not only vested in the presidential authority since the high administrative authority , as well as the administrative prosecution has the same right in the states following this system, such as Egypt and Morocco. If the presidential authority fails to file a disciplinary case the high administrative authority and the administrative prosecution will intervene to do so (31).

3. In some political systems, employees are subjected to disciplinary actions by the legislative authority. For example, in Switzerland, which is constituted of many provinces with some kind of internal sovereignty alongside the power to legislate, those provinces draw up their constitution, and elect judges and the municipal bodies are supervised in accordance with the procedures stated in the Federal Constitution and the relevant law. In addition, the judges and the municipality officials may be subjected to disciplinary action by the legislative power (32).
  
4. In addition to the aforesaid, presidential authority has a wider competence than simply inflicting disciplinary penalties as it implements some procedures which affect the employee such as the internal organisation of the utility (33).

### 5.2.3 Theory of State Authority

This theory has been proposed by Dugnil. The underlying notion in this theory is that disciplinary punishment is, in essence, a criminal one and since the latter is closely linked with state authority, it follows that the authority of disciplinary punishment is associated with state authority. The theory has been described by some scholars as being realistic and logical (34). It is realistic because it acknowledges the fact that the disciplining of a public servant is the competence of the state. It is also logical because it realizes that although disciplinary actions

are actually practiced by the administrative authority, they constitute a judicial task (35).

The theory has been more recently developed as its proponents have looked for a more comprehensive basis for the theory. They have argued that the state exercises the process of inflicting disciplinary penalties on behalf of the people whether those powers are actually exercised by the presidential authority or disciplinary courts or both (36). This is similar to the United States idea of Police Power to secure good government which is said to be inherent in the state. It follows that disciplinary authorities - judicial or administrative - should observe the powers and duties distributed to them by the state. The presidential authority should not try to exercise the powers of disciplinary courts (Ruling of the Supreme Administrative Court taken at the session held on 15<sup>th</sup> May 1971). Meanwhile, the judicial authority should not interfere in the competence of the administrative authority by, for instance, modifying a penalty inflicted by the latter on a public servant (37). In this way, proponents of this theory have been able to respond to the criticisms mounted against the main notion that the presidential authority constitutes the basis for inflicting disciplinary penalties.

### **Criticisms of the Theory**

Despite its rational approach, the theory of state authority has been strongly criticized by some scholars. The main criticism relates to the absolute powers assigned to the state in the disciplinary field. Dr. Malika Al-Farokh (19 : 44) points

out, for instance, that jurisprudence has tended to limit those powers. The disciplinary authority which is considered one of the main elements of state authority is not confined to public servants. There are disciplinary powers in private labour practices as well as in the statutes of Professional syndicates.

### **5.3 The Legal Basis of the Disciplinary and Penal Authority in the United Arab Emirates**

Having discussed the contractual and regulatory theories, I shall now proceed to examine the position in the United Arab Emirates and what is applicable in this regard. The system of work in the UAE is of a special nature as it is directly linked with the establishment of the state and its requirements of qualified personnel for specific periods of time. The relationship of the public servant with the administration in the UAE differs to some extent from that in other countries as will be shown in our discussion of a group of employment contracts concluded by the administration with public servants in the United Arab Emirates. These contracts may be divided, in the light of the above-mentioned theories, into two groups:

Group (1)        Contracts subject to contractual theories

Group (2)        Contracts subject to regulatory theories

### **5.3.1 Contracts Subject to Contractual Theories**

It was stated in Section 5.1 that there are several contractual theories revolving around the character of the contract in three forms (a) the theory of the civil contract which is governed by the agency or lease contract and derives its authority from the legal rule. The contract is the law of the contractual parties, (b) the theory of the common law contract or the public service contract which is similar to the former theory but is more flexible since the administration has the power to intervene in the amendment of the contract if the requirements and needs of the public interest so demand, and (c) the theory of the public utility which is also similar to the previous one with a little addition revolving around the execution of orders, namely, that orders should not be directly executed as per a substantive law but in conformity with an implied right as per the contract.

Looking at item (19) of the foreign employment contract and item (16) of the local employment contract attached to the decision of the Council of Ministers No. 17 of 1967 concerning the regulation of the employment of expatriates, one may note that both texts stipulate the implementation of the provisions of the Civil Service Law and the decisions issued in the implementation thereof as well as all the decisions relating to personnel affairs and the Workers Compensation Law and the amending laws thereof

where there is no relevant stipulation in those two contracts and in the regulation of the employment of expatriates. These two items define the approach to be followed in determining the relationship between the public servant and the administration as well as the legal basis that should be specifically invoked by the administration in characterizing its relationship with the public servant in the light of the legislation and legal regulations issued by the state. They also delimit two exclusive references for the control of the provisions of the contract, viz. the Civil Service Law and the Labour Law. These two references are used in case there is no stipulation in the contract specifying the relationship of the public servant with the administration, otherwise the text of the contract shall be binding. In this connection the Department of Legal Opinion and Legislation at the Ministry of Justice (UAE) confirmed the same in the legal opinion No. 1964 dated 6/3/1995 as it pointed out that the employment contract concluded with Mrs. S.M.D stated the rights of the employee vis-à-vis the employer without mentioning maternity leave; item (4) stated that she is entitled to full salary for the official holidays and item (5) stated that she has no entitlements from the second party save the salary agreed upon. This legal opinion expressly stated that right of the employee will be limited to what is stipulated in the contract concluded with the public servant without giving the Civil Service Law any authority to intervene in the matter. This confirms the fact that the applicable system regarding the employment of expatriates is derived from the contractual theories as the contract is considered to be the basis of the relationship between the public servant and the administration. However, if an

issue is raised and it is not provided for in the contract, the reference shall be to the Civil Service Law and the Labour Law as they are considered the laws controlling all employment cases. Therefore the relationship is that of a contract governed by the rule the contract is the law of the contractual parties. On the other hand, the administration shall have the right to amend the contract at any time it deems appropriate. In this respect, the Department of Legal Opinion and Legislation (legal opinion no. 1659 dated 26/9/94) ruled that the entitlement of the two allowances under the contract is considered as a regulatory legal rule that may be amended by the competent authority at any time (38). It added that it is a must to secure to the employees concerned their previous legal status in connection with their entitlements regarding each of the allowances from the effective date of the decision. The said opinion is considered as one of the main principles in defining the nature of the contractual relationship between the public servant and the administration. The public servant enjoys certain legal rights in the light of the contract concluded with the administration but the latter can amend the contract for the sake of public interest but without having a retrospective effect.

To conclude, with the principle of reserving the legal status of the public servant in the light of the contract concluded between the public servant and the administration, this confirms the fact that UAE has adopted common law contractual theories in determining the relationship between the public servant and the administration. It is to be noted that the state of UAE in some of its contracts has approved of the contractual theories; it does not



depend on one of these theories particularly, but rather on what was stabilized and settled by the administrative jurisprudence in relation to the contractual theories. The principle of the contract is the law of the parties who adopted the principle of administrative authority to alter without prejudice towards the employees their rights by statute which was established by virtue of a regulation that had been applied at the conclusion of the contract. Although the relationship between the public servant and the administration is established on the basis of the contract concluded between them, the contract may be linked with a subsequent and complementary system, in which case this must be referred to in determining the rights and duties of the public servant. For example, item (9) of the standard form of the employment of Abu Dhabi National Oil Company (ADNOC) states, Your employment relationship is governed by the applicable regulations of the company and any amendments or subsequent additions to be issued by the company from time to time. Attached herewith is a manual giving a summary of the regulations applicable in the company. In case there is no provision in these regulations regarding a certain matter, your case shall be governed by the Federal Labour Law applicable in the United Arab Emirates. This stipulation is not expressly stated in other contracts; it is applied as a matter of fact. The most explicit reference to the legal rule the contract is the law of the contracting parties is found in the Civil Service Law of the Sharjah Emirate issued in 1983. Article (12) of the said law reads employment shall be in accordance with the stipulations and terms stated in the foreign employment contract or the local one attached to this law. In addition, Article (12) of the provisions of

employment of expatriates states that those who are employed in accordance with a foreign contract shall be entitled to all or some of the following privileges as the contract states. These two stipulations assert the legality of the contract in determining the rights and duties of the public servant although there is a close and direct link with a special system that governs the employment relationship. Item (11) of the standard form of the local contract and item (15) of the standard form of the foreign contract of the regulations concerning the personnel of the General Postal Authority state that the regulations of the personnel of the General Postal Authority and all the regulations and decisions issued in connection thereof shall be applied where there is no relevant stipulation referred to in the contract. This provision has determined the basis of the relationship between the employee and the administration: it has considered the contract as the basis for establishing the responsibility of the employee and the administration since it is the authoritative document which determines their rights and duties. The reference to the regulations on the personnel affairs is in fact an integral part of the contract itself. It must be noted that what has been stated in items (11) and (15) mentioned above is a stipulation that governs all the contractual relationships concluded in the United Arab Emirates. From the aforesaid, it is clear that the public service in the UAE is closely linked with the contractual relationship as it is greatly affected by the stipulations of contracts and this confirms that the relationship underlying the public service is best understood by reference to contractual theories.

### **5.3.2 Contracts Subject to Organisational Theories**

Does the contractual relationship govern all the employment engagements in the United Arab Emirates? In our answer to this question, we should point out that there are two types of employment relationship; the first one is subject to a standard form of contract signed between the public servant (mostly expatriates) and the administration, while the second one is subject to the general rules of employment without any contract. The latter type of employment relationship links UAE nationals with the administration. This has been expressly referred to in Article 12 of the Civil Service Law of the Government of Sharjah Emirate which considers the employment of expatriates as an exception to the general rule and that it is subject to a contract. The said Article reads, Expatriates may be employed in permanent occupations on a temporary basis and in accordance with the conditions provided for in the preceding articles. Hence the general rule is the employment of nationals as stipulated in Article (6) of the said Law as well as in Article (8) and (15) of the Federal Civil Service Law (39). The same is stated in item (A) of Article (10) of the General Postal Authority concerning its employees which reads the nationals of the United Arab Emirates shall have priority in employment.

The question that may be raised here is: what is the nature of the relationship between public servants who are UAE nationals and the administration? How are the duties and rights of those public servants determined in the absence of a contract?

The employment relationship between UAE nationals and the administration can be analyzed in the light of regulatory theories which view such a relationship not as a contractual one but as a regulatory one in which the public servant derives his rights and duties from the laws and regulations regulating the public service. Amendments made by the administration take effect from the date of their issue without prejudice to the acquired rights and privileges of the public servant under previous regulations or legislation. Therefore, the administration does not conclude contracts with nationals of the United Arab Emirates who know in advance that they will be subject to the Civil Service Law and are entitled to all the rights provided therein. It is also to be noted that all schedules and scales of the civil occupations in the United Arab Emirates are linked with the Civil Service Council as the only competent body. Article (1) of the Federal Law No. (8) of the year 1973 concerning the Federal Government Civil Service states that the provisions of this law shall govern all the employees of the United Arab Emirates and its civil servants who earn their salaries from the general budget of the State with the exception of the categories who are subject to special laws and regulations. This provision asserts that civil occupations are generally subject to the Civil Service Law. Item (6) of Article (16) of the said law also asserts that it is within the competence of the Civil Service Council to suggest the rules

relating to the wages and salaries policy and determine the number of jobs and scales according to work requirements.

In conformity with the above stipulations, Article 2 of the regulations of the Civil Personnel of the Emirate of Dubai for the year 1992 states that the employees of the government of the Emirate of Dubai as well as the employees in the general corporations thereof shall be subject to the provisions of this regulation. Besides, Article (1) of the Emiri Decree concerning the issuance of the Civil Service Law in the government of Sharjah Emirate confirms the same meaning; it reads, the provisions of the attached law concerning the civil service shall be applied on the employees of the departments of the government of Sharjah Emirate wherever there is no relevant stipulation in another law.

However, Article 3 of the implementing regulation of the Civil Service Law in the government of Ras Al Khaimah (RAK) Emirate has expressly linked employment with the Federal Civil Service Law as it stipulates that each department shall prepare monthly lists of the vacant jobs stating the prescribed scales and grades and send the same to the General Department of the Personnel for taking the necessary procedures for filling the same.

From the above discussion, it could be said that the public service is linked with the civil service regulations in a manner that achieves the objectives of the state in satisfying the requirements necessary for developing the public service to the highest standards. In addition, the employment of nationals, as mentioned above, is not linked to a contract. The Department of Legal Opinion and Legislation in the UAE Ministry of Justice issued its opinion No (1659) dated 26.4.1994. in which it stated that the general rule is the application of the new legal rules with a direct effect from the date of their issue and the said rules shall not govern the preceding legal positions. In other words, public servants who are UAE nationals should be subject to all rules and regulations of the public service.

In conclusion, the following points may be made:

- I. The employment relationship between the public servant and the administration in the United Arab Emirates is subject to the two aforementioned theories viz. contractual and organisational theories.
  
2. There is a difference between the employment relationship of the UAE nationals and that of the expatriates. The latter is exceptional and temporary and is governed by a contract, again to a common law contract, concluded with the expatriate public servant determining his rights and duties in the light of the legislations in force. As for the UAE nationals, their employment is

permanent and continuous without being subject to a contract but to a collection of rules and legislations governing their relationship with the administration.

3. There is a great difference between the UAE and other states which have adopted specific systems of employment based on one of the theories discussed in this chapter.

4. In its attempt to develop an employment system that best suits the administration and public servants and serves the public interest, the U.A.E had to fall back on both contractual and organisational theories.

## NOTES - CHAPTER V

- (1) Al-Atom , *Disciplinary Accountability of the Public Servant* ( In Arabic )  
Barakat , A.F.A. , *Disciplinary Authority* ( In Arabic ) , p. 4.
- (2) Sarookh, M., *the Disciplinary Authority in the Public Office* , ( In Arabic ) , p.39,  
1985.
- (3) Barakat , *op. cit.* , p 41
- (4) *Ibid* , p. 42
- (5) *Ibid.*
- (6) Sarookh , *op.cit.* , p. 39
- (7) Al Sheikli, A., *Disciplinary Penalties of Public Servants in Iraqi Law.* Ph.D.  
thesis, Cairo University, p.50 -1979.
- (8) *Ibid.*
- (9) *Ibid* , pp . 49 - 50  
- Ezzat , F., *The Disciplinary Authority between the administration and the  
judicatures* ( In Arabic )
- (10) Al-Malt , *op.cit.*, pp. 39 - 40
- (11) Hashishi , A. *Studies in the Public Office in French Law* ( In Arabic ) ,  
Cairo, 1977,
- (12) Sheikhli , *op.cit.*, p. 51



(13 ) *Ibid*

(14) Sarookh , *op.cit.*, p. 40

(15) Al - Sheikhli, *op.cit.*, p. 50

(16) *Ibid*

(17) *Ibid*, p. 9

(18) Ezzat, *op.cit.*, p. 38

Al - Sarook , *op. cit.* , p. 65

(19) - Al-Shab. M.T.C., *Administrative Law ( In Arabic )* ,  
Baghdad , 1980 , p. 295

(20) Zain Al-Abidin B. Barakat , *Principles of Administrative Law (In Arabic)*  
Damascus , 1975 , Al - Matbaa Al-Jadida

(21) Atom , *op. cit.* , pp. 127 - 128

Al - Sheikhli , *op. cit.* , p. 61

(22) - Al - Atom , *op. cit.* , pp. 127 - 129

- Al - Sheikhli , *op. cit.* , pp. 62 - 64

- Mohammed Mukhtar Othman ,

*Disciplinary offence ( In Arabic )* , pp. 35 - 36

(23) - Al - Atom , *op. cit.* , p. 42

(24) - Hilmi , M.C. (1974) *Regulations concerning Public servants in Government  
Utilities and the public sector . ( In Arabic )*

Dar Al-Fikr Al - Ilmi, Cairo

(25) - Al - Sarookh , *op. cit.* , p. 42

(26) - Al - Sheikhli , *op. cit.* , p. 65

- (27) - Ezzat , *op. cit.* , pp. 33 - 34  
- Al - Sarookh , *op. cit.* , p. 43  
- Al - Sheikhli , *op. cit.* , pp. 67 - 69  
- Al - Atom , *op. cit.* , p. 130
- (28) - Ezzat , *op. cit.* , p. 34
- (29) - *Ibid*  
- Al - Sarookh , *op. cit.* , p. 43
- (30) *Ibid*
- (31) Article 4 of the Egyptian Law No. 107 on Administrative Prosecution and Courts for the year 1958 and Article 9 of Law No. 47 concerning the state council in Egypt for the year 1972
- (32) - Al - Sheikhli , *op. cit.* , p. 73
- (33) - Hussein, A. (1963) *Lecturers on the Public Office* ( In Arabic ) Cairo University , 1963 , p. 24
- (34) Al-Sheikhli, *op. cit.*, p.75
- (35) *Ibid*, p.77
- (36) *Ibid*, p.211
- (37) Al-Atom, *op. cit.*, p.132
- (38) Religious opinion ( Fatwa )  
No. 1659 , Department of Religious Option ( Fatwa ) and Legislation , Ministry Of Justice , United Arab Emirates
- (39) Federal Law No. 8 of 1973

## CHAPTER VI

### THE LEGAL ORGANIZATION OF THE DISCIPLINARY

#### AUTHORITY

The disciplinary authority derives its competence from the responsibilities entrusted to it by the legislator enabling it to conduct its functions. In this connection there is a direct tie and link between the workability and effectiveness of the penalty and the authority competent to impose it, although differing political systems may implement divergent administrative practice. Furthermore, it may be said that as a whole the issue or question is confined to three systems limiting and specifying the mode of the authority inflicting penalty or disciplinary action, these being: The Presidential system (administrative), the quasi-judicial and the judicial system. In this regard Dr. M.Othman combined (and mixed) the quasi-judicial system and the judicial system, justifying this by saying that the basis of the division goes back to the fact that the presidential authority has complete power and makes decisions without asking anyone else's advice or with the participation of either the judicial authorities or the quasi-judicial, as far as the administrative authority in inflicting the penalty is concerned. However, it is preferable to retain the division in the three parts that have already been accredited and officially recognized by the international institute for

administrative sciences (2). Since the judicial system includes within its powers the disciplinary courts, whereas these are not within the quasi-judicial system, whose courts have a competence and authority completely different from other bodies in respect of the proceedings and rulings as well of the imposition of penalties. I will explain the characteristics and particulars of these systems in the following paragraphs:

### **6.1 The Presidential ( Administrative ) System**

This system regards the disciplinary authority as a branch of the presidential authority under which only the administrative executive sometimes using a special appeals board can determine the acts considered as violating the responsibilities of the office and the appropriate penalties (3).

This system is adopted by Spain , Portugal and Denmark (4 ). However The United Kingdom has a mixture of all three systems. The reasoning behind the adoption of this system is mainly an appeal to efficiency, but arguably, also to justice . This may be explained as follows :

1. The presidential authority alone is responsible for the proper functioning of government. Therefore, the presidential authority must have the means by which it can achieve that objective. It must have, among other things, disciplinary powers that would enable it to intervene and take appropriate measures to handle any administrative violations in government utilities (5 ) .

2. The presidential authority is in the best position to know the context in which the employee performs his official duties and so to determine the gravity of the offence and the impact of the same on the good running of the utility and the appropriate penalty to be imposed .

In other words, the administrative offence should not be assessed by looking into its legal aspects only, but also, the administrative conventions, the circumstances of the work , the cultural standard of the people with whom the employees interact, the culture of the employee himself and his rank in the administrative hierarchy, the duties assigned to him and the training he underwent. All these considerations cannot be weighed by judges simply because they are not in contact with the administration .

Arguably, therefore, justice is served if the assessment of all these matters are left to the administrative authority ( 6 ) . The Brussels conference convened on 9 - 10 October 1964 stated that it would be undesirable to assign the imposition of severe penalties in administrative cases to judges as they are not in contact with the presidential authority ( 7 ) .

3. For a disciplinary action to be effective it must be inflicted swiftly and strictly on the offender. This can be best accomplished by the administration in the government utility in which the offending employee works. If, however, the disciplinary action is assigned to an authority other than the administration, It will be delayed and become ineffective ( 8 ) .

4. Taking away the disciplinary authority from the hands of the manager and limiting it to the mere levelling of accusation may degrade the boss in the eyes of his employees, if disciplinary proceedings were taken by another organ and the employee was acquitted (9). The remittance of the case to the disciplinary court will preclude the administration from withdrawing or retracting it (10) .

5. The conduct of the administrative authority on disciplinary actions will enable it to take cognizance of the circumstances regarding the case and accordingly discover any deficiency in the administrative system. Any deficiencies may not be known in time if the investigation is conducted by another independent body such as the administrative prosecution (11).

6. The administrative authority is in the best position to assess the circumstances in which an employee commits a violation and this will lead to mitigation or aggravation of the penalty. However, if the disciplinary action is assigned to an independent body it will concentrate on the violation (12) .

7. The major objective of the disciplinary action is to understand the circumstances which made it possible for the violation to be committed and remedy the shortcomings and deficiencies in the administrative system . However if the disciplinary proceedings were taken by an authority other than the administration, the main objective would be punitive only ( 13 ).

A number of criticisms have been laid against the presidential system which can be summarized as follows ( 14 ) :

1. The administrative authority may be hesitant in imposing the disciplinary penalties fearing that those penalties will be discussed by the highest presidential body or the general public.
2. The administrative authority may not be able to conduct the disciplinary action freely and effectively due to the pressure of some other bodies .
3. The administration authority may be embarrassed in exercising its disciplinary powers since this may stir the feeling of employees against it and lead to negative consequences on the work in general .
4. Negligence of some executives to take disciplinary action may paralyze or weaken the power of the presidential authority and accordingly create difficulties in conducting and organizing the work.
5. The employees' dislike of disciplinary actions may enforce the administrative authority to inflict a kind of disguised disciplinary penalties without any guarantees.
6. The wide competence of the presidential authority in taking disciplinary actions may lead to arbitrariness or abuse of such powers and this will preclude the accomplishment of justice .

## 6.2 Quasi - Judicial System

This system is presidential in substance since the presidential authority still performs the role of inflicting penalties on the offending employees . However , some amendments have been introduced into the presidential system with the aim of providing fundamental guarantees to the employee (15 ). Such amendments emanated from the excesses practiced by the administrative authority in the disciplinary field which affected the wider competence of this authority in disciplinary cases,excesses that had, to some extent, to be curtailed.

The amendments introduced in the presidential system form one of the following three patterns :

- (1) The legislator may institute beside the administration an independent body (Board of Discipline) mostly composed of administrative elements but with an independent element and its opinion should be taken into account before the infliction of the penalty . This body is only consultative .
- (2) The second pattern is where the administration is bound by the opinion of the Board of Discipline. However, the administration may have the right to commute the penalty proposed by the Board of Discipline
- (3) The third pattern involves the division of disciplinary penalties in which the infliction of light penalties is assigned to the administrative authority whereas severe ones are assigned to a board of discipline .



The reason behind calling this quasi-judicial system is that a judge should preside over a board of discipline or be a member thereof. The authority of the board of discipline in controlling the actions of the administrative authority gives it a judicial character. The Supreme Administration Court in Egypt has issued many judgments deciding that discipline should be a judicial decision and that the court has the jurisdiction to review those decisions ( 16 ).

The quasi-judicial system is adopted by many states such as France, Egypt and Lebanon . This system is meant to enable those accused to defend themselves in relation to disciplinary offences . The main justifications for adapting this system are :

- (1) Giving more consideration to the concept of guarantee than to the principle of punishment, that is to say, giving judicial and objective colour to the disciplinary action and also to curb the subjectivity of the presidential authority (17) .
- (2) Making a separation between the accusing authority and the authority that delivers the judgment and organizing the intervention of the consultative bodies, so that they give their opinion before the issuance of the judgment by the presidential authority (18).
- (3) Making a conciliation between the public interest and its attainment, and the interest of the individuals represented in regards to the protection of public rights and freedoms through the adherence to the administration of

the principle of legality without exceeding the limits defined by the legislator(19).

In France, other justifications were considered in inserting amendments to the presidential system . The most important of these are :

1. The domination of the trade unions over the appeals department.
2. The intensive press campaigns against disciplinary penalties .
- 3.The cancellation, by the French State Council, of some disciplinary penalties after a long period of time following their infliction on the offending employees .
- 4.The need for providing judicial guarantees aimed at restricting the administration's exclusive right of inflicting disciplinary penalties.

However, the quasi-judicial system is not free from criticism. The most important of these are ( 20 ) :

- (1) The intervention of the courts in disciplinary actions has resulted in conflict between the courts and the administration .
- (2) The judicial supervision over the presidential authority has resulted in a restriction of the presidential authority to take disciplinary action and more specifically, led the presidential authority to avoid inflicting severe penalties

for fear of being accused of arbitrariness. Consequently, the disciplinary practice has been paralyzed .

### **6.3 Judicial System**

In this system there is a complete separation between the presidential authority which files the disciplinary case and the competent judicial authorities that dispose of the case. The judicial authority is independent in evaluating the behavior of the employee and inflicting the appropriate penalty . The judgment delivered by the judicial authority is binding upon the presidential authority(21). The role of the presidential authority is limited to the levelling of a charge against the offending employee. The lawmaker may also institute a special body named “the administrative prosecution“ to level the disciplinary charge and conduct the prosecution before the courts .

The Judicial system has been adapted by Germany, Austria and Yugoslavia as well as Egypt in its modern organization where disciplinary courts were instituted for the first time as per A No.117 of the year1958 (22). The idea behind the separation of the prosecution and trial authorities is to secure more guarantees to the accused and to achieve the neutrality of the judge or the members of the board of discipline. At the same time , this system sets out many restrictions to curb the right of the presidential authority in exercising its disciplinary powers.

However, the adoption of the judicial system does not mean a total rejection of the administration in the disciplinary field. On the contrary, the

judicial system adopted by some states took into account the characteristics of the administrative disciplinary system and considered it as an extension of the presidential authority . The assignment of disciplinary powers to the judicial authority is meant to achieve guarantees and securities for the employee. It is in no way to be understood as a rejection of the presidential authority. In fact, the presidential authority still exercises certain powers such as the suspension of the employee pending investigation or the imposition of some penalties . There may also be a right of appeal against the judgments of the disciplinary authority on the grounds of their non-legality or unreasonableness (23). The judicial intervention is mainly meant for the protection of the employee the curbing of the arbitrary actions of the administration, and also to lighten the burden on the presidential authority ( 24 ). Jurist, Maris Morgoul, is of the opinion that judicial intervention in administrative affairs reflects the dilemma now facing the administrative system of the separation of powers. Jurist, Francis Waliri, says that the weakness of the disciplinary law regarding public office is mainly due to the defects of the judicial jurisdiction with respect to disciplinary offences ( 25 ).

The following criticisms has been made by jurists against the judicial system(26) :

1. The adoption of the judicial system may lead the presidential authority to inflict light penalties within its jurisdiction to avoid the intervention of the foreign body i.e. the disciplinary courts, or to avoid protracted proceedings .
2. The disciplinary courts follow judicial proceedings which are subject to many formalities. This may lead to a delay in inflicting the penalty and its

effectiveness may, therefore, be weakened. Dr. Mohammed Mukhtar Othman (27) has stated that “it is clear from our field study of some judgments delivered by the disciplinary courts that the infliction of a penalty is effected after a lapse of one year or more from the date of the commitment of the offence or after period of several months from the date of the referral of the case to the courts “ .

3. The disciplinary courts are presided over by judges who are removed from the practical life of the administrative systems, therefore, their evaluation may not be practicable nor fitting to the circumstances and the necessities demanded by the situation.

#### **6.4 Disciplinary Authorities in the Gulf Cooperation Council Countries**

We have seen that there are three systems in the disciplinary field viz . Presidential, Quasi-Judicial and Judicial . This classification does not mean that the legislation in any of the systems fully adopts any one of them . In some cases a mixture of systems is adapted, for example, by assigning the infliction of light penalties to the administrative authority and the other penalties to a quasi - judicial or a judicial body . I will discuss below the position in the United Arab Emirates, the Kingdom of Saudi Arabia, the States of Kuwait, Qatar , Bahrain and the Sultanate of Oman where the disciplinary systems in these states are similar .

#### **6.4.1 The Disciplinary Authority in the United Arab Emirates**

The disciplinary authority in UAE adopted a distinctive form by following an intermixture of the presidential system, the quasi-judicial and judicial one. In this regard the Federal Service Civil Law in UAE has provisions regarding the enquiry of public servants and the disciplining of them. This approach is provided for article 70, stating that “The Minister has the authority of inflicting any of the penalties provided for in the paras 1, 2 and 3 of the said article 1 on the public servants of circuit two and three and alongside giving his reasons therein. 2 The other penalties are only inflicted by a board of discipline, also article 107 from the chapter handling the inquiry of the low grade employees (Workmen) and disciplining them 3 provides that “The concerned or competent Undersecretary shall inflict any of the penalties provided for in the aforesaid article 4. The low grade employce (workman) may bring a grievance against the decision to the concerned competent minister within one month from the date of the notification of the said decision; hence these two articles expound that in inflicting some disciplinary penalties, the administration’s authority is not restricted nor is it bound to take any advice. This approach or attitude followed and taken by law in UAE in determining the principle of grievance against the disciplinary actions because it is compatible with the working of the constitution of the state whereas article 41 of the UAE Constitution provides that “each person has a right to complain to the concerned authorities including the judicial authority against the violations of rights and freedoms provided for in this Chapter”. However, there are some

imperfections in this disciplinary system regarding grievance; whereas the law determines that the principle of grievance against the decisions of the boards of discipline as well as the right of grievance a low-grade employee (workman and low level employees appointed at Circle Four) against the decisions of the Board of Discipline or the concerned under Secretary, article 41, however, pays no regard to the right of grievance against the Minister responsible for the infliction of penalties on the accused public servant (as per article 70). Although the result may not affect the right of a public servant to complain if this be in accordance with the constitution of the state before the concerned authorities. In other words if the principle of grievance covers the employees of the Fourth grade, it is with all the more reason - afortiori - that the same covers those who hold high positions as well as being in harmony with and consonant to the logic of neutrality and disarbitrariness that the public servant should be given a chance to defend himself before an authority other than that which has accused and prosecuted him, or which inflicts the penalty on him. However, there is provision for appeal to the authority of the administrative boss which is limited and confined to simple penalties not grievous ones. To put it in other words, the infliction of a penalty indicates negligence and an omission of duties. In this matter no public servant will accept this decision unless the penalty is compatible with the truth. For that, it is a must that the truth be clear and that the public servant shall be given a chance to air his grievance in this connection. It is not enough that the provision in article 65 of the civil service law provides that "no penalty may be inflicted on the public

servant unless a written inquiry is conducted by hearing his statement and his defence is considered alongside the decision is determined with reason". This article handles the origin of the charge and the infliction of the penalty without treating or dealing with the subsequent stages of the determination of this penalty, nor with the inquiry regarding the public servant. Hearing his defence before the administrative authority that charged him is not enough to attain or achieve the principle of neutrality and justice; moreover, this authority may be affected by outside impacts not shown before. What is needed is another authority whose end purpose is to hear the grievance and the appeal against decisions and to take into account that the original penalty may have been given under a disputation of interpretation for which there is no recourse of appeal. My own beliefs would be that it is desirable to give any public servant irrespective of grade, an absolute right to air grievances against the disciplinary sanctions imposed upon him.

The above discussion in this section clearly shows that the presidential system regarding disciplinary actions has been adopted in the Federal Civil Service Law. The law has also adopted the quasi - judicial system . Article 72 of the said law stipulates that " the disciplinary council for employees in the first cycle shall be chaired by a member of the Supreme Federal Court and shall include two members appointed by the Council of Ministers" . Article 73 of the said law states that " the disciplinary council for the employees in the second and third cycle shall be chaired by a judge selected by the Minister of Justice and shall include a member from the Personnel Department selected by the Civil Service Council and a member from the ministry in which the



violation is committed and the latter shall be selected by the minister concerned”.

These two Articles provide expressly that the Federal Civil Service Law adopted the quasi-judicial system, whereas the board of discipline and the public servants in grade one is to be chaired by a Supreme Court Judge and for the public servant in the second and third grades; the board of discipline is to be chaired by a judge chosen by the Minister of Justice. The same law confirmed expressly the adoption of the quasi-system; however, there is an issue of utmost importance, mentioned above, that some of the penalties regarding public servants are not subject to referral or that the principle of grievance is not adopted. The penalties are imposed by the arbitrariness of the Presidential Administrative Authorities. The board of Discipline, however, has no power over the Administrative Authorities which it deems competent to implement.

It is also the case that employees of the fourth grade (the workmen) are subject to the absolute Presidential Authority although they are legally entitled to the right of grievance. The Board of Discipline, however, has no power over them: it is this matter that deprives the law from attaining or achieving the required guarantee to all the public servants accused of violations. However, the question of the guarantees may be objected against for the fact that the state of UAE adopted the judicial system together with the aforesaid systems (The presidential and quasi-judicial systems) however this objection is not accepted or agreed nor consented, therefore, if any stage of this system is missed, the public servant's interest could be missed, in

addition to the fact that the objection proceedings against the disciplinary actions before a board of discipline may be easier and more relaxed for the public servant to go to courts, institute or administrative suit in this regard. The Federal Law No. (6) of the year 1978 (The constitution of Federal Courts and the transference of their competence to the local judicial authorities in some of the Emirates) on the competence of the Courts to try the administrative suits it provides in its article No.(3) that the Federal Court of First instance in the Federal Capital is competent to try all the administrative disputes between the Federation (The Union) and the individuals whether the Federation (The Union) is a plaintiff or a defendant etc. also article 25 of the Federal Law No. (11) of the year 1992. The Civil proceedings sustained the same rule; moreover, this law confirmed in its article No. (27) the competence of the Courts of Appeal (The Appellate Courts) to look into all the cases put before them after the delivery of the judgement of the court of first instance, whereas article No.(27) provides that the Courts of Appeal (The Appellate Courts) are competent to try the appeal suits put before them, that is, against the judgements delivered or passed by the courts of first instance.

These provisions collectively confirm the existence of the judicial system in the state of UAE where the law expressly provides for appeal against the competence of the Federal Courts of First instance by looking into the administrative suits as well as taking into account all of the litigation stages. Similarly, any suit or case that may be appealed against before the courts of Appeal (The Appellate Courts) may be appealed against as well before the Federal Supreme Court). This approach gives some sort

of security to the public servant before the presidential authority and its arbitrariness. The disciplinary actions passed thereof to the courts have control, within limits, to restrain or leash the authority of the courts of the first instance by making safeguards to avoid the overruling of their decisions by the Judicial authorities. This is the system adopted in the state of UAE on the Federal aspect, facet phase); as for the local aspect, the system adopted by one Emirate differs from the others, for some of them have adopted one or more systems of the three systems.

For instance, in the Emirate of Abu Dhabi the legislator adopted the same approach taken by the Federal government; whereas all the provisions of the Federal Civil Service Law are copied and adopted as provisions governing the public servants of the Emirate of Abu Dhabi who adopted the presidential quasi-judicial system which is no different from that adopted by the Federal government but the other Emirates did not follow the same approach.

In the Emirate of Dubai, the situation is somewhat different . Article 85 of the Regulation on personnel affairs for the year 1992 stipulates that “ 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". It is clear that the system adopted in the Emirate of Dubai is presidential since it is basically formed within the administrative unit in which the violation is committed. However, the system adopted in the Emirate of Dubai is criticized for overlooking the employee's right to appeal against the decision made by the disciplinary committee. However, this system adopted by the legislator in the Emirate of Dubai is criticised in depriving the presidential authority of inflicting the simplest penalties such as giving a warning, for instance, or drawing, or calling attention to an offence and complicating the penalty although in order for the penalty to be invoked or inflicted requires measurements. The same system led the administration to take a mild approach to these proceedings; and it could be incapacitated and crippled the public interest. The negative aspect of this system ignored and paid no attention to the right or grievance against the decision of the board of discipline. Hence the law does not give the public servant such a right which is considered as a violation. The principle of Freedom and human rights requires the introduction of some sort of agreeable and suitable amendment of its articles.

Moving on to the Emirate of Sharjah we notice that the Civil Service Law of 1983, issued by an Emiri decree, defined the disciplinary penalties which may be inflicted on the employees committing violations and indicated in Articles 53 and 55 that a disciplinary council should be formed. In other words, the legislator in the Emirate of Sharjah adopted the quasi -

judicial system regarding disciplinary actions. However, the competence and powers of the disciplinary council have not been defined in the law. This may be considered a deficiency in the said law. Meanwhile, the said law assigns to the heads of the departments the competence of drawing up disciplinary regulations that include types of violations and the penalties thereof, as well as investigations procedures. In the Emirate of Sharjah the Amiree (issued by the Ruler) decree sanctioning the Civil Service law of the year 1983 provided for the disciplinary penalties that may be inflicted on the public servants while it referred in Article (53), (55) to a board of discipline which means the Emirate of Sharjah adopted absolutely the quasi judiciary system with all the violations and penalties but does not specify the way a board of discipline is to be constituted or its competence. which is considered as a clear defect in the disciplinary legislation. This law however as referred to in article (59) to the competent authority (heads of the Departments) authorises them as part of their authority to enact a penalty regulation, whereas, this article provided that [The Competent authority (heads of the Departments) ] should enact a regulation including all sorts of violations and penalties and the inquiry proceedings thereof.

Hence the presidential authority is entrusted with the classifications and specification of the violations, the penalties and the inquiry proceedings thereof which constitutes a contradiction with article 53 & 55 in respect of the existence of board. If the presidential authority is entrusted, as per the said decree, to make the violations and the penalties regulation, what then is the role of the board of discipline and to whom is the authority of inflicting the

penalties to be entrusted ? In addition to ignoring the principle of grievance as a basic rule in determining the rights of freedom, the presidential authority assumes, absolute authority in disregard to the relevant article.

The situation in the Emirate of Ras Al- Khaimah is better, to some extent, than that in Sharjah . The Civil Service Law issued in Ras Al- Khaimah in 1981 bears a close resemblance to the Federal Civil Service Law, in that the latter the administrative authority to inflict some disciplinary penalties while other ones have been assigned to the disciplinary council . However, the Law of Ras Al-Kaimah has included the infliction of some penalties within the competence of the head of the administrative utility. A further difference is that the disciplinary council, as stipulated in the law of Ras Al-Khimah , is chaired by the administrative head with the membership of a head of department and a judge . Therefore the judge is considered as a third member (as a mere member) so the defect is clear and obvious, that is to say the presidential boss may dominate the board of discipline. The title of judge, which is regarded and used as a symbol of equity and justice, comes at the bottom of the constitution of the board whereas the judge should be topping the constitution of the board, as the basic and most important figure. In other words that means the Ruling of the administrative Boss and the head of the Department prevails as in most of the cases they are like-minded and motivated by the same ends and interest. However, this confirms the fact that the legislator in Ras Al Khaimah adopted the presidential and quasi-systems.

In all the Emirates even if their legislations are void of the principle of grievance before the Courts, this competence is nevertheless basically vested

in the courts by virtue of the Constitution which decided the Right to fight and defend cases in courts for any citizen (The Right of Litigation). To conclude, I have reviewed the situation in the state of UAE, both federally and locally, and set out the remarks and comments on each of the systems adopted therein. It must be pointed out that although the civil service legislators among of all the Emirates have overlooked the principle of appeal , employees can still appeal to the courts against disciplinary penalties in accordance with the UAE Constitution which has confirmed the right of every citizen to have recourse to the judicature. This is then the situation in the UAE, federally and locally , as to the patterns adapted regarding disciplinary actions.

#### **6.4.2 The Disciplinary Authority in the Kingdom of Saudi Arabia**

Sub-paragraph (1) of Article (30) chapter 6 in relation to termination of service of the Civil Service in the Kingdom of Saudi Arabia issued by the Royal decree No. R/49 of 1397 H. corresponding to 1977 A.D. gives the reasons for terminations of service : for disciplinary reasons. Furthermore, it provides for the implementation of regulations issued in relation to this law: it states, that service can be terminated for disciplinary reasons, whereas Article (30/14) provides that the public servant must be dismissed by virtue of law in the following cases :

- a- if he was convicted and penalised according to sharia law (a specific penalty in definite offences as per the holy Quran).

**b-** if he was convicted and imprisoned for any offence against honour and honesty.

**c-** if he was imprisoned for a period exceeding one year.

Moreover Article (17/30) of the same regulation provided that it may be by virtue of a Royal decree, or the council of ministers that a public employee can be dismissed if the public interest requires.

The Saudi Civil law issued in the year 1397 H. (corresponding to 1977 A.D.) being the latest amendment in relation to the Civil Regulations issued successively in 1343 H. Corresponding to 1933 A.D. by King Abdul Aziz included some provisions to benefit from, or by, those who were at active service (as well qualified and experienced) consecutively in 1345 H., that is, corresponding to 1935 issued the organisation rules in relation to all the Kingdom's affairs: called the Fundamental instructions. These included the provisions in relation to the public position and classification of the public employees. Furthermore, their salaries, promotions transference, termination of their services and retirement were to be rendered.

In the year 1347 H. corresponding to 1937 A.D. the special instructions were issued comprising twelve articles which included the personnel affairs regulations. The subordinates system issued in the year 1350 H. corresponding to 1940 A.D. the actual commencement of the Civil Service regulations in the kingdom of Saudi Arabia was issued in one hundred and twelve articles (considered as a base and commencement in relation to the Rules and principles stated in the subsequent regulations. In 1364 H. Corresponding to 1944 A.D. the personnel public regulations including two



hundred and fifteen articles amended in the year 1397 H. corresponding to A.D. amended for the second time in 1391 H. corresponding to 1977 A.D. containing eighty six Article; however, the latest amendment was affected in the year 1397 H. corresponding to 1977 A.D. embracing forty articles.

In this regard Reader Abdullah Al Sinayde (Page 84) commented “the regulations relating to disciplinary actions are considered a base to the disciplinary regulations in the subsequent systems”. The control and interrogation authority but now called the grievance bureau, are conducting the disciplinary actions under this system. If we go back to the provisions of this regulation, we notice that it distinguished dismissal from position in a special Chapter (Chapter eight). Chapter (9) too sets out the proceedings to be followed in relation to the disciplinary action and penalties therein. Chapter (10) is assigned to penalties concluding the basic provisions in relation to the public employees (the subordinates exactly as referred to in these regulations).

In view of the fact that the base and reference in relation to the Civil Service and disciplinary regulations in the Kingdom of Saudi Arabia call for a careful and detailed discussion of the regulation. the said regulation followed a completely different system from the administrative law in relation to the disciplinary actions. I shall divide it into two parts, temporary dismissal and permanent dismissal. Article (78) provided that: an employee shall not be dismissed from his position whatever the case may be, unless he is imprisoned for a period exceeding six months or for medical unfitness or if he is administratively incompetent or for misconduct which

should be proved by a court verdict as per the provisions of this regulation. The gist of this provision is that dismissal or removal from office is confined in certain cases. These cases vary in importance whereas the first case refers to the imprisonment of an employee for a period exceeding six months without specifying the charge or violation related to the position. The second case refers to non competence and medical unfitness. The third refers to incompetence administratively and the fourth refers to misconduct which should be proved by a court verdict, however the same is set out specifically whereas it could not be overstepped or departed from in case it is proved and justified therein. As for disciplinary penalties, article (92) provides for the disciplinary penalties that may be imposed exhaustively and inclusively in the following cases if the public employee is tried and convicted:

- 1) Warning
- 2) Deduction from salary not exceeding fifteen days thereof.
- 3) Suspension from work for a period not exceeding one month.
- 4) Demotion to a lower grade.
- 5) Dismissal from work with probability of reappointment.
- 6) Dismissal with deprivation of re-appointment

On the other hand, what authority is competent to inflict these penalties? To answer this question we have to discuss and take up what is provided for in Articles (84/85) of the regulation, where these Articles specify the applicable regulation in committing the public employee to a disciplinary action and the competent authority to carry out the investigation

as well as to give the penalty. It provides that the head of the department is the prime authority competent to conduct the preliminary investigation; if he is of the opinion that in the light of the evidence and inferences that there is a prima facie evidence against the employee in a way that can support his trial, the case shall be remitted to the Director of Public Prosecution in the capital as well as to the administrative executives in the provinces. If the penalty is dismissal or demotion of the grade or deduction from salary not exceeding one month, the board of discipline shall be competent to inflict the penalty; if the offence deserves imprisonment or damages competence in inflicting the penalty shall be vested in the speedy courts.

However, in exceptional cases the prosecution charge may be directly remitted by the head of the department to the board of discipline as well as to the director of public prosecution in the capital and the executive administrators in the provinces and that is pursuant to Article (86) of the regulation on condition that the public employee is charged with misdemeanors for which the penalty will not exceed warning or deduction from salary to fifteen days.

The following observations in relation to this system are cited as follows:

- 1) There is an overlap between the competence of the administrative authority and the judicial one; that is to say, the committal of the public employee to the board of discipline should be taken in cases other than urgent cases where courts when there is no alternative save to remit two cases at the same time or simultaneously. In this

connection administrative jurisprudence is well established and unshakeable so that continuity of disciplinary proceedings will not deter the continuance of the judicial proceedings in respect of the same offence the employee is charged with, and that if a judicial judgement is passed the same will be basically considered in relation to the decision of the board of discipline in inflicting the penalty.. What should be understood is in urgent cases that the courts are considered as an administrative disciplinary authority while retaining judicial competence.

- 2) What is stated in the regulation specifying the disciplinary penalties and the competent disciplinary authority is completely inconsistent and incompatible, that is to say the regulation provides the inflicting of penalties of suspension from work for a period not exceeding one month, whilst it does not specify the competent authority for the infliction of this penalty! Furthermore, specifying the competence of the courts in inflicting the penalty extends its competence in relation to the penalties demanding or deserving imprisonment and damages. Although these two penalties are part of the Public Penal Law they are not provided for in the penalties schedule specified in Article (92) it is this matter that confirmed and sustained the previous idea that there is an overlapping, imbrication and interpenetration between the penal law and the administrative law.

3) In addition to the aforesaid, medical unfitness is included in relation to the reasons for dismissal (with disciplinary reasons). This is debatable and disputed in relation to the classification that the termination of service by reason of medical unfitness is not considered as dismissal, although, the term is implicitly understood. However, if the intention is to set out the cases where there is breaking, or severing, of the employment relationship only, then all the more reason for enforcing retirement or winding up of the contract's term and that it shall be stated within the aforesaid cases or events. To conclude, the article is incomprehensive in not setting all the cases that exceed the proper bounds or limits by including dismissal from work for medical unfitness. Within disciplinary dismissals the procedure is unacceptable as it stands at present regarding the rights of public employees. Therefore, the regulation was issued which was included in its first part that it is regulating the control and investigations authority. The second part assigned competency to the disciplinary authority, however, it did not mention if the previous subordinates' regulation was repealed or not. This confirmed and sustained the observations of Reader Al Sinayde regarding the subordinates' affairs regulation. Article 32 of the Saudi personnel disciplinary regulation indicated that the disciplinary penalties may be inflicted on the employees, as well as classifying them according into their grades to two categories in

relation to the penalties to be inflicted while it provides for the penalties to stand hereinafter. These are as follows:

Firstly, the employees of the tenth grade and below or its equivalent.

- 1) Warning;
- 2) Reprimand/Reproof;
- 3) deduction from salary not exceeding the net of three months' salary; in addition, what is monthly deducted shall not exceed one third of the net monthly salary;
- 4) Deprivation of one periodic allowance.

Secondly : The employees who are in grade eleven and above or its equivalent:

- 1) Reprimand/Reproof;
- 2) Deprivation of one periodic allowance;
- 3) Dismissal.

Article (33) added one more penalty whereas it provides that "The employee who... etc.

The provisions specifying the competence are mentioned hereinafter:

- 1) The competence of the Minister

Article (35) authorises the Minister to enforce the penalties provided for in Article (32) of this regulation excluding dismissal from work, although it provides "The authorised Minister may inflict the penalties provided in Article (32) except dismissal in case the offence does not demand, requires or deserves dismissal from work if the control and

interrogation authority believes that then the case shall be remitted to the authorised Minister along with a suggestion of the penalty deemed to be appropriate. However the authorised Minister is not bound to inflict the penalty suggested by the control and investigation authority that he is authorised by virtue of Article (38) of the regulation to inflict the suggested penalty or chose another appropriate penalty of the penalties that he may inflict in accordance with the regulation, while the penalties were provided for in Article (32) of the regulation except dismissal from work as mentioned above. Moreover, the authorised Minister is competent to issue a decision suspending the employee if he thinks fit and the control and interrogation authority thinks the work interest so demands. What was provided for by the regulation in relation to the Minister's competence is extended and includes the head of the independent departments as well as the administrative boss of a public Corporation as per Article (46) of the regulations.

The said regulation authorized the board of discipline to inflict disciplinary penalties on an employee in the light of the outcome of the investigation as per Article 36 . This council is constituted by a decision of the chairman of the disciplinary board and includes two members and a representative board .

The competence of the investigation board has been defined in Article 5 of the said regulation as follows :

1. Looking into the complaints offered to the board by the competent ministers or other official authorities regarding administrative and financial violations;
2. Conducting investigations on the violations reported to the board;
3. Following up cases of violation with the disciplinary board.

The said regulation then defines the proceedings that have to be followed by the investigation board. It is worth mentioning that if the investigation indicates that there are strong suspicions of the integrity, honour or reputation of the employee, the chairman of the investigation board may propose, following consultation with the competent minister, the dismissal of that employee by a decision of the Council of Minister. As for the disciplinary board, its competence, as defined in the said regulation, embraces all disciplinary cases referred to it by the investigation board. It may be noted that the disciplining of the chairman and members of the disciplinary board is the competence of a three - member board constituted by a royal order. The penalties that may be inflicted on any member of the investigation and disciplinary boards are censure or dismissal as per Article 47 of the said regulation .

Several comments may be made on the Regulation on Disciplining Public Servants. These may be explained as follows :

1. This regulation may help in achieving justice by assigning investigation powers to more than one authority . However, the said regulation does not permit the employee to appeal against the disciplinary penalties inflicted on him. Article 28 of the said regulation stipulates that “the decisions of the trial council are final except those pertaining to the dismissal of employees at the



eleventh or higher grades. The latter decisions shall be final following the approval of the Council of Ministers thereof “. In addition Article 29 of the said regulation states that a disciplinary decision may be reconsidered in two cases only :

a. If there is a misapplication or misinterpretation of the said regulation .

b. If new evidence or documents are made available. The new evidence or documents shall only be considered if they have not been available at the time of issue of the disciplinary decision and if they prove that the accused is innocent. “In addition, the reconsideration of a disciplinary decision, according to the said article, should be approved by the head of the personnel department, the chairman of the investigation board and the chairman of the disciplinary board and if so, approval of the Prime Minister should also be sought.

A further complication is that a disciplinary decision cannot be suspended except by a decision of the council that is assigned to reconsider the disciplinary decision”. It is therefore evident that the said regulation has assigned excessive powers to the administration authority in disciplining public servants and imposing its decisions on them .

2. The said regulation permits the chairman of the investigation board to propose the dismissal of an employee on the basis of strong suspicions regarding the integrity, honesty or reputation of that employee ( Article 13 ).

This stipulation contravenes one of the basic legal rules, namely, that punishment may be inflicted only if a crime is committed . The existence of suspicion of a crime is, in fact, construed for the benefit of the accused. This

principle has its origin in Islamic Sharia which calls for the non- infliction of a penalty if there are suspicions concerning the crime or the person committing it

3. The said regulation has inflicted a penalty on an employee whose service is terminated prior to the infliction of a disciplinary penalty. Article 33 of the said regulation stipulates that the termination of the service of an employee shall not prevent the commencement or the continuation of disciplinary proceedings of the said employee who has violated his duties while in service. The offending employee whose service is terminated prior to the infliction of a disciplinary penalty shall have to pay a fine not exceeding three times the net salary he receives or shall be deprived of re-joining the service for a period not exceeding five years or both. This seems to be totally unjustified since the termination of the service of an employee may be due to reasons which lie beyond the employee's control such as incurable illness or death or may be effected by the administration through, for example, the non - renewal of his contract . In other words, the said regulation penalizes the employee for something which he has not done of his own will .

It is, therefore, clear that there is some variation in the types of penalties inflicted on the employee as per the Employees Regulation and the Disciplining of Public Servants Regulation. It may be also noted that the Employees Regulation which had been issued earlier was not revoked . This creates a problem as to which penalties should be inflicted at a time when the two regulations mentioned above are still in force .

To sum up we observe that the disciplinary system in the Kingdom of Saudi Arabia adopted two disciplinary systems where it confined disciplinary authority in some violations and to the judicial authority in other violations the same is expressed and shown clearly in Articles (84) and (85), aforementioned, in relation to the subordinates (employees) regulation where it is openly expressed and shown clearly in relation to the public employees disciplinary regulations where article (33), aforementioned assigned the competent authority in relation to the employees disciplinary procedure; therefore, the disciplinary system in the Kingdom of Saudi Arabia puts together and conjoined two systems, that is to say, the presidential system and judicial one.

#### **6.4.3 The Disciplinary Authority in the State of Kuwait**

The disciplinary system in the state of Kuwait is different from that adopted in other countries of the Gulf Co-operation Council .

In Kuwait administrative violations committed by employees occupying technical or assistant posts are the responsibility of the under-secretary and his decisions may be amended by the Minister by increasing, reducing or cancelling the penalty or leaving the case on file. As for the administrative violations committed by high-ranking officials, these are the responsibility of the Civil Service Council. According to Article 28 of the Civil Service Law No. 15 of 1979, the disciplinary penalties that may be inflicted on the employee are as follows :

1. Warning;

2. Deduction from the salary for a period not exceeding 15 days each time and not exceeding 90 days within twelve months; .
3. Deduction of a quarter of the salary for a period of not less than three months and not exceeding twelve months for each violation;
4. Demotion of the grade to the next one below . The Judgment regarding this penalty should state the seniority and salary of the employee concerned;
5. Dismissal.

However, high-ranking officials are subject to the following penalties:

1. Drawing the officials' attention , in writing , by the Minister to the violation committed;
2. Censure;
3. Dismissal.

Article 29 of the said law stipulates that the disciplinary penalties inflicted on an employee may be cancelled, in accordance with the regulations laid down in the Civil Service system .

It has been mentioned earlier in this section that the disciplining of high - ranking officials is the responsibility of the Civil Service Council which acts here as a disciplinary board . In this connection, Article 63 of the Civil Service Law in Kuwait authorizes the Civil Service Council to form a committee from its members to conduct investigations into the case referred to it. The committee may instruct one of its members or others who are not members of the Civil Service Council to conduct the investigation. However, the said committee does not have powers to inflict a penalty, rather it submits proposals to the Civil Service Council which is competent to make a judgment

inflicting the penalty. Moreover, the employee does not have the right to appeal against the decisions of the Civil Service Council, which are considered final.

From the above, it is clear that the Kuwaiti legislation regarding disciplinary actions has adopted the presidential system. The responsibility for inflicting disciplinary penalties has been assigned to the administrative authority represented by the under-secretary, the minister and the Civil Service Council.

A further point to be made is that the Kuwaiti Civil Service Law has deprived high-ranking officials of the right to appeal while it has granted the same to employees holding technical and assistant posts under certain restrictions.

Article 66 of the said law stipulates that "employees occupying technical posts may appeal to the minister against the decision inflicting the dismissal penalty. Employees working in clerical posts may also appeal to the Civil Service Council against the same penalty. In all cases, the appeal must be submitted within thirty days of the date of notification of the decision inflicting the penalty and the decision made regarding the appeal is final". This indicates that the principle of appeal in Kuwaiti Law is the exception rather than the rule as it is restricted to some employees and is confined to one penalty. The Kuwaiti Civil Service Law can also be criticized for authorizing some of its members or those who are not members of the Civil Service Council to join the committee convened to discipline a high-ranking official. This is clearly not the best way of achieving justice, since conducting the investigation and proposing a penalty to be inflicted on a high-ranking

official is placed in the hands of a single person against which there is no appeal.

#### **6.4.4 The Disciplinary Authority In the Sultanate of Oman**

The Sultanate of Oman has adopted a special form of disciplinary action. The Sultan Decree No. 8/80 concerning the Civil Service Law states disciplinary penalties, defines the competent authorities for inflicting those penalties and specifies their powers . Under Article 73 the following penalties may be inflicted on the employees of the second and third grades :

1. Warning;
2. Deduction from the salary or demotion of the grade or both;
3. Dismissal ;

As for the employees of the first grade, the following penalties may be imposed on them :

1. Censure;
2. Retirement;
3. Dismissal and deprivation from all or part of the pension or gratuity .

Article 74 stipulates that, “the head of the administrative unit may inflict the penalty, warning, or deduction from the salary of a period not exceeding ten days for each violation and not exceeding forty five days per year. The head of the administrative unit may authorize the immediate manager to either give a warning or a deduction from the salary for a period not exceeding three days for each violation and not exceeding fifteen days per

year. Appeals against the aforesaid penalties must be made to the head of the administrative unit within thirty days from the notification thereof.”

Article 75 of the said law states that, “an administrative board of discipline shall be constituted by a decision of the head of the unit. The said board shall comprise two members and chairman of the board who shall hold a post not less than that of general manager. The said board may consult with experts, as it deems appropriate. The employee committing the violation may be represented by an attorney to help him in rebutting the charges leveled against him“.

Under Article 76 of the said law, the administrative board of discipline shall try the employees of the second and third grades and shall have the following powers :

- a. The suspension from work or the extension of the same in accordance with Article 68 and its decisions shall be final;
- b. The infliction of the penalties stated in Article 73, i.e. warning, deduction from the salary or demotion of the grade or both and dismissal. The decision of the said board regarding the penalties of warning and deduction from the salary for up to ten days shall be final.

Article 77 of the said law stipulates that a central disciplinary council shall be constituted by a decision of the chairman of the Civil Service Council . The central disciplinary council shall include in its membership three high-ranking government officials whose grades shall not be less than the grade of the public servants referred to the said council. With regard to the duties and

responsibilities of the central disciplinary council, Article 78 of the said law states the said council shall :

- a. Decide on the appeals submitted to it against the decisions of the administrative board of discipline and the decisions of the said council regarding such appeals shall be final;
- b. Conduct investigations into the administrative violations committed by employees of the first grade and inflict appropriate penalties on them in accordance with the law;
- c. Decide on the suspension from work or the extension of the same in respect of employees of the first grade, and the decision made by the said council in this regard shall be final .

Under Article 79 of the said law, appeals against decisions of the central disciplinary council should be submitted to the chairman of the Civil Service Council .

To sum up, the Omani Civil Service Law has provided for the disciplinary penalties for each category of employees, and authorizes certain competent people to inflict some penalties, for example :

First : The head of the administrative unit or the direct manager may issue a warning or a deduction from the salary;

Second : The administrative board of discipline of employees of the second and third grades, may impose penalties such as have been stated in Article 73 mentioned above;



Third : The Central Disciplinary Council for the employees of the first grade, including high-ranking officials, may impose penalties such as have been stated in Article 73 mentioned above .

The said law gives great attention to the employee's right to of appeal against the disciplinary decisions made by the head of the administrative unit or the direct manager with regard to the penalties of warning and deduction from salary. The employee has also been given the right of appeal to the chairman of the Civil Service Council against the decisions of the Central Disciplinary Council. However, the said law has deprived the employee of the right to appeal against the decisions made by the administrative board of discipline in connection with the penalties of warning, deduction from the salary or fine . These penalties are so light, the legislator may not think there is a necessity for appeals against them, as they are imposed by a quasi-judicial body and not in an individual. However, the right of an employee to appeal against any penalty, no matter how light it is, could be regarded as basic human right since it may affect the employee morally and financially and reflect upon his performance. Article 44 of the implementing rules of the Civil Service Law states that "the department of personnel shall prepare a statement of the vacant jobs and their grades and prepare a list of the names of the employees eligible for promotion from the register of priorities and the reports prepared by the direct managers". The purpose of this provision is to state the factors that are taken into consideration regarding promotion. It therefore follows that if an employee has a disciplinary penalty on his record, he will be at a disadvantage, so that right of appeal is important.

It is worth pointing out that the classification adapted by the Omani Civil Service Law generally consists of a good distribution of powers and safeguards in not allowing individuals to impose severe penalties. However, it lacks the judicial element of both the boards (the administrative board of discipline and the central disciplinary council,) and does not provide adequately for appeals. Thus the disciplinary authority in the Sultanate of Oman has adopted solely the presidential method, however, the admission of judges to the board of discipline would give the employee more satisfaction as to the correctness of the penalty while keeping the neutrality of the administrative authority.

#### **6.4.5 The Disciplinary Authority in the State of Qatar**

The Qatari Public Office Law first stated the disciplinary penalties to be inflicted on public servants without distinguishing between their different categories . However, this was later amended as per the Emiri Decree on the Public Office Law No. 15 of 1987. Article 64 of the said law has stated the disciplinary penalties as follows :

1. For public servants in the highest grades of the second cycle;
  - a. Drawing the public servant's attention to the violation he has committed;
  - b. Censure;
  - c. Retirement;
  - d. Dismissal with preservation of the public servant's right to gratuity or pension or his deprivation from a quarter of his gratuity or pension .
2. For public servants other than those mentioned in paragraph 1. above;

- a. Warning;
- b. Deduction from the salary for a period not exceeding fifteen days for each violation and not exceeding forty five days per year;
- c. Postponement of granting any periodical allowance for a period not exceeding six months;
- d. Deprivation of any periodical allowance;
- e. Suspension of work without salary or with a reduced salary for a period not exceeding three months;
- f. Reduction of the salary or demotion of the grade or both;
- g. Dismissal with preservation of the public servant's right to gratuity or pension or his deprivation from a quarter of the same.

3. With regard to low-grade employees, Article 105 of the said law has stated the disciplinary penalties to be inflicted on them as follows :

- a. Warning;
- b. Deduction from the salary for a period not exceeding three days for each violation and not exceeding twenty-one days per year;
- c. Deprivation from the periodical allowance or postponement thereof for a period not exceeding six months;
- d. Suspension of work without salary or with a reduced salary for a period not exceeding three months;
- e. Deprivation from promotion;
- f. Reduction of the salary or demotion of the grade or both ;
- g. Dismissal with preservation of the low - grade employee's right to

gratuity

or pension or his deprivation from a quarter of the same .

Article 106 of the amended law assigns to the minister or the highest manager in the government utility the authority to inflict penalties of warning and deduction from salary of low-grade employees, while the authority to inflict the other penalties stated in the law is assigned to the disciplinary council. The same approach is adopted regarding the disciplinary penalties for public servants. However, a comparison between the old public office law of Qatar and the new one reveals some clear differences. For example, Article 65 of the old law states that “the head of the authorized department may inflict the penalty of warning. The penalty of deduction from the salary for a period not exceeding fifteen days for each violation and not exceeding forty five days per year, may be given after a decision by the deputy director on the basis of a proposal by both the head of the department to which the said employee belongs and the submission of the head of the financial department. The other disciplinary penalties shall be inflicted by the disciplinary council.”.

Certain fundamental amendments have been introduced in the same Article in the new public office law. The amended Article reads as follows; “The minister responsible or the highest manager in a government utility, as the case may be , may inflict the two penalties stated in items a and b of paragraph 2 of Article 64, viz: warning and deduction from the salary for a period not exceeding 15 days for each violation and not exceeding 45 days per year. The decision issued regarding the said penalties shall be final and no appeal against the said decision may be made before any authority. The other

disciplinary penalties may be inflicted after a decision by the disciplinary council.”

With regard to the composition of the disciplinary council , Article 66 stipulates that “ a disciplinary council shall be constituted as follows :

1. For public servants in the highest grades of the second cycle :
  - a. One of the deputies of the Chairman of the Appeal Court ( Chairman );
  - b. The most senior head of department in the Directorate of Legal Affairs in the Ministry of Justice ( Member );
  - c. The most senior legal public servant in the personnel department or the accountancy department, as the case may be ( Member ).
2. For public servants other than those mentioned in paragraph ( a ) above :
  - a. The most senior judge in criminal courts of first instance ( Chairman );
  - b. The most senior head of department in the directorate of Legal Affairs in the Ministry of Justice ( Member );
  - c. The most senior legal public servants in the personnel department or the accountancy department m as the case may be ( Member )” .

It is worth mentioning that if the violation is committed in a technical or industrial field, the disciplinary council cannot, by virtue of its composition, assess the effect of such violation on the work in that field . It would be better for the proper functioning of the disciplinary council if it included a member from the department in which the employee works who has committed the violation. A further point to be made is that, according to the old Public Office

Law, the head of the government utility in which the employee works who has committed the violation is included as a member of the disciplinary council. This may not, in the researcher's opinion, achieve justice since the head of the government utility is the authority that refers the employee to be disciplined for the violation he has committed. As regards the right of appeal as stipulated in the Qatari Public Office Law, it may be noted that such a right has been denied to the public servant in connection with two penalties, i.e. warning and deduction from the salary for a period not exceeding fifteen days for each violation and not exceeding forty five days per year. Although these two penalties may be considered light penalties, they may negatively affect the employee's performance, hence, he must be granted the right to appeal before the disciplinary council against such penalties. It should be further noted that according to Article 68 of the said law, a public servant acting as a witness will be subject to a disciplinary penalty if he fails to be present to testify in connection with an administrative violation committed by another public servant. This indicates an obvious overlap between criminal law and administrative law. The refusal of a witness to testify lies within the scope of criminal law and is viewed as an act of concealment of important information which, if not disclosed, might impede the course of justice . Such an act cannot therefore be dealt with as an administrative violation that justifies the infliction of a disciplinary penalty.

To conclude, the amended Public Office Law in Qatar may be considered a step forward in that it has provided some safeguards for the

public servant, yet it suffers from certain deficiencies and limitations as pointed out above. Hence, we observe that the disciplinary authority in the state of Qatar has adopted now the presidential system of entrusting the disciplinary authority to both the administrative and quasi-judicial systems by sanctioning grievance before the judicial authorities. It has, therefore, adopted the same system espoused and followed by the state of UAE. However, this approach is inadequate for the reasons aforementioned.

#### **6.4.6 The Disciplinary Authority in the State of Bahrain**

The Civil Service Law No. 471 issued on 3 August 1987 sets out to explain the approach it has adopted in handling administrative violations. It stresses the importance of creating a favorable climate for productive work and the need to exert genuine efforts to rectify any possible misconduct and as a last resort, the infliction of the disciplinary penalties. It specifically states that in applying disciplinary procedures, the following principles should be taken into account :

- a) Inflicting similar penalties for similar violations .
- b) Giving the public servant the opportunity to rectify his conduct and improve his performance before proposing the infliction of such penalties as suspension of work and salary or termination of service. This may also help in saving any expense that may have to be incurred due to the suspension of work or replacement of the public servant who has been dismissed;

c) Inflicting a more severe disciplinary penalty should the public servant repeat the same violation and display indifference towards the administrative authority. In order to achieve effective discipline, the said law stresses the following procedures:

1. Setting levels of performance which public servants are expected to achieve;
2. Informing public servants of what they are specifically required to perform in the course of work ;
3. Discussing the areas of work that require improvement ;
4. Reprimanding a public servants orally for the first violation he commits ;
5. Reprimanding a public servant in writing if he is not responsive to advice and guidance;
6. Suspending a public servant from work for a period of one or more days without salary if he commits a violation repeatedly;
7. Dismissing a public servant as a last resort if he commits a grade violation .

The above procedures indicate that the Civil Service Law in Bahrain concentrates on the following concepts regarding disciplinary actions :

1. The disciplining of a public servant is not an aim in itself, rather it is meant to rectify his conduct and improve his performance ;
2. The infliction of disciplinary penalties is viewed in the context of serving the public interest and not as a kind of retaliation against the public servant committing the violation;
3. The disciplinary authority must seek to achieve the fundamental principles of fairness and justice;



4. The disciplining of public servants should lead to the creation of a more positive climate for work .

The disciplinary penalties, termed as 'disciplinary measures' in the Civil Service Law in Bahrain, are as follows :

1. Drawing the public servant's attention to the level of performance and the kind of conduct expected of him . This is not considered as a disciplinary penalty rather a form of guidance which is meant to forestall the occurrence of violations;
2. Censure;
3. Written reprimand .
4. Suspension from work. This disciplinary measure should be inflicted only after the public servant committing the violation has been given a written reprimand more than once;
5. Permanent dismissal which may deprive a public servant of re-employment;
6. Dismissal during the probation period. As the said law states, this is not considered as a disciplinary penalty but an indication that a public servant has been found to be unsuitable for a job. This does not mean that such a public servant may not be appointed to another job.

It is important to point out that the disciplinary procedures in Bahrain are somewhat different from those followed in other countries of the Gulf Co-operation Council .

Article 5 of the Civil Service Law in Bahrain defines the disciplinary procedures as follows :

1. For the disciplinary penalties of censure , written reprimand and suspension of work for less than 3 days :
  - a. The appropriate disciplinary measure should be proposed at ‘the first level of supervision of work’;
  - b. The disciplinary penalty proposed should be checked and approved at the ‘the second level of suspension of work’ ;
  - c. The manager in charge of personnel affairs should then approve or amend the disciplinary penalty proposed .
2. For the disciplinary penalties of suspension of work for a period exceeding three days and dismissal :

The head of the Department of Personnel and Administration relations should check the evidence in connection with the violation committed and the penalty proposed .

- a) The Personnel Department should review the proposed penalty and make sure that it conforms with the Law and take the appropriate decision .
- b) As for the disciplinary penalties to be inflicted on public servants of high grades, these must be approved by the assistant under-secretary or a higher official in the ministry .

The following remarks and comments may be made in connection with the above provisions stated in the Civil Service Law in Bahrain :

1. The said law may be described as a collection of general rules for the public service rather than an administrative legislation in the strict sense of the term .
2. In its statement of disciplinary penalties, the said law has included, rather unconvincingly, provisions drawing the public servant's attention to the level of performance and the kind of conduct expected of him. The said law refers to this procedure as a form of guidance, thus its inclusion as a disciplinary measure is unjustifiable and inconsistent with the intended meaning of a disciplinary penalty in the legislation of all other Gulf countries;
3. The said law states that censure may include a written warning. This indicates an overlap between a warning and censure which are usually treated as two distinct penalties in most legislations.
4. There is an obvious shortfall with regard to the authority to inflict the disciplinary penalty of suspension of work for up to three days. The said law assigns the competence of proposing, checking and approving such a penalty to various administrative authorities; meanwhile, the said law has not specified the competent authority for proposing the disciplinary penalties of suspension of work for a period exceeding three days and dismissal ;
5. There is no logical gradation in the disciplinary penalties stated in the said law. For example, the penalty that immediately follows the suspension of work for three days is permanent dismissal with possible deprivation from re-employment in future. Besides, the latter penalty overlooks the principle of rehabilitation adopted in most public-office legislations ;

6. Although the said law has defined the disciplinary penalties to be inflicted regarding administrative violations, it has assigned to the government ministries power to draw up disciplinary proceedings and measures that would be complementary to the said law. This is certainly one of the main deficiencies of the said law .

To conclude, the Civil Service Law in Bahrain suffers from several deficiencies and shortcomings in particular the overlap in the competence of inflicting disciplinary penalties among various authorities, hence it may be said to some extent that disciplinary authority action in the State of Bahrain adopted the presidential system only since it confined the investigation, prosecution and penalty to the administrative authority.

## **6.5 Disciplinary Courts and Proceedings in the UAE Law**

Modern states set up their social systems on the basis of the principle of 'supremacy of law'. This means that the state as well as individuals should submit to the law and that any acts committed in the course of performing work must be subject to legal control. The question that may arise here is: how is legal control exercised ? There are two means:

1. Administrative control which may be exercised through the following three channels:
  - a. Administration of a government facility to which the public servants working in such facility may submit their grievances;
  - b. Head of the administrative facility.

c. A special administrative commission.(28)

2. Judicial control which may take one of the following two forms depending on the legal approach adopted in each state:

a. Ordinary courts which have jurisdiction in adjudicating on administrative violations in addition to their normal jurisdiction. This approach is based on the idea that the establishment of administrative courts will only complicate matters and lead to disputes over jurisdiction;

b. Administrative courts which have been established in an attempt to modernize methods of settling disputes referred to the judicature. These courts, by virtue of their specific jurisdiction, are viewed as the last resort for a public servant to prevent any possible injustices practised by the administration against him.

Now, the question that may be raised is the following: which of these two approaches has been adopted in the UAE ?

### **6.5.1. Disciplinary Courts in the UAE**

The UAE Constitution, the Civil Service Law, the Law concerning the Establishment of Courts make no reference to administrative courts. However, the Civil Service Law No.8 of the year 1973 Article 72-73 stipulates the establishment of a board of discipline and sets out its jurisdiction and competence. According to the same law, decisions taken by those councils may be appealed against before ordinary courts of varying degrees. In

practice, however, the UAE has adopted the former approach, namely, giving ordinary courts jurisdiction to adjudicate in administrative cases including those which have a disciplinary character. The main reason for adopting this approach may be ascribed to the defects noticed in the formation of administrative and disciplinary courts in some Arab countries. In Egypt, for example, administrative courts initially comprised non-judicial members and was subsequently criticized for this reason. (29) Ordinary courts in the UAE have faced no obstacles whatsoever in adjudication on administrative cases. Judges in these courts are well acquainted with the duties and prohibitions of the public service. Meanwhile, guarantees of fairness are secured, by law for the public servant whether his case is adjudicated by a disciplinary or an ordinary court.

Supporters of administrative disciplinary courts justify the need for such courts by making the following three arguments :

1. That disputes arising in a government facility are better settled by people who fully understand the requirements of work in such a facility;
2. That administrative courts can surpass the procedural formalities with which ordinary courts are entangled and consequently the former courts will be flexible enough to settle disputes swiftly;
3. That judges in ordinary courts, by virtue of their legal composition, are not normally inclined towards administrative law. It would be therefore

imperative that administrative cases are adjudicated by the other judges who are well versed in administrative law. (30)

However, the above arguments, if examined closely, can be shown to be rather unconvincing.

Firstly, judges in the UAE ordinary courts have always shown, through their adjudication of numerous cases, their remarkable knowledge of all state legislations and laws including administrative law.

Secondly, the so-called 'procedural formalities' related to court proceedings, duration of appeal and the like are, in fact, considered fundamental matters that secure the rights of the parties concerned and should therefore be observed by all courts including administrative ones.

Thirdly, the inclination of particular judges towards administrative law cannot be taken as a genuine reason for establishing administrative courts. The establishment of courts of specific jurisdiction (criminal, civil, state security, personal status, etc.) is usually made on grounds of unity of jurisdiction and aims at focusing the attention on certain legal domains.

I shall now proceed to discuss the formation of courts in the UAE and their jurisdiction. Article 96 of the Constitution stipulates for the formation of the Supreme Federal Court. Meanwhile, Article 102 of the same Constitution stipulates that "Federal primary courts shall be formed in the Federation's

permanent capital city as well as in the capitals of some Emirates. The said courts shall practise jurisdiction in the following matters:

Civil, commercial and administrative disputes between the Federation, whether plaintiff or defendant, and individuals.”

This express stipulation of the jurisdiction of ordinary courts to include administrative cases makes the establishment of an independent administrative court unlikely, unless the Constitution is amended and this will take a very long time and will have to go through an elaborate process.

In practice, however, primary courts can assign administrative cases to one of its departments as is the case in civil, criminal and personal status cases.

As mentioned earlier in this chapter, ordinary courts in the UAE have faced no obstacles whatsoever in adjudicating on administrative cases. For example, a public servant in a government facility violated his duties and was referred to a disciplinary council. The council suspended him from work for three months and ordered the payment of a half of his salary during the suspension period. Meanwhile, the head of the facility in which the public servant was working issued an order terminating the service of the public servant as of the date of the issuance of the decision of the disciplinary council. The public servant then filed a case to a primary court in Abu Dhabi (Case No. 25 of 1994) demanding the payment of his entitlements until the date of termination of his service. The court ruled that the termination of the public servant's service was illegal as it fell within the jurisdiction of the disciplinary council and ordered the payment of his entitlements. The government facility appealed against this ruling (Appeal No.574 of 1995) and



so did the public servant (Appeal No. 143 of 1995). The appeal court confirmed the ruling of the primary court and also ordered the payment of compensation the public servant for the damage sustained by him.

In another case (Case No. 414 of 1992), a public servant was appointed head of department in a government facility. An order was later issued by the administration demoting the public servant to a clerk. Another order was issued transferring the public servant to another work site. The public servant did not start work at the new site and subsequently his services were terminated. He filed a case to the court demanding (a) the cancellation of the decision on the termination of his services, (b) his reinstatement in his original post, and (c) payment of compensation to him. The court ruled that the transfer was legal as it fell within the competence of the administration but the decision on the termination of the public servant's services was illegal. The court therefore revoked the latter decision and ordered the reinstatement of the public service in his original post, the payment of his entitlements for the period extending from the termination of his services until his reinstatement as well as the payment, by the administration, of compensation to the public servant for the damage inflicted on him. The appeal court confirmed the ruling of the primary court (Appeal No.82/1994 issued on 30 April 1994) but reduced the amount of compensation. In its ruling, the appeal court pointed out that "an administrative decision would have its legal impact only if it was devoid of defects. The administrative decision in question was defective in that it ignored the procedure prescribed by the Law. An investigation should have been carried out to determine the

violations committed by the public servant and, if proven, the decision on the termination of his services could be then justified. This procedure has been prescribed by the Law in order to protect the public servant against oppression by the administration. In this case, the legal procedure was ignored and consequently the decision on the termination of the public servant's services should be revoked.”

### **6.5.2 Jurisdiction of Disciplinary Courts**

Jurisdiction of disciplinary courts has been expressly stated in some countries e.g. Egypt. In the UAE, however, no law concerning the establishment of disciplinary courts has been issued. Administrative cases, as above mentioned, are adjudicated by ordinary courts. In this respect employees in the UAE may be categorized into two groups:

- a) Public servants whose relationship with the administration has been determined by the Civil Service Law.
- b) Employees whose relationship with their employers has been determined by the Labour Law (Federal Law No.8 year 1980 in relation to Regulation of Labour Regulations). Discussion of the latter group lies beyond the scope of this study.

Jurisdiction of the UAE courts in adjudicating on disciplinary cases has been stipulated in Federal Law No. 8 of 1973 concerning the Civil Service. Article 75 of the same Law stipulates that “disciplinary cases may be filed against public servants in the first cycle by permission of the Prime Minister and against public servants in the second and third cycles by

permission of the competent Minister. A public servant shall be referred to disciplinary trial from the date of issue of the said permission.” Article 84 of the same Law also stipulates that “a public servant may submit a grievance to the Criminal Department in the Supreme Federal Court against the decisions of the Disciplinary Council inflicting upon him such penalties as suspension from work without salary, reduction of salary or 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.” Although the above stipulations have expressly permitted the courts to adjudicate on disciplinary administrative cases, they have not indicated the type of their jurisdiction and the matter is left to the discretion of those courts. Practical experience has however shown that the UAE courts have successfully adjudicated on many cases that pertain to administrative law such as compensation claims, revocation of decisions issued by disciplinary councils involving suspension from work and termination of service after the probationary period. The precise and mature rulings issued by the courts in such cases clearly indicate their success in performing the role of administrative judicature. This will, in turn, stimulate the administration to exercise greater care in the implementation of the law and encourage the public servant to observe more closely his duties and prohibitions in a manner that best serves the public interest.

### **6.5.3 Disciplinary Proceedings in the UAE Law**

Disciplinary proceedings elucidate the steps that should be followed from the time a public servant commits a disciplinable wrongdoing until a penalty is inflicted on him. These proceedings pass through two stages:

- a. The investigation stage in which the wrongdoing is confirmed to have been committed by a particular public servant and sufficient evidence is gathered to convict him;
- b. The trial stage which may end up in acquitting the public servant or convicting him and inflicting a disciplinary penalty on him.

Unlike criminal proceedings, disciplinary proceedings are not constrained by certain limitations unless stipulated in the law. For example, several articles in the UAE Federal Law No.8 of 1973 concerning the Civil Service have stipulated certain proceedings which have to be followed by the body authorized to carry out investigations with the public servant committing a wrongful act. These proceedings provide the opportunity for the public servant to defend himself and aim at arriving at the truth. A similar approach has been adopted by many countries in which independent administrative courts have been formed as well as by those in which ordinary courts adjudicate on administrative cases. For example, the Egyptian Supreme Administrative Court ruled on 27 November 1965 that "there are no stipulations which determine the specific proceedings of the investigation to be conducted by administrative bodies in disciplinary cases. What is required

to be done is that the investigation should observe impartiality, secure the public servant's right to defend himself and aim at searching for the truth and accomplishing justice"(31). "Therefore, if sufficient evidence has been gathered to convict a public servant and specific accusations have been filed on the basis of investigation and the witnesses' testimonies and if the public servant has been given the opportunity to defend himself the ultimate goal of the legislator would have been accomplished even if some minor procedural steps have been overlooked."

Disagreements have arisen as to the law which should be applied if the stipulations organizing disciplinary proceedings are lacking or rather incomplete. Some states tend to apply the civil proceedings law (32) whereas others apply the criminal proceedings law.(33) The latter view has been confirmed, for example, by the Egyptian Supreme Administrative Court which has pointed out that "civil and commercial proceedings have been laid down to accomplish special interests and cannot therefore be applied to disciplinary cases. However, disciplinary trials are much closer to criminal trials and the proceedings applied to both aim at achieving the common good. In disciplinary proceedings, it is important that the administrative investigation and the trial should observe the general rules applied in all trials. Besides, criminal and disciplinary courts are similar in that both apply a code of punishment."(34)

In general, then, disciplinary proceedings should observe the rules and principles followed in criminal trials. More specifically, however, the

disciplinary law should include detailed stipulations which determine the proceedings that ought to be followed in disciplinary cases. In this respect, the UAE Federal Law No. 8 of 1973 concerning the Civil Service has dealt with disciplinary proceedings. Article 65 of the same law stipulates that “no penalty may be inflicted on a public servant except after a written investigation has been conducted in which his statements are taken and the opportunity is provided for him to defend himself. Reasons shall be given for inflicting the penalty on him.” Also, Article 66 of the same law stipulates that “the competent Minister or his deputy may suspend a public servant from work for investigation purposes as a precautionary measure, for a period not exceeding three months. The said period may not be extended except by a decision of the competent disciplinary council. The case of the suspended public servant shall be immediately referred to the disciplinary council which shall decide on the case within a month from the date of referral thereof.” Further, Article 75 of the same law stipulated that “the decision of referral of the public servant to the disciplinary court shall include a statement of the wrongful acts committed by the public servant and the latter shall be notified, in writing, of the said statement and the date of the disciplinary session.” In addition, Article 81 of the same law stipulates that “the public servant referred to the disciplinary court shall be entitled to look into the statement of accusations submitted to the said court and obtain a copy thereof, if he so wishes, and shall be further entitled to attend the sessions of the said court or appoint someone as the attorney thereof”. Moreover, Article 82 of the same law stipulated that “the disciplinary council shall have the same powers as those authorized to

investigation bodies in respect of substantiating evidence including taking a witness 's oath prior to giving the testimony thereof. Provisions that pertain to witnesses giving testimonies before courts shall be enforced on witnesses in disciplinary cases.” In a further article (Article 83), the same law stipulates that “the decision issued by the disciplinary council shall give the reasons on which it has been based and shall be read out in a session held for that purpose. The public servant concerned shall be notified, in writing, of the said decision and the reasons thereof within two weeks from the issue thereof.” Grievances may be submitted in respect of certain disciplinary penalties as stipulated in Article 84 of the same law:

“A public servant 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 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.”

To sum up, the main disciplinary proceedings stipulated in the UAE Civil Service Law No. 8 of 1973 are the following:

- a) Disciplinary cases may not be filed against public servants in the first cycle except by permission of the Prime Minister. As for disciplinary

cases in respect of public servants in the second and third cycles, these may be filed by permission of the competent minister;

- b) The date of referral of a public servant to the disciplinary court is the date of permission mentioned in (a) above;
- c) The public servant should be notified, in writing, of the accusations filed against him and the evidence substantiating such accusations as well as the date of the disciplinary session;
- d) A public servant may be suspended from work during the investigation period, as a precautionary measure, by a decision of the competent minister or his deputy for a period not exceeding three months. The suspension period may be extended by a decision of the disciplinary council which should be taken within a month following the approval of the Council of Ministers in respect of public servants in the first cycle. It is worth mentioning that the salary of the public servant is fully paid during the investigation period as per Article 67 of the Civil Service Law. This stipulation was confirmed by Abu Dhabi Primary Court in its ruling in Case No. 388/1996 dated 29 January 1997 in which the Court ordered the quick enforcement, without bail, of the plaintiff 's demand for the payment of his salary and entitlements;
- e) The case of the suspended public servant should be referred to the disciplinary council immediately;
- f) The public servant referred to the disciplinary court is entitled to look into the statement of the case filed against him and obtain a copy of it;



- g) The public servant concerned may attend the investigation sessions in person or appoint a lawyer as his attorney to defend him;
- h) The investigation should be conducted in writing and the statements of the public servant concerned should be noted down;
- i) The disciplinary council may carry out the investigation or assign it to one of its members;
- j) The decision of the disciplinary council should include the reasons on which it has been based and should be read out in a session held for that purpose. Besides, the public servant should be notified, in writing, of the disciplinary decision within two weeks from the issue thereof;
- k) A public servant 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 salary, reduction of salary, scale or both and dismissal. The decision of the Court should be considered final;
- l) Members of the disciplinary council may not be included in the membership of the Supreme Federal Court;

In the event of shortcomings and gaps arising in the above disciplinary proceedings stipulated in the UAE Civil Service Law, recourse may be made to other legislations and laws in force in the country. However, discrepancies have arisen, as mentioned earlier in this chapter, as to whether the Civil Justice Ordinance or the Code of Criminal Procedure (CCP) should be implemented to fill those gaps. The present researcher believes that neither law should be

implemented to the exclusion of the other since both are linked, in one way or another, to administrative cases. Penal proceedings are closer to disciplinary proceedings in terms of purpose or goal. Meanwhile, the public service contract is subject to the Civil Dealings Law in the cases in which a specific stipulation in the contract or the Civil Service Law regarding a certain matter is lacking. In fact, the Penal Proceedings Law and the Civil Proceedings Law are inseparable and they are best viewed as complementary to each other in filling any possible gaps in the disciplinary proceedings. This may explain the participation of both the Public Prosecution and the Department of Religious Opinion and Legislation in the Ministry of Justice as representatives of administrative facilities in disciplinary cases. (35)

### **Conclusion**

From the above discussion of the pros and cons of administrative courts and disciplinary proceedings, the following conclusions may be drawn:

1. No mention was made to disciplinary courts prior to the promulgation of the Civil Service Law of 1973.

2. Ordinary courts in the UAE have issued precise and mature rulings in many administrative cases and have therefore succeeded in accomplishing cherished justice.
3. Primary courts in the UAE can assign to one of its departments the exclusive adjudication in administrative cases.
4. The Penal Proceedings Law and the Civil Proceedings Law are considered complementary to each other as far as disciplinary proceedings are concerned.
5. The proceedings stipulated in the UAE Civil Service Law for filing a disciplinary case are so clearly stated that there will be little room for claims as to the improper implementation thereof.

## NOTES-CHAPTER VI

- 1) Othman, M.M, *op.cit* , pp.4276-427
- 2) The international institute for the administrative science and studies - Second edition, first No. 1460, p. 367
- 3) Zahwa, H., (19) *Discipline in the Public Service*, p.235
- 4) *Ibid*;  
Omar foad Bnakat, *op, cit*;  
Atam, *op, cit*, p.216.
- 5) Mohammad Mukhtar Othman, *op.cit.*, p.427
- 6) Tamawi, *op. cit.*, pp.418-419
- 7) Al-Tamawi, *Courts of Discipline*, *op.cit.*
- 8) Omer Foad, *op cit.*, pp.110-111
- 9) Malika, *op.cit*, p.99
- 10) Judgement No.617, the Supreme Administrative Court in Egypt
- 11) Mohammed Mukhtar, *op.cit.*, pp. 420-429
- 12) Ali -Sarookh, *op. cit.*, p.100
- 13) *Ibid*, pp.100-101
- 14) Malika, *op.cit*, P.101 and Mukhtar, *op.cit.*, pp 429-430.
- 15) Zahwah, *op.cit.*,
- 16) Judgement No.26, the Supreme Administrative Court  
In Egypt, 1274 Hijri
- 17) See Administration order No. 2/1273 - 1274, No. 26 for two year dated 11/12/1967 No. 995 for two 11<sup>th</sup> year dated 16/12/1967.
- 18) Ezzat, *op.cit.*, p.138
- 19) Al-Sarookh, *op. cit.*, p.111
- 20) *Ibid*, p.115
- 21) Barakat, *op.cit.*, p.114

- 22) Zahwah, *op.cit.*, pp.236-237
- 23) *Ibid*
- 24) Barakat, *op.cit.*, pp. 143-144
- 25) Al-Sarookh, *op.cit.*,
- 26) Mohammed Mukhtar, *op. cit.*, pp. 431-432
- 27) *Ibid*, p.431
- 28) Al-Tamawi, Suleiman, *Administrative Justice*, (in Arabic), Dar Al-Fikr Al-Arabi, Cairo, 1967, pp. 36-37
- 27) Egyptian Supreme Administrative Court Ruling No. 1107 dated 28 June 1975 Al Shaikh Mahdi
- 29) Al-Sheikh, Mehdi, *Judicial Control on Administration*, M.A. dissertation (in Arabic), University of Zaqaziq, Egypt, 1996, p. 389
- 30) Al-Atom, Faisal, *Disciplinary Accountability*, *op. cit.*, p.249
- 31) Syria is one of the countries applying civil justice ordinance in relation to disciplinary cases
- 32) Egypt, for example, applies the code of Criminal Procedure in relation to disciplinary cases
- 33) Egyptian Supreme Administrative Court Ruling dated 23 January 1965 Al-Atom, *ibid*, pp.252-253
- 34) According to a decision issued by the UAE Council of Ministers, confined to legal opinion and legislation department at the Ministry of Justice-UAE. The extension of legal service in relation to disciplinary cases.

## **CHAPTER VII**

# **SURVEY, ANALYSIS AND RESULTS IN RELATION TO THE OPINIONS OF THE PUBLIC SERVANTS IN THE STATE OF UAE**

### **7.1 Methodology**

This chapter presents and analyzes the results of the survey of the opinions of the public servants in the UAE regarding their rights and duties as per the Civil Service Law of 1973 and its implementation in real life.

The methodology employed by the researcher was to design a questionnaire and administer it to a representative sample of the UAE public servants. This was supplemented by semi-structured interviews with some of the public servants who kindly acted as informants. The results obtained from the questionnaire and interviews were then analyzed.

#### **7.1.1 Selection of Sample**

A sample of 305 public servants working in federal ministries and local departments in the UAE was chosen. In terms of size, this sample is believed to be a reasonable and manageable number of respondents. In order to ensure that the sample is representative of the whole population of public servants in the

UAE, the researcher included in his sample public servants of different ages, sexes, nationalities, occupations and tenures of service.

### **7.1.2 Questionnaire Design**

The researcher read extensively on questionnaire design and administration before preparing his own questionnaire. The main consideration was to make explicit the general theme of the questionnaire as well as the wording of the questions asked.

The questionnaire (Appendix 1) begins with factual information eliciting basic personal information about each respondent (Items 1-7) such as age, occupation, nationality, qualifications and work experience. This is followed by questions relating to attitudes and opinions (Items 8-40). Such questions are concerned with the rights and duties of public servants as stipulated in the UAE Civil Service Law as well as the main issues relating to disciplinary actions inflicted in cases of administrative violations. The questionnaire included both closed questions and open-ended questions. The main question format employed in the questionnaire is multiple-choice questions on category scale selection. Some of the questions involved more than one point. For example, question No. 35 includes four points (A-D) emanating from the main point in question.

## **7.2 Results of the Survey**

In this section, the responses to the questions posed in the questionnaire will be presented. This will be preceded by giving some background information about the respondents.

## **7.2.1 Factual Information about the Respondents**

The information included in this section was obtained in the first seven questions raised in the questionnaire eliciting general information about the respondents.

### **7.2.1.1 Number of respondents related to age and the section they work at** **(Figure 2 Q.1)**

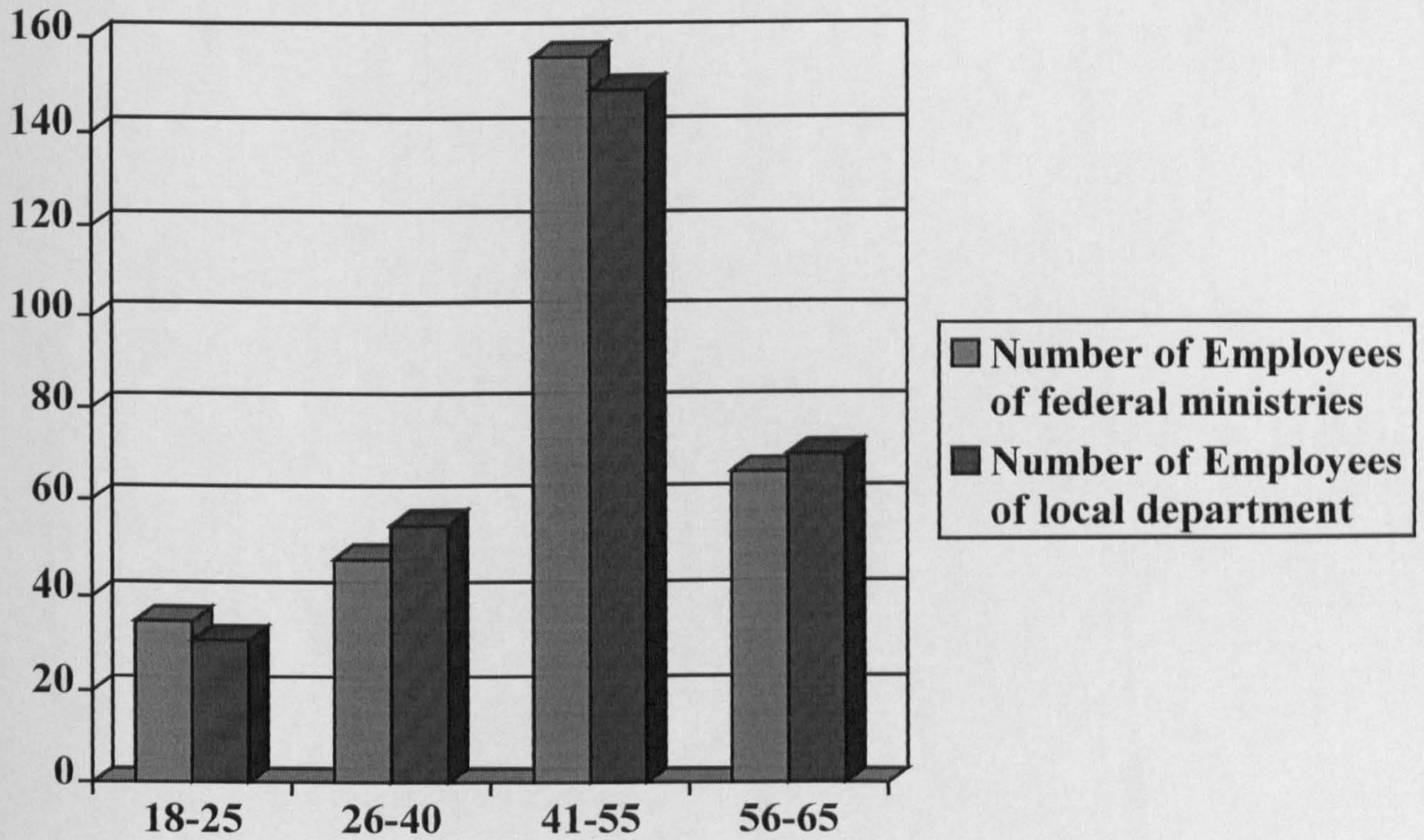
It is evident from figure 2.Q.1 that the number of respondents in the federal ministries amounting to 35 employees aged between 18-25, represent 23%, where as 31 employees work at the local departments, represent 21% of 305 total number of employees. Respondents aged 26-40, represent 21% and 20% of them work with federal ministries.

The respondents from the federal ministries totaling 156 employees and their ages range between 41-55 representing 28% and those at local departments totaling 149 and represent 30%. On other hand, employees between 56-66 years at the federal ministries represent 18% which is low in comparison with those at the local departments which represent 23% of their employees.



Figure ( 2 ) Q.1

Number of respondents to age and the section they work at



### **7.2.1.2 Number of respondents with respect to their qualification**

That the majority of the university graduates and postgraduates are concentrated in the federal ministries where the number of holders of postgraduate degrees (21 employees) represent 7% while university graduates in all disciplines amount to 120 employees representing 57% and at the local departments the number is 39 representing 41%. The number of respondents who do not have university qualifications in the federal ministries total 77 employees, representing 36%, and in the local departments they number 48 employees representing 50%.

### **7.2.1.3 Number of respondents with respect to sex, the department they work for and their nationalities**

The number of male respondents who are working in the federal ministries is 140 employees representing 66% and the number of female employees in the federal ministries amounts to 70 representing 33%, whereas in the local departments the male employees represent a higher percentage amounting to 73% and the rest of respondents are females.

The result of the indicates that the number of respondents who are nationals of United Arab Emirates number 225 employees representing 73% and the expatriates (non-citizen) number 80 employees representing 26%. With regard to the number and diversity of the positions held by the respondents, the

Researcher has divided them into three categories, the first being Technical. The Researcher has designated to this category such positions as technicians, whether in a hospital or other circuits, e.g. the water and electricity department, public works department etc. and physicians (doctors) MD and engineers whereas the second category is executive, and includes clerical positions and these held by ordinary employees.

The third category includes the presidential positions such as those held by the directors head of sections and the like.

The percentage of the employees in relation to the technical category among Federal and local was 21% those occupying executive positions in the Federal departments 44% from the total and 47% in the local departments. It is observed that the said percentages come towards each other and meet at a point in other words converge to some extent. On the other hand, with regard to the presidential positions, the number of the respondents at the Federal Ministries totals 75 employees and at the local departments 30 employees that is 35% out of the grand total of 305 employees.

The percentage of the employees in the technical category represent 21% in the federal ministries and local departments whereas those who work in the administrative category in the federal ministries represent 44% of the total of 156 employees whereas 47% are in the local department which is a close percentage to some extent.

With regard to the managerial categories, the number of respondents in the federal ministries is 75 employees (45%) and in the local department 30 representing 35% of the total number of 305 employees (1).

## **7.2.2 Opinion and Attitudinal Findings**

### **7.2.2.1 The authority of an official in decision making**

As concluded from the survey, 220 employees, representing 72%, have indicated that the decision-making authority of government officials is very limited in light of the current laws of the civil service, whereas 45 employees (representing 14% ) stated that their authority is limited. The remaining balance, representing 13%, stated that the authority of an official in decision -making is absolute.

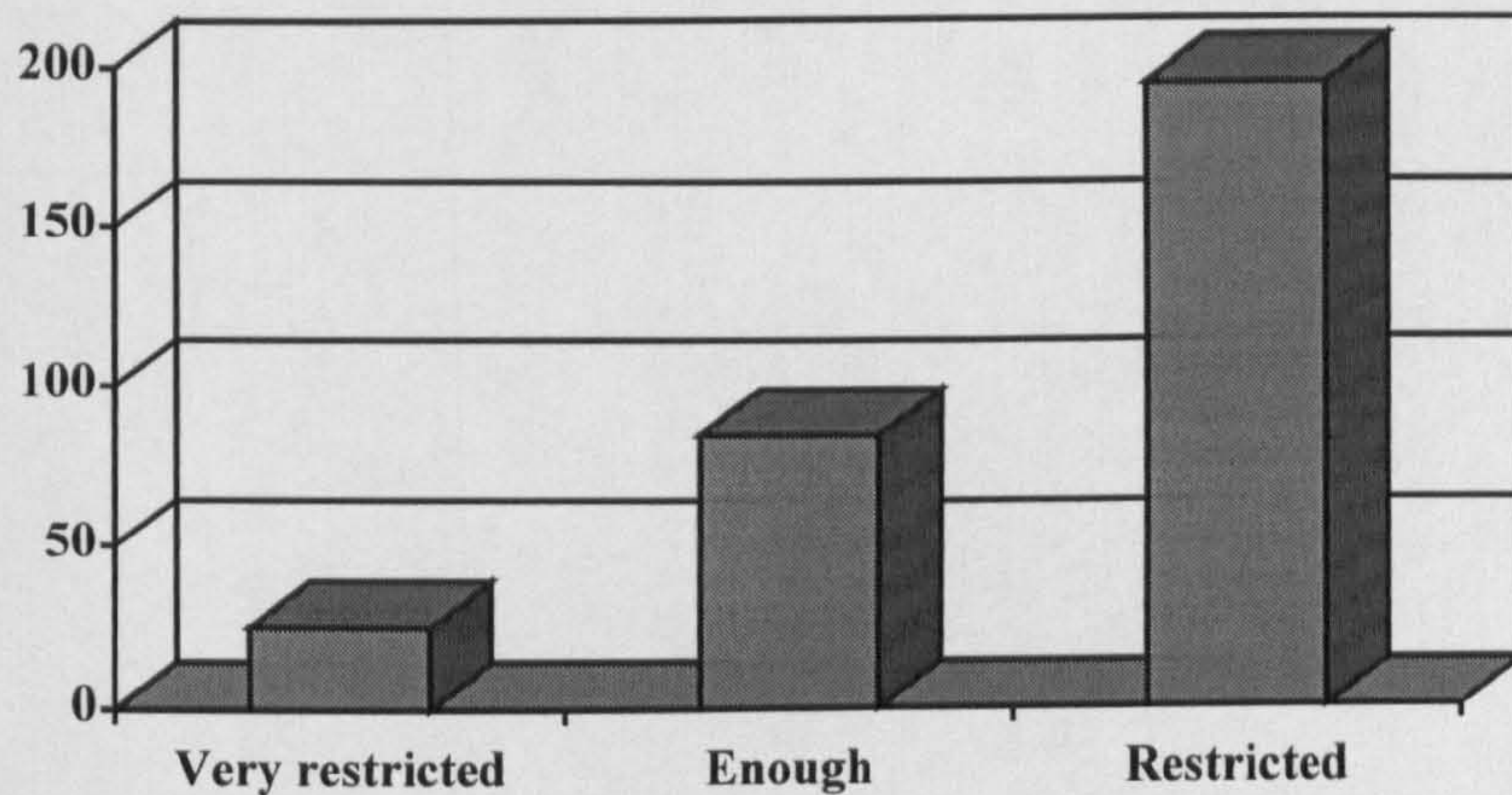
Some of the respondents have clarified through this survey that their authority is limited due to the fact that the manager above them has total control in most of the decisions including the disciplinary action of those who are below him, thus taking the decision making out of the hand of the lower managerial level.

### **7.2.2.2 Extent of authority given by the Civil Service Law to apply the disciplinary action (see Figure 3) Q.7**

In their response regarding the extent of authority in applying disciplinary action as stated in the Civil Service Law, the majority of the respondents (numbering 195 employees and representing 63%) believe that the Civil Service Law in its current status has given somewhat limited authority to apply disciplinary action, whereas 28% stated that the law has given enough authority to a great extent in this respect, and a fewer number, amounting to 9%, stated that the authority is limited.

*Figure (3) Q.7*

*What is the extent of your authority in taking disciplinary action against your subordinates ?*

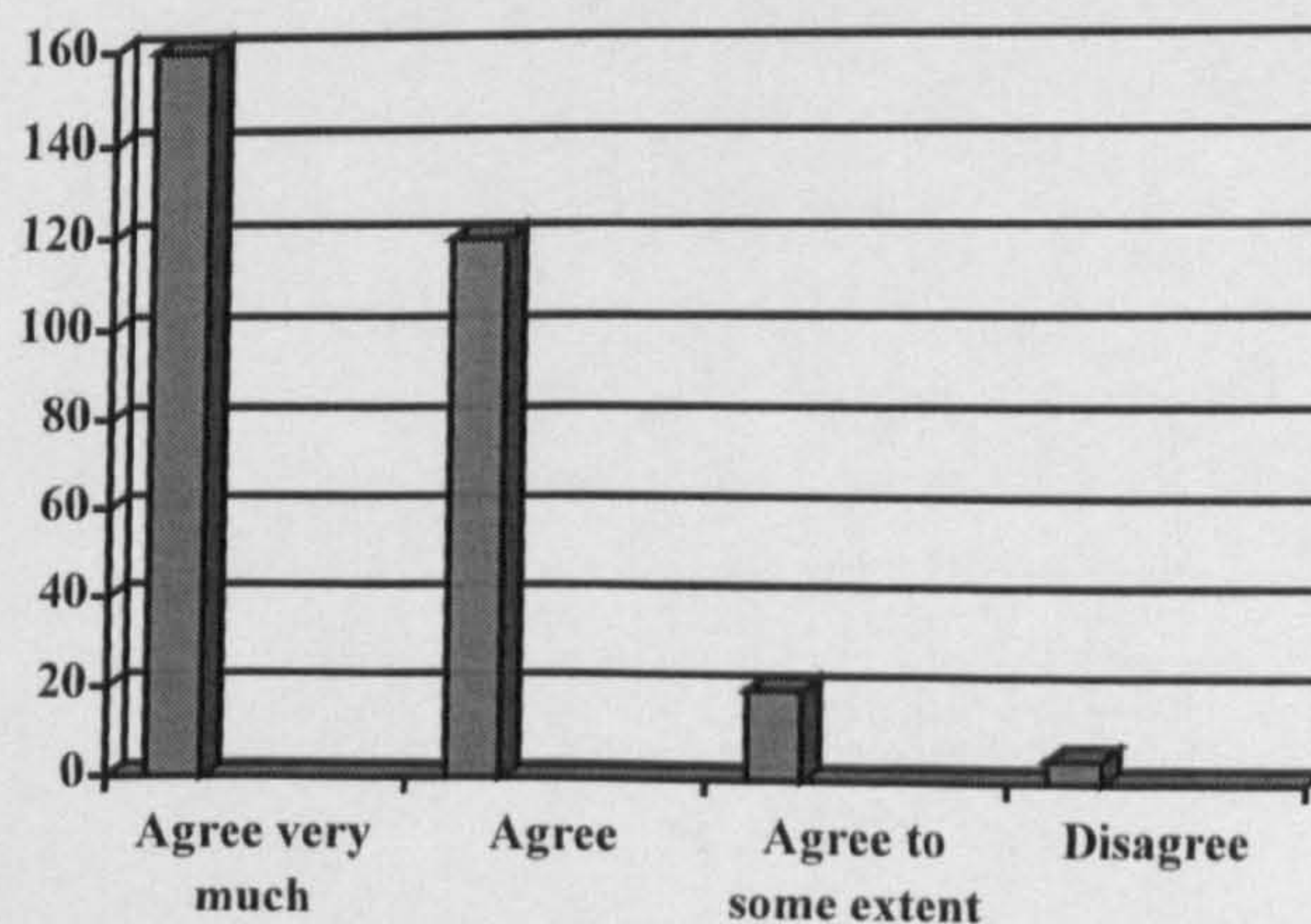


Analyzing the survey results, it is clear that a high percentage stated that "to some extent" and that is mostly concentrated in the administrative category of respondents, whereas in the managerial category, the answers affirmed that the law has given responsibility "to a great extent". This confirms that the disciplinary action is in the hands of the higher authority of the organizational setup. This also means that the employee, even though he is a manager, has not enough authority in the decision-making or at least is not able to discipline an employee without going back to a higher authority. Limiting the disciplinary authority to the highest managerial level is weakening and enervating the role of the supervisors and limits recourse to disciplinary action due to the lengthy procedure and so it becomes non-effective.

### 7.2.2.3 Does the Civil Service Law give sufficient authority (Figure 4) Q.8

Analyzing the result of the relevant question, the researcher found that 160 employees who represent 52% agree 'very much', whereas 120 employees, who represent 39%, 'agree only' and 20 employees agree 'to some extent'. Only 5 employees representing 1% of the total number of both local and federal employees did not agree. One of the employee who did not agree stated that "many of the persons in charge do not adhere to the articles of the Civil Service Law in reality. Thus, if an employee disapproves or disagrees with his supervisor about the job he has to do because it is illegal, he will be subject to a disciplinary action which will not necessarily be in accord with the regulations of the Civil Service Law but may take another form such as transferring the employee to a less important job or giving him an additional task which will hurt the employee and brings about dissatisfaction".

*Figure (4) Q.8*  
*Do you think that the Civil Service Law gives sufficient authority in taking the disciplinary action ?*



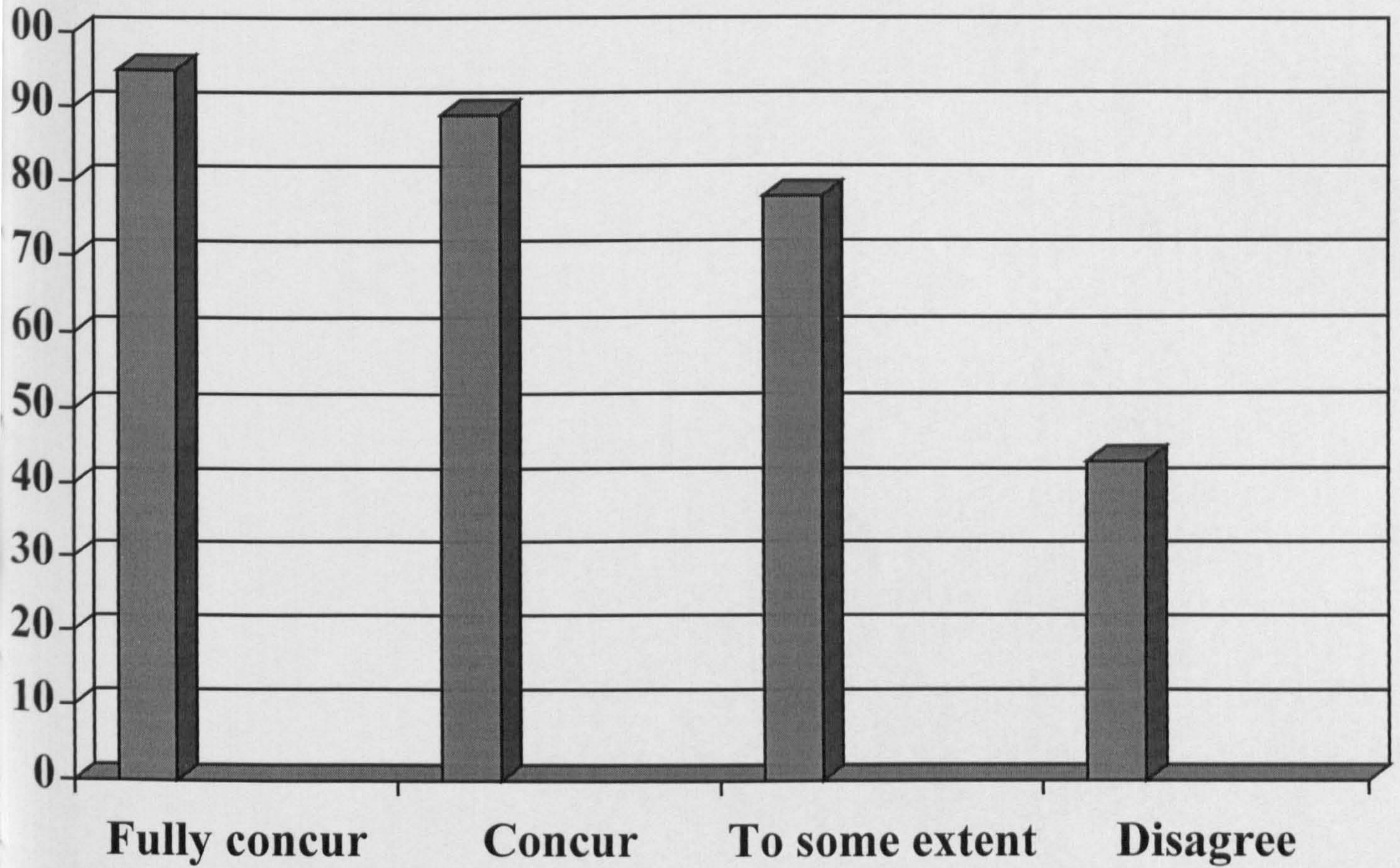
However, most of the employees feel that a person who works under an established law is always safe from disciplinary action as long as he does not break any article of the law. Thus we can say that the majority of employees try to implement the law, respect the job duties and refrain from committing any violation in order not to come under disciplinary action.

**7.2.2.4 An employee believes he is safe in conducting his duties from any arbitrary action under the present Civil Service Law ( Figure 5) Q.9**

With regard to the application of the article related to disciplinary action in the Civil Service Law more than other articles, 95 employees, representing 31%, agree 'to a great extent', 89, representing 29%, 'agree', and 78 employees, representing 25%, 'agree to some extent', while 43 employees, representing 14%, do not agree. It is believed that most of those who agree have not been considered for promotion since their appointment or have not received a promotion or an incentive, a matter which is important for the employee. This is substantiated by the views of some employees in an interview with a local magazine, where one stated that "for twelve years he had been in the same position and had not been promoted; another had been in the same job for 10 years and had not received any promotion or incentive". It is worth noting that even so the implementation of disciplinary action as stated in the Civil Service Law is not extensive; lack of promotions (or the long delay in granting them) and the lack of incentives are the reasons for the low performance of the employee and his non-development in his department which is hindrance to proper job functioning.

*Figure (5) Q.9*

*An employee believes that he is safe in conducting his duties from any arbitrary disciplinary action under the present Civil Service Law ?*





**7.2.2.5 Prolonged proceedings in relation to Disciplinary action dissuaded the official in charge from taking disciplinary action (see Figure 6) Q.11**

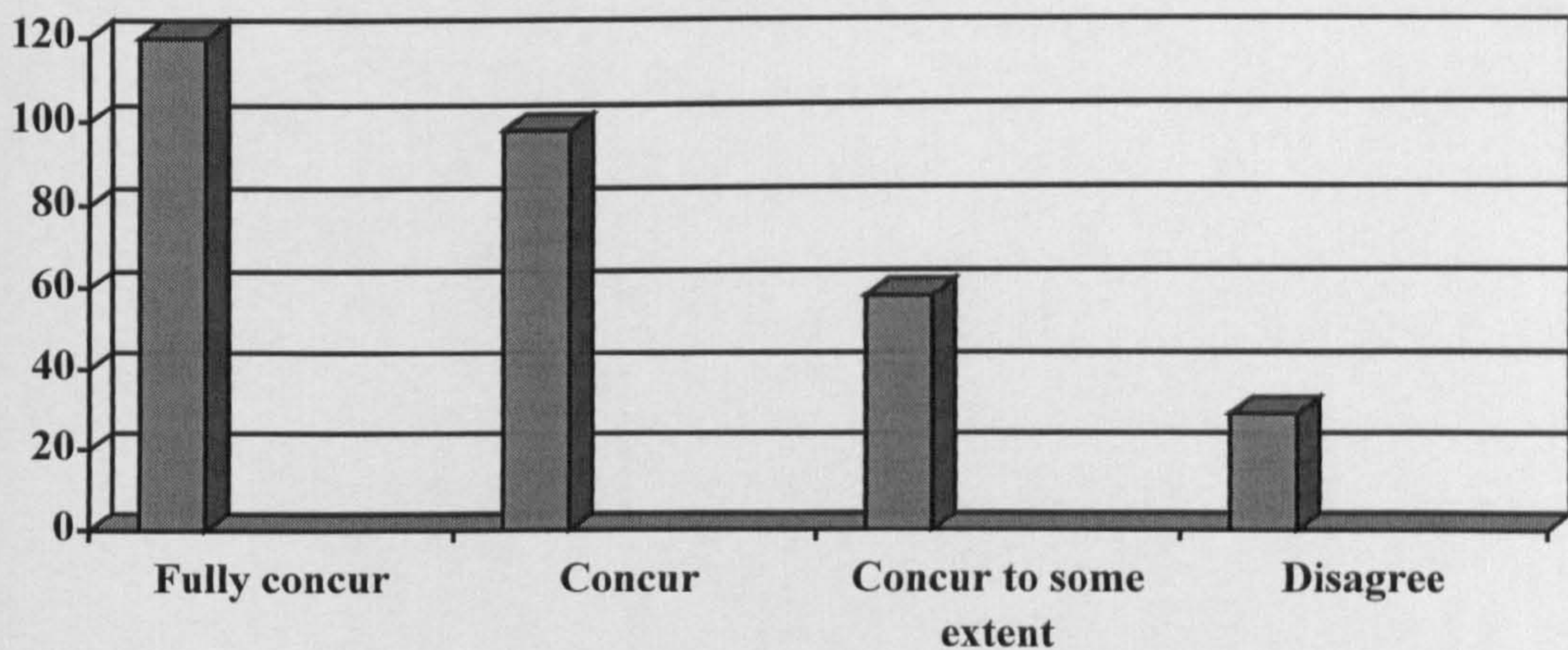
Analyzing the answer regarding whether the lengthy procedures for implementing disciplinary action discourage the person in charge, 120 employees, representing 39%, agree to a great extent, 99 employees, representing 32%, agree only and 18% agree to some extent, while those who disagree represent 9% of the total number 305 employees from federal and local departments.

This perhaps confirms that the lengthy procedure for implementing disciplinary action discourages the person in charge from taking such action which was confirmed by a government official during an interview with him on 25/6/95. When he was asked about his opinion on the punishment of any employee in respect to his grade of negligence and his act of responsibility, he said "it is difficult to terminate the service of an employee; we must go through a big fight to implement that".

In reality, to refer an employee to a disciplinary committee requires approval from the minister or the undersecretary and then referral to a committee for employee affairs. After the committee approves the action it goes to the minister who in turn sets up a disciplinary board chaired by one of the judges and a representative from the civil service council. This requires a formal request sent to the council to appoint a representative from their side and a letter to the Ministry of Justice to nominate one of the judges to chair this board. After the

nominations have been decided, the minister will instruct the setting up up a disciplinary board. In many cases, the employee's service ends or he leaves the work before any legal action can be completed or before he is referred to the disciplinary board.

**Figure (6) Q.11**  
*The Lengthy and complex proceeding and rarity of the disciplinary action discourage the manager from taking such decisions?.*



**7.2.2.6 Freezing of promotion makes the official in charge less enthusiastic in invoking disciplinary actions (see Figure 7) Q.12**

It is clear from the answer that the freezing of promotions and incentives for a long period by the application of austerity measures in the administrative utility leads to negative consequences. Because supervisors see the employee treated unfairly in many aspects, they do not refer him to a disciplinary council in case of violation. This is seen as a compensatory measure

for not providing him with the incentives to which he is entitled. That is what one of the officials (1) said "I have been in charge for five years and I have never referred any person to a disciplinary committee because some of the employees working for the ministry for a number of years have never been given the right of promotion or incentive and in general I fix matters by notifying and verbal warning only".

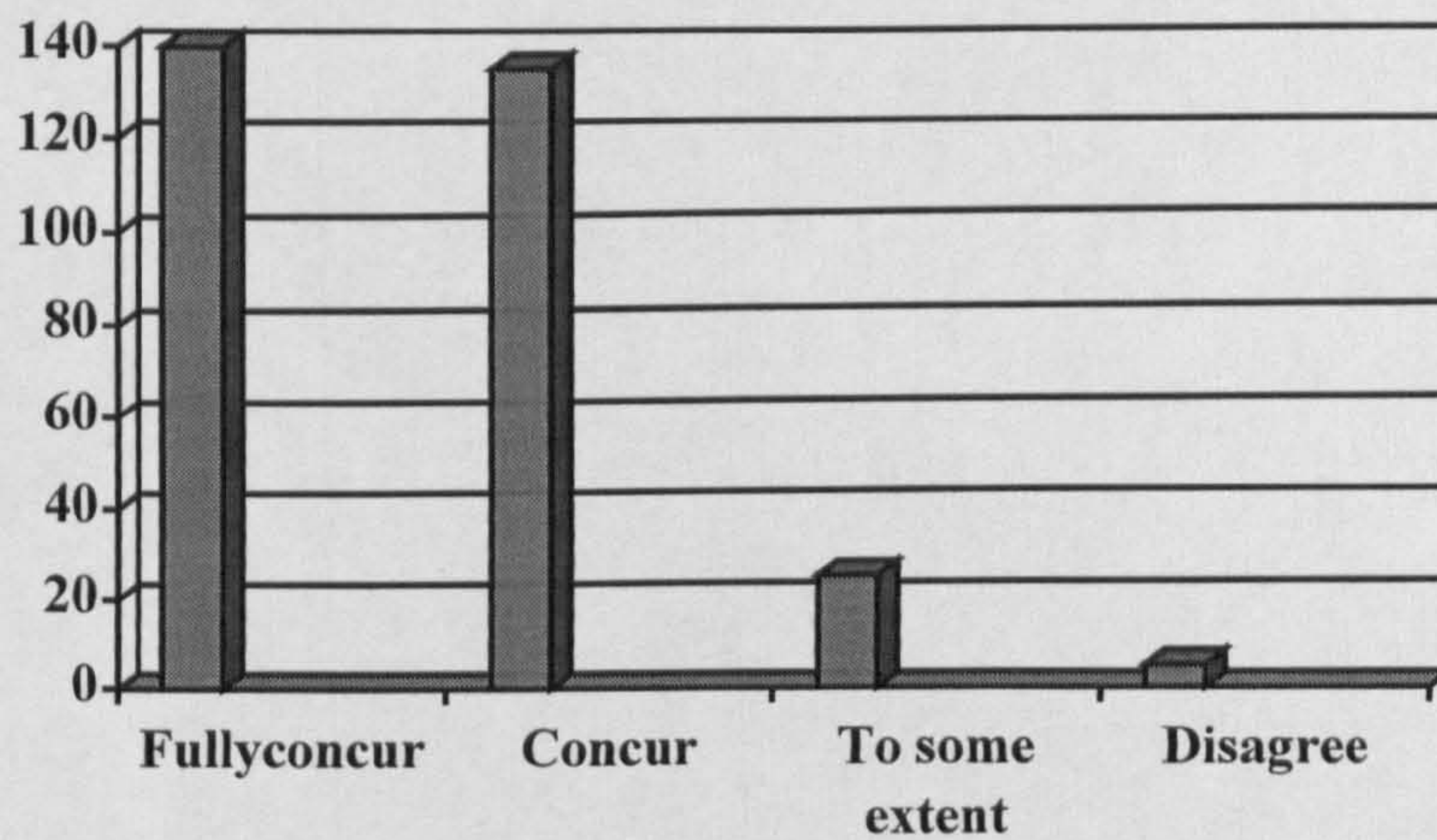
We discovered through the responses to this question that there are 140 employees, representing 46%, who stated that they agree to great extent, whereas 42% said they agree only and 25 employees, representing 8% said they agree to some extent, while the rest, amounting to 3%, disagree which is a small percentage.

**7.2.2.7 The Judicial system is more appropriate to the employee in compared with the other disciplinary systems (see Figure 8) Q.13**

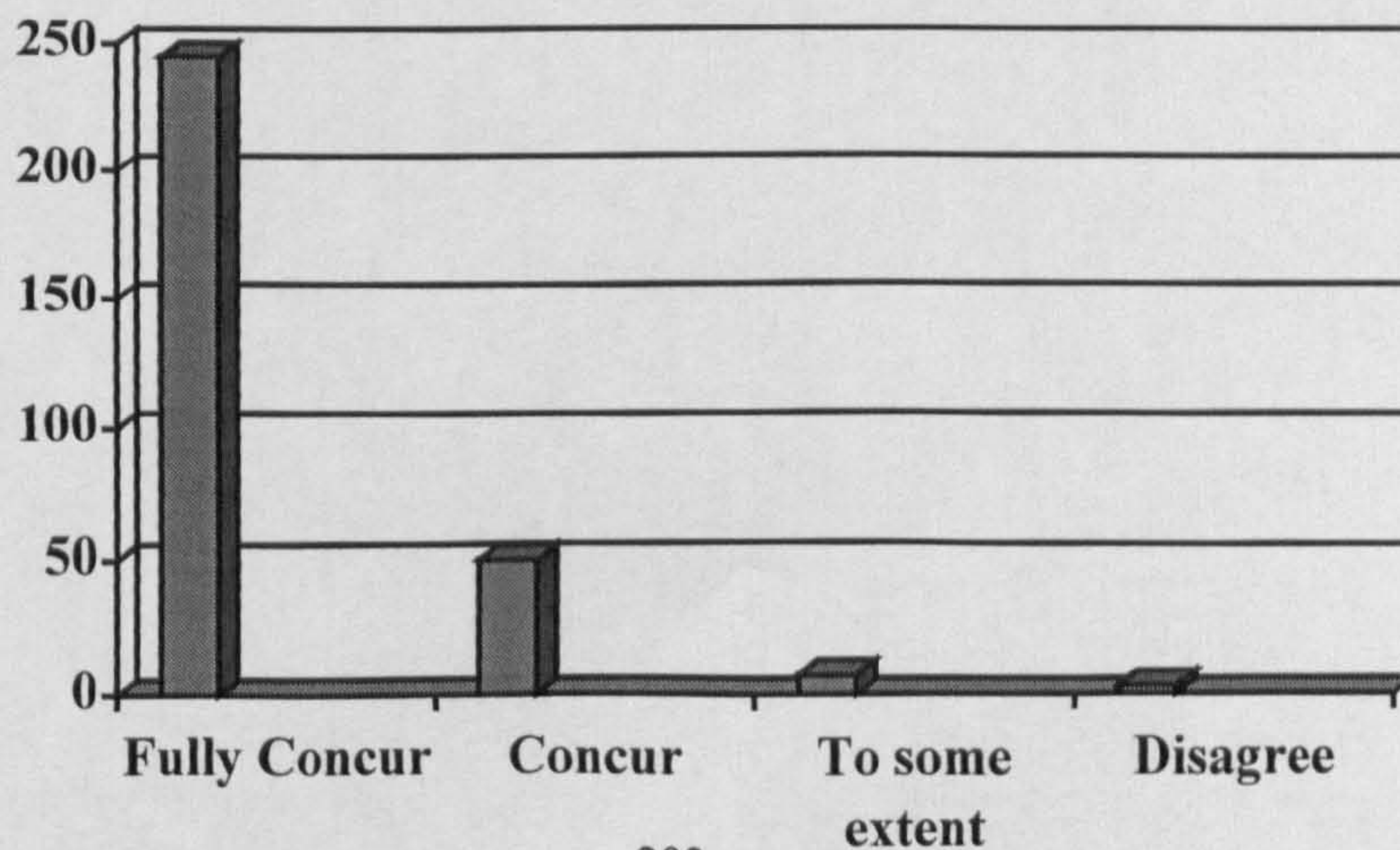
The judicial system is more suitable for the employees in the United Arab Emirates in comparison with other systems where it has special importance in providing administrative safeguards and the employees feel more secure to have justice. This is the outcome of the survey where the majority of the respondents agreed to a great extent that the judicial system is the most appropriate one ( they represented 78% from a total of 305 federal and local employees) while 16% stated that they agree and 4% said they agree to some extent. The total number of respondents who agreed to this question was 302, representing 99% of the total number. The remaining 3 employees, representing 1%, did not approve this and they favored the current law. They said that the disciplinary council is more suitable and practical to the employment

circumstances and the job requirements. For this reason this system has been used in practice for more than twenty years and there are special departments for the judicial administration in the Supreme Federal Court which they function well, as intended.

**Figure (7) Q.12**  
*Suspension of promotions for a long discourages the manager from inflicting penalties?*



**Figure (8) Q.13**  
*The Judicial system is more appropriate to the UAE society than the administrative system whereas the former furnishes the employee with more safeguards?*

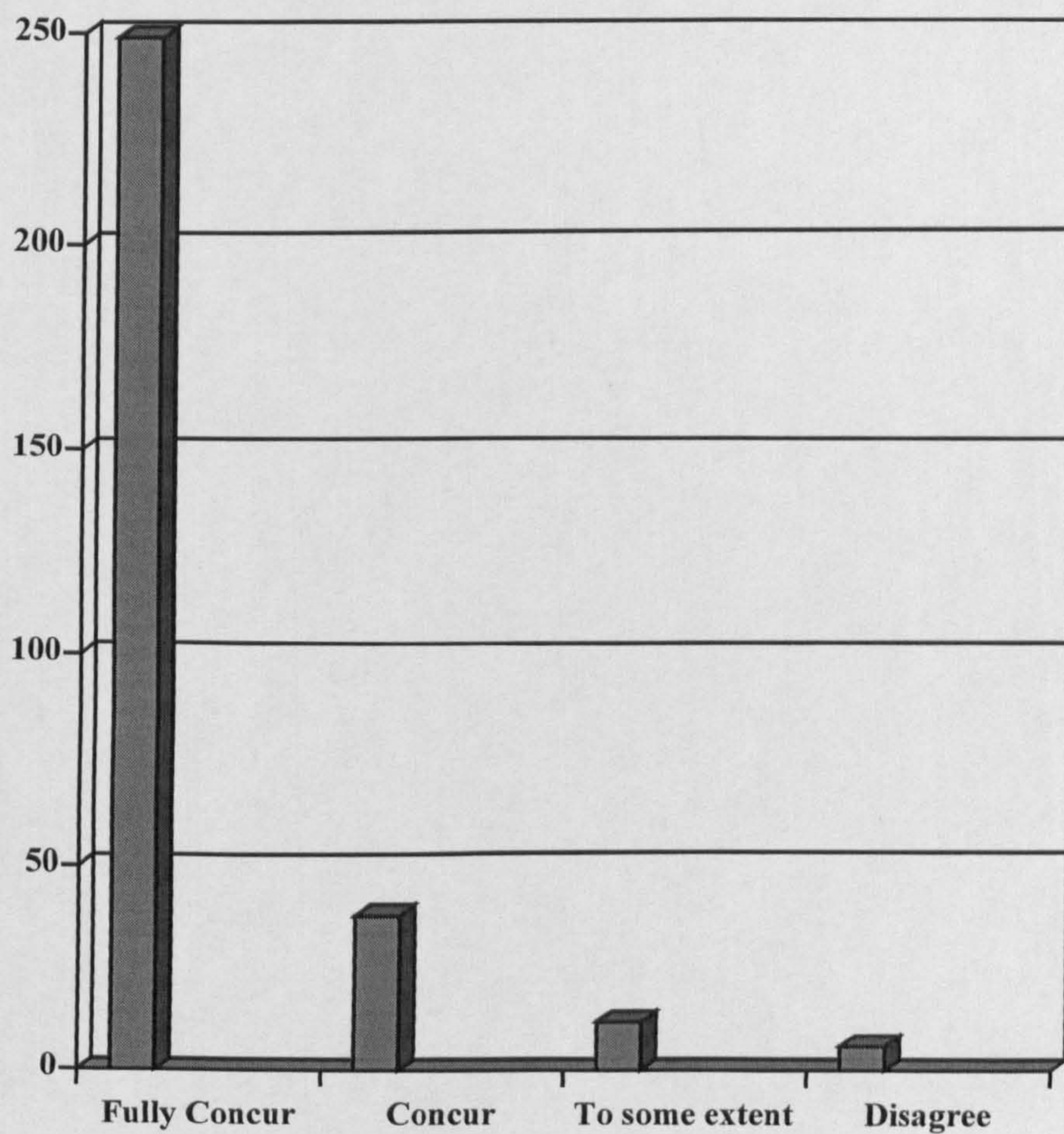


**7.2.2.8      The majority of punishments are inflicted on employees in the low level grades (see Figure 9) Q.14**

The apex of the functional set up, i.e. people in high positions, is always safe from any disciplinary action due to the fact that this is in their own hands: raising this point to the disciplinary committee should pass through them for their consent. This explains why none of them have been referred to a disciplinary committee and all cases are those of low-grade employees. The result of this is that a high-standing official tends to function below the required standard whether by violating the regulations and laws or by not being forthcoming at work as he knows that no disciplinary action will be inflicted on him and it is only he who will apply the same to the low-grade employees. This is what we have concluded from the answers of some of the employees. An interview was conducted with one of the employees in a local magazine (2) about the same subject and he has stated that "this matter is applied to the low grades who are subject to several pressures which kill off any feelings of responsibility about the job". This is confirmed by the result of our survey about this subject where a majority of 82% agree to a great extent that most of the disciplinary actions are only applied to low grade employees; 11% 'agree only' and this shows that they are hesitant to agree to support positively this question and only 6 employees agree to some extent. We conclude that 99% of the total number of respondents were agreeing to that and the remaining percentage which amounts to 1% disagree with this and most of them were high-ranking officials.

It is believed that the lack of accountability of high-ranking people resulted in weakness in the performance of some administrative staff who make use of the work time for their personal business thus bringing productivity down to its lowest level.

**Figure (9) Q.14**  
***Most of disciplinary action are imposed on low-ranking employees whereas the high-ranking employees could not be reached ?***

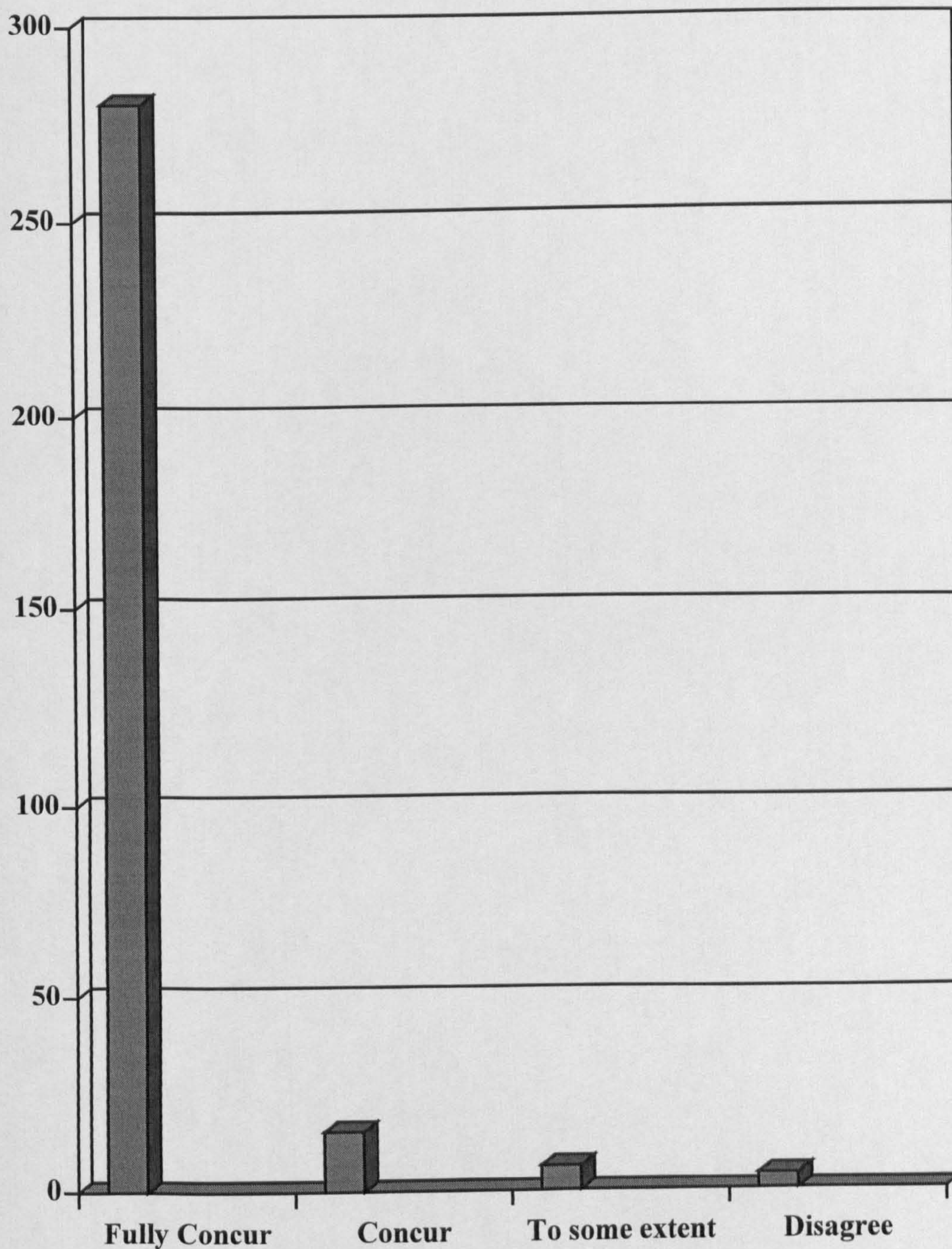


**7.2.2.9 Boards of discipline in its present Constitution and the guarantees of the public servant in fair discipline (see Figure 10) Q.15**

There is an important role for disciplinary councils in providing assurance to the employee. The employee should feel he is safe from the administration influence on this council and therefore he should feel that justice will be achieved in case of a dispute between him and the administration. The formation of the council under the chairmanship of one of the judges gives the council judicial status and this is the best type of assurance the employee may have. The result of the survey confirms the same as 280 employees representing 91% agree to a great extent and 15 employees representing 5% agree only and 6 employees representing 2% agree to some extent, while 1% do not agree which represents a small percentage. There was a remark from one respondent who said that increasing the judicial members in the disciplinary council provides greater assurance since they are more familiar with the laws in comparison with other members who have no legal background. He further explains that the current rules for forming the council do not stipulate that all the members should have a legal background.

Another remark from one of the respondents stated that they do not agree that this council in its current form under the Civil Service Law provides enough assurance for the employee in a fair investigation and that all its members should be from judicial departments.

**Figure(10 )Q.15**  
*Do you think that present formation of the boards of discipline as per the Civil Service Law furnish sufficient safeguards to the employee?*





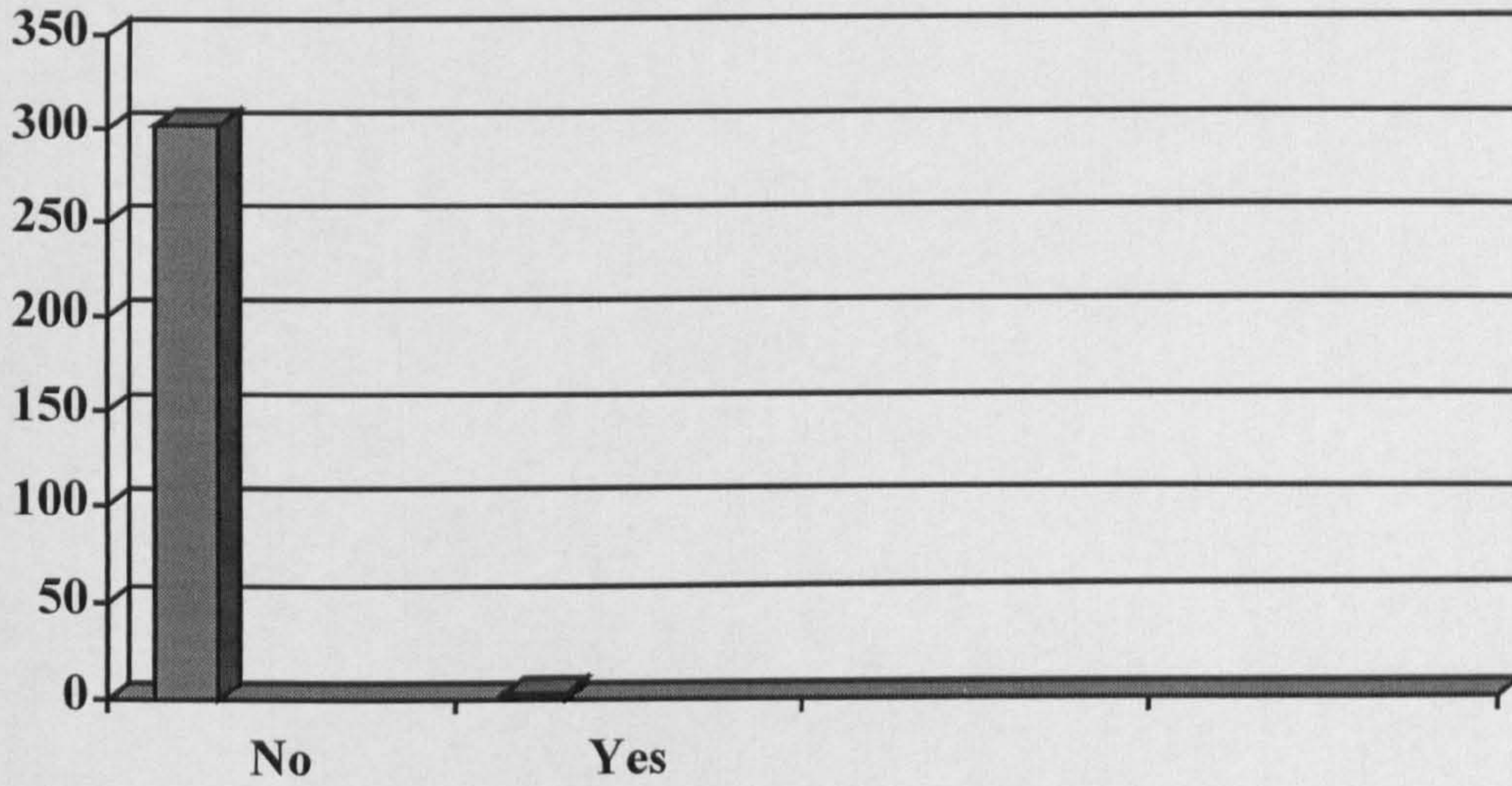
**7.2.2.10 The Respondent had been committed before to a board of discipline**  
**(see Figure 11)Q.16**

This question was given to the respondents and the answer showed that 3 employees only have been referred to a disciplinary council representing 1%. A few other respondents stated that they have committed some negligence but it was overlooked and they were given either a written or verbal warning only.

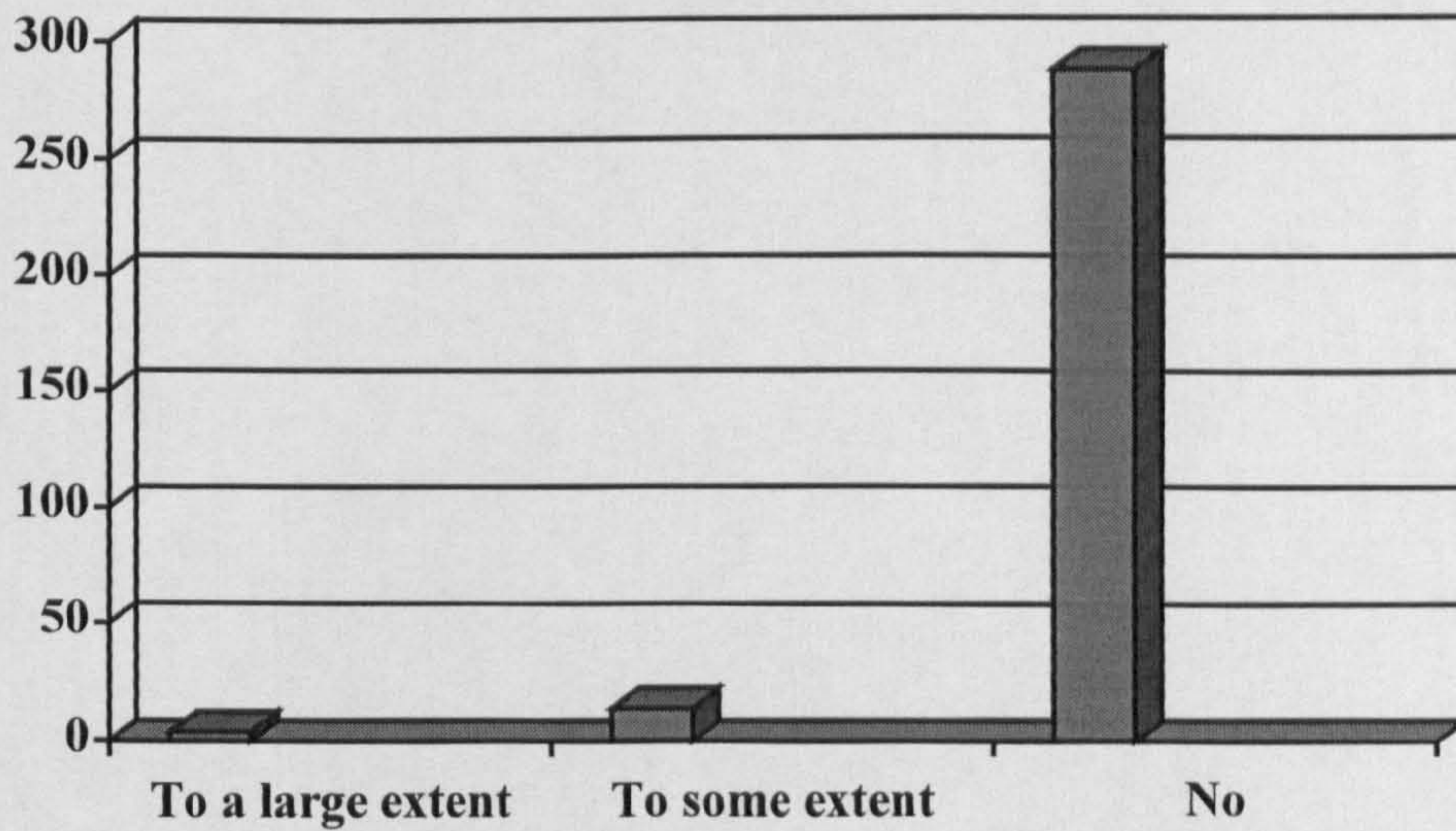
**7.2.2.11 Sole authority of the superior in inflicting disciplinary penalty entails**  
**development of work and speed up achievements (see Figure 12) Q.17**

The result of investigating the sole authority of the manager in applying disciplinary action showed that only 4 employees, representing 1%, agree to a great extent, three employees agree to some extent and 14 employees, representing 4%, agree only, while 287 employees, representing 94%, disapprove of this procedure. This confirms that putting absolute authority in the hands of one person to apply punishment or disciplinary action makes the employee insecure for the future of his employment. This also explains that many of the superiors in the administrative section make use of the system for their own business and follow up their commercial matters. In spite of that, it is believed that granting the manager limited authority in some matters is useful so that he does not lose control of his section.

**Figure(11 )Q.16**  
*Have you ever been referred to a board of discipline?*



**Figure(12)Q.17**  
*Do you believe that if penalties were conferred only by the manager with the exclusion of board of disciplines will this lead to the promotion of the work?*



**7.2.2.12 To what extent does the superior implement and effectuate the Civil Service Law in relation to disciplinary side?(see Figure 13)Q.18**

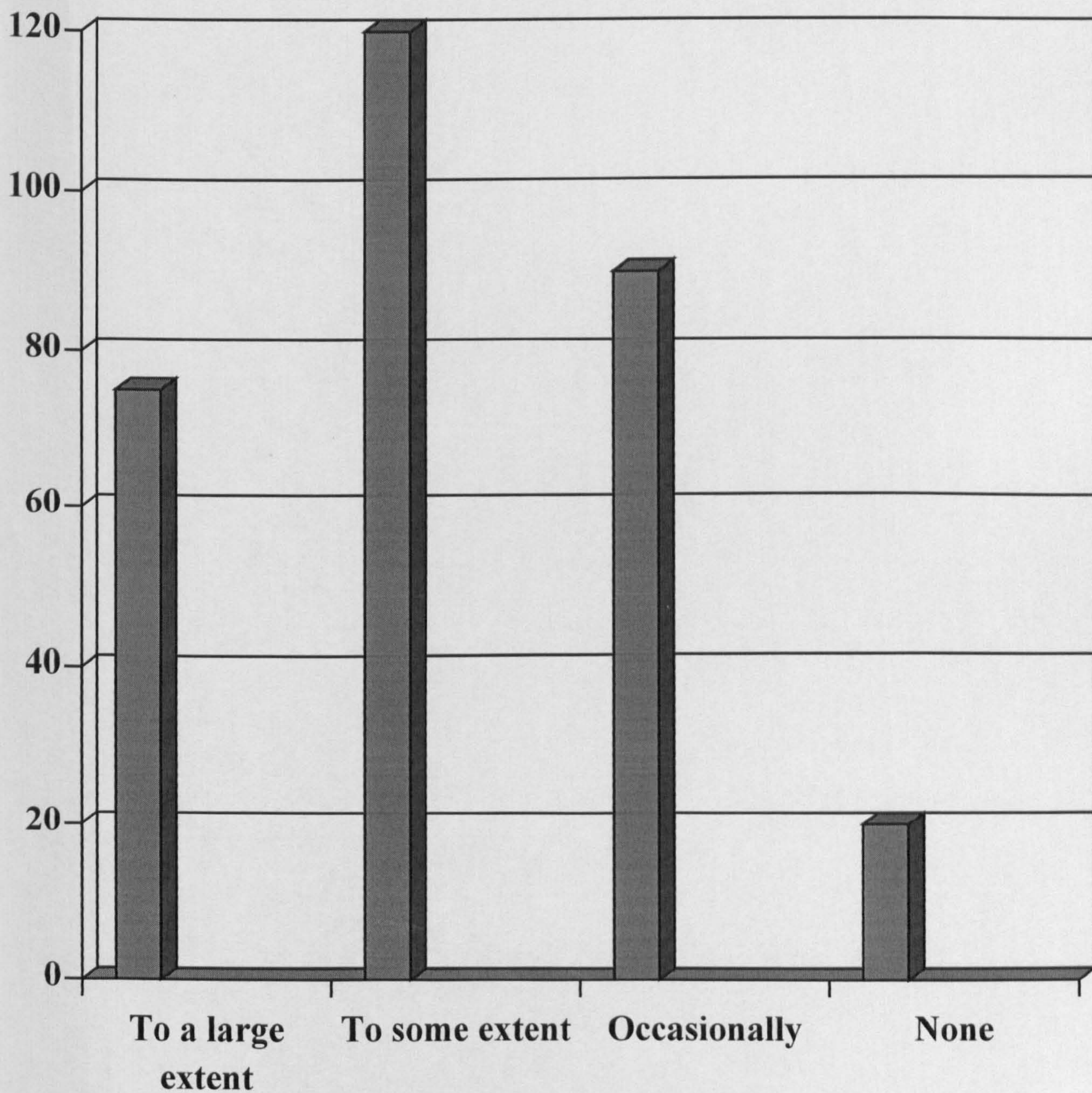
The answers indicated that 75 respondents, representing 26%, believe that the disciplinary aspect of the law has been applied to a great extent and, 120 employee representing 39%, believe the law is implemented to some extent while 90 employees, representing 29%, believe it is sometimes applied and only in the extreme cases. The majority of managers tend to reprimand the employee even though the violation deserves to be investigated by the disciplinary council. 20 employees of respondents (federal and local), representing 5%, believe that the manager does not carry out the Civil Service Law in relation to the disciplinary action but decides by himself what he sees fit.

Mediating between employees and manager comes into the picture if the employee feels that he is going to be investigated by the disciplinary council. He then seeks the help of a number of persons to mediate for him in order to avoid blaming him or officially issuing any disciplinary decision against him. Quite often the manager responds to mediation efforts.

One of the employees stated the same in an interview with a local magazine (3) where he said that "this issue must be focused on and not forgotten when discussing the position of a government employee: the influence of mediation or personal relationships on the process of promotion on disciplinary action".

Figure(13)Q.18

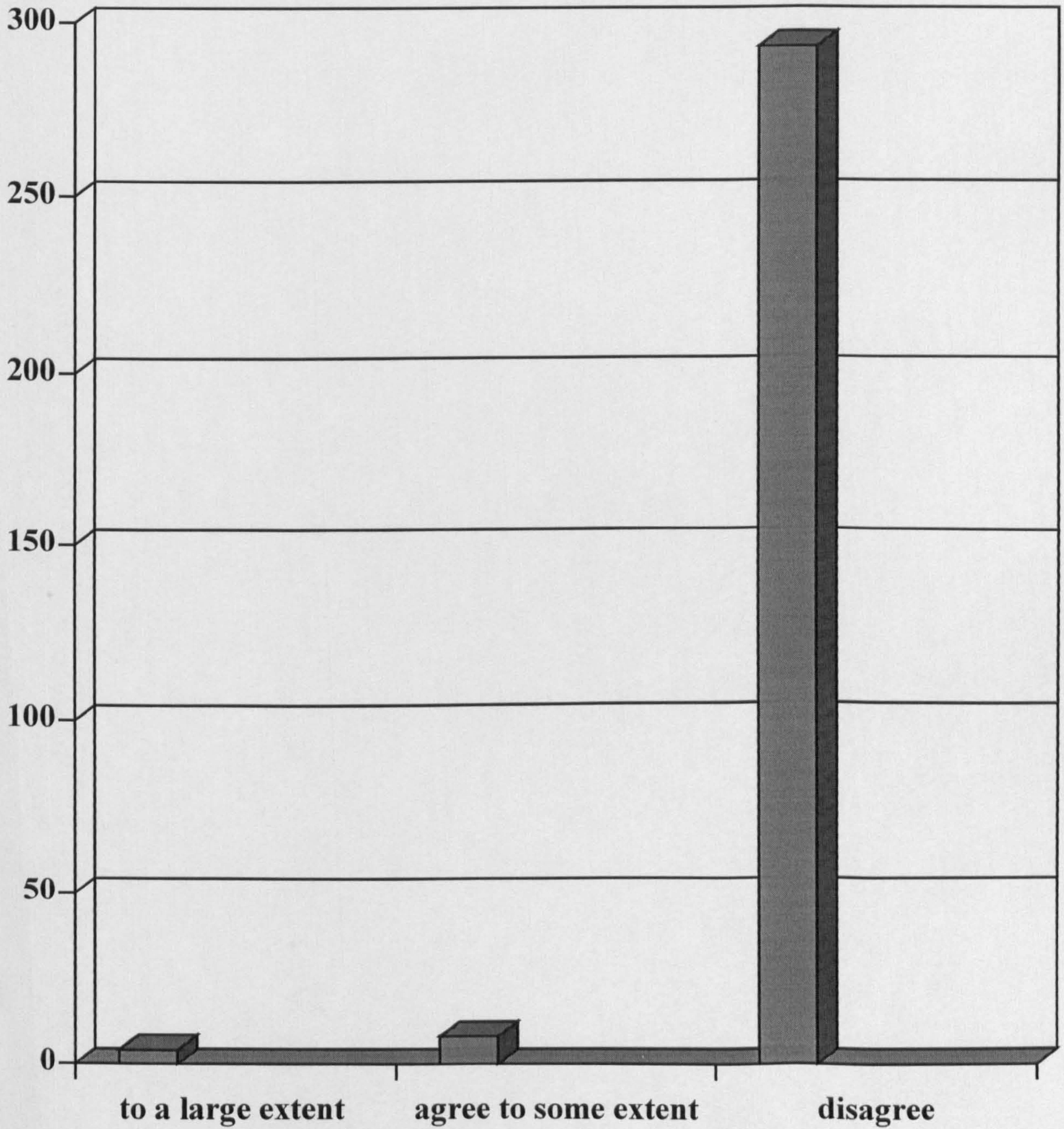
*To what extent does the manager enforce the Civil service Law regarding the disciplinary aspect?*



**7.2.2.13      The Civil Service Council and its role in accomplishing Justice in relation to the employee`s complaints (Figure 14)Q.20**

In response to the question about the role of the Civil Service Council in achieving justice, 4 employees, representing 1%, stated that the Council achieves fairness to a great extent, 8 employees believe that it does achieve fairness to some extent, while 293 employees, representing 95% of the respondents, stated that the Civil Service Council does not achieve fairness in the complaints of the employees. They say it does not perform any positive role as the complaints do not pass its offices and remain in the drawers and have never been raised to the Council to investigate its contents. They further assert that if it is ever raised the Council role will be very negative as it only takes a note of the contents without doing anything about the subject of the complaint. Therefore the Civil Service Council, in its current form, does not accomplish its objectives because most of its member are below the standard, nor does it represent ministries which have some influence on the government departments. This has weakened and limited its authority to take any action or carry out any decision.

*Figure 14.Q.20*  
*The Civil Service Council is competent to look at the employee's complaints. To what extent do you think that this ensures the required equity?*



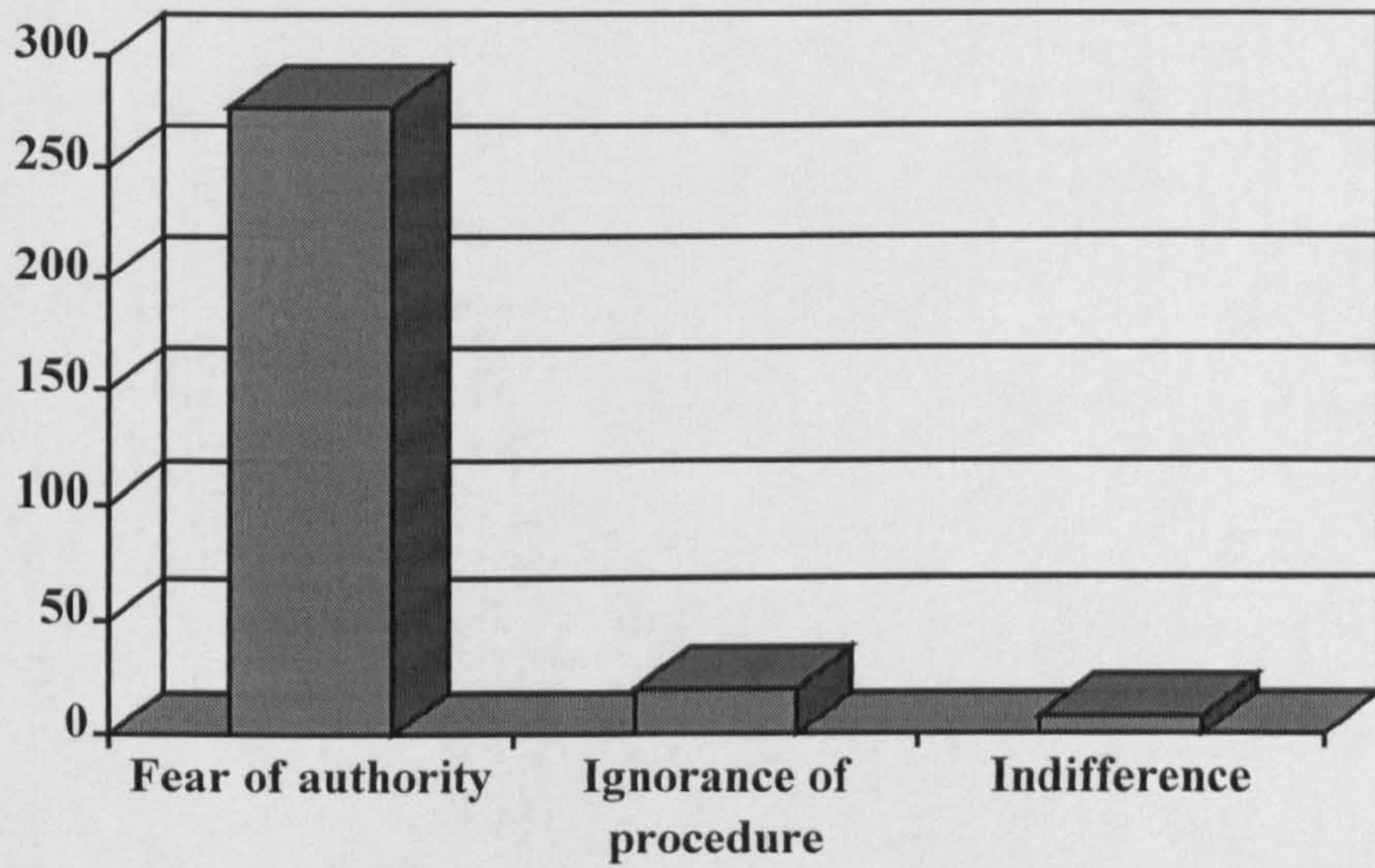
**7.2.2.14 The employee does not generally complain against the decisions taken against him by the boards of discipline (see Figure no.15) Q.21**

In answers about the extent of appeals against decisions taken by the disciplinary council, 277 employees, representing 82%, see that fear of the authority of the person in charge does not encourage them to move forward and appeal against the decision issued against them. 6% see that the employee's ignorance about regulations lead him not to appeal against the disciplinary decision and 3% believe that the employee does not exercise his right to contest the decisions because of his prior knowledge that this will not change anything and on the contrary, might worsen his relation with his superior who would perhaps take a more harsh and negative attitude.

**7.2.2.15 Participation in decision making minimizes work violations to the smallest possible degree(see Figure 16) Q.24.A**

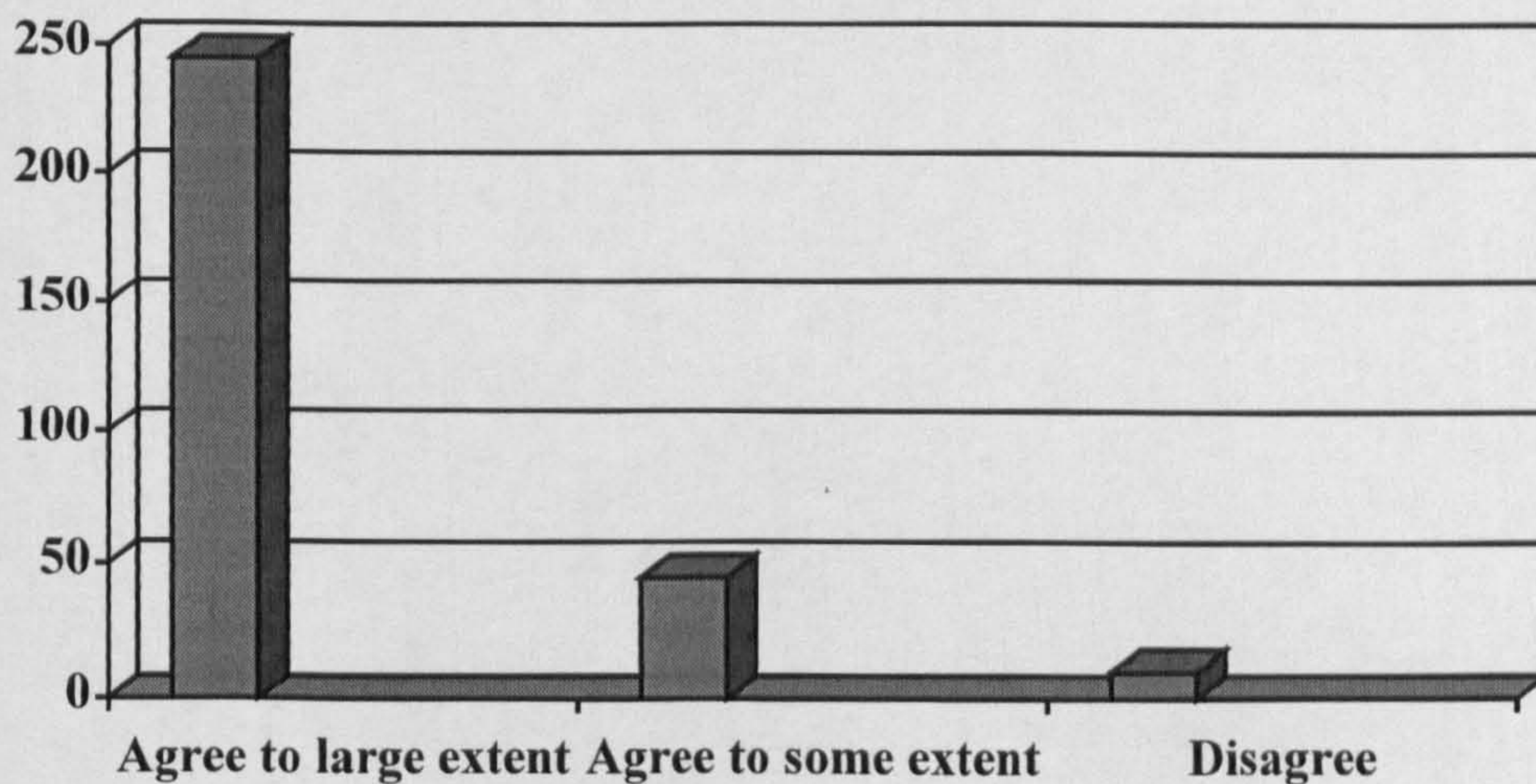
245 employees, representing 80%, agree to a great extent that if employees take part in the disciplinary decision, administrative violations will be reduced 45 employees, representing 15%, agree to some extent, while 15 employees disagree with this concept because the employee's role is limited to the execution of work and does not go beyond that to include taking decisions this being the authority of the chairman alone.

**Figure 15.Q21**  
*Why doesn't an employee generally complain against the disciplinary actions inflicted on him?*



**Figure 16.Q24.A**  
*What are the safeguards that you think sufficient to minimise the percentage of administrative violations?*

**A. Participation in taking decisions in the work field.**





**7.2.2.16 Intermixture of the superior with the subordinates minimizes administrative violations to the smallest possible degree (see Figure 17) Q.24.B**

190 employees, representing 62%, agree to a great extent that a close relation between the manager and his employees reduces administrative violations and 95 employees, representing 31%, agree to some extent. 20 employees, representing 6%, do not agree that this will reduce the violations in the administrative section.

It is evident that if harmony exists in the administrative section between the manager and his employees then understanding and discussion prevail among all parties and the manager will not be looked upon as the sole director and the employee has only to carry out the orders as instructed by his manager without any discussion. This was confirmed by a lady employee working in one of the ministries in the United Arab Emirates who states in an interview (4) that "indeed there is a bad selection of managers in some departments and this is evident from the relationship between the section manager or person in charge and the employees working with him. In such cases, the employees' affairs are not followed up and no one listens to their complaints".

Therefore, a successful administration is one which adopts the policy of understanding and consultation among the persons in charge in order to create an atmosphere of common understanding through sharing with the employees their problems and work closely with them to close any gap which the employees feel exists between them and the person in charge. There is no doubt that this would reduce administrative violations by making the person in charge so harsh on his

employees and not pursuing him and subjecting him to punishment. Therefore, through a relation of understanding, proper guidance and follow up will be implemented in the best interests of the work. Also, if a spirit of understanding is not created in the work environment, it results in poor productivity levels as well as low performance. Consequently the work violations will increase.

#### **7.2.2.17. Relation between The laws issued by the State and the Civil Service**

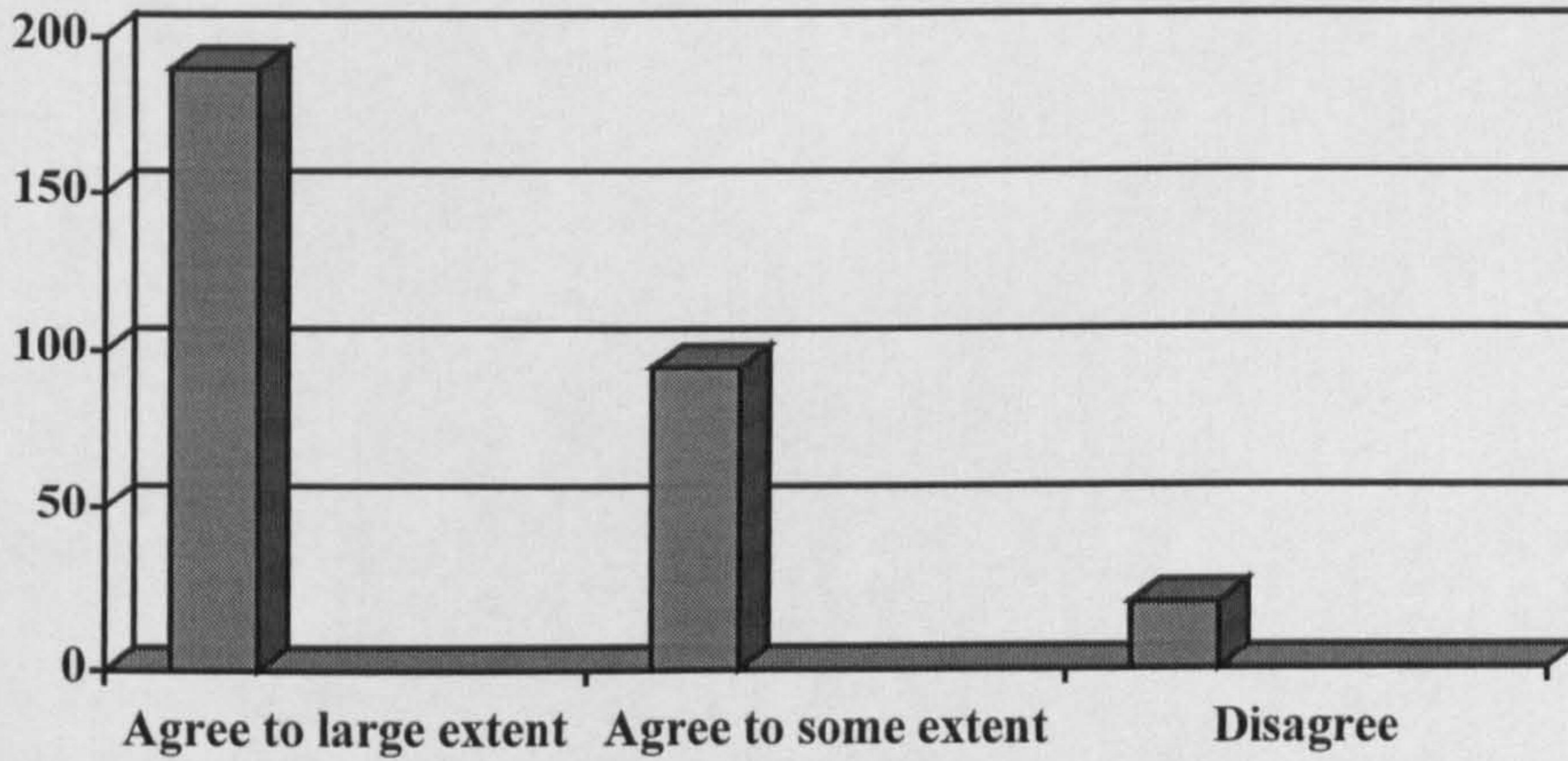
##### **Law (see Figure 18)Q.28**

224 employees believe that the laws and regulations issued by the State has a close relation, to a great extent, with the Civil Service Law 22% stated that they agree to some extent, while 4% said that they do not agree with this. Most of those respondents were from the federal ministries. Those of the opinion that a close relation does exist point out that the Civil Proceedings Law, for example, gives rules for withholding the employee's salary, the amount of deduction to be applied and on whom such rules should be implemented. The Pension Law regulates many matters related to the job. Other Laws forbid the employee to practice any work outside his working hours. For example, a lawyer who works as an employee in a legal post is prohibited from practising the profession as long as he is in his federal or local job.

**Figure 17.Q24.B**

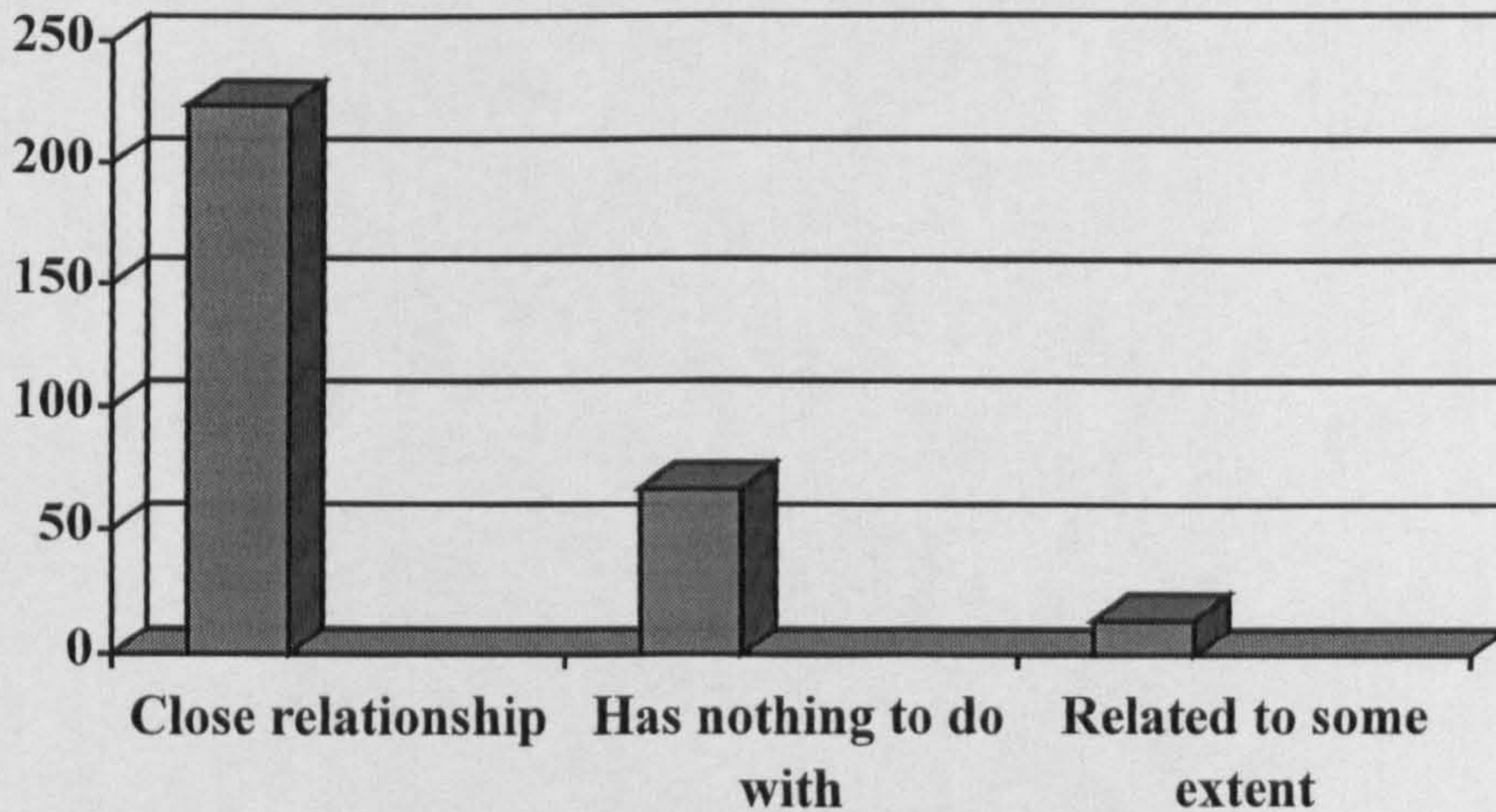
*What are the safeguards that you think sufficient to minimise the percentage the administrative violations?*

*B. linking the employee in all the proceedings with the presidential authority.*



**Figure 18.Q28.**

*What is the relation of the legislation issued by the State other than those regulating the Civil Service to the regulation of a public officer?*

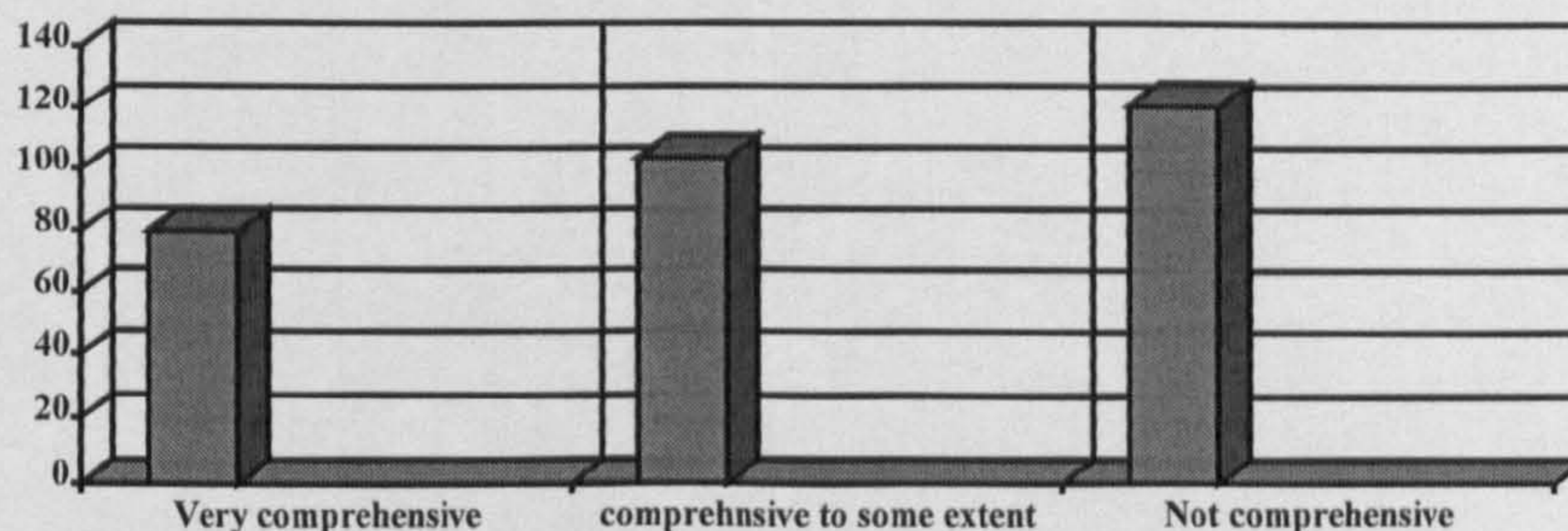


**7.2.2.18 The Civil Service Law comprehensively covers the work duties and actualities of life in relation to the employee (see Figure 19)Q.29**

Regarding the comprehensiveness of the Civil Service Law for all the duties and requirements including the functional and human aspects, 80 employees, representing 26%, believe that the Law, in its current form, is very comprehensive, whereas some of the respondents, representing 34%, believe it is only comprehensive to some extent. However, a majority of 39% believe that the law is not comprehensive to all human and functional aspects as it does not include many of the human aspects which exist in laws applied in many Arab and Gulf countries; for example, there is maternity leave allowed for women following delivery and another leave for delivery and nursing; also transfer to another job because of some personal reason of consideration of an employee's absence for reasons recognised by the employer or the person in charge. To this extent, we can say that the Civil Service Law, in its current form, deals with the employee from the job point of view only without considering the human aspects.

*Figure 19.Q29.*

*The Civil Service law is the legislation that states and organises the employee's affairs. Does it cover the requirements of the employee and the employment or is there any deficiency?*



### **7.2.2.19 Extent of clarity and sufficiency, employee's operative Civil Service Law**

**(see Figure 20)Q.30**

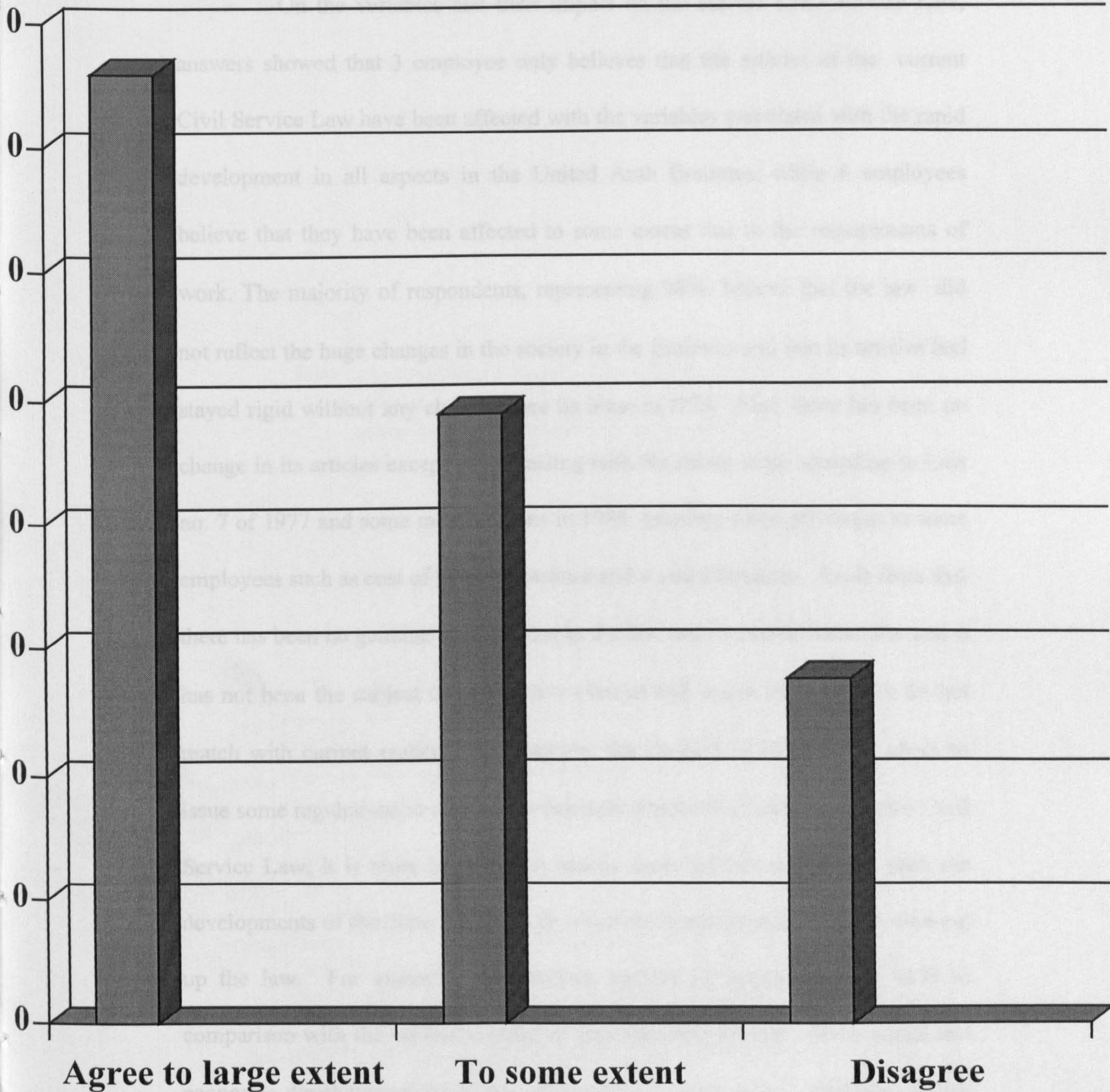
152 employees, representing 50%, believe that the current Civil Service Law is clear and comprehensive in its provision of the rights of the employee to a great extent, and 98 employees, 32%, agree to some extent, while 17% disagree and believe the law is not clear at all. The remainder did not agree that the law in its current form contains enough articles to present the rights of the employee in a clear and complete way as some of the employee's rights have not been stated in comparison with the laws in other countries. This was confirmed by an official in one of the ministries (5) during an interview in a magazine about the subject where he said "but with deep regret, our institutions and specially the federal ones are run with ideas that go back a quarter of century. Why? Because we are still tied up with articles of a law which were established 25 years ago and have not been modified to match the requirements of the modern times and the intellectual standard of the society in the Emirates".

We conclude from this that the current laws must indicate clearly the rights and duties of the employee by which he has to abide and in case of violation of those duties, he will be subject to a disciplinary action. As shown in the responses, the question of employees' rights has to be adequately addressed in the law.

**Figure 20.Q.30.**

**The Civil Service law states the duties of the employee. Are these duties proportional with the employee's rights ?**

**Figure 20.Q.32**

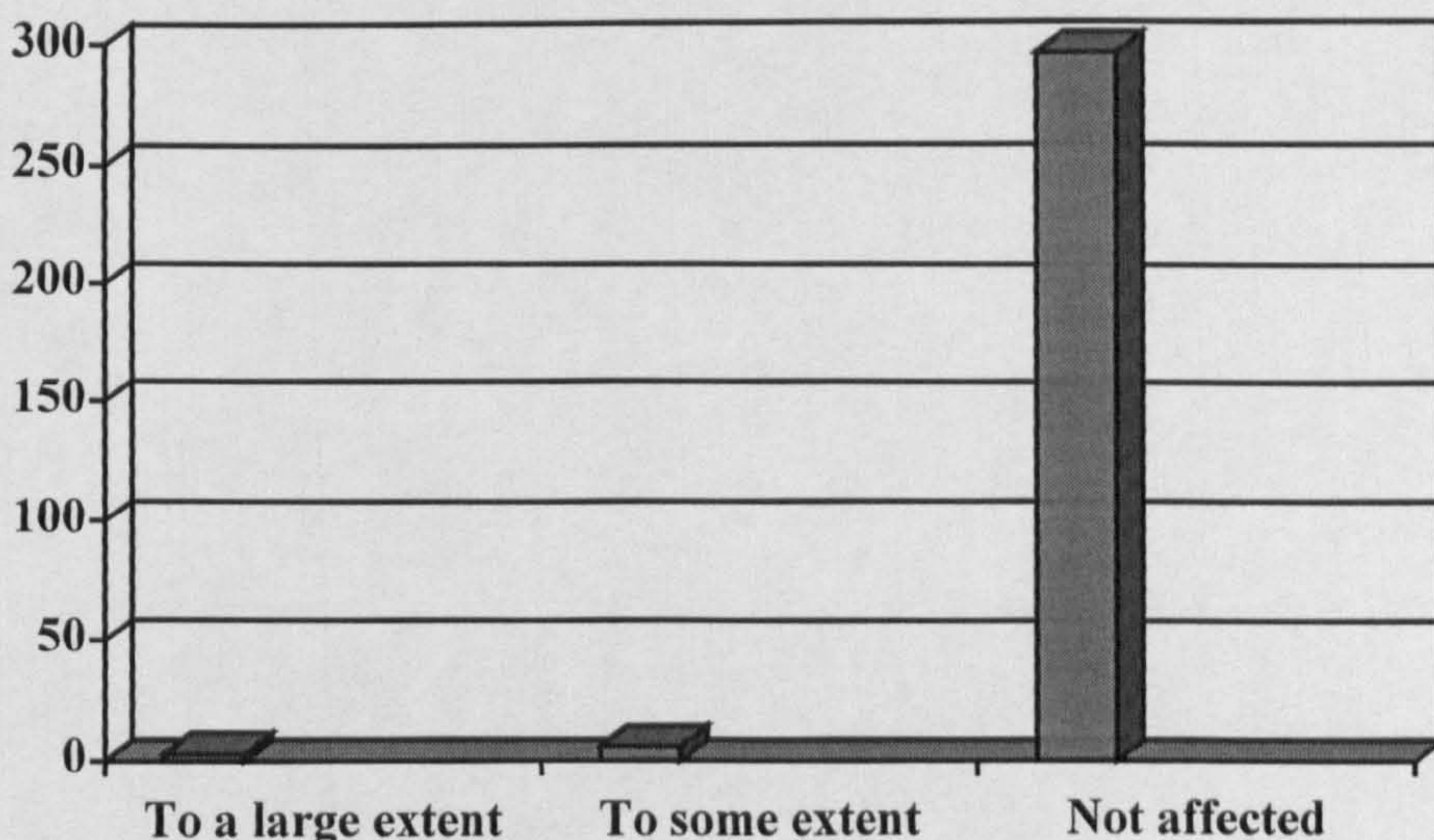


**7.2.2.20 Variables and their impact on the operative Civil Service Law (see Figure 21)Q.32**

On the variables and their impact on the current Civil Service Law, answers showed that 3 employee only believes that the articles of the current Civil Service Law have been affected with the variables associated with the rapid development in all aspects in the United Arab Emirates, while 6 employees believe that they have been affected to some extent due to the requirements of work. The majority of respondents, representing 98%, believe that the law did not reflect the huge changes in the society in the Emirates and that its articles had stayed rigid without any change since its issue in 1973. Also, there has been no change in its articles except those dealing with the salary scale according to Law no. 7 of 1977 and some modifications in 1988 granting some privileges to some employees such as cost of living allowance and social allowance. Aside from that there has been no genuine modification in the law and its current structures and it has not been the subject of any review even though many of its articles do not match with current reality. For example, the Council of Ministers is about to issue some regulations to regulate its function which are in conflict with the Civil Service Law; it is more important to amend these articles to coincide with the developments of the State and society which were not considered while drawing up the law. For example, the previous number of employees was 3000 in comparison with the current number of approximately 63.000. Some social and economic developments have also taken place in areas surrounding our country

over which we should have some sort of influence as they have some impact on us (6). Also, the annual incremental increase has remained unchanged and the difference between the starting salary and end salary of a particular grade remained has not changed. No modifications have taken place in the rest of the articles of the Law. Moreover, if we review appointments of the employees, we find that the circumstances at the establishment of the federal State were totally different from those of the present time. This is why these articles remain an obstacle to the ambitions of the employee and his future hopes.

**Figure 21.Q32.**  
***Many changes have occurred since the issuance of the Civil Service law in 1973. To what are those changes taken into consideration by the legislator?***





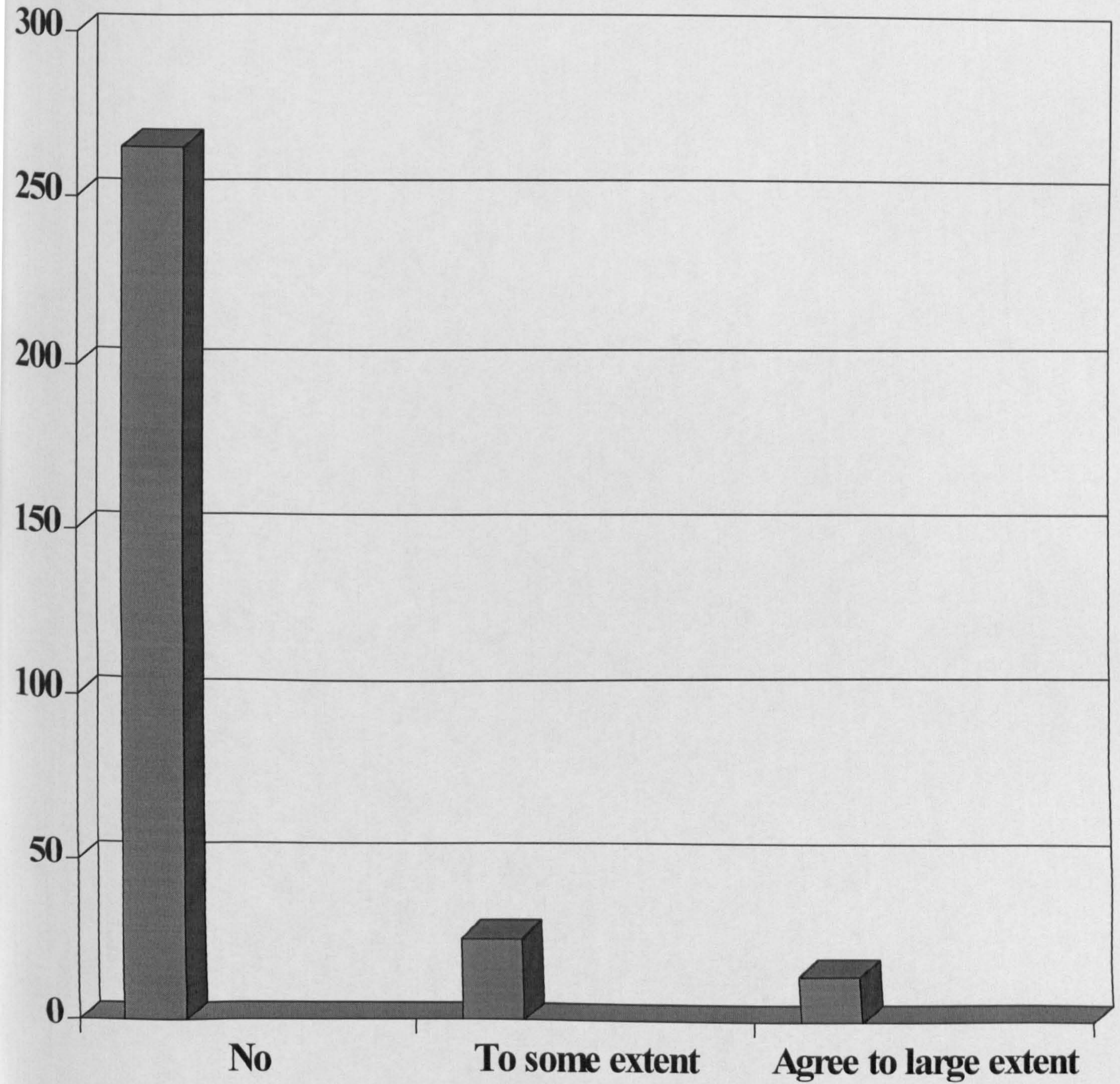
**7.2.2.21 The authority of the executive administrator to treat the administrative violators from within the administrative circuit (see Figure 22)Q.33**

In connection with the authority of the Manager in treating or handling the administrative violations within the administrative circuit, the answers indicated that only 14 employees which is 4% out of the total number of federal and local employees agreed to a great extent that the manager should be given authority in handling the administrative violations within his unit. 26 employees agreed to some extent. However 78% of employees responded that the manager or official in charge should not be entrusted with this authority giving the reason that if the manager or the official in charge is entrusted with that authority, he/she will turn into an absolute authority and hence the employee will lose his competence in some matters.

The researcher has concluded from the opinions of the respondents that there are 195 persons who believe it is better to refer such matters to a disciplinary court, whereas 41 employees believe that this authority should be given to the disciplinary board in the civil service council under the current laws. The majority of 240 employees, representing 70%, feel that there should be disciplinary councils within each administrative unit dealing with simple matters such as minor violations which do not require the formation of a bigger council and would not require a long procedure.

*Figure 22Q.33.*

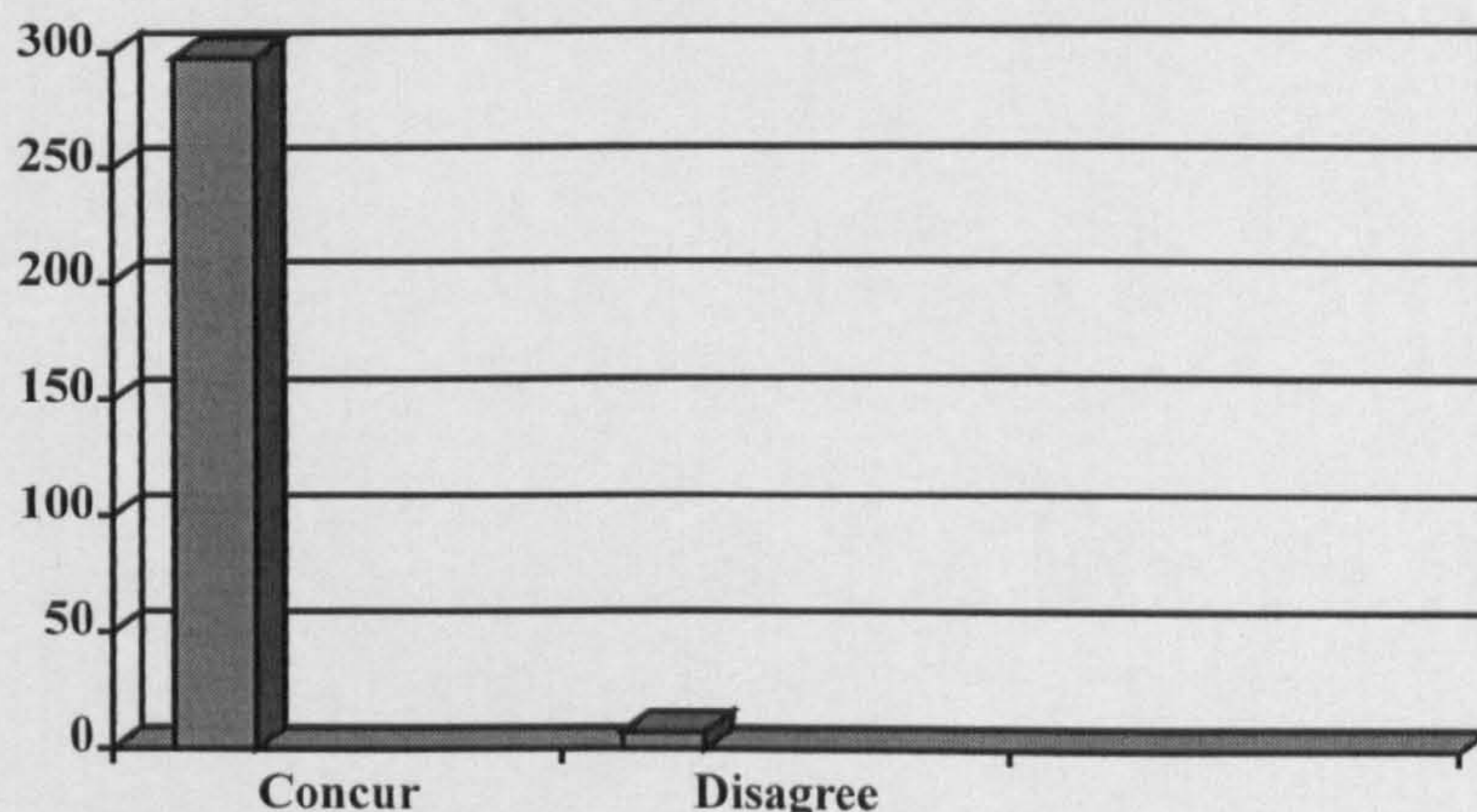
*The employee's violation of his duties entails responsibility viz-a-viz the administration. Do you think that direct manger should have powers in putting those violation right?*



**7.2.2.22 Various objectives of disciplinary actions (see Figure 23)Q.34**

As for each kind of disciplinary action and its objectives such as correction or non- repetition of such violations, we found out that 298 employees, representing 98%, said that disciplinary action has objectives but these vary according to the punishment. In some punishments, the disciplinary action goes as far as to termination of service or dismissal in order to set an example to the other employees and deter them from committing those violations. However, only 7 employees representing 2%, considered that the disciplinary action in all punishments has only one objective and the punishment has no effect on this objectives.

***Figure (23) Q.34***  
***A disciplinary action has ends and aims. Do you think that these aims differ in accordance with the type of penalty ?***



**7.2.2.23 Divulgence of the public position secrets (see Figure 24)Q.36.A**

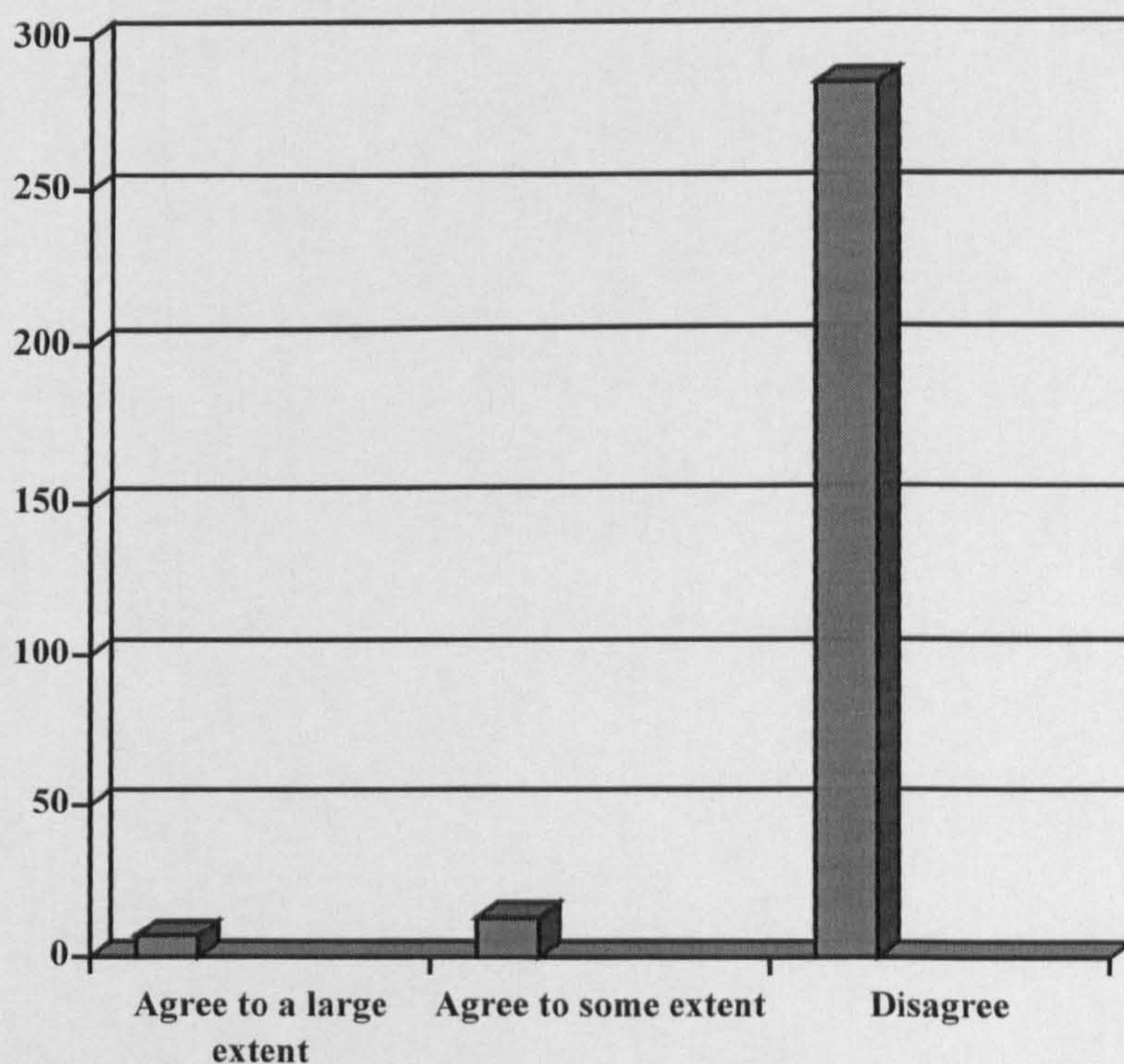
Divulgence of the public position secrets is considered as a disciplinary offence. The public position has its secrets, therefore, the public servant should respect this secrecy, so the laws and regulations gives these matters the utmost importance. While many secrets are kept confined in the mind of the public employees, he is obliged not to divulge these secrets since the public interest or the administrative body will be prejudiced. In addition, there are some matters which should not be disclosed even after the employee resigns his job. Answers to this question indicated that 7 employees, representing 2%, agreed to a great extent that secrets should not be disclosed even though such secrets constitute a clear violation of the Civil Service Law, whereas 13 employees, representing 5%, agree to a certain extent. The majority, amounting to 285 employees, representing 93% had a different opinion saying that is there is no obligation by the employee to keep a secret when that secret is related to violations of the law because such violations are detrimental to the public interest. This applies whether or not the employee is still in the job or has already quit.

**7.2.2.24 Disclosure of a public secret even though the government would ultimately lose (see Figure 25)Q.36.B**

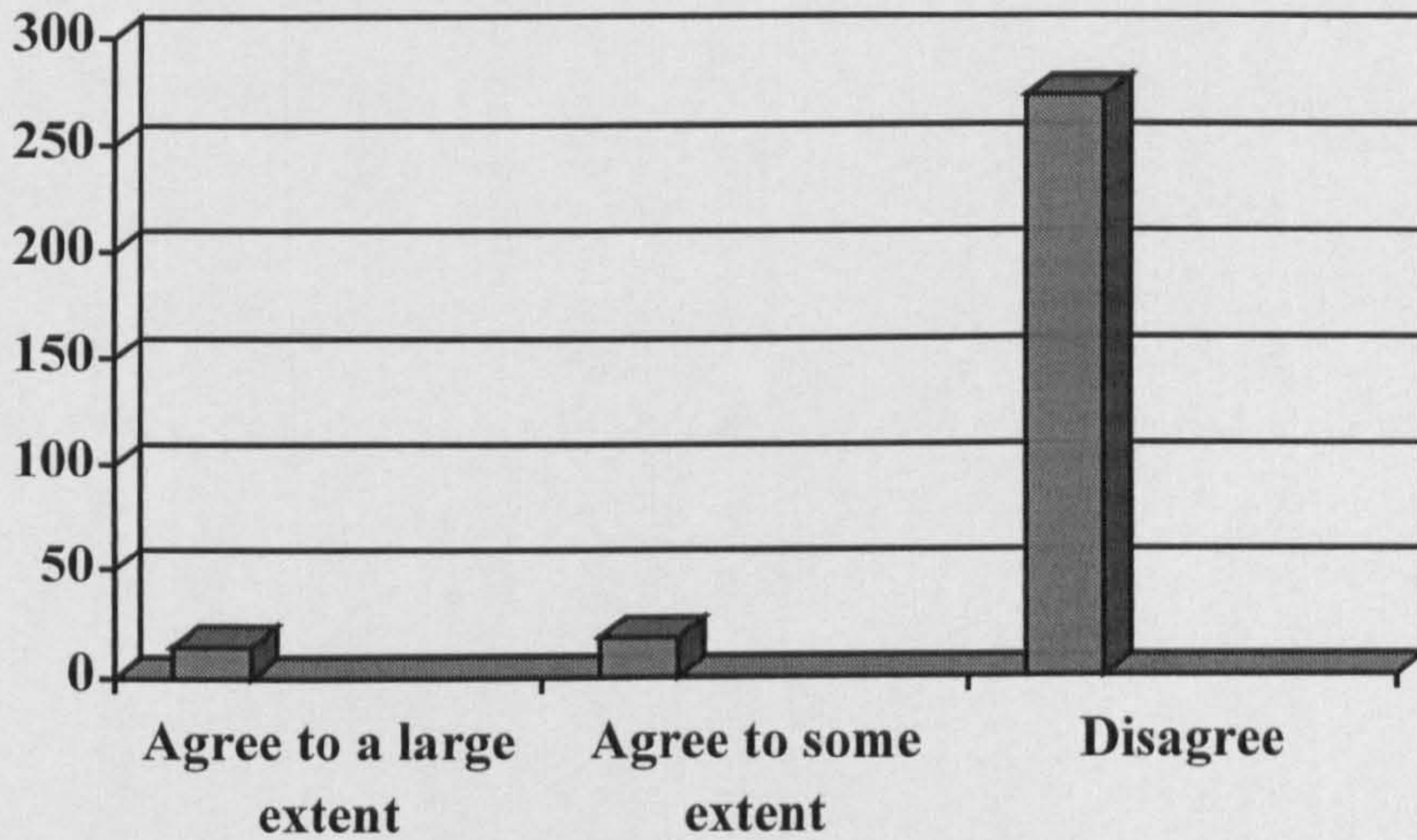
Public interest is the first consideration which the employee has to bear in mind because he has agreed to work in the service of the State. Thus, if an employee discloses a secret which may result in some loss to the government, he

should not consider this as a secret and should inform the administration in order to take corrective action. Therefore, analyzing the answers of the respondents, it is indicated that 14 employees, representing 4%, agree to a great extent that they should keep the secrets of their jobs and the employee should not disclose them, 18 employees, representing 6%, agreed to some extent, whereas 273 employees, representing 89%, believe that if this secret will make the government lose a benefit then they should be under no obligation to keep it as this will hurt the government or its administrative section.

**Figure (24) Q.36A**  
***Should disclosure of government information be prohibited ?***  
***A. If the information contravenes the Law***



**Figure (25) Q.36B**  
***Should disclosure of government information be prohibited ?***  
***B. If the disclosure affects the interest of the government .***



**7.2.2.25 Unawareness of the public employee of his rights and duties is considered as mitigating and extenuating circumstances of the disciplinary liability (see Figure 26)Q.37**

There are rights and duties the employee should fully know in order that there are no shortcomings in his duties and if he there are, he becomes accountable in spite of his ignorance of his duties. Thus, according to the law, an employee ignorant of his duties will bear the consequences of any violation he commits.

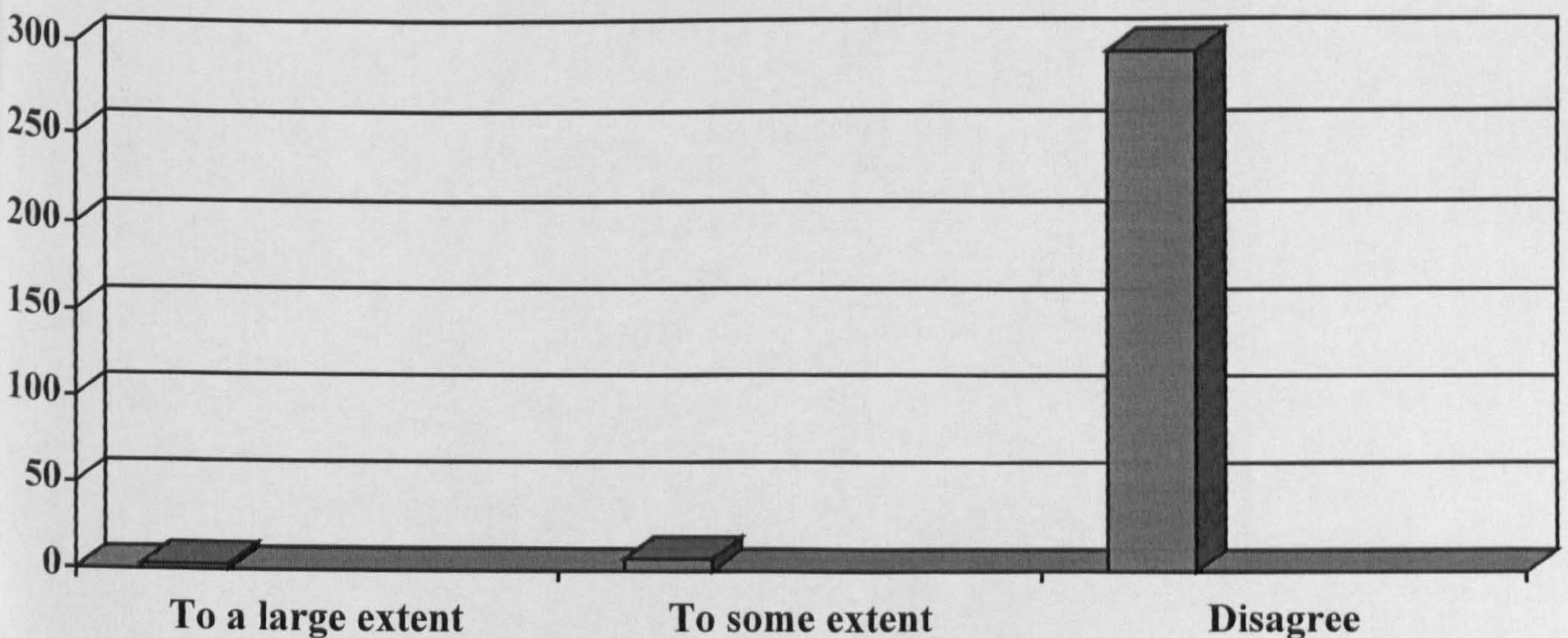
Quite often, the employee attends training seminars in his special area to help him be aware of his duties and develop his skill. However, these seminars

are limited to a small number of employees who are selected by the administration.

In answer to this question, 3 employees, representing 1%, believe that withholding information about the rights and duties of the employee should be a reason for lenient disciplinary action, whereas 7 employees, representing 2%, believe that this should be a reason for lenient action to some extent. However, the majority, 295 employees, representing 97%, believe that ignorance of the law does not relieve the employee from responsibility or disciplinary action, which should remain in full effect.

*Figure (26) Q.37*

*Do you believe ignorance of the right and duties of the employment by the employee is sufficient as a mitigating circumstance for a disciplinary action?*



**7.2.2.26 Engagement of the employee while on duty in private business exterior to the scope of duty is considered disciplinary violation (see Figure 27)Q.39**

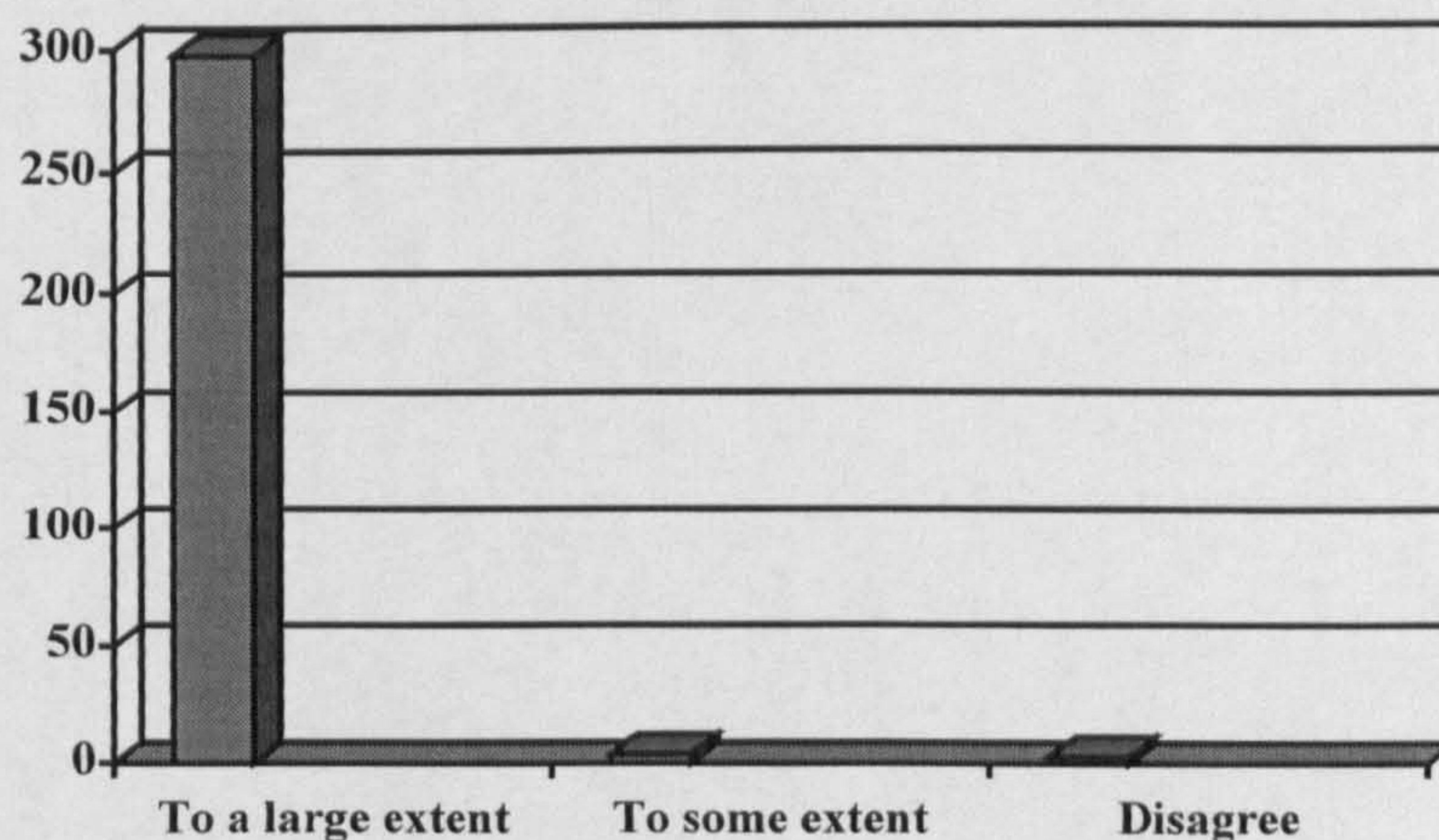
On whether employees attending to private matters outside the scope of their jobs is a violation which results in disciplinary actions, the answer indicated that 298 employees, representing 98%, agree to a great extent and 4 employees, representing 1%, only agree to some extent, while only 3 employees, representing 1%, answered that they do not believe so. Explaining the reason for this, the three employees indicated that the employee could be in an unfair situation regarding his job entitlements, a matter which may compel him to do private work on his own. This was confirmed by some employees in an interview in one of the local magazines. One of them (7) stated that "he is obliged to look for another source of income because of the freezing of the salaries and promotions which are the only way to increase his income".

This is not true to everyone, of course, as some can obtain a commercial license to help them make additional revenue. It is clear that many of the employees who are busy with outside work beyond their jobs leave the office to follow up their own business. In other cases, office hours is just a time to fill without any real productivity, consequently the employee falls into administrative violations which leads to an appearance before the board of discipline. In this respect, the law states clearly that the employee should not engage in any work outside his job, even after official working hours, without the prior approval of the minister.



It is more appropriate and more desirable that the public servant should not exploit his position for any personal interest or private business. However, we notice that this phenomenon is spreading widely in the administrative system of the state. No doubt this is going to result in grave consequences in the near future for the public service, unless the state takes precautions against it by taking measures of severe accountability against such violations. That is to say the percentage of the public position performance is drastically dropping at present. If the practise continues the gap between performance and productivity will widen and consequently the situation will worsen.

**Figure (27) Q.39**  
***Carrying out private work while on duty is a violation***



### 7.3 Analysis of the Results of the Survey

The research is based on the methodical analysis of a written list of questions put to a number employees in order to provide information for the research (questionnaire) in an endeavor to get to know the concepts and ideas of the employees. The matter requires, of necessity, logical consistency of responses and opinions in a way that enables the researcher to rely on them in making and establishing the results of his research.

The authority of the official in charge in relation to decision making needs to be approved by the majority of employees. Where the majority believe it is adequate and appropriate civil service law should be limited or restrained to some extent. The same is inconsistent with the response in relation to queries posed in relation with the safeguards of the public employee in relation to disciplinary action, whereas, the conclusions came out that the majority of the opinions confirm that they agree with the safeguards but this response although inconsistent with the one before. However, it is not confirmed to a great extent with the view that the authority of the official anchorage is extremely limited (See Figure (4) question No.2 graph 3). Nevertheless, the civil service law in the state of UAE being the subject the questionnaire particularly the provisions handling the disciplinary actions specifically article (70) whereas it provided that "The Minister shall have the authority to impose the penalties provided for in the subarticles 1, 2, 3 (1) of the previous article on the employees of the second and third grades alongside establishing his reasons therein. As for the other penalties (2) it should not be imposed save with the decision of a board of discipline as well article (107) whereas it provides that the authorised Under Secretary shall

impose any of the penalties provided for in the previous article (3) where the employee (workman) may appeal against the decision inflicting the penalty to the competent Minister within one month from the date of being notified with decision thereof - related to the cases of the employees of the Fourth Grade.

The absolute power of the presidential authority allows for the imposing of same disciplinary penalties while debarring from inflicting other penalties. To put it differently, the law constitutes some sort of severe penalty which requires accuracy and caution to avert arbitrariness in exercising authority. Subsequently may be viewed that the authority conferred by the law is adequate to some extent.( see Figure (3) question No.(2) graph No. (3)).

As the survey indicates, the authority of the manager to make decisions is limited.(Fig.3) This must be due to the fact that the authority given by the Civil Service Law is somewhat limited. On the other hand, the opinions of the majority indicate that this authority is adequate to some extent. This is inconsistent with the answer to the question about the security of the employee regarding the disciplinary decision, as the result indicates that the majority are in agreement. Although this answer does not tally with the one before, it does tally to a great extent with the assumption that the person in charge has a very limited authority.

Looking into the Civil Service Law in the state of United Arab Emirates where this survey was conducted and with reference to the articles on disciplinary action, we notice that the Law provides the administration with adequate powers in this area. For example, Article 70 states that "The minister has the authority to inflict one of the penalties specified in paragraphs 1, 2, and 3 of the previous article on the employees of the second and third grades and his

decision should be based on good reasons; other penalties should not be implemented except by a decision from the Disciplinary Council. Also, Article 107 states that "The Undersecretary has the right to inflict one of the punishments stated in the previous Article and the employee has the right to contest the decision by submitting an appeal to the minister and that should be within one month from the date he is informed about decision". This is related to employees in the fourth grade.

The Law has given the managerial authority absolute powers to apply some disciplinary punishments and has left no option for it to apply other penalties for fear of abusing such authority. Consequently, we can say that the authority granted by the law to the manager is enough, to some extent and this does tally with the answer to this question but should also tally with the other questions. This will be discussed below.

The survey has indicated that the majority of respondents stated that due to the long disciplinary procedures, the manager is not encouraged to take a disciplinary action. One of the managers has indicated that this is an obstacle in achieving the disciplinary objective.

Reviewing Article (70) referred to above indicates that there are two types of disciplinary actions which are basically related to the type of punishment. One is warning or salary deduction for a period not exceeding fifteen days for each violation but not exceeding sixty days in a year or with suspending the annual increment. If the decision is related to an employee in the second or third grade, then there is no long procedure in applying disciplinary punishment. If the employee is in fourth grade, it will be possible for the undersecretary to

apply a set of disciplinary punishments without the need to undertake any procedure. On the other hand, if the employee belongs to the first grade which is one of the highest in the country, or if the punishment to be severe, the matter requires some review and there should be no rush in the decision. This is logical and acceptable since it is compatible with the position of the employee.

Terminating the service of an employee is one of the most severe disciplinary punishments that requires some caution in order not to let the employee fall under the mercy of the administration which can deprive him from his source of income. Therefore, it is imperative to set a number of procedures to apply such punishment as described in the Law in Articles 72, 73, 75, 79 and 83.

The most noble element in the job is the employee on whom the law is relying to fulfil the public interest and provide the public service required. Should the managerial authority become stringent and able to terminate his job without control or safeguards to the employee, the job will become unstable, unreliable and this will increase the violations that will lead to a weakening and enervation of the administrative work.

In response to the question related to administrative system and whether it is more suitable to the employee in the United Arab Emirates, the majority of respondents indicated that they agree to a great extent, and this is inconsistent with the responses to the question about the disciplinary board in its present form. Whether it provides the employee with the security of fair investigation where the majority of the respondents believe that they agree to a great extent. Meanwhile, the response to the question about the disciplinary courts indicates that the majority believe that disciplinary board should be set

inside up the administrative units, and this answer conforms with the answer related to the disciplinary boards but is in contradiction with the answer related to judicial system. The logic in the judicial system depends on securing the employee's rights and such security is not achieved through disciplinary councils. The answers to the question on the disciplinary councils are also contradictory because those who have supported the disciplinary boards inside the administrative units do not see that the security is achieved in the general disciplinary board which is not formed within the administrative units(see EC No.7 Fig. 8)

What is the position of the Civil Service Law from all of that?

The Civil Service Law provides for the formation of a disciplinary board in Articles 72 and 73. Article 72 reads:" A disciplinary board shall be formed for the employees in the first grade from one of the members of the Supreme Federal Court as chairman and two members to be appointed by the Council of Ministers". Article 73 states that "a disciplinary board shall be formed for the employees in the second and third grades to be chaired by one of the judges appointed by the Ministry of Justice and a member from the personnel section to be nominated by the Civil Service Council and a member from the Ministry where the violation has taken place to be nominated by the Minister".

It is clear from the Civil Service Law that there are two types of councils: the first may have one of its members from the administrative unit where the violation has taken place and is formed under the chairmanship of a judge from the Supreme Federal Court as well as two members nominated by the Council of Ministers and this disciplinary board shall decide on disciplinary

actions against employees in the first grade. This is because that the person under investigation is an employee who is holding a high position in the State and therefore it is necessary to form a disciplinary board at the highest level in the country. Regarding the other board, the Law has stated clearly that it should include a member from the administrative unit to which the employee belongs in addition to a member from the personnel section, and this board is chaired by a judge in order to assure fairness and avoid unjust decisions. If we compare this distinction between the two boards with the respondents' answers, we observe that the answer to the question on the disciplinary board is consistent with the formation of the board related to employees in the first grade, whereas the answer about disciplinary courts is consistent with the board formed under Article 73 which is set for disciplinary actions against employees in second and third grades.

Both answers totally contradict the concept of administrative justice and indicate a lack of conformity between the results which are based on the opinions obtained from the survey.

However, the previous results about the administrative courts and the disciplinary councils are generally consistent with the results of the two questions concerning the sole authority of the manager in taking disciplinary actions where the results of the first question indicate disagreement over giving the manager the sole responsibility in applying the disciplinary punishment because such authority, if given, will not achieve justice to the employees.

The results of the second question indicate that the manager should not be given powers to tackle administrative violations in the administrative circuit. The results of these two questions contradict with the approach adopted by the

Civil Service Law in the United Arab Emirates which has given some authority to the manager to apply some disciplinary punishments.

However, I am not so much concerned to what extent the laws are in conformity with the civil service law that is to say the mass base has its view point in the law, I am concerned, however, that there should be a congruence in a way that may bring about the arrival evenly and balanced conclusions to serve the objectives of the Research.

Disagreement of the majority over giving the manager powers to tackle administrative violations in the administrative circuit is basically due to the fear of inflicting arbitrary punishments by the manager. However, if this view is accepted it may lead to the weakening and enervating of the authority of the management.

The Civil Service Law has granted a lot of authority to the management to deal with the administrative violations as stipulated in Article (66) which states that the Minister or the Undersecretary, each within his competence, has the right to suspend an employee as a precautionary measure for a period not exceeding three months should it be necessary during the investigation period, and the case of the suspended employee should be reviewed immediately by the disciplinary council. The head of an administrative utility is the key person in the entire utility and lack of his effective authority will result in a great failure in its work. So we should not let our concern regarding possible unfairness of the manager in applying the disciplinary actions a reason to withhold his authority to apply punishments for the violations committed in the utility.



The results obtained through the answers to the question regarding the need to have a close relation between the manager and his employees indicate the awareness of the respondents as to the importance of such a relation for the smooth and effective running of the utility.

Perhaps the fear of the authority of the administration in going beyond its limits in taking disciplinary decisions tallies with the answer to the question on submitting appeals against disciplinary penalties where the majority of respondents indicate they do not do so because they fear the consequences. This reluctance to submit an appeal against disciplinary penalties is also enhanced by the opinion of the majority that the Civil Service Council does not fulfil any role in achieving justice regarding the complaints of the employees.

Regarding the rights and duties we find some variation in the results. The majority agree to adhere to the duties stated in the Civil Service Law while they do not see this law inclusive of all their rights. It may be also noted that the legislator included in the Law some rather than all the duties which have to be performed by the employee. In this connection, counsel Husain Darwish/deputy director of the legal opinion and legislation department at the Ministry of Justice, UAE commented that "the duties of the public employee are numerous. However, they are stated in this law as a instance and are not exhaustive nor exclusive (8).

## NOTES-CHAPTER VII

- 1) A personal interview with an official in the Ministry of Justice during the survey.
- 2) *Al-Shurooq Magazine*, Issue No.137, dated 27/11/1994, AbuDhabi, p.48.
- 3) *Ibid.* p.44.
- 4) *Ibid.*
- 5) *Ibid.* p,46.
- 6) *Ibid.*
- 7) *Ibid.* p.45.
- 8) Hussein Darwish, *A Reference Book on Rules of Service and Civilian and Military Pensions* (In Arabic), Al-Omira Publishing Company, Abu Dhabi, 1987.

## Conclusions and Recommendations

Firstly :

From the Research it appears that there are clear features in relation to the administrative law in the State of UAE as evidenced by the instances set below :

1. Specifying a definite court to try all the administrative disputes. Pursuant to article (3) the court of first instance in the Federal capital (Abu Dhabi) to try all the administrative disputes between the union and the individuals whether the union is a plaintiff or a defendant the court may convene at any of the capitals of the Emirates referred to in Article (1) if the circumstance so demands alongside its rulings are appealed against before the capital (Abu Dhabi) court of Appeal (The Administrative Circuit).

Secondly :

This Court whether the court of First instance or the appellate one is not obligated in trying administrative disputes in applying the civil law norms

in fact it asks for inspiration from the principles and theories established by the administrative justice in the countries adopting this form of justice. This is perhaps are of the most important conclusions and recommendations arrived at by the researcher from his studying the administrative theories, legislations, field studies and looking into the comparative regulations and Laws of the AGCC.

1. Prior to 1971, the UAE had not known any specific system of public service. There was then no clear administrative structure in the Emirates. The rise of the Union in 1971 and the emergence of administrative entities signaled the evolution of the disciplinary system of Public servants.
2. The souci-economic situation in a country has a significant effect on the enactment of Laws and regulations including the Civil Service Law.
3. The duties and privileges of public servants stipulated in the UAE Civil Service Law are quite balanced.
4. There are considerable similarities between the Civil Service Laws in some G.C.C. countries viz. UAE, Kuwait and Qatar. This may be due to the similar souci-economic conditions prevalent in those countries as well as the recruitment of legal advisors at the same time in such countries from the Arab Republic of Egypt.

5. UAE Civil Courts issued numerous administrative rulings which may be considered as the cornerstones for the foundation of independent administrative courts.
6. Non-UAE public servants are employed on a temporary basis and their employment is governed by contracts defining their rights and duties. This is not, however, the case with UAE national servants.
7. The State of UAE adopted two kinds of theories - one is the administrative theory (not the contractual) and the other is the organizational theory simultaneously.
8. In spite of the fact that the courts are disposing of the administrative disputes, it is not recognizable to the position of Judicial Justice, However, the public servant in the state of UAE needs and wishes to see an independent administrative justice having its particularity and its own nature.
9. The current disciplinary boards should have a predominantly judicial membership and must be chaired by a judge. The UAE Constitution has specifically made this stipulation in respect of the formation of the Supreme Disciplinary board for the trial of Ministers and other high-ranking officials.
10. Until the formation of independent administrative courts in the state of UAE, I am of opinion that one of the circuits of the court of first

instance should be exclusively confined to the trial of administrative suits.

11. Most disciplinary decisions are currently taken by the highest levels in the public service. This has weakened the role of the immediate superior and has curtailed the authority of disciplinary boards in taking appropriate decisions against offending public servants.
12. The climate of fear created by disciplinary penalties has led many public servants in the UAE to stick to the literal implementation of the provisions of the Civil Service Law, and moreover, has discouraged them from making any attempts to understand the objectives of those provisions.
13. The administrative-judicial system is more appropriate than the present system in force in the UAE because the former provides positive and definite guarantees to the public servants.
14. The disciplinary system in the UAE is in practice applied on low-ranking public servants only. High-ranking public servants who commit administrative violations have not been referred to disciplinary boards except in very few cases which are not statistically significant.
15. Disciplinary boards lack fairness and impartiality and most of the decisions taken by such councils have been influenced by personal considerations.

16. The emplacement of disciplinary powers in the hands of the highest administrative authority has weakened the role of control as well prolonged the disciplinary proceedings. For these reasons, recourse to disciplinary actions has been considerably reduced.
17. The non-adherence, by the senior public servants to the provisions of the Civil Service Law creates a state of anxiety and instability among the low-ranking public servants as they would fear the infliction of penalties on them if they disobey their superiors' orders, even though such orders may be inconsistent with the law.
18. The inadequateness or nonexistence system of the incentives system in the UAE may be considered a major cause for the low-level performance of public servants.
19. The suspension of promotions prevents superiors from committing offending public servants to disciplinary boards because it would be unfair to inflict penalties on them while their right to promotion is not granted to.
20. The indifference shown by the immediate superior towards a public servant who has been suspended from work for investigation purposes makes the latter lose confidence in the former and this may have negative consequences on performance.

21. The number of public servants who have been committed to disciplinary boards is relatively small. This is mainly due to the lack of direct and indirect control over their work. This does not indicate by any means that the work is satisfactorily performed.
22. The weakened authority of the immediate superior shakes his confidence in the public office. It may also prompt him to start his own private business and exploit the position facilities for his personal interest.
23. The complaints made by public servants are not seriously dealt with by the Administrative authority. The latter loses its credibility and a big gap may be consequently created between the administrative superiors and the public servants entailing adverse effects on performance.
24. The formation of the UAE Civil Service Council should have been made in such a way that consolidates its authority so that it can perform its duties efficiently.
25. (The unawareness of ) The Public Servant 's lack of awareness of his rights and duties may sometimes lead him to commit certain administrative violations.
26. Ignorance of the Legal proceedings may discourage the public servant from submitting grievances against the disciplinary penalties inflicted upon him.



27. Participation of the public servants in taking disciplinary decisions may have a positive effect on reducing the number of administrative violations.
28. The hierarchical structure of the public service has made it possible for some public servants to evade responsibility. It has also turned the public servant into a kind of machine that is programmed to produce mechanical work with little room for development and creativity.
29. The Administrative executive is the superior authority; in this capacity he controls and supervises the good running of the work in as much as his relations with the employees is built upon a friendly and understanding integration of spirit as far as the percentage of violations is minimized. Thus, the high productivity of good performance, that is to say the administration, is nothing but an instrument for guidance and follow-up, accordingly keeping the employees under its sway.
30. The Civil Service Law should deal, clearly and adequately, with all matters pertaining to the rights and duties of the public servants. Vagueness or inadequacy of the provisions of the said Law may have negative consequences on performance as well being conducive to administrative violations.
31. Following the elapse of a quarter of a century since the issuance of the UAE Civil Service Law, public servants are craving for the

introduction of major amendments to the Law. Such amendments should reflect the great economic, social and legal developments which the country has witnessed throughout those years. The amendments will have to specifically address the various theoretical and practical issues of administration which have arisen over that period.

32. The competence of handling administrative violations in the UAE Civil Service law has been exclusively confined to the highest administrative officials in a government utility. As a result, public servants have become apprehensive of the administrative authority and they have been left with no choice except to obey their superiors' orders, as is the case in a military establishment. It would be much more appropriate if administrative violations were handled by disciplinary boards over which administrative officials had no authority whatsoever.

## BIBLIOGRAPHY

### I. Books

- Abdul Barr, A., (1989) Civic Responsibility of Government and Public Sector Employees. Dar Al-Nahda Al-Arabia Publishers.
- Abdul Hadi, B., (1983) Studies of Research in Public Administration and Admin. Law, 1483 Hijra, Hittin Printing Press, Al-Furgan Publishing & Distribution.
- Afifi, M.,(1990 ) The Philosophy of Disciplinary Punishment (in Arabic).
- Afifi, M.M.,(1991) Fundamentals and Principles of Public Administration. Theoretical and Applied Study of Admin. Problems in the UAE of Foreign Countries, Al-Bayan Commercial Printers, Dubai.
- Ajailah, A.I. (1980 ) Obedience to Superiors and its extent in Public Service Administratively, Disciplinary, Criminally and Civilly, The World of Books Publishers.
- Al-Baharnah, H., (1975) *Arabian States, Their Legal and Political Status and their International Problems*, (2<sup>nd</sup> edn.), Beirut.
- Al-Bandari, A.,(1972) Disciplinary and Criminal Accountability of Civil Servants in the State and in the Public Sector, Al-Alamia Printing, Cairo.
- Al-Fairzbadi, Al-Qamoos Al-Muheet (The Comprehensive Dictionary).
- Al-Hamadani, A.H., (1966) *Dawlat Al-Emarat Al-Arabeiah Al-Mottaheda, Nashatiha Wa Tataworeha*, (The UAE, its formation and development), Maktabat Al-Mulla, Al-Kuwait,.
- Al-Helow, M.,(1989) Ragib, *Organization of Administration Authority and Public Employment in the United Arab Emirates a comparative study*. Al-Bayan Commercial Publisher.
- Al-Hilou, M.,(1980) The Kuwaiti Admin. And Civil Law, Dhat al-Salasil, Publishers Al-Hayat Printing Press, Beirut.,

- Al-Hilou, M.,(1985) Administrative Jurisprudence, Al-Dar Aljmia Printing.
- Al-Itoum, M.I., (1984) Disciplinary Accountability of a Public Servant : Comparative Study of Disciplinary Codes in Jordan, Syria, Egypt and France, 1404 Hyrah, Al-Shary Printing Press, Beirut.
- Al-Kabisi, A.(1982) *"The Public Administration and Development in the U.A.E."*, First Edition, Al-Khaleej Publisher, Sharjah.
- Al-Khalili R.I. (1967) Civic and Criminal Disobedience Accountability in Socialist Societies, Al-Alamiyah Printing, Cairo.
- Al-Malt, M.J., (1967) Public Servants' Moral Responsibility.
- Al-Naqub, A., (1984) The General Theory of Accountability Emanating from Personal Acts Diwan Al-Matbu' at Al-Jamiyya, Algiers.
- Al-Sabah, A., (1979) *Sukkan Dawlat Al-Emarat Al-Arabeiah Al-Mottaheda, (Population of the UAE), Matbaat Al-Mulla, Al-Kuwait.*
- Al Sarook, M.(1985) The Disciplinary Authority in the Public Office, In Arabia.
- Al-Salam, T.,(1971) Obstructs To Criminal Accountability, Arab Research Centre.
- Al-Shanj, A., (1987) Disciplinary Codes and their Relationship with other Penal Codes.
- Al Sheikhli, A.(1979) Disciplinary Penalties of Public Servants in Iraq law, Cairo University
- Al-Shawi, T.M.,(1954) Lectures on Criminal Codes in the Arab Countries. Arab World Studies Institute, Arab League. Dar Al-Hana Printing.
- Al-Sherif, A.,(1988) Disciplinary Codes and their relationship with other penal systems, Dar Al-Nahdi Al-Arabia Publishers. Cairo Printing and University Book Publishers.

- Al-Tamawi, S.,(1971) Administration Jurisdiction Vol.3 : Discipline, Al-Fikr al-Arabic Publishers.
- Asfour, M., (1963) A General Theory of Disciplinary Action. Public Administrative System.
- Badran, M. (1990) Public Service : Examining the Fundamental Principles of Admin. Law and Public Administration, Parts 1 & 2, Dar Al-Nahda, Al-Arabiya Publishers.
- Barakat, O.F. (1987) Disciplinary Authority. Al-Alameeya Publisher
- Basheer, J.M., (1986) Non-Responsibility for Criminal Accountability in the Islamic Sharia and Man-made Laws. The Public House for Publishing and Distribution, First Edition, 1986. National Bookstone.
- Basheer, J.M.,(1986) Causes Relieving of Criminal Accountability in Islamic Sharia and Positive Law. Dar al-kutub al-Wataniyya, Libya.
- Bashir, E., (1982) *Dawlat Al-Emarat Al-Arabeiah Al-Mottaheda, Masirat Al-Ettehad wa Mostaqbalehi*, (UAE, route of unity and its future), Dar Al-Ketab Al-Arabi, Beirut, (In Arabic).
- Basyouni, A., (1992) Administrative Law, Al-Dar Al-Jamia Printing.
- Bateekh R.M. (1988) *The Local Administration in the Federation Systems : An Analytical Study and Application in the UAE*. The Economist Publisher, Dubai.
- Bateekh, R.M. and Ali, S.,(1990) *Administrative Law. In the U.A.E. A comparative study between Civil systems and Islamic Law*, Vol.1, Al-Nakheel Publisher, Ras Al-Khaimah.
- Brown and Garner (1993) French Administrative Law, 3<sup>rd</sup> ed., 1993.
- Clauad, M., (1975) *Zayed Falcon of the Desert*, Abu Dhabi : Ministry of Information.
- Darwish, H. (1987) A Reference Book on Rules of Service and Civilian and Military Pensions (In Arabic) Al-Omira Publishing company, Abu Dhabi.
- David, E.L., (1978) *The Persian Gulf*, West Voew press, Bulder, Colorado.

- Fahim, A., (1968) General Theory of Criminal Accountability in Crimes Committed and affecting Public Property - Baghdad Criminal Law, Part 1. Haddad Press, Basra, Iraq.
- George, L., (1980) *The Middle East in World Affairs* (4<sup>th</sup> edn.), Cornel University Press, Ithaca and London.
- Hassan, A., (1964) Discipline in Public Service, Cairo.
- Heard-Bey, F.,(1982) From Trucial States to United Arab Emirates, Longman, London and New York.
- Hogg, (1989) Liability of the Crown, 2<sup>nd</sup> ed.,
- Husni, M.N., (1948) Penal Code Interpreted.
- Ibrahim,A.M.,(1978) Interpreting the Civil Service System of the UAE, Printed by Ministry of Information and Culture, Distributed by Information Dept., U.A.E.
- Ismail, K., (1988) Encyclopedia of Discipline, Modern Press.
- Jaafar, M.A. (1982) Principles of Public Service and their Applications in the Algerian Legislation, Morante Brothers Press.
- Mergani S. (n.d.) Appearance of Administrative Organization, Al-Qods Bookshop, Al-Ain, UAE.
- Merri Report (1985) '*United Arab Emirates*', Croom Helm and the Middle East Research Institute, University of Pennsylvania, (U.S.A.).
- Molid, A., (1979) Kuwaiti Fatwa and Legislation : A compendium of Principles - Vol.3
- Morcos, S., (1971) Civil Accountability in Arab countries Technologies, Part 1, General Rules, Arab Studies and Research Institute, Arab League, 2<sup>nd</sup> Edition, Al-Jabalawi Press.
- Othman, M., (1971) Criminal Conduct Calling for Discipline, Dar al-Fikr-Arabi, Cairo.
- Qasim, J.Z., (1978) Emarat Qadimah wa Dowal Haditha, *Dawlat Al-Emarat, Drasah Mashiah Shamelah*, (The Emirates in the past and new countries, the UAE, a comprehensive survey study), Maahad Al-

- Bohooth wa Al-Derasat Al-Arabiah, Cairo, (In Arabic).
- Rashid, A., (1960) Notes on Criminal Code.
- Rendym W., (1987) *Gulf Trade and Finance*, Graham & Tratmon, London.
- Rosmarie, S.Z., (1978) *The Origin of the United Arab Emirates*, The Macmillan Press Ltd., London.
- Sadiq, S., (1985) Decisions and Provisions of Discipline (in Arabic).
- Shaheen, M
- Tabtabai, A. (1983) Qanun Al-Khidma, Al-Maadaniya, Al-Kuwaiti, Al Jadid, Dirasa Tatbiqiyya Liqararat Majlis al-Khidma, al-Madaniyya wa fatawi Diwan Al-Muwazzafin wa Indarat Al-Fatwa wat - Tashri (The New Kuwaiti civil service law : An applied study of the Decisions of the Civil Service Council and Legal Opinions - Fatawi - of the Personnel Department and the Department of Legal Opinions and Legislations ) Matba'at Shat Al-Salasil, Kuwait University.
- The UAE Ministry of Information and Culture, (1991) *Dawlat Al-Emarat Al-Arabeiah Al-Motahedah, Haqaeq wa Arqam*, (UAE, Facts and Numbers), Wazarat Al-Ealam wa Al-Thaqafah, Dar Al-Furair Letebaah wa Al-Nasher, Dubai, Al-Emarat Al-Arabeiah Al-Motaheda.
- Viche, G., (1948) La Sanction Professionnelle, These Montpellier
- Wade and Bradley (1993) Constitutional and Administrative Law.
- Yakan, Z., (1973 ) Administrative Law. Al-Asriya Publishers, Beirut.
- Zaki, I., (1986) Employees Appointments, Promotions and Discipline. Cairo Publisher.
- Zuhdi, A.H., (1970) Discipline in the Public Services Phd Dissertation.

## II. Journals and Periodicals

1. *The UAE Official Gazette* No.2, March 1992.
2. *Gulf News*, 23 January 1995, U.A.E.
3. Hervert, JL, International Relations of Arabia, *The Middle East Journal*, January 1974.
4. *Al-Khaleej*, A U.A.E. Arabic Newspaper, August 5, 1990.
5. *Al-Khaleej*, A U.A.E. Arabic Newspaper, January 14, 1996.
6. *Al-Ettihad*, a U.A.E. Arabic Newspaper, March 11, 1994.
7. *Official Journal of Ras Al-Khaimah*, No.7, March 1, 1974.
8. Dubai Government, Qaanoon Tashkil Mahkamat Al-Tamyeex Dubai - Qanoon raqam 1 of 1988 (Dubai Supreme Court Institution Law No.1 of 1980) *Majalat Al-qada Wa Al Tashreea*, (Journal of Judiciary and Legislation), Al Adad Al-Awwal, January 1992, (In Arabic).
9. Habeich, F. : "Public Service and Personnel Management" Arab Organisation of Admin. Sciences. *Arab League. Issue No. 262*.
10. Habeich F, Arab Organisation and Administrative Sciences, Civil Servants : Right and Responsibilities, 1982, Issue No. 267.
11. *Al-Shurooq Magazine*, Issue No. 137, dated 27 November 1994, Abu Dhabi.



### **III. Thesis and Dissertations**

1. Abdulla, M.I.M. *Advanced Means of preparing the public budget and their utilisation in modernising the public budget in the United Arab Emirates.* "Ph.D. Thesis EXERTER University, 1991.
2. Al Hosani, *a Constitutional and judicial organisation in the U.A.E.*, Ph.D. thesis, EXERTER University, 1989.

## **APPENDIX (1)**

### **Questionnaire to Public Servants of the United Arab**

#### **Emirates**

Dear Sir/Madam,

I am a researcher at the University of Newcastle upon Tyne. My research is about the legal rights of public servants in countries of the Gulf Co-operation Council. I would be very grateful if you could spare some time to help me by answering certain questions. I have enclosed a questionnaire covering the pertinent topical areas. 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, I would not mind if you prefer to skip some of the questions for reasons best known to you. One thing I will certainly ask of you is to include your comments where appropriate; this could be done preferably at the bottom of the questionnaire. I would be delighted to receive your contribution by 15/6/1995.

I look forward to hearing from you soon.

Sincerely Yours,

Ahmed Ebrahim Al-Hosani

1. Respondent Age                    25-30                                    30-40                                    40-55

2. Qualifications

Postgraduate

University

Below university

3. Position

4. Nationality

5. Tenure as Public Servant or in the Private Sector

1-5 years

5-10 years

More than 10 years

6. Where are you working at?

Federal Government

Local Government

7. The extent of your authority in taking disciplinary action against your subordinates:

Very restricted

Restricted

Absolute

8. Do you think that the Civil Service Law gives sufficient authority in taking the disciplinary action?

Yes

Sufficient

To some extent

No

9. An employee believes that he is safe in conducting his duties from any arbitrary disciplinary actions under the present Civil Service Law?

Fully concur                      Concur                      To some extent                      Disagree

10. The chapter on disciplinary action is invoked more than the other chapters in the Civil Service Law such as promotion, incentives, etc.

Fully concur                      Concur                      To some extent                      Disagree

11. The lengthy and complex proceedings and rarity of the disciplinary actions discourage the manager from taking such decisions?

Fully concur                      Concur                      To some extent                      Disagree

12. Suspension of promotions for a long period discourages the manager from inflicting penalties.

Fully concur                      Concur                      To some extent                      Disagree

13. The Judicial system is more appropriate to the UAE society than the administrative system whereas the former furnishes the employee with more safeguards?

Fully concur                      Concur                      To some extent                      Disagree

14. Most of the disciplinary actions are imposed on low- ranking employees whereas the high -ranking employees could not be reached?

Fully concur                      Concur                      To some extent                      Disagree

15. Do you think that the present formation of the boards of discipline as per the Civil Service Law furnish sufficient safeguards to the employee?

Fully concur                      Concur                      To some extent                      Disagree

16. Have you ever been referred to a board of discipline? Yes      No      If Yes:

1-2

2-4

4-more

17. Do you believe that if the penalties were conferred only by the manager with the exclusion of board of disciplines will this lead to the promotion of the work?

To a large extent

To some extent

No

18. To what extent does the manager enforce the Civil Service Law regarding the disciplinary aspect?

To a large extent

To some extent

None

19. Do you think that the Civil Service Law does justice?

Yes

To a large extent

To some extent

No

20. The Civil Service Council is competent to look at the employee's complaints. To what extent do you think that this ensures the required equity?

To a large extent

To some extent

I don't believe so

21 Why doesn't an employee generally complain against the disciplinary actions inflicted on him?

- Fear from his manager
- He does not know the procedure to be followed in this connection
- Due to his indifference

22. Do you prefer that the administrative presidential authority shall have an absolute say in taking the disciplinary action?

Fully concur                      Concur                      To some extent                      Disagree

23. Do you believe that the presidential authority will take arbitrary decisions if it is entrusted with absolute power?

To a large extent                      To some extent                      In some cases

24. What are the safeguards that you think sufficient to minimize the percentage of the administrative violations?

- Participation in taking decisions in the work field.
- Linking the employee in all the proceedings with the presidential authority.

25. What is the limit of the obedience that you think sufficient for the efficiency of the work and minimising the percentage of violations?

1st. To obey the orders and instructions even though the same is contrary to the Law.

2nd. To obey the orders and instructions within the prescribed Law.

3rd. To obey the orders and instructions even though the same leads to the commission of a criminal offence.

26. Do you think that if the manager maintains good ties and human relationships with his subordinates, this will contribute in minimising the percentage of disciplinary offences?

Fully concur

To a large extent

To some extent

27. Do you think that the requirements of the Civil Service Law are sufficient?

Completely

To some extent

No

28. What is the relation of the legislations issued by the State other than those regulating the Civil Service to the regulation of a public officer?

Close relationship

Has nothing to do with

Related to some extent

29. The Civil Service Law is the legislation that states and organises the employee's affairs. Does it cover the requirements of the employee and the employment or is there any deficiency?

If the answer is in the affirmative, what are the aspects of the deficiency in your opinion? (extend your opinion, if you like)

30. The Civil Service Law states the duties of the employee. Are these duties proportional with the requirements of employment?

Agree to large extent

To some extent

Disagree

Do the duties provided for in the Civil Service Law cover the employee's human aspect and not only the employment aspect?

Yes

No

31. The Civil Service Law provides for the rights of the employee as explained in several Articles of the Law. Do you think that those Articles are sufficient?

Yes

No

If the answer is in the negative, what are the rights, in your opinion, which are overlooked?

To what extent are these rights related to the employee humanely?

To a large extent

To some extent

32. Many Changes have occurred since the issuance of the Civil Service Law in 1973.

To what extent are those changes taken into consideration by the legislator?

To a large extent

To some extent

Not affected

33. The employee's violation of his duties entails responsibility viz-a-viz the administration. Do you think that the direct manager should have powers in putting those violation right?

No

To a large extent

To some extent



Which of these three systems, in your opinion would achieve justice and equity.

One) Boards of discipline in the administrative unit

Two) Boards of discipline in the Civil Service Council

Three) Courts of discipline

34. A disciplinary action has ends and aims. Do you think that these aims differ in accordance with the type of penalty?

Concur

Disagree

35. The multiplicity of penalties or disciplinary actions is meant to relate the penalty to the type and the offence. Do you believe that this is the case?

Yes

No

36. Should disclosure of government information be prohibited?

A. If the information contravenes the law

To a large extent

To some extent

Disagree

B. If the disclosure affects the interest of the government

To a large extent

To some extent

Disagree

37. Do you believe ignorance of the rights and duties of the employment by the employee is sufficient as a mitigating circumstance for a disciplinary action?

To a large extent

To some extent

Disagree

38. If the employee is keeping himself busy with matters outside the scope of his assignment, is this, in your opinion, a cause in increasing disciplinary offences?

To a large extent

To some extent

Disagree

39. Carrying out private work while on duty a violation.

To a large extent

To some extent

Disagree

40. What are your comments on this questionnaire (if any)?

## APPENDIX (2)

### Federal Law No. 8 for the Year 1973 Concerning the Civil Service in the Federal Government and Amended Laws

We, Zayed bin Sultan Al Nahyan, President of the United Arab Emirates  
Following the perusal of the Provisional Constitution and Law No.4 of 1972  
concerning the Civil Service of the public servants of the state of the United  
Arab Emirates,

And on the basis of the submission of the Civil Service Council,

And following the approval of the Council of Ministers and the Federal  
National Council,

And following the sanction of the Supreme Council of the Union

Issue the following Law :

## PART ONE

### Scope of Implementation of the Law and Job Categories

#### **Article (1)**

The provisions of this Law shall be applicable to all public servants and low-grade employees of the United Arab Emirates whose salaries are paid out of the general budget with the exception of categories that are subject to specific laws or regulations in accordance with the stipulations thereof.

#### **Article (2)**

The following words shall have the meanings indicated against them unless otherwise stated:

**Public Servant** : Any person appointed in one of the higher, high or medium jobs mentioned in the table enclosed herewith.

**Low Grade Employee** : Any person appointed in one of the fourth - cycle jobs mentioned in the table enclosed herewith.

**(Competent Minister** : The highest official in a Ministry in charge of all matters pertaining to the public servants and Low-grade employees in the Ministry under the provisions of this Law)

**(Public Service Positions** : The totality of jobs and scales approved in the Budget Law)

**Salary** : The basic salary unless otherwise stated.

### **Article (3)**

Revoked by Article 7 of Federal Law No. 5 of 1978

### **Article (4)**

Permanent jobs shall be classified, as indicated in the table enclosed herewith into the following four categories:

**Higher Jobs** : They include the job of the Under Secretary and the first-cycle jobs.

**High Jobs** : The second-cycle jobs.

Medium Jobs : The third -cycle jobs.

Jobs of Low-Grade Employees : The fourth-cycle jobs.

The second-cycle jobs shall be divided into two types. Technical and Administrative. The third-cycle jobs shall be divided into two types : Technical and Clerical.

#### **Article (5)**

Revoked by Article 7 of Federal law No.5 of 1978

#### **Article (6)**

The numbers, types, cycles and scales of jobs in each Ministry shall be defined in the budget. The number of public servants or low-grade employees appointed in any scale may not be exceed the number of jobs allocated to the Ministry.

## **PART TWO**

### **Public Servants**

#### **Chapter One - Appointment**

##### **Article (7)**

Appointment in jobs of the first scale of the first cycle and above shall be made by a decree on the basis of a proposal of the competent Minister and the approval of the Council of Ministers.

Appointment in jobs of the second scale of the first cycle shall be made by a decision of the Council of Ministers on the basis of a proposal of the competent Minister.

Appointment in jobs of the second and third cycles shall be made by the competent Minister following the approval of the Civil Service Council. The Council's decision shall be issued not later than four weeks from the date of submission of the nomination documents, duly completed, to the personnel department. The failure of the Civil Service Council to reply to the Ministry concerned within the specified period shall be considered as approval of the Council on the nominations submitted thereto. The provisions of this Article

shall be applicable in the appointment of non-citizens with the exception of public servants in the first scale of the first cycle whose appointment shall be made by a decision of the Council of Ministers on the basis of a proposal of the competent Minister.

### **Article (8)**

Any person appointed in one of the jobs mentioned in Article (7) above should fulfill the following conditions:

- (a) That he is a UAE citizen. In the event of the non-availability of a UAE citizen applying for the job priority shall then given to citizens of Arab countries.
- (b) That he has a good reputation.
- (c) That he has not been sentenced to a detective penalty in a crime demaining of honor or integrity unless he has been pardoned by the competent authorities or he has been rehabilitated in accordance with the law.



- (d) That he has not been dismissed from work by a court ruling or a disciplinary decision unless at least four years have elapsed since the issue of the said ruling or decision.
- (e) That he is not less than eighteen years old. Age shall be confirmed by a birth certificate or an official letter or otherwise defined by a competent medical board whose decision shall be final.
- (f) That he has obtained the academic qualifications necessary for filling the post.
- (g) That he is medically fit for the job as confirmed by a competent medical board. Public servants appointed by decrees shall be exempted from this condition.

Conditions of medical fitness shall be defined by a decision of the Civil Service Council following consultation with the Ministry of Health. A person applying for a job may be exempted from the condition of medical fitness by a decision of the competent Minister following consultation with the Civil Service Council. The said Council shall specify appropriate means for selecting the best candidates.

## **Article (9)**

Any person appointed in a Public office should have obtained the following qualifications:

- (a) A University Degree - or an equivalent thereof - in an area of study appropriate to the job. This shall apply to jobs of the first and second cycles.
  
- (b) The secondary education certificate - or an equivalent thereof - in an area of study appropriate to the job. This shall apply to the jobs of the third cycle.

A UAE citizen may be appointed in a job at the third or fourth scale of the third cycle if he has obtained a qualification below the secondary education certificate in an area of study appropriate to the job.

A UAE citizen may be also exempted, by a decision of the Civil Service Council, from the condition of academic qualification if he has successfully performed work, for at least two years, identical to the work required in the job for which he is nominated providing he submits a confirmation thereof.

### **Article (10)**

The academic qualifications mentioned in Article (9) above shall be subject to equivalence by a decision of the Minister of Education on the basis of a recommendation of a competent committee constituted by the said Minister for this purpose.

### **Article (11)**

A public servant appointed in a position shall be granted the first grade of the scale in accordance with the table enclosed herewith.

### **Article (12)**

The authority in charge of appointment may grant the public servant whose years of experience exceed those required for the job one or more allowances which shall be added to the first grade of his scale provided that his salary does not exceed the \_\_\_\_\_ of the scale.

### **Article (13)**

Vacancies shall be advertised. An advertisement shall include information regarding the job being advertised and the conditions of applying for the job. A public servant who has abandoned a job may be re-appointed in the same job at the same scale and salary provided that the period of abandonment of the job does not exceed five years and that he has not been dismissed from work by a court ruling or a disciplinary decision. The said public servant may be exceptionally re-appointed, following the approval of the authority in charge of appointment, in a scale than his previous one if he has fulfilled the conditions specified in Article (8) of this Law and he has acquired experience in a private job which he may utilize in his new public office. However, the said public servant may not, in this case precede his colleagues in scale, salary or seniority.

#### **Article (14)**

A public servant appointed in a job for the first time shall be put under probation for a period of six months from the date of appointment during which his service may be terminated if he is found unfit for the job, otherwise he is instated in the said job and the probation period is included in his service.

The provisions of this Article shall not apply to those appointed in jobs of the first cycle.

### **Article (15)**

Non - UAE citizens may be appointed in permanent jobs on a temporary basis and shall be subject to the conditions stipulated in the aforementioned articles. The appointment of non-UAE citizens shall be made by contracts in accordance with the rules and stipulations laid down by the Council of Ministers on the basis of a proposal of the Civil Service Council.

### **Article (16)**

A public servant shall be entitled to his salary from the date of his commencement of work. However, a public servant seconded from an Arab or a foreign government or an international organization shall be entitled to his salary from the date of his departure from his original site of work to the UAE provided that the period of travel does not exceed three days.

No person may official work in a Ministry or a government office prior to the issuance of the decision of his appointment by the competent authority.

## **CHAPTER TWO**

### **The Civil Service Council**

#### **Article (17)**

The Council of Ministers shall issue a decision constituting a council called ‘The Civil Service Council’ headed by a Minister and includes seven members selected from administrative, financial and legal sectors and whose scales are not below the first scale of the first cycle. A representative of the Personnel Department and another one of the Ministry of Finance shall be included in the membership of the said Council.

The said Council shall aim at developing the Civil Service, raising productivity, achieving justice in the treatment of public servants and employees and monitoring the performance of executive organs as well as discovering any wrong doing committee on the administrative organ carrying out an investigation in the said wrong doing and make proposals that would ensure their non-repetition in the future.

#### **Article (18)**

The Civil Service Council shall be charged with the following duties and responsibilities:

- (a) To propose draft laws and regulations concerning the public office and give opinions on proposals made by other bodies relating to the public office prior to their approval.
- (b) To supervise the implementation of employment laws and regulations and the interpretation thereof.
- (c) To propose regulations concerning the selection of the best candidates for filling vacancies and the determination of academic qualifications required for the said vacancies.
- (d) To propose regulations concerning the training of public servants and supervise the implementation thereof in order to ensure raising the standard of the public service and the smooth running of work in government utilities.
- (e) To propose regulations concerning the inspection and follow-up of work in government utilities via the Personnel Department in order to ensure a good performance of the administrative organ.

- (f) To propose the policy relating to wages and salaries and determine the number of jobs and scales according to work requirements.
- (g) To propose regulations concerning the allowances as well as the health and social services of public servants and employees and the conditions thereof.
- (h) To look into the complaints and grievances of public servants in respect of their jobs and take appropriate decisions.
- (i) To perform any other duties entrusted to the Council in accordance with specific laws or regulations.

### **Article (19)**

In order to carry out the duties falling within the competence, the Civil Service Council may deputize one or more public servants to conduct research in a certain Ministry. The said public servants are entitled, with the consent of the Competent Minister, to look into records and documents and demand information which they deem necessary for their work.



### **Article (20)**

The Civil Service Council shall submit an annual report to the Council of Ministers concerning the implementation of its duties including its remarks on the performance of the administrative organ and its proposals for developing the said organ.

### **Article (21)**

The Personnel Department shall perform the following duties and responsibilities:

- (a) To assist the Civil Service Council in implementing its duties and prepare research and information requested by the said council.
- (b) To participate, alongwith the Ministry of Finance and the respective ministries in revising draft budgets and allocations of ministries in respect of jobs and scales as well as salaries and allowances of public servants and employees and give opinions on the same prior to their approval by the competent authorities.

- (c) To keep the records needed by the Civil Service Council and follow up the implementation of the decisions of the said Council by various Ministries.
- (d) To perform any other duties entrusted to the Personnel Department in accordance with this law or any other law.

### **Article (21-A)**

A committee for Personnel Affairs shall be constituted, by a decision of the competent Minister, in each Ministry or Council. The said committee shall comprise at least three senior public servants in the Ministry or Council. The Head of Personnel Affairs or his deputy shall be the Secretary to the said committee but shall not have the right to vote.

The said committee shall be charged with looking into all appointments (except those of the first cycle) as well as the transfers, promotions and allowances of the public servants of the second and third cycles in addition to any other matters referred to the said committee by the Competent Minister concerning the said public servants.

## **Article (21-B)**

All ministries shall provide the Personnel Department with a copy of the decisions issued by the said ministries regarding their public servants and employees within two weeks from the date of issue of the said decisions.

## **CHAPTER THREE**

### **Reports on Public Servants**

#### **Article (22)**

An annual report shall be submitted, in January, on the work and conduct of each public servant in the second and third cycles during the previous year. The said report shall be written on the form prepared by the Personnel Department.

#### **Article (23)**

The annual report on a public servant shall be submitted by the immediate superior to the one higher in rank for comments. The said report shall be then submitted to the competent Under Secretary for approval. The level of performance shall be assessed by the grades, 'excellent', 'good', 'satisfactory' and 'weak'.

### **Article (24)**

A report on a public servant seconded or deputized for more than six months shall be submitted by the government utility to which the said public servant has been recorded or deputized.

A report on a public servant who has been awarded a scholarship shall be submitted by the scholarships bureau.

As for a public servant who has gone on sick leave for more than six months in a year, the last annual report on the said public servant shall be considered. However, if the grade 'weak' was recorded on the last report on the said public servant, the provisions of Article (27) shall not be enforced during his illness.

### **Article (25)**

A public servant whose performance has been assessed as 'weak' shall be notified of the aspects of weakness in his work. The said public servant may submit a grievance to the competent Minister within thirty days from the submission of the said report. The decision of the competent Minister on this matter shall be final.

### **Article (26)**

The public servant whose performance has been assessed as 'weak' shall be deprived from the first periodic allowance to which he is entitled. If the time of the periodic allowance has become due prior to the issue of a decision regarding the grievance submitted by the public servant according to Article (25) above, the granting of the said periodic allowance shall be suspended until the said decision is issued.

### **Article (27)**

The case of a public servant whose performance is assessed as 'weak' in two consecutive reports shall be referred to the competent Minister to take the appropriate decision on the basis of a proposal submitted by the Personnel Affairs Committee in the Ministry concerned.

## **CHAPTER FOUR**

### **Promotions and Allowances of Public Servants**

#### **Chapter (28)**

A public servant may be only promoted to a vacant position of the same type of job he occupies (technical, administrative or clerical). The said public servant should fulfill the conditions for filling the vacant position. A promotion of a public servant shall be made to the scale next to his present one. However, a UAE public servant or employee may be promoted to a job higher by more than a scale above his present one in a position that has become vacant due to resignation, termination of service or death or in a new position provided that the said public servant fulfills the conditions of the said position. The said promotion shall not be repeated during the period of service of the said public servant and shall not be made to more than these consecutive scales.

#### **Article (29)**

A promotion may not be made prior to the elapse of the period of time prescribed for the promotion as indicated on the table enclosed herewith. However, the Council of Ministers, on the basis of a recommendation of the

Civil Service Council, may drop the condition of duration of time for the sake of the public good.

### **Article (30)**

Public servants shall be arranged in their respective scales according to seniority. In the event of the appointment of two or more public servants in the same scale, seniority should be given to the one with the highest qualification. If the said public servants hold the same qualifications, seniority should be given to the one who graduated earlier followed by the oldest.

### **Article (31)**

A promotion shall be made according to seniority in the previous scale. However, promotions may be made on grounds of competence provided that the said promotions do not exceed 25% of the vacant positions in the scales of the second and third cycles. All promotions to the first cycle positions shall be made on grounds of competence. In the event of two or more public servants who are equally competent, seniority should be taken into consideration in the promotion of the said public servants.

A public servant whose performance is assessed as 'weak' in the annual report may not be promoted in the year in which the said report has been submitted.

### **Article (32)**

A promotion shall be made by a decision of the competent authority following the completion of the necessary procedures. A promotion shall come into force from the date of issue of the decision on the said promotion and shall not have a retroactive effect. The promoted public servant shall be granted the first grade of the scale to which he has been promoted or one of the allowance of the said scale, whichever is higher, starting from the first day of the month that follows the issue of the promotion decision.

### **Article (33)**

A public servant shall be granted a periodic allowance in accordance with the regulations in force and the categories specified in the table enclosed herewith and with due consideration of the provisions of Article (26) mentioned above.



A periodic allowance shall be due following the elapse of a year from the date of appointment or the date of granting the previous periodic allowance.

A periodic allowance shall not exceed the final grade of the present scale of a public servant. If the dates of a promotion and a periodic allowance coincide, both shall be granted to the public servant. Periodic allowances shall be granted by a decision of the competent Minister on the basis of the submission of the Personnel Affairs Committee in the Ministry concerned.

#### **Article (34)**

The competent Minister, on the basis of the submission of the Personnel Affairs Committee in the Ministry, may grant a public servant an incentive equal to the periodic allowance of the said public servant without exceeding the final grade of his scale provided that the performance of the said public servant has been assessed as 'excellent' in the most recent annual report.

A public servant may not be granted more than an incentive every two years.

#### **Article (35)**

A promotion from the highest scale in the third cycle to the lowest scale in the second cycle may be made if the public servant has spent two years at his

scale and holds the necessary academic qualification. If, however, the said public servant does not hold the necessary academic qualification, he may be promoted to the lowest scale in the second cycle provided that he has spent four years at his scale and his performance in the previous two years was assessed as 'excellent'.

## **CHAPTER FIVE**

### **Transfer, Deputation and Secondment**

#### **Article (36)**

A public servant may be transferred, by a decision of the competent Minister on the basis of the submission of the Personnel Affairs Committee, from a job to an equivalent one within the Ministry. A public servant may be also transferred from a Ministry to another in a job equivalent his previous one following the consent of the two competent Ministers.

If the transfer is made between the Federal Government and the governments of the Emirates of the Union, the transfer decision shall be issued following the consent of both authorities and the rights of the transferred public servant shall be preserved. In all cases, however, the transfer should not lead to the delay or deprivation of the transferred public servant from getting a

promotion on grounds of seniority unless the transfer is made upon the request of the public servant.

### **Article (37)**

A public servant may be deputed to perform another job in a vacant position or a position whose original occupier is absent provided that the scale of the said job is equal or higher than that of the deputed public servant. This provision applies to higher jobs, the second-cycle jobs and the first and second grades of the third cycle.

Deputation to a job whose scale is lower than that of the public servant shall be prohibited.

A deputed public servant may be required to perform his original work provided that the said public servant is not deputed to perform more than a job.

Deputation shall be enforced by a decision of the competent Minister on the basis of the submission of the Personnel Affairs Committee in the Ministry concerned.

A deputed public servant shall be granted an allowance estimated at 30% of the first grade of the scale of the job to which he is deputed provided that the said public servant continues performing his original work and that the deputation period does not exceed one year. The said deputation period may be extended by one year only following the consent of the competent Minister. However, if deputation is effected to a vacant position, its period may not exceed one year.

Deputation from a ministry to another shall be enforced following the approval of the two competent Ministers.

### **Article (38)**

The competent authority concerned with the appointment of public servants may issue a decision of secondment of a public servant to a public or a private utility in the UAE or to an Arab or foreign government or organization provided that the said public servant agrees, in writing, thereto. The said secondment shall be for one year and may be extended. The salary of the seconded public servant shall be paid by the utility, government or organization to which he has been seconded. The secondment period shall be included in the calculation of the public servant's periodic allowance, promotion, pension and retirement gratuity.

The original position of the seconded person may be filled by a decision of the appointment authority. A public servant shall return, following the completion of the secondment period, to perform his original job, if vacant, or another vacant job of the same scale or he may remain in his original job on a personal capacity until his case is settled by the appointment of the said public servant in a vacant position of the same scale.

The government, by a decision of the Council of Ministers, may pay the salary of the seconded public servant during the secondment period and in this case no appointment shall be made in the position of the seconded public servant.

### **Article (39)**

Decisions of the competent Minister concerning the promotion and secondment of public servants in the second and third cycles shall be issued following the approval of the Civil Service Council provided that the said Council issues its decision on the said matter within four weeks from the date of arrival of relevant documents, duly completed, to the Personnel Department. The failure of the said Council to reply to the Ministry

concerned within the said period shall be taken as approval of the said Council on the matters submitted thereto.

## **CHAPTER SIX**

### **Leave of Absence**

#### **Article (40)**

A public servant may not absent himself from work except on leave granted thereto

#### **Article (41)**

A public servant may be granted any of the following types of leave :

(One) Periodic Leave

(Two) Sick Leave

(Three) Study Leave

(Four) Special Leave

### **Article (42)**

An Emergency leave may be taken by a public servant for unforeseen circumstances that cannot be reported in advanced. An emergency leave may not be taken more than four times a year and may not exceed three days each time.

A public servant, following the elapse of the emergency leave, should explain the reasons for his absence to his immediate superior who has the right to accept or refuse them. In the event of the refusal of the reasons given for taking the emergency leave, the absence from work shall be considered as part of the periodic leave to which the said public servant is entitled. If the said periodic leave has been exhausted by the said public servant, a deduction shall be made from his salary for the days of absence.

### **Article (43)**

A public servant shall be entitled to an annual periodic leave as indicated below:

Sixty days for Under Secretaries as well as public servants in the first cycle and the first and second scales of the second cycle.

Forty five days for public servants in the third and fourth scales of the second cycle and public servants in the third cycle.

A periodic leave may not be granted prior to the successful completion of the probation period.

The salary of a periodic leave shall be paid when it is due.

A public servant shall not be entitled to a periodic leave for the time he spends on a study leave or on a scholarship.

The periodic leave of public servants working as teaching staff in schools and institutes shall be granted during the summer vacation in accordance with the regulations laid down by the Ministry of Education. The said regulations shall determine the emergency leave and the sick leave of the said public servants.

#### **Article (44)**

A periodic leave may not be granted except by a written request by a public servant. Permission to a public servant in the first or second cycle to go on a



periodic leave shall be only given with the consent of the competent Under Secretary. The authority that has given permission to a public servant to go on a periodic leave may request the said public servant to return to work prior to the elapse of its duration if the said request is in the interest of work.

#### **Article (45)**

A public servant who has not gone on a periodic leave for two years may go on a periodic leave for a period of time not exceeding three months in the following year if work conditions permit.

If a public servant has not taken all or part of his periodic leave, he shall be paid the equivalent of a one-day salary for each day of the untaken periodic leave calculated on the basis of the basic salary of the public servant. However, the amount of money paid to a public servant for the untaken periodic leave may not exceed the equivalent of a one year salary of the said public servant every ten years of service.

#### **Article (46)**

Permission of a sick leave shall not exceed seven days and shall be given on the basis of a medical certificate issued by a medical doctor or a medical treatment institution and approved by a government utility.

Permission of a sick leave that exceeds seven days shall be given on the basis of a medical report issued by the competent medical committee in the Ministry of Health. A public servant should inform his immediate superior about his illness within two days from the start of illness and the said superior should take the necessary action for informing the competent medical committee to examine the said public servant and prepare a report about his case.

#### **Article (47)**

A public servant who has been asked by the competent medical committee to stay away from work to avoid coming into contact with another public servant who has caught an infectious disease shall stop work for a period determined by the said committee. The period of stoppage of work, by the said public servant, shall not be deducted from his leave, and the said public servant shall be paid his salary and allowances for the said period.

#### **Article (48)**

The competent Minister, following the consent of the Civil Service Council, may grant a UAE public servant a study leave during which his salary and

allowances excluding the transportation allowance shall be paid. The said leave shall be granted for not more than four years or for the period of study, whichever is longer, and may be extended for a similar period if reports on the said public servants consider the extension necessary.

The duration of the study leave shall be included in the calculation of the said public servant's pension, retirement gratuity, promotion and periodic allowance.

The original position of the public servant who has gone on a study leave may be filled provided that the said public servant, upon return from the said leave, is offered a job appropriate to his field of study and, in any case, not lower than his original job.

#### **Article (49)**

A public servant shall be granted a one month leave, with his full salary paid thereto, in order to perform the rites of Al-Hajj (Muslims Pilgrimage to Mecca). The said leave shall be granted once during the time of service of a public servant and shall not be deducted from his periodic leave.

### **Article (50)**

The competent Minister may grant a special leave without salary to a husband or wife if either one has gone abroad on a scholarship, a deputation, secondment or an official task or has been transferred to a job abroad or has joined the service in an international organization or with an Arab or foreign government.

The duration of the said leave shall not exceed the period of work of the said wife or husband abroad.

The position of the said wife or husband may be filled by appointment provided that he/she, upon return from work abroad, is offered a job which is not lower than his/her original one.

### **Article (51)**

A female public servant shall be granted a special leave, with a salary of one and a half months paid thereto, for child delivery. The said leave shall not be deducted from the other kinds of leave to which the said female public servant is entitled.

### **Article (52-A)**

The competent Minister may grant a public servant a special leave, without salary, for one month in a year in addition to the periodic leave of the said public servant if there are good reasons for doing so.

### **Article (52-B)**

A Muslim female public servant whose husband has passed away shall be granted a special leave, with a full salary, for a period of four months and ten days from the date of death. The said leave shall not be deducted from the other kinds of leave to which the said female public servant is entitled.

### **Article (53)**

The competent Minister may grant a public servant a leave, with a full salary, for a period not exceeding two months if circumstances require that the said public servant should accompany his wife, son or parent or one of his relatives for medical treatment abroad. The said leave may be extended for a similar period of circumstances so require.

If the period of medical treatment exceeds four months, the remainder of leave shall be considered without a salary.

#### **Article (54)**

Any public servant not reporting to duty immediately after the end of leave shall have his salary suspended as of the day following the end of the leave. However, the competent Minister or whoever exercises his powers may determine as to whether absence is justifiable and accordingly authorise the release of suspended salary provided that a balance of leave in favour of the said public servant is available and that the period of absence does not exceed fifteen days and acceptable reasons of absence are given.

#### **Article (55)**

Any public servant who discontinuous work for thirty days or does not report to duty thirty days after the end of his leave shall be considered as having resigned from the date of discontinuing work or the end of leave. However, the competent Minister may not consider the said public servant as having resigned if the said public servant provides acceptable reasons for his absence and in this case the period of absence shall be deducted from his periodic leave if his balance of leave so permits or otherwise the period of absence shall be without a salary.

## **CHAPTER SEVEN**

### **Duties and Prohibitions of Public Servants**

#### **Article (56)**

The public office is a duty which should be performed by those appointed therein. It aims at serving the citizens and accomplishing the public interest in accordance with the laws and regulations in force.

#### **Article (57)**

A public servant should accurately and honestly perform any work assigned to him. He should devote the official working hours to the performance of his duties and observe the provisions of the laws and regulations in force as well as the instructions of his superiors. He should also exercise utmost care in the spending of government money.

A public servant shall be prohibited to commit any act which is inconsistent with his job's duties or behave in such a way that does not conform to good manners or the honor of the public office.

### **Article (58)**

The official working hours shall be determined by a decision of the Council of Ministers on the basis of the submission of the Civil Service Council.

The Minister or Under Secretary, each within his competence, may order a public servant to work for extra hours if that is deemed to be in the interest of the Ministry or government utility.

### **Article (59)**

A public servant shall be prohibited from joining, working for or participating in propaganda or promotion activities of political parties or organizations.

### **Article (60)**

A public servant may not perform to others any work, with or without a salary, even outside the official working hours except by permission of the competent Minister. However, a public servant may undertake curatorship, guardianship or representation for relatives who are away with or without a salary or wage.



### **Article (61)**

A public servant may not have any personal involvement, directly or indirectly, in any work or contract related to that of the Ministry to which he belongs.

### **Article (62)**

A public servant shall be prohibited from :

- (a) Disclosing confidential information to which he has access by virtue of appointment.
- (b) Keeping the originals of any official documents even those relating to his work.
- (c) Renting or taking a lease of land or property or anything else for the purpose of exploiting the same in a field related to that of his official work.
- (d) Gambling.
- (e) Committing an immoral act or an act inconsistent with the ethics of the work he performs.

### **Article (63)**

A public servant shall not have civil liability except for his personal wrong doings.

## **CHAPTER EIGHT**

### **Disciplining Public Servants**

#### **Article (64)**

Any public servant who violates the provisions of this law shall not be exempted from disciplinary penalty, (without prejudice to civil or criminal responsibility, when necessary) unless it has been proven that the violation has been committed on grounds of the implementation of a written order issued by his superior whose attention has been drawn to the violation in which case accountability shall fall on the person issuing the order.

#### **Article (65)**

No penalty may be inflicted on a public servant except after a written investigation has been conducted in which his statements are taken and opportunity has been provided for him to defend himself. Reasons should be given for inflicting the penalty on the said public servant.

## Article (66)

The competent Minister or his deputy, each within his competence, may suspend a public servant from work for investigation purposes, as a precautionary measure, for a period not exceeding three months. The said period may not be extended except by a decision of the competent disciplinary council.

The suspension of a first-cycle public servant shall be not made except with the consent of the Council of Ministers. The person issuing the suspension decision may reconsider the same either voluntarily or upon request of the public servant concerned.

The payment of half the salary of the suspended public servant shall be stopped from the date of suspension. Re-payment of the same shall be made if the said public servant has been acquitted or is given a warning or if the investigation has been left on file.

If the said public servant has been inflicted with a more severe penalty, the authority inflicting the penalty shall determine the action to be taken regarding the suspended salary. The case of the said public servant shall be

immediately referred to the disciplinary council which should issue its decision within a month from the date of referral thereof.

Any public servant who has been imprisoned, as a precautionary measure, shall be suspended from work during the period of imprisonment and the payment of half the salary of the said public servant shall be stopped. Repayment of the same shall be made following the elapse of the imprisonment period if the said public servant has been acquitted from the charge for which he has been imprisoned or if the investigation has been left on file.

#### **Article (67)**

Any public servant who has been imprisoned, as a precautionary measure, shall be suspended from work during the period of imprisonment and the payment of half the salary of the said public servant shall be stopped. Repayment of the same shall be made following the elapse of the imprisonment period if the said public servant has been acquitted from the charge for which he has been imprisoned or if the investigation has been left on file.

### **Article (68)**

A public servant who has imprisoned, in execution of a court ruling, shall be suspended from work and shall be deprived of his salary during the imprisonment period.

### **Article (69)**

The following disciplinary penalties may be inflicted on public servants :

- (a) Warning
- (b) Deduction from the salary for a period not exceeding fifteen days each time and sixty days in a year.
- (c) Suspension from work, without a salary or with the payment of half the salary, for a period not exceeding three months.
- (d) Reduction of the salary to the lowest grade of the scale or demotion to the next lower grade or both.

- (e) Dismissal from work with the preservation of the right to pension or retirement gratuity or deprivation from either one by a quarter thereof.

The following disciplinary penalties may be inflicted on the first-cycle :

- (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.

### **Article (70)**

The competent Minister shall be authorised to inflict any of the penalties stipulated in paragraphs a, b and c of Article 69 on the public servants in the second and third cycle and, in each case, reasons should be given for the infliction of the penalty.

The other penalties may not be inflicted except by a decision of the Disciplinary Council.

### **Article (71)**

In the event of secondment or deputation of a public servant to another Ministry or utility, the disciplinary authority in respect of the violations committed by the said public servant shall rest with the Ministry or utility to which he has been seconded or deputed.

### **Article (72)**

The disciplinary council for public servants in the first cycle shall be chaired by a member of the Supreme Federal Court and shall include two members appointed by the Council of Ministers.

### **Article (73)**

The Disciplinary Council for public servants in the second and third cycle shall be chaired by a judge selected by the Minister of Justice and shall include a member representing the Personnel Department selected by the Civil Service Council and a member representing the Ministry in which the violation has been committed selected by the Minister concerned.

### **Article (74)**

The scale of any member of the Disciplinary Council may not be lower than that of public servant referred to trial.

### **Article (75)**

Disciplinary cases shall be filed against public servants in the first cycle by permission of the Prime Minister and those against public servants in the second and third cycle shall be filed by permission of the competent Minister.

A public servant shall be considered as having been referred to a disciplinary trial from the date of issue of the said permission. The referral decision should include a statement of the violations committed by the said public servant who should be notified, in writing of the said decision and the date of the session.

### **Article (76)**

The right to file a disciplinary case shall lapse after five years from the date of committing a violation.



If these are several public servants accused in a disciplinary cases, the elapse of the said period for one of them shall apply to the others.

#### **Article (77)**

A disciplinary case shall lapse by the death of the accused.

#### **Article (78)**

The resignation of a public servant accused in a disciplinary case shall not deter from the continuation of disciplinary proceedings. The said resignation should not be accepted if the said public servant has been referred to a disciplinary trial.

#### **Article (79)**

Jurisdiction of the Disciplinary Council shall be determined according to the scale of the public servant at the time of his referral to trial.

If several public servants who have committed inter-connected violations are subject to trial by different disciplinary councils in accordance with their scales, the disciplinary council which has jurisdiction over the trial of the

public servant with the highest scale shall have jurisdiction over the trial of all the said public servants.

The sessions of a disciplinary council shall be held in the Ministry in which the violation has been committed.

#### **Article (80)**

The sessions of the Disciplinary Council shall not be considered as valid unless if they have been attended by all its members. The decisions of the said Council shall be issued by a majority vote.

The said Council may not hold its sessions prior to the elapse of at least a week from the date of notifying the public servant of a statement of the violations ascribed to him.

#### **Article (81)**

The public servant referred to a disciplinary trial shall be entitled to look into the statement of accusations ascribed to him and obtain a copy thereof, if he so wishes, and shall be further entitled to attend the sessions of the said trial or appoint someone as the attorney thereof.

### **Article (82)**

The Disciplinary Council shall collectively conduct the investigation or assign the same to one of its members. The said Council shall have the same powers as those authorised to investigation bodies in respect of substantiating evidence including giving a testimony, by a witness, after taking an oath thereof provisions that pertain to witnesses giving testimonies before courts shall be enforced on witnesses in disciplinary cases.

### **Article (83)**

A decision issued by the Disciplinary Council shall state the reasons on which it has been based and shall be read out in a session held for that purpose. The public servant concerned shall be notified, in writing, of the said decision and the reasons thereof within two weeks from the date of issue of the said decision.

### **Article (84)**

A public servant 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.

#### **Article (85)**

A public servant suspended from work on account of conducting an investigation with him or suspended from work on grounds of precautionary imprisonment shall retain his turn in promotion if the time due for the said promotion coincides with the said suspension or trial.

If the said public servant has been acquitted or inflicted with a penalty of warning or a deduction of the salary of not more than five days, he shall be granted the said promotion with a retroactive effect from the date on which it falls due.

#### **Article (86)**

A public servant referred to trial for an offence or a crime demeaning of honor or integrity may not be promoted. The said public servant may, however, retain his turn in promotion if it falls due during the trial. If the said public servant has been acquitted, he shall be granted the said promotion

on a retroactive effect from the date on which it falls due. The promotion of a public servant suspended from work on account of a ruling of imprisonment for a month or more may not be considered during the period of penalty.

#### **Article (87)**

The periods referred to in the aforementioned articles shall be counted from the date of issue of the decision or ruling inflicting the penalty.

#### **Article (88)**

The disciplinary penalties inflicted on a public servant shall be cancelled after the elapse of the following periods of time:

- (a) A year (in the case of warning or deduction from a salary).
- (b) Two years (in case of deprivation from a periodic allowance)
- (c) Three years (in the case of suspension from work or reduction of a salary or demotion of a scale or both).

The cancellation of any of the said penalties shall be made by a decision of the competent Minister if the reports submitted to him on the public servant concerned indicate that his conduct has been acceptable since the infliction of the penalty.

The penalty, following its cancellation, shall be considered as if it has not existed. Besides, the documents relating to the penalty shall be removed from the file of the public servant concerned. Meanwhile, the entitlements and compensation of the said public servant shall not be effected.

#### **Article (89)**

The service of a public servant shall be terminated for one of the following reasons :

- (a) Reaching the retirement age of sixty.
- (b) End of the contractual or secondment period of the public servant concerned.
- (c) Providing, by a decision of the competent medical board, that a public servant is medically unfit for the service.

- (d) Resignation.
- (e) Dismissal or pensioning off a public servant by a disciplinary decision or a court ruling.
- (f) Depriving a public servant of his UAE nationality or withdrawing the same.
- (g) Canceling a temporary job.
- (h) Sentencing a public servant to a detentive penalty in a crime demeaning of honor or integrity. The competent Minister may dismiss the said public servant if the ruling has been issued stay of execution.
- (I) Death

The competent authority of terminating the service of a public service shall be the competent authority of appointment thereof in accordance with the provisions of the law.

### **Article (90)**

The duration of the service of a public servant may not be extended after reaching the retirement age of sixty except by permission of the Council of Ministers following the consent of the Civil Service Council. The said extension shall not exceed five years.

### **Article (91)**

A public servant may resign his job and the resignation should be in writing. However, the service of the said public servant shall not terminate except by a decision of acceptance of the said resignation. The request for resignation should be determined on within thirty days from the date of submission thereof, otherwise, the resignation shall be considered as having been accepted under the law. Meanwhile, the said public servant should continue working until he is notified of the decision of acceptance of the resignation or until the period specified in the first paragraph of this Article elapses.

A decision of acceptance of the resignation shall be issued by the competent Minister in respect of the first-cycle public servants and by the Under Secretary in respect of other public servants.

### **Article (92)**



A public servant's service shall be terminated by the force of the law if he joins the service of a foreign country without express permission of the competent authorities.

### **Article (93)**

If a public servant has been deprived of the UAE nationality or the said nationality has been withdrawn, his service shall be terminated from the date of issue of the decree concerning the deprivation or withdrawal of the said nationality.

### **Article (94)**

A public servant, following the termination of his service, may be allowed to stay for a period not exceeding a month in order to hand in what he has in his custody for the utility in which he works. The said period may not be extended except by a decision of the competent Minister and the extension may not be exceed two months.

A reward equivalent to the public servant's salary shall be paid to him for the said period.

## **Article (95)**

If a decision or a ruling of dismissal of a public servant and he has already been suspended from work, the service of the said public servant shall be terminated from the date of suspension.

If, however, the said public servant has not been suspended from work, he should be paid his salary until the date of the issue of the dismissal decision or ruling. The public servant who has been suspended from work shall not be asked to reimburse the salary already paid to him if he has been dismissed or pensioned off.

## **PART THREE**

### **Low - Grade Employees**

#### **Chapter One - Appointment**

## **Article (96)**

Any person appointed in one of the fourth-cycle jobs indicated on the table enclosed herewith shall be considered as a low-grade employee in the implementation of the provisions of this law.

## **Article (97)**

Any person appointed in one of the jobs of low-grade employees should fulfill the following conditions :

- (a) That he is a UAE citizen. In the event of the non-availability of a UAE citizen applying for the job, priority shall be then given to citizens of Arab countries.
- (b) That he is not less than eighteen years old. Age shall be confirmed by the method stipulated in Paragraph (e) of Article (8) of this law.
- (c) That he has a good reputation.
- (d) That the has not been sentenced to a detonative penalty in a crime demeaning of honor or integrity unless he has been pardoned by the competent authorities or he has been rehabilitated in accordance with the law.

- (e) That he has not been dismissed from work by a court ruling or a disciplinary decision unless at least one year has elapsed since the issue of the said ruling or decision.
- (f) That he is medically fit for the job. Conditions of medical fitness shall be defined by a decision of the Civil Service Council following consultation with the Ministry of Health. Exemption from the said condition may be made by a decision of the competent Minister following consultation with the competent medical board in cases in which the nature of work in the said job does not require the said condition.

### **Article (98)**

Appointment in jobs of low-grade employees shall be made by a decision of the competent Minister on the basis of the submission of the Personnel Department in the Ministry concerned.

The low-grade employee shall be granted the first grade of the scale in which he has been appointed and shall be entitled to his salary from the date of reporting to work.

If the said employee has previous job experience, the competent Minister, on the basis of the submission of a competent committee, may grant the said employee one or more allowances to be added to the first grade of the scale in which he has been appointed provided that the said allowances do not exceed the final of the said scale.

## **CHAPTER TWO**

### **Promotions and Allowances**

#### **Article (99)**

A promotion of a low-grade employee shall be made by a decision of the competent Minister. A promotion may not be made prior to the elapse of the period of time prescribed for the promotion as indicated on the table enclosed herewith. The promotion allowance shall be paid starting from the first day of the month that follows the issue of the promotion decision.

### **Article (100)**

Promotions of low-grade employees shall be made according to seniority. A promotion shall be made to the scale next to the employee's present one. Seniority shall be counted from the date of appointment of a low-grade employee. The provisions of Article (30) of the law shall apply to low-grade employees in respect of seniority. A promotion shall come into force from the date of issue of the decision on the said promotion. The promoted low-grade employee shall be granted the first grade of the scale to which he has been promoted or one of the allowances of the said scale, whichever is higher.

A promotion from a scale of a low-grade employee to a scale of a public servant may not be made unless the said employee has obtained the necessary academic qualification required for the job or has passed the test conducted by the Ministry for that purpose.

### **Article (101)**

A low-grade employee shall be granted a periodic allowance in accordance with the categories specified in the table enclosed herewith.

A periodic allowance shall not exceed the highest grade of the scale in which a low-grade employee has been appointed.

A periodic allowance shall be due following the elapse of a year from the date of appointment or the date of granting the previous periodic allowance.

The competent Minister may deprive a low-grade employee of a periodic allowance on the basis of a written report of the employee's immediate superior indicating that the said employee does not perform his duties acceptably.

#### **Article (102)**

The competent Minister, on the basis of a recommendation of the immediate superior of a low-grade employee and the consent of the Under Secretary, may grant the said employee an incentive equal to the periodic allowance of the said employee without exceeding the final grade of his scale. The said incentive shall not be counted as a periodic allowance.

A low-grade employee may not be granted more than an incentive every two years.

## **CHAPTER THREE**

### **Leave of Absence**

#### **Article (103)**

A low-grade employee shall be entitled to an annual periodic leave for thirty six days. The said leave may not be granted prior to the elapse of six months from the date of reporting to work.

A low-grade employee who has not gone on a periodic leave for three years may go on the said leave in the following year if work conditions permit. The salary of a periodic leave shall be paid when it is due.

#### **Article (104)**

If a low-grade employee has not taken all or part of his periodic leave, he shall be paid an amount of money equivalent to a one-day salary for each day of the untaken periodic leave calculated on the basis of the basic salary of the said employee on the date of payment of the said amount in exchange for the leave.



## **Article (105)**

The provisions of Article (42), (44), (46), (47), (48), (49), (50), (51), (52-A), (52-B), (53), (54) and (55) of Chapter Six of Part Two of this law shall be applicable to low-grade employees.

## **CHAPTER FOUR**

### **Disciplining of Low-Grade Employees**

## **Article (106)**

The following disciplinary penalties may be inflicted on low-grade employees :

- (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 thereof.

### **Article (107)**

The competent Under Secretary may inflict any of the penalties stipulated in Article (106) of this law on a low-grade employee. The said employee may appeal to the competent Minister against the decision inflicting the penalty within a month from the date of his notification of the decision.

### **Article (108)**

The competent Under Secretary may suspend a low-grade employee from work as a precautionary measure for a period not exceeding a month. The said period may be extended for a month if that is deemed to be in the interest of investigation of the said employee. In the event of the investigation includes public servants who are suspended from work for a certain period, suspension of the said employee shall continue for the same period. The payment of half the salary of the suspended low-grade employee shall be

stopped from the date of suspension. Re-payment of the same shall be made if the said employee has been acquitted or if the investigation has been left on file. If the said employee has been inflicted with a penalty, the competent Minister shall determine the action to be taken regarding the suspended salary.

The competent Under Secretary may reconsider the suspension decision, any time he wishes, either voluntarily or upon request of the employee concerned.

#### **Article (109)**

No penalty shall be inflicted on a low-grade employee except after an investigation has been conducted in which the said employee's statements are taken and opportunity has been provided for him to defend himself. Reasons should be given for inflicting the penalty on the said employee.

#### **Article (110)**

The provisions of Chapter Seven of Part Two as well as Article (71), (85), (86), (87) and (88) of this law shall be applicable to low-grade employees.

## **CHAPTER FIVE**

### **Termination of Service**

#### **Article (111)**

The service of a low-grade employee shall be terminated for one of the following reasons:

- (a) Reaching the retirement age of sixty.
- (b) Proving that a low-grade employee is medically unfit for the job.
- (c) Resignation.
- (d) Depriving a low-grade employee of his UAE nationality or withdrawing the same.
- (e) Dismissal of a low-grade by a disciplinary decision or a court ruling.
- (f) Sentencing a low-grade employee to a detentive penalty in an offence or a crime demeaning of honor or integrity. The competent Minister

may dismiss the said employee if the ruling has been issued stay of execution.

(g) Death

### **Article (112)**

The competent Minister may keep a low-grade employee in his position for a period not exceeding five years after reaching the retirement age of sixty provided that a competent medical board confirms that the said employee is medically fit for the job.

### **Article (113)**

The provisions of Articles (92), (93), (94) and (95) of this law shall be applicable to low-grade employees.

## **PART FOUR**

### **General Provisions**

#### **Article (114)**

Revoked by Article (7) of Federal Law No.5 of 1978.

#### **Article (115)**

The periods of time stipulated in this law shall be counted according to the chronology relating to the birth of Christ.

#### **Article (116)**

In the event of death of a public servant or a low-grade employee while in service, the government utility in which he works shall continue to pay his salary for three months following his death. Payment of the said salary shall be made, at the specified dates of salary payment, to a person designated by the said public servant or low-grade employee or, if no one has been designated for this purpose, to the persons whom he has been supporting at the time of death.

The amount of money paid after the death of the said public servant or low-grade employee shall be considered as a grant that may not be reimbursed from his pension, gratuity or other entitlements of the said public servant or low-grade employee under any other law. The said grant shall be exempted from any type of duty or tax and may never be seized.

### **Article (117)**

A public servant or a low-grade employee shall be paid a remuneration for any extra work he performs outside the official working hours.

A public servant or a low-grade employee may be granted a financial reward for the excellent services he renders.

Public servants and low-grade employees may be granted additional allowances on account of special working conditions or extraordinary burdens.

The said remuneration's, rewards and allowances shall be determined by decisions of the council of Ministers on the basis of proposals of the Civil Service Council.

### **Article (118)**

No deduction or seizure may be made on amounts of money due to be paid by the government to a public servant or a low-grade employee except for the purpose of paying an alimony ruled by a court on the said public servant or low-grade employee or reimbursing money he owes to the government. The deduction in the said cases may not exceed a quarter of the salary of the said public servant or low grade employee. Priority should be given to the payment of the alimony.

### **Article (119)**

The council of Ministers shall approve a table of jobs and salaries for each Ministry within the limits of the scales indicated on the table enclosed herewith.

### **Article (120)**

Regulations complementary to this law shall be issued by a decision of the council of Ministers on the basis of a proposal of the Civil Service Council.



### **Article (121)**

Previous laws and decrees that are inconsistent with the provisions of this law shall be revoked.

The current regulations that are inconsistent with the provisions of this law shall be applicable until the implementing rules and regulations of this law has been issued.

### **Article (122)**

This law shall be enforced by all Ministers. This law shall be published in the official Gazette and shall come into effect from the date of publication thereof.

**Zayed Bin Sultan Al Nahyan**  
**President, United Arab Emirates**



**Scales and Salaries of Public Servants  
and Low-Grade Employees**  
(As Amended by Federal Law No. 7 of 1977)

Scale		Monthly Salary (Dirhams)	Monthly Average (Dirhams)	Annual Allowance (Dirhams)	Representative Allowance (Dirhams)	Minimum No. of Years for staying in the scale
Under Secretary		12000 (Permanent Salary)	-	-	1000	-
Assistant Under Secretary		10000 (Permanent Salary)	-	-	-	-
<b><u>First Cycle</u></b>	Higher jobs					
First Grade		6500-7000	6750	100	-	-
Second Grade		6000-6500	6250	100	-	-
<b><u>Second Cycle</u></b>						
First Grade		4900-6000	5450	100	-	-
Second Grade	High jobs	4200-4900	4550	100	-	2
Third Grade		3500-4200	3850	80	-	2
Fourth Grade		2800-3500	3150	80	-	2
<b><u>Third Cycle</u></b>						
First Grade		2240-2800	2520	60	-	-
Second Grade	Medium jobs	1820-2240	2030	50	-	4
Third Grade		1450-1820	1635	40	-	4
Fourth Grade		1150-1450	1300	40	-	4
<b><u>Fourth Cycle</u></b>						
First Grade	Low Grade Employees	1150-1300	1225	30	-	-
Second Grade		1000-1150	1075	30	-	4
Third Grade		850-1000	925	30	-	4
Fourth Grade		750-850	800	20	-	4