



# The Constitutional and Legal Basis for The Prime Minister's Authority to Form Investigation Committees in Iraq

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## Abstract

The authority for administrative investigation represents one of the fundamental pillars for regulating the performance of public administration in modern states, as it serves as an effective means to detect behavioural and functional deviations within the administrative apparatus and to ensure that public employees adhere to the duties imposed by their positions. This authority gains additional importance in political systems of a parliamentary nature, including the Iraqi constitutional system of 2005, where the role of the executive authority in overseeing ministries and public institutions is amplified, in the absence of detailed provisions that precisely define the legal limits of the Prime Minister's powers in this area. Hence, the need has arisen to study the constitutional and legal basis of the Prime Minister's authority to form investigative committees. Especially after these committees have become an executive tool used in handling extensive administrative, financial, and security files, which raises precise questions about the compatibility of this authority with the principle of legality and the rule of law, and about its conformity with the administrative jurisdiction rules established by both the constitution and the prevailing laws. This makes the research topic complex, combining constitutional analysis of the Prime Minister's position within the executive authority with the legal study of his administrative responsibilities, in addition to tracking practical applications that have reinforced the growing role of these committees within the structure of the Iraqi state.

## Keywords

Prime Minister, investigative committees, Constitution

## Introduction

The constitutional and legal basis for the Iraqi Prime Minister's authority to form

investigative committees rests primarily on the 2005 Iraqi Constitution, particularly the articles pertaining to executive power, government accountability, and administration. However, the precise details of these committees (their powers and composition) are often defined by fundamental laws or government decrees, based on Article 78 (Executive Powers) and the oversight role of the Council of Ministers, and are frequently governed by laws such as the Temporary Investigative Committees Law or internal regulations[1].

The gap this research fills, is the absence of a constitutional or legislative clause defining what the Prime Minister can (and cannot) do when establishing investigation committees. It means there are some serious questions about interpretation when it comes to why exactly he can claim this authority, especially as his position is defined elsewhere (by Article 78 of the Iraqi Republic's 2005 Constitution) as the chief executive directly responsible for overall policy. That the problem is further compounded by the State employees' discipline law No.14 of 1991 as amended, to the effect that right to set up investigation committee is confined only to minister or head of department. [2]" And this makes us ask whether the Prime Minister is constitutionally a superior to administrative units and he could use this authority as part of his general competence in supervising (controlling) ministries and other organizations, or would that represent the breach of principle of legislative specialization? Complexifying the matter is not only with the fact that there appears to be some increase since 2005 in prime ministerial establishment of investigatory committees, but also that there is no legal regime on when such committees can be established and what should be their powers and their decision outcomes. "And this is where the problem occurs, which touches on the principle of legitimate evidence and rule of law, and it questions how much these committees' decisions are open to legal challenges or they comply with functional jurisdiction rules taken by Iraqi legislator.

This is no trivial matter since the legal issue it studies has been a key front in the work of the executive branch since 2005, namely: Just how far can the Prime Minister go in setting up investigative committees within Israel's administrative state? This study is of particular importance in light of the growing reliance on such committees as means to observe the staffs by successive Prime Ministers rendering them an institutionalized component to Iraqi public administration despite unclear statutory framework governing model creation, jurisdiction and legality. Thus the clarification of the constitutional and legal sources of the authority in question, along with differentiating between actions that can be taken by virtue of his general constitutional powers on one hand, and those which cannot be taken because they are not authorized by legislation on the other hand, is a vital step in outlining the bounds of legitimacy within which this type of governmental review should operate. This research further aims to help address an obvious jurisprudential vacuum in the Iraqi literature due to the lack of specialized works pertaining to the study and criticism of PM's powers in light of legality and rule of law. Furthermore, the subject has practical significance since decisions of investigative committees may have legal consequences for people's professional standing and are open to judicial review by administrative courts. This renders the research both academically and practically significant.

This research aims to uncover the constitutional and legal basis upon which the Prime Minister's authority to form investigative committees in Iraq rests. This is done through readership of the various constitution with focus on Article 78 of the 2005 Constitution of the Republic of Iraq that deals with matters executive and of the Prime Minister. Moreover, it evaluates some laws governing the administrative investigation, mainly the amended State

Employees' Discipline Law No. 14 of 1991. This research also aims to find out whether this power is a natural one because the Prime Minister is the head of the executive power in the state, or it is an extraordinary power, which requires a specific mention in legislative text regarding its jurisdiction and ambit. In the process, the research tries to explore what was the attitude of the Iraqi administrative judiciary with regard to the decisions issued by the investigative committees that were established by the Prime Minister, and to what distance such decisions are subject to judicial review. In doing so, the research aims to provide a theoretical and practical framework that identifies the limits of the Prime Minister's power to form investigative committees in accordance with the principles of rule of law. This framework seeks to take a more moderate approach to balancing executive power and public employee rights, as well as attempting to alleviate the legal uncertainty that accompanies expanding this power absent a clear statement by the legislature.

This study is limited to the constitutional and legal frameworks regulating the exercise of the Prime Minister's powers regarding investigative committees. It is restricted to the provisions of the 2005 Constitution of the Republic of Iraq, specifically where the concept of the power of the Prime Minister is found in Article 78, and where the powers of the Cabinet are discussed in Article 80, without delving into other constitutional provisions that are not in one way or another related to the subject of research. It shall also include a statement of the provisions of the State Employees' Discipline Law No. 14 of 1991 as amended and the relevant regulations legislation in a manner that defines the character of the administrative investigation and the authorities conducting the investigation, and within the limits of the provisions relevant to the establishment of the investigating committees. The final sections of the research detail and analyze a selection of practical cases of investigative committees created by Prime Ministers from 2005 onward, limiting the legal analyses while primarily refraining from pure political interpretation. The research does not address the powers of other oversight bodies, such as the Integrity Commission or the Federal Board of Supreme Audit, except where necessary to clarify any overlap in jurisdiction. The scope of this research does not extend to criminal investigations under the jurisdiction of the judiciary, as these fall outside the scope of the subject matter, which focuses exclusively on administrative investigations of a disciplinary and organizational nature [3], [4], [5].

In accordance with the nature of the subject and the complexity of its constitutional, legal, and practical aspects, the research methodology necessitated dividing it into four chapters. Each chapter addresses a specific aspect of the study, as follows:

## **Methods**

This research will employ a descriptive-analytical approach, the primary method in legal studies. This involves describing the constitutional and legal texts related to the powers of the Prime Minister, then analyzing these texts according to the rules of constitutional and administrative interpretation. The goal is to ascertain the principles of law which govern the authority to create investigative committees. The study also adopts a comparative method in the comparative experiences in their legislative experiences in each of the parliamentary countries in the Iraqi model, notably Egypt, Jordan and Britain, to emphasize the similarities and differences between the comparative of Arabic experiences, and the one stemming from the organization of executive powers. TRACE is also an applied work of empirical research because it follows the group of investigative committees that Iraq established after 2005. This involves analyzing the

legal basis upon which these committees were founded and the extent to which their decisions were subject to judicial review by the administrative courts. The goal is to develop a practical framework that reinforces the theoretical analysis and reveals the limits of this authority in practice. The research has focused on these approaches because they are the closest to the legal and constitutional nature of the subject matter and because they represent the most suitable tools for achieving accurate scientific results consistent with the requirements of the principle of legality.

## **Results and Discussions**

### **The Constitutional Framework of the Powers of the Prime Minister in Iraq**

The Prime Minister occupies a pivotal position in the constitutional structure of the Iraqi state. The 2005 Constitution of the Republic of Iraq granted him a set of powers that made him the direct executive responsible for the state's general policy, in accordance with the nature of the parliamentary system, which is based on the principle of a flexible separation of powers. Article 78 of the Constitution describes the state of the Prime Minister as the highest executive authority and warns of the legal ceiling of how many inherent powers, particularly those that fall under the ability to exercise administrative oversight of the ministries and the jurisdiction to constitute investigation committees, can be jurisdictionally emanated from the very constitutional position of the Prime Minister. This definition is also important because the constitution does not explicitly state that the Prime Minister has the authority to form investigative committees, and there are legal texts that limit the authority for administrative investigations only to the minister or the head of the department as stated in the amended State Employees' Discipline Law No. 14 of 1991. This discrepancy creates an interpretive problem related to the nature of the executive system in Iraq and the extent to which the constitutional powers of the Prime Minister can be broadly interpreted to allow him to exercise jurisdiction not specifically mentioned in legislation [6]. This issue also relates to the nature of the relationship between the Prime Minister and the Cabinet on the one hand, and the ministries under its purview on the other, and the extent to which the Prime Minister can be considered the highest administrative authority with the power of direct supervision and internal oversight of the state's administrative apparatus [7]. This chapter aims to analyze the foundations of these powers in light of constitutional texts and to determine whether they can be considered a legal basis for forming investigative committees, or whether this requires explicit legislative intervention to regulate this power within the limits imposed by the principle of legality.

### **The Constitutional Position of the Prime Minister**

Determining the constitutional position of the Prime Minister is the essential step for understanding the nature of his powers, including the extent to which the power to form investigative committees can be considered part of his constitutional prerogatives. As per the provisions of the Constitution of 2005, the constitutional system in Iraq is described as a parliamentary system based on the principle of a flexible separation of powers. The PM at the head of the executive, has control of ministries and public administrations under political responsibility to the Council of Representatives. A series of powers described by the Constitution form the foundation of the Prime Minister's executive portfolio. However, these powers are presented in general terms and lack detail, thus opening the door to multiple interpretations regarding their scope and limits, particularly concerning investigative or oversight powers that

are not explicitly defined. Therefore, analyzing the Prime Minister's position within the Iraqi Constitution is a necessary starting point for establishing the legal foundation upon which to base a discussion of his authority to form investigative committees [6].

The Prime Minister gets his constitutional position from Article 78 of the 2005 Constitution of the Republic of Iraq, which makes him the unilateral executive, holder of the general policy of the state, commander of the armed forces and overseer of ministries' work. It highlights the dichotomy of the PM, where the prime minister is not just the head of the executive branch of a parliamentary system, nor is he only the glue between state and executive policies. This constitutional formulation reflects the constitutional legislator's philosophy in granting the Prime Minister a leadership position that ensures the unity of executive decision-making and achieves harmony among the state's executive institutions [7]. The wording of Article 78 is somewhat general, as it does not specify the Prime Minister's detailed powers but rather allows him to exercise broad roles according to the requirements of executive work. Some constitutional scholars have argued that this wording does not aim to grant absolute powers, but rather to emphasize the central role of the Prime Minister in leading the executive branch within the limits set by the Constitution and applicable laws [6]. Therefore, assessing the Prime Minister's authority to form investigative committees requires understanding this constitutional nature, which is based on direct executive responsibility. This responsibility may allow for a broad or narrow interpretation of the powers, depending on their proximity to or distance from the principle of legality.

The constitutional nature of the Prime Minister's position is not only clarified by Article 78, but is further enhanced by a set of other provisions that define the competencies of the Council of Ministers as the executive branch.

The highest executive body in the state, particularly Article 80 of the 2005 Constitution, grants the Council powers related to planning and implementing the state's general policy, overseeing ministries, and managing public affairs. Since the Prime Minister heads this Council, these powers are exercised through him, which places his constitutional position above that of other members of the executive branch in terms of his ability to direct administrative work and formulate public policies [8]. These texts, taken together, indicate that the constitutional legislator intended to strengthen the position of the Prime Minister by linking the government function to the executive leadership unit, so that the Prime Minister remains the entity that bears political and practical responsibility for the performance of ministries, both before the House of Representatives and before public opinion. This leadership position necessarily requires the Prime Minister to possess the authority to make regulatory or oversight decisions if such decisions are necessary for implementing the state's general policy or ensuring the harmonious performance of ministries, provided that this does not infringe upon the exclusive powers legally vested in other authorities or entities [7]. From this understanding of the Prime Minister's constitutional role arises the question of whether forming investigative committees can be considered part of these powers derived from his executive position, especially since the constitution formulated his powers in general terms without specifying detailed executive instruments. This opens the door to two interpretations: the first, a broad one, which makes his leadership position a basis for forming investigative committees; and the second, a restricted one, which requires an explicit legal provision granting him this authority [6].

One school of constitutional jurisprudence argues that the nature of the parliamentary system in Iraq, as established by the 2005 constitution, requires the Prime Minister to have a

distinct constitutional position, going beyond simply being the head of an administrative body, to be a representative of the executive authority as a single bloc responsible to Parliament. Accordingly, this trend sees that the executive leadership granted to the Prime Minister justifies granting him powers derived from the requirements of the constitutional office, even in the absence of detailed texts, as long as those powers do not conflict with the existing laws and do not affect the jurisdictions of other authorities [8]. In contrast, another trend adopts a more restrictive position, as it considers that the constitutional powers of the Prime Minister, however broad they may be formulated, cannot be interpreted outside the limits of the textual legitimacy imposed by the constitution and the law, and that granting the Prime Minister any power not stipulated in the constitution requires the issuance of special legislation that defines its conditions and limits, to ensure that it does not conflict with the principle of legality, which is fundamental to the Iraqi administrative system [9]. This trend claims that extending the scope of article 78 to include investigative capabilities may go beyond the limits of ministerial oversight provided by the Civil Service and Discipline Laws and result in a duplication of authorities within the executive. The result is that the Prime Minister is Constitutional in nature with general powers to lead and guide — but no specific powers to investigate not more than the law permits. This underscores the need to examine the relationship between his constitutional position and the legal powers governing administrative investigations, which forms the cornerstone of this research [7].

First Paragraph: The executive authority in the Iraqi constitutional system is based on the principle of explicitly defining powers, a fundamental principle in interpreting the scope of the Prime Minister's work. The Constitution explicitly defines the powers of the President of the Republic, the Prime Minister, and the Council of Ministers, which are divided into formal and substantive powers. This definition implies that executive powers can only be exercised pursuant to a constitutional or legal provision, in accordance with the principle of legality, which is fundamental to regulating the work of public administration in Iraq. Article 5 of the Constitution affirms the supremacy of the law, and Article 110 stipulates that federal authorities are obligated to exercise their powers in accordance with the Constitution and the law. This means that no executive authority can be established or exercised except on the basis of explicit legality [9]. Accordingly, the position of the Prime Minister, despite its broad leadership role, does not permit him to create new powers of a regulatory or investigative nature unless they are based on a provision authorizing them, whether constitutional or legislative. Therefore, some legal scholars argue that the Prime Minister's direct executive responsibility is insufficient in itself to serve as a basis for unstated powers, as this could open the door to the dominance of the executive branch at the expense of the defined jurisdictions of other authorities or administrative bodies [7].

The limits of executive power become clearer when analyzing the nature of the relationship between the Prime Minister and other ministers. The parliamentary system adopted in the 2005 Constitution is based on the principle of the collective responsibility of Cabinet members for the state's general policy, counterbalanced by the individual responsibility of each minister for the direct management of their ministry's affairs. Article 80 of the Constitution affirms this distribution by stipulating the Cabinet's powers in formulating general policy and overseeing ministries, while administrative laws confirm that the minister is the highest administrative authority in their ministry and is responsible for monitoring the performance of its employees [8]. Consequently, the Prime Minister, despite their position at the top of the

executive branch, does not legally have the power to abolish ministerial powers or transfer them to themselves unless explicitly permitted by legislation. The independence of the minister in managing their ministry is a structural safeguard in the parliamentary system to prevent the concentration of power in one person, as well as to enshrine individual political accountability before the parliament. Therefore, any action by the Prime Minister that infringes upon the legal powers granted to ministers must be interpreted narrowly, especially concerning investigative powers, since the legislator limited the authority for administrative investigations to the minister or head of department without mentioning the Prime Minister [9]. Thus, it becomes clear that the constitutional limits require the Prime Minister to exercise his powers within the framework of comprehensive coordination and oversight, without extending them to the exercise of detailed powers belonging to lower administrative bodies, unless there is an explicit provision allowing for the expansion of these powers. This raises the question of whether his general powers can be interpreted as including the formation of investigative committees, a point that will be clarified in light of the subsequent legal interpretation[10].

The limits of executive power are also evident when considering the principle of separation of powers as intended by the Iraqi constitutional legislator. This principle is fundamentally based on preventing the concentration of power in the hands of a single entity and ensuring the distribution of constitutional functions in a way that guarantees a balance among them. The 2005 Constitution affirmed this principle in Article 47, which stipulated that the legislative, executive, and judicial authorities exercise their powers based on the principle of separation of powers. This principle implies that exercising any power not explicitly granted or restricted by law could lead to an imbalance of power, especially if that power pertains to oversight or accountability functions, such as administrative investigations [7]. Under this view, legal experts say, the executive branch's authority to create investigative committees – even without clear legislative approval – could encroach on legislative power by expanding the power of the Prime Minister.

Legislation regulates administrative investigations and likewise, the assignment of competent authority is a legislative and not a general executive power. Law rather than the constitution establishes who can make administrative investigations – which may only be the minister or department head. To extend this power to the prime minister requires explicit powers in the constitution allowing it to happen [9]. Following the separation of powers principle, the prime minister does not have power to create new investigative mechanisms and investigative committees that have direct normative consequences without legal provision. In the absence of such legislation, the prime minister's authority remains confined to general oversight and guidance, without extending to investigative functions that are at the core of the regulatory administrative jurisdiction defined by the Civil Service Discipline Law. This paves the way for examining the legal framework for the authority to form investigative committees in the following chapter.

Determining the constitutional basis for the investigative authority of the Prime Minister is one of the most prominent issues that has sparked widespread debate in both legal scholarship and practical application. This is because the 2005 Iraqi Constitution does not contain an explicit provision authorizing the Prime Minister to form investigative committees to examine administrative violations or monitor misconduct within ministries and public institutions. Conversely, the constitution grants the prime minister the title of direct executive officer responsible for the state's general policy. This broad and general statement has led some to

suggest that oversight and investigative powers can be derived from it, while others argue that this statement alone is insufficient to establish a specific administrative jurisdiction such as investigative authority, which is inherently linked to rules of professional conduct and regulated by special law [8]. It is also noteworthy that the Iraqi parliamentary system is based on the principle of the prime minister's political accountability to the parliament. This might be interpreted as granting the prime minister broad political and administrative oversight to ensure the implementation of public policy. However, this understanding remains constrained by the provisions of administrative legality, which restrict the power of administrative investigation to specific entities by legislative text. This makes the relationship between the prime minister's constitutional role and investigative powers a matter requiring precise interpretation [7]. Therefore, this study aims to analyze the relevant constitutional provisions, determine their applicability to establishing investigative authority for the prime minister, and ascertain whether this jurisdiction falls within the scope of his executive responsibilities or not. A jurisdiction that requires a direct legislative basis and cannot be exceeded [10].

Constitution of Iraq: Article 78 Article 78 of the 2005 constitution lays the foundation of the constitutional position of the Prime Minister, to the extent that the Prime Minister is "the direct executive responsible of the general policy of the State. This, although only a small phrase, has very far-reaching constitutional implications for the real powers of the Prime Minister in the conduct of the executive. There's a view among some legal scholars that "direct executive responsible" gives the Prime Minister a leadership role that goes beyond merely coordinating ministerial work. It encompasses general oversight and monitoring of the implementation of government policies, and may even include the authority to make certain regulatory decisions to ensure the proper functioning of public services [6]. Based on this understanding, some researchers believe that Article 78 can be interpreted in a way that authorizes the Prime Minister to take oversight measures, which may include forming investigative committees, if these committees aim to implement the state's general policy or address administrative deficiencies within executive bodies. This approach is based on the fact that the constitutional text was formulated in a general and open manner, allowing for a degree of flexibility in defining executive powers according to the requirements of government work [8]. However, this broad interpretation raises an important issue: the extent to which it is permissible to derive powers of a detailed nature—such as the power of administrative investigation—from general provisions established by the constituent authority to define the leadership position of the Prime Minister, without establishing direct rules governing disciplinary and administrative measures. These rules are inherently linked to law, not the constitution. Hence, the necessity arises of defining the limits within which Article 78 can be interpreted without violating the principle of legality.

Another trend in constitutional jurisprudence holds that the interpretation of Article 78 must remain within the limits set by the principle of legality, which makes the exercise of any executive power conditional upon the existence of a clear legal basis. According to this view, the phrase "direct executive authority" does not grant the Prime Minister administrative investigation powers nor does it create a new jurisdiction for him, because it lacks the detailed nature required by the rules concerning disciplinary responsibility, which are regulated by the amended State Employees Discipline Law No. 14 of 1991. This view is based on the fact that regulating administrative investigations falls under the purview of the legislative authority, not the general constitutional powers of the Prime Minister [9]. This perspective highlights the fact that where the Constitution intended to give the Prime Minister certain powers it did so

explicitly (e.g. the command of the armed forces, the management of the Cabinet or the conduct of international relations [9]) while it contained no provision on similar investigative or oversight powers of the prime minister [10]. As a result, any such powers if drawn from the general constitutional text would infringe upon the powers of the constitutional legislator and could usher in a vast executive authority vested in the prime minister, defying the very essence of a parliamentary regime [7]. This way of reasoning is based on a very important principle of constitutional interpretation: that general provisions of constitutions do not create specific jurisdictions unless they are backed by additional legislation. While the constitution lays down the broad framework, law fills in the details, but constitutional roles especially relating to functional responsibility and executive discipline are often matters that need particular processes and specific levels of scrutiny [8]. Thus, the interpretation of Article 78 cannot extend to granting the prime minister the power to form independent investigative committees, as this power is punitive or quasi-punitive in nature and can only be established by explicit legislation.

The third paragraph of the first requirement: The interpretation of Article 78 cannot be separated from the rest of the constitutional texts that complement it, especially Article 80, which defines the powers of the Council of Ministers. This article clearly demonstrates that the Constitution chose to distribute executive powers between the Prime Minister and the Council as a collective body, rather than granting them to the Prime Minister individually. Article 80 of the Constitution stipulates that the Council of Ministers exercises several powers, including "planning and implementing the state's general policy," "supervising the work of ministries," and "monitoring general state affairs." These are general terms, but they reflect that the functions of implementation and political oversight are exercised by the Council as a whole, not by the Prime Minister alone [7]. Based on this understanding, any power intended to be assigned to the Prime Minister individually must be explicit and clear, because the fundamental principle in a parliamentary system is that executive power is a shared responsibility between the Prime Minister and the members of the Council. This makes interpreting Article 78 broadly to include the power of administrative investigation inconsistent with the constitutional structure, because administrative investigation is a detailed executive tool whose regulation falls under the purview of the legislative authority, and it cannot be delegated to the Prime Minister through a general constitutional provision [6]. This means that when one interprets Article 78 of the Constitution, he must draw a line between the general powers that the Prime Minister enjoys by virtue of being the head of the executive branch, from the specific powers which have to emanate from law. The former are exercised in a limited framework of control and guidance, while the latter, including the power to establish investigative committees, requires an explicit regulation of the law, which in turn, restricts the power of the Prime Minister to use only the text of Article 78 without any further legal basis."

The question of the constitutional source of unwritten powers presents a core issue in Iraqi constitutionality; how far can the Prime Minister acquire new executive powers depending on the generality of constitutional texts in the absence of the existence of an explicit law? The origin of this issue is due to the constitution.

Some of these provisions contained general matters, especially those related to executive powers, in the 2005 Iraqi Constitution. It stipulated the direct executive responsibility of the Prime Minister without specifying the instruments or mechanisms for exercising this responsibility, thus opening the door to multiple interpretations of these provisions [9]. Some legal scholars believe that constitutional generality can form the basis for a flexible interpretation

of powers, provided that this interpretation does not exceed the intent of the constitutional legislator or infringe upon the powers granted to other authorities. From this perspective, the Prime Minister can make powers that are not mentioned in the constitution, as long as they are required for the achievement of the general policy of the state or for the smooth functioning of public services, which come under the executive rather than the legislation [8]. But this perspective brings with it the question of whether constitutional generality itself can become a kind of inroad for the Prime Minister to assert more power than the separation of powers allows. This makes examining the limits of interpretation essential to avoid slipping into the concentration of executive power in the hands of one person within a parliamentary system [10].

Another view in constitutional jurisprudence holds that the constitutional interpretation of unstated powers should remain within a narrow scope and be exercised only when the constitutional text is inherently open to interpretation, and provided that this does not conflict with subsequent and effective legal texts. While the constitution is a general document, it does not aim to grant the Prime Minister absolute power, but rather to establish a general framework within which executive powers are exercised in accordance with the law. According to this trend, any attempt to derive a detailed authority such as the authority to conduct administrative investigations or the authority to form investigative committees should be considered a violation of textual legitimacy, because these powers fall within the jurisdiction of the legislative authority, which regulates functional and administrative relations in detail [7]. This trend bases its argument on the constitutional rule that obliges federal authorities to exercise their powers in accordance with the constitution and the law, a rule that came explicitly in Article 109, which means that the exercise of any authority must be based either on an explicit constitutional text or on a law, not on an expansive interpretation of texts. This trend is also based on the well-established principle in constitutional jurisprudence that powers derived through deduction are exceptional and should not be interpreted in a way that disrupts the balance of power, especially in parliamentary systems based on the collective responsibility of the executive branch rather than individual leadership [6]. This understanding renders the process of deducing the Prime Minister's authority to conduct administrative investigations impermissible, because administrative investigations are regulated by a specific law that exclusively defines the competent authorities, and the Prime Minister is not among these authorities. Therefore, any expansion in this direction is inconsistent with administrative legitimacy [11].

Defining the limits of constitutional deduction requires examining the nature of the constitutional texts themselves. Autonomous texts (those that have the character by nature of generating powers) are fragmented (entitling the public authority broadly, with vagueness about the public function they must fulfill) and unique about the legislative subject (such as the concept of administrative investigations). Legal scholars distinguish between autonomous texts (those that can be considered legislative and by nature create sovereign powers) and fragmentary texts (that is, the provision of legislative texts granting the public authority broadly, with vagueness about the public function they must fulfill.) Though texts assigning to the Prime Minister the task of policy making for the public are broad in scope and generous to interpretation, they must not be taken to grant powers of a penal or disciplinary type. This is because such powers are linked to the rights and guarantees of employees and are subject to specific procedures that must be regulated by law [9]. Furthermore, constitutional jurisprudence makes a precise distinction between executive powers exercised by the executive branch in its capacity as a planning, directing, and managing body, and powers that fall under the category of

administrative control or functional discipline, which require explicit legal provisions. Therefore, granting the Prime Minister the authority to form investigative committees based on general provisions could undermine the legal safeguards established by the legislature to protect public employees. These safeguards stipulate that administrative investigations must have a clear legal basis, transparent procedures, and clearly defined authorized bodies [8]. It is thus evident that the scope of constitutional deduction remains limited to what does not conflict with the legal provisions governing administrative investigations. Since these provisions restrict the authority to form investigative committees to the minister or department head, without mentioning the Prime Minister, deriving this authority from general constitutional provisions is impermissible from a legal standpoint [11].

The legal framework governing administrative investigations in Iraq is one of the most important foundations to consider when examining the legitimacy of the Prime Minister's authority to form investigative committees. In Iraq, the legislator has organized a specific codified law concerning administrative investigations, namely State and Public Sector Employees' Discipline Law No. 14 of 1991, as amended. This law clearly outlines who has the authority to create investigative committees and what process will be used. Upon reading this law, it is clear that the Iraqi legislator has tried to limit the scope of investigation to the higher management or the Minister or the department head of the ministry or department. This clear legislative intent raises questions about the possibility of granting the Prime Minister the same authority without an explicit provision [9]. Furthermore, subsequent administrative laws, such as the State Council Law No. 71 of 2017 and the regulations governing the work of the Council of Ministers, have not included any provision granting the Prime Minister direct authority to form administrative investigation committees. This reinforces the premise that the authority to conduct administrative investigations is a purely legal prerogative, which can only be derived from or expanded through new legislation issued by the legislative authority. This legal aspect gains added significance given the practical expansion in Iraq after 2005 of the Prime Minister's formation of investigative committees, particularly in cases of an administrative, security, or financial nature. This necessitates examining the extent to which these practices align with the mandatory rules established by the legislator in the areas of professional discipline and the regulation of administrative responsibility [8]. Therefore, this chapter addresses the legal framework governing administrative investigations, examines relevant legal texts, and analyzes the legal position regarding the Prime Minister's role in this area, to determine whether his exercise of the authority to form investigative committees is based on sound legal grounds or constitutes an overreach of his legislative jurisdiction [11].

The Amended State and Public Sector Employees' Discipline Law No. 14 of 1991 represents the fundamental legislative framework that regulates the provisions of disciplinary responsibility and administrative investigation in Iraq. Through this law, the legislator precisely defined the entities possessing investigative authority, the investigation procedures, the employee's safeguards during investigations, and the penalties that may be imposed. The legislator ensured in this law that the investigative authority is explicitly defined and exercised only by the authorized entities. This is to protect public employees from the abuse of power and to guarantee respect for constitutional principles related to the rule of law and administrative legitimacy [9]. This law is a central focus of this research because it represents the standard by which the legitimacy of any investigative authority exercised outside its scope is measured, including the authority attributed to the Prime Minister to form investigative committees. The

legislator did not merely specify the competent authority, but also clarified the nature of the investigative committee, its formation mechanism, its procedures, and the imposition of specific penalties. Therefore, any violation of these legislative provisions constitutes a breach of legality, unless a subsequent legal text expands or amends the provisions of this law [8]. Hence the importance of this study in analyzing the fundamental texts of the State Employees' Discipline Law, demonstrating how it regulates the investigative authority, and identifying the competent body, which serves as the legal framework to which the legitimacy of the Prime Minister's formation of investigative committees is referred [11].

The Iraqi legislator explicitly defined the authority competent for administrative investigations in the State and Public Sector Employees' Discipline Law No. 14 of 1991, as amended, through Article (10), which clearly stipulates that: "The Minister or the Head of Department shall form an investigative committee regarding the violation attributed to the employee." This is the cornerstone in determining jurisdiction, because it came in an exclusive form that does not allow expansion or measurement, as the legislator mentioned only two entities that can form investigation committees, namely: the minister, and the head of the department. Thus, the legislative text has restricted the exercise of this jurisdiction to specific administrative bodies and has not opened the door for any other executive body to exercise investigative authority, regardless of its position in the administrative hierarchy [9]. This legislative limitation reveals two fundamental points:

First, that the administrative investigation authority is a purely legal authority, not a derived constitutional one, because it pertains to the employee's rights and affects their job status, making it the sole prerogative of the legislative authority [11].

Second, that the legislator's intent was to make disciplinary responsibility a sectoral responsibility belonging exclusively to the ministry or department; that is, it is an internal responsibility linked to the administrative structure of each institution, and not a central responsibility at the level of the highest executive authority [8]. Therefore, the law has clearly defined the boundaries of jurisdiction and prevented any expansion in granting investigative authority to an entity not explicitly designated. This poses a direct query over the degree to which it is possible to assign this power to the PM; in this case, the prime minister to form an investigative committee to investigate violations of administration which are taking place in ministries—where there is no legislative text on the ground to authorize him to do so.

The legislative limitation of administrative investigation authority to the minister, or the department head is not simply a structural decision but is an application of the rule of law because the administration has only those powers that are expressly provided by law. Iraqi administrative jurisprudence affirms that the power of administrative investigation is a restricted power that cannot be inferred or expanded, as it touches upon the fundamental rights of the employee and may result in disciplinary penalties affecting their legal and professional standing. This makes the necessity of an explicit legislative text an essential condition for its exercise [9]. The wording of Article (10) of the Disciplinary Law indicates the legislator's desire to make administrative investigation part of the internal authority of the ministry or department, so that administrative responsibility is linked to the principle of hierarchical order within the institution, and not outside of it. The legislator intended for the minister or department head to directly supervise their employees, ensuring swift action and consistency with the nature of administrative work, and preventing multiple investigative bodies or the intervention of higher authorities that may not be familiar with the specifics of administrative work within each

ministry or department [8]. This limitation of jurisdiction also provides legal protection for the employee, as restricting investigative authority to an administrative body close to the employee guarantees a minimum level of procedural safeguards and prevents them from being influenced by decisions issued by higher executive levels that lack the necessary administrative expertise or functional experience to conduct an investigation. This explains why the Prime Minister is not included among the authorities empowered to conduct administrative investigations, as their constitutional role pertains to public policy, not the direct management of employees within ministries [7]. Hence it is clear that the jurisdiction of the minister and the head of the department is a jurisdiction defined by a mandatory legal text, and that exceeding it or transferring it to another entity, no matter how high it is in the executive hierarchy, requires an explicit legislative amendment issued by the competent authority, which is the legislative authority exclusively [11].

What distances us from the reality of the public administration is the exclusivity of the authority status of the administrative investigation that the amended State Employees Discipline Law No. 14 of 1991 confirms, as the legislator intended to establish blank lines between the internal administrative powers of ministries and the leadership role of the Prime Minister. This ensures that the Prime Minister has no jurisdiction over disciplinary matters, since these are entirely within the functional authority of the minister or head of department. Disciplinary responsibility is directly linked to the employee and their administrative superior and forms part of each ministry's internal regulations, making it non-transferable or non-delegable to other entities without explicit legislative authorization [9]. Consequently, despite their leadership position within the executive branch, the Prime Minister does not possess, by virtue of the constitution or the law, the authority to form administrative investigation committees for employees of ministries, as this power is restricted to specific entities by legislative provision. Even if the Prime Minister is considered the highest administrative authority in terms of general oversight, this does not automatically grant him investigative powers. The legislator has linked investigative authority to the person holding the direct administrative position of the employee, namely the minister or department head [8]. Furthermore, administrative jurisprudence agrees that expanding the scope of investigative authority to include higher-ranking officials in the executive hierarchy, including the Prime Minister, could disrupt the principle of administrative hierarchy and weaken ministers' responsibility in managing their ministries. This contradicts the philosophy of the parliamentary system, which is based on the individual responsibility of each minister for their ministry's actions before the legislative authority [7]. Therefore, the legislative framework for administrative investigation logically and legally prevents assigning this authority to the Prime Minister in the absence of an explicit legislative provision. This limits his role to general oversight, without extending it to the exercise of investigative power, which remains the exclusive prerogative of the minister or department head, as stipulated in Article 10.

Constitutional The revised State Employees Discipline Law No. 14 of 1991 succeeds in meticulously detailing the procedures for establishing investigative committees; grandeur of the court doth prithee ensure that the credit for intent so purposed, lies with the legislator, who while pandering to their congress do seek to muster feeble accouterments of upholding impartiality and safeguards for employee rights. Article (10/Second) of the same law states that "the investigative committee is composed of a head and two or more members." The intentional arrangement is designed to maintain a balance of differing opinions and ensure objectivity regarding the facts ascribed to the employee. In addition, the regulation states that committee

members must be employees with sufficient experience in administrative or legal work so that the investigation shall be conducted in accordance with professional principles, embodying the provisions of the law and the rules of procedures as the law determines [8]. This regulation does indeed show that the legislator acknowledges that administrative investigations cannot be a simple procedure with no substantial guarantees; among other things, he guarantees that the committee to investigate is relatively independent, functionally specialized and that the work is not subject to interference by another authority, and in that way keep the employee from arbitrary or capricious decisions [11]. Therefore, the legislator did not permit the formation of the committee by unauthorized entities, nor did it allow the inclusion of individuals from outside the ministry or department except in rare exceptions and under specific conditions. This was to avoid involving the highest executive authority in the details of the administrative investigation related to the ministry's internal structure [9]. Thus, it is clear that forming an investigative committee is not merely an administrative procedure that any entity can undertake, but rather a power governed by strict legal controls. Any intervention from outside the ministry or department, including intervention by the Prime Minister, constitutes a violation of the principle of functional jurisdiction stipulated in the Disciplinary Law.

Article (10/Third) of the State Employees' Disciplinary Law stipulates that the investigative committee must conduct its work according to procedures that guarantee the employee's right to defense and to have their statements heard. It stipulates the necessity of recording the statements of the employee and witnesses, and enabling the employee to present their defenses and submit any supporting documents. These procedures emphasize that the administrative investigation is not merely a tool for uncovering professional misconduct, but rather a legal safeguard to protect the employee from any administrative abuse. Therefore, the legislator mandated the official documentation of all procedures and stipulated that the results must be based on clear factual and legal grounds [9]. It is noteworthy that the legislator was careful to establish precise investigative procedures, such as posing questions professionally, refraining from exerting any psychological or administrative pressure on the employee, and ensuring the confidentiality of the investigation in its initial stages. The legislator also emphasized the committee's obligation to remain impartial and unbiased, as it is a fact-finding body, not a punitive one. Such a regulation is in line with the philosophy of the legislator which separates the investigation and disciplinary functions from the power to impose sanctions that are still held by the competent authority after the results of the investigation are received [8]. The high degree of specificity of the procedures in the law does not allow for the expansion of investigative authority to bodies other than those expressly listed, given that this will lead to the dilution of criteria and confusion in the procedural order like the one created when body not a party in such proceedings (here: the Minister-PM) is not subject to the same detailed controls under the law imposed on investigative committees within the ministry [12]. The sanctity of the investigative process is rooted in the respect for specific legal procedures, and such a violation makes the recommendations and the legal consequences which may emerge from them legally void.

One of the most essential controls imposed by the legislator in the State Employees' Discipline Law to the investigation procedures is the requirement of the organic linkage of the investigation to the ministry or department to which the employee belongs. This is for several reasons: First, the minister or head of the department is the entity most familiar with the working conditions and the tasks assigned to the employee. Second, the nature of the alleged

error is often related to the nature of the duties specified in the ministry's regulations and instructions. Third, the proximity of the investigation The work environment provides greater access to the evidence, testimonies, and documents necessary to establish the truth [9]. Consequently, any investigation conducted outside the ministry or department, or by an entity not directly related to the employee, violates the principle of functional jurisdiction, even if that entity is higher in the executive hierarchy. The law does not permit transferring an administrative investigation to another entity on the grounds of higher status or broader authority, because the legislator deliberately narrowed the scope of the investigation to prevent interference by higher authorities in the internal affairs of ministries and to ensure that investigative procedures are not politicized or used for purposes outside the requirements of public service [8]. This leads to a crucial conclusion: the Prime Minister, despite his constitutional leadership position, is not among the entities legally authorized to conduct administrative investigations, because his jurisdiction pertains to general oversight and policy formulation, not to the implementation of detailed disciplinary procedures. This confirms that the authority to form investigative committees is not among the powers granted to the Prime Minister under the current Disciplinary Law, and that any exercise of this power by him necessarily requires an independent and explicit legislative basis[12].

Part of understanding the PM's ability to create investigative committees involves studying the legal nature that governs his administrative powers in existing laws, which again is likely too complex a task to be contained in an interview. The role of the Prime Minister in the executive branch was codified in general terms within the 2005 Iraqi Constitution, but was further spelled out in subsequent laws that detailed the contours of his power and the limitations on its exercise. These include, but are not limited to, the two most relevant pieces of legislation, Council of Ministers Law No. 6 of 2019 and Financial Management Law No. 6 of 2019, as well as the general administrative laws underpinning the state's executive apparatus. These laws raise a number of questions regarding the extent to which the Prime Minister possesses supervisory or regulatory powers that could constitute a legal basis for expanding his authority to include the formation of investigative committees [9]. A review of these laws reveals that the Iraqi legislature granted the Prime Minister a range of powers related to public policy, oversight, and coordination, but did not grant him any explicit authority pertaining to disciplinary matters or administrative investigations. This limits his legal powers to general oversight, without extending to the detailed procedures regulated by the Civil Service Discipline Law. Furthermore, the implementing laws did not provide avenues for establishing new powers for the Prime Minister outside the explicit legislative framework. This underscores the importance of analyzing these texts to determine the extent to which they can be used to justify the exercise of investigative authority [8]. This study aims to analyze the fundamental legal texts that define the Prime Minister's powers and determine whether they can be interpreted as including the power to form investigative committees, or whether this power remains outside the scope of the existing legal framework, rendering any exercise of it without a valid legislative basis[12].

Cabinet Law No. 6 of 2019 represents the most recent legislative framework directly regulating the powers of the Prime Minister. By this law, the legislator aimed at determining the functions of the Prime Minister in the body of the executive authority and emphasizing his body within the cabinet and direction in the execution of the general policy of the state. Article (2) of the law states that the Prime Minister is the head of the Cabinet and the one in charge of

running its meetings and directing its work. His powers under Article (3) are varied in nature, including powers from issuing decisions, orders and instructions that he deems necessary to implement general policy and for managing ministries and entities not affiliated with a ministry [8]. These provisions indicate that at least according to the lawmaker, the Prime Minister's organizational leadership function is to be reinforced as he is given power to issue directions and instructions [12]. These powers are more administrative and managerial oriented, but it does not confer disciplinary or administrative investigatory powers. Without limiting the Prime Minister's work as the supervisory, coordinating, and leading body, the law gave the Prime Minister general authority regarding the management of personnel affairs in ministries and the ministries' accountability for that respect. Until this point, this authority was limited to the minister or department head, as per the existing laws [9]. This analysis shows that the Cabinet Law while important in defining the jurisdiction of the Prime Minister, cannot be viewed as a piece of legislation giving him the legal right to set up investigative committees. While the provisions in the law are meant to govern and supervise the work of the Cabinet and the implementation of public policy, they do not pertain suspension or penal procedures. These procedures are exceptions to the general rule of administrative authority and may only be exercised based on specific legal provisions [12].

Article (4) of Cabinet Law No. 6 of 2019 grants the Prime Minister additional powers, including general oversight of ministries and monitoring of government performance, as well as coordinating work among various executive bodies to ensure the consistent implementation of the state's general policy. However, despite their broad scope, these powers remain supervisory in nature, not detailed executive. They grant the Prime Minister the authority to monitor and direct, but do not give him the right to substitute himself for the minister in exercising his legal powers, particularly those related to administrative investigations, which are exclusively stipulated in the Disciplinary Law [9]. Administrative jurisprudence confirms that the authority of general oversight differs fundamentally from the direct internal oversight exercised by the competent authority over its employees. The authority of oversight does not include the power to make penal, disciplinary, or investigative decisions, but is limited to ensuring that administrative performance aligns with general policy and intervening in cases that necessitate issuing general directives or regulatory orders without infringing upon the internal administrative responsibilities of the ministry [8]. The absence of any provision in the Cabinet Law granting the Prime Minister the authority to form investigative committees, despite the law's aim to comprehensively define his powers, is a significant legislative indicator that the legislator did not intend to grant him any direct investigative role. This makes it all the more necessary to assert that the use of this power by the Prime Minister without a clear legal justification constitutes a breach of the principle of administrative jurisdiction, making any investigative committee that he sets up susceptible to being challenged before the administrative judiciary on the grounds of lack of a legal basis [12].

Cabinet Law No. 6 of 2019 has confirmed this with wording specifying that the Prime Minister is only responsible for defining policies, and directing work of the government, without exercising administrative functions of a penal or disciplinary nature. This is in line with the constitutional role of his position as the head of the executive branch, not a direct superior of employees in ministries. It is a common knowledge in administrative jurisprudence that Disciplinary Responsibility is tied to the immediate supremacy of the head of each ministry and cannot be transferred or expanded but in a special law which determines its conditions and

limits and effects [7]. The nexus between constitutional and legal texts drives the end conclusion that although the Prime Minister has the power to communicate orders and instructions, such orders are of a general regulatory nature, and thereby inappropriate for the establishment of investigative committees entailing operational legal consequences affecting public employees [12]. These orders cannot be considered a substitute for the legal texts that regulate administrative investigations, because legislation alone determines the entities authorized to exercise this jurisdiction, according to the principle of the hierarchy of legal rules, which places subsequent legal texts below the constitution but above executive decisions and orders [9]. Therefore, the powers granted to the Prime Minister by the Cabinet Law do not, under any circumstances, include the authority to form administrative investigation committees. This necessitates examining the basis for this authority in other laws or practical applications, bearing in mind that the absence of an explicit legislative text remains a fundamental obstacle to establishing this authority legally [12].

Other administrative laws—such as the Financial Management Law No. 6 of 2019 and the Civil Service Law No. 24 of 1960—show that the legislator focused on the Prime Minister's role in monitoring the state's financial and administrative performance, without granting him any direct powers related to administrative investigations or the authority to hold employees accountable. The provisions relating to the executive branch's responsibilities in these laws pertain to formulating public policies, approving budgets, and managing state affairs at the macro level, not the micro level [8].

Secondly, the Civil Service Law does not grant the Prime Minister any detailed role in matters of employee discipline. Rather, it confines disciplinary matters to the employee and their direct administrative department. This aligns with the principle of administrative hierarchy, which makes the minister or department head responsible for monitoring their employees, not the Prime Minister, whose role is limited to general oversight [9].

Thirdly, the regulatory laws for bodies and departments not affiliated with a ministry affirm that the Prime Minister exercises general administrative oversight, but does not replace the heads of those bodies in exercising investigative powers. This is because the law, by its disciplinary nature, determines the entity authorized to form investigative committees. The interpretation of oversight provisions should not be broadened to include penal or disciplinary powers [7].

Upon reviewing the provisions of the current administrative laws, it becomes clear that the Iraqi legislator has defined the general limits of the Prime Minister's powers in a way that makes his role supervisory and coordinating, rather than directly involved in managing the disciplinary affairs of ministries [12]. The laws, including the Cabinet Law and the Financial Management Law, affirm that the Prime Minister is responsible for general policy and direction, powers that, by their nature, do not extend to detailed procedures such as administrative investigations [9].

Second Paragraph: None of the administrative laws explicitly authorize the Prime Minister to form administrative investigation committees, rendering this power illegitimate. The authority to conduct investigations, as stipulated in Article (10) of the Disciplinary Law, is the exclusive prerogative of the minister or department head, and it cannot be transferred, shared, or exercised by another entity without a legislative basis, as this would violate the principle of jurisdiction.

As specified in the administrative rules [8]:

Furthermore, interpreting the broad powers of the Prime Minister, such as oversight and monitoring, as authorizing him to form investigative committees, deviates from the concept of general administrative oversight. This oversight does not include taking punitive or quasi-punitive measures, but rather is limited to policy-making and the general evaluation of institutional performance. Iraqi administrative jurisprudence has established that powers with a direct legal effect on an employee must be based on an explicit legislative text, which is not the case with the Prime Minister [7].

#### The Principle of Legality and Judicial Oversight of Investigative Committees Formed by the Prime Minister

The principle of legality represents the cornerstone of the administrative legal system in Iraq. This principle requires that the administration operate within the limits of the powers granted to it by law and not exceed the jurisdictions defined for it by legislation. The 2005 Constitution of the Republic of Iraq explicitly stipulates that all authorities are subject to the Constitution and the law. This renders any administrative decision or investigative procedure outside the framework of legislative texts liable to annulment and judicial challenge [7]. The importance of this chapter becomes particularly evident when examining investigative committees formed by the Prime Minister, given the legal issues they raise concerning their compliance with the principle of legality. This is because the Disciplinary Law specifies the body authorized to conduct administrative investigations and does not include the Prime Minister among those empowered. Furthermore, the formation of these committees may have direct legal consequences for public employees, necessitating verification of the soundness of the legal basis upon which they are founded to avoid the invalidation of any procedures or decisions issued by them. The issue of judicial oversight of these committees is of paramount importance, as the Iraqi administrative judiciary, represented by the Civil Service Court and the State Council, is the body authorized to review the legality of administrative decisions, including recommendations or decisions issued by investigative committees not constituted in accordance with the law. The jurisprudence of the State Council has established that any violation of jurisdiction or established legal procedures renders an administrative decision null and void and subject to annulment. Therefore, this chapter examines the relationship between the principle of legality and the authority to form investigative committees, as well as the extent of judicial oversight of their work. Its aim is to determine the soundness or unsoundness of the legal basis upon which these committees operate, and the implications of this on the legal status of employees [12].

The principle of legality is the foundation of the administrative law system in Iraq. It stipulates that the public administration possesses only the powers explicitly or implicitly granted to it by law, within the limits prescribed by that law. Article (5) of the Constitution states that the rule of law prevails, and Article (109) states that federal authorities exercise their powers in accordance with the Constitution and the law. This makes respect for legality a necessary condition for the validity of any administrative procedure, especially those related to the disciplinary responsibility of public employees [9]. Administrative jurisprudence emphasizes that the principle of legality is not limited to the necessity of a legal basis for an administrative decision. It also requires that the decision not exceed the scope of the jurisdiction defined for the administrative body by legislation. Jurisdiction is a specific legal authority that the administration may not exceed or expand without a legal provision, as this constitutes a clear violation of the principle of the rule of law and renders the administrative procedure and its resulting effects invalid [8]. Therefore, any exercise of administrative investigation powers—an

exceptional power because it affects the legal status of an employee must be based on a clear legislative text and cannot be exercised merely through a broad interpretation of supervisory or general directive powers. Consequently, the formation of investigative committees by an entity not legally authorized constitutes a violation of the principle of legality and renders those committees illegitimate in terms of their jurisdiction [13].

The application of the principle of legality also extends to the administration's obligation to adhere to the formalities and procedures stipulated by law. This is clearly evident in the field of administrative investigations, where the legislator has established specific procedures to guarantee the committee's impartiality and protect the employee's rights. The law mandates that the committee be composed of members with functional ties to the ministry or department, requires that the employee's statements be heard, the procedures be documented, and that the employee be given the opportunity to defend themselves [14]. Violating any of these procedures renders the investigation flawed and legally invalid, regardless of the issuing authority or its position within the executive hierarchy ([9] 304). The principle of legality extends beyond provisions concerning jurisdiction and procedures; it also requires that the administrative decision or investigative recommendation be based on a legitimate and factual basis. If the investigation is founded on false information, issued by an unauthorized entity, or conducted in a manner contrary to legal requirements, it is considered legally null and void, and the employee has the right to appeal it before the administrative courts. Iraqi judicial rulings, particularly those of the State Council, have affirmed that a lack of jurisdiction or a fundamental procedural defect renders the investigation and all subsequent actions null and void [7]. Consequently, the Prime Minister's exercise of the authority to form investigative committees without explicit legal basis constitutes a violation of the principle of legality, both in terms of jurisdiction and procedure. The law does not grant him this power, nor does it establish specific procedures for committees he forms. Therefore, any committee he establishes is outside his jurisdiction and contravenes the legal principles governing administrative investigations [13].

The principle of legality is closely linked to the principle of the hierarchy of legal rules, which places the constitutional rule at the apex, followed by laws, and then decisions, regulations, and instructions issued by the executive authority. This hierarchy means that the executive authority, including the Prime Minister, may not create new powers or modify jurisdictions defined by law, as this constitutes an overstepping of the legal hierarchy, where the executive authority's actions must remain bound by the law, not create it [8]. Therefore, any exercise of the Prime Minister's power to form investigative committees is an attempt to add a jurisdiction not explicitly granted, which contradicts the principle of hierarchy. The State Employees' Discipline Law explicitly designates the competent authority as the minister or department head, and does not grant the Prime Minister any role in this regard. Consequently, the Prime Minister's formation of investigative committees lacks a legal basis and constitutes an infringement upon the legal jurisdictions established for other administrative authorities [9]. The Iraqi administrative judiciary affirms this principle through its rulings, which stipulate that an administrative body exceeding its jurisdiction is sufficient grounds for annulling an administrative decision, even if the decision was issued by the highest executive authority. Legitimacy rests on respecting legal boundaries, not on the rank of the issuing authority. Therefore, adherence to the principle of legality and the hierarchy of legal rules necessitates considering any investigative committee formed by the Prime Minister without legal basis as invalid in terms of its jurisdiction [13].

Judicial oversight of administrative actions is the fundamental guarantee for protecting the principle of legality, particularly in the area of administrative investigations that affect an employee's rights and legal status. In Iraq, the State Council, and specifically the Civil Service Court, is responsible for reviewing the legality of administrative decisions, including recommendations and findings issued by investigative committees. This oversight is doubly important with regard to committees formed by the Prime Minister, given that they are often established without an explicit legal basis authorizing the Prime Minister to create them. This makes them more subject to scrutiny of their legitimacy before the administrative judiciary [7]. The Iraqi administrative judiciary has established that an investigative decision, whether a recommendation or a procedure, must be issued by a competent authority and carried out according to sound legal procedures; otherwise, it is considered null and void and must be annulled. The judiciary has also considered violations of jurisdictional rules or essential investigative procedures to be serious defects that render the administrative decision invalid, even if issued by the highest executive authority. Hence, the importance of this discussion in clarifying the limits of judicial oversight becomes apparent.

The investigation committees formed by the Prime Minister, and the criteria the judiciary uses to assess the legitimacy of these committees [9].

The defect of jurisdiction is considered one of the most serious defects that lead to the invalidity of an administrative decision. This defect occurs when an administrative body issues a decision without being legally authorized to do so [15]. Iraqi administrative jurisprudence has emphasized that jurisdiction is a legally defined authority, and the administration may not exercise it on its own initiative or derive it from the nature of its position, as this constitutes a violation of the principle of legality, which is based on the necessity of a clear legislative basis for every administrative authority [8].

In light of this concept, the formation of investigative committees by the Prime Minister falls under the category of jurisdictional defects, because the amended State Employees' Discipline Law No. 14 of 1991 exclusively grants the authority to form investigative committees to the Minister or the Head of Department, and does not grant this authority to the Prime Minister. Therefore, any investigative committee formed by the Prime Minister is considered to have been formed by an unauthorized entity, rendering it invalid and devoid of any legal effect [9].

The Iraqi administrative judiciary has reinforced this trend through its rulings, which have affirmed that violating the rules of jurisdiction constitutes a serious defect that cannot be rectified by prescription or the passage of time, but rather renders the administrative decision null and void. This principle applies directly to investigative committees formed by the Prime Minister, as they are issued by an entity not authorized by the legislature to exercise this type of power. The second paragraph: Iraqi administrative jurisprudence unanimously agrees that any investigative committee formed by an unauthorized entity is invalid, because jurisdiction in administrative investigations pertains to public order and cannot be delegated or agreed upon [13]. The Civil Service Court has ruled in several judgments that the formation of investigative committees by higher authorities outside their jurisdiction, even the Prime Minister's office, explicitly violates Article (10) of the Disciplinary Law. This renders the recommendations and decisions issued by such committees legally ineffective, and in some cases, the judiciary deems them null and void due to their issuance by an entity lacking jurisdiction [7]. Furthermore, the judiciary has emphasized that the legal basis is the sole criterion for the validity of jurisdiction,

and political or administrative considerations cannot justify the formation of committees outside the scope of the law, as protecting employees and ensuring the impartiality of investigations are among the priorities of the Iraqi legal system [9].

The effect of a jurisdictional defect in the investigative committees allegedly formed by the Prime Minister is direct and decisive. This defect renders all procedures undertaken by the committee invalid, including questioning, hearing witnesses, and issuing final recommendations [15]. Administrative jurisprudence holds that the invalidity of the committee extends to the disciplinary decisions based upon it, because what is built upon a flawed foundation is itself flawed, and because proper jurisdiction is a fundamental condition for the validity of any administrative investigation [8]. Consequently, investigative committees formed by the Prime Minister lack a legal basis and thus lose one of the most important conditions of legitimacy, making them, their committees, and their recommendations subject to judicial annulment upon appeal [9].

The validity of an administrative investigation rests on the committee's adherence to the procedures stipulated in the State Employees' Discipline Law, such as hearing the employee's statement, recording testimonies, enabling the employee to defend themselves, and documenting all steps. Any investigation that fails to comply with these procedures is considered illegal, and consequently, its recommendations are invalid, even if issued by a committee appointed by a competent minister. How much more so if the committee is formed by an entity lacking the necessary authority, such as the highest executive body [9]. Administrative jurisprudence emphasizes that respecting procedures is not merely a formality, but rather an integral part of protecting the employee and ensuring the integrity of the investigation. The Iraqi judiciary has considered that violating essential procedures, such as failing to hear the employee, the absence of an investigation report, or the failure of members to sign it, constitutes a defect that invalidates the investigation and renders it null and void [7].

The second point: Investigation committees formed by the Prime Minister, due to his lack of jurisdiction, cannot adhere to the procedures stipulated in the Disciplinary Law. This is because the law itself links these procedures to the minister or department head and their respective subcommittees, not to any other entity. The law assumes that the investigating body is part of the ministry's administrative structure and has direct knowledge of the employee's duties and working conditions. However, central committees formed by the Prime Minister's office lack this functional connection, often leading to violations of essential investigative procedures, such as failing to complete the employee's testimony or the absence of a functional link between the committee and the ministry under investigation [8]. These violations have significant legal consequences, most importantly that the investigation loses its legal value and is considered null and void. Any recommendation or decision based upon it is subject to annulment before the administrative courts, as administrative investigation procedures are mandatory and cannot be violated [9].

Paragraph Three: The violation of procedural rules by investigative committees formed by the Prime Minister is not merely a formal error, but a violation that undermines the legal basis of the investigation itself. This is because the investigation is conducted by an entity lacking the necessary authority and through procedures not grounded in law. Therefore, the Iraqi administrative judiciary has deemed the recommendations issued by these committees to have no legal standing, and ministries or administrative bodies cannot impose penalties based on them. This is because the validity of the procedure is inextricably linked to the integrity of the

investigation procedures and their issuance by a competent authority [7]. Consequently, the invalidity of these procedures automatically nullifies all resulting consequences, thus rendering the establishment of these committees. In terms of legal consequences, the committees' actions constitute a violation of legitimacy and are subject to appeal before the administrative courts without the need to prove harm, because violating fundamental procedures is considered a serious defect that renders the administrative decision null and void [9].

Third requirement: The extent to which the decisions of investigation committees are subject to appeal before the administrative courts.

Paragraph 1: The Iraqi administrative judiciary, represented by the Civil Service Court and the State Council, is competent to review the legality of administrative decisions, including recommendations or decisions issued by investigative committees. Its jurisprudence has established that any decision or recommendation resulting from a committee formed without a legal basis, or which has taken procedures contrary to the law, is subject to annulment because it is flawed by lack of jurisdiction or a fundamental procedural defect [8].

Paragraph 2: Since the Prime Minister does not have the legal authority to form administrative investigative committees, decisions issued based on these committees are considered null and void. Employees have the right to appeal these decisions without being bound by any time limit, because a lack of jurisdiction is considered a serious defect that renders an administrative decision null and void and irreparable. This has been established by the administrative judiciary in numerous precedents ([9] 348).

Paragraph 3: Furthermore, the judiciary does not only consider the body that formed the committee, but also examines the extent to which the procedures stipulated by the Disciplinary Law were followed [16]. If it is not proven that the investigation was conducted according to the prescribed procedures, or that the employee was given the opportunity to defend himself, the judiciary will rule to annul the disciplinary decision, even if it was issued by a competent authority. This reinforces the argument that investigation committees issued by the Prime Minister are invalid in form, substance, and procedure alike [7].

It is clear from the foregoing that the principle of legality constitutes the fundamental basis for defining the limits of administrative authority in Iraq, particularly with regard to the authority to form administrative investigation committees. This chapter has demonstrated that the Prime Minister does not possess a constitutional or legal basis authorizing him to conduct administrative investigations or form such committees, and that any committee he forms is considered to have been issued by an unauthorized entity, thus rendering it invalid in terms of both jurisdiction and procedures. Furthermore, the analysis of judicial oversight confirms that the Iraqi administrative judiciary takes a firm stance against these committees, ruling all their effects invalid due to their lack of a legislative basis and their failure to adhere to the required procedures stipulated in the State Employees' Discipline Law [17]. Consequently, all decisions or recommendations based on an investigation issued by a committee appointed by the Prime Minister are subject to annulment and appeal. Any attempt to expand this authority must be done through an explicit legal amendment, in accordance with the principles of legality and the rule of law [9].

## **Discussion**

1. The 2005 Iraqi Constitution did not explicitly grant the Prime Minister the authority to form investigative committees, and the powers stipulated in Article 78 are general in

- nature, pertaining to executive responsibility and not detailed investigative powers.
2. The research clarified that the amended State Employees Discipline Law No. 14 of 1991 exclusively grants the authority to form investigative committees to the minister or department head, making no mention of the Prime Minister. This renders the investigative jurisdiction a legally restricted one [18].
  3. It became clear that the nature of administrative investigations is disciplinary in nature and cannot be inferred from the generality of constitutional texts or their broad interpretation, as it pertains to the employee's rights and legal guarantees, and requires clear legislative provisions specifying the competent authority.
  4. The research showed that the current administrative laws, including Cabinet Law No. 6 of 2019, do not grant the Prime Minister any direct authority to conduct administrative investigations, but rather limit it to supervisory and coordinating powers.
  5. The analysis of the principle of legality reveals that the Prime Minister's exercise of the power to form investigative committees constitutes an overreach of jurisdiction, as this power is exclusively granted by legislative text and cannot be established by executive decision or broad interpretation.
  6. It was established that any investigative committee formed by the Prime Minister is invalid in terms of jurisdiction, because the entity that formed it is not legally authorized, which renders its procedures and recommendations without legal effect [19].
  7. The Iraqi Administrative Judiciary affirmed that a lack of jurisdiction is a serious defect that renders administrative decisions null and void, and that decisions based on recommendations from unqualified committees are considered invalid.
  8. It was found that violating the investigation procedures stipulated in the Disciplinary Law, such as hearing the employee and documenting the investigation, leads to the invalidation of the investigation. This is inherent in committees formed by the Prime Minister because they are not subject to the legally defined procedures [20].
  9. The research demonstrated that expanding the Prime Minister's powers to include the formation of investigative committees violates the principle of the hierarchy of legal rules, as it transfers a purely legislative power to the executive branch without any legal basis [21].
  10. The research concluded that the Prime Minister's exercise of the power to form administrative investigation committees lacks any constitutional or legal foundation, and that the correct solution, should the legislature wish to grant him this power, should be through an explicit legislative amendment issued by the legislative authority.

## **Conclusion**

1. Constitutional analysis reveals that the general provisions of the 2005 Constitution, particularly Article 78, are insufficient on their own to establish detailed disciplinary powers. This means that forming investigative committees is not a requirement of the Prime Minister's direct executive responsibility.
2. An examination of the amended State Employees' Discipline Law No. 14 of 1991 shows that the legislator restricted the formation of investigative committees to the Minister or the Head of Department only. This makes this authority exclusive and cannot be extended to the Prime Minister without an explicit legislative provision.
3. It is evident that relying on the supervisory and monitoring powers granted to the Prime

Minister in the Cabinet Law No. 6 of 2019 is insufficient to establish the authority for administrative investigation, as administrative supervision differs fundamentally from the authority to conduct investigations, which requires a direct functional connection. 4. It has been established that the formation of investigative committees by the Prime Minister constitutes, from a legal standpoint, an overreach of authority and a violation of legitimacy, because this procedure is issued by an entity that does not possess investigative powers under the law, which makes It is invalid due to a lack of jurisdiction.

4. It is clear that the Iraqi administrative judiciary treats investigative committees formed by unauthorized entities, including the Prime Minister, as legally null and void. Their procedures and recommendations are not recognized, and any penalties imposed based on them are considered null and void.
5. It is definitively established that granting the Prime Minister the authority to form administrative investigative committees can only be achieved through an explicit legislative amendment issued by the legislative authority. This authority cannot be established through interpretation or precedent; rather, it requires an explicit legal text that defines and limits its scope.

### **Recommendations**

1. The Iraqi legislature should issue an explicit legislative text that precisely defines the entities authorized to form investigative committees, in order to avoid over-interpreting constitutional or administrative powers.
2. It is recommended to amend the State Employees' Discipline Law No. 14 of 1991, as amended, to determine whether it is appropriate to grant the Prime Minister a specific role in administrative investigations, or whether this authority should remain exclusively with the minister and the head of the department.
3. The necessity of establishing a detailed legal framework to regulate the work of central investigative committees when needed, specifying their procedures and the safeguards for employees before them, in order to prevent overlap between oversight bodies.
4. Strengthening the principle of separation of powers by preventing the highest executive authority, represented by the Prime Minister, from exercising disciplinary powers not stipulated by law.
5. The necessity of issuing regulatory instructions from the Cabinet that are consistent with existing laws and affirm the ministries' commitment to the jurisdictions defined in the Disciplinary Law, in order to prevent the formation of investigative committees outside the legal framework.
6. Supporting the role of the administrative judiciary in overseeing investigative decisions by enhancing the capabilities of the Civil Service Court and the State Council to effectively review appeals related to administrative investigations.
7. Recommending the activation of parliamentary oversight of the executive authority's exercise of its powers, particularly regarding directives from the Prime Minister that may be interpreted as encroaching on the disciplinary jurisdictions of ministries.
8. The need to educate legal departments in ministries about the provisions of administrative investigations and the principles of jurisdiction, to prevent the referral of employees to illegal investigation committees and to protect their employment rights.
9. Emphasizing the importance of adhering to the essential procedures for administrative

investigations stipulated in the Disciplinary Law, and rejecting any investigation that lacks guarantees of defense, hearings, and proper documentation of procedures.

10. Recommending the adoption of the principle of administrative transparency by publishing decisions related to administrative investigations and clarifying their legal basis, thereby strengthening confidence in the rule of law and preventing the abuse of power.

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