

A Review of Students' Rights in the Disciplinary Procedures in the Islamic Republic of Iran

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Abstract: Disciplinary law, recently included as a new branch in the study of Law, used to be a part of administrative rights and sometimes criminal law. The rules and regulations governing students' rights in the disciplinary procedures in Iran are specified in the "Executive Student Disciplinary Procedure" (2009). The question asked in the present study is, "What are the students' rights in the disciplinary procedure based on, and is the principle of proportion of crime and punishment as well as criminal procedures respected in this procedure?" Research shows that there is still a long way to go to obtain the ideal situation in this regard. However, the students' rights and duties in the disciplinary procedure are, to a great extent, in compliance with universal human rights criteria and the Islamic Republic of Iran Constitution.

Keywords

College student rights, disciplinary councils, student violations, student executive disciplinary procedure.

1. Introduction

A great volume of student disciplinary cases always exist in Iranian universities. The student disciplinary councils are responsible for hearing these cases and handle them based on the student disciplinary by-laws and relevant procedures. Research has showed that control and expulsion may be the most frequently used educative tools in some universities and schools [1,2,3].

The rules and regulations set forth for handling student violations are called "students' rights in the disciplinary procedure". Annually, a great number of students at various Iranian universities are called to disciplinary councils and accused of certain violations. Many of them are later exonerated, and others are sentenced. These sentences are sometimes very harsh and can include expulsion from the university. According to the investigations conducted in the field, there are several problems involved in such cases: First, the members of the disciplinary councils often lack legal education [4]. Even if they are actually educated Law experts, handling these cases by them would require knowledge of the theories set forth in the field of disciplinary law in general and students' rights in the disciplinary procedures in particular. Second, many of the council members wrongly assume that the cases must be processed based on the by-laws and disciplinary procedures alone, and do not pay serious

attention to human rights and the Constitution. Third, students cannot defend themselves properly, particularly due to the fact that they are not entitled to have an attorney and that they are not sufficiently familiar with their rights in disciplinary procedures and have no access to a compiled set of regulations or the relevant legal theories.

With due regard of the abovementioned points, the author seeks to answer the question, "To what extent are the students' rights in the disciplinary procedures held at Iranian universities recognized and respected based on the universal human rights concepts and Islamic laws?" Another way of asking the same question would be "What rules and regulations are the students' rights in the disciplinary procedure based on, and to what extent is the principle of proportion of crime and punishment as well as criminal procedures recognized and respected in these regulations?"

Disciplinary Law and Disciplinary Councils

Clause 1: Definition: Disciplinary Law is a new branch of Law which used to be (at times) included in administrative and/or criminal law. According to the Central Student Disciplinary Committee (2005), "Disciplinary Law is a newly emerged discipline the principles of which are unknown in our legal society. This discipline, except in a few administrative and executive respects, has not been widely considered in the Iranian legal system." (p.1).

The governing rules and regulations regarding students' rights in disciplinary procedures are specified in the "Student Disciplinary and Executive Procedure" (2009). This procedure, comprising an introduction and 5 sections (including 31 articles, 10 clauses, and 82 notes) was ratified on June 2009 by the Ministers of Science, Research and Technology, and Health and Medical Education. Upon notification of this procedure, all previous by-laws and approvals that contradicted it were deemed as invalid.

Clause 2: Disciplinary Councils: These councils are the only competent authority in a university to process student violations. The structure and method of hearing, as well as the voting system of these councils were approved in the form of a by-law by the Supreme Council of Cultural Revolution, and further ratified by the Ministers of Science, Research and Technology, and Health and Medical Education. In the administrative chart of the university, the Disciplinary Council is a department managed by the Students' Affairs Deputy. However, regarding the processing of the violations, punishment of violations, and issuing sentences as well as judgments/votes, the Council enjoys complete autonomy and does not follow the administrative system governing the other university departments.

The objectives set forth in the June 6, 2009 Disciplinary Procedure are: 1) protecting the high position of universities and keeping educational/research environments healthy; 2) protecting the general rights of academics through encouraging students towards respectful behavior; 3) fighting disorder, violating norms, and disregard of other people's individual/social rights.

Disciplinary Councils have several duties the most important of which are: supervision and control of students at all educational levels and all university departments (educational or welfare environments); handling the Council's staff affairs including correspondence with state organizations; receiving official and unofficial reports (from legal or real entities) about students and investigating such reports; performing follow-up procedures related to educational/non-educational violations during the filing procedure through holding interviews.

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The Preliminary Disciplinary Committee as well as the Appeals Council are held on the university campus. The Central Disciplinary Committee supervises the Appeals Council. The student may take the vote issued by the Preliminary Committee to the Appeals Committee and present a complaint against the vote of the Appeals Committee to the Central Disciplinary Committee. However, the Central Committee's judgment shall be final and binding.

Regarding the selection of the disciplinary committee members, the following must be considered:

According to Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights, all individuals are entitled to participate directly or through freely elected representatives in the affairs of their society. Therefore, it is necessary that the truly elected representatives of student organizations be present in the Disciplinary Council sessions. Currently, these representatives are appointed by the university authorities and not by the students themselves. Therefore, to observe the principle of student participation in determining their own academic destiny, it would be better if representatives elected by student organizations replace those appointed by the university president. The same can be said about faculty members.

Disciplinary Council and Disciplinary Law: **Governing Principles and Rules**

Clause 1: The Rule of Law and Principles of Justice: According to the rule of law principle, legal authority must not be applied without due consideration of relevant regulations. In other words, "state by-laws, actions, decisions, and measures should be in accordance with the governing laws, whether the statutory laws that are written or the laws and rules that judges and legal experts and scholars devise" [5]. According to this principle, "No authority in any state must be free from control and accountability" [5]. The rule of law principle states that "Administrative authorities are obligated to consistently observe the relevant rules and regulations in their decisions and actions" [6]. The guarantee for the rule of law with regard to the actions and rulings of the

Disciplinary Committee exhibits itself in the cancellation of these rulings if they are deemed to be against the law. Thus, if the actions and rulings of the Committee are against the law, they shall not be binding or legally effective. In case such rulings and actions are cancelled due to their being against the law, it is assumed that they have never been issued in the first place, and in case such actions or rulings have affected the student in any way, those effects must be duly eliminated [6] and if the student has suffered damages as a result of such rulings, the damage must be compensated.

Clause 2: Rule of Law in the Administrative System: According to the rule of law principle, administrative officials are obligated to observe the relevant rules and regulations in all their actions and decisions including those that relate to individuals (such as individual decisions, rulings, etc.) or those that relate to the public (e.g., by-laws and administrative notifications). In other words, the rule of law principle dictates that all the administrative branches and state activities, whether legislative, judicial, executive, or administrative, must be established in accordance with the law, and that if any case of acting against the law or abuse of power is observed, then the case can be referred to competent judicial authorities for further legal action to stop such violations or abuse of power. The governing rules and regulations for enforcing the rule of law on the decisions and actions taken by administrative authorities would limit these authorities' powers. These rules and regulations are not limited to the general rules of law, but also embrace all the binding rules and regulations recognized as legal rules.

The legal rules governing administrative actions and decisions include the following: international conventions, the Constitution, ordinary laws, customary laws and credible Islamic sources, general legal principles, the rulings of judicial courts, and administrative by-laws [6].

Clause 3: International Conventions: According to Article 9 of the Civil Law, International Conventions are equivalents of law and are binding for all countries and their administrative organizations. There are no specific international

conventions regarding Iranian students' rights in disciplinary procedures. However, the recognized regulations stated in the International Declaration of Human Rights must be observed. After that, the Constitution and the ordinary laws (the Islamic Punishment Law), the disciplinary by-laws and relevant executive procedures, and finally, the Central Disciplinary Committee Procedure must be adhered to. The International Declaration of Human Rights, now considered as the International Constitution, is at the foremost of all the laws. Most countries which have a written constitution have, implicitly or explicitly, included the rules of this Declaration in their respective constitutions [7].

Clause 4: The Constitution and Ordinary Laws: Constitutional laws are among the superior governing laws in all countries and are binding for all state organizations. A constitution might be written or unwritten and must be adhered to in both cases. However, "Where the principles stipulated in the introduction to the Constitution are not arranged as legal rules and votes/rulings, so that they cannot be as clearly binding or explicit as regular legal votes, then they cannot be counted as legal rules, and they merely express the ideology and policies of their respective states [7]. Due attention must be paid to Articles 34-40 of the Constitution regarding students' rights in disciplinary procedures.

Clause 5: Disciplinary By-Laws and the Relevant Procedures: Like other laws, by-laws are a general order issued by competent officials on certain subjects, they create rights and obligations, and are binding for all administrative, educational, and the public in general, unless they are against the law. Administrative by-laws are set forth by administrative officials within their legal powers, and, along with the Constitution, international conventions, and ordinary laws, govern administrative actions and decisions. In fact, although legislation is the sole duty of the legislature, lawmakers have delegated the setting forth of certain rules to the government to enforce the laws that are ratified by the parliament. In other words, lawmakers usually set forth the main principles that must be observed in laws and leave the details to executive authorities. "As by-laws are

synonymous with law and as binding as laws, in North America, to observe the principles of democracy and respecting people's opinion and in accordance with the Administrative Procedural Act ratified in 1946, the relevant benefactors are consulted when by-laws are set forth, so that their thoughts and views can be reflected in the same." [6].

In Iran, setting forth student disciplinary rules is delegated to the Supreme Council of Cultural Revolution. The disciplinary by-laws are laid down by this Council and, subsequently, the executive procedures are issued by the Health and Science Ministries.

Student Violations and the Relevant Punishments

In Section 2 of the Student Disciplinary By-Law (2009), student violations and their respective punishments are specified in more detail. Enumerating all these cases is outside the scope of this article. However, a few general cases are referred to as required[8].

Clause 1: Violations and Punishments: Violations: Violations committed by students can be divided into four groups: 1) general crimes; 2) educational and administrative violations; 3) religious, political and security violations; and 4) moral violations.

1. Punishment: Two types of punitive measures can be applied to students:

a) Punitive measures applied as a result of the ruling by the Disciplinary Council in the university or by the Central Disciplinary Council:

- 1) Summoning and verbal notice
- 2) Written notice without being reflected in the student's record
- 3) Written warning without being reflected in the student's record
- 4) Written notice reflected in the student's record
- 5) Written reprimand reflected in the student's record
- 6) Giving the student a grade of 0.25 in the subject or exam related to the violation
- 7) Depriving the student from welfare facilities including loans, dormitory, etc., or introducing changes in welfare arrangements

8) Demanding compensation from the student in cases where violation causes material damage

9) Suspension for one term without including the suspended term in the maximum number of terms allowed for the student

10) Suspension for one term and including the suspended term in the maximum number of terms allowed for the student

11) Suspension for two terms without including the suspended terms in the maximum number of terms allowed for the student

12) Suspension for two terms and including the suspended terms in the maximum number of terms allowed for the student

b) Punitive measures that can be applied only through the ruling issued by the Central Disciplinary Council:

13) Suspension for three terms without including the suspended terms in the maximum number of terms allowed for the student

14) Suspension for three terms and including the suspended terms in the maximum number of terms allowed for the student

15) Suspension for four terms without including the suspended terms in the maximum number of terms allowed for the student

16) Suspension for four terms and including the suspended terms in the maximum number of terms allowed for the student

17) Transferring the student to another university (and changing his field of study if necessary)

18) Transferring the student from daytime classes to evening classes

19) Expulsion from the respective university while preserving the right for him to participate again in the entrance exam

20) Expulsion from the respective university and preventing the student from studying in any other university for between 1 and 5 years while preserving the right for him to participate again in the entrance exam.

Clause 2: General Crimes Committed by Students: The general crimes committed by students include the following: 1) Threatening, bribing, libel, using abusive language, aspersion, and slander; 2) Assault and battery; 3) Forgery; 4) Theft; 5) Receiving a bribe, embezzlement, and fraud.

Clause 2: Educational and Administrative Violations Proceedings: Educational and administrative violations include the following: 1) cheating in exams or homework; 2) The student's sending someone else to take part in an exam in his place, or taking part in an exam instead of another student; 3) committing any act by real persons which might disrupt, interrupt, or disturb university or dormitory routines; 4) incurring damage on public or private property, or committing breach of trust.

Clause 4: Moral Violation Proceedings: Moral violations include the following: 1) consuming addictive drugs; 2) drinking alcohol; 3) gambling; 4) using unauthorized audio, visual, or text material or taking part in buying and selling or distribution of such material; 5) non-observance of the Islamic dress code, using a dress code that is against university values, and using make up; 6) committing acts that are not compliant with a student's status, i.e., ignoring other people's rights, aggression, creating conflicts, etc.; 7) having illicit relations; 8) taking part in or holding illegal meetings; and 9) committing indecent acts (adultery, sodomy, or lesbianism).

Student Violation Proceedings

These proceedings are as follows:

Clause 1: Receiving a Report: According to the Executive Student Disciplinary Procedure (ratified on June 6, 2009), the receiving of reports can be in the following ways: 1) via competent authorities; 2) via other reliable people; 3) via private plaintiffs. Where reports about committing public violations are received, the Committee secretary can act as a prosecutor in investigating and processing the matter.

Clause 2: Proceedings and Rulings: Proceeding in Disciplinary Councils: Upon oral and written notifications to the student and briefing him about the committed violations, the Disciplinary Council must, before issuing any rulings, interview the student in person, consider and take his written defense (Article 5). In case the student decides to defend himself in person during the Council meeting, the secretary can invite him to the preliminary council meeting and allow him enough time to defend himself in proportion with the subject of the proceeding. In case the student fails to appear in due time in the

Council meeting, then the Council can continue the proceedings in the student's absence (Article 7). According to the Note included in the same Article, if the student fails, within 10 days of viewing the second official invitation for taking part in the interview or the session held for defending himself, to attend the meeting and present his application, then the Council can act to issue a judgment by default. Under all circumstances, the final ruling of the Council shall be issued in the student's absence.

The disciplinary rulings by the Preliminary Council must, upon receipt of the written report and charging the student, be issued as soon as possible and notified to the student. If, due to prolonged proceedings, the student suffers any loss or damage, then the university must act, in a manner that does not contradict general interests of the university or other students, to compensate for such loss or damage (Article 9). If the secretary to the Council or the Head of the Council act to prolong the proceedings and the student suffers damages as a result, then the matter can be referred to the Appeals Council, the Central Council, or other relevant authorities (Note 4, Article 14).

2. Central Council Proceedings: The Appeals Disciplinary Council is the only competent authority to refer student violation cases to the Central Council. In such cases, the minutes of the Appeals Council meeting, signed by all the present members and containing the specific application for reconsideration, must be forwarded to the Central Council, and all the relevant records and documents must be attached to the same in the order determined by the Central Council. Copies of all these documents must be kept for further reference. Obviously, the Central Council shall disregard the cases which lack the necessary documentation or the minutes of the Appeals Council meeting (Article 11).

3. Notification of the Ruling to the Student

The Disciplinary Councils in the university must notify their rulings within a month of their issuance to the accused student through the Head of the Council or the Secretary, and receive a receipt. In case the student refuses to receive the ruling, Article 20 shall be enforced (Article 12).

Clause 3: Reports Proceedings: The following must be observed during reports proceedings: 1) initial examination; 2) considering the truthfulness of the report; 3) considering the person's as well as the environmental situation; 4) the student must be summoned in writing; 5) confidentiality must be observed throughout the proceedings; 6) Humane and Islamic codes of conduct must be observed as well as the ultimate goal which is divine education; 7) implementing the services of legal experts who keep an open mind on matters; 8) notifying the charge in a specific manner; 9) making available to the student the relevant by-laws, procedures, and guidelines; 10) completing the summarized information forms; 11) holding personal interviews (preferably in writing); 12) refraining from urging the student to confess or considering unnecessary details; 13) refraining from probing into unrelated matters and respecting the student's privacy; 14) duly investigating the matter and asking others about the same; 15) obtaining confessions and commitments in a humane manner; 16) compiling and collecting documents without prying onto matters; 17) Extracting the key point and preparing a summary of the case through chronological arrangement of the main events (dates must be specified).

Clause 4: Council Meetings and Filing of Claims: During Council meetings and filing of the claims, the following must be observed: 1) the real members of the Council must be regarded as representatives of the public and the relevant norms. Being accepted in the academic circles is an important feature which can increase the effectiveness of the rulings; 2) the Council members' legal positions must be considered; 3) where the student's case is being processed by judicial authorities, the Council must refrain, until the court of appeals has issued its ruling, from making any decisions, particularly irreparable decisions; 5) all the documents must be presented to the council in the chronological order of their occurrence in a written file. Any attempt at magnifying, underestimating, or presenting false statements in order to create bias or prejudice among council members must be avoided since such acts are irreparable if they lead to infringement

of others rights; 6) The student should be allowed to be present in the Preliminary Council to defend himself. Unfortunately, this is one of the rights of the accused student which has not been seriously considered by the authorities yet. In all judicial proceedings, the accused must be present. According to religious laws, certain violations should not be processed in the absence of the accused, and the accused must be present in at least one interview session or the preliminary session.

Clause 5: Drafting of Judgment: The following must be observed in the drafting of a judgment: 1) reflecting on the person's motives and behavioral background in the occurrence of the violation; 2) reflecting on the consequential effects of the issued judgment in personal, family, and social relations; 3) considering the customs and the effect of limiting the prevalence of an offense on mitigation of the penalty; 4) using lighter provisions (oral warnings and summoning) for reasserting the importance of the disciplinary ruling leading to further deterrents; 5) considering the deterrent effects of suspension rulings; 6) considering the possibility of mitigation or suspension of the ruling in the appeals procedure if the ruling would prove more effective; 7) exact examination by all members and preserving their independent rulings; 8) all voting council members must be convinced that the ruling reached upon consensus is based on clear and convincing evidence; 9) offering advice to the Student Advisory Office.

Clause 6: Notifying the Judgment: The following must be observed when notifying the ruling: 1) the judgment must be diligently arranged; 2) avoiding unnecessarily prolonged procedures from the summoning to issuance of ruling and notification of the same; 3) delivering the verdict directly and in written form; 4) timely notification and giving the student the chance to appeal; 5) using the title "Student's Affairs Deputy" (instead of "the Disciplinary Council"); 6) guiding the student through the bureaucratic procedure; 7) refraining from enforcing the verdict before it is finalized; 8) refraining from sending copies to other university departments (except for enforcing the verdict).

Clause 7: Issuance of the Final Ruling: The Appeals Council and the Central Council are both obligated to issue their final ruling upon due consideration of the student's application presented in his own defense. In case issuance of the final ruling is conditioned to presenting further evidence or conducting further investigation deemed to be in the student's favor, then the final ruling may be postponed until the file is completed (No. 2, Clause 3, Procedure 78).

In accordance with Conference 83, the following must be observed in the issuance of the final ruling: 1) the appeal to the ruling must be realized; 2) no short-term suspension rulings must be issued concurrently with or shortly before the final exams.

In many cases and due to various reasons including the Appeals and the Preliminary Councils having similar or identical arrangements, insufficient time, or there being many cases awaiting consideration, the Appeals Council does not reconsider the ruling of the Preliminary Council. The complete reconsideration of the decisions by the Preliminary Council in the Appeals Council, as well as paying due attention to the raised protests is an inevitable necessity. The most important point to consider in issuing the final ruling is that it cannot be harsher than the preliminary ruling. If in the interval between the preliminary and final rulings, the Secretary to the Council receives new evidence requiring a harsher penalty, then it is necessary that all the procedural steps including summoning, interviewing, and presenting the application based on new evidence to the Preliminary Council be repeated.

Clause 8: Mitigation or Aggravation of the Ruling: Mitigation of the ruling: Article 38 of the Islamic Code of Punishment determines the cases where mitigation is allowed. These include: remission by the private plaintiff; cooperation of the accused in identifying his accomplices or accessories after the fact; obtaining evidence or discovering objects used in committing the crime; etc. A mitigation in the ruling issued by disciplinary councils might occur due to the following reasons: 1) in compliance with the Procedure, in case a

violating student is punished and upon completion of the appeals procedure and issuance of the final ruling, the university president, at his own discretion, may ask the Central Council for a mitigation in its ruling (Article 23); and 2) The ruling might be mitigated if the student protests to the ruling and refers the case for reconsideration to the Appeals Council.

1. **Aggravation of the Ruling:** Student's refusal to accept and observe the ruling and the orders issued by the Disciplinary Council, or his repeating the offense can lead to further aggravations (by one or two degrees) as well as reapplication of the punishment.

Clause 9: Spoliation of Documents from the Student's File: Based on the student's request and the Appeals Council in the university, the Disciplinary Council may agree to eliminate all the punitive record from the student's file. Elimination of certain punitive measures must be approved by the Central Council (these cases are enumerated under No. 7, Section 3 in the Procedure). Eliminating the effects of suspended rulings need not be approved by the Central Council.

Clause 10: Protesting to the Disciplinary Councils Rulings – Disciplinary By-Laws and Procedures

1. **Protesting to the Disciplinary Councils Rulings:** The student can protest to the rulings issued by the Disciplinary Council by submitting his protest within 10 days of the viewing of the ruling. If the student refuses to view the ruling or fails to submit his timely protest, then the ruling shall be deemed as final. Under such circumstances, the university president can, at his own discretion aimed at observing the student's rights, can refer the case to the Appeals Council. The maximum time allowed for submitting protests to the Central Council secretariat is one month after receiving the ruling from the university.

Protesting to Disciplinary By-Laws and Procedures: this protest can be referred to the Administrative Court of Justice. The duty of this court is to "hear the complaints, grievances, and protests by the public against government employees, organizations, or procedures, and

administering justice in these regards” (Article 173 of the IRI Constitution).

Conclusion

The question asked in this article was “What are the students’ rights in the disciplinary procedure based on, and is the principle of proportion of crime and punishment as well as criminal procedures respected in this procedure?” Research shows that there is still a long way to go to obtain the ideal situation in this regard. However, the students’ rights and duties in the disciplinary procedure are, to a great extent, in compliance with universal human rights criteria and the Islamic Republic of Iran Constitution.

In concluding, the author points out the following: It seems that in spite of the favorable progress obtained in recent years due to the positive developments in applying the by-laws and procedures as a result of the perspectives offered by the Ministers of Science, Research and Technology as well as Health and Medical Education, there is still a long way to go before the existing executive problems can be eliminated in practice. It seems that empowering students to take part in important scientific, educational, gild, and welfare activities, highlighting their role in such assemblies as the disciplinary councils as well as consulting with them about drafting by-laws and procedures, and adopting a proper decision making procedure for authorities in the disciplinary councils can be effective in promoting correct decisions. It is necessary that both students and the authorities in the disciplinary councils be familiarized with the relevant rules, by-laws, and rights so as not to disregard the rights of the students and not to issue unjust rulings. Based on natural justice, no one should judge a case wherein he himself holds an interest. Therefore, it is essential that impartiality is encouraged in the proceedings of the disciplinary councils. One way to do this is to allow professors rather than the university president to select the faculty members that are to become future members of the Disciplinary Council. The second principle of natural justice says that the student should be entitled to have a lawyer. Unfortunately, many students are unjustly sentenced simply because they are unfamiliar with disciplinary regulations and are

unable to properly defend themselves. Such unjust sentences have very negative effects on the student. However, if the student is allowed to have a lawyer, such rulings would never occur in the first place.

It is necessary to observe humane principles and values, and respect human rights and freedoms. Under all circumstances, the disciplinary councils must follow the rule of law, avoid decisions based on political and religious partialities, and observe justice and fairness as well as moral and intellectual principles, so that they can ultimately issue correct rulings.

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