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Legislative Controls for Disciplinary Penalties Imposed on Public Servants: A Comparative Analysis of Jordanian and French Legal Frameworks

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Article	Abstract
<p>Keywords: Administrative Judiciary; Civil Service Regulation; Disciplinary Penalties; Public Employee.</p> <p>Article History Received: Mar 25, 2023; Reviewed: Jan 22, 2025; Accepted: Jan 28, 2025; Published: Jan 31, 2025.</p> <p>DOI: 10.28946/slrev.Vol9.Iss1. 2777.pp137-156</p>	<p>This study examines the legislative framework governing disciplinary penalties imposed on public servants under the Jordanian Civil Service Regulation of 2020 and the French General Civil Service Law of 2021. It seeks to analyze the concept of disciplinary punishment, its legal nature, and the fundamental principles that regulate its application within public administration. Additionally, the research explores the extent of judicial oversight exercised by administrative courts over disciplinary sanctions, ensuring compliance with legal and procedural safeguards. By adopting a comparative approach, the study highlights both the similarities and differences between the Jordanian and French legal systems concerning the imposition of disciplinary penalties and the mechanisms of judicial review applicable to such measures. The findings underscore that while administrative authorities possess discretionary power in selecting disciplinary measures, this discretion must be exercised within the confines of legality, adhering to the principle of proportionality. The study emphasizes that excessive or disproportionate penalties risk judicial intervention, reinforcing the necessity for fair and reasoned decision-making. Furthermore, the research concludes that disciplinary sanctions should be proportionate to the severity of the infraction, with administrative bodies ensuring a clear and precise definition of violations and their circumstances. This clarity facilitates effective judicial oversight and prevents arbitrary or overly punitive disciplinary measures, thus maintaining a balance between administrative authority and legal accountability.</p>

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INTRODUCTION

The development in the administration's activity through its intervention in all social and economic fields in Jordan and France, in addition to the increase in the number of employees in public facilities, led to the need to develop laws and regulations that regulate public office and personnel affairs, define the duties of the public employee, and indicate the prohibitions that the

public employee must avoid. In the event that he breaches these duties entrusted to the public employee, disciplinary penalties must be imposed against him.¹

The Jordanian legislator regulated the provisions of disciplinary penalties in the Jordanian Civil Service Regulation for 2020 under the chapter (Disciplinary Penalties), while the French legislator regulated the provisions of disciplinary penalties in the General Civil Service Law for 2021, which governs the work of employees in the state under the item (Disciplinary Penalties).

The significance of the research pertains to the efficacy of disciplinary sanctions, the degree of legal protections available to safeguard public employees from administrative abuse of discretionary power in enforcing disciplinary measures, and the role of the administrative judiciary in Jordan, represented by the Administrative Court and the Supreme Administrative Court in monitoring the legality of the disciplinary sanctions that are imposed against the public employee.

This is in addition to explaining the role of the administrative judiciary in France, represented by the administrative courts, the courts of appeal, and the State Consultative Council, in supervising the legality of the disciplinary sanctions imposed against the public employee as a result of the disciplinary violations the public employee commits during his work.

The research aims to demonstrate the extent to which the public employee is protected from abuse by the administration by using its discretionary powers to impose disciplinary penalties and to demonstrate the importance of judicial oversight exercised by administrative courts in controlling the disciplinary penalties imposed on the public employee, in addition to clarifying the similarities and differences between the job systems in Jordan and France regarding the method of imposing disciplinary penalties on public servants and clarifying the aspects of judicial control in both countries on the legality of disciplinary penalties imposed on public servants.

The study problem is to examine the regulations that dictate the disciplinary sanctions imposed by the administration on public employees. Consequently, this research aims to address the concerns that constitute the research topic, primarily represented by numerous key issues, the most significant of which are: What are the punitive measures for disciplinary infractions? What is the essence of disciplinary sanctions? What are the foundational ideas behind disciplinary sanctions? What are the elements of judicial oversight concerning disciplinary sanctions?

RESEARCH METHODS

This study will follow the comparative approach by comparing Jordanian legislation with French legislation and the applied approach by explaining the practical application of monitoring disciplinary penalties imposed on public employees in administrative courts in Jordan and France due to the diversity of legislation that differed in dealing with sections and topics included under the subject of disciplinary penalties, and an indication of the differences between the Jordanian system and the French system regarding the imposition of disciplinary penalties against the public employee, and judicial control over the disciplinary punishment in terms of the bases of jurisdiction, subject-matter, cause and purpose, and the knowledge of the

¹ Tariq Khader, "The Case for Cancellation and the Case for Hisba in the Judgments of the Egyptian Administrative Judiciary," *Journal of Administrative Sciences* 35, no. 1 (1993): 137.

strengths and weaknesses of the various jurisprudential and judicial trends that dealt with disciplinary penalties, and the extent of their adoption in the legislative systems in both Jordan and France.²

The research also requires an analytical approach to analyse all texts of legislation related to the subject of the research by referring to the Jordanian Civil Service Regulation for 2020 and its amendments, in addition to referring to the French General Civil Service Law for 2020 in order to identify its contents, implications and objectives, and to criticise and comment on it, and highlight the researcher's critical side, as this paper necessitated the use of several research approaches due to its complex nature between the texts of functional legislation and the jurisprudential and judicial opinions and trends regarding the controls of disciplinary penalties imposed on public servants.³

ANALYSIS AND DISCUSSION

What Is the Disciplinary Sanction?

Disciplinary punishment is considered one of the most serious disciplinary elements in Civil Service Regulation because of its negative impact on the legal position of the public employee and his relationship to his work and job.⁴ It is considered one of the most important means of respecting the legal rules and is directly related to the existence of a relationship between the public employee and the administrative body to which he belongs.⁵

What is meant by disciplinary punishment?

Punishment means lingo: "the infliction of some kind of pain or loss upon a person for a misdeed".⁶

As for what is meant by the disciplinary punishment legally: "It is the penalty imposed by the law to deter from committing what was forbidden and abandoning what was ordered".⁷ However, the question that arises is, "What is meant by disciplinary punishment according to jurisprudential, legislative and judicial definitions"? To answer this question, it must be noted that there has been a doctrinal dispute over defining the concept of disciplinary punishment. Some jurisprudence has defined it as: "a job penalty that afflicts the employee whose responsibility is proven for committing a specific disciplinary error".⁸

Another aspect of French jurisprudence defined it as: "an individual action taken by the administration with the intent of suppressing a disciplinary offence that would have negative consequences on the employee's life".⁹ Another aspect of administrative jurisprudence defines it as: "The punishment imposed on the guilty employee who committed a mistake and affects his professional path by depriving him of some privileges".¹⁰

² Sherif Khater, "Public Service," in *Comparative Study* (Cairo: Dar Al-Nahda Al-Arabia, 2009).

³ Harvey Randall, *A Reasonable Disciplinary Penalty under the Circumstances* (Abuzz Press, 2014).

⁴ Ashour Schwabel, "Obedience to Presidential Orders and the Criminal and Disciplinary Re-Sponsibility of the President and Subordinate," General Culture Council, 2008.

⁵ Mustafa Bawadi, "Guarantees of the Public Employee in the Disciplinary Field, a Comparative Study between the French and Algerian Laws" (Belkaid University, 2014).

⁶ Muhammad Ibn Manzoor, "Lexicon of Lisan Al-Arab," 2007.

⁷ Adel Muheisen, "Overlapping Penalties in Islamic Law" (Islamic University, 2008).

⁸ Nawaf Kanaan, "The Disciplinary System in the Public Service," University Library, 2008.

⁹ Francis Delepere, "The Development of Disciplinary Law in the Public Service" (1969).

¹⁰ Ahmed Haider, "The Rights and Guarantees of the Public Employee When Applying the Disciplinary Penalty," *Alfath Journal* 1, no. 1 (2007): 1–18, <https://www.iasj.net/iasj/download/515aa8294fb4b8cc>.

The Jordanian and French legislators avoided defining the disciplinary punishment. In addition, some of the administrative jurisprudence also refrained from setting a specific definition of the disciplinary penalty, contenting itself with dividing it into material and administrative penalties, or mentioning the penalties that may be imposed on the violating employee.

Therefore, the Jordanian and French legislators did not define disciplinary punishment but rather left the task to the legal jurisprudence. Therefore, the jurisprudential definitions of disciplinary punishment were numerous. One part of jurisprudence has defined it as " the public employee's failure to adhere to the ethical and organisational foundations during or outside the exercise of his job."¹¹

Article (142) of the Jordanian Civil Service Regulations for the year 2020 stipulates that: "If the employee commits a violation of the laws, regulations, instructions, and decisions in force in the civil service or their application, or if he performs an act or acts that violate or obstructs the responsibilities and powers entrusted to him, or offending job ethics, duties and behaviour of the employee, failing or neglecting to perform his duties, or assaulting the state's funds and interests, one of the following disciplinary penalties is imposed on him: A. Notice B. Warning C. Deduction from the basic monthly salary for no more than seven days per month D. Withholding the annual increase for a period of one year E. Withholding the annual increase for a period of three years F. Withholding the annual increase for a period of five years G. Termination of service G. Dismissal".¹²

The disciplinary penalties imposed on public employees who violate the rules of codes of professional conduct are: warning, warning, deduction from the basic monthly salary for more than seven days in the month, withholding the annual increase for a period of one year, withholding the annual increase for a period of three years, withholding the annual increase for a period of five years, termination of service, and dismissal.¹³ Therefore, disciplinary penalties can be enumerated and classified into moral penalties, financial penalties, and exclusionary penalties. Moral penalties are the least serious, while financial penalties have a material impact.¹⁴

These penalties, according to the Jordanian Civil Service Regulation, are represented by deduction from the basic monthly salary for no more than seven days per month, withholding the annual increment for one year, withholding the annual increment for a period of three years, or withholding the annual increment for a period of five years. Perhaps the most severe disciplinary penalties are the so-called exclusionary penalties because they lead to the termination of the functional relationship between the employee and the administration and are represented, according to the Jordanian Civil Service Regulation of 2020, by terminating the service and dismissal from the job. Dismissal of the employee is either a decision by the Disciplinary Council for committing a serious disciplinary violation, or it is a judgment if three different disciplinary penalties are imposed on him from the following disciplinary penalties (deduction from the basic monthly salary in excess of seven days per month, withholding the annual increase for one year, withholding the annual increase for three years, withholding the annual increase for five years).¹⁵

¹¹ Bashar Abdel-Hadi, "Studies and Research in Public Administration and Administrative Law," Amman: Dar Al-Furqan, 1983.

¹² "The Jordanian Civil Service Regulations" (2020).

¹³ Ahmed Salama, *Administrative Investigation and Disciplinary Trial* (Cairo: Dar Al-Nahda Al-Arabiya Library, 2010).

¹⁴ Khalifa Al-Jamahi, *Disciplinary Responsibility of the Public Employee for Financial Violations in Libyan Law*, ed. Benghazi, Special Pu, 1997.

¹⁵ Muhammad Al-Khalayleh, *The Mediator in Administrative Law* (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2023).

It follows from this penalty that the employee is not allowed to apply for an appointment for the purposes of competition to occupy a position in the civil service until at least three years have passed since the issuance of the decision of dismissal and he obtained a decision from the head of the Civil Service Bureau approving him to apply to work in the civil service. As for dismissal from the job, which is the most severe disciplinary punishment, it will be by a decision of the Disciplinary Council for committing a serious violation, or if a competent court sentences the public employee for any felony or misdemeanour against honour, such as bribery, embezzlement, theft, forgery, misuse of trust, capitalisation on the position, false testimony, or any other crime against public morals.¹⁶

As for the French legislation, disciplinary penalties were regulated in Article (L. 533/1) of Law No. (1574/2021) of Nov. 24, 2021, related to the legislative part of the General Civil Service Law, which stipulated that the disciplinary penalties that can be imposed are divided into: "Civil servants are divided into four groups: 1- The first group: A. Warning. B. Reprimand. C. Temporary suspension from performing job duties for a maximum period of three days. The second group: A. Suspension of promotion. B. Downgrading the category to a category lower than the category he occupies. C. Temporary suspension from performing job duties from four to fifteen days. D. Termination of service. The third group: A. Downgrading the grade to a lower grade than the grade he occupies. B. Temporary suspension from performing job duties from sixteen days to two years. The fourth group: A. Retirement. B. Dismissal".¹⁷

The provisions of the administrative judiciary in both Jordan and France did not set a direct and explicit definition of disciplinary punishment. However, the Jordanian Supreme Administrative Court ruled in its ruling No. 193/2018, dated 5 June 2018, that: "...it is well known that disciplinary penalties have been legislated so that the competent disciplinary authority can impose a penalty on the employee who committed the disciplinary violation in order to preserve the public interest and the good functioning of public facilities, and the general condition for the penalty is that it be just without being extravagant in severity or indulging in clemency".¹⁸

From the foregoing, the disciplinary punishment, from our personal point of view, is meant as the penalty inflicted on the public employee as a result of proving his responsibility for committing behaviour contrary to the laws and regulations that regulate the work of the administrative body to which he is affiliated.

Therefore, we conclude from the aforementioned that disciplinary punishment represents a major tool for the administrative authority to ensure respect for the legal rules. Most of the occupational legislations in both Jordan and France did not set a comprehensive and Conclusive definition of disciplinary punishment but left the definition task to jurisprudence. These legislations set penal regulations that exclusively include disciplinary penalties that can be imposed on public employees, and these legislations left the disciplinary authority with discretion in choosing the appropriate punishment that is consistent with the committed act.¹⁹

¹⁶ Ali Shatnawi, *Al-Wajeez in Administrative Law* (Amman: Dar Wael for Printing, n.d.).

¹⁷ TEXTES GÉNÉRAUX, "Law No. (1574/2021) Related to the Legislative Part of the General Civil Service Law," [legifrance.gouv.fr](https://www.legifrance.gouv.fr/download/pdf?id=LY7qiEYHvNFBchgPRVjWSNxbNeBfV3AR3mH8mkFXiGE=), n.d., <https://www.legifrance.gouv.fr/download/pdf?id=LY7qiEYHvNFBchgPRVjWSNxbNeBfV3AR3mH8mkFXiGE=>.

¹⁸ "The Jordanian Supreme Administrative Court" (2018).

¹⁹ Hassan Al-Taie, "Ending the Disciplinary Punishment by Erasing (Comparative Study)," *Journal of the College of Law for Legal and Political Sciences* 7, no. 27 (2018): 112–66, https://jclaps.uokirkuk.edu.iq/article_173928.html.

The legal nature of disciplinary punishment

Disciplinary punishment is one of the administrative means used by the administrative authority in accordance with a legal text in order to deter perpetrators of disciplinary and administrative violations.²⁰

But the question that arises is: "What is the nature of these disciplinary sanctions"?

In order to answer this question, it is necessary to refer to jurisprudence, legal systems, and administrative judiciary, where we find that a disagreement has arisen in jurisprudence, legal systems, and judicial rulings about determining the nature of disciplinary punishment and that there is no consensus among legal systems to define one nature of this relationship, as that nature differ from one period of time to another through the development of the state in terms of political, economic and social.²¹

A part of the legal jurisprudence believes that the disciplinary punishment represents in its nature an administrative penalty that affects the job position of the public employee and aims to run the public service regularly and steadily. The disciplinary punishment differs from the criminal punishment in that it does not affect, as a general principle, the life, freedom and money of the public employee.²²

Another aspect of jurisprudence believes that disciplinary punishment includes a kind of deterrence and reprimand that makes the public employee fear the recurrence of the violation or disciplinary error in order to avoid the disciplinary punishment, which constitutes an incentive for the non-occurrence of any disciplinary violation in the future.²³

There is no consensus among legal systems to define a single nature between disciplinary error and disciplinary punishment. This nature varies from one period of time to another, so disciplinary punishment is, in its nature, an administrative penalty that affects the job position of the public employee and aims to run the public facility regularly and steadily. It also includes a kind of deterrence and rebuke that makes the public employee fear repeating the violation.

The Principles Governing Disciplinary Punishment

It should be noted that before issuing its decision to impose disciplinary penalties against a public employee, the disciplinary authorities must take into account the established principles and follow a set of procedures specified under functional legislation. These principles are considered among the most important principles that protect the public employee from the arbitrariness of the administration in imposing and inflicting disciplinary penalties against him.²⁴

There is no doubt that if the public employee is proven to have committed a disciplinary violation, this will entail imposing disciplinary penalties against the public employee. However, the right to impose disciplinary punishment is not an absolute right, but is restricted by a set of

²⁰ Muhammad Yaqoot, *Principles of Investigation of Disciplinary Violations, A Comparative Study*, ed. Manshaat Al-Ma'arif (Alexandria, 2002).

²¹ Hassan Al-Taie, *Judicial Developments in Oversight of the Principle of Proportionality in Disciplinary Decisions* (Alexandria: Modern University Office, 2015).

²² Khalifa Al-Juhani, *Judicial Control Over the Proportionality Between Punishment and Crime in the Field of Discipline, a comparative study in comparative Arab law* (Alexandria: New University Publishing House, 2009).

²³ Muhammad Othman, "The Disciplinary Crime between Administrative Law and the Science of Public Administration (a Comparative Study)" (Ain Shams University, 1973).

²⁴ Muhammad Yaqoot, *Principles of Administrative Investigation in Disciplinary Violations, Explanation of Disciplinary Procedures in the Public Office, Free Trade Union Professions, and Private Work* (Alexandria: New University Publishing House, 2007).

general and basic principles in imposing punishment in order to achieve the principle of the rule of law and to confirm the rights and guarantees of employees.²⁵

The principle of legality of disciplinary punishment

The principle of legality in the field of criminal law means that crimes and penalties are always defined according to the provisions of the law, based on the principle (there is no crime or punishment except by a text).²⁶

As for the functional disciplinary system, the administrative legislator takes one aspect of legitimacy, which is in terms of penalties only, i.e. (no punishment except by text).²⁷

Therefore, the principle of the legality of disciplinary punishment means that the disciplinary authority does not impose a penalty on the perpetrator of the disciplinary violation unless the legislation prescribes it, that is, that the punishment that will be imposed on the perpetrator of that violation is expressly stipulated in the legislation.²⁸

Discipline, as it is punitive and restricts basic freedoms, must not deviate from the penalties specified exclusively by the legislator. In addition, this punishment is not imposed except on the employee who committed the disciplinary violation or participated in or contributed to it.²⁹

The Jordanian Supreme Administrative Court ruled in its ruling No. (341/2022) issued on July 13, 2022, that: "Whereas it was proven that the appellant provided an unauthorised medical leave to the university in which he works, and the university president formed an investigation committee to investigate the appellant after dropping the public right lawsuit against him because the general amnesty law covers it. The investigation committee has recommended that the appellant be referred to the primary disciplinary board for employees, which issued its decision that included the removal of the penalty from the job for the appellant and depriving him of reward and compensation. The appellant contested the decision before the Appellate Disciplinary Board, which issued its complained-about decision No. (1/ 2022) dated Jan.2, 2022, which overturned the decision of the Disciplinary Board, cancelled it, and issued a warning penalty against the appellant. We find that the penalty came within the disciplinary penalties stipulated and issued by the competent authority to issue it and is commensurate with the violation committed. Accordingly, the decision complained about has been issued correctly".³⁰

In France, French administrative jurisprudence has established that, according to the principle of legality, it is not permissible to impose a penalty unless it is decided by text, so no person can be punished for an act that is not legally criminalised.³¹

The French administrative judiciary applied the concept of legitimacy in many of its rulings, as the French Council of State ruled that: "If the act is not legally criminalised, the administration cannot punish the person for committing it".³²

²⁵ Ismail Ibrahim, "Disciplinary Punishment Provisions in the Public Office," *Journal of Legal and Sharia Sciences* 1, no. 6 (2015): 252–68, http://www.zu.edu.ly/jsls/issus_6/download/paper14.pdf.

²⁶ Iryna Shylo, "Criminal-Legal Description of Penalties Imposed for Criminal Offenses," *Naukovyy Visnyk Dnipropetrovs'kogo Derzhavnogo Universytetu Vnutrishnikh Sprav* 4, no. 4 (2020): 356–61, <https://doi.org/https://doi.org/10.31733/2078-3566-2020-4-356-361>.

²⁷ Salama, *Administrative Investigation and Disciplinary Trial*.

²⁸ O. M. Stets, "GUARANTEES of the RIGHTS of PUBLIC SERVANTS during the APPLICATION of DISCIPLINARY PENALTIES," *Herald of Zaporizhzhia National University. Jurisprudence* 2, no. 4 (2020): 168–73, <https://doi.org/https://doi.org/10.26661/2616-9444-2020-4.2-24>.

²⁹ Mohamed Al-Ahsan, "The Legal System for Discipline in the Public Office - a Comparative Study" (Belkaid University, 2016).

³⁰ "The Jordanian Supreme Administrative Court" (2022).

³¹ Emmanuelle Mignon, "The Extent, Meaning and Scope of Guarantees in Matters of Administrative Sanctions," A.J.D.A., 2001.

Consequently, according to the principle of legality, it is not permissible to impose a penalty unless it is decided by text, so no person can be punished for an act that is not legally criminalised.

The principle of non-retroactivity of disciplinary punishment

The principle of non-retroactivity of disciplinary punishment is one of the established legal principles in the disciplinary system, meaning that an employee may not be punished for an act that was not a disciplinary offense at the time of its commission. This principle applies to disciplinary sanctions just as it applies to criminal sanctions. However, the Jordanian Civil Service Regulations of 2020 and the French Civil Service Law of 2021 did not include an explicit provision that obligates the disciplinary authority to follow this principle. However, this principle is considered a general principle required by justice and the need for stability in the legal positions of public servants, in addition to respecting the rules for the distribution of competence in terms of time.³³

So, the Jordanian Supreme Administrative Court ruled in its judgment No. (183/2020) issued on July 29, 2020, that: "It is established in jurisprudence and judiciary that the administrative decision takes effect from the date of its issuance, and it may not be issued retroactively, and that the principle of non-retroactivity of the administrative decision is based on the non-retroactivity of prejudice to acquired rights since the appellant issued its decision on 7 January 2019 to terminate the service of the respondent as of 1 January 2019 (i.e. retroactive effect), then in this case the decision issued by the appellant is in violation of the law and must be annulled, and since the Administrative Court reached the same conclusion, its ruling is in accordance with the law".³⁴

The principle of proportionality of the disciplinary punishment with the disciplinary offence

The principle of proportionality of the disciplinary punishment with the disciplinary offence requires the administration to impose a disciplinary penalty commensurate with the disciplinary offence committed by the public employee and not excessively punish the public employee for his actions. The principle is that the administration enjoys a wide discretionary power in choosing the disciplinary punishment it imposes on the public employee. However, the administrative judiciary in both Jordan and France settled on the fact that the exercise of this disciplinary power of the administration remains under its supervision to ensure the principle of compatibility between the gravity of the disciplinary violation and the amount of the disciplinary punishment imposed on the public employee.³⁵

The Jordanian Supreme Administrative Court ruled in its ruling No. (267/2022) issued on June 21, 2022, "We find that what is proven from the case papers is that the properly formed Disciplinary Board has carried out the procedures governed by the Civil Service Regulation, observed the guarantees contained in the system, and issued its decision complained of. Since the conclusion reached by the Disciplinary Board was acceptable and properly extracted from proven assets in the case papers, and since the error committed by the appellant was by printing a personal status card in the name of the invitee (SN) and placing a picture on it that does not belong to her but to an unknown girl, this act is based on a great degree of danger and that the punishment imposed by the Disciplinary Council by terminating the service of the appellant is

³² "The French Administrative Judiciary" (2005).

³³ Yahya Qassem, *Guarantees for Disciplining Employees in Legislations, Egypt, Iraq, Yemen, France*, ed. Sana'a (Abadi Center for Studies and Publishing, 1999).

³⁴ "The Jordanian Supreme Administrative Court" (2020).

³⁵ Tareq Al-Billeh, "The Situations Related to the Functioning of the Administrative Judiciary in Jordan for the Year 2020: A Step Forward," *International Journal for Court Administration* 14, no. 3 (2023), <https://doi.org/https://doi.org/10.36745/ijca.453>.

commensurate with the seriousness of the misdeed she committed and is not subject to exaggeration, which requires dismissing the appeal of the appellant".³⁶

In another ruling of the Jordanian Supreme Administrative Court No (337/2022) issued on July 5, 2022, it ruled that: "Our Court also finds that the penalty imposed by the appellant on the respondent, which is termination of service, is not commensurate with the circumstances of the case and the behavioural violations attributed to him, without taking into account that he has been an employee since 2000. This is because it is known that the disciplinary punishment was legislated so that the competent disciplinary authority could impose the penalty on the employee who committed the disciplinary violation in order to preserve the public interest and the proper functioning of the public facility. This is not possible if the penalty involves extreme cruelty or leniency in the disciplinary procedures, as required by Article (4/141) of the Civil Service Regulation. The penalty imposed was the termination of service, which is the penalty that came in terms of severity in the seventh order among the package of graduated penalties prescribed in Article (141/1) of the Civil Service Regulation. Since the papers submitted in the case were devoid of evidence that would require an increase in the penalty to the limit of choosing the most severe of them, this stigmatises the decision with extremism and failure to take into account the principle of appropriateness and proportionality between the violating act and the penalty resulting from it. With this matter, the decision complained of must be annulled in terms of punishment only for exaggeration".³⁷

As for France, the French Council of State ruled in its ruling issued on Dec. 13, 2022 that: "The judge is left with the discretionary power to determine whether there is an abuse of power, and within the limits of that matter he decides whether the alleged actions against the public employee justify the persecution of Disciplinary punishment for those acts or not, and whether the prescribed punishment is commensurate with the committed acts. With regard to monitoring the alleged facts that justify the issuance of the disciplinary punishment, the evaluation of the appropriateness of the punishment in relation to the seriousness of the committed defects is up to the discretion of the trial judge".³⁸

The principle of unity of disciplinary punishment

The principle of the unity of disciplinary punishment means that it is not permissible for a public employee to be punished for the same act with two disciplinary penalties. It is not considered a violation of the aforementioned principle to impose an original or consequential penalty on a public employee for a single act, as is the case with a public employee who is dismissed, in addition to depriving him of applying to other positions in the civil service before the lapse of a specific period. It is not also considered a violation of the principle of the unity of the disciplinary penalty that a disciplinary penalty is imposed on the public employee and a criminal penalty for the same act because they are two penalties independent of each other, such as credit abuse crimes, embezzlement crimes, and forgery crimes. In the event that the crime is proven against the public employee and he is punished before the criminal courts, this does not preclude the administration from imposing the disciplinary punishment on the public employee.³⁹

³⁶ The Jordanian Supreme Administrative Court, 2022.

³⁷ The Jordanian Supreme Administrative Court.

³⁸ "The French Council of State-5th Chamber" (2022).

³⁹ Nawaf Kanaan, *Al-Wajeez in Jordanian Administrative Law*, ed. Amman, Book Two (Dar Al Thaqafa for Publishing and Distribution, 2013).

Article (141/A/3) of the Jordanian Civil Service Regulation of 2020 stipulates that: “No more than one punishment may be imposed for a single behavioural violation committed by an employee”.⁴⁰

The principle of non-punishment for the act twice is considered one of the most important principles applied in the disciplinary field, so that it is not permissible to combine disciplinary penalties for a single violation, given that the same mistake committed by a public employee cannot result in a double disciplinary penalty.⁴¹

In application of this, the Jordanian Higher Administrative Court ruled in its judgment No. (340/2022) issued on July 4, 2022, that: “by applying the law to the facts, and since the decision issued by the appellant on 26 September 2021 considering the respondent is legally dismissed from the job based on Article (70/A /3) of the personnel system at Al-Balqa Applied University was issued on the basis of the criminal judgment issued against the respondent, which includes his conviction of a misdemeanour crime and a sentence of six months imprisonment. This judgment gained the final degree by the decision issued by the Amman Criminal Court of First Instance, Southern Amman Division, in its criminal capacity in Case No (999/2021), which is the decision that affected the legal status of the respondent. Since this decision was overruled by a written request from the Chief Public Prosecutor under Article (291) of the Code of Criminal Procedure, by the ruling issued by the Court of Cassation in its criminal capacity in Case No. (4049/2021), and since this cassation came in favour of the respondent (the appellant), affected the legal position of the respondent and made the penal judgment issued against him non-conclusive, this makes the appealed decision (complained against) not based on a valid factual and legal reason, and it necessitates annulment In addition, we find that the appellant, with the same decision complained of, decided, pursuant to Article (53/a/9) of the same system, to deprive the respondent of the university’s financial contribution to the provident fund, even though this penalty was not stipulated in Article (70) of the system mentioned in the case of dismissal from the job de jure, but it was stipulated in Article (53) of the same system in the event of dismissal arising from disciplinary procedures and penalties”.⁴²

The French Council of State ruled that: “it is not permissible to combine disciplinary penalties for the same reason for the violation, even if those penalties are prescribed by law, as long as the law does not allow combining them, and therefore it is not permissible to combine automatic transfer and downgrading”.⁴³

Judicial Control of Disciplinary Penalties

The oversight of the administrative judiciary over the legality of the disciplinary decision regarding the imposition of disciplinary penalties is one of the most important disciplinary guarantees in the public office, given that the judiciary is considered the guardian of justice and the rule of law and is characterised by impartiality and independence,⁴⁴ in addition to the strength and authoritative provisions of the administrative judiciary that everyone is committed to implementing and respecting.⁴⁵

⁴⁰ The Jordanian Civil Service Regulations.

⁴¹ Habib Abu Al-Saud, *Administrative Judiciary*, Disciplina (Al-Iman Press, 2006).

⁴² “The Jordanian Higher Administrative Court” (2022).

⁴³ “The French Council of State” (1963).

⁴⁴ Tareq Al-Billeh, “Jurisdiction Regarding Administrative Proceedings in Jordanian and French Legislation: Views on the Administrative Judiciary in 2021,” *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 37, no. 1 (2023): 189–215, <https://doi.org/https://doi.org/10.1007/s11196-023-10064-5>.

⁴⁵ Beata Baran, “Penalties Imposed on Officers of the Customs and Tax Service for Disciplinary Offenses,” *Roczniki Administracji I Prawa* 2, no. XIX (2019): 169–78, <https://doi.org/https://doi.org/10.5604/01.3001.0014.0434>.

In application of this, Article (5/1) of the Jordanian Administrative Judiciary Law stipulates that: “The court is exclusively competent to consider appeals submitted by stakeholders related to the following: ... public officials’ requests to cancel the final decisions issued against them by the disciplinary authorities”.⁴⁶

Article (7/a) of the same law stipulates that: “Proceedings shall be filed against the person who has the authority to issue the decision to be challenged, or against the person who issued it on his behalf. The lawsuit must be based on one or more of the following reasons: 1. Lack of jurisdiction. 2. Violating the constitution, laws, or regulations, or misapplying or misinterpreting them. 3. Association of the decision or the procedures for issuing it with a defect in the form. 4. Abuse of power. 5. Defect of cause”.⁴⁷

In France, Article (L.211-1) of the Administrative Judiciary Law stipulates that: "Administrative courts are considered as a primary judicial body that decides on all administrative disputes outside the jurisdiction of the State Council, and that each administrative dispute must be presented first at the level of the Administrative Court for adjudication by an appealable preliminary judgment unless the special texts decide otherwise. In the same context, Article (L.211-4) of the same law stipulates that the administrative Court can conduct a reconciliation process between the conflicting parties, and the French legislator aims to mitigate administrative disputes on the administrative judiciary. The Court can also, according to the text of Article (L.212-1), exercise an advisory function and decide on cases brought before it by a panel composed of a president and a group of advisors, according to the text of Article (L.221-1)".⁴⁸

Therefore, from the foregoing, the judicial oversight of disciplinary penalties is represented in the defect of lack of jurisdiction, the defect of violating the constitution, laws, or regulations, or the error in their application or interpretation, which is called the defect of the subject-matter, in addition to the association of the decision or the procedures for its issuance with a defect in form, the defect of abuse of power, which is called the defect of purpose, and the defect of cause.

Control over the base of jurisdiction

The defect of lack of jurisdiction means that the administration departs from the powers granted to it when issuing its decision to impose disciplinary penalties. That is, it is the inability to undertake a specific legal action related to imposing disciplinary penalties, given that the legislator has assigned this jurisdiction to another party.⁴⁹

Article (143) of the Jordanian Civil Service Regulation of 2020 stipulates that: "A. Disciplinary penalties stipulated in Paragraph (a) of Article (142) of this system shall be imposed on a behavioural violation committed by an employee of the first, second and third categories, according to the following powers: 1). By a decision of the line manager if the disciplinary penalty for the violation does not exceed a warning, 2). By a manager's decision if the disciplinary penalty for the violation does not exceed a deduction from the basic salary, 3). By a decision of the Secretary-General, the disciplinary penalty for the violation does not exceed withholding the annual increment for a period of three years, 4). By a decision of the Minister if the disciplinary penalty for the violation does not exceed the withholding of the annual increment for a period of five years".⁵⁰

⁴⁶ “The Jordanian Administrative Judiciary Law” (2014).

⁴⁷ The Jordanian Administrative Judiciary Law.

⁴⁸ “The France Administrative Judiciary Law” (2022).

⁴⁹ Wissam Al-Ani, *Administrative Judiciary* (Baghdad: Al-Sanhouri Library, 2013).

⁵⁰ The Jordanian Civil Service Regulations.

Applying this, the Jordanian Administrative Court ruled in its judgment No. (188/2022) issued on June 29, 2022 that: "Whereas the court finds that the petitioner is an employee of the Social Security Corporation of the first category and that on July 29, 2021, the plaintiff" S.H." filed a complaint with the Social Security Corporation, the subject of which is the leaking of its data and personal information to another person, which caused her great harm. In light of this, a committee was formed to investigate this complaint based on the provisions of Article (146 /A/1) of the Civil Service Regulation. The committee issued its recommendation to the Director General to issue a penalty of warning to the petitioner per the provisions of Article (142) of the Civil Service Regulation for violating the violation of submitting the data of one of the insured without an official letter. The petitioner submitted a grievance to the Director General indicating the reasons for reviewing the penalty taken. This grievance was considered by the Grievance Committee, which issued its recommendations that the interrogation procedures and the decision to direct the penalty are consistent with the provisions of Articles (140, 141, 142, and 145) of the Civil Service Regulation and recommended to the respondent to reject the grievance. On Feb. 21, 2020, the respondent issued his appeal decision, which included the rejection of the grievance and the maintenance of the warning penalty directed at the petitioner. Accordingly, the appealed decision was based on the investigations carried out against the petitioner and following all legal procedures through which it is proven that the petitioner committed a behavioural violation, which is the leaking of data and information related to maintaining confidentiality and the mechanisms for disclosing information, in violation of the code of professional conduct and ethics of the public office that requires the employee to carry out the job tasks and duties entrusted to him and adherence to the provisions of the laws, regulations, instructions and decisions in force. In this case, what the petitioner did constitutes a violation against him that has been proven to have an established basis in the case papers".⁵¹

Control over the base of forms and procedures

The administration must abide by the formal procedures and conditions to be followed when making administrative decisions. Otherwise, its decision is defective and subject to nullification, even if a competent administrative authority issued it, so the basis of form and procedures in the administrative decision means the external appearance of the administrative decision. Every administrative decision has procedures and steps that the administration must follow and adhere to in issuing administrative decisions so that this achieves the public interest and the interest of individuals at the same time, because the rules of form and procedures would allow the administration to make the administrative decision, and constitute a guarantee for individuals to protect their rights and freedoms from the arbitrariness of the administration.⁵²

In order to protect the public interest, the legislator requires the administration to follow certain procedures to impose disciplinary penalties on the violating employee. The administration must follow those procedures that are considered essential when stipulated in laws, regulations, and instructions.⁵³

Therefore, the legislator may impose on the administration to take certain procedures that precede the issuance of the administrative decision with the penalty. As a result of failure to follow them, the decision will be defective in form and procedure and subject to nullification.⁵⁴ In addition, the law requires that the decision to impose a disciplinary penalty be written.

⁵¹ The Jordanian Supreme Administrative Court, 2022.

⁵² Al-Khalayleh, *The Mediator in Administrative Law*.

⁵³ Hussein Othman, *Administrative Judiciary Law* (Beirut: Al-Halabi Human Rights Publications, 2010).

⁵⁴ Mustafa Abu Zaid Fahmy and Majed Al-Helou, *Administrative Cases, Case of Cancellation, Settlement Case* (Alexandria: New University House, 2005).

Otherwise, it is considered contrary to the base of the form, which leads to the invalidity of the administrative decision to impose a disciplinary punishment.⁵⁵

Applying this, the Jordanian Supreme Administrative Court ruled in its ruling No. (24/2023) dated Jan.24, 2023 that: "All disciplinary measures against the appellants were carried out in accordance with the rules and have all the elements of the validity of the administrative decision, and were issued within the powers of the respondent granted to it in the legislation regulating customs work, and that the Court does not have the power to comment on the evidence from which the respondent formed its belief when issuing its appealed decision (complained of) after investigation, hearing the evidence and inflicting the penalty, but verifies the validity and legality of the procedures followed by the Disciplinary Council and the result it reached, that what the Disciplinary Council reached to has a fixed origin in the case papers, that the disciplinary punishment imposed against the appellants is within the competence of the respondent and that it took into account the seriousness of the administrative offense and the appropriate penalty. There is no comment on it, as the legitimacy of this discretionary power is that its use is not marred by any exaggeration or lack of appropriateness. Our Court does not see in the punishment imposed on the appellants any exaggeration, considering that it is appropriate to the appellants' actions".⁵⁶

Control over the base of cause in the disciplinary punishment

The causing of the disciplinary decision by imposing disciplinary penalties is one of the important guarantees that ensure the fairness of the disciplinary penalty that is imposed on the employee and protects him from the arbitrariness of the administration. It is dictated by general legal principles, even if there is no text stating it because the disciplinary decision is of a judicial nature and decides on an issue that is originally within the jurisdiction of the judiciary. Therefore, it must be causal. The importance of causing the disciplinary decision for the public employee is that it puts in his hands the reasons that called for the disciplinary authority to impose the penalty on him. If it appears to him that they are not valid, he can appeal against the disciplinary decision. The causing also makes the disciplinary authority supervise itself and slow down before issuing the disciplinary decision. It also allows the judiciary at the same time to implement its control over the legality of the disciplinary decision by imposing disciplinary penalties against the public employee by examining the legality and appropriateness of the reasons that called for the issuance of the disciplinary punishment against the public employee.⁵⁷

In the defect of the cause, it is assumed that there is a valid factual and legal case that compels the administration to intervene and prompts it to issue the administrative decision to inflict disciplinary punishment against the public employee. This case is intended because of the administrative decision. Hence, the meaning of the cause for the decision can be defined as the motive that drives the administration to express its will and issue the administrative decision. The cause for the disciplinary decision to impose a penalty on the employee is his breach of job duties, the general organisational rules, or the superiors' orders.⁵⁸ The defect of the cause also occurs if the administration relies on the decision to impose the penalty on a violation that the employee did not commit, which is called the physical existence of the facts.

⁵⁵ Ghazi Mahdi and Adnan Obaid, *Administrative Judiciary, Al-Nibras Corporation for Printing* (Baghdad: Publishing and Distribution, 2013).

⁵⁶ "The Jordanian Supreme Administrative Court" (2023).

⁵⁷ Ali Muhareb, *Administrative Discipline in the Public Office* (Amman: House of Culture for Publishing and Distribution, 2004).

⁵⁸ Suleiman Al-Tamawy, *The General Theory of Administrative Decisions: A Comparative Study* (Cairo: Dar Al-Fikr Al-Arabi, 1967).

Or it occurs in the event that the work for which the disciplinary decision was issued does not meet the legal conditions, such as the public employee committing an act that cannot be considered a violation according to the legal description of the facts.⁵⁹

In application of this, the Jordanian Supreme Administrative Court ruled in its judgment No. (25/2020) issued on March 4, 2020, that: "Since every administrative decision has a cause that justifies its issuance, and that the administrative judiciary monitors the validity of the establishment of the facts and the correctness of their legal qualification, and whether the result reached by the administrative decision is justifiably drawn from existing assets, otherwise the administrative decision is invalid because it has lost an essential base that is the cause for its existence and the justification for its issuance."⁶⁰

As for France, the Administrative Court of Appeal in Paris ruled in its judgment issued on March 18, 2022 that: "In accordance with the provisions of Article 29 of the Law of July 13, 1983 regarding the rights and obligations of civil servants codified by Article L530-1 of the General Law of the Public Service as of March 1, 2022, which stipulates that: "Any mistake committed by a public employee during the exercise of his duties or on the occasion of the exercise of his duties exposes him to a disciplinary penalty without prejudice to the penalties stipulated in the criminal law." The Court also ruled under the provisions of Article 66 of the Law of Jan. 11, 1984 regarding the statutory provisions related to the public service of the state, codified in Article L.533-1 of the General Law of Public Service as of March 1, 2022: "It is up to the judge to consider the plea of abuse of authority, to determine whether the alleged acts against public officials constitute disciplinary errors and justify the imposition of disciplinary punishment and whether such punishment is commensurate with the seriousness of the acts committed".⁶¹

Control over the base of the subject matter in the disciplinary punishment

The subject matter of the administrative decision to impose the disciplinary penalty is the subject matter of the disciplinary decision, i.e. the direct effect that results from it, whether it represents the establishment, amendment or cancellation of a specific legal status. The subject matter of the disciplinary decision to dismiss an employee is to sever the relationship between the administration and this public employee. It is assumed that the subject matter of the administrative decision is feasible in practice and not impossible. It is also assumed that the subject matter of the administrative decision is legitimate from a legal point of view, in the sense that the administrative decision does not contradict the rules of law. Hence, the decision to deprive the employee of his annual leave, for example, is a defective decision in its subject matter because the occupational legislation did not provide for depriving the employee of his leave as a disciplinary penalty among the specific disciplinary penalties exclusively.⁶²

So, the subject-matter of the administrative decision in the field of disciplinary action is "disciplinary punishment", and the defect of the subject matter is the defect of violating the law in the narrow sense, given that any defect in the decision is considered a violation of the law because the law is the one that determines the provisions for the validity of the administrative decision. The defect of violating the law is that the administration issues a decision violating the legal rule, as it violates the laws, regulations, and instructions in force in the public facility,

⁵⁹ Fawzat Farhat, *General Administrative Law, Part Two, Administrative Work Control* (Beirut: Al-Halabi Human Rights Publications, 2012).

⁶⁰ The Jordanian Supreme Administrative Court, 2020.

⁶¹ "The Administrative Court of Appeal in Paris" (2022).

⁶² Suleiman Al-Tamawy, "Administrative Judiciary," in *Disciplinary Judgment*, Book Three (Cairo: Dar Al-Fikr Al-Arabi, 1995).

such as if the administration imposes more than one penalty on the violating employee. Thus, it has violated the legislative texts.⁶³ (Al-Helou, 2004, p. 176).

Accordingly, the Jordanian Supreme Administrative Court ruled in its judgment No. (47/2022) issued on Feb. 22, 2022, that: "Extrapolating the texts of articles (45, 46, 47) of the teaching staff system at Al-Balqa University No. (41) of 2007, we find it requires the faculty member to carry out the university tasks and duties entrusted to him and to adhere to the provisions of the applicable regulations, instructions, and decisions. In the event that the faculty member violates the system, one of the disciplinary penalties stipulated in Article (46) of the same system will be imposed, including the notice penalty. Based on the provisions of Article (47) of the system, the respondent (the first appellant) has the authority to impose this penalty in the event that the violation is proven, as it is proven in the case papers that the appellant (the second appellant) did not adhere to the specified lecture times. An interrogation was directed to him in this regard, and he responded by admitting that he used to leave early from some lectures in his response to the interrogation. In light of the lack of conviction of the respondent (the first appellant), it issued its decision that included directing a notice penalty against the second appellant for violating the text of Article (45/b) of the faculty system".⁶⁴

Control over the purpose base in the disciplinary punishment

The purpose of the administrative decision to impose the disciplinary penalty is the conclusion reached by the administration, with its discretion, that the public servant has committed the disciplinary offense. Therefore, a disciplinary punishment was imposed on him due to that disciplinary violation. The administration's decision aims to ensure that public utilities continue to operate regularly and steadily. Thus, the disciplinary decision issued against the violating employee aims to preserve the entity of the public office, prevent abuse of the job, deter this employee from repeating the violation, and deter others from committing it. The objective of the administrative decision must be to achieve the public interest; otherwise it is defective and subject to revocation.⁶⁵

Sometimes, it is not enough for the administration to pursue this general goal; rather, it must seek to achieve a specific goal that the legislator wanted explicitly or implicitly within this general framework, which is the realisation of the public interest, which is known as the goal allocation rule. Suppose it is proved that the administration did not aim in its decision to achieve this specific goal. In that case, its decision will be defective with the defect of abuse of power, even if it aims to achieve another public interest.⁶⁶

Disguised disciplinary punishments, such as spatial or qualitative transfer, are considered as one of the defective forms of abuse of power in the purpose of the punishment decision. The administration has the authority to transfer an employee to achieve the requirements of the public interest, but its intention of the transfer is to punish the transferred employee.⁶⁷

Accordingly, the aim of the decision to impose the penalty may not be to take revenge on the punished public employee, but rather, the aim and the main objective should be to ensure the achievement of the public interest.⁶⁸

The basic rule is that the administration must initially aim to achieve the public interest through its decisions. Public authority is not considered a personal privilege for the

⁶³ Majed Al-Helou, *Administrative Cases* (Alexandria: Manshaat Al-Maarif, 2004).

⁶⁴ The Jordanian Supreme Administrative Court, 2022.

⁶⁵ Othman, *Administrative Judiciary Law*.

⁶⁶ Al-Khalayleh, *The Mediator in Administrative Law*.

⁶⁷ Fahd Al-Deghaither, *Judiciary Control over Administration Decisions* (Cairo: Dar Al-Nahda Al-Arabiya, 1993).

⁶⁸ Mohieddin Al-Qaisi, *General Administrative Law* (Beirut: Al-Halabi Human Rights Publications, 2007).

administration; rather, it is empowered to achieve the public interest. Thus, in the event that the decision to impose a disciplinary penalty is inconsistent with the objectives of the public interest, the decision is considered defective due to the purpose of its issuance and subject to invalidation.⁶⁹

The Jordanian Supreme Administrative Court ruled in its judgment No. (342/2022) issued on July 5, 2022, that: "Since the penalty imposed on the respondent, which is termination of service, is among the penalties listed in Article (46) of the Civil Service Regulation, our court considers that it is commensurate with the seriousness of the guilt committed by the petitioner (appellant in the second appeal), as it falls within the scope of sound and reasonable estimation and is not marred by any exaggeration, given that it is appropriate to his actions".⁷⁰

The Supreme Administrative Court ruled in its ruling No. (201/2019) issued Oct. 9, 2019 that: "Our Court finds that the penalty imposed by the respondent on the appellant, which is the ban from practicing the legal profession for a period of six months, is not commensurate with the violation he committed and the circumstances of the case, which constitutes an exaggeration in the punishment, especially since the aforementioned Article (63) has a gradation in the severity of the punishment for such a violation, starting from noticing, then reprimanding, and then banning from practicing the profession without indicating the minimum of what is stated in Paragraph (C) of that Article. This is because it is known that disciplinary penalties have been legislated so that the competent disciplinary authority can impose a penalty on the lawyer who committed the disciplinary offense in order to preserve the reputation and dignity of the legal profession. The general condition for the punishment is that it be just without being extravagant in severity or indulging in clemency. If it is the first form, then the exaggeration in the punishment violates the principle of appropriateness, which is intended to be proportional between the cause and subject matter of the decision. In this, we say that without delving into the jurisprudential debate that revolved around defining the nature of exaggeration by including it at times within the defect of violating the law or within the defect of abuse of power, the most important thing is the development of judicial control over the disciplinary penalty. The Supreme Court of Justice ruled in many of its rulings that although the competent authority has the right to assess the seriousness of the administrative offense and the corresponding penalty, the legitimacy of this discretionary power is that its use is not marred by excessive punishment and that there is a fit between the seriousness of the offense and the appropriate penalty. If the imposition of the penalty is excessive, as there is no proportionality between the offence committed and the penalty imposed, then it is considered a form of abuse of power that necessitates the cancellation of the decision. Since the penalty imposed on the appellant is to prevent him from practising the profession for a period of six months, which is the penalty that came in terms of severity in the third order among the package of graduated penalties stipulated in Article (63) of the Law of the Regular Bar Association, in addition to that the third order of the aforementioned Article did not indicate the limit of the minimum period for preventing the practice of the profession, and since the papers submitted in the case were devoid of evidence that would require an increase in the penalty to the extent of choosing a severe penalty for the violation committed by the appellant, all of this stigmatises the decision with exaggeration and the failure to take into account the principle of appropriateness and proportionality between the violating act and the penalty resulting from it".⁷¹

As for by referring to the rulings of the French administrative judiciary, the French Council of State ruled in one of its rulings: "to cancel the termination of service penalty that was

⁶⁹ Al-Tamawy, "Administrative Judiciary."

⁷⁰ The Jordanian Supreme Administrative Court, 2022.

⁷¹ "The Supreme Administrative Court" (2019).

imposed on two nurses because they were accused of sexual intolerance against some patients, so that the council decided that the violation attributed to them does not require a penalty of termination from public service".⁷²

Therefore, ensuring the attainment of the public interest should be the primary goal of the punishment decision rather than seeking retribution against the disciplined public servant. The fundamental principle is that the administration's actions must first be made with the public interest in mind. The administration does not view governmental authority as a personal luxury; it is empowered to serve the public good. Accordingly, the decision to impose a disciplinary penalty is deemed flawed for the purposes of its issuing. It is subject to review if it conflicts with the goals of the public interest.

CONCLUSION

The Jordanian and French legislators did not specify an exact definition of disciplinary punishment but rather left the task of defining it to jurisprudence and the administrative judiciary, considering that the choice of punishment is left to the discretion of the disciplinary authority that imposes it against the public employee.

In fact, a dispute arose in jurisprudence, legal systems, and judicial rulings in both Jordan and France about defining the nature of disciplinary punishment. We find that there is no consensus among the legislative systems to define one nature of this relationship. This nature varies from one period of time to another through the development of the state in terms of political, economic and social aspects. The disciplinary punishment represents an administrative penalty that affects the employee's job position and aims to run the public facility regularly and steadily. It also includes a kind of deterrence and rebuke that makes the public employee fear the recurrence of the violation or error to avoid disciplinary punishment, which constitutes an incentive for the non-occurrence of any disciplinary violation in the future.

Therefore, the disciplinary authorities in both Jordan and France must, before deciding to impose penalties against a public employee, consider the established principles according to the legislation. These principles are considered among the most important principles that protect the public employee from the arbitrariness of the administration in imposing and inflicting disciplinary penalties against him. The right to impose disciplinary punishment is not an absolute right that the administration exercises as it wishes, but rather is restricted to a set of general and basic principles in imposing punishment in order to achieve the principle of the rule of law and confirm the rights and guarantees of employees.

However, the oversight of the administrative judiciary in both Jordan and France regarding the legality of the disciplinary decision regarding the imposition of penalties against the public employee is one of the most important disciplinary guarantees in public office, given that the administrative judiciary is considered a guardian of justice, guarantees the rule of law, and is characterised by impartiality and independence.

Finally, we recommend that the competent disciplinary authority in both Jordan and France, when imposing the punishment, take into account the seriousness of the violation before imposing the punishment against the public employee, and not arbitrarily use its authority to impose penalties with the intent of taking revenge on the public servant, with the need to take into account the limits of legality and not to go to extremes in the punishment by following the gradual method of inflicting disciplinary punishments.

REFERENCES

Abdel-Hadi, Bashar. "Studies and Research in Public Administration and Administrative Law."

⁷² "The French Council of State" (2003).

- Amman: Dar Al-Furqan, 1983.
- Al-Ahsan, Mohamed. “The Legal System for Discipline in the Public Office - a Comparative Study.” Belkaid University, 2016.
- Al-Ani, Wissam. *Administrative Judiciary*. Baghdad: Al-Sanhouri Library, 2013.
- Al-Billeh, Tareq. “Jurisdiction Regarding Administrative Proceedings in Jordanian and French Legislation: Views on the Administrative Judiciary in 2021.” *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 37, no. 1 (2023): 189–215. <https://doi.org/https://doi.org/10.1007/s11196-023-10064-5>.
- . “The Situations Related to the Functioning of the Administrative Judiciary in Jordan for the Year 2020: A Step Forward.” *International Journal for Court Administration* 14, no. 3 (2023). <https://doi.org/https://doi.org/10.36745/ijca.453>.
- Al-Deghaither, Fahd. *Judiciary Control over Administration Decisions*. Cairo: Dar Al-Nahda Al-Arabiya, 1993.
- Al-Helou, Majed. *Administrative Cases*. Alexandria: Manshaat Al-Maarif, 2004.
- Al-Jamahi, Khalifa. *Disciplinary Responsibility of the Public Employee for Financial Violations in Libyan Law*. Edited by Benghazi. Special Pu., 1997.
- Al-Khalayleh, Muhammad. *The Mediator in Administrative Law*. Amman: Dar Al-Thaqafa for Publishing and Distribution, 2023.
- Al-Qaisi, Mohieddin. *General Administrative Law*. Beirut: Al-Halabi Human Rights Publications, 2007.
- Al-Saud, Habib Abu. *Administrative Judiciary*. Disciplina. Al-Iman Press, 2006.
- Al-Taie, Hassan. “Ending the Disciplinary Punishment by Erasing (Comparative Study).” *Journal of the College of Law for Legal and Political Sciences* 7, no. 27 (2018): 112–66. https://jclaps.uokirkuk.edu.iq/article_173928.html.
- . *Judicial Developments in Oversight of the Principle of Proportionality in Disciplinary Decisions*. Alexandria: Modern University Office, 2015.
- Al-Tamawy, Suleiman. “Administrative Judiciary.” In *Disciplinary Judgment*, Book Three. Cairo: Dar Al-Fikr Al-Arabi, 1995.
- . *The General Theory of Administrative Decisions: A Comparative Study*. Cairo: Dar Al-Fikr Al-Arabi, 1967.
- Baran, Beata. “Penalties Imposed on Officers of the Customs and Tax Service for Disciplinary Offenses.” *Roczniki Administracji I Prawa* 2, no. XIX (2019): 169–78. <https://doi.org/https://doi.org/10.5604/01.3001.0014.0434>.
- Bawadi, Mustafa. “Guarantees of the Public Employee in the Disciplinary Field, a Comparative Study between the French and Algerian Laws.” Belkaid University, 2014.
- Delepere, Francis. “The Development of Disciplinary Law in the Public Service,” 1969.
- Fahmy, Mustafa Abu Zaid, and Majed Al-Helou. *Administrative Cases, Case of Cancellation, Settlement Case*. Alexandria: New University House, 2005.
- Farhat, Fawzat. *General Administrative Law, Part Two, Administrative Work Control*. Beirut: Al-Halabi Human Rights Publications, 2012.
- GÉNÉRAUX, TEXTES. “Law No. (1574/2021) Related to the Legislative Part of the General Civil Service Law.” legifrance.gouv.fr, n.d.

<https://www.legifrance.gouv.fr/download/pdf?id=LY7qiEYHvNFBchgPRVjWSNxbNeBfV3AR3mH8mkFXiGE=>.

- Haider, Ahmed. "The Rights and Guarantees of the Public Employee When Applying the Disciplinary Penalty." *Alfath Journal* 1, no. 1 (2007): 1–18. <https://www.iasj.net/iasj/download/515aa8294fb4b8cc>.
- Ibrahim, Ismail. "Disciplinary Punishment Provisions in the Public Office." *Journal of Legal and Sharia Sciences* 1, no. 6 (2015): 252–68. http://www.zu.edu.ly/jsls/issus_6/dowanload/paper14.pdf.
- Kanaan, Nawaf. *Al-Wajeez in Jordanian Administrative Law*. Edited by Amman. Book Two. Dar Al Thaqafa for Publishing and Distribution, 2013.
- . "The Disciplinary System in the Public Service." University Library, 2008.
- Khader, Tariq. "The Case for Cancellation and the Case for Hisba in the Judgments of the Egyptian Administrative Judiciary." *Journal of Administrative Sciences* 35, no. 1 (1993): 137.
- Khater, Sherif. "Public Service." In *Comparative Study*. Cairo: Dar Al-Nahda Al-Arabia, 2009.
- Mahdi, Ghazi, and Adnan Obaid. *Administrative Judiciary, Al-Nibras Corporation for Printing*. Baghdad: Publishing and Distribution, 2013.
- Manzoor, Muhammad Ibn. "Lexicon of Lisan Al-Arab," 2007.
- Mignon, Emmanuelle. "The Extent, Meaning and Scope of Guarantees in Matters of Administrative Sanctions." A.J.D.A, 2001.
- Muhareb, Ali. *Administrative Discipline in the Public Office*. Amman: House of Culture for Publishing and Distribution, 2004.
- Muheisen, Adel. "Overlapping Penalties in Islamic Law." Islamic University, 2008.
- Othman, Hussein. *Administrative Judiciary Law*. Beirut: Al-Halabi Human Rights Publications, 2010.
- Othman, Muhammad. "The Disciplinary Crime between Administrative Law and the Science of Public Administration (a Comparative Study)." Ain Shams University, 1973.
- Qassem, Yahya. *Guarantees for Disciplining Employees in Legislations, Egypt, Iraq, Yemen, France*. Edited by Sana'a. Abadi Center for Studies and Publishing, 1999.
- Randall, Harvey. *A Reasonable Disciplinary Penalty under the Circumstances*. Abuzz Press, 2014.
- Salama, Ahmed. *Administrative Investigation and Disciplinary Trial*. Cairo: Dar Al-Nahda Al-Arabiya Library, 2010.
- Schwabel, Ashour. "Obedience to Presidential Orders and the Criminal and Disciplinary Responsibility of the President and Subordinate." General Culture Council, 2008.
- Shatnawi, Ali. *Al-Wajeez in Administrative Law*. Amman: Dar Wael for Printing, n.d.
- Shylo, Iryna. "Criminal-Legal Description of Penalties Imposed for Criminal Offenses." *Naukovyy Visnyk Dnipropetrovs'kogo Derzhavnogo Universytetu Vnutrishnikh Sprav* 4, no. 4 (2020): 356–61. <https://doi.org/https://doi.org/10.31733/2078-3566-2020-4-356-361>.
- Stets, O. M. "GUARANTEES of the RIGHTS of PUBLIC SERVANTS during the APPLICATION of DISCIPLINARY PENALTIES." *Herald of Zaporizhzhia National University. Jurisprudence* 2, no. 4 (2020): 168–73.

<https://doi.org/https://doi.org/10.26661/2616-9444-2020-4.2-24>.

The Administrative Court of Appeal in Paris (2022).

The France Administrative Judiciary Law (2022).

The French administrative judiciary (2005).

The French Council of State-5th chamber (2022).

The French Council of State (1963).

The French Council of State (2003).

The Jordanian Administrative Judiciary Law (2014).

The Jordanian Civil Service Regulations (2020).

The Jordanian Higher Administrative Court (2022).

The Jordanian Supreme Administrative Court (2020).

The Jordanian Supreme Administrative Court (2022).

The Jordanian Supreme Administrative Court (2023).

The Supreme Administrative Court (2019).

Yaqoot, Muhammad. *Principles of Administrative Investigation in Disciplinary Violations, Explanation of Disciplinary Procedures in the Public Office, Free Trade Union Professions, and Private Work*. Alexandria: New University Publishing House, 2007.

———. *Principles of Investigation of Disciplinary Violations, A Comparative Study*. Edited by Manshaat Al-Ma'arif. Alexandria, 2002.