



THE AUTHORITY OF DISCIPLINARY ACTION BETWEEN ADMINISTRATION AND JUDICIARY

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ABSTRACT

This brief research studied the duty of the administration, presented by the disciplinary authority granted to it. These powers have been studied according to the administrative hierarchy established in accordance with the provisions of the law, and granted to each of the President of the Republic, the Prime Minister, the Prime Minister and the ministers were studied. Then we moved on to discuss the powers that enables the administration to describe, adapt the violation, and then impose the appropriate punishment on the perpetrator. Then we followed this study by examining the penalties that affecting the employee's salary and job, not his person. The research ended by searching the judiciary's supervision imposed on the authority and its disciplinary decisions to ensure that they comply with the legal texts and do not violate the principle of legitimacy.

Keywords: *administration - powers - employee - discipline - punishment*

INTRODUCTION

The functions of the state have become diverse in our present time, and these public functions are carried out by a group of individuals who are appointed to achieve this goal, and they are called "civil servants". The nature of the relationship that governs the state with the category of civil servants is organizational in nature, which is governed by laws and regulations that specify the obligations and rights of each party towards the other in order to ensure that work in public facilities, which this category is appointed to serve, runs regularly and smoothly. Therefore, it is the right of the state in case one of the employees is negligent to impose punishment through the disciplinary authority that is specialized in that, according to the procedures followed in that regard.

The Importance of Research

The significance of this study lies in shedding light on the texts that authorize disciplinary sanctions according to current laws and identifying gaps in these laws. If addressed, this will result in achieving the public and private interest of individuals, which in turn will develop and enhance the efficiency of the government's administrative system. In the first chapter, we will discuss the administration and disciplinary authority.

Chapter One: Administration and Disciplinary Authority

The responsibilities entrusted to administration are diverse, aimed at achieving public goals, which are in the public interest. To ensure the efficient performance of these tasks, the administration follows methods that maintain order, including the powers granted to it, which some call privileges. One of the most important of these powers is its authority in disciplinary matters. Administrative authorities with disciplinary power can be divided as follows:

Section 1: Presidential Authority in Disciplinary Actions

Many jurists in administrative law agree that disciplinary authority is divided into presidential authority and disciplinary committees, which differ in their decisions' bindingness. Some decisions are binding on the president to implement, while others only serve an advisory role. Some jurists have divided the administrative bodies that impose disciplinary sanctions based on the category of administrative employee. For example, employees in the first category are disciplined by a different administrative body than those in other categories. We will discuss the presidential



disciplinary authority, the government's disciplinary authority, and the disciplinary authority of the administrative president.

First requirement: Head of state and disciplinary authority

What distinguishes the executive authority in any country is the substantial number of its employees compared to the legislative and judicial authorities. They are distributed among the public employees working inside the state or those who work outside it, such as ambassadors and consuls.

The executive authority is represented by the head of state, who is considered the head of the hierarchy and derives his powers and duties from the provisions of the constitution. The legal texts that define the tasks of the president of the republic are primarily honorary tasks, in addition to legislative tasks that he performs in case of necessity and emergencies. However, if the law considers that these tasks fall within the framework of the executive tasks and are not considered legislative tasks, this is what is stipulated, for example, in the Palestinian Basic Law in Article 38.

On the other hand, regarding the duties of the president, the Palestinian Basic Law did not address this issue, while Article 39 dealt with the powers granted to the president, including his authority over the armed forces. Therefore, whoever holds power also holds disciplinary authority, and the same applies to whoever has the power of appointment.

Regarding the President's powers on the external level, they consist of appointing representatives and employees of the authority in other countries. Article 40 of the Palestinian Basic Law stipulates that the appointment and termination of these representatives is in the hands of the President. Additionally, Article 42 grants the President the power to grant special pardons for punishment. Although the text does not specify the type of punishment covered by the pardon, the legislator's opinion is that it applies broadly, including disciplinary punishment.

The other laws also grant additional authorities to the President of the Authority. In the Palestinian Civil Service Law, the President is considered responsible for the public service and the civil servant, as well as all matters related to them, such as promotions, financial matters such as compensation and salaries, the duties assigned to the employee, and disciplinary penalties. However, this law did not specifically refer to disciplinary penalties, but Article 15 also indicated the President's authority to appoint the head of the Financial and Administrative Control Department. Therefore, we can say that whoever has the power of appointment also has the power of appointment regarding this text.

The second demand: concerns the authority of the Council of Ministers and ministers in disciplinary matters.

The Council of Ministers is considered a legal entity composed of the Prime Minister and a number of ministers as required by the public interest. It was defined in Article 63 of the Palestinian Basic Law as the supreme executive and administrative tool entrusted with the responsibilities of implementing programs decided by the legislative authority. The administrative competencies possessed by the Prime Minister, which are disciplinary in nature, are specified in Article 69. For examples, these competencies include preparing the administrative apparatus, establishing, and supervising its structures, appointing and monitoring the work of heads of administrative bodies, as well as determining the competencies of those bodies. Here arises the question again, whether the term 'supervision' refers only to oversight, or whether it expands to include disciplinary authority from the supervisor to those under their supervision?

The Egyptian State Council issued a fatwa in response to this question, which states that a ministry's agent who supervises a regional authority in the state does not acquire any rights alongside the head of the authority he supervises. This is because supervision only refers to coordination and directing work towards the public interest according to the policy set by the minister. On the other hand, disciplinary authority is limited to the head of the administrative body in each administrative entity, in addition to the policy of criminalization and punishment within this body. Therefore, the presidential authority is the only one that signs disciplinary penalties.



The third demand: disciplinary powers of both the Prime Minister and the Ministers. According to Article 69, paragraph 1 of the Civil Service Law, disciplinary action for a violation shall be taken against any employee by the authority responsible for imposing such a penalty. Therefore, the Prime Minister has full authority to impose disciplinary sanctions on ministers.

As for the disciplinary authority granted to the ministers, many laws have granted them these powers, as they are considered the top of the hierarchy in their job, which gives them the power to sign the necessary disciplinary penalties for employees, based on their authority to direct and be responsible for the good performance of the ministry they head. Therefore, they have the ability and possibility to determine the actions of employees that are considered violations, as well as to estimate the appropriate disciplinary penalty for these violations. They also assess the accompanying circumstances of the mistake, which may either aggravate or mitigate the punishment, and deal with minor daily violations promptly and decisively. This is considered one of the matters that address the misconduct of employees immediately.

As discussed in Article 71 of the Basic Law has addressed the powers granted to each minister within their ministry, particularly in the second paragraph that granted the minister the right to supervise the work progress within their ministry and issue the necessary instructions for it. The word "supervision" carries several meanings, including disciplinary action. Additionally, Article 86 of the executive regulations of the Palestinian Civil Service Law has granted the minister the authority to delegate their disciplinary powers to impose penalties of warning or reprimand on senior employees.

The Fourth Demand: The Role of the Administrative President in Disciplining Civil Servants

Article 69 of the Civil Service Law states that the administrative president has the right to impose disciplinary measures, such as warning and reprimand, on their subordinates. Investigation committees may assist in this process to mitigate the impact of these measures imposed by the administrative president, for fear of personal animosity between the president and their subordinates. However, in practice, it has become clear that the role played by these committees is mostly advisory, and their opinions, while independent, are not binding. This is because the president has the authority to impose these measures without consulting these committees or seeking their opinion.

The second section: The disciplinary powers of the administration.

This refers to the types of penalties that the administration can impose on a public employee who violates the provisions of the Civil Service Law. These penalties are outlined as follows:

the First Demand: Identifying Violations and Disciplinary Penalties:

Although the Palestinian Civil Service Law does not define disciplinary violations, jurisprudence and the judiciary have defined them. The Supreme Administrative Court in Egypt defined a disciplinary violation as the employee's failure to fulfill their duties, whether positively or negatively, which includes respecting and obeying presidential orders. It also includes duties required for the proper functioning of the public facility, even if they are not specified by laws. Some jurists defined disciplinary violations as any action punishable by an administrative penalty, which includes violating laws and regulatory decisions. Therefore, the elements of a disciplinary violation consist of a material element, which is the commission or omission of the required action that constitutes a breach of official duties, and a moral element, which is the intentional and conscious will to commit the act, knowing that it is a violation of the law.

As for the definition of disciplinary penalties, administrative law jurists have defined them as the punishment that affects the employee who has made a mistake in their position or job. These penalties have been divided into several types: moral penalties such as reprimand, warning, or attention, and financial penalties such as salary reduction or demotion. Other penalties have an exclusionary nature, such as dismissal from service. To clarify the meaning of these penalties, they can be explained as follows:

1. **The alert or warning:** it refers to the issuance of a memo to the employee to remind them of their assigned duties, without resulting in any change to their legal status or financial compensation.



2. **The warning:** It aims to alert the employee that any violation of his/her duties will subject him/her to a more severe penalty. Like the case with the penalty of notification or attention, the removal of this penalty is only done after six months. However, unlike the notification penalty, its imposition requires the signature of the committee responsible for imposing this penalty, called the investigation committee.

The Second Demand: Disciplinary Penalties Affecting Employment and Salary.

1. **Deduction from salary for no more than 15 days:** This penalty is characterized by its financial nature and can be imposed on all categories of employees, except for the top tier. The Egyptian legislator has clarified in Article 82 of the Public Sector Workers Law that the duration of this deduction shall not exceed two months per year.
2. **Deprivation of or delay in receiving the periodic allowance for a period not exceeding six months:** This penalty is also classified as a financial penalty, and it is imposed on the employee who has spent a year or more in his service, and it is paid at the beginning of each year.
3. **Deprivation of promotion:** The Palestinian Civil Service Law defines promotion as the granting of a higher rank to an employee than the position they hold. Deprivation of promotion is not considered a punishment that can be imposed on high-level employees. Moreover, promotion can be affected if a complaint is filed against the employee that warrants disciplinary or criminal action. Furthermore, promotion is not considered until a final decision is issued in the case of the employee in question.
4. **Temporary suspension from work for a period not exceeding six months with half salary:** Suspension refers to the revocation of an employee's job tenure, but it is temporary. During this period, the employee does not exercise any authority or carry out any work related to their job, as stipulated by the Palestinian legislator as a disciplinary penalty. Legal and precautionary suspensions are also mentioned in the law.
5. **Demotion:** The terminology of this disciplinary measure varies depending on the laws. In the Jordanian Civil Service Law, it is referred to as "downgrading," while in the Egyptian Workers' Law, it is called "reducing the position. This penalty is imposed after two consecutive reports of poor performance, at which point a demotion is imposed.
6. **Warning of Dismissal:** The punishment of a warning has been previously mentioned. As for the warning of dismissal, it is considered a disciplinary penalty that does not apply to senior employees, and it is not related to reports on the work and performance of employees. Moreover, it expunges after two years of its imposition. Deleting this penalty means considering it as if it never existed in the employee's future, and therefore, it does not affect their rights and compensation. The documents of this penalty are removed from the employee's service file.
7. **Dismissal and retirement from service:** This penalty refers to ending the employment relationship and severing all ties between the employee and the job. Some laws refer to this penalty as termination of service.

Chapter Two: Judiciary and Disciplinary Authority

In this chapter, we will discuss the first topic which includes the authority of administrative courts in disciplinary matters. In the second topic, we will examine the judiciary's oversight of the performance of administrative courts in imposing disciplinary sanctions, in accordance with the following:

The first topic: The jurisdiction of disciplinary courts.

As for the nature of these authorities, they can be divided into the following:

The First Issue: The Judicial Jurisdiction of Disciplinary Courts:

Refers to the authority granted by law to the courts to impose disciplinary sanctions, particularly those penalties that cannot be imposed by administrative heads, such as dismissal from service or referral to retirement. For example, in Egyptian law, the courts have the power to impose disciplinary sanctions stipulated in Article 80 of the Civil Service Law of 1978. It should be noted that this law applies not only to government employees but also to those working in the public



sector, including employees of private associations and institutions that are designated by a presidential decree. As for members of labor unions councils established according to the Labor Law, they are also subject to this law and can be disciplined by disciplinary courts, even if their work is in the private sector.

The Second Issue: The Jurisdiction of Disciplinary Courts at the Governorate Level

According to the provisions of the Egyptian Labor Law No. 48 of 1978, the legislator granted the disciplinary courts the jurisdiction to impose the penalty of suspending or extending the suspension of workers, as well as the authority to consider suspending part of the worker's salary. And this is according to the following:

1. The Precautionary Suspension of the Employee from Work: The Syrian legislator defined this punishment in Article 6 of Legislative Decree No. 90 of 1962 as "suspending the employee," which means temporarily dismissing the employee from his/her job until his/her return. Advisor Mohammad Rashwan defined it as "preventing the employee from performing his/her duties for a certain period." Article 83 of Law No. 48 of 1978 granted the minister, governor, and chairman of the board of directors of the authority the power to issue a decision to suspend the employee on a precautionary basis for a period not exceeding three months if the interests of the investigation require it. However, this punishment cannot be extended except by a decision issued by the competent disciplinary court. The court's decision in this regard is not considered an exercise of its original jurisdiction, but rather comes after the exercise of the presidential authority's right to impose the precautionary suspension punishment.
2. Looking at the suspension of part of an employee's salary, this penalty is applied in cases where the employee is suspended as a precautionary measure. It should be noted that the disciplinary court is not authorized to suspend more than half of the salary as a disciplinary punishment. Article 83 of the Egyptian Civil Servants Law No. 47 of 1978 stipulates that the competent authority and the administrative prosecution director may, depending on the circumstances and the violation committed, issue a decision to suspend the employee from work as a precautionary measure for a period not exceeding three months. This period cannot be extended except by a decision of the competent disciplinary court for the duration it determines. Additionally, when an employee is suspended from work, his salary is stopped by half from the date of suspension, and the disciplinary court with jurisdiction must decide whether to pay the remaining amount of his salary or not.

Therefore, by examining the jurisdiction of disciplinary courts, we can deduce matters that fall outside of their purview through reference to judgments rendered by the Supreme Administrative Court, including the following:

1. The lack of jurisdiction of the disciplinary court over civil claims or lawsuits means that the administrative authority or any other party who has been harmed as a result of the accused's action can pursue the legal avenues provided by the law to obtain compensation for the damages.
2. The disciplinary court is not authorized to terminate the service of an employee for reasons related to the physical fitness for service. Accordingly, the Supreme Court has stated that the jurisdiction of the disciplinary court is limited to imposing the appropriate legal penalty in the event of a violation or error, or acquitting the employee if the accusation is not proven.
3. The disciplinary court is not entitled to deprive the worker of his wages of either side in case he combines two jobs (his job in the state and another job in another entity).

The Second Topic: Judiciary as a Supervisory Authority over Disciplinary Administration.

This oversight includes several procedures that can be followed in confronting decisions issued by the administrative authority, including the following:

1. The appeal for cancellation in disciplinary decisions: This is because the disciplinary decision, even if it is a correct disciplinary decision, must be free from defects that make it subject to appeal. The appeal is made before the Supreme Administrative Court, although disciplinary courts may consider these appeals exceptionally. However, this exception is linked to penalties and sanctions provided by law.



2. The appeal for cancellation of disciplinary judgments issued by disciplinary courts can also be made before the Supreme Administrative Court. The judgments that can be appealed for cancellation are those related to the reduction of job grade, reduction of salary, referral to retirement, and dismissal from service.

qayimat almarajie

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