

# Appropriateness Of Disciplinary Penalty With Administrative Offense In Jurisprudence And Jordanian Judiciary

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## Abstract

This study aimed to study the appropriateness of the disciplinary penalty with the administrative offense in jurisprudence and the Jordanian judiciary. The administration sought to put in place a general penal system to punish the violating employee, by defining the types of disciplinary penalties and stating the disciplinary violations. Given that the public employee is the human element in the state's public authorities, he is the planning mind and the hand that implements public projects. There must be job stability so that the employee's production is in the best way. The most important elements of stability for the employee are the lack of injustice in the punishment imposed on him by the person responsible for imposing the disciplinary punishment, and the proportionality of the disciplinary punishment with the violation against the employee. In order to ensure the secrecy of the public facility regularly and steadily, and to achieve positive results of the disciplinary system, the disciplinary authority, in imposing disciplinary penalties, had to take into account the proportionality of these penalties with administrative violations to achieve the desired result of discipline in terms of the effectiveness of management and guarantee for employees. The study concluded with a set of recommendations that we hope will be of scientific benefit in the field of employee discipline.

Keywords: Jurisprudence, Administration, Jordanian, Judiciary.

## Introduction

The administration's authorities in disciplining its employees through its disciplinary procedures in imposing the disciplinary penalty

prescribed for it must consider in its application the principle of legitimacy, which implies the rule of law or the principle of subjection to the law. It is a principle on which the modern legal State is based, and this principle requires in the administrative field in general that all administrative work, whether legal or material, conforms with the law's provisions. The requirement of an appropriate disciplinary penalty with the offense is that the competent authority does not impose the penalty in its choice and that it is valid within a reasonable matter. Appropriate the disciplinary penalty with the violation requires that the authority competent to impose the penalty should not go to extremes in its choice and be correct and sound within the reasonable thing. The punishment falls on the employee to the extent that it is necessary to confront the violation or administrative error.

Through this study, we showed the appropriateness between disciplinary punishment and violation in jurisprudence and judiciary. Where we explained the content of the principle of convenience and its development, the nature of control over appropriate, and the position of jurisprudence and the administrative judiciary in Jordan on the principle of proportionality.

The requirement of convenient disciplinary penalties with the offense is that the competent authority shall not overstate the imposition of disciplinary punishment and its choice and that its assessment shall be correct and suitable to the offense committed by the official. It must impose the penalty on the offending official to the extent necessary to counteract the legal or administrative breach, thereby achieving the reasonableness of the offending employee's deterrence and the exhaustion of other personnel. Hence, sentencing controls are objective, which means that any override of these controls is an increase and tyranny that must be rejected.

The control of the administrative judiciary over the decisions of the administrative authority is inherent in verifying the physical existence of the facts taken by the administrative authority as the basis for its decision. The validity of the legal adaptation of these facts, and the failure of the place of decision to violate the legal rules without prejudice to the importance or gravity of the reason and to the assessment of the suitability between the action taken on the basis of which the administrative decision is based, i.e. its subject matter of the administrative decision and its content. Because the administrative judge of this infringement is out of his position and

interferes with the core of the administrative work and thus becomes the head of the administration [1].

Within the scope of administrative decisions, convenience means the compatibility of the decision with the timing of its adoption and the different circumstances in which it is issued. In principle, the decision-maker has discretion in this area means that he or she first decides whether or not it is appropriate to issue the decision, and if he deems it necessary, he chooses. Secondly, the timing of its issuance is appropriate, and if it is settled on the timing of its issuance, it will finally decide the appropriateness of the circumstances surrounding the issuance of such a decision. convenient related to the relevance of the legal action to the circumstances of its promulgation, while appropriately is a link between the legal action and the principles and rules governing it. It is also an internal link in the legal work between some of its components and elements and specifically between its cause and place and also includes the purpose and aims behind it [2].

### **Study problem**

The problem of the study lies in the fact that the disciplinary penalty may be marred by a serious defect and the deficiency of inappropriateness in the estimation of the disciplinary penalty, and this defect is the exaggeration in the disciplinary punishment as the disciplinary penalty must be commensurate with the administrative violation committed by the employee.

### **Study questions**

This study tries to answer the following questions:

1. What is the appropriateness principle between the disciplinary punishment and the violation committed by the employee?
2. What is the position of Jordanian jurisprudence and judiciary on the principle of appropriate between disciplinary punishment and violation?

### **Study hypotheses**

This study is based on the following hypotheses:

1. Appropriately the disciplinary penalty raises a lot of controversy when issuing disciplinary penalties.
2. The disciplinary penalty was established to reform and discipline the employee so that he does not commit the violation again.

Does the inappropriate use of disciplinary punishment serve the purpose for which it was set?

### **Study importance**

The importance of this study can shed light on the appropriateness of the disciplinary penalty with the administrative offense committed by the employee and the position of jurisprudence and the Jordanian judiciary on that.

### **Study objective**

The aim of the study is to clarify the position of the Jordanian jurisprudence and judiciary regarding the principle of appropriate disciplinary punishment with functional behavioral violation.

### **Study methodology**

In this study, the researchers will rely on a comparative analytical approach through references, previous research, jurisprudence, and court decisions, by analyzing relevant legal texts, identifying and analyzing jurisprudence, and setting out the legal principle on which it is based.

### **First topic: Content of the principle of appropriate disciplinary penalty**

The principle of appropriate is a form of discretion, exercised by the disciplinary authority when disciplinary sanctions are imposed on a public official when he or she commits a violation of the rules and provisions of the public office, the content of which is the freedom to assess the appropriateness of a disciplinary administrative decision, in relation to the discretion of the administration to issue administrative decisions [3].

The assessment of the disciplinary penalty is not subject to the whims of the disciplinary authority. Rather, when assessing it, it takes into account the gradation in the penalty, the gravity and seriousness of the violation, the circumstances and circumstances under which it occurred, the condition of the violation, its motives, the extent of its possibility of reform, and the conditions through which it passed. and the procedures that she was subjected to from the discovery of the violation until the imposition of the penalty [4]. Therefore, the basis for the appropriateness of the administrative offense with the penalty is the appropriateness of the penalty, that is, estimating the extent of

the seriousness of the administrative offense and the corresponding penalty, and that the disciplinary decision be based on its entire cause [5]. The principle of proportionality in disciplinary decisions has received the attention of some comparative functional legislation. There is legislation expressly stipulated so as not to leave the disciplinary authorities with absolute freedom to choose and estimate the disciplinary penalty. punished, so that disciplinary punishment must be assessed by taking into account that its choice of punishment is commensurate with the degree of offense, in order to ensure the fairness of the disciplinary penalty [6]. The Egyptian legislator, in Article (80) of Law No. (47) of 1978 A.D. on workers in the state, emphasized the principle of appropriate by stating that: (A worker who violates his job duties shall be punished with one of the penalties stipulated in the law, and that is appropriate to his job and the circumstances of the offense committed).

As for the Jordanian legislator, he emphasized the principle of proportionality, in accordance with the text of Article 140 /A of the Civil Service Regulation No. (82) for the year 2013 AD, as it stipulated that ".....a. Provide the following guarantees to the employee before imposing any penalty on him: 1-....2-.....3-....4.... proportionality between the disciplinary punishment taken and the nature of the committed violation, and not to go to extremes or Leniency in the disciplinary measures taken against the employee [7]. It is noted how the legislator in Jordan did not neglect to explicitly stipulate the principle of proportionality in the disciplinary punishment, as it is an important guarantee for the employee who is subject to a disciplinary penalty as a result of a violation he committed.

The principle of proportionality as stated by Dr. Salim Hetamaleh in his work (The administration enjoys a margin of time and space freedom to decide on the exercise of its disciplinary powers within the scope of the law and does not derogate from it. Thus, only the administration decides whether the sentence to be imposed is appropriate or inappropriate and, more precisely, weighs the appropriateness of its disciplinary decisions to the factual circumstances and the legal conditions that motivate the commission of an administrative offense in the light of the public interest so that it does not become an arbitrary authority. [3]. Thus, it is clear that the fundamental field of the principle of proportionality in the administrative judiciary is the introduction of disciplinary sanctions to counter the excessive exercise of the administrative authorities' disciplinary authority and the blatant

disparity between them in the assessment of appropriate penalties. As the administrative judiciary imposed its control over the appropriateness of these decisions, proving the difference between the degree of the administrative violation and the type and amount of punishment and their incompatibility leads to the illegality of the disciplinary decision [8]. In a judgment of the Jordanian Supreme Court of Justice, it was stated: "Although the disciplinary authority has an assessment of whether or not the conduct constitutes administrative guilt and the power to assess the seriousness of the offense and the appropriate punishment unacceptable to it. However, the authority's legitimacy is the same as any other discretion that is not abused [9].

**First requirement: Evolution of the principle of appropriate:**

It is worth noting that the Egyptian administrative judiciary created the principle of proportionality in the field of discipline through the theory of overload in the use of power. The Egyptian Administrative Court has established that the disciplinary authorities are responsible for assessing the punishment they deem appropriate to the offence committed by the public official, insofar as the authorities have not violated the laws and regulations and have assessed the penalty within the legal limits specified for him [1].

Judicial oversight of the proportionality of the sentence and disciplinary offense did not appear suddenly and once, it has gone through gradual stages like any new idea has evolved well into what it is today. The course of the Egyptian Administrative Court of Justice went through two stages, the first stage was from (1946-1951). The Egyptian Administrative Court, at the outset, committed itself to the French administrative judiciary's failure to extend its control to the proportionality of the punishment and disciplinary offense, considering that the assessment of proportionality in this regard is one of the reserved competencies of the correctional authorities to authorize it without being punished by the judiciary. This is evident in its judgment: "The Disciplinary Committee of the Administrative Court shall not be commented upon in its objective assessment of the facts and the appropriate disciplinary sanctions [10]. The second stage of the Administrative Court's conduct was (1951-1955). The Court's negative course of control over proportionality in the discipline has not been for long. It departed from its previous judgment, which refused to control proportionality in the area of discipline in a limited

part, by exercising this type of control over certain disciplinary sanctions imposed on certain communities, namely Mayors, Sheikhs, and students [11]. This is what the Administrative Court of Justice took in its judgments, finding in its judgment that: "The plaintiff's argument that the disciplinary sanction was inappropriate to that attributed to him, it is not for the court to trace the amount of disciplinary sanction, as the administrative authority authorizes this proportionality between the act in question and the disciplinary sanction [12]. Subsequently, the Supreme Administrative Court, established in 1955, also went through two phases: the first from 1955 to 1961, enshrined in more than one judgment that the disciplinary authority was free to assess disciplinary punishment within the quorum prescribed without penalties in that court. Indeed, this judiciary was applied in the field of discipline by Mayors, Sheikhs, and students, and it is the field that witnessed the emergence of control over proportionality in the field of discipline for the first time [13].

The legislator's failure to establish and prescribe disciplinary punishment for each offense has led some administrative authorities to extravagant in exercising their disciplinary authority in assessing the appropriate disciplinary penalties for the same or similar errors. Hence, the Egyptian Administrative Court cautions to adopt the principle of inappropriateness between the disciplinary offense and the penalty imposed which is a violation of the disciplinary decision and must be annulled as a requirement of justice and a balance between considerations of public interest and the employee's interest. The judiciary of the Supreme Administrative Court subsequently witnessed a remarkable development and an unprecedented development towards the control of proportionality in the disciplinary field in the so-called judiciary of hyperbole that was with the issuance of its famous ruling in contestation No. 563/7 s in the session of 11/11/1961 A.D. Where she explicitly decided, for the first time, that the blatant discrepancy or the apparent inappropriateness between the degree of administrative guilt and the type, amount, and disproportionate punishment leads to the illegality of the disciplinary decision, by saying: "While the disciplinary authorities, including the disciplinary courts, have the power to estimate the seriousness of administrative guilt and its appropriate punishment without penalty therein, however, the authority's legitimacy, like any other discretion, is that its use should not be marred by hyperbole. One picture is the apparent hyperbole between the degree of seriousness of the

administrative guilt and between the type of penalty and its amount. In this picture, the consequences of apparent incompatibility run counter to the aim of the Discipline Law. The law's aim of discipline is generally to ensure the regularity of public services. This insurance does not come if the penalty involves blatant irony, riding in cruelty leads to public service workers' reluctance to take responsibility for fear of being subjected to such severe cruelty. Excessive pity leads to their negligence in performing their duties, hoping for this excessive leniency each of the two extremes does not ensure the regular functioning of public utilities. Thus contrary to the law's objective of discipline. On this basis, the use of the penalty assessment authority in this picture is extremism, so the determination derives from the scope of legality to the scope of wrongfulness and is therefore subject to the control of this Court and the criterion of wrongfulness in this picture is not a personal criterion but an objective criterion, that the degree of gravity of the administrative guilt is totally disproportionate to the type and amount of the penalty [14].

We see how the Egyptian Administrative Court began not to adopt the principle of proportionality as a reason for revoking the disciplinary decision because it was not competent to consider this partial. It did not impose on itself the right to examine the proportionality of the disciplinary penalty with the disciplinary offense. This order is included until it was recognized through the famous judgment of 11/11/1961. Where it was a race to put the theory of hyperbole before the French or Jordanian judiciary, that provision included the hyperbole of the notion of proportionality or exaggeration in the field of discipline and clarified the parameters and dimensions of this notion. What can be described as laying the general foundation of the hyperbole theory, has brought about a significant shift in the extent to which the Egyptian administrative judiciary censors the work of the disciplinary authority.

In its traditional judgment, the French Conseil State has refused to censor the proportionality of the disciplinary penalty to the error committed in the field of public office, Until 1978, the French Conseil State had refused to extend its control over disciplinary decisions to examine the proportionality and appropriateness of such decisions, on the grounds that the choice of disciplinary punishment was the prerogative of the disciplinary authority, which could not be punished. This remained the case until 1978 when the Conseil State considered that the time had come to restrict the discretion of the administration



in its most important stronghold, namely the field of discipline, to extend its control over the proportionality between the disciplinary penalty and the degree of gravity or gravity of the mistakes made by the public official. The French Conseil State applied this in its famous judgment in the Lebon case, where the Conseil State monitored the proportion of disciplinary sanctions to the facts causing them by resorting to the notion of apparent error [3]. This means that the French judiciary has begun to consider the proportionality of the disciplinary administrative decision with the offense. This victory of the French Conseil State (Conseil State) in the Lebon case was upheld in another judgment in the Venolay case in its judgment of 26 July 1978. The State Council, for the first time, abolished the disciplinary penalty imposed on the Director of Services of the Chamber of Agriculture, which was disproportionate to the offense committed [6].

The Jordanian Administrative Court initially rejected the idea of extending its control over proportionality and remained the case until 1985, when the Egyptian Administrative Court and the French Conseil State (Conseil State) followed. There are many judicial rulings in this regard. "The appropriateness of disciplinary punishment for disciplinary offenses is a matter of discretion for the administration, The disciplinary authority shall assess the seriousness of the administrative offense and the appropriate punishment without punishment therein. The legitimacy of this discretion depends on the fact that it is not used too much. The sentence imposed on the appellant is commensurate with the guilt committed and is not hyperbole" [15]. This means that the penalty, which is not commensurate with the staff member's fault, is overly punishable. It is clear to us that the Supreme Court of Justice has followed this approach. The disciplinary Councils have the right and authority to assess the seriousness and severity of the administrative offense, and therefore to assess the extent of the disciplinary penalty necessary to inflict on the offending official. However, this freedom is relative and not absolute. If the Disciplinary Council is entitled to assess the seriousness and severity of the offense committed by the employee, the proportionality of the penalty to the offense falls under the supervision of the Supreme Court of Justice, which requires that the disciplinary penalty be appropriated and the conduct offense committed by the staff member. The Supreme Court of Justice affirms this in its judgments, including its decision: "... the assessment of the disciplinary penalty, although the Disciplinary Council is empowered

to assess the seriousness of the conduct offense and the appropriate sanction, that its use should not be marred by exaggeration..." [16]. Applying this principle, it ruled that: "The imposition of a term of refuse from the employee of a guard at a high institution because he entered one of a travel and tourism agent to the sales office in order to see the fax belonging to him outside official working hours, in the belief that he is an employee of the institution and hosted by his brother in the office, sometimes the decision is overly punishable and is subject to annulment"[17].

The investigator considers that the Supreme Administrative Court has taken this principle well and has applied it to the staff member's important safeguard in the direction of a disciplinary authority so that the disciplinary penalty imposed on the offending staff member is precise that the disciplinary penalty is commensurate with the offense committed. We note that the principle of proportionality has passed through several stages until the situation is settled in Egypt, France, and Jordan. The judiciary denied this right by considering the proportionality of disciplinary penalties with the offense and then evolved into what it is now, making it a general theory in administrative law - the theory of hyperbole - and the administrative judiciary censored the appropriate of the administrative disciplinary decision with the disciplinary offense committed by the employee.

**Second requirement: Nature of appropriate control:**

The original fact is that the supervision of the administrative judiciary over the decisions of the administrative authority shall cease when it verifies the physical existence of the facts taken by the administrative authority as a basis for its decisions and the validity of the legal adaptation of these facts. The location of the decision does not violate the rule of law, without prejudice to the importance and gravity of the reason and the assessment of the proportionality between it and the action taken on its basis, That is, the place and content of this administrative decision because the administrative judge of this response is out of the office and is at the heart of the administrative work and thus becomes the head of the administration [1].

This is the origin and what the administrative judiciary has settled on is other than the origin, the administrative judiciary has now recognized the Department's discretion to adapt the administrative decision in its actions. But bearing in mind the appropriateness of the facts justifying the adoption of the administrative decision and the

place of this decision on the basis that the principle of proportionality. In such cases of general legal principles that the Department must adhere to in its work and its actions without the need for explicit stipulations thereon, and based on this, the judge's work extends to monitoring the extent to which this proportionality is achieved without exceeding the limits of his function as a judge, where his work depends on the conformity between the place of the administrative decision and a general legal principle of proportionality [18]. The discretion of volition has clear that it is the most appropriate and deserving of doing so and proportionate to the seriousness and severity of the administrative mistakes committed by the staff member and the corresponding appropriate punishment. [19]. The principle of appropriate administrative justice is most evident in the application of disciplinary sanctions by the competent disciplinary authority, this principle has a role to play in countering the administrative authorities' extravagance in exercising their disciplinary authority for fear of arbitrariness and overstatement of disciplinary sanctions. The administrative judiciary must censor the appropriateness of such decisions so that the flagrant discrepancy between the degree of disciplinary offense and the type and amount of the disciplinary penalty is established and disproportionate, resulting in the illegality of the disciplinary decision and becoming subject to nullity or annulment. The control of proportionality is also beneficial to the staff member against the Department's arbitrariness and conditionality, as the Department reviews its decisions and puts them in the proper context without extremism when in its account there is a judicial oversight over them [20].

Applying the principle of proportionality in disciplinary punishment entails cruelty in introducing disciplinary sanctions, which may result in staff members' reluctance to take responsibility and not too much pity which might lead them to underestimate the performance of duty. The employee accused of being absent from work for one day shall be punished by dismissal from service. Such a penalty would be contrary to the principle of proportionality because it is too high for the assessment of the penalty to go beyond the scope of legality to the scope of wrongfulness [6]. The administrative judiciary had a say in oversight of the proportionality of administrative disciplinary decisions, and this is what we will talk about in the second topic of the position of the administrative judiciary and administrative

jurisprudence from the principle of proportionality, especially with regard to disciplinary penalties.

### **Second topic: Position of jurisprudence and administrative judiciary on the principle of proportionality in Jordan**

The administrative judiciary's control over the principle of proportionality has passed two stages in Jordan, as for jurisprudence, some tended to support the adoption of the principle of proportionality while others have influenced the disagreement, which is what we will discuss in the second requirement of this study.

#### **First requirement: Position of the administrative judiciary on the principle of proportionality in Jordan**

In keeping with the concern of the administrative judiciary to strike a balance between the general guarantees of individuals and the effectiveness of the administration in its work, it subjected the administration's discretion in imposing disciplinary sanctions to implement judicial oversight. Judicial oversight of the proportionality of punishment and disciplinary offenses in administrative judgments did not suddenly appear once. It has been through gradual stages of time and has evolved to the point where it is now. It is considered the judiciary of hyperbole, which was invented by the Egyptian administrative judiciary at an early age and from its earliest beginnings is considered the ideal application of control over proportionality in the field of discipline, without this judiciary having anything like it in the provisions of the French State Council, which has long experience and innovated the theories of administrative law. The situation in Jordan was the same as in Egypt, where in the first stage the Jordanian administrative court did not give itself the right to control the proportionality between disciplinary offense and disciplinary punishment. In a judgment of the Supreme Court of Justice: "The assessment of the amount of disciplinary punishment to be imposed on the complainant is left to the Disciplinary Board without supervision by the Supreme Court of Justice".

The judgments of the Supreme Court of Justice remained in this direction, affirming its approach that it had no role in the control of proportionality and appropriateness. In a judgment, it stated: "Since the plaintiff's statement that the penalty imposed on him is severe is not commensurate with the offenses imposed on him is reimbursable, this is because the second paragraph of the article (72) of the Trade

Union Law authorized the Trade Union Board after the complainant's conviction to impose one of the penalties provided for in article (63) of this Law. Since the imposed sentence falls within the scope of the penalties set out in this article, we do not see the need to interfere with the penalty amount for the offenses for which the summons was convicted [21]. We note that the Jordanian administrative judiciary at this stage has disassociated itself from monitoring the proportionality of the appeal against the disciplinary decision, which is flawed by the lack of proportionality, and remained the case until the next stage of control over proportionality beyond 1985, where after 1985 the French and Egyptian judiciary's approach to monitoring the proportionality between disciplinary punishment and disciplinary offense followed [3]. The Jordanian administrative judiciary used the words and phrases used by the Egyptian Supreme Administrative Court in its famous judgment of 1961, which was discussed earlier. We find that the Supreme Court of Justice of Jordan has followed established that the Egyptian judiciary recognizes the disciplinary authority's power to assess the seriousness of administrative guilt and the appropriate punishment. However, he considered that the lawfulness of this discretion was contingent on its use not being overemphasized in disciplinary punishment, this is what she ruled in a judgment: "If the disciplinary authority has the power to assess the seriousness of the administrative guilt and the appropriate punishment without punishment therein, the legitimacy of this discretion depends, however, on the fact that its use does not overemphasize the sentence, One of the forms of this hyperbole is the apparent incompatibility between the degree of seriousness of the administrative offense and the type of penalty and its amount, In this form, the evident inappropriateness contradicts the law's objective of discipline, which is generally to ensure the regularity of public facilities. This insurance is impossible if the penalty involves severe cruelty or excessive compassion. Both sides do not ensure the regular functioning of public facilities and are inconsistent with the law's objective of discipline. On this basis, the use of the penalty assessment authority in this picture is overly high, and the assessment goes from the scope of legality to the scope of wrongfulness. It is therefore subject to the supervision of this Court since the degree of gravity of the guilt attributed to the applicant is not commensurate with the type of penalty imposed on him, the decision is unlawful and has to be overturned for this reason [6, 22].

The direction of Jordan's administrative judiciary is to impose its control appropriateness. Many of its provisions apply this principle. "... since the Disciplinary Board exercised its competence under articles (141 and 146) of the Civil Service Regulations and was satisfied that the applicant had committed the offense attributed to him and imposed the appropriate disciplinary penalty for this offense. The conviction derives from an indication of its established origin in the papers that the Supreme Court of Justice does not comment on this conviction as long as it is considered to be a valid and acceptable consequence of the evidence contained in the disciplinary proceedings and there is no overstatement of the disciplinary penalty [23]. Another provision also reads as follows: "... since if the disciplinary authority overly imposes the penalty, there is no proportionality between the guilt committed and the disciplinary penalty imposed, it shall be considered an abuse of authority [24].

Also, in another provision, it decided that: "As for the penalty, it must not be hyperbole, if possessed some hyperbole, then the assessment of the punishment goes out from the scope of legality to the scope of illegality" [25]. The judgment of the Jordanian Supreme Court of Justice was based on the principle that the sentence should be assessed on the basis of a progressive sentence in such a way as to ensure the regular functioning of the General Facility [26]. The judiciary is not a higher degree of disciplinary court, but a legal oversight instrument, and this is what the Supreme Court of Justice ruled in a judgment: "... The judiciary is not a higher level of disciplinary court and is a legal oversight tool, in this regard, it may monitor the validity of the fact that the disciplinary decision is constituted (the cause of the disciplinary decision) and the reality of its legal adaptation, and the appropriateness of the penalty imposed to commit the offense. Since Article 55 of the Physicians' Union Law gives the Higher Disciplinary Council the right to impose one or more of the penalties contained therein. If the Supreme Disciplinary Council exercises this power by imposing the penalty appropriate for the guilt committed, namely, reprimand and prohibition from practicing the profession for one month, it has erred [6, 27]. We find that the Jordanian Supreme Court of Justice has taken the course of the Egyptian and French administrative judiciary in establishing its control over the proportionality of the disciplinary penalty to the disciplinary offense committed by the employee. I believe that the Jordanian administrative judiciary has correctly done so.

**Second requirement: Position of administrative jurisprudence on the principle of proportionality in Jordan.**

At the outset, reference must be made to the position of Egyptian jurisprudence on this subject, since this theory is the result of the Egyptian administrative judiciary par excellence. The Egyptian agreement was divided between a supporter and an opponent of the Egyptian Supreme Administrative Court's assertion of its control over the proportionality of the disciplinary penalty to the offense committed by the employee. A part of jurisprudence believes that it is not conceivable that the authority of the administrative judge extends beyond assessing the importance of the incident, as it is a difficult and accurate estimate that requires penetration into the circumstances of the incident, its circumstances, and the perpetrator's circumstances and behavior. What it is and what its motives are, as it requires an examination of the working conditions in the surroundings where the incident occurred, and the impact and gravity of this, which this group does not see from the jurisprudence available to the judge in any case, the administrative authority has ability according to that opinion of the doctrine to make a proper assessment of the facts, the correct estimate agreed upon and their truth [13, 28, 29]. In this direction, it cannot be said that the assessment of the incident is objective, and the fact is taken into its own hands and valued far away from all other considerations. This is because the significance of the event varies differently from the circumstances in which it occurred and from the circumstances of the perpetrator. He may intentionally commit it, and he may commit it negligently or unaware of the novelty of his reign of service, likewise, the event's significance may vary by its impact on the area of work in which it occurred. Therefore, the significance of the incident cannot be assessed away from these considerations, and we value these considerations as valuable, and the fact cannot be assessed in its own right away from the effects, considerations, and other factors [30]. Some jurists who support this trend add that the Egyptian Supreme Administrative Court did not agree with some estimates when it intervened by monitoring proportionality in disciplinary sanctions. It often exaggerates in the consequences of the act, while the offense itself must be viewed rather than its effects, must therefore be confined by the Egyptian Supreme Administrative Court to the control of legality and not extend to the control of proportionality because the administrative authority is best able to balance the seriousness of the crimes attributed to the employees and

to determine the appropriate penalties to deter them and to serve as an example to other colleagues [29]. According to this jurisprudence, the Egyptian Supreme Administrative Court does not have the power to comment on a disciplinary judgment or decision, unless it is contrary to the law, and there can be no disadvantage to the contrary unless we are exercising restrictive jurisdiction. There is no disagreement that the disciplinary authority exercises discretionary jurisdiction when choosing the appropriate penalty for the established offence against the employee [31]. Dr. Suleiman Al Tamawi considers that the Administration is best able to understand the working conditions and is best able to appreciate the meaning of the seriousness and importance of the offenses surrounding the working conditions and the circumstances of the offender also balancing and taking into account these considerations is a hardship that only managers can advance. It is clear from the view of the previous directions that managers are best able to appreciate the significance of the facts and demonstrate their gravity and impact in the work environment, which is difficult for an administrative judge to do.

While another aspect of the jurisprudence considers that it is not too difficult to assess the facts to say that the administrative judge cannot do it. This is contrary to what he sees as the trend that refusal to control proportionality, which calls into question the administrative judge's ability to assess the facts well for what they are, and even the administrative judge can make them easy and conveniently. This view was in favor of the application of administrative judicial control over the proportionality of disciplinary decisions and judgments and the proponents of this trend was based on the consideration of proportionality control as an advanced form of control over legality where a disciplinary decision lacks proportionality, it falls outside the scope of legality to that of illegality [32]. The Egyptian Supreme Administrative Court ruled that: "The requirement for the legality of the authority to assess the seriousness of the administrative offense, and the appropriate reward, that its use should not be tainted by exaggeration. One of the forms of this hyperbole is the apparent incompatibility between the degree of seriousness of the administrative offense and the type and amount of the penalty. In this form, the results of the apparent inadequacy contradict the goal that the law seeks to discipline, which is to secure the functioning of public utilities, which takes the assessment from the scope of legality into illegality [33].



The Egyptian Supreme Administrative Court has approved its full control over the appropriateness of the lawfulness and the proportionality of the disciplinary penalty to the disciplinary offense by stating: "The origin is that the penalty assessment is based on progressiveness depending on the gravity of the guilt committed, if the disciplinary authorities have the authority to assess the seriousness of the administrative guilt and the appropriate penalty, The logic of the authority's legitimacy is that its use will not be overwhelmed, and the apparent incompatibility between the degree of gravity of the guilt and the type of penalty. In this case, the assessment falls outside the scope of legality to that of illegality, It is thus subject to the control of this court, which is also subject to the delimitation of the boundary between the two bands [34]. This was the case in the case of the Jordanian Supreme Court of Justice, which found in a judgment: "That the original penalty assessment is based on the progressive punishment in such a way that the penalty is sufficient to ensure the regular functioning of the public facility [35].

Jordan's administrative jurisprudence agrees with the need for the administrative judiciary to monitor the principle of proportionality between disciplinary offenses and disciplinary punishment imposed on an employee. This is supported by Prof. Nawaf Kanaan and Dr. Salim Hatamleh in their research and opinions as we explained earlier. Dr. Salim Hatamleh supported that disciplinary sentences handed down by disciplinary courts based on their discretion in determining the sentence and the seriousness of the guilt were far from an umbrella of arbitrariness and perversion, and said in his research: "He supports this that inappropriateness can be considered as an abuse of authority that defects the administrative decision to impose the penalty. If the disciplinary penalty has been imposed by a court of disciplinary jurisdiction, the sentence may not be impaired other than against the law in its limited sense, which can be disadvantaged by the violation of the use of power or deviation in its use because it is decided that the deviation in the judiciary's discretion may not be considered unlawful. However, where there is a deviation, the fact is not properly drawn so that the reality of the dispute is completely distorted. Proportionality is one of the most important safeguards for the imposition of disciplinary sanctions on the offending official. The disciplinary authority must take into account the choice of the disciplinary penalty appropriate to the error so that the penalty is fair and appropriate to the disciplinary error without adversity or

excessive severity, or compassion, by incorporating disciplinary penalties, the legislator must take into account the proportionality of the offenses attributed to the official with the penalties imposed without excess.

In this regard, Professor Dr. Muhammad Al-Khalayleh believes that the principle of proportionality of the disciplinary punishment with the violation requires that the administration impose the disciplinary punishment that is commensurate with the violation committed by the employee and that the administration does not exaggerate in punishing him. The principle is that the administration has a wide discretionary power in choosing the punishment it imposes on the employee, but the administrative judiciary settled on exercising this authority and remains under its control to make sure of the issue of compatibility between the gravity of the violation and the amount of the penalty imposed [36]. The Supreme Court of Justice of Jordan has thus been adjudicated in a judgment: "... in terms of punishment, the disciplinary authority shall assess the seriousness of the offense and the appropriate sanction. However, the lawfulness of this authority shall not be prejudiced..." [37]. In another judgment of the Supreme Court of Justice: "... The excessive penalty means the apparent inappropriateness between the degree of seriousness of the administrative guilt and the type and amount of the penalty. The apparent consequences of inadequacy run counter to the aim of the law of discipline and there is a paradox between the offense and the sanction and the discretion derogates from the scope of legality to the scope of wrongfulness..... " [38].

The legislator did not stipulate disciplinary penalties in vain because the legislator does not prejudice and this is confirmed by the judgments of the administrative judiciary, which states: "The impugned decision and the issuance of the contested decision needs a recommendation of the Board of the Department and then a recommendation of the College Council, or a recommendation of the Committee constituted under article 32/f of the said instructions.

It is then inscribed by the Promotion and Appointment Committee, and to say otherwise that the text is lost is guaranteed and threatens its purpose and the text becomes hyperbole and the legislator does not [39,40]. We believe that Jordanian jurisprudence and the administrative judiciary have applied the need to monitor the administrative judiciary for the principle of proportionality between

the offense committed by the official and the disciplinary penalty imposed on him. In the opinion of the researcher on this issue, the field of administrative judicial control of the principle of proportionality is one of the loose things that is one of the most important safeguards for employees from the side of the disciplinary authorities. He believed that the Administration's assessment of the seriousness of the facts and the punishment imposed should never be extradited, so as not to result in abuse of authority or infringement of the law as to the unlawfulness of the assessment of the penalty if the disciplinary penalty is an exaggeration.

### **Conclusion**

At the end of this research, entitled "Appropriateness of Disciplinary Penalty with Administrative Offense in Jurisprudence and Jordanian Judiciary", we should draw the most important conclusions we produce, and then make a recommendation. We believe that their introduction reinforces this kind of control over the discretion enjoyed by the disciplinary authorities in choosing the type and amount of disciplinary punishment for the disciplinary offense committed, thereby achieving the effectiveness of the administration on the one hand and guaranteeing the guarantees of staff members on the other.

### **First: Results**

1. Disciplinary sanctions imposed by the disciplinary authority are a means of deterrence and injustice and are not an object and purpose in themselves. The disciplinary system does not target the punishment itself but is the subject of the purpose of enabling public facilities to perform a message and thereby ensuring the regular and steady functioning of the public facility.
2. The disciplinary authorities in Jordan and Egypt are subject to the supervision of the administrative judiciary, which has expanded to control the appropriateness of the sentence imposed with the administrative guilt of the perpetrator, the so-called "hyperbole".
3. Exaggeration in disciplinary punishment is incompatible with the principle of proportionality as a consequence of the lawfulness of the penalty and results in the loss of the employee's self-confidence, experience, and superior work, and the creation of red tape and bureaucracy in the performance of the work, which is detrimental to the public facility.
4. I have concluded that no punishment may legally be imposed that has not been included in explicit disciplinary sanctions for the

purpose of disciplining staff members. If the Administration takes action, it abuses its authority, resulting in the annulment of the contested decision. It is incumbent on the administration to punish the offending official in accordance with the penalties stipulated in the Law. He may not be punished by a penalty not provided for in the civil service system.

### **Second: Recommendations**

Through research, there are some recommendations as follows:

1. I wish the Jordanian legislature to increase the penalties stipulated in Civil Service Regulation No. 13 of 2020 by more than eight degrees, by adding the penalty for the reduction of salary and the penalty for the reduction of grade, and also the penalty for the referral of retirement to the terminated employee for the period of time so prescribed.
2. I firmly believe that it is imperative for our legislator to introduce the defect of the exaggeration of the disciplinary penalty as an independent ground placed by the law so that one of the grounds on which the appellant's claim for annulment or compensation of the disciplinary penalty may be based.
3. The disciplinary authorities must ensure that the disciplinary penalty is imposed, that the facts are properly and properly examined, that the consequences of the penalty are considered, and that the circumstances and circumstances surrounding the incident and the offending official are examined before the appropriate punishment is determined. The spirit of the law must be viewed, not only in its body.

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