

# The Legality of the Disciplinary Punishment of a Public Employee as A Guarantee of Disciplinary Decisions Issued by the Administration

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## **Abstract**

*The administrative legislator guaranteed the public employee, from whom a violation that requires disciplinary punishment occurs, numerous guarantees to ensure his right to defend himself from what he was based on based on the decisions of the administration, in dedication to the legal and constitutional principles that guaranteed the right of Defense to man ( Supreme Administrative M79 / s47 of the year 1978), Therefore, this research aims to shed light on the most important guarantees that ensure the legality of disciplinary punishment based on decisions issued by the administration due to violations committed by a public employee, what these guarantees are and their legal provisions in accordance with the provisions of the law, judiciary and jurisprudence, in order to achieve a balance between the employee's interest and the interest of the administrative apparatus and in order to achieve the public interest ( Mohammed Hamid 2017, 9). the study concluded a number of results on the guarantees of the legality of disciplinary punishment before the disciplinary decisions of the administration.*

**Keywords:** *Guarantees, Legality, Disciplinary Penalties, Disciplinary Responsibility, Legality of Disciplinary Punishment.*

## **INTRODUCTION**

The disciplinary penalty imposed on a public employee upon the occurrence of a violation, including negligence or negligence while performing his duty towards the state or one of the public utilities managed by the latter, has become one of the legal controls by which the Department's work is upright in its decisions towards its employees. In return, the legislator has guaranteed numerous guarantees to the public employee or those in his judgment who are referred to the disciplinary matter to ensure his protection against the possibility of arbitrariness and abuse of his rights. Mohammed Refaat 356.2009), which called for the existence of guarantees of the legality of disciplinary punishment before the decisions of the disciplinary administration, which is based on several foundations or guarantees, and for this it is necessary to develop a distinct system of guarantees based on conciliation Between the administration on the one hand and the employee's right on the other (Mohammed Hamid 10,2017).

**The First Requirement:** the principle of the personality of punishment:

Taking note of the character of punishment as one of the guarantees of the principle of legality requires a statement of the content of this principle and the symptoms of disciplinary responsibility by dividing this requirement into two branches:

**Section I:** the content of the principle of personality of punishment:

The principle of personality of disciplinary punishment means that the erring employee is responsible for the offense he committed and that no one else is responsible for the mistakes he committed (Al-Tamawi, 1979, 292).

That is, the meaning of the principle of the personality of the disciplinary punishment is that the punishment affects the perpetrator of the disciplinary crime, whether he committed it directly or indirectly, such as having done a specific positive or negative action, is considered a contribution from him to the occurrence of the disciplinary offense, therefore, the principle of the personality of the disciplinary punishment requires determining who the disciplinary punishment is imposed on (Khalifa, 2003) .

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We believe that the Supreme Administrative Court has established that the disciplinary responsibility is personal and that the punishment is also personal and that this is a general principle that finds its meaning in all the heavenly canons and in the provisions of constitutions and laws and that the error is not assumed to occur and the employee may not be held accountable as a result of a loss

(Ruslan, 1997,339).

**Second Section:** symptoms of disciplinary responsibility:

There are cases when surrounding the commission of a disciplinary offense leads to its lack of effect from a legal point of view, and prevents the imposition of disciplinary punishment, which in one of these cases has become in vain, which results in the invalidity of the disciplinary punishment sentenced on the basis of it.

### **THE MOST IMPORTANT OF THESE REASONS ARE**

**1-force majeure:** it is an exceptional circumstance from the action of man or nature that is unexpected and cannot be pushed (Khalifa ,2003, 39). If the employee commits a violation under force majeure, no penalty may be imposed on him for it, and the burden of proving force majeure falls on the violator, considering that he is the alleged existence of force majeure.

**2-coercion:** the rule is that coercion spoils everything, and material coercion destroys the will, but moral coercion does not destroy the will, but it is a defective will that would lead to the revocability of the decision, and there is no doubt that material coercion destroys responsibility because a person is completely without will (Tantawi, 2001, 84 ).

**3-psychological or mental illness:** having a mental disability when a violation occurs means refraining from responsibility for this violation, and it is the most frequent contraindication to liability in judicial applications, and this illness must be proven by official means, and work pressure and its poor distribution are not an obstacle to responsibility, as well as ignorance of the law or regulations (Abu al-Enein, 1999, 229).

**4-criminal acquittal and disciplinary accountability:** in the event of a criminal verdict of acquittal based on the absence of the physical existence of the offending facts or their non-attribution to the public official, the criminal verdict has absolute authority before the disciplinary authorities and the employee can request the verdict to cancel this punishment, which was expected because of the lack of legal basis on which the decision or disciplinary verdict is based (Abu al-Enein, 1999, 199).

### **The Principle of Unity of Disciplinary Punishment**

#### **Smoothing and Splitting**

It is necessary to examine the principle of the unity of disciplinary punishment by determining the content of this principle, its legal basis and the limits of its application by dividing this requirement into three branches :

#### **The First Section**

##### **The Content of the Principle of Unity of Punishment**

We find that one of the results arranged by jurisprudence and the elimination of the principle of legality of disciplinary punishment is the rule " inadmissibility of punishment for one act twice (Abdulbar, 1979 ,448). Accordingly ,it is not permissible to punish an employee for the same administrative offense twice, and therefore it is not permissible to combine the penalty of deduction from salary with the penalty of warning of dismissal (Al-Bahi, 2000, 136).

We also find that the decision of the Jordanian Supreme Court of Justice (1977), it affirmed this principle in many of its decisions that it is not permissible to punish an employee who commits a violation with two disciplinary penalties twice at the same time .

In confirmation of the seriousness of the multiplicity of disciplinary punishments, some scholars have argued that the duality of disciplinary punishment towards a single mistake is more severe than deviation in the use of

*The Legality of the Disciplinary Punishment of a Public Employee as A Guarantee of Disciplinary Decisions Issued by the Administration* authority, since the disciplinary authority thereby reaches the peak of its controlling character (Abdulbar, 1979, 156 ).

## **Second Section**

### **The Basis of the Principle of Unity of Disciplinary Punishment**

#### **This Principle is Based on Two Foundations**

The first is the principle of no punishment except by a provision, as this principle is considered to be a branch of the principle of the legality of disciplinary punishment, and therefore the multiplicity of punishments that are not permitted by the provision is the establishment of an unscheduled punishment and a departure from the principle of legality (Abdul Bar, 1979, 452).

The issuance of a penalty for a certain disciplinary offense means that it is not permissible to issue a penalty for the same crime in accordance with the authority of the order issued, in relation to the judgment issued by the disciplinary courts.

## **Section III**

### **Limits of Application of the Principle of Unity of Disciplinary Punishment**

In order to apply the principle of unity of disciplinary punishment, we must study specific controls to ensure the principle of unity of punishment as follows:

**First:** we must be aware of the actions: we must be aware of the actions for which the employee was punished ,and if new facts appear after the punishment is imposed, the administration can use its disciplinary authority before it (Supreme Administrative Court, 1989).

Thus, the Supreme Administrative Court (1989), which decided to cancel a ruling signing a new penalty on some employees, claimed that the administration continued the violation, as it proved the absence of this continuation .

**Second:** there must be a previous penalty: in order to be in the case of multiple penalties, there must be a previous penalty that has already been sentenced, and if the penalty that was previously signed is canceled, a penalty may be imposed, and this will be achieved in the event that the penalty decision is canceled for a defect in the form of sentencing, lack of jurisdiction, or withdrawal of the competent administrative authority, and we will study it accordingly:

**1-Cancellation of the decision due to a defect in form:** the Jordanian Supreme Court of Justice (1984) ruled that "its previous decision to cancel the decision of the Council of ministers related to taking disciplinary measures against the summoned canceled the contested decision due to a defect in the form of the decision, which does not prevent him from being punished again for the same actions without this being considered a departure from the rule of non-multiplicity of penalties because the verdict was not issued because the employee is innocent of what was assigned to him or that what he committed did not constitute a disciplinary offense but was a defect of form that does not touch the substance of the matter .

**2-Withdrawal of the decision:** accordingly, we find that the talk regarding the withdrawal of the administrative decision is limited to disciplinary decisions issued by an individual administrative head ,and as for " decisions issued by a disciplinary council, or from a disciplinary court, can only be appealed in the manner prescribed by the legislator, by appealing to another body concerned by the legislator, whether it is an appellate disciplinary council or a Supreme Court(al-Tamawi, 1979, 419).

**3-The subject of the two disciplinary punishments should be united:** the two punishments should be of one type, that is, they should be issued by one Penal authority, and also both punishments should be original:

Therefore, if the nature of the two is different, if one is disciplinary and the other is criminal, then we are not dealing with a situation of multiple punishments, since each punishment does not prevent the other from

signing the independence of both criminal and disciplinary crimes from each other, because the constituent elements of each are different from the other (Khalifa, 2003, 54).

### **The Third Requirement**

The principle of proportionality of punishment with a disciplinary offense

#### **Smoothing and Splitting**

The proportionality of the punishment imposed on a public employee with the offense committed by the latter is a fundamental pillar of the principle of disciplinary legality, so taking note of this principle requires a statement of its content and controls by dividing the requirement into two branches:

**Section I:** the content of the principle of proportionality of punishment with disciplinary offense.

**Section II:** controls the principle of proportionality of punishment with the disciplinary offense.

#### **The First Section**

The content of the principle of proportionality of punishment with disciplinary offense

This principle means that the appropriateness between the degree of seriousness of the offense and the imposed penalty and its amount must be taken into account. the disciplinary authority chooses the type of penalty that is commensurate with the guilt committed, provided that the disciplinary authority assesses this appropriateness.

One of the forms of this hyperbole is: the apparent inappropriateness between the degree of seriousness of administrative guilt and the type and amount of punishment (al-mult, 1967, 332), and the appropriateness in general is the proportionality between the reason for the decision and its place, it is based on two elements, the element of the reason, which is the disciplinary offense, and the element of the place, which is the estimated disciplinary punishment (Abdulbar, 1979, 463).

Although some recent rulings of the Supreme Administrative Court give the Disciplinary Authority the freedom to assess the appropriate punishment without being subject to judicial control, but the prevailing trend in its judiciary is to control the proportionality between the crime and the punishment, and while the majority of its rulings is to cancel the penalty for exaggeration of severity, it tends to cancel the decision:

**First:** the freedom of management to assess the appropriate penalty:

The Supreme Administrative Court(1973) recognized the administration's freedom to assess the penalty through several of its rulings.

**Second:** control the proportionality between crime and punishment:

Most of the decisions of the Supreme Administrative Court(1974), tend to subject the assessment of the disciplinary authority of punishment to judicial control.

The Jordanian Supreme Court of Justice (1996) has ruled that the original assessment of the penalty should be based on the progression of the punishment in such a way that the punishment is sufficient to ensure the regularity of the public facility .

#### **Second Section**

Controls the principle of proportionality of punishment with disciplinary offense

The assessment of disciplinary punishment is up to the disciplinary authority, as long as this assessment does not reveal hyperbole, that it should not be excessive in cruelty or excessive in pity, and the assessment of this is in the light of a number of controls, the most important of which is(Ayyash, 2007).

**First:** taking into account the degree of seriousness of the guilt: This is an objective and not subjective criterion based on the degree of seriousness of the disciplinary offense, since it is established that disciplinary authorities,

including disciplinary courts, have the authority to assess the severity of administrative guilt and the appropriate punishment (Supreme Administrative Court, 1991)..

**Secondly:** taking into account the public interest: it is necessary to take into account the assessment of the proportionality of the punishment with the violation, to investigate the public interest for which the disciplinary body decided the type of punishment and its amount, for example, but not limited to signing the dismissal penalty in hopeless cases of the employee's validity to remain in the job, and to refrain from signing it if there is a benefit from the return of the worker to work for both parties, the employer and the worker (Supreme Administrative Court, 1996).

**Third:** taking into account the circumstances and circumstances: since the authority to determine the punishment is discretionary , it is necessary to take into account when assessing the punishment the circumstances and circumstances surrounding the commission of the offense, so that the punishment for the offense committed intentionally is not equal to the punishment for the offense committed through negligence and negligence, as there is no doubt that the first requires a tougher punishment than the second (Supreme Administrative Court, 1997).

**Fourth:** taking into account the employee's job status and the impact of the punishment on him: if the degree of seriousness of the disciplinary offense has to be taken into account when assessing the punishment, then the employee's job status and the extent of the impact of this punishment on him must also be taken into account, for example, without limitation, the employee's age, the amount of job service, the extent of its impact on punishment and whether or not the employee has previously committed disciplinary violations should be taken into account, as the case of recidivism requires toughening the punishment by reversing the commission of the crime for the first time and before reaching retirement age (Supreme Administrative Court, 1997).

#### **Fourth Requirement: The Principle of Legality of Disciplinary Punishment**

The principle of legality is one of the principles that controls crimes and punishments in the criminal and disciplinary field, which is one of the basic guarantees of human rights, so taking note of it requires defining its content, restrictions and controls contained in it, characteristics and results of its legality by dividing this requirement into four branches :

**Section I:** the content of the principle of legality of disciplinary punishment:

In the opinion of Al-Bandari, if an employee commits a violation of his job duties and is found guilty of this by the disciplinary authority, then it has to inflict the appropriate punishment for this violation, but the authority does not have the right to inflict the disciplinary sanctions it wants, on the contrary, it should abide by the sanctions specified by the legislator in accordance with the rule of legality of sanctions, which aims to inform the employee in advance of what this punishment could be to be aware of him .

Accordingly, the disciplinary legislator has reduced the value of violating the principle of determining the disciplinary penalty, among other things:

- 1-that he defined the authority competent to discipline exclusively, and did not leave it as a whole to the superiors.
2. he also defined the penalties in terms of their severity and softness and in terms of the persons of the perpetrators and their job grades.
- 3- it also allowed the establishment of disciplinary regulations that include crimes and the penalties assigned to them (Tantawi, 2001).

By the principle of the legality of disciplinary punishment, we mean that no disciplinary authority whatsoever may impose on the perpetrator of a disciplinary offense a punishment that has not been established by legislation (Khalifa, 2003).

**Section II:** restrictions and controls of compliance with the principle of legality of disciplinary punishment:

The principle of the legality of the disciplinary sanction means the commitment of the disciplinary authorities to the legally established limits of sanctions, in addition to the need for a narrow interpretation of the texts, and the inadmissibility of taking non-punitive measures for punitive purposes.

**Section III:** characteristics of the legality of disciplinary punishment:

The characteristics of the legitimacy of disciplinary punishment issued by administrative decisions towards its employees, which distinguish it from the legitimacy of criminal punishment, may represent shortcomings in the legitimacy of disciplinary punishment, but the judiciary and jurisprudence are both seeking ways to reduce the effects of these characteristics on the effectiveness of the legitimacy of disciplinary punishment, the most important of these characteristics are:

**First:** failure to apply the rule of proportionality between crime and punishment : as there is no gradation in crimes corresponding to a gradation in penalties.

**Second:** non-application of the principle of retroactivity of the most correct law: the general principle in administrative and criminal law is considered to be the same principle, that is, the punishment or sanction existing at the time of the commission of the crime is inflicted.

**Third:** the multiplicity of sources of disciplinary penalties: as we know, the legislator has limited the disciplinary penalties that are imposed on the employee accused of committing one of the disciplinary violations, and therefore we are in front of the legitimacy of the disciplinary penalty, that is, the administration may not impose a penalty that is not provided for.

## CONCLUSIONS

After we dealt with the issue of guarantees of disciplinary legality in the face of decisions issued by the administration, the result was to come up with an abundant set of important and useful results in the field of study in this research as follows:

1-the immediate effect of the disciplinary penalty: the example of the penalty contained in the law in force at the time of signing the penalty, regardless of the law in force at the time of committing the offense or the establishment of disciplinary proceedings, which was stated by the Egyptian Supreme Administrative Court (1984), and the validity of the rule of immediate effect does not prevent the imposition of the most appropriate punishment for the accused, and this was decided by the Supreme Administrative Court (1989).

2-proportionality between the offense and the disciplinary punishment: the necessity of proportionality between the punishment and the seriousness of the disciplinary offense is considered a matter determined in the disciplinary scope, and derived directly from the principle of legality.the original is that the management decision in the disciplinary penalty on the basis of the gradation between the seriousness of the administrative guilt, and the appropriate punishment issued by the administration towards the employee ( higher administrative 114, 1963).

3-inadmissibility of punishment for one act twice: this principle must be implemented within the same disciplinary system, where the Egyptian Supreme Administrative Court (1954) decides that "it is not permissible to punish an employee for one administrative guilt twice with two original penalties that the law does not explicitly provide for combining them.

4-compliance with the punitive provisions in terms of the type of punishment and its amount: in order to implement the principle of legality, the administration must comply with the penalties stipulated by the law without resorting in particular to the implementation of measurement tools or deduction, and this was decided by the Egyptian Supreme Administrative Court (1963).

5-the importance of disciplinary trials stems from the importance of the right that it protects and the goal it seeks and the gravity of the consequent provisions, as the laws of the public service and disciplinary trials issued by the decisions of the administration did not contain a complete organization of disciplinary guarantees and blocked the veto obtained by not providing for these guarantees.

## IMPLICATIONS AND FUTURE RESEARCH

The need for a system that stipulates the foundations and principles of guarantees of the legality of disciplining a public employee towards management decisions because disciplinary guarantees are considered guarantees of the public job itself, not just the employee, and must adopt the basis of legality in the investigation, Research, disclosure and the impact of the case to consider and take all measures to ensure the proper functioning of maintaining the guarantees of the legality of disciplining a public employee and compliance with the provisions of Islamic Shari'a, both in letter and spirit, by issuing the applicable regulations that are consistent with the purposes of Islamic Shari'a and adhering to the limits prescribed by law for disciplinary punishment, so that the disciplinary authority must respect the quantitative amount of the types of penalties that the legislator stated that any amount should be respected without an increase. Moreover, the conduct of persons should be governed by the law not only in their relationship with each other, but also their relationship with the governing bodies of the state, whether these legal persons are public law persons or private law persons.

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