

# Disguised Administrative Penalties For Public Servants

Muhammad Sulaiman Alyahyae<sup>1</sup>, Jabir Ali Alrayssi<sup>2</sup>, Sandia Mohamed AlFzari<sup>3</sup>, Rashid Obaid Almatrooshi<sup>4</sup>, Arieff Saleh Bin Rosman<sup>5</sup>

<sup>1,2,3,4</sup>UNIVERSITI TEKNOLOGI MALAYSIA (utm)

<sup>5</sup>Universiti Teknologi Malaysia (utm)

---

## Abstract

The aim of the research is to clarify one of the forms of punishment that may fall on the public employee by the administration, and the administrative authority may be unfair, and it is marred by a kind of deviation and abuse in the use of disciplinary authority. Therefore, this research attempted to explain the legitimacy of a disguised punishment, what is meant by it and its concept, and the difference between legitimacy and legality, in addition to referring to the forms and forms of disguised punishment, and how to challenge this punishment by those who signed the penalty, with an explanation of the reasoning of the decision and how to challenge it, and was followed in This research has more than one approach: I followed the descriptive analytical approach, by describing the legal phenomenon related to this punishment, and its statement with the analysis of the legal texts related to it to reach the most important results and recommendations. The extent to which the Emirati legislator was affected by it, and the researcher reached several conclusions, including: The disguised punishment is defined as: a painful action taken by the administration against the employee without charging him with a specific accusation, so he/ she resorts to recklessness b Disciplinary punishment, through another procedure owned by it, that achieves the disposal of the hidden employee without fulfilling the disciplinary procedures, and also represents the disciplinary punishment that may be explicit in the text of the law and then is a mandatory effect of imposing a disciplinary punishment.

**Keywords:** Disguised Punishment - Public Employee - Legitimacy - Disciplinary Penalty

## Introduction

The employee may be exposed to types of forms of pain, some of which deviate from legitimacy and represent a deviation or abuse of authority, such as disguised punishments, and others are arranged by the functional law as a consequential effect of the disciplinary penalty, so we are in the process of consequential penalties and some of the others imply the meaning of the penalty, and if it causes harm to the employee, then we are in the process of legal administrative procedures or measures, all of which do not qualify for the description of disciplinary punishment, especially with regard to the cause element of committing a disciplinary fault, especially that disciplinary faults are Unspecified exclusively.

What makes it more difficult and opens up a wide scope for deviation in the administrative authority's use of its discretionary power when faced with behavior that is not in its assessment or in the assessment of Sharia a disciplinary fault. However, it is appreciated at the same time the necessity of imposing punishment because of it, and therefore there are many procedures that do not bear the description of punishment, but they involve the most painful disciplinary punishments, in addition to the presence of many forms that being clarified by the meaning of punishment, even if the law would confer on them a description away from the meaning of punishment, in both cases, this image and procedures are not surrounded by the minimum guarantees without which justice and fairness cannot be achieved.<sup>1</sup>

### **Research Importance:**

The importance of the study lies in the fact that it carries with it an important subject in itself and its nature. The penalties that may be applied to the public employee, including those that affect the right, and others that arise as a result of arbitrariness and deviation by the administrative authority. The study will indicate disguised punishment that could be a disciplinary penalty for the public employee.

### **Research Objectives:**

1. Explain the legitimacy of a disguised punishment.
2. Clarify what is meant by the principle of legality in disciplinary punishment.
3. Recognize the forms of disguised punishments.
4. Explain how to appeal the disguised punishment.

### **Research Methodology:**

The researcher relied on the descriptive analytical approach, by describing the legal phenomenon related to this punishment, explaining it and analyzing the relevant legal texts to reach the most important results and recommendations. The comparative approach was also relied upon by referring to some matters related to Egyptian jurisprudence and judiciary to see the extent to which the UAE legislator was affected by it.

---

<sup>1</sup> Muhammad Asfour, Freedom, Authority and the Rule of Law, World of Books, Cairo, 1967, p. 6.

## **Research Plan:**

### **First Chapter: Legitimacy of Disguised Punishment**

First Topic: The Meaning of the Principle of Legality in Disciplinary Penalties.

Second Topic: The Concept of Disguised Punishment.

### **Second Chapter: Forms of Disguised Punishments**

First Topic: Appealing a Disguised Sentence.

Second Topic: The Reasoning of Disciplinary Penalties.

## **Conclusion, Results and Recommendations**

### **First Chapter: Legitimacy of Disguised Punishment**

The disciplinary authority enjoys a wide discretionary power in adapting disciplinary offenses and selecting the appropriate penalty. This authority is not an arbitrary privilege that goes unpunished, but rather is subject to a number of principles which provisions are regulated by law. The disciplinary authority has to observe this power and not abuse it. Otherwise, the disciplinary decision shall be tainted by the defect of violation of the law or abuse of power. The legislator, jurisprudence and administrative jurisdiction have made great efforts to find and organize principles that serve as a disciplinary rule or constitution that governs the work of the disciplinary authority and provides the greatest degree of guarantees for accused employees, and the most important of these principles is the principle of legality.<sup>1</sup>

#### **First Topic: The Meaning of the Principle of Legality in Disciplinary Penalties.**

The principle of legality has two meanings, the first is private, indicating the administration's commitment to the provisions of the laws, and the second is general, which refers to the administration's respect for all laws, regulations, instructions, customs and general principles of law. The principle of legality represents at the current time the top of basic guarantees of the rights and freedoms of peoples, as this principle crystallizes all the gains that peoples have been able to achieve in their conflict with the ruling authorities to force them to give up all manifestations of absolute rule, through successive generations that have passed on humanity until our present era.<sup>2</sup>

---

<sup>1</sup> Nofan Alaqil Al-Ajarmah, the Public Employee Disciplinary Authority, A Comparative Study, Amman, Jordan, Dar Al Thaqafa for Publishing & Distributing, 2007, p. 115.

<sup>2</sup> Gamal El-Din Sami, Administrative Jurisdiction and Control of Administration Activities, The Principle of Legality and Organization of Administrative Jurisdiction, Alexandria, Egypt, Dar Elgamaa Elgadida Printing, Publishing & Distribution, 1990, p. 9.

Contemporary states tend to adopt the principle of legality, which requires the state to be subject in its actions to the existing law, as this term “Legality” is used to refer to everything that is consistent and in conformity with the law.<sup>1</sup>

In order to identify what is meant by the principle of legality in disciplinary penalties, we will first clarify what is meant by the principle of legality in general, leading to the definition of the principle of legality in disciplinary penalties.

### **The Concept of Legality Principle:**

Legitimacy in the field of criminalization and punishment means that only the legislator decides which act constitute a crime. It is also the one who determines the penalties for each of them, and thus the sources of criminalization and punishment are limited to the law texts, and the role of the judge is limited to applying the texts of the law to the facts as presented to him without addition or deletion.<sup>2</sup> The issue of the interplay between the concepts of legitimacy and legality has met two trends in jurisprudence and law:

#### **1. The Conflict Between Legitimacy and Legality:**

A part of jurisprudence has tended to the necessity of distinguishing between the two terms of legality and legitimacy, based on the fact that legality is contained in French law and means respect for the rules of law that actually exist in society, and in fact it is a positive legality. As for legitimacy in the French legislator, it means an ideal idea that carries within it the meaning of justice and what the law should be. Its concept is broader than mere respect for the rules of positive law as it includes other rules that must be the ideals envisaged by the legislator in the state if he/she wants to raise the level of the issued legislation.

#### **2. Synonymy Between Legitimacy and Legality:**

This aspect thinks that legality and legitimacy are synonymous, because the principle is a restriction on the actions of public authorities and requires compliance with all legal rules. Among these rules of positive legality, and as long as this principle means respect for the ideal ideas that carry within it the meaning of justice, and it means respect for the rules of positive legality, there is no room for distinction between them.<sup>3</sup>

The principle of legality was defined as the rule of law or subjection to the law. Some jurists used the term “rule of law” to denote the principle of legality, i.e. respect for its provisions and their applicability to both the ruler and the ruled. Therefore, the law requires that the behavior of individuals govern their relations with each other as well as their relations with the governing bodies in the state. However, part of the jurisprudence does not allow the use of the term “rule of

---

<sup>1</sup> The Judicial Institute of Jordan, *The Defect of Misusing the Authority in the Administrative Decision*, Amman, Jordan, Ministry of Justice, 1998, p. 2.

<sup>2</sup> Al-Ajarmah, *The Public Employee Disciplinary Authority*, op. cit., p. 117.

<sup>3</sup> Tariq Fathallah Khader, *Administrative Jurisdiction: The Principle of Legality, Regulating Administrative Jurisdiction*, cancellation claim, Egypt, 2002, p. 17.

law,” as the term “sovereignty” has a special, almost agreed upon, connotation, which is describing the fully independent state as “sovereign.”<sup>1</sup>

The principle of legitimacy in the disciplinary law means that the disciplinary authority implements the penalties stipulated in the law, and it cannot impose a penalty unless it was stipulated by law, whether simple or severe, or impose a penalty more severe than what is prescribed for it. The disciplinary authority does not have the power to invent new penalties because they are specified by law, and this does not mean that there is a conformity between the principle of legitimacy in criminal law and disciplinary law. Where the legislator is satisfied with specifying a list of penalties, allowing the disciplinary authority to choose the appropriate penalty for the administrative offense committed from among those penalties.<sup>2</sup>

The **Federal Civil Service Law** No. 21 of 2001 defines the disciplinary authorities in the presidential disciplinary authority of the minister or his delegate, and the disciplinary boards formed under the provisions of this law<sup>3</sup>. However, the legislator has reversed this behavior in accordance with the Federal Human Resources Law and its executive regulations. Where it identified specific bodies concerned with everything related to disciplining a public employee, when he/ she commits a functional infraction, and these bodies are the Offences Commission, the Grievances Committee and the Objection Committee, each of them has a role in this regard specified by the law and its executive regulations.<sup>4</sup>

As for disciplinary measures, can be defined as “a set of procedural rules taken by the administration against the public employee, with the aim of imposing a disciplinary penalty to him in a way that ensures that he/ she is not subjected to persecution and abuse by this administration, given that the administration’s achievement of its objective depends on the performance of the employee.” These procedures aim to achieve guarantees at all stages of disciplinary procedures, in order for discipline to achieve its purpose as a protection tool for the public facility, not as a means of retribution or revenge. These disciplinary procedures are initiated after the employee commits a fault and adapts it as a disciplinary fault.<sup>5</sup>

the Researcher believes: From the above, the broad concept of the principle of legality requires that the disciplinary authority abide by all the principles that result from the principle of the rule of law and the principles of justice, which requires observance of the principles of the personality of the penalty, and the lack of analogy with it or the inclusion in it, the principle of non-retroactivity

---

<sup>1</sup> Khader, Administrative Jurisdiction, p. 17.

<sup>2</sup> Al-Ajarmah, The Public Employee Disciplinary Authority, op. cit., p. 117.

<sup>3</sup> Issam Ali Debs, Administrative Law and Its Applications in the UAE, University Library, Sharjah 2015, p. 371.

<sup>4</sup> Hamdi Abu Al Nour, Al Shamil in Administrative Law in the UAE, Al Falah for Publishing and Distribution, Al Ain 2013, p. 189.

<sup>5</sup> Rashid Muhammad Fahli, The Legal System of Disciplinary Penalty and its Guarantees in the United Arab Emirates, Dar Alnahda AlArabia, Cairo 2015, p. 26.

of the disciplinary penalty, and the compatibility between it and the fault committed and the failure to impose disguised penalties.

## **Second Topic: The Concept of Disguised Punishment**

The Jurisprudence's term "Disguised Punishment" is defined as "a harmful procedure taken by the administration against the employee without accusing him/ her of a specific accusation, so it deliberately evades disciplinary punishment through another procedure that it possesses that achieves the disposal of the erring employee without fulfilling the disciplinary procedures", or as "an administrative procedure taken by the administration that was not designed to discipline and was used with the intent of harming and punishing the employee."

The Egyptian judiciary tends to extend its control over the administration's behavior in this regard, as judicial applications are based on protecting legality in this field. For all other administrative decisions that cover disciplinary penalties<sup>1</sup>, the court judgments have established that a disguised disciplinary penalty is unlawful if it is proven that it was intended to sanction the employee for a disciplinary fault. For the administrative decision to be restricted as a disguised disciplinary penalty, it does not need to include one of the specific disciplinary punishments, otherwise, it is an explicit disciplinary penalty. Rather, it's important to show from the circumstances and situations that the administration's intention was to punish the employee, but without following the procedures and conditions established for that, so it deviated its authority in the decision to achieve this hidden purpose, so the decision would be a disguised disciplinary penalty, and then it would be tainted by the defect of abuse of power and in violation to the law. But if it turns out that it did not deviate from its authority to achieve such a hidden purpose, but rather used it to achieve the public interest for which the decision was prepared, then it is proper and in conformity with the law<sup>2</sup>.

**The Researcher believes that** the concept of disguised punishment includes one of the internal measures that the administration has to take, whether under the text of the law or its discretion if it deviates from its legitimate aim and is intended as a mere punishment.

## **The Second Chapter: Methods and Forms of Disguised Punishments**

### **First Method:**

---

<sup>1</sup> Abdel-Fattah Abdel-Halim Abdel-Bar, The Role of the Idea of Disguised Disciplinary Penalty in Protecting Legality in Judicial Applications, Research published in Journal of Administrative Sciences, Egyptian Division of the International Institute of Administrative Sciences, 38th year, First Issue, June 1996, p. 134.

<sup>2</sup> Judiciary of the Egyptian Supreme Administrative Court, Challenge No. 141 of Judicial Year 2, session 23/ 06/ 1956, referred to in Counselor Samir Sadiq's book, Decisions and Disciplinary Provisions in the Supreme Administrative Court, General Egyptian Book Authority, 1985, p. 92. See also its judgment in Challenge No. 509 of Judicial Year 17, session 29/ 01/ 1976, judgment referred to in Counselor Abdel Wahab Al-Bandari's book, Disciplinary Punishments, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009, p. 183, and its judgment in the two Challenges, 2815, 2872 of Judicial Year 31, session 18/ 03/ 1989, the modern administrative encyclopedia, previous reference, part 29, pg. 404 and beyond.

## **Imposing a Penalty Without Reference to Any Provision in the Law for a Job Fault Committed by the Employee:**

Among the applications of this method is draw-attention, especially if it is accompanied by recording violations of the employee in his/ her authority, on the basis that draw-attention is not considered one of the disciplinary punishments stipulated by the disciplinary systems, whether in Egypt or the Emirates. Hence, resorting to the Head is not based on the law, and by this description, it is not considered a disciplinary punishment if its purpose is to remind the erring or negligent employee of his/ her job duties. But if it is accompanied by recording the fault or negligence in the personal file of the perpetrator, then in this case it is considered a disciplinary punishment provided. This is what the Egyptian administrative judiciary has done in its judgments, where the Supreme Administrative Court ruled in its judgment that: If the decision issued to draw the attention of the employee recorded that the employee committed specific violations and labeled his/ her behavior as flawed contrary to moral values and confirmed what he/ she stigmatized by depositing the decision papers related to him/ her in his/ her service file and that would affect his/ her legal position in the field of public office, as the aforementioned decision, and the case as well, has departed from the real aim of draw-attention as it is merely a self-serving measure to remind the employee of his/ her job duties. A decision in this way entails a disguised disciplinary penalty<sup>1</sup>.

### **Second Method:**

#### **Imposing a Penalty by Abuse of Authority or Legal Text:**

This method takes one of two forms:

**The First Form:** The administration exceeds the limits of the legal text and uses it for purposes other than the aim it was established to achieve. Among its applications is the termination of the employee's service for inefficiency according to what is stipulated in the law, if the assessment of his/ her adequacy is not based on a proper basis of reality and the law.

**The Second Form:** The administration does not rely on a clear legal text to issue an incorrect procedure without observing the terms and conditions contained in this text. For example, the administration resorts to suspending the employee as a precaution from work in cases other than those specified by law exclusively, or for a purpose other than for which this procedure was established, or if the suspension was justified at the beginning, then the justification recedes, and the employee remains suspended without justification to harm him/ her<sup>2</sup>.

#### **The First Topic: The Challenge to the Disguised Punishment**

The disciplinary guarantees prior to the issuance of the disciplinary decision alone are not sufficient. Rather, there must be other disciplinary guarantees contemporaneous with the imposition of the disciplinary penalty, to ensure the achievement of considerations of justice.

---

<sup>1</sup> Challenge No. 853 of Judicial Year 19, session 21/ 2/ 1976, aforementioned judiciary.

<sup>2</sup> Abdul Wahab Al-Bandari, Disciplinary Punishments, previous reference, p. 206.

These guarantees are represented in the impartiality of the authorities concerned with imposing the disciplinary penalty and enabling the employee to defend himself/ herself.

### **The Impartiality of the Competent Authority:**

The impartiality of the disciplinary authority is one of the important guarantees that must be ensured that it is respected in the disciplinary field. To achieve the justice of the judgments and decisions issued by the disciplinary authority, the guarantee of impartiality is based on the principle that it is not permissible to combine the two qualities of accusation and judgment at the same time. This requires the separation between the powers of accusation and judgment, that the function of investigation and accusation be assumed by a body independent of the authority of judgment<sup>1</sup>.

This principle leads to the incompetence of anyone who has previously been in contact with the stages of the disciplinary case to pass judgment on it. Impartiality in discipline is achieved by regulating the rules of jurisdiction, which prevents combining investigations, accusations, and the authority to impose a penalty, and the incompetence of those surrounded by personal, functional, or objective considerations that question its impartiality and detachment. The basis for the guarantee of impartiality is that it is not permissible for one person to be a litigant and an arbitrator at the same time since the one who sits in the Judicial Council must not have listened, spoken, or written. This is for the accused employee to be reassured of the impartiality of the one who is prosecuting him/ her. Any reasons for which it is believed that the inability to adjudicate the case without inclination or influence necessarily requires that the member of the disciplinary body is not qualified to consider the case so that he/ she must withdraw from its consideration. This matter is dictated by general legal principles and does not need a text to determine it, since the principle in criminal and disciplinary trials is that the person expressing his/ her opinion in them should refrain from participating in the consideration or judgment of the case. This aims to ensure the impartiality of the judge, so that the accused can be reassured of the justice of his/ her judgment and that he/ she is free from being influenced by a belief that was previously about the accusation of the subject of the trial<sup>2</sup>.

Disciplining the employee may be presidential, and the penalty is given by a decision of the administrative heads and the discipline may take the form of a judgment issued by a quasi-judicial authority, represented by disciplinary councils. Finally, the penalty may be derived from a judicial judgment.

---

<sup>1</sup> The Supreme Administrative Court in Egypt ruled that the decisions of disciplinary councils that are not subject to ratification by supreme administrative authorities are closer to disciplinary judgments than to administrative decisions. Therefore, it is treated as these provisions, and therefore the basic rules of provisions must be observed. Among these rules, the formation of the Disciplinary Council is not tainted by the presence of a legal impediment against one of its members, as stated in Article (146) of the Procedure Code, which stipulates that the judge is unfit to hear the case and is prohibited from hearing it, even if no one wants it. Challenge No. 11194 of the Supreme Administrative Judicial Year 48, Session 09/ 25/ 2004, D5, Verdict published in the Journal of the State Litigation Authority, No. 34, Volume 2, Cairo 2006

<sup>2</sup> Challenge No. 844 of the Supreme Administrative Judicial Year 43, session 11/ 02/ 2004, previous reference.



The UAE legislator has followed a special system of discipline for public employees that differs from the rest of the well-known disciplinary systems. This is what was stipulated in Article 82 of the Federal Decree-Law on Human Resources in the Federal Government, where the Violations Committee was entrusted with looking into the violations committed by public employees. The Violations Committee is formed under the chairmanship of the Assistant Undersecretary for Support Services or his/ her equivalent in the federal authority and a number of members, determined by the formation decision, provided that among them is a representative of the Human Resources Department and the Legal Affairs Department. The committee shall have a rapporteur to prepare the necessary arrangements for holding its meetings, writing down its minutes, decisions, or recommendations, and reporting on them.

Thus, the disciplinary system in the United Arab Emirates does not fall under the presidential disciplinary system, because the imposition of a disciplinary penalty is not within the powers of the competent administrative head, and does not fall within the judicial discipline, but can fall within the quasi-judicial discipline system through the presence of “violations committees” in each ministry and federal authority. These committees take the place of disciplinary boards that are formed in advance in ministries, public authorities, and institutions.

The means of ensuring the principle of impartiality is represented in applying the reasons for incompetence and the reasons for responding and stepping down on a member or head of boards, committees, or disciplinary courts. Although the Federal Decree-Law of 2016 and its executive regulations did not stipulate any rules or reasons for the incompetence of members of the Disciplinary Board, this does not mean excluding the application of the general rules in the Civil Procedures Law that indicated cases of the judge’s inability to consider the case, and the reasons for response and stepping down.

### **The Guarantee of Defense Rights:**

It is agreed - jurisprudence, judiciary, and legislation - that the right to defense is a natural and important right of every human being at all stages of investigation, accusation, and trial, and in particular in investigations or trials that end with the imposition of a certain penalty in the event of conviction, such as criminal or disciplinary investigations and trials. Hence, contemporary legislation is keen to put in place the necessary guarantees to exercise the right of defense, as it is one of the important guarantees for the employee through which he/ she can achieve the defense and discuss the evidence and charges against him/ her. The right of defense may not be violated under any circumstances.

The right of defense is a general guarantee of discipline from which the rest of its guarantees are branched. In fact, the aim behind deciding any of the disciplinary guarantees is to ensure the right of the accused to defend himself/ herself. In this regard, we can say that ignoring or breaching this guarantee would lead to the nullity of the trial, at any stage. Because the guarantee of the right of defense is of great importance, all constitutions’ guarantee the accused the right to defend himself/

herself in the charges against him/ her. It is unfair to impose any penalty on the employee without hearing his/ her words and verifying the validity of his/ her defense<sup>1</sup>.

The UAE legislator has emphasized the guarantee right of defense, in accordance with the provision of Article 28 of the Constitution, and this right was recognized in Article 98, Paragraph 2 of the Executive Regulations of the Human Resources Law in the Federal Government, which stipulates that “when the investigation begins, the Chairman of the Violations Committee must read The Employee who is referred to investigation all the facts clearly attributed to him, and inform him the evidences supporting his committing of the violation even can express his defense, provide the documents that support his statements, all his statements must be entered and signed, and in the event of his abstention, it must be proven by the Chairman of the committee”<sup>2</sup>.

The Accused Employee must aware for the charge attributed to him, Date of hearing before referral to the Court in order to be able to defend himself/ herself. and this procedure is not limited to during the trial stage, but also includes the investigation stage. The forms of defense are represented in enabling the accused employee to attend the sessions, present the defense, and the right to counsel and to cite witnesses.

The Administrative Jurisdiction has stressed the necessity of enabling the accused employee to defend himself/ herself by himself/ herself or through a lawyer, as this is one of the guarantees established by the general principles of law that the judiciary has traditionally applied without the need for a law to determine. and that it is not permissible to deny the right of the accused to seek to counsel, as it is a branch of The branches of defense which includes the right to counsel as one of its contents<sup>3</sup>. It is inconceivable for the accused employee to be able to hear his statements and express his defense without the presence of the employee referred to investigation, and the right of defense has no meaning for existence, but rather remains a slogan without content unless accompanied by the freedom of defense that guarantees its use without restrictions that limit his/ her ability to perform his role.

The main goal of this guarantee is to create a kind of balance between the means of the punishment authority against the accused while it is searching for the truth, and the accused’s right to defend himself/ herself, as the accused may not be able to undertake this work alone for reasons that may be personal or objective. The accused can hire a qualified lawyer to perform this role.

The UAE legislator emphasized the right of the employee referred to the investigation to express his defense. the employee is free to choose the method of his defense, so he/ she may express his

---

<sup>1</sup> Abdul Latif Shedid Al-Harbi, *Disciplinary Guarantees in the Public Service*, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, first edition, 2006.

<sup>2</sup> Sherif Ahmed Balousha, *Judicial proceedings before the Administrative Jurisdiction, "A Comparative Study"*, Center of Arab Studies for Publishing and Distribution, 2018, p. 162.

<sup>3</sup> appeal No. 1562 of 37 ق Supreme Administrative, session 26/12/1992, ruling published by Moataz Abdel Hafez, the role of the Administrative Jurisdiction in controlling the legality of management decisions, research published in the *Journal of Legal and Economic Sciences*, Faculty of Law, Mansoura University, special issue, April 2003, p. 622.

defense in writing or orally, and he/ she may also combine the two methods, and the methods of choose may depend on the administrative custom followed in each country.

### **Second Topic: Reasoning Disciplinary Penalty Decision**

Reasoning is one of the greatest guarantees that emerged from legal civilization, given that the guarantee of reasoning as a human right beside human justice controls opinion and the power of emotion and stands as a rampart against any disruption that may affect the human soul or any emotion that affects human justice. The objective of obligating the administrative authority to reasoning its disciplinary decisions against its employees is to protect the public employee of first-rate, and to ensure that his future career is not compromised and the use of this authority on its own. Therefore, the reasoning of the disciplinary decision is closely related to the guarantee of judicial control, which is the second path that the public employee takes by appealing the legality of the disciplinary decision issued against him. and one of the contemporary guarantees to prevent a disciplinary penalty is that issuing a reasoned decision, so the public employee's breach of his job duties or his departure from their requirements is the reason for Imposing the disciplinary penalty and the basis of its legitimacy. reasoning the disciplinary decision has a great importance, as it is considered an important guarantee of career disciplinary for the employee and the disciplinary authority, and for this the disciplinary decision must be reasoned <sup>1</sup>.

Reasoning is the disclosure of the legal and realistic reasons that justify the disciplinary decision, and therefore the decision is reasoned if it discloses the reasons on which the source of the decision relied. Reasoning is the formal expression of the reasons of the decision, and therefore it belongs to the external legitimacy of the decision, and it means the reasoning of the disciplinary decision - as an important guarantee of career discipline guarantees - the decision clearly includes the basic elements on which the disciplinary penalty is based, as well as the conditions and circumstances surrounding the commission of the violation and was taken into account in assessing this penalty, and the decision contains its reasons at its core, and these reasons are sufficient, consistent and justifiable<sup>2</sup>.

Reasoning the decision or judgment issued in the penalty drives the disciplinary authority to Perception when determining the violations that are proven against the accused, and makes them diligent in adapting these violations, weighing them and estimating them appropriately, and in reasoning must deal with the facts of the subject matter in terms of the person of the accused, the violations attributed to him, and its evidence that must be determined through documents, and be clear whereas the employee only can by looking at the decision know the reasons for the penalty imposed on him. Reasoning the disciplinary decision is one of the important guarantees that guarantees the fairness of the disciplinary penalty, in addition to that, it achieves the public interest by disciplining the employee who breaches the duties of the career, it also achieves the private

---

<sup>1</sup> Iman Hussein Rabati, Reasoning Administrative Decisions, University Library, Sharjah 2010.

<sup>2</sup> appeal No. 3118 of the year 49 ق Supreme Administrative Court, session 14/5/2005, 1, Journal of the State Litigation Authority, previous reference, p. 181.

interest of the accused employee in terms of guaranteeing the fairness of the disciplinary penalty imposed on him/ her.

The principle established by Jurisprudence and the administrative Jurisdiction is that the administration is not obligated to give reasons for its decisions, unless the law requires that, and this is what the UAE judiciary has adopted, as the Federal Supreme Court confirmed this in its ruling, which stated that “the principle is that the administration is not obligated to mention the reason for the administrative decision except If the law expressly stipulates this, as there is a legal presumption which its content that is every administrative decision has a legitimate reason, but if the administration discloses the reason for the decision, then this reason is subject to the control of the judiciary”<sup>1</sup>. Article 100, paragraph 2, of the executive regulations for the Human Resources Law in the federal government provides for that “the committee issues its decisions ... provided that the decision is reasoned and proportional to the established fact against the employee referred to investigation”. Jurisprudence usually focuses on the importance of reasoning disciplinary decisions for individuals, based on the fact that the individual is the cornerstone of administrative activity, and on the other hand, the individual is the first to benefit from the necessity of reasoning, because he/ she always seeks to know the reasons that drives the administration to take its decision. Reasoning answers, the questions of individuals and the reasons for issuing the decision, by finding out the real reasons on which the administration relied on to issue the decision, in order to the individual can then determine his position towards the decision, so he/ she has one of the two options, either to appeal the decision because he/ she is not convinced of the reasons that justified it, or convinced of the content of the decision and the validity of its reasons.

Reasoning also facilitates the employee’s task in defending himself/ herself, because it guarantees the guarantee of confrontation, in which Through, the employee can know the nature of his violation and its grounds, and thus knowing the extent of the legality of the penalty that was issued against him. If the violating employee finds that the disciplinary authority does not observe the rules and guarantees to be followed in the imposition of disciplinary penalty, then the employee has the right to appeal the disciplinary decision in accordance with the methods established by law.

Reasoning the disciplinary decision enables the violating employee to match the errors that the administration relied on in its justification of the disciplinary decision if they were the same errors with which he/ she was confronted, or that his punishment was based on violations he/ she was not aware of. Also reasoning the disciplinary decision enables the violating employee to know the procedure of the administration, by comparing the decision of the punishment of a guilty employee to the same reasons that were mentioned in a disciplinary decision for his colleague, and this is to ensure of applying the principle of equality in disciplinary sanctions.

---

<sup>1</sup> appeal No. 152 ق of the Federal Supreme Court, session 31/12/1991, a set of rulings issued by the Federal Supreme Court in administrative judiciary disputes, the first book in the administrative decision during the period from 1975 to 2005, prepared by the Technical Office in cooperation with the College of Sharia and Law, Publications of UAE University and the Ministry of Justice, p. 119.

The importance of the reasoning carried by the disciplinary decision is not limited to the employee, but this procedure is also important for the management. The benefit of reasoning for the issuing administration of the decision that the commitment to decision will drive the issuing administration to study the facts carefully to avoid flawed issuing which leads to invalidity, which leads to deciding the civil responsibility of the administration as an effect of canceling this decision, which constitutes embarrassment for it when it is placed on the side of the wrongdoer, which shakes confidence in its decisions.

As the statement of reasons is a reference for citizens and those concerned to ensure that decisions were not made for passions or personal objects far from the public interest, but were issued after research and reasonable conclusion, considering that the administration is not just more than an agent for the people in managing its affairs and managing the public resources entrusted to it. Therefore, the reasoning can be said that it is an account statement for reviewing and verifying the reasonableness of the act and the attendant aspects of spending public funds.

It should be noted that the principle is that the administration is not obligated to give reasons for its decisions, and the wisdom of that is that these decisions are supposed to be issued based on valid reasons, such as decisions issued regarding promotion by choice. In this case, the plaintiff must prove the opposite<sup>1</sup>.

Reasoning plays an important role in limiting the discretionary power of the administration. When the administration cognizance that its decisions are subject to the control of the court, there is no doubt that it will disclose the legal and realistic reasons for those decisions on its own in order to convince the observers of its rulings and legitimacy. In addition, reasoning of administrative decisions leads to Modifying the administrative behavior, so the administration gets used to respecting the principle of legality, and consider reasoning as a legal basis for its validity and powers, instead of considering it as a restriction on the exercise of those powers<sup>2</sup>.

Finally, Reasoning is an important means to tighten control over disciplinary decisions. Through reasoning, the validity of the reasons cited by the administration based on its disciplinary decision is examined. In light of this, the judge decides the validity of those reasons. As without this procedure, the judge's task appears difficult in this regard, and He/ She cannot access the decision procedure, especially in the field of reason and abuse of power. Reasoning gain the judiciary more authority in controlling the authority of investigation and discipline, whether in terms of legality, or in terms of Suitability in sentencing punishment or in the extent of proportionality between the reasons for taking the decision and the penalty imposed on the employee. Reasoning may reduce cases of resorting to the judiciary in the event that the employee is convinced of the reasons on which the decision was based, which would reduce the burden on the judiciary and reduce useless appeals.

---

<sup>1</sup> Saeed Obeid Al-Naqbi, Reasoning Administrative Decisions, Dar Al-Nahda Al-Arabiya, Cairo 2017.

<sup>2</sup> Saeed Obeid Al-Naqbi, previous reference, p. 71

The researcher believes: Reasoning is one of the guarantee that guarantees the justice of the punishment imposed because the disciplinary authority's commitment to reasoning means stating the real reasons that prompted it to impose the disciplinary penalty on the incident or facts committed by the employee, which are considered disciplinary errors that require punishment.

### **Challenging Disciplinary Decisions:**

Challenging disciplinary decisions is one of the most important guarantees for employees who are subject to a disciplinary penalty, as it satisfies the employees' sense of justice and enables them to seek disciplinary justice from a third party. The UAE legislator has made it possible to challenge disciplinary decisions first before the administration and then before the judiciary.

According to the provisions of Decree Law No. 11 of 2008 regarding human resources, the legislator has made grievance before the administration against decisions imposing disciplinary penalties a mandatory condition, meaning that grievance to the administration is considered as a prerequisite for accepting the judicial challenge against disciplinary decisions. Perhaps the obligatory grievance is in the interest of the employees, the administration and the judiciary together. There is no doubt that the interest of the employees is achieved through the ease of implementing fair decisions with easy and inexpensive procedures. Furthermore, correcting illegal decisions by the administration is far superior to correcting them by the judiciary, and resolving the dispute in the administrative grievance stage relieves the judiciary and judges of the burden.

In this context, the UAE legislator expressed his/ her intention well in Article (95) of the Human Resources Decree, which states that "the government shall maintain effective and fair communication relations between the ministry and its employees in order to reduce job problems and disputes that occur in the work environment, through adopting immediate procedures to resolve these problems and disputes without prejudice to the employee's right to submit grievances that should be settled through the internal procedures of the ministry in a clear and fair manner, taking into account giving the employee a good opportunity to defend his/ her point of view. The legislator assigned the task of investigating administrative objections to a special committee formed in each ministry or federal authority, which he/she named the Grievance Committee, provided that, when formed by the minister, it should be taken into account that none of its members is a member of the Violations Committee, which has previously issued disciplinary decisions.<sup>1</sup>

The employee may submit his written objection to the Objections Committee within a period not exceeding two weeks from the date of his/ her notification of the disciplinary penalty. The Grievance Committee may conduct the investigations it deems appropriate, including reviewing the investigation file and hearing witnesses. It may also return the file to the Violations Committee to fulfill any aspects or deficiencies in the investigation and then restore it, complete the grievance

---

<sup>1</sup> Issa Muhammad Youssef, The Impact of the Penal Judgment on the Disciplinary Responsibility of the Public Employee, Dar Al-Nahda Al-Arabiya, United Arab Emirates, first edition, 2018, p. 40.

investigation and issue its decision regarding it, which shall not deviate from one of the following options:

1. Rejection of the grievance.
2. Acceptance of the grievance and amendment of the penalty.
3. Acceptance of the grievance and cancellation of the penalty.

In all cases, the aggrieved party shall not be harmed by his/ her objection, and it is not permissible to amend the penalty by imposing a more severe penalty than the aggrieved one in accordance with the general rule “The challenger shall not be harmed by his challenge.” The decisions of the Grievance Committee shall be final on the grievances submitted to it regarding the imposition of the two penalties for the written notice and warning.

As for the other decisions of the Grievance Committee, the employee may object to them by submitting a written objection signed by him/ her to the Objections Committee formed in the Federal Authority for Human Resources within a period not exceeding three weeks from the date of his/ her notification of the Grievance Committee’s decision, otherwise its decision shall be considered final.<sup>1</sup>

The Committee shall be formed by the decision of the chairman of the Federal Authority for Human Resources, and it shall have a reporter chosen by the chairman from among the non-members, and he/she shall not have a counted vote in the Committee. In objecting to the decision of the Grievance Committee, the legislator required the availability of the following data:

1. The employee’s name, workplace, job and address.
2. The decision issued by the Violations Committee.
3. The decision issued by the Grievances Committee, the date of its issuance and notification.
4. The subject of the objection, its reasons, and the documents and data supporting it.

The Committee shall consider the objection to the decision of the Grievance Committee, and it has the right to:

1. Assign whomever it deems appropriate to conduct the necessary research or investigations related to the subject of the objection under examination. The person charged with this may review the papers and records and request the data that he/she deems necessary to review.
2. Summon any employee of the employee’s workplace, to hear his/ her statements and obtain the necessary information regarding the objection submitted to it by the employee.
3. Contact any of the federal government employees if it deems that necessary and related to the objection.
4. Request an opinion from the Legal Advice & Legislation Department at the Ministry of Justice on the subject of the objection if it deems it necessary, taking into account what is

---

<sup>1</sup> Sherif Al-Tabbakh, Encyclopedia of Administrative Responsibility in the Light of Judiciary, Jurisprudence, and the Administrative Court Judgments, Nas Printing Company, Cairo, first edition, 2014, p. 572.

received from the aforementioned department when issuing the decision regarding the objection.

The Committee shall finish its work within thirty working days from the date of submitting the objection to it in order to issue its decision with the majority of its members. In the event of the votes being equal, the side with which the chairman voted shall win, and its decision shall not deviate from:

1. Approval of the Grievance Committee's decision regarding the penalty or its mitigation.
2. Returning the decision to his/ her workplace for reconsideration.
3. Cancellation or suspension of the decision due to insufficient evidence.

In all cases, the employee shall be notified in writing of these decisions, along with an explanation of reasons, within ten days from the date of their issuance, provided that the employee signs a statement acknowledging receipt and informs his/ her workplace. Here it is recorded on the Grievance Committee in the Ministries and the Federal Authority what was recorded on the Violations Committee, in terms of the lack of organization for the committee's convening, the quorum of its meeting, the grades of its members, and the guarantees of its impartiality.

## **Conclusion**

In this research, we tried to shed light on the subject of Disciplinary Punishment and its effects on the reality of the job, as it is a very important subject. Its importance is highlighted in the effects of the disciplinary decisions taken against the employee referred to the court by prejudicing his/ her right in the event of his/ her deviation, without prejudice to the principle of fairness in the decisions of the disciplinary authority and the principle of arbitrariness. We have clarified this by referring to the forms of disciplinary punishment, which were represented in three disciplinary punishments: Subordination, which may be explicit in the text of a law or subject to the discretion of the main authority, which is the legal and organizational measures taken by the administrative and disguised authority, which is the measure taken by the administration against the employee without directing a specific accusation against him/ her. The research reached a set of results and recommendations, as follows:

## **Results:**

1. The disguised punishment is defined as: an action taken by the administration against the employee prejudicing his/ her right without directing a specific accusation against him/ her, so it deliberately evades disciplinary punishment, by implementing another procedure, which enables it to get rid of the employee without fulfilling the disciplinary procedures.
2. The disciplinary punishment may be explicit in the text of the law, and then it is a mandatory effect of imposing a disciplinary punishment, but it may be also a parallel consequential effect that is subject to the discretion and appropriateness of the presidential authority.
3. Measures are legal and regulatory procedures taken by the administrative body, either in accordance with the text of the law or under its discretionary authority, by assuring the interest



of the work and its good conduct and regularity. They may restrict the employee's rights, reduce some of them, affect his job position, cause him/ her to be financially harmed, or affect his/ her morale, but they do not imply the meaning of the penalty.

### **Recommendations:**

1. The necessity of working on a disciplined legalization of administrative measures in a way that allows restricting the administrative authority with restrictions and guarantees that would protect the employee on the one hand, and the administration itself from the consequences of deviation or the misuse by practicing disguised punishment through it instead of taking the path of explicit disciplinary punishment on the other.
2. Reconsidering the policies for organizing personnel affairs in a way that achieves integration among them on the one hand, and evaluates them on sound objective foundations and criteria on the other, which is what gives these policies their desired effectiveness as well as limits their use in disguised punishment.
3. The need for adequate control over the administrative measures taken by the administration, whether it is administrative or judicial control, in order to allow intervention to cancel the administrative decisions if they deviate from their legitimate aims.

### **References:**

#### **First: Scientific books:**

1. Iman Hussein Rabati, Reasoning Administrative Decisions, University Library, Sharjah 2010.
2. Gamal El-Din Sami, Administrative Judiciary and Control of Administration Activities, The Principle of Legality and Organization of Administrative Judiciary, Alexandria, Egypt, New University Publishing House, 1990.
3. Hamdi Abu Al Nour, Al Shamil in Administrative Law in the United Arab Emirates, Al Falah for Publishing and Distribution, Al Ain 2013.
4. Rashid Mohammed Fahli, The Legal System of Disciplinary Penalty and its Guarantees in the United Arab Emirates, Dar Al-Nahda Al-Arabiya, Cairo 2015.
5. Saeed Obeid Al-Naqbi, Reasoning Administrative Decisions, Dar Al-Nahda Al-Arabiya, Cairo 2017.
6. Samir Sadiq, Disciplinary Decisions and Provisions in the Supreme Administrative Balance, General Book Authority, 1985.
7. Sherif Ahmed Balousha, Litigation Procedure before the Administrative Judiciary, "A Comparative Study", Center for Arab Studies for Publishing and Distribution, 2018.

- 8- Sherif Al-Tabbakh, Encyclopedia of Administrative Responsibility in the Light of Judiciary, Jurisprudence, and the Administrative Court Judgments, Nas Printing Company, Cairo, first edition, 2014
9. Tariq Fathallah Khedr, Administrative Judiciary: The Principle of Legality, Organization of Administrative Judiciary and Annulment Case, Egypt, 2002.
10. Abdul Latif Shedid Al-Harbi, Disciplinary Guarantees in the Public Service, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, first edition, 2006.
11. Abdel Wahab Al-Bandari, Disciplinary Punishments, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009.
12. Issam Ali Debs, Administrative Law and its Applications in the UAE, University Library, Sharjah 2015.
13. Issa Muhammad Yusuf, The Impact of the Penal Judgement on the Disciplinary Responsibility of the Public Employee, Dar Al-Nahda Al-Arabiya, UAE, first edition, 2018.
14. Fatima Mouloud, Disciplinary Crime of the Public Employee, Master Thesis, Faculty of Law, University of Algiers 2012.
15. Muhammad Asfour, Freedom, Authority and the Rule of Law, Alam Al-Kutub, Cairo, 1967.
16. The Judicial Institute of Jordan, The Defect of Authority Abuse in the Administrative Decision, Amman, Jordan, Ministry of Justice, 1998.
- 17- Nofan Al-Aqeel Al-Ajarmeh, The Disciplinary Authority of the Public Employee, A Comparative Study, Amman, Jordan, Dar Al Thaqafa for Publishing and Distribution, 2007.

**Second: Research and Periodicals:**

1. Abdel Fattah Abdel Halim Abdel Bar, The Role of the Idea of Disguised Disciplinary Penalty in Protecting Legality in Judicial Applications, Research published in Journal of Administrative Sciences, Egyptian Division of the International Institute of Administrative Sciences, 38th year, first issue, June 1996.
2. Moataz Abdel Hafez, The Administrative Judiciary's Role in Control of the Legality of Administrative Decisions, Research published in the Journal of Legal and Economic Sciences, Faculty of Law, Mansoura University, Special Issue, April 2003.

**Student's Name:**

1 - Muhannad Sulaiman Alyahyae.  
UNIVERSITI TEKNOLOGI MALAYSIA (utm).

2- Jabir Ali alrayssi.

UNIVERSITI TEKNOLOGI MALAYSIA (utm).

3- Sandia Mohamed AIFzari.

UNIVERSITI TEKNOLOGI MALAYSIA (utm).

4- Rashid Obaid Almatrooshi.

UNIVERSITI TEKNOLOGI MALAYSIA (utm).

5- Arief Saleh Bin Rosman.

Universiti Teknologi Malaysia (utm).