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Research Article

Sanctions Signed by Disciplinary Boards on Police Officers in The Practice of Administrative Control: In the Light of The Corona Pandemic

Mahmoud Sabry Abdelaziz[1], Mohamed Abdelsalam[2]

[1,2]College of Law, Applied Science University, Kingdom of Bahrain

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Abstract

The judiciary monitors the administration appropriately oversight in normal circumstances, and police officers in the event of those circumstances are subject to a delusion in the matter of implementing the administrative and judicial quality control of some work pressures. Therefore, the knowledge of jurisprudence and the elimination of a set of principles governing the trial before the disciplinary councils can be summarized in five main points, which is a proportionate necessity The disciplinary penalty with the disciplinary offense is proportionate and does not contain exaggeration, and it is not permissible to punish the same violation twice according to the principle of the law which recognized that a person may not be punished for the same act twice, with the implementation of the principle of imposing the most appropriate penalty for the accused, so the person is not punished according to a canceled law and the lesson is always with the immediate effect of the law All this in light of the principle of legality of disciplinary sanctions, and that legitimacy requires the necessity of establishing the principle of gradual disciplinary sanctions, all in light of the provisions of Police Law No. 109 of 1971 AD, and subject to judicial oversight.

Keywords: Disciplinary Boards, police authorities, corona Pandemic, proportionality of sanctions, disciplinary offense, most appropriate penalty for the accused. Legitimate sanctions. gradual disciplinary sanctions.

Introduction

The legislator has guaranteed the public employee many guarantees, perhaps the most important of which is the designation of a predetermined body that undertakes the investigation in the event of disciplinary violations, so that it does not disturb the course of career and these procedures are not subject to lack. These rules are known in ordinary societies as criminal law, and in societies and administrative organizations as disciplinary law or The disciplinary system.(1)

The importance of the disciplinary system in the field of public office is that it is the protector of its protector and the guardian of its entity. Without it, the career life is not upright, which affects the continuation of the administrative life and the accompanying activities in the state, as it is an integral part of the public position.(2)

The disciplinary system is a set of legal rules regulating the imposition of the legally prescribed penalty on a public employee when he commits a disciplinary error, in accordance with legal procedures, with the aim of maintaining the integrity of the public office and the regular and steady functioning of public utilities.

After conducting the necessary investigation, it is inevitable that the jurisdiction of the natural judge is the disciplinary courts stipulated in Article 190 of the 2014 Constitution of the Arab Republic of Egypt. However, the legislator has designated some groups to submit to a special type of means of disciplinary responsibility by submitting to disciplinary councils(3), led by faculty members Police officers, experts of the Ministry of Justice, members of the diplomatic and consular corps, judges and members of the administrative prosecution, members of the State Cases Authority, members of the State Council, disciplinary boards for court and prosecutorial workers, the disciplinary council for authorized officials, and the disciplinary council for lawyers, as special laws stipulate that these employees are subject to the special disciplinary system The rulings of the administrative judiciary, the Supreme Administrative Court and the Department of Unification of Principles combined, considering that what is issued by disciplinary councils are judicial rulings, as there was hesitation between considering what was issued by judicial

rulings or administrative decisions, but the modern trend is to consider what is issued by judicial rulings, and two conditions were established for that The first is that the judicial nature of the formation of these councils is predominant, and the second is that the rulings issued are final and do not have a supreme authority to comment. on her.
The investigation of the stages of the establishment of the Egyptian Police Authority and Law No. 109 of 1971 regarding the Police Authority shows that it is a regular civil body concerned with maintaining order, public security and morals, and protecting lives, honor and money, and in particular the prevention and control of crimes, as well as ensuring peace and security for citizens in all fields. By carrying out the duties imposed on it by laws and regulations.(4)

Perhaps the state of emergency conditions and the emergence of some pandemics are among the most things that affect the departure from the normal rules of administrative law on the one hand, and raise the burden of judicial oversight placed on the administration in normal circumstances on the other hand, so the judiciary monitors the administration's legal control and reduces the scope of application of appropriate control Perhaps the policemen who are in charge of administrative control on the occasion of health conditions are in grave danger from the epidemiological confrontation on the one hand, and the danger of breaking those rules and sacrificing some of the rights of individuals to preserve the right of society on the other hand, so it was necessary to have guarantees that protect this right, which are the controls General for the work of disciplinary councils regarding some groups that are subject to a special type of trials, which is the subjection of police officers to disciplinary councils, and through this point we review the legal rules governing the penalties imposed by disciplinary councils on police officers in the exercise of administrative control in light of the Corona pandemic.

Since the disciplinary councils are the disciplinary body competent to try police officers, and in view of the seriousness of this jurisdiction held for those councils, and considering their work parallel to the disciplinary courts, it was necessary to establish the legal rules governing the penalties imposed by the disciplinary councils under study and research due to the seriousness of this system and the uniqueness of the Egyptian legal system in it.

Research Problem

Questions follow about the idea of legal regulation of the legal rules that govern the penalties imposed by the disciplinary councils, perhaps the most important of which is the extent to which the disciplinary penalty is proportional to the disciplinary offense, and the extent to which it is permissible to punish the same offense twice, and is there room to activate the most suitable penalty for the accused, and what is the ruling for the idea of punishment in The disciplinary field, is it subject to the principle of the legitimacy of disciplinary sanctions, and whether the legislator took into account the principle of gradual disciplinary sanctions, and do the exceptional circumstances imposed by the pandemics have an impact on those rules, perhaps these are the most important problems that this research comes to.

Importance of the Topic

The penalties imposed by the disciplinary councils are governed by a set of general rules, including that the assessment of the disciplinary penalty is left to whoever has the right to sign it, whether it is the administrative head, the disciplinary council or the disciplinary court, as the discretionary authority in estimating the penalty finds its limit when the proportionality between the disciplinary violation and the penalty imposed on it is necessary. Exceeding this limit is expressed by exaggeration in estimating the penalty that stigmatizes the disciplinary penalty with illegality, in addition to the principle that a person may not be tried for the same criminal act twice, and the extent to which the same rule in criminal law is applied, which is the principle of the original penalty for the accused, even if the basic rule in the law The criminal principle is that there is no crime or punishment without a text, which is called the principle of legitimacy. This principle has remained in the disciplinary field, which is the principle of the law of disciplinary sanctions, and these principles are underlined by the necessity of grading penalties, otherwise the judgment will be invalid, and we explain these principles successively through the following division:-

Research Plan

First topic: the proportionality of the disciplinary penalty with the disciplinary offense Second

topic: It is not permissible to punish the same violation twice.

Third topic: The most suitable punishment for the accused

Fourth topic: The principle of legality of disciplinary sanctions
Fifth topic: The principle of gradual disciplinary sanctions

The First Topic The Disciplinary Penalty Is Proportional To The Disciplinary Offense

The general rule is that the estimation of the disciplinary penalty is left to whoever has the right to sign it, whether it is the administrative head, the disciplinary council or the disciplinary court, as the discretionary authority in estimating the penalty finds its limit when the proportionality between the disciplinary violation and the penalty imposed on it is required. The disciplinary penalty is marked as illegal.(5) In the penalty imposed on the worker, several conditions are required, first: that the penalty be legitimate, that is, it is decided by an explicit legal text, second: that the penalty is not impossible to implement and implement from a realistic point of view, and third: that it be appropriate to the disciplinary offense proven by the worker and free from exaggeration.(6)

It limits the wide discretion of the disciplinary authorities in estimating the appropriate penalty for the violation, restricting the inadmissibility of abuse of power when there is a disproportion between the disciplinary violation and the penalty imposed on it. Exaggeration in estimating the penalty stigmatizes the disciplinary procedure as illegal and makes it obligatory to cancel, and the proportionality between the disciplinary violation and the penalty imposed on it is based on the precise definition of the description of the violation in the light of the circumstances and circumstances that constitute its dimensions.(7)

In order to implement the discretionary authority in estimating the appropriate penalty, it is required that there should not be a legal system that has assigned a specific administrative offense a specific penalty, as is the case in the case of the existence of a list of penalties specifying the violation and the penalty prescribed for it, since in such a case this authority must inflict the penalty stipulated in The list of sanctions(8), the criterion of legality of the penalty or not is an objective criterion based on the degree of seriousness of the administrative guilt commensurate or not commensurate with the type and amount of the penalty.(9)

In order to achieve proportionality between the disciplinary penalty and the disciplinary violation, the disciplinary board must have the circumstances and circumstances accompanying the occurrence of the violation that require mitigation or aggravation and aggravation to the degree that necessitates the termination of the employment relationship of the violator in order to preserve the facility from the ban on continuing to work.

First: Mitigating Circumstances of the Disciplinary Penalty

1- *Issuance of a criminal judgment of conviction for the same act*: when estimating the disciplinary penalty (mitigation), the criminal penalty imposed on the employee for the same act attributed to him shall be taken into account(10), and this case assumes that the act by which the violator is referred to the Disciplinary Council constitutes at the same time a crime A felony punishable by a penalty stipulated in the Penal Code, and the criminal judgment must have been issued and become final before being referred to the Disciplinary Board.
2- *The circumstance of provocation:* the circumstance of provocation should be considered when assessing the disciplinary punishment, because this circumstance is linked to the natural and innate human feelings in the ordinary person, which are provoked and angered by humiliation and insult, especially in the society of colleagues, which is something that generates in the human an automatic desire to respond directly to the insult(11), which is what It is called moral harassment in the workplace.
3- *Poor organization of the facility and its impact:* In determining the disciplinary penalty, the objective circumstances in which the worker performs his work, and his job must be taken into account - if there is a defect in the functioning of the facility represented by lack of supervision, follow-up and control - the violation must be proportional to the objective circumstances in which it was committed, and the penalty should be assessed.(12)
4- *Moral Coercion:* It must also take into account every moral coercion that occurred on the employee by his superiors preventing him from performing an act or leading to the commission of a violation, which the Egyptian Supreme Administrative Court has settled in its rulings (and the respondents undoubtedly he is subordinate to them have fallen under duress A literary barrier prevented him from expressing his opinion after he saw the insistence of the competent authority

on awarding a company....), although this does not relieve the appellant from liability, but this must be under the consideration of the court when assessing the appropriate penalty for the violation attributed to him in light of these circumstances.(13)

5- *Transferring the employee after committing the violation:* The court bears in mind that if the administration follows its penalty by expelling the violating employee from his place of work or transferring him to an office job, "since the administrative authority, after committing this violation, transferred him to an office job and thus removed him from a job. To collect what is considered a reason and justification that must be taken into account in assessing the penalty for the violation attributed to him by reducing the penalty that must be imposed on him".(14)

Second: The Aggravating Circumstances Of The Disciplinary Penalty

1- Disciplinary trial is sufficient if the act constitutes a criminal offence: as the general rule is that what the Public Prosecution concludes by proving the worker's guilt is not valid before the disciplinary boards or disciplinary courts, the basis for this is the independence of the disciplinary offense from the criminal offense, and the fact that the authority is a determinant of the criminal judgment and is not Criminal investigations, as a result of which the Public Prosecution's conclusions are subject to examination, scrutiny and evaluation before the Disciplinary Court.(15)

Accordingly, if the act attributed to the violating employee constituted a felony, and yet his employer did not refer him to the criminal trial to be criminally punished for it, then it would have been too soft towards him if it did not impose a severe disciplinary penalty on him.(16)

2- The gravity of the disciplinary violation: the gravity of the material act constituting the violation is related to its consequences, and what the job requires for the perpetrator of the care and accuracy in order to avoid its effects.(17) And since the above-mentioned facts in the reasons for the contested judgment carry within them the moral deviation of the appellant, a moral deviation that affects the right behavior and good reputation and has a bad effect on the job that the legislator is keen to surround with a fence of respect that cannot be achieved and the job holder is at an unfortunate degree of deterioration in morals Contrary to Sharia and religion, if he accepts this shameful position for himself, then he has departed from the requirements of the job by neglecting the dearest of the best qualities that the employee can possess, and what the appellant came to implies a deviation in his nature and creation and a flagrant violation of the limits and prohibitions of God, all of which affects It has a direct impact on the job entity and its consideration, and it contradicts the trust owed in it.(18)

Where the violation based on negligence or recklessness is not equal, and the one that is deliberate and targets an illegal purpose - this is taken into account when assessing the penalty.(19)

Third: The Supreme Administrative Court's Oversight Of The Disciplinary Councils' Assessment Of The Disciplinary Penalty

The general rule is that estimating the appropriate penalty for a serious administrative culpability is one of the matters on which points of view may differ, and it is difficult to definitively prove error in the aspect of any of these opinions or estimates, as long as the dispute was not blatant.(20)

However, the Supreme Administrative Court had a prominent role in determining the components of the principle of proportionality between the disciplinary violation and the disciplinary penalty in accordance with the rules of sound legal reasoning, the inappropriateness of equality in the amount of the penalty between the perpetrator as an original perpetrator and the supervisor of the supervisory position.

Where the judiciary of the Supreme Administrative Court has established that it is legally unjustifiable to equalize the amount of the penalty between the perpetrator of the violation as the original perpetrator, and the owner of the supervisory position on it, whose role is merely control, supervision, coordination and follow-up on his multiple subordinates, and then one of the forms of exaggeration is the imposition of the penalty on the owner The supervisory function is more severe than the penalty imposed on the perpetrator of the violation by his subordinates for the same violation, whether the penalty is imposed by one disciplinary authority or a different authority.(21)

The Supreme Administrative Court's oversight of the disciplinary councils' application of the principle of proportionality between the disciplinary offense and the disciplinary penalty includes several cases:

- In the case of the administration having a discretionary power when imposing the penalty: Where there is no place to challenge the penalty by exaggeration, unless the administration has a discretionary authority in assessing the penalty.(22) Also, if the legislator does not include in determining the penalty for committing the act, the legality of the decision to impose a disciplinary penalty on him depends on whether the act is proven or not, without considering the extent to which this penalty is excessive.(23)
- The discrepancy in estimating the penalty that is included in one of the penalties items (such as the number of days of salary deduction) is not included in the concept of exaggeration.(24)
- In order to achieve appropriateness and proportionality, the penalty should not be impossible to implement and implement from a realistic point of view.

The principle is that the strength of the thing that has been decreed must be respected as a basic principle and one of the legal principles that must be respected, dictated by general tranquility and dictated by the necessity of stabilizing the situation and stable stability, and this principle may not be wasted by refraining from implementing the enforceable rulings on the grounds that it violates the law. considerations of public order unless a complete legal or material impossibility prevents the implementation of this provision.(25)

The judiciary of the Supreme Administrative Court has settled that the implementation of the sanction of reduction to a position in a lower grade directly requires that the worker referred to trial should not be in the lowest grades of the career ladder. The issuance of such a penalty on a worker at the lowest level of appointment makes him violate the law, and the basis for this is that the ruling in this case is a penalty that was not stipulated by law, in addition to the impossibility of its implementation, which requires with it the annulment of the judgment and the imposition of the appropriate penalty.(26)

Its judiciary also established that the wage reduction is directly linked to the reduction of the position to the lowest degree in accordance with paragraph 9 of Article 80 of Law No. 47 of 1978. The reduction in wages in this paragraph is limited to reducing the wage to the extent it was before promotion - in the meaning of paragraph (7) is limited The wage for reducing it within the limits of the allowance - this means that the penalty for reducing the wage to the extent that the worker was when he occupied the third degree (the beginning of the degrees of appointment in the presented case) does not find a place and comes out of the scope of the penalties decided by the legislator - the Supreme Administrative Court, when considering the appeal, cancels it and imposes the penalty Occasion - Example: Amending the penalty imposed on the appellant to allow him to postpone his promotion when it is due for a period of two years.(27)

Its judiciary also established that the legislator limited the disciplinary penalties exclusively and made at the end the penalty of dismissal from service - where the phrase "dismissal from service" was contained in an absolute and abstract wording, which means: that there is no penalty that includes relative dismissal other than abstract from a specific party, The penalty of dismissal means dismissal from every job within which the disciplinary judge has the authority to impose the penalty, including serving the worker in the government or the public sector.(28)

Its judiciary has decided that the legally prescribed penalties shall be imposed on the worker whose nature is consistent with the state of termination of service, given that the penalty will revert to the date of the commission of the sinful incident for which the penalty was imposed, and its legal effect shall be imposed on the entitlements of the accused in salary, pension and other entitlements, which leads to the exclusion of the penalty of suspension from work in this case.(29) **The Second Topic**

It Is Not Permissible To Penalize The Same Violation Twice

One of the basic general principles of the legality of punishment of any kind is that it is not permissible to punish a person for the sinful act twice, and that although it is permissible to punish for the disciplinary offense of the public official despite the punishment for the same acts as criminal offenses within the scope of criminal responsibility for the different acts, description

and qualification in both the criminal and disciplinary areas However, it is not justified to punish the worker disciplinary for the same acts only once, as the disciplinary authority exhausts its mandate by imposing disciplinary punishment.

Accordingly, the same disciplinary authority or another disciplinary authority does not justify the imposition of the penalty for the same disciplinary offenses for the same worker who was previously punished and sanctioned, and it does not change that the authority that initially imposed the disciplinary penalty is the presidential administrative disciplinary authority or the judicial disciplinary authority represented in the disciplinary courts or Disciplinary councils because the illness is realized as soon as a legally valid disciplinary penalty is imposed on the worker, and then it is not permissible after that to re-initiate the disciplinary authority over the same worker with the same act that was permissible for him, as the disciplinary mandate is linked, whether or not, with the intended goal of it, which is to reward the worker for what is proven to be attributed to him before disciplinary offenses.(30)

Since if the original was not to impose the penalty twice for the same incident, this does not mean that a new disciplinary sanction may not be imposed for each new disciplinary violation attributed by the Administrative Prosecution to the same employee for his previous disciplinary sanction, even if it was of the type of violation for which the employee was previously held accountable and disciplinary sanctioned even if They combined the elements of similarity and similarity in the nature of the violation, as long as the incident that constituted the new violation was different from the incident for which he was previously questioned and disciplinarily punished.(31)

Ancillary or complementary penalties to the original penalty inflicted are not considered a plurality of punishment, and therefore skipping in promotion is not considered a disciplinary penalty that prevents the imposition of a disciplinary penalty(32), and the administrative authority's transfer of the appellant from his job to another job and then the issuance of a disciplinary judgment to punish him is not considered a duplication of Punishment, the basis of this - that the criterion of double punitive or penal is to inflict on the violator for the violations attributed to him and established against him, two of the penalties expressly specified in the law, so transferring the employee or skipping him in promotion is not considered among the penalties prescribed in the law as a punishment for violations committed by the employee.(33)

However, there is a contrary trend to the Department of Unification of Principles at the Supreme Administrative Court, where its judiciary has settled that if the employee is punished for the act according to the text governing penalties in his work, and the management body arranges an effect that does not exist in that text, this is considered a new penalty for the same act, and it was That would violate the provisions of the law and the constitutional principles of punishment.(34)

The application of this principle does not entail saying that the multiplicity of violations attributed to the employee, which are included in a single disciplinary case, arranges a multiplicity of penalties for each violation separately - whether they are related or unrelated violations - but the effect of that is to choose the appropriate penalty for all Or what was proven against the employee from among the penalties of gradual severity, the disciplinary legislator did not specify a specific penalty for each disciplinary offense as did the criminal legislator, but rather set disciplinary penalties from which the appropriate ones are chosen according to the gravity of the violation or violations attributed to the employee in the disciplinary case.(35) **The third topic**

The best penalty for the violator

As for the application of the rule of law that is best for the accused in the criminal field, does it apply in the disciplinary field? The law is more suitable for the accused if it removes the criminalization from the act or reduces the penalty prescribed for the act. In the field of discipline, there are two directions for the Supreme Administrative Court about the penalty that may be imposed on the worker if the text is modified before the penalty is imposed, which we can call the most suitable law for the offender:

The first direction: the judiciary of the Supreme Administrative Court held that within the scope of disciplinary cases and in appeals before the Supreme Administrative Court on the judgments of the disciplinary courts issued in disciplinary cases: If after the occurrence of the act and before the issuance of the judgment a law is issued that is more favorable to the accused in terms of disciplinary punishment, the disciplinary court must apply the rule (The most suitable law for the accused), and in this

respect it is subject to the supervision of the Supreme Administrative Court, and if the most suitable law is issued during the stage of appealing the verdict of the Disciplinary Court before the Supreme Administrative Court, this court must apply it.(36)

Its judges concluded that the issuance of the disciplinary court ruling imposing the censure penalty, considering the accused occupying a second-class position according to the table attached to Law No. 58 of 1971 - is incorrect. The basis for that: the penalties for warning and censure are limited to the incumbents of higher positions at the time of the ruling, and then no longer After the issuance of Law No. 47 of 1978, it is permissible to impose the censure penalty on the accused who at the time of the ruling occupies a position of the second category - the basis for this, the immediate and direct effect of Law No. 47 of 1978. (37)

- The lesson in the legislation in force at the time of the issuance of the disciplinary court ruling to impose the penalty - It is not permissible to apply the legislation in force at the time of committing the violation or at the time of filing a disciplinary case - The basis for that: the direct effect of the law.(38)

The Fatwa of the General Assembly of the Fatwa and Legislation departments has established that in the field of imposing disciplinary penalties, it is not permissible, as a general rule, to impose a disciplinary penalty on the worker except the prescribed and enforceable penalty at the time of the occurrence of the disciplinary act for which he is punished, unless it has become impossible to impose the penalty on the accused as a result of a change His job status by referring him to retirement, where the punishment set by the legislator is imposed on him for those who leave the service and the similar cases, including changing his job status by transferring from one of the senior management positions to other jobs or vice versa - after committing the violation - where he will be subject to the punishment specified by the legislator according to the center The legal status of the worker at the time of imposing the penalty and not at the time of committing the violation. This is due to the fact that the worker occupying a position with different disciplinary sanctions would establish a new legal position for him other than his previous position and thus be subject to the disciplinary sanctions prescribed for the position he occupies at the time of the penalty. This requires that the imposition of the penalty be contemporaneous with the completion of investigations with the worker. If the investigation period is prolonged - without an illegal effort by the worker or the administrative authority - and his job status changes, then the lesson is in the functional status at the time of the penalty being imposed.(39)

The second trend: the judiciary of the Supreme Administrative Court has settled that if a disciplinary offense occurs under a law that specifies certain penalties, then the law changes after the occurrence of the violation and before the disciplinary case is decided upon, the disciplinary authority is bound by the laws in force at the time of exercising its disciplinary jurisdiction, and it can only sign The penalties in force at the time of the use of its competence, regardless of the penalties that existed at the time of the violation - the basis of this is that the public employee occupies a regular position, and is subject to the new laws - the rulings or decisions issued with punishment judge their legitimacy in accordance with the laws in force at the time of their issuance.(40)

The lesson in the imposition of the penalty is the list of penalties applied at the time of the issuance of the penalty decision and not the list preceding the issuance of the penalty decision, even if the violations occurred on a date prior to the issuance of the list of signed penalties.(41)

The fourth topic The principle of legality of disciplinary sanctions

One of the constitutional principles is that punishment is personal, and there is no crime or punishment except on the basis of a law, and there is no punishment except for actions subsequent to the date of the law's entry into force(42), this principle means that there is no disciplinary punishment without a text, as the disciplinary authorities are obligated to impose a penalty that has been stipulated by the legislator before Committing the violation. Disciplinary penalties are specified in the functional legislation by way of enumeration and inventory, as are the criminal penalties to which it applies (the principle of no crime and no penalty without a text).

Criminal penalties are legally limited to a maximum and a minimum for each crime, which - it is not permissible to sentence more than the maximum or less than the minimum prescribed for it (except for mitigating legal or judicial circumstances or the so-called legal excuses) - but that in disciplinary sanctions, they are It was legally defined, but it does not have a maximum and

a minimum for each crime separately. Rather, the legislator specified the penalties and their degree from warning to dismissal from service and authorized the disciplinary authorities to impose any penalty on any disciplinary violation according to the circumstances of each and the circumstances surrounding it.

If the disciplinary offense is not subject to the principle of "no crime without a text", then the disciplinary penalty is governed by the principle of "no penalty without a text", and this principle means that if the competent disciplinary authority is authorized to assess what falls within the scope of disciplinary offenses, it is obliged to impose a penalty Among the penalties set by the legislator - The disciplinary system differs from the criminal punitive system in that in the field of penal law there is a complete link between each crime separately, and the appropriate punishment for it. Determining the punishment is the work of the legislator in the first place, and the freedom that may be left to the criminal judge is limited, It is limited to determining the appropriate punishment between two limits. As for the disciplinary law, the general rule is that the legislator determines a list of disciplinary penalties that may be imposed on the erring employee, and leaves the competent disciplinary authority the freedom to choose the appropriate punishment from among the prescribed list of penalties - and the assessment of the appropriateness of the penalty is subject to the administrative guilt that has been proven The right of the employee is the authority of the administration, and there is no oversight to eliminate it in this regard, unless the penalty is marked by apparent inappropriateness, i.e. abuse of authority.(43)

We conclude from this, that if the disciplinary authority authorizes the assessment of the penalty, it is obligated to inflict a penalty that the legislator has previously specified, so it cannot replace it with another, regardless of the motives.(44)

The legislator has determined the disciplinary powers and the competence of each of them to impose the penalty, and the Disciplinary Court has also delegated the authority to impose a penalty. Referral to pension and dismissal from service - this requires - it is not permissible to refer a worker to a pension or dismiss him from work except by a disciplinary ruling. Work is a right, a duty and an honor entrusted to the state. It also guarantees the protection of the worker and his fulfillment of his job duty in the care of the people's interests. It is not permissible to dismiss him without a disciplinary method except in the cases specified by law. Dismissal from service except by a disciplinary ruling that may not be amended except by a law and not by an inferior instrument - the executive regulations issued by the executive authority, which include the detailed and supplementary provisions necessary for the implementation of the law, may not suspend its provisions or deal with them by modification or exception - leading to that - the body that issues the executive regulations should To abide by the principles, foundations and guarantees, whether they are stated in the constitution or in the law of the system of civil servants in the state Dibiya alone with the imposition of a penal referral to the pension and dismissal from service - based on it - the law authorizing a certain authority to issue a regulation for workers without being bound by what is prescribed by law for the rest of the state's workers - cannot in any way be considered a legislative mandate - as it is recognized that each of the law, executive regulations and legislative mandate are its scope in accordance with the provisions of the Constitution.(45)

Punishment has no effect without text: The general rule is that the legislator has limited the disciplinary sanctions that may be imposed on the worker in the various public job laws, whether those that are subject to public law, those that are subject to special laws, and those that are exercised within the framework of the public authority of the state. The legislator himself sometimes has a specific legal effect on the imposition of a penalty in itself - in this case the effect of the penalty is subject to the principle (there is no punishment without a text, and there is no effect of punishment without a special text). (46)

Skip in promotion as a legally stipulated effect of punishment (accessory penalty): Article 65 of the Police Authority Law No. 109 of 1971 states that "It is not permissible to consider the promotion of an officer who has been subject to a suspension penalty for the duration of the suspension, and the period of deprivation shall not be less than Promotion for three months.

If the penalty is postponed or deprived of the bonus, the period of postponement and deprivation may not be promoted, and these postponement periods are calculated from the date the decision to impose the penalty becomes final, even if they overlap in another period resulting from a previous penalty.

And if the officer has a role in promotion during the period resulting from the penalty of postponing the increment or the suspension penalty for no more than three months, a rank shall be reserved for him until the expiry of the period of deferment,

and his seniority shall be calculated upon promotion from the date on which the promotion was made when his turn came, without payment differences.

The judiciary of the Supreme Administrative Court has settled that the impediments to promotion are reasons that prevent the worker from being promoted, and these impediments are only established by a provision in the law, as the worker has the right to compete with his colleagues in promotion to a higher job, whether it is a promotion by seniority or by choice, as long as it is available in His right is its conditions and its elements are complementary, and it is not permissible to exclude him from this contention except by the text of the law.(47)

And since the General Assembly of the Fatwa and Legislation Departments has issued a fatwa that "under the penalty, it is not permissible to consider the promotion of the worker during the period of deprivation calculated from the date of its signing, which is the date of the ruling issued by the Disciplinary Council, without any confusion between the imposition of the penalty under the ruling and the date of its implementation".(48)

The Fatwa of the General Assembly of the Fatwa and Legislation Departments also established that "the legislator has determined for the management authority the path that it must follow regarding the worker referred to the disciplinary trial, whether with regard to his promotion or seniority in the grade to which he is promoted, as he made referring the worker to the disciplinary trial – in and of itself – an obstacle. Temporarily one of the impediments to promotion. If the impediment prevents the management from being promoted, it must reserve the degree to which his role is to be promoted for a period of one year. If the trial does not take more than a year, a ruling is issued for his acquittal or his sanction by warning, deduction or suspension from work for five Days or less, the administration must promote him to the rank reserved for him, but if the trial lasted more than that, it became permissible to occupy it with someone else, then the extent of the worker's entitlement to promotion depends retroactively on the outcome of the disciplinary case's decision. The discount or suspension from work for five days or less - Penalties that have no consequential effects - obliges the management authority upon promotion to retroactively calculate his seniority in the position to which he is promoted, so that it reverts back to the date on which it would have taken place if he had not been referred to trial. If the penalty exceeds those penalties, it is prohibited - at first - to consider his promotion before the expiry of the period stipulated by the legislator in Article (85) of the Law of the Civil Workers System in the State, and this is a consequential penalty that accompanies the original penalty and falls by force of law And those periods are calculated from the date of imposing the penalty with the issuance of the judgment or disciplinary decision, as the case may be, in addition to the fact that his promotion to the higher degree does not revert back to a date prior to the date of the issuance of the promotion decision, and his seniority in the position to which he is promoted is calculated from the date of this decision.

And its fatwa established that the disciplinary ruling issued for the imposition of the penalty of deprivation of half of the periodic increment will have its effect on the increment that is due after its issuance without any previous bonus, which has been integrated into the wage and has become an inseparable part of it - the period prescribed for eliminating the deprivation penalty from the bonus is calculated in this case from the date Issuance of the disciplinary ruling, and the period during which promotion may not be considered is calculated from the date of this ruling until the hypothetical date set for the entitlement of the first periodic bonus that was supposed to be disbursed if the salary had not reached the end of the degree link.(49) **Fifth topic**

The principle of gradation of disciplinary sanctions

This principle means that disciplinary penalties vary among themselves, so that the penalties are in a hierarchical situation, so at the base there is the lightest penalty, which is a warning, then another penalty in severity, and so on until we reach the top of the hierarchy, which is the penalty of dismissal from service, and the gradation of the penalty results from the gradation of violations. Disciplinary in terms of severity, there are administrative violations, financial violations, behavioral violations, and violations that constitute a criminal offense in nature, and the principle of gradual effects of disciplinary sanctions is derived from it.

In order for the Disciplinary Council to be able to apply the rule of proportionality between the disciplinary penalty and the disciplinary offense, the law must include disciplinary penalties in a way that achieves the goal of the disciplinary penalty. In assessing the penalty, considerations related to reforming the situation of violators must be considered and deterring them from returning to such violations.(50)

The legislator's policy in enacting disciplinary penalties varied in the laws of private cadres, as some of these laws provided for more than ten penalties(51), and some mediated the gradual progression of penalties.(52) Others stipulate only two penalties.(53)

The judiciary of the Supreme Constitutional Court has settled that "the principle of the penalty is its reasonableness, so that interference with it is only to an extent, to distance it from being unjustified pain, confirming its cruelty without necessity, and that the legality of the penalty - from a constitutional angle - is entrusted with the practice of every judge His authority in the field of gradualism and fragmentation, in appreciation of it, within the legally established limits, that alone is the way to its reasonableness and humanity, redressing the effects of the crime from a just perspective related to it and its perpetrator.(54)

We believe that the texts of disciplinary sanctions must include more than one, the number of which is not less than five, as a minimum, so that the disciplinary judge has the freedom to assess the appropriate penalty for the disciplinary violation before him.

Conclusion

The main motive for writing in the field of discipline was to see the legal nature of disciplinary councils, the legal rules that apply to those councils, and the extent to which they are adhered to, especially in exceptional circumstances. The questions, as the research roamed us on those rules, and because the judiciary gave what is issued by the disciplinary boards a description of the judicial ruling, it was worth us to clarify the legal rules that should govern the work of the disciplinary boards, in its power to impose penalties.

Perhaps the most prominent of those principles that must be available for any trial, we have summarized them in five main points, which are the necessity of commensurate disciplinary punishment with the disciplinary violation, a proportion that does not contain hyperbole, and the inadmissibility of punishing the same violation twice in accordance with the principle of the law that states that a person may not be punished for the same act twice With the implementation of the principle of imposing the most suitable penalty for the accused, the person is not punished according to a nullified law, and the lesson is always the immediate effect of the law, all in the shadow of the principle of the legality of disciplinary punishment, and that legitimacy requires the necessity to establish the principle of gradation of disciplinary sanctions, and we saw how the legislator differed between the restriction of the authority of disciplinary councils. For some councils, the penalty is blame and dismissal only, as stipulated in State Council Law No. 47 of 1972 A.D., and some laws that make available penalties are eleven penalties, as in Police Law No. 109 of 1971 A.D., and we recommended the necessity of limiting and unifying penalties, and that they be unified penalties as in Civil Service Law No. 81 of 2016, taking into account the gradation of penalties.

By reviewing the specificity of the disciplinary case before the disciplinary boards and the legal rules governing their work, we can draw some conclusions, perhaps the most important of which are:

1. What is issued by the disciplinary councils are like judicial rulings, with two conditions that the formation of the councils is predominantly judicial, and that it is not subject to the approval of a higher authority on the decision taken. 2. Disciplinary boards are under the rule of a natural judge, even if the constitutional text does not come to them.
3. The disciplinary boards have the right to suspend the disciplinary case until the issuance of the judgment in the criminal part of the related act, and we concluded that the authorities of the disciplinary boards are not restricted except in the case of a verdict of acquittal because the incident is not proven.
4. We concluded that there are principles governing restricting disciplinary councils in imposing the penalty, the most prominent of which is the necessity of commensurate disciplinary penalty with the disciplinary violation, and the impermissibility of punishing the same violation twice, with the implementation of the principle of imposing the most suitable penalty for the accused, and all this in the shadows of the principle of the legitimacy of the disciplinary penalty, and that legitimacy It is necessary to establish the principle of gradual disciplinary sanctions.

From what we have previously obtained, we suggest the following:

1- The need to address the constitutional vacuum and for the constituent authority established in the first upcoming constitutional amendment to remedy this void by providing for the system of disciplinary councils, with the need to give it the status of judicial authorities, as is the case with the administrative prosecution.

2- The necessity of issuing a law on unified litigation procedures before disciplinary councils, taking into account the specificity of the disciplinary case before those councils, in order to address the procedures and ensure impartiality and independence, and combine effectiveness and guarantee, and organize the methods of appeal and unmask the constitutionality and legitimacy of the work of disciplinary councils, and that this should include this The law stipulates the formation of disciplinary councils in a more permanent, independent, and impartial manner, and ensures the presence of more than one disciplinary department in the same authority so that the transferee can activate the provisions of the Civil and Commercial Procedures Law allowing response and litigation, and activate the council's authority to confront and refer so as not to unite the authority of investigation and accusation and trial, and to ensure that these councils are financially independent so that they are not subject to a reward given or prevented by the administrative authority.

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[2] See Dr. Muhammad Asfour, Discipline and Punishment in Work Relationships, A Doctrinal Study in Discipline, First Edition, Dar Al-Nahda Al-Arabiya, 1972. As well as Dr. Suleiman Al-Tamawi: Administrative Judiciary, Book Three, Disciplinary Judiciary, a comparative study, Dar Al-Fikr Al-Arabi, 1995, p. 45.

[3] If the general principle is that all employees in the public office are subject to a unified system for their functional affairs, including discipline, but the legislator excluded from that principle some groups of employees, and assigned them special functional systems that organize all their job affairs, including discipline, and the law of civil workers in the state is only referred to Where there is no special text in the special job systems, and if that text is found as in the discipline, it must be given priority in implementation, given that the competence to discipline, including the special formation it includes, is considered a public order and it is not permissible to deviate from it for those who are subject to the provisions of special cadres: see in that Judgment of the Supreme Administrative Court in Appeal No. 3538 of 38 BC, session of June 5, 1993 AD.

[4] See the ruling of the Supreme Administrative Court in the original invalidity case No. 8473 of 65, session 5 May 2018.

[5] See in the same sense the ruling of the Supreme Administrative Court in Appeal No. 45808 of 60 BC, session of June 18, 2016.

[6] See the ruling of the Supreme Administrative Court in Appeal No. 1156 of 33 BC, session of June 24, 1989 AD.

[7] See the ruling of the Supreme Administrative Court in Appeal No. 6399 of 43 BC, session of December 10, 2000 AD.

[8] See the ruling of the Supreme Administrative Court in Appeal No. 1591 of 27 BC, session of June 8, 1985 AD.

[9] See the ruling of the Supreme Administrative Court in Appeal No. 3619 of 40 BC, session of March 29, 1998 AD.

[10] See the ruling of the Supreme Administrative Court in Appeal No. 3433 of 37 Q.A., session of March 19, 1994 AD. [11] See the ruling of the Supreme Administrative Court in Appeal No. 259 of 32 BC, session of November 7, 1992 AD. [12] See the ruling of the Supreme Administrative Court in Appeal No. 1425 of 34 BC, session of September 23, 1989 AD.

[13] See the ruling of the Supreme Administrative Court in Appeal No. 4060 of 45 BC, session of June 2, 2001 AD.

[14] See the ruling of the Supreme Administrative Court in Appeal No. 2093 of 34 BC, session of January 15, 1994 AD. [15] See the ruling of the Supreme Administrative Court in Appeal No. 739 of 37 Q.P., session of November 23, 1993 AD.

[16] See the ruling of the Supreme Administrative Court in Appeal No. 21173 for the year 52 Q.P., session of March 12, 2016.
[17] See the ruling of the Supreme Administrative Court in Appeal No. 6399 of 43 Q.A., session of December 10, 2000 AD.
[18] See the ruling of the Supreme Administrative Court in Appeal No. 2359 of 42 BC, session of February 14, 1998 AD. [19] See the ruling of the Supreme Administrative Court in Appeal No. 20934 of 51 BC, session of November 12, 2011. [20] See the ruling of the Supreme Administrative Court in Appeal No. 16465 of 51 Q.P., session of January 23, 2011.
[21] See the ruling of the Supreme Administrative Court in Appeal No. 6778 of 44 Q.A., session of December 23, 2001 AD.
[22] See the ruling of the Supreme Administrative Court in Appeal No. 2912 of 45 BC, session of November 24, 1998 AD.
[23] See the ruling of the Supreme Administrative Court in Appeal No. 7149 of 45 BC, session of September 5, 2005 AD.
[24] See the ruling of the Supreme Administrative Court in Appeal No. 7149 of 45 BC, session of September 5, 2005 AD.
[25] See Fatwa No. 207-2-86, session of April 3, 1991 AD, dated April 3, 1991 AD.
[26] See the ruling of the Supreme Administrative Court in Appeal No. 1826 of 29 BC, session of March 3, 1987 AD.
[27] See the ruling of the Supreme Administrative Court in Appeal No. 953 of 29 BC, session of June 20, 1987 AD.
[28] See the ruling of the Supreme Administrative Court in Appeal No. 972 of 30 BC, session of February 27, 1988 AD. [29] See the ruling of the Supreme Administrative Court in Appeal No. 3619 of 33 BC, session of June 24, 1989 AD.
[30] See the ruling of the Supreme Administrative Court in Appeal No. 2491 of 41 BC, session of February 15, 1997 AD.
[31] See the ruling of the Supreme Administrative Court in Appeal No. 4218 of 45 BC, session of June 23, 2001 AD. [32] See the ruling of the Supreme Administrative Court in Appeal No. 8022 of 47 BC, session of May 10, 2004 AD.
[33] See the ruling of the Supreme Administrative Court in Appeal No. 2255 of 36 BC, session of April 3, 1993 AD.
[34] See the ruling of the Supreme Administrative Court - Department of Unification of Principles - in Appeal No. 4360 of 53, session of June 13, 2009
[35] See the ruling of the Supreme Administrative Court in Appeal No. 5351 of 54 in the session of December 18, 2016.
[36] See the ruling of the Supreme Administrative Court in Appeal No. 1682 of 31 at the session of March 4, 1989, with the meaning of Appeal No. 10680 of 56 Q.A. at the session of August 24, 2013 AD.
[37] See the ruling of the Supreme Administrative Court in Appeal No. 965 of 25 BC, session of June 15, 1985 AD. [38] See the ruling of the Supreme Administrative Court in Appeal No. 975 of 25 BC, session of June 15, 1985 AD.
[39] See File No. - 86-1 - 1638 - Session 6-1-2010.
[40] See the ruling of the Supreme Administrative Court in Appeal No. 22284 of 58 BC, session of November 7, 2015.
[41] See the ruling of the Supreme Administrative Court in Appeal No. 2924 of 40 BC, session of March 11, 2001 AD.
[42] See the ruling of the Supreme Administrative Court in Appeal No. 600 of 16 BC, session of April 9, 1972 AD.
[43] See the rule The Supreme Administrative Court in Appeals Nos. 20806 and 23187 for the year 60 BC, session of April 11, 2015.
[44] See the ruling of the Supreme Administrative Court in Appeals Nos. 48967 and 5221 for the year 60, and 61839 for the year 61 BC, session of July 25, 2015.
[45] See the ruling of the Supreme Administrative Court in Appeal No. 4170 of 44 BC, session of March 11, 2001 AD.
[46] See the ruling of the Supreme Administrative Court - Unification of Principles Department - in Appeal No. 4360 of 53, session of June 13, 2009
[47] See the ruling of the Supreme Administrative Court in Appeal No. 485 of 35 BC, session of May 16, 1992 AD. [48] See its fatwa issued on 12-12-1992 - session 06-12-1992 - file number 224/3/86)
[49] See Fatwa No. -2004 - December 6, 1992 session - December 12, 1992 - File No. 224-3-86

[50] See the ruling of the Supreme Administrative Court in Appeals Nos. 44671, 44747, 44894 for the year 57 Q.P., session of April 9, 2016.

[51] Article (77 bis (2)) of Police Law No. 109 of 1971, as amended by Law No. 64 of 2016, disciplinary penalties that may be imposed on police personnel are:

1- The warning.
2- Extra services.
3- Deduction from the basic salary for a period not exceeding ninety days per year, and the deduction in implementation of this penalty may not exceed a quarter of the monthly salary after the quarter that may be seized or legally waived.
4- Postponing the date of entitlement to the bonus for a period not exceeding six months.
5- Deprivation of all or half of the bonus.
6- Suspension from work for a period not exceeding six months with disbursement of half of the salary, and the salary includes the attached fixed allowances.
7- Reducing the salary by not more than a quarter.
8- Delaying promotion for a period not exceeding three years from its due date.
9- Decrease the degree by not more than one degree.
10- Reducing the salary and the grade together in the manner indicated in items (7 and 9).
11- Dismissal from service while retaining the right to a pension or remuneration.
12- Dismissal from service with the permissibility of depriving part of the pension or benefit within the limits of one-fourth.

The heads of the departments may impose the two penalties (1, 2), the director of the sub-management, the officers of the departments and centers, and the like, may impose penalties from (1 to 4), and the authority's representative or someone in his equivalent may impose penalties from (1 to 6), and the head of the authority or someone in his equivalent may Penalties from (1 to 10), and the Assistant Minister concerned may impose penalties (1 to 11), and the competent disciplinary boards may impose any of the penalties mentioned in this article.

[52] Article 110 of the decree of the President of the Arab Republic of Egypt by Law No. 49 of 1972 regarding the organization of universities and the disciplinary sanctions that may be imposed on faculty members are: 1- The warning.

2- blame.
3- Blame with delaying the due bonus for one period or delaying appointment to a higher position or the like for a period of two years at most.
4- Dismissal from the job while retaining the pension or bonus
5- Dismissal with deprivation of pension or gratuity, within the limits of one-fourth.

Every act that is insulted in honor of a faculty member, or that would affect his integrity, or in violation of the provisions of Article (103) shall be punishable by dismissal. In all cases, it is not permissible to dismiss a faculty member except by a ruling from the Disciplinary Council.

[53] Article 120 of State Council Law No. 47 of 1972 that "Disciplinary penalties that may be imposed on members of the State Council are:

- Blame

- and insulation

- If the disciplinary council's ruling regarding the penalty of dismissal is issued here, the member of the council is considered to be on inevitable leave from the date of the ruling's issuance to the day of its publication in the Official Gazette, and the date of dismissal is considered from the day of publication in the Official Gazette. This decision or the judgment pronouncement is in the Official Gazette.

[54] In this sense, he shall review the ruling of the Supreme Constitutional Court in Case No. 88 of 36 Q.D., session of February 14, 2015. Published in the Official Gazette - Issue 8 (bis) on February 25, 2015.

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