

## The Disciplinary Sanctions in the Jordanian and French Law

*Dr. Noor Alhendi<sup>1</sup>*  
*Dr. Muamar Salameh<sup>2</sup>*

### *Abstract*

*This study deals with an important administrative issue which is the Disciplinary Sanctions in the Jordanian and French Law, as we know in the administrative laws there is no exclusive enumeration of the actions constituting disciplinary violation in occupational legislation, and hence any dereliction on the part of a public servant in his positive or negative obligations may constitute errant conduct, and therefore the matter is up to the administrative authority to make a determination whether the conduct of the employee constitutes a disciplinary violation necessitating disciplinary punishment or not, and the onus is also upon the administrative body to prove the occurrence of the act of violation. In this case, the public administration may misuse its powers and privileges granted to it by the Jordanian and French legislators and harm the public employee by issuing disciplinary administrative decisions that contradict administrative legislation. Therefore, there must be judicial oversight of administrative decisions in this case. Therefore, his study deals with codified disciplinary penalties in Jordanian law, by standing on the principle of the legitimacy of disciplinary punishment, by defining codified disciplinary punishment, stating its objectives and legal divisions, and finally stating the position of the administrative judiciary on disciplinary penalties.*

**Key words:** *codified disciplinary sanctions, disciplinary authorities, administrative authority, principle of the legitimacy of the disciplinary sanction, administrative judiciary.*

---

<sup>1</sup> Associate Professor, Faculty of Law, Applied Science Private University, Al Arab St 21, Amman, Jordan.

<sup>2</sup> Assistant Professor, Faculty of Law, Prince Mohammad Bin Fahd University, Saudi Arabia, Alkhubar.

## **I. INTRODUCTION**

The importance of this study stems from the fact that it stands on the codified disciplinary sanctions in the Jordanian and French Law, to reveal the abuse of power by the administrative authority, because the public administration may misuse its powers and privileges granted to it by the Jordanian and French legislators and harm the public employee by issuing disciplinary administrative decisions that contradict administrative legislation. Therefore, there must be judicial oversight of administrative decisions in this case. So, the aim of the present study is to elucidate the principle of the legitimacy of the codified disciplinary sanctions, the codified disciplinary punishment, its objectives, its legal divisions, the extent of the administrative judiciary's control over disciplinary sanctions. Therefore, the descriptive analytical method was of extreme help in describing, analyzing, and comparing legal provisions, judicial rulings, and the jurisprudential opinions related to the subject of the study with all the tools it has. The problem of this study can be solved by answering several questions, most notably: What is the principle of the legality of disciplinary punishment? What is the codified disciplinary punishment? And what are its objectives? What are its legal divisions? What is the extent of the administrative judiciary's control over disciplinary sanctions? One of the most important academic obstacles that faced the study; The lack of specialized references in the core of this topic, the researcher did not find studies that intersect with it except for a study: Nofan Al-Ajarma, the authority to discipline a public employee issued in 2007, and a study by Abdel Fattah Hassan, Discipline in Public Service issued in 2008 that dealt with discipline in public office in Egyptian law, and a study Nawaf Kanaan, Disciplinary System in the Public Service, issued in 2008. As for the current study, So I took a different approach than that adopted by previous studies, as they compare the Jordanian and French legislation in the field of disguised penalties, which legitimizes their birth. The study concludes with a set of findings and several recommendations.

## **II. Principle of the Legitimacy of the Disciplinary sanctions**

The content of the principle of the legitimacy of the codified disciplinary sanctions is represented in restricting the disciplinary authority in imposing sanctions, such through exclusive stipulation, for the Jordanian Civil Service Regulation Number (9) of 2020 determined the disciplinary sanctions while leaving it to the disciplinary authority to choose the appropriate disciplinary

punishment for the administrative violation from among those sanctions.<sup>3</sup> Thus Article (142) stipulates: "In case a public servant commits a violation of the laws, regulations, instructions and resolutions in effect in the civil service, or in applying them, or embarks on an action or conduct in dereliction of responsibilities and powers assigned to him, or hinders them, or affronts the professional ethics and the duties and conduct of the employee, or was derelict or neglectful in performing his duties, or infringed on the property and interests of the State; then the following disciplinary sanctions will be imposed on him: notification, warning, deduction from his basic salary of not more than seven days a month, suspend the annual raise for a one year period, suspend the annual raise for a three year period, suspend the annual raise for a five year period, termination of services, dismissal."

As regards the French legislative or organizational rules which determine the disciplinary sanctions for public service employees in France they are represented in the following:

– Law Number 79-587 dated 11 July 1979 related to the motives for administrative measures in case of the imposition of disciplinary sanctions,<sup>4</sup> Law Number 83-634 dated 13 July 1983- Articles 19,29,30- concerning the rights and obligations of the civil servant,<sup>5</sup> Law Number 84-53 dated 26 January 1984- Articles 89 to 91- which stipulates legal provisions related to domestic civil service,<sup>6</sup> Circular Number 1078 dated 26 June 1986 related to entering the disciplinary sanctions in the file of the public servant,<sup>7</sup> Edict number 88-145 dated

---

<sup>3</sup> Ahmad Hiasat, *Disciplinary Sanctions Imposed on the Public Service and the Consequence of their Extreme Application on the Administrative Decision*, A Comparative Study, Nayef University Publishing House, Riyadh, 2015, p.79.

<sup>4</sup> **Loi n° 79-587 du 11 juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public;**  
<https://beta.legifrance.gouv.fr/jorf/id/JORFTEXT000000518372>

<sup>5</sup> **Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires;**  
[https://beta.legifrance.gouv.fr/loda/texte\\_lc/LEGITEXT000006068812/](https://beta.legifrance.gouv.fr/loda/texte_lc/LEGITEXT000006068812/)

<sup>6</sup> **Loi n° 84-53 du 26 janvier 1984 portant dispositions statutaires relatives à la fonction publique territoriale;**  
[https://beta.legifrance.gouv.fr/loda/texte\\_lc/LEGITEXT000006068842/](https://beta.legifrance.gouv.fr/loda/texte_lc/LEGITEXT000006068842/)

<sup>7</sup> **Lettre circulaire 1078 DH/8D du 26 juin 1986** relative à l'inscription de sanctions disciplinaires au dossier du fonctionnaire.

15 February 1988- Articles 36 and 37- adopted to apply Article 136 of Law 26 January 1984 amending the important legal provisions.

concerning domestic public service related to temporary employees in the domestic governmental service,<sup>8</sup> Edict Number 92-1194 dated 4 November 1992- Article 6 which defines the joint provisions applicable to the civil service employees who are trainees in the domestic public service,<sup>9</sup> the response of the Civil Service Ministry in the Senate which was published in the Official Gazette on 10 February 2011 according to which it was determined that an employee referred to the Disciplinary Board is entitled to recover his travel expenses.<sup>10</sup>

Thus, the disciplinary authority has no power to impose any sanction on the contravening employee, unless stipulated in the abovementioned legal provisions, and it has no right to innovate new disciplinary sanctions,<sup>11</sup> and this is not the limit for the administration is not just bound by the list of codified disciplinary sanctions but is obliged to comply with the formal and objective restrictions which the legislation framed, for in form, it must adhere to the term of sanction which the legislation offers, or what is known as (semantic compliance), whereby if among the sanctions is that of warning for instance, then it is incumbent on the disciplinary authority to use the same term and not to substitute it with another, otherwise its conduct in this case would be in contravention of the principle of the legitimacy of the disciplinary sanction. And insofar as subject matter, the disciplinary sanction impinges on the job benefits of the employee, and thus if the disciplinary authority resorts to impinging on the dignity of the employee, such as through material degradation or impinging on his freedom through imprisonment, or impinging on his private property, then its measures go beyond

---

<sup>8</sup> **Décret n°88-145 du 15 février 1988 pris pour l'application de l'article 136 de la loi du 26 janvier 1984 modifiée portant dispositions statutaires relatives à la fonction publique territoriale et relatif aux agents contractuels de la fonction publique territoriale:**

[https://beta.legifrance.gouv.fr/loda/texte\\_lc/LEGITEXT000031840083/](https://beta.legifrance.gouv.fr/loda/texte_lc/LEGITEXT000031840083/)

<sup>9</sup> **Décret n°92-1194 du 4 novembre 1992 fixant les dispositions communes applicables aux fonctionnaires stagiaires de la fonction publique territoriale:**[https://beta.legifrance.gouv.fr/loda/texte\\_lc/LEGITEXT000006080323/](https://beta.legifrance.gouv.fr/loda/texte_lc/LEGITEXT000006080323/)

<sup>10</sup> publiée dans le JO Sénat du 10 février 2011

<sup>11</sup> Nofan Ajarmeh, Power of Disciplining a Public Servant, A Comparative Study, House of Culture, Amman, 2007, p.117.

the limit of legitimacy,<sup>12</sup> and in case the sanctions of warning and reprimanding do not impinge on the job features and benefits but they become of a serious nature in case the disciplinary administrative decision includes harsh wording.<sup>13</sup>

Thus French jurisprudence<sup>14</sup> is of the view in the field of disciplinary sanctions that there are two procedures which must be taken into consideration; the first is to follow the legal disciplinary measures, and the second is for the administration to ignore the legal procedural method, and the administration might intentionally resort to an illegitimate means to take a measure notwithstanding its awareness that its conditions are not met, and hence the use of any measure to achieve a particular outcome inside an institution is for this measure to deviate from its subject, and hence if the legislator to achieve this aim prepares a particular means it must be respected and not ignored, because the end and the means are an integral part of the domain of legitimacy.

The administrative court: the Supreme Court of Justice of Jordan emphasized the principle of the legitimacy of disciplinary sanctions in a number of rulings: "... it is impermissible for any disciplinary authority to impose on the petitioner the sanction of deprivation from availing of the services of the Health Insurance Fund, because it is not among the disciplinary sanctions stipulated in the Electricity Authority laws and regulations..."<sup>15</sup> Moreover, it is necessary to allude to the guarantees which must be given due regard by the disciplinary authority prior to imposing any sanction on him,<sup>16</sup> for Article (141) of the Jordanian Civil Service Regulation provided for those guarantees represented in "notifying the employee in writing of the wrongdoing and accusations assigned to him, and it is incumbent on the heads and members of the investigation committees or the formed disciplinary board pursuant to the provisions of this regulation to resign in cases where there is kinship ties or personal considerations which may affect the proceedings of the investigation or the imposition of sanction, and it is also

---

<sup>12</sup> Abdel Qader Al-Shaykhali, *Legal System for Disciplinary Sanction*, Dar El Fikr Publishing House, Amman, 1983, p.256.

<sup>13</sup> Nofan AL-Ajarmeh, *Authority to Discipline a Civil Servant*, op.cit., p.118.

<sup>14</sup> Rene CHAPUS, *Droit administrative general*, t 1, Montchrestin, 15 ed, 2001, p 348.

<sup>15</sup> Decision of the Supreme Court of Justice (Administrative Court) in Case Number 131/93, issued on 13/7/1973, The set of the legal principles of the Supreme Court of Justice from the beginning of 1993 until 1997, Section One, Bar Association, p.269.

<sup>16</sup> NAWWAF KANAAN, *DISCIPLINARY SYSTEM IN PUBLIC POSITION*, 9, (Ithra' for Publication, Sharjah, 2008).

impermissible for any person who partook in the stage of investigation or accusation or testimony to participate in considering to impose a sanction or to decide on it, and it is impermissible to impose more than one of the sanction stipulated in Paragraph (a) of Article (142) of this Regulation, for the single misconduct committed by the employee, where the sanction imposed is commensurate with the nature of the committed violation, and not to be extreme or excessively lenient regarding the disciplinary measures taken regarding the employee, and to obtain reasoning for the disciplinary decision adopted by the competent authority concerned with adopting the disciplinary measures and sanctions, and to inform the employee in writing of the sanction adopted against him within ten days from the date of its imposition."

In France, both Article 19 of Law number 83-634 dated 13 July 1983 related to the rights and obligations of civil service personnel, and paragraphs 2 and 5 of Article 211 of the code of relations between the public and the administration stipulated the decision to pronounce the disciplinary sanctions to be reasoned, while the decision must include a statement of the factual and legal considerations constituting the basis of the decision. Moreover, the administrative authority, when desiring to penalize an employee shall summon him to a meeting beforehand as a part of the disciplinary measures, and the meeting must be fair,<sup>17</sup> to enable the employee to be informed about the subject of the complaint, and to know the reasons for rendering him the subject of a disciplinary sanction. Recently, the trial judges in French administrative courts have adopted the position of not accepting the statement of re-amending the reasoning addressed to the employee by the quarter issuing the decision through a separate letter when the statement of reasoning is insufficient or illegal even if the cause of punishment is explained to the concerned person in the counterclaim.<sup>18</sup>

### **III. Nature of the codified undisguised disciplinary sanction**

The disciplinary sanction is considered the weapon through which the administration can make the employees to perform their job duties and responsibilities, for the aim of the disciplinary punishment is to achieve the public

---

<sup>17</sup> in this regard the ruling of the Administrative Court of Appeal in See CAA Nancy, 6 février 2018, n° 16NC00727.

<sup>18</sup> TA Dijon, 29 mars 2018, n° 1601508.

interest, and it is for this purpose this part exposits the codified disciplinary punishment and elucidates its aims and legal divisions as follows:

#### **IV. Definition of the codified and undisguised disciplinary sanction**

Jordanian and French legislation have avoided defining the codified disciplinary sanction, and amid this legislative silence some administrative jurists have made statements in this regard given that the task of definition is among the aims of jurisprudence, and hence some jurists have defined the codified disciplinary punishment as "a type of sanctions emanating from the Public Service system which is visited on an employee accused of committing a disciplinary violation by the disciplinary authority specialized in disciplining him and deterring other employees."<sup>19</sup> On the other hand other jurists have refrained from providing a specific definition of disciplinary punishment, and were sufficed with stating its divisions represented in material sanctions and administrative punishment, or with citing the sanctions that may be imposed on the employee in breach. Moreover, French jurisprudence defined disciplinary sanctions as those sanctions associated with behaviors that are inconsistent with the obligations particular to the staff of the administration, and they concurrently point out that the disciplinary law is the totality of rules which govern the elimination of professional misconduct."<sup>20</sup> The disciplinary error constitutes an infringement of a professional obligation that exists a priori, and the disciplinary punishment is represented by loss of position (job) or some of its powers or even its benefits, and disciplinary error arises from the nature of the action which affects directly or indirectly the employment status.<sup>21</sup>

The aims of codified disciplinary sanctions are represented in disclosing the defects of administrative activity as a prelude to rectifying them which would prevent the commission of violations in future, for it is a remedial measure which aims to bridge the gaps and prevent the occurrence of error, and it also aims to reform the employee by making him aware of the reality of the errors he

---

<sup>19</sup> KHALED AL-DHAHER, ADMINISTRATIVE LAW, AL-MASEERAH 245, (Publishing House, Amman, 1997).

<sup>20</sup> NAWWAF KANAAN, COMPENDIUM OF JORDANIAN ADMINISTRATIVE LAW, 164 (Second Book, AL-Afaq AL-Mushriqah, 2012).

<sup>21</sup> Bonnard (Roger), De la Répression disciplinaire des fautes commises par les fonctionnaires publics, Bordeaux, Imprimerie Y. Cadoret, 1903, p.28

committed so as not to repeat them again,<sup>22</sup> and it also aims to ensure the good functioning of public facilities, for when an employee recognizes that any dereliction on his part would be dealt with by the administration with disciplinary sanctions this would spur the public functionary to assiduously perform his duties.<sup>23</sup>

Disciplinary responsibility does not only penalize the reprehensible acts which may be committed by the public functionary in the course of carrying out their duties, but also the actions committed in their private lives which tarnish the image of the institution to which they are affiliated.<sup>24</sup> It is worthy of mention that the employment legislations are usually confined to stating the duties of the functionary and the prohibited actions in general, and thence stipulate that every functionary who is derelict in performing these duties, or deviates from their imperatives and requisites, or acts in a manner violating the dignity of the public function shall be disciplinarily sanctioned pursuant to the punishment exclusively stipulated in legislation,<sup>25</sup> and some jurists are of the view that the cause of the inability to specifically delimit the disciplinary violations is the diverse trajectories of the imperatives of Public Service and accordingly it is impossible to put in place specific stipulations where the person in breach would deserve the deterrent disciplinary punishment, however it would be possible to support the jurisprudence which is of the view that not specifying the disciplinary violation is inconsistent with the principle of legitimacy which signifies for the legislator to determine the actions considered as violations, and stating the sanctions prescribed for them once proven clearly and specifically, for defining the crime and the punishment is considered a fundamental principle in criminal law for there is no crime or punishment except with the presence of a stipulation, and this is contrary to the disciplinary domain, where the principle of legitimacy in the criminal domain is not applied to the disciplinary violation, because not restricting the disciplinary violations will confer on the disciplinary authority considerable freedom in considering the action or refraining from it a crime, and the means to face this freedom lies in what the administrative judiciary exercises in oversight

---

<sup>22</sup> NOFAN NAWWAF KANAAN, COMPENDIUM OF JORDANIAN ADMINISTRATIVE LAW, 164 (Second Book, AL-Afaq AL-Mushriqah, 2012).

<sup>23</sup> ALI MUHAREB, ADMINISTRATIVE DISCIPLINING IN PUBLIC SERVICE POSITIONS, 98 (Dar Al-Thaqafah, Amman, 2004).

<sup>24</sup> CE, 24 juin 1988, Secrétaire d'Etat aux P. et T., *AJDA*, 1988, p. 614.

<sup>25</sup> AL-WASEET IN ADMINISTRATIVE LAW AR., 277 (Dar Al-Thaqafah, Amman, 2016).



in this regard, and the sound exercise of disciplinary policy entails endeavoring to codify the job duties and the possible associated punishment as is the case in the criminal domain, and a gradual codification helps in achieving the aim while avoiding the negativities, for it would be possible as a first stage to endeavor to codify the foremost job duties and the most connected to the facility or to codify the violations associated with the severest sanctions.

Moreover, the lack of a stipulation that criminalizes the action in employment legislation does not necessarily mean that it is a licit act, but rather it is permissible for the administration to disciplinarily penalize the functionary upon breaching the job duties, for the administrative law does not adopt the principle of no crime and no punishment without a stipulation, but rather adopts one element thereof, namely (no punishment except with a stipulation), in the sense of the administration necessarily relying on a legislative text conferring on it the authority to penalize him, and this does not mean that its authority is absolute, but is rather subject to the oversight of administrative courts. Hence, it is necessary not to mix between the disguised disciplinary punishment and the measures taken for the service which is not of a repressive nature, and for example the French State Council considered the changes produced by the decision to transfer a functionary who is subject to the oversight of an administrative judge as not impinging on his occupational situation,<sup>26</sup> and in particular cases the transfer which is consistent with the functions performed by the functionary might not constitute a disciplinary punishment upon giving due regard to his rank which does not diminish his salary rights even if this measure would lead to a relative decrease in his responsibilities, but does not lead to a forfeiture of the privileges associated with his job.<sup>27</sup> Furthermore, the decision to alter the appointment of the functionary inside the institution is a legal decision and constitutes a simple measure to organize the services which does not affect his legal guarantees and the privileges he possesses in exercising his functions and does not impinge on his salary, where such a decision is an internal procedure that is connected to organizing the services and may not be challenged on grounds of abuse of authority.<sup>28</sup>

---

<sup>26</sup> Conseil d'État, 17 décembre 2007, n°301317, Dazord.

<sup>27</sup> Cour administrative d'appel de Bordeaux, 13 décembre 2005, n° 02BX01491.

<sup>28</sup> Conseil d'État, 17 décembre 2008, n°294362, Département des Ardennes.

## V. Divisions of the Codified Disciplinary sanctions

The codified disciplinary sanctions are of a gradual nature, for they are not of an equal level of enormity, and hence the disciplinary sanctions which may be imposed on a functionary are notification, warning, deduction from the basic monthly salary not exceeding seven days a month, suspending the annual raise for one year, suspending the annual raise for a period of three years, suspending the annual raise for five years, dismissal from service, and dismissal. These sanctions may be divided to moral punishments, financial punishments, exclusionary punishments, which is what we will address as follows:

### A. Moral disciplinary sanctions

The following disciplinary measures shall be taken against an employee who is repeatedly late for work, according to the following:

A- The warning penalty for the employee whose delay is repeated in one month three times.

B- The warning penalty for the employee who is repeatedly late for work more than three times in one month. In all cases, one day is deducted from the employee's annual leave if he is late for official working hours by a total of one hour per week. If the employee exhausts his annual leaves, then that hour is deducted from his salary and allowances. average of one day.

The moral disciplinary sanctions are considered to be the lightest of punishments, for they are a preventive warning practiced by the administration vis a vis its staff to prevent them in future from committing new violations based on which they are subject to the imposition of more severe punishments,<sup>29</sup> and among examples of such punishments are warning and notification,<sup>30</sup> for notification is a form of reprimand for the employee and reminding him of the imperative of behaving in accordance with his job duties and not committing the transgressive action once again, and a part of jurisprudence is of the view that notification is not considered a disciplinary punishment and is not more than administrative guidance to the functionary reminding him of his job duties, and it does not involve any legal consequence which is reflected on the other job conditions of the functionary.

---

<sup>29</sup>Abdel Qader AL-Shaykhali, Legal System for Disciplinary Sanction, p.399.

<sup>30</sup> Ahmad Hiasat, Disciplinary Sanctions Imposed on the Public Service and the Consequence of their Extreme Application on the Administrative Decision, p.70.

Moreover, the semantic connotation of this punishment does not entail causing pain presumably associated with punishment, and legal logic requires facing disciplinary violation however simple with an appropriate punishment which involves the meaning of pain for the functionary.

Nevertheless, it would be possible to agree with an aspect of jurisprudence<sup>31</sup> which is of the view that notification is considered a disciplinary punishment, for the Jordan Civil Service Regulation expressly stipulated that notification is considered among the disciplinary punishments, and it is known that the legislator transcends vain talk, and if he intends he expresses it, for notification entails urging the functionary and reminding him of the necessity of giving due regard to his professional duties, for the administration cannot be silent on such a violation, and at the same time cannot impose a more severe punishment, and hence the notification sanction is the appropriate punishment in such a case, and in case the functionary once again commits the same violation then the administrative body shall have the right to impose a more severe punishment

Furthermore, there exists a significant consequence in case any disciplinary punishment is imposed on the functionary from among the sanctions stipulated in Article (142) including the notification sanction, given that it is impermissible for his annual evaluation to be more than good during the year of evaluation, and also within the data and information which are included in the report of the evaluation of the performance of the functionary shall be the warnings addressed to him, and the disciplinary decisions and the categorical judicial rulings issued regarding him, whether convicting him or acquitting him.<sup>32</sup> As to the sanction of notification

---

<sup>31</sup> NOFAN AJARMEH, *AUTHORITY OF DISCIPLINING THE PUBLIC SERVANT*, p.354.

<sup>32</sup> The disciplinary sanctions in France were stipulated in Article 66 of Law number 84-16 dated 11 January 1984 related to the legal rules related to state public service and they were divided into four groups: the first group, warning and reprimand- temporary exclusion from the job for a period of three days; second group, removal from the table of allowances; demotion from the grade held by the employee, temporary exclusion from the job for a period of four to fifteen days, third group- decrease the rank associated with the grade of the employee; temporary exclusion from the job for a period of sixteen to twenty days- fourth group- retirement; termination of service. And in French Law the sanction of reprimand and temporary exclusion from the job is automatically removed from the file of the employee after three years from its imposition unless a new sanction is imposed on him during this period. CAA Bordeaux du 10 février 2009 - N°08BX01158.

it entails both reprimanding and notification, where the functionary is warned of a more severe punishment if he repeats the action in future,<sup>33</sup> whereby the warning aims to alert the functionary of the error he committed, and to warn him of not repeating it, by means of complying with his job duties and to guide his conduct failing which he would be subject to a more severe punishment.<sup>34</sup>

### **B. Financial disciplinary sanctions**

The Jordanian legislator in the civil service system granted the public employee financial rights:

Salary: It is the amount that the employee receives monthly, on a regular basis, in return for discontinuing the management service. The system defines the salary according to Article (2) of it as (the monthly basic salary that the employee is entitled to and receives in return for carrying out the tasks of the position he occupies, and it does not include allowances and allowances of any kind).

2. The annual increment: It is the amount decided automatically for the employee annually to be added to his basic salary without his grant being suspended on the issuance of a decision from any party, because this right is directly sourced by the system. In this regard, Article (21) of the system stipulates that: The date of granting it if a decision is not issued to withhold it) and the increase is due after one year has elapsed from the date of maturity of the previous annual increase or the date of appointment. with this increase.

3. Bonuses: They are sums of money granted to employees that lead to an increase in salary to help employees cope with the steady increases in the burdens of living. These allowances are determined according to the specified job grades and categories.

So, the Financial disciplinary sanctions are of a financial nature which impinge on the financial benefits of an employee, and those punishments or sanctions are represented in deduction from the basic monthly salary not more than seven days a month and suspending the annual raise for a one-year period and suspending the

---

Article 66 de laLoi n° 84-16 du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat:<https://beta.legifrance.gouv.fr/loda/id/LEGIARTI000038922925/2020-04-11>

<sup>33</sup> Muhammad Al-Khalayleh, Al-Waseet in Administrative Law, p.282.

<sup>34</sup> Abdel Qader Al-Shaykhali, The Legal System for Disciplinary Sanction, p.375.

annual raise for a period of three years and suspending the annual raise for a period of five years. An orientation of jurisprudence- which we subscribe to- finds that this kind of punishments is inconsistent with the principle of the personality of the punishment,<sup>35</sup> for its effect is not confined to the person of the employee but exceeds it, especially when the matter relates to the married employee who supports a family where harm is done to them, and hence France has endeavored to abolish this penalty and we hope for the Jordanian legislator to follow in the steps of the French legislator.

### **C. Exclusionary Disciplinary sanctions**

The dismissal punishments are considered the severest of punishments which are imposed on the employee because it leads to terminating the professional connections between him and the administration, and these punishments are represented in dismissal from service and dismissal from the job, whereby the employee is dismissed either by virtue of a decision of the disciplinary council for committing a grave offense, or automatically in case three different punishments are imposed on him from among the following disciplinary punishments: deduction from the basic monthly salary not in excess of seven days a month, and withholding a salary increment of the annual raise for a period of one year, and suspension of the annual raise for a period of three years, and suspension of the annual raise for a period of five years, and this punishment entails the following: ".it is impermissible to allow an employee to apply for appointment on a competitive basis to a position in the civil service pursuant to the provisions of this regulation except upon the passage of at least three years from the time of the issuance of the dismissal decision, and his obtaining a decision from the president of the Civil Service approving his application for employment with the Civil Service Bureau."<sup>36</sup> As to dismissal from the job it shall be in three cases stated in Article (172/a) of the Jordanian Civils Service Regulation and these cases are represented in "a decision from the Disciplinary Board associated with his committing a grave offense, and in case he is convicted by a competent court for committing any felony or misdemeanor in violation of honor such as bribery, embezzlement, theft, counterfeiting, abuse of trust and

---

<sup>35</sup> Suleiman Al-Tamawi, Justice of Disciplining, p.290.

<sup>36</sup> Article 171 of the Jordanian Civil Service Regulation.

position, false testimony or any other crime that is inconsistent with public morality, and in case he is sentenced to prison by a court for a period in excess of six months for committing any other crime." And consequent upon this punishment are serious effects where Article (177) of the Civil Service Regulation states that an employee shall be deprived of his financial entitlements in case his service expires or is terminated in any of the following cases: dismissal from job, loss of job, and loss of the Jordanian nationality.

Perhaps this is the difference between and layoff and dismissal from service,<sup>37</sup> for in the second case and notwithstanding the termination of service the Civil Service Regulation states in Article (177/a) thereof that: "The financial entitlements of an employee shall be paid to him pursuant to the provisions of this Regulation and the relevant laws and regulations in case his service expires or is terminated in any of the following cases: dismissal from service." Moreover, resulting from this punishment is that "it is impermissible to re-appoint the employee who is dismissed from the job in any department, however, it is permissible with the approval of the president of the Civil Service Bureau to allow the employee who was dismissed in accordance with the provisions of Clause (2) of Paragraph (a) of this Article or those included by the general amnesty or whose status is rehabilitated to apply for employment in the Civil Service."<sup>38</sup>

Moreover, Article (19) of French Law Number 634 issued on 13/7/1983 stipulates that the disciplinary power is the entitlement of the quarter that has appointing power,<sup>39</sup> and this underscores and confirms what is stipulated in the French Employment Law number 244 issued on 4/2/1959 which the law of 13/7/1983 supplements and complements, and the French law grants the administration the power to impose the sanctions of warning and reprimanding without consulting any quarter,<sup>40</sup> while the more severe punishments including the punishment of ending the professional relationship it may impose it upon engaging the opinion of the joint administrative committee which includes equally representatives of the employees and the administration, and in case the administration imposes the

---

<sup>37</sup> Ahmad Hiasat, *Disciplinary Sanctions Imposed on the Public Service and the Consequence of their Extreme Application on the Administrative Decision*, p.73.

<sup>38</sup> Article 172/d of the Jordanian Civil Service Regulation.

<sup>39</sup> Article (19) de la loi n ° 634 du 13/07/1983 **portant droits et obligations des fonctionnaires** [https://beta.legifrance.gouv.fr/loda/texte\\_lc/LEGITEXT000006068812/](https://beta.legifrance.gouv.fr/loda/texte_lc/LEGITEXT000006068812/)

<sup>40</sup> Ali Muhareb, *Disciplining in Public Office*, p.292.

punishment contrary to the opinion of the committee in such case the employee is entitled to present his grievance before the Higher Council of Public Service within a month from the date of being notified of the decision of the imposition of the punishment,<sup>41</sup> and hence the higher administrative chairman represented by the person of the president of the French Republic or the competent minister or the head of the facility is responsible for signing all the punishments stipulated in Article (30) of Law 4/2/1959 including the punishments of terminating the professional relationship, and the only restriction which the administration must abide by is to consult the committee referred to, and the opinion of this committee is not binding on the administration.

Finally, the transfer of an employee is considered among the most prominent applications of disguised disciplinary sanctions in the Jordanian and French administrative judiciary, given that the administration possesses discretionary power to issue decisions to transfer employees so long as they aim to achieve the public interest, and hence the spontaneous transfer is considered an internal measure to which resorts the administration to achieve the public interest, without relying in the process on a disciplinary error from the employee, where the administration might utilize the transfer procedure in order to organize work activity based on its management of the public facility, but it could actually impose a punishment on the employee without following disciplinary procedures, as is the case in adopting the transfer decision with a view to concealing the original purpose or aim, and worthy of mention is that the measure of transfer differs from the measure of disciplining, for the administration possesses discretionary power in its adoption of the transfer procedures with limited guarantees for the employee in this case if not their non-existence, while the authority of the administration is limited by particular parameters, and the employee in this regard has numerous guarantees, which is what impels the administration to be rid of the restrictions and guarantees of disciplining, and resorting to a means that is easier and more secure for it, and perhaps the decisive judge in considering the transfer decision to be a disguised disciplinary punishment is the judiciary which determines based on the conditions and situational components, that the intention of the administration is inclined to

---

<sup>41</sup> Article 6 of French Edict Number 311 issued on 14/2/1959.

impose punishment on the employee.<sup>42</sup> In this context the French State Council faced this kind of punishments through numerous cases such as the Bidault<sup>43</sup> case and the Ferrand<sup>44</sup> case, but the mission of the administrative judge could be strenuous and profound.<sup>45</sup>

The French administrative courts ruled to compensate a fire fighter in the position of the director of the service of the fire department in (Calvados) district in France for being subject to a disguised punishment. In summary the case had to do with a fire fighter and after eight years in his position began to receive several criticisms of his job performance, and while receiving training for a period of 9 months he was transferred to another position and his job became vacant, and his request to be restored to his position as the fire department manager was rejected. The fireman submitted the dispute to the “Caen Administrative court” which revoked the transfer decisions, and ordered the district (Calvados Fire and Rescue Department) to pay the sum of 18000 Euro as compensation for his various losses, and the fire and rescue services in Calvados appealed the decision before the administrative court of appeal in Nantes, which not only rejected the appeal but also increased the compensation amount to 31872044 Euro, and it ordered the Defense and Security Department in Calvados to pay this sum to the fireman, and in fact the court found that the plaintiff was subject to a disguised punishment, and the court stated firstly that the disguised punishment is characterized by when the protagonist intended actually to punish the employee, and the concerned decision negatively affected his job situation, and the court also stated that the new tasks assigned to the concerned person are not concordant with his rank and he fell under the responsibility of another person, which manifests the intention to penalize the employee, We deduce from this that the rejection of restoring the plaintiff to his position, and appointing him to a position that is not consistent with his grade has actually revealed a disguised disciplinary punishment which generates the right to claim compensation.<sup>46</sup>

---

<sup>42</sup> Bawadi Mustafa, Application of Disguised Sanction in the French, Algerian and Kuwaiti Disciplinary Domain, p.37.

<sup>43</sup> .E, 11/6/1993, bidault, no 105 576. Cite par pierre BANDET, L'action disciplinaire dans les trios fonctions, 3 edition, Berger-Levrault, paris, 2001, p.25.

<sup>44</sup> C.E , 4 fevrier 1994FERRAND, no 98 233. Cite par pierre BANDET, p. 26.

<sup>45</sup> CAA Bordeaux, 3 avril 1997, « *Commune de Port-Vendres*.

<sup>46</sup> CAA Nantes 16 mars 2018, n° 16NT00748, SDIS du Calvados.



Moreover, the ruling of the Jordanian Supreme Court of Justice also stated that “the administration may issue a decision to transfer the employee from one position to another so long as the position to which he was transferred is not less than the position from which he was transferred where the underlying cause is the public interest, and so if it becomes evident to the court from the circumstances surrounding the issuance of the transfer decision that the individual of the administration aimed for a purpose contrary to the public interest then the decision would be marred by the defect of misuse of authority, and entails a disguised disciplinary measure, and hence the transfer of an employee from a purely technical job to an educational job that differs from the job he held insofar as qualifications and the conditions of appointment to it, and it therefore follows that the transfer was not based on keenness for the public interest, but rather to impose a punishment on the employee without following the procedures of disciplinary punishment which makes it marred by misuse of authority.”<sup>47</sup>

The transfer of an employee is not a disciplinary measure. The administration possesses discretionary power in its adoption of the transfer procedures with limited guarantees for the employee, whereas for disciplinary sanctions the authority of the administration is limited, and the employee in this regard has numerous guarantees. This second kind of action frees the administration of the restrictions and guarantees of disciplining, allowing it to resort to a punishment that is easier and more secure for the administration. The judiciary decides whether the transfer decision is a disguised disciplinary sanction based on circumstantial and situational components, including whether the administration intended to punish the employee.<sup>48</sup> The French State Council considered this type of punishment in numerous cases such as the Bidault<sup>49</sup> case and the Ferrand case.<sup>50</sup>

In another well-known case, the French administrative court ruled to compensate a firefighter in the position of the director of the service of the fire department in the Calvados district for being subjected to a disguised punishment. In summary,

---

<sup>47</sup> Publications of Center of Justice, Ruling of the Supreme Court Number 363/1995 Five Member Judging Panel, date 4/2/1996.

<sup>48</sup> *ibid.* p.37.

<sup>49</sup> CE, 11/6/1993, bidault, no 105 576. Cite par pierre BANDET, *L’action disciplinaire dans les trios fonctions*, 3 édition, Berger-Levrault, Paris, 2001, p.25.

<sup>50</sup> CE, 4 Février 1994 FERRAND, no 98 233. Cite par pierre BANDET, p. 26.

the case was about a firefighter who after eight years in his position began to receive several criticisms of his job performance, and while receiving training for a period of nine months he was transferred to another position and his position was declared vacant. The firefighter's request to be restored to his position as the fire department manager was rejected. The fireman submitted the dispute to the Caen administrative court which revoked the transfer decision and ordered the district (Calvados Departmental Union of Firefighters) to pay a sum of €18,000 as compensation for his various losses.

The court found that the plaintiff was subject to a disguised punishment and stated firstly that the disguised punishment is characterized by the protagonist intending to punish the employee and the decision negatively affecting his job situation. The court also stated that the new tasks assigned to the concerned person are not concordant with his rank, which manifests the intention to penalize the employee. We deduce from this that the rejection of restoring the plaintiff to his position and appointing him to a position that is not consistent with his rank has revealed a disguised disciplinary punishment that generates the right to claim compensation.<sup>51</sup>

Moreover, the ruling of the Jordanian Supreme Court of Justice also stated that:

[...] the administration may issue a decision to transfer the employee from one position to another so long as the position to which they were transferred is not less than the position from which they were transferred and where the underlying cause is in the public interest, and so if it becomes evident to the court from the circumstances surrounding the issuance of the transfer that the administration aimed for a purpose contrary to the public interest then the decision would constitute misuse of authority, and entails a disguised disciplinary measure [...]<sup>52</sup>

## VI. Conclusion

After examining the disguised disciplinary sanctions and the extent of their legitimacy the study reached a set of findings and conclusions represented in the following:

---

<sup>51</sup> CAA Nantes 16 Mars 2018, n° 16NT00748, SDIS du Calvados.

<sup>52</sup> Publications of Center of Justice, Ruling of the Supreme Court Number 363/1995 Five Member Judging Panel, date 4/2/1996.

- The administrative authority is circumscribed by applying the codified disciplinary punishments represented in notification, warning, deduction from the basic salary not more than seven days a month, suspending the annual raise for a one-year period, suspending the annual raise for a period of three years, suspending the annual raise for a period of five years, dismissal from service, and layoff and dismissal.
- Codified disciplinary measures are defined as a type of punishments emanating from the Public Service regulation which are imposed on the employee ascribed to whom is the commission of the disciplinary violation by the disciplinary authority competent to discipline him and deter other employees, and those punishments aim to disclose the defects of administrative work and guarantee the sound operation of public facilities.
- The codified disciplinary sanctions are divided into moral disciplinary sanctions, financial disciplinary sanctions, and exclusionary disciplinary sanctions.