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Privacy of the investigation and disciplinary trial before the police judiciary of the ministry of interior

(a comparative study)

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1. Introduction:

The disciplinary system in the human resources sector generally and in police sector particularly is an urgent necessity in any state for its impact on the political, economic and social system, this latter shows more effectiveness due to the source of disciplinary authority represented in the dependency relationship of policemen and security officers to the Ministry of the Interior and due to the privacy of presidential relationship in which this latter is subject under a police system mixed of the legal, administrative and military frame. This privacy aroused the interest of UAE legislator in the same way as legislators in Arab and Western comparative regimes, primarily the French legal system, where attention is drawn to identify and adjust the security and policemen obligations towards the authority used whether local police units or Ministry of the Interior under the administrative trusteeship whose breach means the trigger of disciplinary responsibility.

In this context, it should be recalled that the purpose of discipline in general is not to retaliate against the guilt of the officer but rather to correct their conduct in order to achieve the purposes aimed from labor relation, i.e. maintaining the good functioning of the institution as well as the public facility. Disciplinary system is one of the penal systems influenced by the notion of authority and punishment; because it defines the body specialized in signing the legally defined sanctions in addition to the work duties left thus who committed this disciplinary mistake have to be punished, on one hand.

On the other hand, the Emarati legislator did not ignore the security and policemen rights concerning the legal guarantees that are able to protect them from the administration abuse, to ensure the professional stability by pre-censorship over these bodies and by identifying the disciplinary mistakes and their penalties in advance, in addition to censorship afterward practiced by the administrative authorities specialized at the level of the Ministry of the interior and judiciary bodies to make sure that those authorities did not deviate or abuse in punishing the guilty police officer as an additional guarantee. This is the main purpose behind our selection of this topic, to study the privacy or the specificity of investigation and disciplinary trial in front of Directorate of Police Justice of the Ministry of the Interior as a result of the significant role played by the latter with its quasi-judicial institutions especially Police Investigation Commission and Police Court to maintain its order and good function and what reflects on the level and quality of disciplinary judgments issued in this regard.

Federal Law No. 12 of 1976 regarding the police force and security, supplementing and amending the provisions of Federal Decree-Law No. 31 of 2019, and Federal Decree Law No. 1 of 2008 regarding the civil service of the Ministry of Interior, supplementing and amending the provisions of Federal Decree-Law No. 32 of 2019, Ministerial Resolution No. 109 regarding violations of the rules of conduct and its penalties, as amended in some of its provisions by Ministerial Resolution No. 145 of 1997, as well as amended in its provisions by Ministerial Resolution No. 8 of 2016, and Executive Resolution No. 12 of 1977 regarding investigation procedures for violations of the rules of conduct and Executive Resolution No. 13 of 1977 Regarding the formation of disciplinary boards and the trial procedures before them, Ministerial Resolution No. 619 of 2015 regulating some investigation and disciplinary procedures at the Ministry of Interior, and Ministerial Resolution No. 542 of 2013 regarding amending the system of employing non-national civil servants in the Ministry of Interior issued by Ministerial Resolution No. 78 For the year 2009, and Ministerial Resolution No. 62 of 2016 regarding orders and instructions regarding appearance and grooming. Federal Law No. 6 of 1989 amending and supplementing Federal Law No. 12 of 1976 previously mentioned, Ministerial Resolution No. 109 of 1989 regarding violations

2. The difficulties of study:

The major difficulties of this paper are gathered in the novelty of the subject itself. The establishment of the Directorate of Police Justice in the Ministry of the Interior under the Cabinet No. 37 in 2008 regarding the organizational framework of the Ministry of Interior, where the ministerial decree No 508 of 2015 was enacted to reorganize the Judicial Police Council and the second article was set to establish the Police Investigation Department and Police Court at an administration level since it stated that the Judicial Police Council constitutes of organizational units of the deputy, administration of Police Investigation , Police Court, as well as the ministerial decree No.509 in 2015 that stated the reorganization of the legal affairs in the Ministry of the Interior and the general command of Abu Dhabi police where the fourth article stipulating that the Judicial Police Council runs the proceedings related to investigation and enacting judgments in severe misconduct at the level of Interior Ministry, and the general command of Abu Dhabi police and mobility of units and workers in this domain to the Police Judicial Council, did not exceed few years before the establishment of Police Court or Police Judiciary in Dubai about two years ago. This explains the lack of academic and scientific papers related to Police Justice in the state of UAE.

Even the references associated to this topic were very few and not focused in the way needed to show its technical aspects. Finally, one of the research difficulties is the intensity of the legal and regulatory texts and the great flexibility with which they were characterized because of the many amendments made to them, what suggests the legislator's willingness to set an objective and strong legal system to punish the policeman, and to pursue all available legal guarantees.

3 The importance of study:

This study aims to know the scope of enacting the objective procedural rules in the discipline area for security and police officers of Ministry of the Interior. The authorities competent to investigation and trial particularly the police investigation and Police Court in the Directorate of Police Judiciary were informed with procedures and guarantees issued before the Disciplinary Accusation Authority and Disciplinary Decision Authority, also it presented the terms of police disciplinary decision validity from the point of the legal form and procedures required in the Police Court of the Directorate of Police Judiciary.

Based on the information mentioned in the introduction, there is a big core question:

If the functional legal system of security and policemen and those in Minister of the Interior includes many of specificity and distinction elements comparing to the general functional system related to the federal human resources, especially in view of its adaptation of half administrative half military, so is the Ministry of the Interior tendency to set a distinct and specific institutional and legal system (whether by establishing special investigation commissions or Police Court of quasi-judicial composition) enough to observe and take into account the special and exceptional nature of federal police personnel and to build a structural and legal system that fits this nature and challenges assigned to the Federal Minister of the Interior ?

The rules of conduct and its penalties and its amendments, Ministerial Resolution No. 619 of 2015 regulating some investigation and disciplinary procedures in the Ministry of Interior, and finally Ministerial Resolution No. 8 of 2016 amending some articles of Ministerial Resolution No. 109 of 1989 regarding violations of the rules of conduct and its penalties.

The first chapter:

The legal framework related to the formation of Police Court and the basics of its disciplinary sentences

First section: the formation of Police Court and procedures of issuing disciplinary sentences

First sub-section: the formation of Police Court

A Judgment or sentence must be rendered by a court whose composition has been completed. Otherwise, it shall be invalid for reasons of public order. The judgment shall be rendered by the judges who attended all the hearings otherwise it is void as provided in Article 341 of Criminal Procedure Law. The judge who adjudicates the proceedings must have begun all procedures in accordance with the principle of oral proceedings. The absence of a judge, however, does not preclude their participation in sentencing in case of no pleadings or investigation procedures, like limiting the hearing to adjournment, for example, as well as in case of the judge is delegated to conduct a complementary investigation or a preliminary or preparatory judgment. The Police Court is formed to look into violations of the rules of conduct and duties, as Article (1) of Executive Resolution No. 13 of 1977 regarding disciplinary boards and trial procedures before them stipulates that disciplinary boards be formed to look into violations of the rules of conduct and duties according to a decision from the undersecretary after our approval of it. Article 82 of the federal law No.12 of 1976,regarding security and police force, states that disciplinary boards made by the Minister or their representative take in charge the disciplinary trial of those force members.(4)

Article 341 of the criminal procedure law stipulates that in the case of a given emergency that prevents the presence of one judge who attended the defense because of transportation, death or retirement, it must be reinstated, since the law does not allow the judge who did not listen to the case to sentence in it. Whereas, changing the Prosecutor does not affect the judgment validity in terms of procedural aspect in the presence of who do their job, the same goes with the court clerk.

While Article (2) of Executive Resolution No. 13 of 1977 concerning the disciplinary boards and trial procedures stipulates that the Police Court shall be convened by three officers, the one with the highest rank shall be the President of the Court.(5)

Article 341 of UAE Criminal Procedures Law in accordance with the latest amendments by Federal Decree-Law No. 28 of 2020

Article 1 of Executive Resolution No. 13 of 1977 concerning Disciplinary Boards and Trial Procedures p. 33

Article 82 of Federal Law No. 12 of 1976 regarding the police and security force

Article 2 of Executive Resolution No. 13 of 1977 concerning Disciplinary Boards and Trial Procedures p. 33

Article 11 of the decision mentioned earlier states that the court quorum is not complete without the presence of court members and Prosecutor. (6)

Second sub-section: The Proceedings system of the Police Court

After the trial and defense concluded, the court shall issue its decision to close the pleadings and open the proceedings, in which the judges shall withdraw to the Deliberation Room to discuss them, recall the evidence and see whether the facts are proven or not or not, to examine the indictment and discuss the motions and defenses as well as the applicable articles of law, and conclude the judgment of the proceedings in accordance with their conviction.

This is performed by the judges who have commenced all the case proceedings and listened to the pleading confidentially away from the audience, where the defense, clerk or anybody cannot attend, because violating this confidentiality invalidates the judgment. One of the most sacred judiciary duties is to maintain such confidentiality, and judgments are rendered by the majority's opinion.

Article 12, paragraph (a), of Executive Resolution No. 13 of 1977, concerning Disciplinary Boards and the proceedings, stipulates that disciplinary hearings shall be held in public, and the President may decide to conduct the trial in camera if they deem it appropriate. Paragraph (b) says that the assignee or the representative of the prosecution has the right to ask for the trial to be conducted in camera provided that he or she gave the reasons for doing so, and the President has the right to accept or reject the request(7).

Article 29, paragraph (a), of the same decision provides that decisions of the Police Court shall be issued unanimously or in the majority on behalf of the state governor and shall be signed by the court president and members. Paragraph (b) if there is a contrary decision, it must be recorded, written and signed by the opposing member and is included in the case file.Paragraph (c) the full case file is submitted to the Legal Counsel after the record of the proceedings has been signed by the Tribunal.(8)

Third sub-section: pronouncement of the sentence.

The pronouncement of the sentence is deemed the last procedures of the final investigation conducted by the court, thus it means the disciplinary sentence is issued verbally/ orally by the presiding judge or their representative from the draft judgment signed by the States of deliberation, since the original copy is not written yet, already the judges who looked into the case and deliberated the sentence must attend and each judge can change their opinion and ask for re-discussion in any moment before announcing the sentence. Some of those judges can be absent too, or another court body is able to pronounce the sentence since this latter was issued from the judges who attended the defense and signed the draft judgment. Article 85 of the Federal Law No.12 of 1976 concerning security and police force states that the decision of disciplinary council is based on the causes it is built on and it is not final yet until being ratified by the Minister or their representative.

Article 11, ibid, p. 36

Article 12 of Executive Resolution No. 13 of 1977 Concerning Disciplinary Boards and the Procedures for Trials

Article 29, previous ibid, p. 40

The associate may appeal against the disciplinary council's decision to the Minister during the 10 days after decision notification. Pronouncing the sentence includes the recitation of its utterance, its causes and the proved elements of the criminal act that accuse the charged, these causes are the basis of such judgment according to the Article 379 of the Criminal Procedures Law. The judgment , whether acquittal or conviction, shall be pronounced in an open session in the presence of the accused in accordance to the last paragraph of Article 309 of the Criminal Procedure Law even if the case was heard in camera otherwise the judgment is void in Article 314 of the same code. The judgment is sentenced in the defense session or the session next if the law did not set a specific time to announce it. It is also written in the meeting record and signed by the head and clerk of the court.

Article 12, paragraph (a), of Executive Resolution No. 13 of 1977, concerning Disciplinary Boards and proceedings, stipulates that disciplinary hearings shall be held open, and the President may decide to conduct the trial in camera if they deem it appropriate. Paragraph (b) the assignee or the prosecutor may request the trial to be conducted in camera providing the reasons, and the President has the right to accept or reject the request (10). Article 29, paragraph (a), of the same decision provides that Police Court decisions shall be issued unanimously or in the majority on behalf of the State Governor and shall be signed by the President and members of the Court. Paragraph (b), if there were a contrary decision, it should be written and signed by the dissenting member and be included in the case file. In paragraph (c), the case file shall be submitted in full to the Counselor after the record of the proceedings has been signed by the Tribunal. (11)

Second Section: The basics of Police disciplinary sentences

The issuance of the sentence is not complete by just pronouncing it, but rather it must be written down including certain data required by the law for it validity, taking into account the formal procedures established by law as always.

This is explained below:

Sub-Section one - writing the sentence

Jurisprudence and judiciary have landed on the rule which says that every judgment itself involves its elements of validity and compliance with the law, since it has to be built on correct procedures, so if the text omitted a given procedure means that it did not occur and cannot prove the opposite in any other way like the Registrars testimony. Whereas, any formal procedure proved by the sentence we assume its validity and none of the litigants can prove the opposite. We conclude, therefore, that the judgment must be built on evidences presented to the court through the case, so it is considered inoperative based on unsubstantiated matters during investigations and trial procedures. When the sentence is pronounced in an open session, it is recorded in the records of the meeting and the original copy of the judgment is edited. This copy is an official document irrefutable by appealing for falsification, the clerk writes down the sentence according to the records of the meeting and draft judgment edited by the president of the court or one of its judges.

9. Article 85 of Federal Law No. 12 of 1976 regarding the Police and Security Force

١٠ Article 12 of Executive Resolution No. 13 of 1977 Concerning Disciplinary Boards and the Trials procedures p. 36

11 Article 29, ibid, p. 40

13. Article (28) Paragraph (B) of the Executive Resolution No. 13 of 1977 regarding trial procedures before the Disciplinary Boards

It also stipulates the punishment imposed and the provisions of the law that are proportional and applicable to the act, in implementation of the rule of crimes and penalties legality. The omission to mention these texts invalidates the sentence. The court must also decide about all requests submitted to it by legal means, even if the operative does not expressly provide for the court's decision regarding requests, an implicit explanation is sufficient.

The pronouncement of the sentence entails that the latter be a de facto law specific to the case, what means that it highlights to the parties of the case the legal basis applicable to their relations, as well as the court's exhaustion of its authority over the case in respect of which a final judgment was rendered on the subject of the dispute, thus its exiting it from the court's possession and it may not refer to it, waive it, or change it. Whereas Article (6) of the Executive Resolution No. 13 of 1977 regarding trial procedures before the Disciplinary Boards stipulates that disciplinary Boards shall be formed and take their decisions within the limits set for them under the provisions stipulated in this resolution. Each board is dissolved after the issuance of the decision in the case for which it was formed. A disciplinary board may always be formed if working conditions so require. (14)

Article 85 of the Federal Police and Security Force Act No. 12 of 1976 provides that the decision of the Disciplinary Board shall be made on the grounds on which it was built and shall not be considered final until the Minister ratifies it. The affiliate may appeal against the Disciplinary Board's decision to the Minister within 10 days of the date on which the decision is reported.(15)

This general effect has a special one when a conviction is handed down because it is a particular legal phenomenon, since the acquittal is granted to a previous legal status, depending on the failure to establish or attribute the act to the accused, which means that, to the knowledge of the judge, the accused was not subject to the rule of law.

This is a pre-judgment situation, while the conviction is different since it is established for a legal center with no decision, as part of it is a decision for a previous center and a second part is established for another center. Since the responsibility of the accused is to carry out the act ascribed to them, the sentencing is proof of a pre-sentence situation as opposed to the imposition of the sentence. Imposing the punishment after conviction is the formation of a new center, because the accused before the sentence was a person eligible for punishment if the criminal act was attributed to them, but with its issuance they are effectively subject to the punishment.

14. Article (6) of the same Executive Resolution No. 13 of 1977 regarding trial procedures before the Disciplinary Board p. 35

15. Article 85 of Federal Law No. 12 of 1976 regarding the Police and Security Force

Third sub-section: Causes for police disciplinary sentence

The grounds for judgment are one of the fundamental statements required by the legal provisions to ensure that they are serious about the search for confidence in the integrity of the truth. The jurisprudence is almost unanimous that the grounds for judgment reflect the evidence and arguments for the fact, the legal grounds and the rationale for reaching the conclusion of the judgment in terms of the accused's guilt or innocence. The courts are therefore obliged to state the reasons and evidence they have adopted as a source of their conviction. This is essential, both with regard to the rulings on the subject or prior to a ruling on it, where the litigants stand on the reasons that prompted the judge to take one point of view without the other one and provide them with a natural guarantee, as this makes the judge automatically motivated to scrutinize his opinion to formulate premises that logically lead to the result adopted in their judgment.

Thus, the cassation can exercise its control over the validity of the law application to the facts, which supports confidence in the integrity of judiciary, not to mention that the obligation to formulate those causes allows the accused to accept the judgment, whether conviction or innocence, and enhances their trust in the justice of that judgment and the judicial reference, and it also acknowledges that The victim is appointed regardless of the outcome of the sentence, and perhaps the biggest beneficiary of the causal and accurate judgment is the community, which considers one of its priorities that the innocent should not be convicted and the criminal should not escape the punishment they deserve.

The judgment causes are based on two types: legal and objective causes:

The legal causes are intended to indicate the incident's elements, its legal circumstances, and the legal provision applied to it. While the objective causes mean those reasons or evidences on which the sentence is built as an expression of the judge's conviction prove or disprove through their manifestation sufficiently and logically. Causes of judgment include another aspect; the response to the essential defense figures presented in the proceedings.

If the legal and substantive causes represent the positive arguments for the judgment, the response to the defenses amounts to a prior response and pushes the possible criticism of it, especially not editing the causes puts the sentence in the ground of invalidity. The examination of the sentence's causes requires the examination of causation as a legal principle, and thus also its elements as a statement of the incriminating fact and the applicable legal article, since it is difficult to deal with legal evidence without presenting the elements of the incident, its circumstances and the evidence of the responsibility of the accused party.

- **The validity conditions of the judgment causes**:

For the validity of the judgment causes, certain conditions must be found:

- **In terms of the nature of conviction:**

The court must identify the punishable incident, the legal elements of the crime derived from it, and any other circumstances in which the legislator is responsible for assessing the penalty in terms of severity or

commutation. The causes are insufficient; they merely refer to the evidences without listing it and indicating its content. However, the judgment is not void if the drive behind the crime is not mentioned since it is outside the elements and circumstance of the crime.

In the case of acquittal, it is sufficient for the court to indicate the elements and evidence that have established its conviction of the accused's innocence, because the omission of indictment's evidence does not affect the sentence as long as they do not carry what condemns the accused.

- **In terms of sufficiency:**

The causes must be comprehensive and adequate, including a response to every request or substantive defense produced in the case that would change the court's viewpoint before closing the pleading whenever this request or defense was firm and explicit. If not, the court is not obligated to respond to every suspicion raised by the defense as long as the response is implicitly derived from not taking this defense and what it presented.

- **In terms of clarity:**

The causes for the judgment - whether acquittal or conviction - must be clear and unambiguous, not tainted by any contradiction, proportionate and in line with the findings of the court's opinion and what was stated in the sentence.

Second Chapter: the legal framework of the "administrative decision and Police disciplinary sanction" duality

First section: the pillars of disciplinary sanction in police offences

As it was explained earlier, the administrative decision related to the police disciplinary judgment is generated once it has the element of will, what means its existence or absence is associated with the intention and will of the administrative police body interested in achieving a particular legal result, regardless the extent to which this resolution meets the requirements for its validity and legitimacy, as in the case of negative and implicit decisions.

If the administrative decision concerning the police disciplinary judgment is born to satisfy the element of will, its legal existence is achieved, even if it can be revoked because just the absence of one of its elements. In contrast, if the decision does not meet the element of will, then there is no decision, even if all the other elements appear to be valid and consistent with the law. Therefore, it is clear that the decision existence is related to the disclosure of the police administrative authority of its will and intention to make a certain legal effect whatever the method of this disclosure or expression.

From the other side, the determination of the validity and eligibility of this decision is not linked just to the will element but to formal and objective conditions set already by the law to adapt the decisions validity generally. Thus, the failure of just one part of them is enough to make such decision illegal and revocable before the competent administrative judiciary.

Subsequently, we attempt through this chapter to study the elements and conditions of the administrative decision which include the external elements; form, procedures, jurisdiction, and the internal elements; cause, object and purpose, as follows:

First section: Form and procedures of the administrative decision related to the police disciplinary judgment

1. Definition:

If such decision is the means to express the police will to enact a certain legal effect, thus it must be in the way prescribed by the law, i.e. the appearance of this decision, procedures and steps followed by the public administration as determined in the laws and regulations in force.(16) Basically, there are no specific rules that determine the formalities and procedures ought to be followed in formulating the administrative

decisions related to the police disciplinary sentence which gives the public administration a broad discretion to choose the suitable form to express its will. However, some legal provisions may impose – on a certain range of administrative decisions concerning police disciplinary sentences- certain forms too to express its will so the administration here is limited to and obliged to respect the law, those forms and procedures.(18)

For example, the law requires that an administrative decision related to a police disciplinary sentence be written in a particular manner or model, as in the case with employment decisions which are required by law to be written and drafted in serial terms, including the selective conditions and procedures to which the employment file was subjected, or to cause and explain the decision like in the case of disciplinary decisions or decisions to dismiss a public official, where the law requires that the disciplinary reasons for the imposition of the penalty be included. On this basis, the failure of this corner makes the decision flawed and cancelable.

Also, in some certain cases, the law may require only certain procedures prior to the issuance of an administrative decision on a police disciplinary sentence, in which case the omission and negligence of such proceedings may affect the validity and integrity of the decision, render it defective of the form and procedures and therefore subject it to appeal to the administrative court by annulment. This is the case for disciplinary decisions or dismissal decisions, as the law requires that several internal administrative stages be followed before its issuance, especially consulting the disciplinary committee at the institution level, as well as its presidential committee at the ministry level, i.e. the Offenses Commission to enable the concerned employee to exercise the appeal at two levels with ensuring their rights to defense. (19)

In this regard, we should like to point out that the legal basis for the rules of form and procedure in the administrative decision of the police disciplinary sentence can be drawn from a number of sources, including the Constitution, organic law, ordinary law or regulations in their various forms. The judiciary has also made a substantial contribution to the creation of formal rules that are not provided for in the laws and regulations because of the cases exposed to it and the circumstances and data dictated by the spirit of law and principles of equality and justice.

16. CE, May 18, 1990, application number 91858, Armenian Association of Social Assistance (Rec. P.128; AJDA 1990, p.722, concl. Stirn)

17. This is what was expressed by the Federal Supreme Court in UAE in its ruling issued in 1993, saying: "...it is stipulated in the rules of administrative judiciary that it is not required in the administrative decision to be issued in a specific form or specific form, but rather that it is sufficient that It is issued by the competent authority within the limits and powers established for it by law, and that it fulfills its requirements, and there is no need to stipulate that it be issued in a specific form or formula...", Judgment of the Federal Supreme Court in Appeal No. 258 of Judicial Year 14, session 15-6 -1993.

19. In the context of requesting prior consultation before issuing the administrative decision and its impact on the legality of the latter, the French Council of State distinguished between mandatory

consultation, the neglect of which results in the invalidity of the decision due to defective procedures, and non- consultation, whose failure does not affect the validity of the decision. Among its applications to this principle are:

Second: The importance of the form and procedure pillar in the administrative decision related to police disciplinary judgment

Respecting the rules of form and procedures in the drafting the administrative decisions of disciplinary police sentences can achieve two interests at the same time; the public interest by requiring the administration to follow legally agreed norms what leads it not to rush to make false or improvisational decisions, and the self-interest through preserving the individuals' rights and freedoms from any sort of police administrative abuse. For example, there are certain legal procedures before the dispossession decision for the public interest especially the prior technical consultation and a fair guarantee compensation to the owner, including the protection and guarantee to the private property.

This principle is affirmed by the Jordanian Supreme Court of Justice in several provisions, particularly its 1988 judgment, which states that "the Administration must abide by the formal and procedural rules required by law on the grounds that the legislator intends to ensure the proper functioning of public facilities on the one hand and the individuals' interests on the other." (20)

The Supreme Federal Court of the United Arab Emirates also affirmed the same principle: "The rules of form and procedure in administrative decisions are determined by laws and regulations, because they are of great importance and are intended to protect both the public and individual interest, because they act as a barrier and counterbalance to the serious powers of the administration in this area. If the administration enjoys serious privileges in this regard, it must carefully follow the path laid down by laws and regulations to make such decisions in order to avoid slipperiness and haste and to grant them the reasonable opportunity to slow down, think, and study the different viewpoints... "21

CE, May 24, 2000, request number 204657, Superior Council for the Administration of Property: Dr. fisc. 2000, 40, 742; RJF 2000, 976). (CE, January 26, 2007, request number 276928, Syndicat geomatics professional prev Contracts - public procurement, 2007, 67, Zimmer note; Droit adm. 2007, 67, Marson note; AJDA 2007, p.244, Nicinski note ; LPA March 16, 2007, 55, note Glatt.- See also concerning the consultation of a joint technical committee: CE, March 12, 2007, request number 277979, National Environment Union.

20 Jordan High Court of Justice, Decision No. 152-87, Journal of the Jordanian Bar Association for the year 1989, p. 596.

21. Appeal No. 116, for the year 2010, session 16-6-2010. Sourced from www.ejustice.gov.ae

Second section: jurisdiction

1. **Definition**: As a result of the multiplicity and expansion of the Modern State occupations, the burdens and responsibilities of the administrative staff have expanded too, what made the separation of powers principles no longer limited to three powers only but it extended to separate the jurisdictions in the same power especially the executive power given the number of its centralized and decentralized institutions, regional and annex ones, its police sectors and administrative activities. Since the primary means used by the executive power i.e. the administration to exercise these activities is the administrative decision of the police disciplinary ruling, jurisdiction is a fundamental element in a such decision. This has manifested in setting this pillar and its rules of the public policy by the legislator themselves.22

   From this perspective, jurisdiction achieves a double benefit for individuals and administrations at the same time. For individuals, it allows them to know closely the authority competent to issue the administrative decision of police disciplinary sentence, so they can appeal easily. The jurisdiction rules help them also in knowing the internal organization of the police administrative body what enables them to access the parties they wish to deal with in a smooth way especially in the light of the complications of its different branches and sections.

   For administrations, including jurisdiction in the administrative decision related to police disciplinary judgment would push the overlap and job assault between its different agencies, as it allows the official to master their work through the practical exercise so the administrative efficiency named in the quality of service and speed of performance.

   In this regard, several definitions of jurisdiction have been included in the administrative decision on police disciplinary judgment, which has been defined by some jurists " it represents rules defining the persons and bodies that possess the conclusion of conduct,23 " while others define it " representing the established eligibility or capacity of the administration, or its own people, to make specific decisions in terms of its subject matter, place and time range, 24, or it is the power or legal authority of the decision-maker in making their decision in terms of quality, that is, the issues and subjects on which the decision may be made, the time to which the decisions may be made, and the place, i.e. the geographical or regional area in which the Department may conduct its activities . "25

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22. In detail, see - Kentawi Abdullah, Jurisdiction Pillar in Administrative Decision, Master's Note in Public Law, Faculty of Law, Abu Bakr Belkaid University, Algeria, 2010, p. 11. See also - Dr. Radwan Boudjemaa, Required in Moroccan Administrative Law, first edition, An-Najah Press, Casablanca, 1999, p. 182.

٢٣. Dr. Suleiman Muhammad Al-Tamawi, The General Theory of Administrative Decisions, Fourth Edition, Dar Al-Fikr Al-Arabi, Cairo, 1976, p. 312.

٢٤.Dr. Abdel Aziz Abdel Moneim Khalifa, Administrative Decision in the State Council Judiciary, first edition, National Center for Legal Publications, Beirut, 2008, p. 49.

Dr. Majeed Ragheb Al-Helou, Administrative Law, University Press, Alexandria, 1982, p. 475.

See also - Lombard Martine ,administrative law, 6th edition ,Dalloz, Paris ,2005, P 208 - 209.

Dr. Muhammad Marghani Khairy, Al-Wajeez in Moroccan Administrative Law, Part Two, Morocco House for Edition, Translation and Publishing, 2006, p. 256.

Second: Characteristics of the jurisdictional pillar of the administrative decision related to police disciplinary judgment

Here, we would point out that the jurisdiction pillar, if it represents the ability to engage in a particular administrative act, will not be based on an objective or factual source, whatever its nature or power of influence in the internal administrative system, but must be based on a specific legal source, regardless of the source's position in the hierarchical ladder of laws, whether it is in the primary legislation, ordinary legislation or organization. The important is to define the jurisdiction rules with the intervention or the permission of the legislator.

This has a number of consequences, the most important of which are:

1. **Jurisdiction is of the public order**.

Consequently, it is not permissible for the competent jurisdiction to agree with individuals to amend, change or dispense with these rules, as they are not designed for the benefit of the administration and cannot be waived at its will, but they are determined only by law. Therefore, it is possible to amend or delegate these rules to such texts only.

2. A claim of lack of jurisdiction may be raised at any stage of the annulment proceedings

The right to present such a claim shall not be extinguished by entering into the subject matter of the case or by proceeding with its various judicial proceedings. The judge shall also raise such an appeal and rule that he or she does not have jurisdiction on his or her own initiative, even if it is not raised by the applicant.

3. **-The Police Department may not violate the rules of jurisdiction**. It cannot do under the pretext of an urgency excuse, public interest or other excuses, except in cases imposed by the requirements for dealing with exceptional circumstances, under the supervision of the administrative judiciary.

Section 2: Internal Pillars of Administrative Decision on Police Disciplinary Provision

The internal pillars of the administrative decision on police disciplinary sentence are cause, object and purpose. Pillars that reflect the discretion of the public administration, unlike the external pillars, namely, form, procedure and jurisdiction, which are often precisely defined by the legislator, and hence the scope of the administration's use of its discretion in this area is very narrow and limited.

Sub-section I – Cause

Definition:

In theory, several definitions have been given of the cause as a pillar of the administrative decision. At the Western doctrinal level, it has been defined by the latter. George Vedel defined it "an inspirational motivation that merely raises the idea of a man of administration to take legal action27. For the jurist Waline, he defined it as representing the factual and legal set of grounds that occur away from the administrator, justifying and allowing them to intervene and make decisions to create a particular legal status, which they would justify in the public interest." 28. Debbasch the jurist pointed out also that "the cause in the administrative decision is the factual and legal status before the decision and which led the administration to intervene. 29. For Chapus, it is "the set of legal and factual elements that takes place first and already suggesting to the man of administration that they are able legally intervene and issue an administrative decision, in this case the cause is a necessary foundation for the administrative decision to be valid and legitimate. 30

27.Vedel (G), administrative law, T1, 12th edition, PUF, Paris, 1992, P 96 - 97.

٢٨.Waline (M) ,elementary treaty of administrative law, ed Sirey ,15th edition, Paris ,P 184.

.٢٩Debbasch (CH), administrative law treaty, Ed Economica, Paris, 2002, P 137.

30 Chapus (R), general administrative law, 5th Edition, Ed Montchrestien, Paris, 2001, P 246.

In contrast, the comparative administrative judiciary provided several definitions of the cause, the most important of which was the definition reached by the Supreme Federal Court of the UAE, which stated: "the cause is the factual or legal situation that leads the administration to intervene with a view to produce a legal effect that is the subject of the decision, and that the cause is not a personal or psychological element of the decision-maker, but rather an external objective element that would justify the decision ... existence of the cause has to be prior to the decision and exists until the time of its making. " 31.

Second – the distinction between legal and factual causes

Here, we point out that the legal causes of the administrative decision related to a police disciplinary sentence may take the form of a constitutional, legislative or regulatory provision, an administrative decision, a judicial sentence, a principle of common law or a customary rule, and in many cases it is sufficient alone to issue the decision without requiring to be linked to a factual situation. For example, when an employee submits a request to refer him to deposit or retirement, it is a cause for a decision by the administrative head to accept the deposit request in the first case, or to terminate the legal relationship that binds the employee to the public facility in the second case.

While by the factual causes, we mean the material circumstances beyond the control of the police administration and that push it to issue the decision, which can be classified into three categories, first, the causes that take a specific form or model, for example, the resignation demand which must be written according to the certain formal wording conditions. Second, the causes associated with the adaptation of a particular situation, for instance, floods, earthquakes or riot, all of which constitute a factual situation that prompts the administration to issue a curfew in the affected area in order to maintain public order. Third, causes related to a certain characteristic of something or an individual, for example, the case of a building that is dilapidated, which prompts the municipality to issue a decision to demolish it in order to preserve public security.

Third- the condition of cause in the administrative decision of the police disciplinary sentence

First condition: the cause has to exist until the day of making decision, i.e. the status or the material legal or factual incident on which the decision was based must already exist, on one hand. On the other hand, it must continue to exist until the time of the administrative, because the test in assessing the legality of the cause relates to the time when the decision was made. This is evidenced by an examination of the circumstances prior and subsequent to the issuance of such administrative decision, in order to reveal the existence or absence of facts on which the decision was built. If the cause for the decision was realized but disappeared before issuing the decision of police disciplinary judgment, the decision is flawed because there was no cause; like for instance a staff member modified their resignation demand and withdrew it before the administration's decision accepts it. 32

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31. Appeal No. 189, 2008, session 29-6-2008. Source: www.ejustice.gov.ae

32. The Supreme Administrative Court in Egypt expressed this condition by saying, "...the cause must be real and not fictitious or illusory, and legally fulfilling the legal conditions...." Judgment issued on 4/13/1957, which is the same principle adopted in The Federal Supreme Court in the United Arab Emirates, especially by appeal No. 189 of 2008, dated 06-29-2008, its source is www.ejustice.gov.ae

Article 81 of Federal Act No. 12 of 1976 on the Police and Security Force stipulates that directors who have been appointed by a Minister Decision may impose a penalty of warning, a pay deduction for a period not exceeding one month, simple detention for a period not exceeding fifteen days and imprisonment for a term not exceeding ten days after hearing statements of the offence and investigating their defense. The Minister shall have the power to impose the sanctions referred to in the preceding paragraph, and shall have the power, within 15 days from the date on which they are informed of the decision to revoke the Administrator's decision or to amend the penalties by tightening or mitigating them as they may revoke the decision of referring the offender to the Disciplinary Board. More severe sanctions than the first paragraph may be imposed only by decision of the Disciplinary Board. 33

Second Condition: the cause must be legitimate

This condition requires that the cause behind the decision of the Police Administration to be consistent with the law provisions, especially if the legislator identifies certain grounds on which the Administration must base its decisions. If the Administration relies on causes other than those specified by the legislator, its decision is entitled to repeal because of the illegitimacy of the cause. For instance, the revocation of citizenship decision has grounds specified by the legislator in the Nationality Act.٣٤ Article 28, paragraph (b), of Executive Decree No. 13 of 1977 on the composition of disciplinary boards and trial proceedings stipulates that the decision must be written and causative.

Section II: object

1- **Definition:** As we mentioned earlier, the administrative decision of a police disciplinary sentence is a legal act of a particular administrative authority aimed to create a new legal status, to amend or repeal existing legal conditions. On this basis, the object is one element of the administrative decision, the subject of the decision or the direct effect comes after, and therefore, it constitutes the core and material of the decision. The thing that distinguishes it from material work whose object is associated with external position or status imposed by the circumstances and requirements of reality.36

33.Article 81 of Federal Law No. 12 of 1976 regarding the Police and Security Force

34 - See - d. Khaled Khalil Al-Dhaher, "Administrative Law, a Comparative Study", first edition, Dar Al-Masira for Publishing, Distribution and Printing, Amman, 1997, p. 185.

٣٥- Article 28, Paragraph (b) of Executive Resolution No. 13 of 1977 regarding the formation of disciplinary boards and the trial procedures p. 40

36. Among the judicial applications that referred to the concept of object in the administrative decision, we mention the decision of the Administrative Chamber of the Supreme Court in Algeria issued in 1993, which stated: "… the object is one of the main pillars of the administrative decision, and it represents the center that the decision's will is directed to create. , as well as the immediate and direct effect, and this effect may take the form of creating a specific legal case, amending it, or canceling it...", the decision of the Administrative Chamber of the Supreme Court dated 9/12/1993 in the case of Mr. (JA) against the Minister of Industry Case No. 14264, Journal of the Supreme Court, No. 2, April 1994, p. 97.

This led some French jurisprudence to say that: "The object of the administrative decision is its spirit and essence. The other pillars are merely auxiliary or helpful to bring the object into being in its proper legal form". 37

The object of the decision is not short of three main outcomes: creation, amendment, repeal

* Creation as an administrative decision to appoint a staff member to a particular position, the object of this decision is the establishment of a new legal status, relating to the placement of the staff member where he or she was appointed, and thus the right to enjoy the rights associated with the post and to be bound by its duties, as well as decisions concerning the establishment of various public facilities and decisions involving the accreditation of private and other public associations and bodies.

* Amendment: Here, it is a matter of amending and changing the status of law that existed in the past, whether by increasing as an administrative decision to promote an employee, and then reviewing all matters related to promotion, like salary, bonuses, responsibilities, pensions, etc., or by granting a given association the status of a public-interest association, etc., or by decreasing as the decision to remove a staff member after a disciplinary decision against them, or by narrowing the powers of the mayor due to their negligence and inaction applying the solution principle.

*Repeal: here the content of the administrative decision includes the repeal and termination of a certain legal position that existed in the past, for instance, a decision to dismiss an employee from their job, so the decision here is to end the legal relationship that links the employee with the administration, and then stop all the consequences of this relationship, or the issuance of an administrative decision to close one of the shops because of seizing prohibited goods, so the decision here is to stop the business of the shop permanently or temporarily as stipulated in the decision.

Second – the object conditions in the administrative decision of the police disciplinary sentence

- ١ The object must be possible: This condition means that the legal effect of the administrative decision on police disciplinary sentence is factually or legally feasible. If the administration could not execute the object the decision will be non-existent.

The impossibility here can be factual or legal. Factually, for instance, the mayor issues an administrative decision to destroy the ramshackle house but this house collapses accidently before issuing the decision, the object here is –destroying the house- is technically impossible to achieve, therefore, the administrative decision itself is non-existing. For the legal impossibility, we can illustrate – for example- by issuing a decision of appointing an employee in an occupied position, or promotion of one in an occupation subject to external recruitment.

2- **The object must be legally permissible (legitimate):** That is, the legal effect resulting from the issuance of the administrative decision of a police disciplinary judgment is in accordance with the legal texts and rules in force, whatever their source is constitutional, legislative, regulatory, customary, or a principle of law principles. If the legal effect of the decision is illegitimate or opposes the general principles and legal provisions, the decision is flawed in its object.

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37. Chapus (R), op.cit, P 289 – 290.

Examples of administrative decisions that are flawed because of their object include organizational decisions that run counter to the principle of respecting public freedoms are many; a decision to transfer an employee to retirement on the basis that he or she has reached 60 years old but they did not, or the principle of equal rights and duties for citizens, such as a decision of depraving an employee of a regular vacation, or issuing a promotion decision without completing the required period ought to be spent in their previous ranks.

Concerning the administrative decisions pending on a suspended or revoked condition, they are not enforceable and have no effects until this condition is achieved. For instance, a promotion decision to an employee accused and referred to disciplinary or criminal investigation, so it won't be enforceable but pending until the acquittal is proved. The administration can also delay its decisions implications if it aims to achieve public interest, for instance, postponing the implementation of transferring or borrowing a policeman due to troubles in public security at the level of their original work area.

Section III - Purpose

Definition: The purpose or motivation of an administrative decision of a police disciplinary sentence means the result or purpose to which the administrator seeks to pursue the decision, or as the French jurist Bonar states: "The ultimate result sought by the Administrator through the direct effect of his work" 38. As for his comrade Lafrière defined it from the concept of purpose default saying:" the purpose default shall mean the public employee uses their administrative powers to achieve another goal than the one they entrusted with such powers." 39 On the other hand, the Algerian jurist Ammar Aouabdi defines it as "the far-reaching, final and indirect impact that the decision-maker targets in his decision. The objectives of the decision-maker are all about public interest".

The purpose is an internal psychological element in the source of decision. The purpose of the decision to appoint a staff member is to ensure the continued functioning of the facility. The purpose of the decision to issue administrative controls is to protect public order in its main dimensions: public security, public health, public safety, public morals, environmental protection and so on.

The purpose differs fundamentally from cause and object in the administrative decision of police disciplinary sentence, because the material and legal incident stimulated the official to issue such decision. The object is the outcome and immediate effect achieved just after the enforcement of decision, thus the object and cause differ from decision to another according to the decision content. In contrast, the purpose presents the final result aimed in all public facilities and is one for all administrative decisions whatever their form, subject, and nature. For instance in public service, the disciplinary decision issued to sign a sentence over an employee who violated a specific rule, its cause is the violation, its object is the sentence i.e. signing the sentence and its implication against the employee, however, the purpose is to deter the employee to not commit the same mistake in the future, all for the public interest manifested in the stability of police administration

38.Bonnard (R) ,Precise of administrative law, op.cit ,P 138.

39.Laférriére (E) ,Treaty of administrative jurisdiction and contentious appeals, Volume 2 ,17th edition, Paris ,1988, P 548.

40.Dr.Ammar Aouidi, ibid, p.166

Second: images of purpose in the administrative decision of police disciplinary sentence

1. **Targeting the public interest**: the power enjoyed in the administration is not a purpose itself, but a means to achieve the highest purpose represented in the public interest necessitated by the masses of public. If the administration deviated from this purpose to achieve personal interest like favoritism, political intention or revenge, so its decisions are flawed and subject to repeal before the judge of legality.
   In this context, the Court of Administrative Justice of Egypt has tried to determine what the public interest means by saying. "The common good does not mean the benefit of an individual, a team or a group of individuals. This constitutes a purely private good, as it does not mean the sum of the private interests of individuals. The mass cannot respond to similar things of the same nature and character, and such private interests are conflicting and contradictory, they can be added to each other to produce results for all. The public interest, so, meant to the group interest as a whole, independent and separate from its units..." 42
2. **Respecting the rule of aims allotment**: if the general rule requires that all administrative decisions of police disciplinary sentence with no exception must seek one aim: the public interest, there is another subordinate rule calls for targeting a specific set of administrative decisions of specific aims too designed in advance by the legislator pursuant to the rule of "aims allotment". These aims determine the administrative decisions of police disciplinary sentence issued from or to the targeted party, and if they deviate then they will be tainted by deviation from authority even if the administration claimed that it intended to achieve the public interest.

   For instance, the administrative control decisions for which the law sets the four aims to not be violated; they are maintaining public security, public safety, public health and public morals. If the administration violates these aims in its control decisions, these latter are deemed flawed and concealable.

   The rule of aims allotment is one of the stable rules in light of contemporary judicial trends, and one of its applications is the ruling of the French Council of State issued in 1972, which states that "The administrative decision of the Mayor of Artois to determine the public interest status of a plot of land owned by the Master "" Barron "is considered to be a flawed decision to deviate from the use of power, which should be rescinded. The Council found, through the circumstances of the case that the Mayor's declaration of the need to preserve the quiet nature of the population adjacent to the said land was not one of the aims for which it decided to confiscate for the public good. " 43

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41. Article 6 of Algerian Decree No. 88-131 of 4-7-1988, on the regulation of relations between administration and citizens, states: "The administration shall always adapt its functions and structures to the needs of its citizens.

42. Appeal No. 565 , Judicial Year 2000, Session 3-7-1969, cited by Dr. Musa Shehada, op. Cit., p. 307.

43. CE , 11-16-1972, Sieur Baron ,Rec, Leb ,P 167.

This rule was established by the Egyptian Administrative Court of Justice in a 1968 decree: "None of the measures or actions permitted by the street shall be taken in order to achieve another aim than the basic one to which the street is intended, even if that aim is for the public interest in its comprehensive sense, In application of the fundamentalist rule of "the aims allotment rule" and the penalty for violating that rule is the invalidity of decisions because of the defect to power, which is the failure of the administration to respect the purpose of the legislation. 44

The Jordanian Supreme Court of Justice also affirmed this rule in several judgments, in particular its 1986 judgment, in which it held that "The administrator shall pursue the purpose of his terms of reference within the meaning of the public interest. For personal or individual purposes unrelated to the public interest, his decision is deemed defective because of the violation of aims allotment rule and using his powers in other aim than the one was allocated, thus the decision shall be revoked. "45

٣ . Respect for established procedures:

The administration must respect the procedures established by law in order to achieve its aims. If it deviates from the administrative procedures necessary for the issuance of a particular decision, by following other procedures that are not appropriate for the aim wished, then that decision is defective of the abuse of power in terms of deviation from the procedure.

In order to avoid the lengthy and complex procedures required by the legislator to issue a particular type of decision, the administration usually uses this method of decision-making, for example, to resort to the temporary seizure of real estate rather than to the confiscation of property for the public benefit in order to avoid difficulties and complications in the process of dispossession or when it decides to assign a staff member, but in fact it is intended to punish them. It resorts to the assignment in order to avoid lengthy and complex disciplinary procedures for a public official.

Third: Defect of deviation in the use of authority

In this context, we will try to learn about the defect in the use of power by examining three main issues: defining its legal concept, highlighting its main characteristics and finally clarifying its images and manifestations .

This is as follows：

Definition: Several doctrinal attempts have been made to define the defect to the use of power, the most important of which is the definition given by the French jurist Bonnard. "The defect of deviating from power is the use of a particular administrative authority of its powers in order to achieve a purpose other than the one for which such powers were conferred upon it by law."46

And his fellow the jurist, Vodal, defined it as “the administrative authority’s use of its powers in order to achieve a purpose different from the one for which it was found.”

44. Appeal No. 1631, judicial year 2000, hearing 17.3-1977, unpublished .
45. Jordanian Supreme Court of Justice, Decision No. 68-86, Journal of the Jordanian Bar Association, 1990, p. 48 .
46. Bonnard (R) ,op.cit, P 356.

At the Arab level, the Egyptian jurist "Suleiman Al-Tamawi" defined it as "including the use of the administrator of his discretion to achieve a purpose not recognized for them". The Algerian jurist "Ahmed Mahiou" also stated" it includes the administrative body's use of its authority to achieve a purpose other than the one for which it was granted that authority." The same jurist adds that "in order to search for the defect of power, the motives that inspired the source of the decision must necessarily be sought. This makes us distinguish causes from the motives. Causes are factual or legal data, and constitute objective elements of justification for the administrative decision, while the motives are personal, because they are the result of the intention and inclinations of the decision source.

2 - Characteristics of the defect of deviation in the use of power:

We can limit the characteristics of the power deviation defect to five basic elements, namely, the backup characteristic, the intention characteristic, the combination of the deviation defect to the discretion of the administration, the deviation defect attached to the use of authority the purpose pillar in the administrative decision and, finally, the non-attachment of the deviation defect to the public system.
This will be addressed as follows:

A. The backup characteristic: this characteristic means the possibility to revoke the deviation defect in using power only if there is no other defect tainting the administrative decision. If the decision has one defect easy to detect like form defect or jurisdiction defect, it would have been more appropriate for the person affected by this decision to plead and raise the defect of deviation in authority as a backup in the case.

Jurisprudence justifies the backup feature of the deviation defect from the aspect of the difficulty of proving this defect compared to other defects that lead to the cancellation of the administrative decision, because the work tainted by it is usually a sound work in all its apparent aspects, but its interior is invalid because the source of the decision did not seek to achieve the good, rather, it seeks to achieve an aim or a personal interest completely far away from the specific purpose of the authority granted to it, and it constitutes a subjective and psychological motive for the decision-maker.

All these circumstances make the task of proving the deviation by using the authority a very difficult task, for the judge and for the litigant alike, because relying on it in order to cancel the decision requires revealing the true intention of the source of decision, for that the administrative judge prefers during their examination of the legitimacy of administrative decision to search for other legal errors affecting directly the decision legality, leaving the
Deviation defect in authority as a last resort, which can be relied upon as a backup.

B- The intention characteristic: one of the main characteristic of deviation defect using power is the intentional defect related to the official's will to target another purpose outside the scope of public interest with their knowledge. Thus, the administrative judge depends usually in adapting this defect in the administrative decision on two elements: intention and purpose, not on results.

47.Dr. Ahmed Mahieu, op. cit., p. 278 .
48 Ibid., p. 279.

In such a case, it is therefore necessary for the decision to be rescinded to have the intention of deviating from power at the source of the decision itself, and for the free will to deviate from their authority for a certain personal purpose, which was decided by the Algerian Council of State in several decisions. The most important one is issued in 2010 stating:" The abuse of power defect is one of the intentional defects. Its basis is that the administration, when issuing the decision, has the intent to abuse power and deviate from it. Therefore, the proof of this defect must be examined in the purposes of the decision source and not in the general facts because they are far from the purpose and objectives of the decision…" 49

C- Combination of deviation defect using the discretion power of the police administration:

To the effect that the deviation defect in the use of power is caused by the factors of choice and appreciation of the official, instead of using discretionary powers in accordance with the objective framework set by the law, and choosing the purpose sought by granting them the various administrative powers and privileges, they chose to abuse these powers to achieve a subjective end which does not comply with the public interest requirements.

If the law gives the official a certain space to use their discretion in order to assess and decide the administration's position on issues within the scope of its work, then this must be consistent with the spirit of the legal provisions and public interest. Therefore the discretion does not represent an absolute authority or allow personal and improvisational decisions. Rather, it is an authority restricted by law and for the purpose of the facility and its goals. If the administration man departs from this framework, their decision will be tainted by the abuse of power defect.

D- The deviation defect in using power attached to the purpose pillar in the administrative decision of police disciplinary sentence: there is a close relationship between the purpose element in the administrative decision of police disciplinary ruling and the deviation defect in authority. The deviation defect in the use of power cannot be raised unless the official targets a purpose other than achieving the public interest, or the purpose on which they were granted these administrative powers by virtue of the law. In the sense of violation, the administrative decision cannot be contested on the basis of the deviation defect in power due to the failure of one of the other decision pillars, such as jurisdiction, form, purpose or object which is the trend enshrined in the comparative administrative judiciary rulings.

E- The non-attachment of the deviation defect to the public system: This means that the defect in the use of power - unlike for instance, jurisdiction defect - is not from the public order, and therefore may not be raised or exposed by a judge on his own initiative. He must examine it only on the basis of a direct thrust from the challenging litigant.

Images of the deviation defect in using power

A - Deviation of authority to achieve the personal interest of the decision-maker or others: As we mentioned earlier, the decisions of the Police Administration have to be aimed at one purpose: to achieve the public interest. If it detracts from this framework by targeting or granting personal benefit

at the expense of the public good, it will be outside the scope of legality and inside the defect in the use of power.

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49.Decision mentioned by Dr. Cobtan Jamal Eddin, detailed in explaining the administrative law, Part Two, Administrative Activity, Dar Al Chihab, first edition, Algeria, 2015, p. 243.

A notable judicial application of this image was the 1938 decree of the French Council of State in the Ruthénois case, where the legal solution reached was that " The decision of the local council of Ruthénois City is seriously flawed, which requires repeal, because it was not for the public interest to facilitate traffic between the two countries (France and Switzerland), but the real motive is the personal interest of two members of the local council, to which the decision was passed and other members agreed in courtesy… "50

b- Deviation of authority out of revenge against others: In this image of deviation from the public interest, the policeman uses his dangerous legal powers to harm anybody because of the malice, hatred and personal grudges he has to them. Perhaps the most dangerous application of such a picture of deviation from authority is in the functional sphere, particularly with regard to the legal relations governing the organization and functioning of various public facilities, or matters relating to the rights and duties of employees.

One of its judicial applications was the 1978 ruling of the French Council of State in the case of Mr. Quintais. (PH), which states, “Since the mayor's decision to adjust working hours at the municipal headquarters would not have been aimed at organizing work and providing a better service to the public, it was intended not to empower the mayor's secretary.” As a result of the synchronization of teaching times with the new working times established by the Mayor's decision, the decision to amend the municipal working times is considered to be motivated by retaliation and has nothing to do with the public interest, making it defective to power. One of its judicial applications was the 1978 ruling of the French Council of State in the case of Mr. Quintais. (PH), which states, “Since the mayor's decision to adjust working hours at the municipal headquarters would not have been aimed at organizing work and providing a better service to the public, it was intended not to empower the mayor's secretary Mr. “Kanti” to start his additional work as a teacher in one of the schools, due to the coincidence of teaching times with the new working hours specified by the mayor’s decision. There fore the decision to amend working hours in the municipality is considered to be motivated by revenge and has no relation with the public interest. That makes it tainted by the defect of deviation from power.51

C - Deviation of power for a political, partisan or religious motive: every Constitution of the world stipulates that the principle of impartiality and integrity of police administration, which is one of the fundamental principles guaranteed by the Constitution and enshrined in laws and regulations governing public service, means that a man shall always be impartial and objective in the performance of his or her duties, and that all actions undertaken by them in the course of their function shall be aimed at the same purpose: the public interest. If their actions fail to achieve such an end by targeting the same personal interests and objectives of political or partisan nature, then they are deemed flawed and subject to repeal.

This can be seen when the administration issues its decisions for partisan purposes or political purposes away from the public good, such as the appointment of members of heavy parties in the State to public services at the expense of their political opponents,

50 C.E, Le 2-2-1938, conseil municipale de Ruthénois, Rec, Leb, P 127.

51. C.E ,On 19-2-1978, Sir Quintais (PH) ,Reb, Leb ,P 385.

52. This principle is enshrined in article 23 of the Algerian Constitution of 1996 (amended and supplemented), which states: "The impartiality of the administration is guaranteed by law." This principle is enshrined in article 41 of Ordinance No. 06-03 of 15 July 2006, containing the General Basic Law on the Civil Service, which states: "An official shall exercise his functions honestly and without prejudice."

or the administration uses its legal authorities prevent a rally on the pretext, for example, of blocking traffic, which is actually intended to prevent a political meeting opposed to the Government.

One of the judicial applications relating to this matter is the issuance by the administrator of decisions on religious grounds, which is also one of the most serious defects in administrative decisions, as well as the application in the French Council of State of its 1939 decision to rescind the Minister of Education's decision to dismiss Ms. Beis from her work as a teacher because of her religious beliefs, likewise its 1948 ruling overturning the Minister of Education's decision to dismiss Miss. Pasteau worked as a social assistant in the school health department because of her religious beliefs. 54

D -Deviation of authority for defrauding the law or disrupting the execution of judicial sentences:

In this case, the reason for the judiciary to repeal is the deviation of authority where the official is obliged to implement the law accurately and according to the will of the legislator who drafted it, not according to their personal will and self-interests. The generality and abstraction featured the legal rule make it address people equally and fairly to achieve the public interest, so if this rule has been distorted or interpreted outside its real sense and spirit in favor of one particular individual, group, or the department interest itself; the decision based on it will be defective.

Among the judicial rulings related to this issue, we mention the ruling of the Supreme Administrative Court in Egypt, which annulled the management's decision in which it circumvented the implementation of a judicial ruling issued in favor of one of the employees..55, and the summary of the case is that after a court ruling was issued to cancel the decision to dismiss a public employee, his administration used to place him in a rank lower than His previous rank, and when the employee in question filed his case before the courts, requesting to restore him to his original rank, the administration took the initiative to issue a new decision to dismiss him from service again, based on the same reasons it established in its first decision, which is what the judges of the matter considered a deviation of authority from by defrauding the enforcement of court rulings.

Among the judicial decisions on this issue is the Supreme Administrative Court decision of Egypt to overturn the decision of the administration to circumvent the execution of a judicial decision in favor of an employee. The summary of the case is that, following a judicial sentence overturning the decision to dismiss a public official; his department placed him at a lower level than his previous rank. When the employee in question filed his case before the judiciary requesting to return to his first position, the administration took the initiative to issue a new decision to dismiss him from service again, based on the same reasons established in its first decision, what the judges of the case considered a deviation of authority by circumventing the execution of court sentences. 56

53 C.E, Le 25-7-1939, MelleBeis, Rec, Leb, P 524.
54. C.E, Le 08-12-1948, MellePasteau, Rec, Leb, P 464.
55. Appeal No. 2265, Judicial Year 37, Session 27-3-1994, unpublished decision.
56. In detail, see - Dr. Musa Shehadeh, ibid., p. 310.

Conclusion

In the end, we conclude that the disciplinary responsibility for the employees of the Ministry of Interior in the United Arab Emirates has witnessed rapid developments during the last period of time, which suggests the determination of the leading authorities in the Ministry to establish precise and focused rules in the field of investigation and disciplinary trial in order to achieve objectivity and justice, and in the light of the system The policeman whose legal meaning is mixed between the administrative framework and the military framework, it was necessary for the UAE legislator to search for appropriate legal solutions to balance the two previous adaptations, the administrative reference adaptation whose foundations derive from the Federal Human Resources Law and the internal regulations and regulations of the Ministry of Interior that are concerned with maintaining the military nature of personnel Police and security.

Once again, we note that the purpose of focusing and strengthening the foundations of disciplinary responsibility, especially for employees of the Ministry of Interior, is not revenge against the guilty police and security man, but on the contrary, the purpose of the operation is a disciplinary and corrective purpose for his behavior, in order to achieve the desired goals of the work relationship, that is, to maintain the proper functioning of the institution as well as The proper functioning of the public facility, and the disciplinary system is one of the punitive systems that is affected by the ideas of authority and punishment, in order to determine it by the competent authority to impose the legally defined penalties, in addition to its determination of the job duties that the leaver is punished and considered to have committed a disciplinary error that requires punishment, on the one hand.

But disciplinary responsibility does not include only the procedural and punitive aspect, but also includes several standards and means to ensure the rights of police and security men, especially those related to legal guarantees to protect it from the abuse of the administration, and this is to ensure professional stability within the police and security

units, especially through the desire of the Emirati legislator along the lines of Comparative legislation to lay the foundations for tribal oversight over the presidential administrative bodies authorized to move and direct disciplinary follow-up on the one hand, in addition to predetermining disciplinary errors and their penalties in advance, and on the other hand, post-monitoring exercised by specialized administrative bodies at the level of the Ministry of Interior, as well as the institution of the police judiciary as well as the Federal Supreme Court In order to ensure maximum objectivity, transparency and justice in the field of trial and disciplinary follow-up for employees of the Ministry of Interior.

Through this study, we reached several results that we try to summarize as follows:

1- There is a fundamental amendment to the specialized legal legislation related to disciplinary responsibility, as in the past, investigation and trial procedures were organized by disciplinary committees, which were formed and empowered temporarily with investigation and trial functions, but the situation created significant deviations in application due to the weakness of legal specialization, especially procedural for these committees. As well as giving priority to the personal aspect over its work, which necessitated the establishment of the Police Judiciary Directorate in the Ministry of Interior in accordance with Cabinet Resolution No. 37 of 2008 regarding the organizational structure of the Ministry of Interior, followed by the issuance of Ministerial Resolution No. 508 of 2015 related to the reorganization of the Police Judicial Council, as well as Ministerial Resolution No. 509 of 2015 2015 related to the reorganization of the legal affairs activity of the Ministry of Interior and the General Command of Abu Dhabi Police.

2- The disciplinary decision issued by the presidential authority for minor violations or the disciplinary decision issued by the police court for serious violations are all administrative decisions in the legal and technical sense of the administrative law, and therefore they are subject to the same means of litigating illegal administrative decisions, especially state or presidential administrative grievance and appeal Judicial, and administrative or judicial appeals in disciplinary decisions include prejudice to the absence of one of the pillars of the legality of the administrative decision, especially the defect of jurisdiction, defect of form and procedures, defect of location, defect of reason, and finally defect of purpose or what is called in the common expression defect of deviation in authority.

3- The Ministry of Interior has tended to strengthen and audit the disciplinary trial systems for its members, especially by adopting almost the same legal systems applied in the field

of judicial trials for disciplinary offenses, especially by adopting two different frameworks for disciplinary follow-up. An independent subject, emphasizing the incompatibility of dual appointments in the two bodies in order to ensure impartiality and objectivity in the investigation and trial. The disciplinary case, as well as all the guarantees established to protect the rights of the policeman under investigation. These guarantees include the objective legal standards established to protect him during the investigation as well as the legal standards and mechanisms established to protect him also during the trial to ensure a fair, impartial and transparent trial and respect all dimensions and elements of administrative legality.

On the other hand, this study allowed us to come up with a number of recommendations and suggestions that we can summarize as follows:

1- It is clear that the efforts of the Ministry of Interior in the field of auditing and strengthening the legal systems related to disciplinary responsibility were directed at establishing a semi-administrative quasi-judicial structure that is independently concerned with the subject of investigation and disciplinary trial, which is the Police Judiciary Court, as well as the investigation bodies that work under its supervision. This structural distribution of functions and powers is The highest achievement of comparative legislation, especially French legislation in the field of disciplinary trials for police and security personnel, but the gap that still prevents the police disciplinary system from reaching the prospects that the Ministry of the Interior aspires to is the recent experience of this system, which is reflected in the lack of legal training specialized in The field of formation of investigation and judgment bodies in the police judiciary, and for this we recommend the need to focus on the element of legal specialization in the field of selecting investigators, prosecutors and judges in the police court.

2- It is generally accepted in practice and practice that the ruling issued by the Police Court in the field of issuing disciplinary penalties is a ruling of a judicial nature, especially in view of the composition of the police court, which is very similar to the composition of the ordinary courts, as well as following the same systems and procedures of the traditional trial, in particular the presentation The facts, ensuring the right of defense for the accused, and finally the deliberations and the issuance of the verdict, but on the other hand, we must not forget that the composition of the investigation bodies and the court’s ruling body are made up of individuals who belong to the Ministry of the Interior, meaning that they are

members of the police and security forces, and in this respect they constitute an administrative body in addition to adapting them as a judicial body in the manner The aforementioned, and that is why we recommend the possibility of applying aspects of administrative appeal in the rulings of the Police Court, in particular the presidential administrative appeal before the Minister of Interior or the Undersecretary of the Ministry of Interior, as the case may be. which was filed directly before the Federal Supreme Court if it can be settled internally, and finally this solution will allow time to gain in the field of Handling disciplinary cases.

3- We recommend intensifying the legal awareness of the police and security personnel of the mysteries and secrets of the police disciplinary system and the effects of disciplinary violations, not only on the internal framework of the Ministry of the Interior, but for the whole substantive system of public life, which affects the stability of the administrative life of the police unit or the ministry, as well as the social life of individuals, i.e. companions, and this end We believe that the way to reach it is to organize specialized internal training courses, seminars and workshops, with keenness once again to enhance the job training of military personnel working in investigative and court bodies through programming intensive training courses for them, in addition to creating reasons and means for competition among them in the field of practical quality. On the other hand, the deportation of individuals suspected of involvement in acts related to revenge against the policeman arrested for personal reasons far from the requirements of the public interest, whether at the level of the police disciplinary investigation or the police disciplinary trial.