Disciplinary administrative decision reasoning  
between theory and practice  
(Comparative Study) 

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(Comparative theoretical study)

Summary of the Study

This thesis studies the topic of the disciplinary administrative decision reasoning between theory and practice, a comparative study between three countries [Bahrain, Egypt and Kuwait] in accordance with the provisions of the Civil Service Law on reasons for imposing disciplinary penalties on public servants, and according to the guarantees approved and granted by the legislator and the jurisprudence to the employees with the aim of ensuring justice, as well as protecting the employee's right to challenge decisions and claim compensation, in case the authority has been shown to be unfair in its decisions.

The importance of the study can be attributed to the fact that it is one of the few studies that try to present the subject in the form of explaining and analyzing the attitudes of the three countries under study towards such points.

The subject of this thesis has been addressed in a preliminary and three chapters, including the disciplinary decision and its relation to the administrative decision at the first place. Thus, the preliminary defines the decision in general before addressing the main topic, namely, reasoning. Under the first topic of the preliminary, I discuss two points, definition of the administrative decision in terms of language and concept, in which I review the opinions of jurists, and the judicial concept of the administrative decision, and develop a general image of its definitions in the countries under study. I also focus on the conditions of the validity of the administrative decision in general, being an individual action subject to legal control and issued by the administrative authority. At that point, I refer to the difference between the decision of the individual authority and the national authority, and then address the legal consequences of the administrative decision.

Then, I move on to clarify the criteria that distinguish the administrative decision from the judicial actions, and I discuss the same idea through the decision where the criterion of form is the objective criterion that focuses on the nature of the action, in terms of whether it is regarded as a spontaneous action or subject to the nature of work. Therefore, I make a distinction between administrative decisions and legislative work.

I then address the concept of the legal status and its purpose, being public, objective, private or personal. I then review the idea of legal acts in terms of being legitimate, personal or conditional acts. This is a prelude to the second point, namely, elements of the administrative decision in general. Here, I discuss the form elements and their meaning (the jurisdiction element and its divisions: Competence of a court ratione personae. In this context, I explain the concept of delegation with a focus on the fact
that there is no delegation without a written notice. That is why I turn on to talk about its types and emphasize the fact that delegation must be explicit as there is no delegation of responsibility and explain the concept of commission and solutions. I talk about (Competence of a court ratione materia, ratione temporis and Competence of a court ratione loci).

The discussion turns to the decision maker’s exercise of his jurisdiction throughout the region, and also to the identification of the legislator for the spatial scope over which the jurisdiction is exercised.

Then I address the (form element) and the impact of faulty drafting element and the faulty procedures.

The second subsection focuses on the reasoning of the administrative decision in general before turning to the disciplinary decision. Here, I address the reason element, and then differentiate between reason and reasoning and after that discuss the reasoning of the administrative decision and the fact that it is an external aspect, with the emphasis that it is regarded as being one of the components of the form element.

The validity element is then discussed, and here I review the conditions of the acceptable valid decision.

The purpose element is dealt with after that, and my focus falls on the deviations of authority in terms of the decision’s inconsistency with the public interest, or its failure to meet the goals.

In order to highlight the importance of the disciplinary decision reasoning as having a fundamental role in uncovering the intention of the administration and the factual and legal situation underlying the decision issued against the employee, the first chapter deals with the basic aspects of reasoning the disciplinary decision and reviews the concept of disciplinary decision. It also addresses the types of disciplinary offenses punishable by law. This distinction may have been of importance in determining the types of offenses. Next, the chapter distinguishes between the disciplinary offenses and other crimes. Here, the elements of the disciplinary offense are reviewed, and the difference between the disciplinary offense and the civil error is stated. The disciplinary decision is discussed in terms of its elements and sources, and finally the relationship of the disciplinary law to the administrative law is highlighted.

I initiate the second section with a presentation of the definition of the legal character of reasoning, then I discuss the distinction between reasoning and similar legal concepts, after that the legal basis for reasoning the disciplinary decision is highlighted. I then talk about the importance of the disciplinary decision reasoning and the role of judicial control. I highlight the importance of setting guarantees for the public servant, through showing the importance of the disciplinary decision reasoning for the disciplinary authority. I then clarify the relationship between the disciplinary decision reasoning and the judicial control. I then move on to discuss the role of reasoning in the judicial control over the reason of the decision, and the role of reasoning in the judicial
control over the authority deviation. I finally introduce the role of reasoning in exercising the judicial control over procedures deviation.

The second section deals with the importance and types of disciplinary decision reasoning, where I address the importance of reasoning for the administration, and show the controls of reasoning that must be taken into account when making the decision. Then, I move on to the importance of reasoning for adversaries, next the importance of reasoning for the applicant being the third side in that process, and the importance of reasoning for making a just judicial judgment. In the second subsection, I list the types the disciplinary decision reasoning, in terms of its obligatory nature (optional or compulsory) and then the disciplinary decision reasoning in terms of its source (legal or judicial: as being legitimate and realistic) and then I discuss the disciplinary decision reasoning in terms of reasoning time, due to the fact it is regarded to be at the heart of the decision. And therefore the idea of oral decision or referral decision is avoided, and finally I study reasoning in terms of being agreeable, consistent and clear in terms of the content.

The second chapter deals with the controls and limitations of the disciplinary decision reasoning and the first section discusses the elements and conditions of the disciplinary decision reasoning, while the first subsection presents the elements of the disciplinary decision reasoning. The legal consideration of the incident, form consideration and its elements are discussed in the same subsection with an emphasis on the form consideration so that reasoning may have its effect. I then study the defective jurisdiction in its three forms (competence of ratione temporis, competence of ratione loci, and competence of ratione material), which is divided into simple jurisdiction and serious jurisdiction). Next, I deal with the form and procedures in the administrative decision, after the law violation defect, then conclude with the purpose at the end of the subsection.

I propose in the second section the conditions of the validity of the disciplinary decision, where reasoning must be related to the core of the disciplinary decision and I exclude the idea of oral decision, as well as the idea of reasoning by referral, therefore, the reasons for the disciplinary decision should be serious and clear. These are some of the validity conditions in terms of the administration, as for status in the administrative law, it has several conditions for its validity, for example it must be legally permissible and materially possible.

The second section is entitled “scope of the disciplinary decision reasoning” of which the first subsection focuses on the concept of non-commitment on the part of the administration to reasoning its decision, the content of the concept and the basis of the concept to clarify its meaning. Then I review the confidentiality in the work of the administrative authority, the presumption of legality accompanying the administrative decisions, and then the effectiveness of judicial control over the reasons for the administrative decision. Next I review the three categories in dealing with the retreat from the principle, and then mention cases of failure to reason the rulings made with the three types of evidentiary proceedings, to reason the referral ruling for investigation, and to reason the ruling for the inspection or questioning of an opponent or a claim of fraud. I then conclude the subsection with an emphasis on the necessity of reasoning the ruling of the application of one of the evidence procedures.
The second subsection is about exceptions to the concept of the administration's commitment to reason its decision. It outlines the provisional reasoning exemption, explains the meaning of temporary exemption from reasoning in case of absolute urgency, temporary exemption from reasoning in the case of implicit secret decisions, as an exception to the absence of the publication of the obligatory reasoning, while reasoning is still there, the confidentiality of the trials and the seven rights of the accused. The subsection is concluded by discussing the permanent exemption from reasoning.

The third chapter is entitled "Scope of judicial control over the disciplinary decision reasoning". In the first section, aspects of the illegality of disciplinary decision reasoning are presented. The first subsection deals with lack of material facts attributed to the employee. I discuss what the disciplinary offense means, and then presents doctrinal and judicial definitions of violation, and the elements of the disciplinary violation. I provide an example of the crime of bribery and the physical element of bribery. Elements of the exploitation of influence, the attempt to obtain the advantage of any public authority, the moral element in the crime of exploitation of influence, and the legitimacy element followed by the capacity element and the characteristics of the material element are all discussed in the same subsection. I also show how a crime is made, and I discuss the administrative judiciary control over the extent of material facts attributed to the employee, and finally conclude the discussion with proving to what extent lack of material facts is a reason for challenging the disciplinary decision.

The second subsection discusses the error in the legal adaptation of the facts attributed to the employee. I define the term legal adaptation and its importance in civil law and administrative law. Then I review the role of the judge to understand and relate these facts to his mental activity and I state the legal rule applicable to the three countries under study. Thus, I distinguish between the defect of insufficient reasons and the defect of the violation of the law, and after stating examples for clarification, I conclude the second subsection with the distinction between insufficient reasons and lack of reasons. The third subsection addresses the defect of deficiency in reasoning. I refer to the definition of deficiency in reasoning and flaws in reasoning in terms of the rulings. I define deficiency in reasoning and distinguish it from other defects, and set cases of deficiency of reasoning, where the evidence of the incident is not defined. I discuss the ambiguity of reasons, then state the legal text without specifying the facts that justify referring to that text as in the case of stating the reasons for the ruling in general. Next, I discuss the evidence that conflicts with the incident as in the case of the failure to investigate certain factual elements that are necessary for the judge's judgment, the failure to show the source of the incident and evidence of its existence, and the failure of the court to consider the dispute.

Then I address reasoning and its detection of defects in the laws and regulations, as well as lack of reasoning and violation of the right of defense and finally the character of flaws in reasoning.

Then I move to the forms of flaws in reasoning, where the judge's understanding of the incident and its evidence is not acceptable, arbitrariness in the conclusion, the judge's reliance on unacceptable evidence in making his judgment and then the judge's misrepresentation of the elements of the prosecution. I then list certain cases for such defect like reasonless rulings, partial lack of reasons and complete lack of reasons. I then show when defects occur for lack of sufficient reasons, discuss the withdrawal of
the administrative decision as a natural result of such defects, and conclude the subsection with talking about withdrawal as a means to avoid judicial appeal.

The second theme deals with the effects of failure to reason the disciplinary decision. The first subsection talks about the invalidity of the disciplinary decision. In that place, I address the invalid judicial decision and the nullified judicial decision. I set criteria (the criterion of usurping power and the criterion of the decision violation of the constitution), and I list cases of invalidity in the countries under study, and then I address the defect of the decision invalidity or its violation of the law, and conclude the subsection with a presentation of the error in the application of the law.

The topic of the second subsection is the claim for compensation, in which I discuss the definition of compensation, and the types of compensation (monetary compensation, compensation in kind, and moral compensation). Next, I turn to show how to estimate the compensation, and the basis of the compensation estimate, highlighting the main damage, and the sub-damage. The date of the award, the importance of the compensation claim, the characteristics of the claim for compensation in terms of the subject matter of the case, the power of the judge, the dates, form and procedures are then to be discussed. I finally conclude with the conditions required for accepting the claim.

A conclusion to this thesis, some recommendations and indexes are provided.