

## **Judicial Control of Proportionality in Administrative Justice - A Comparative Study**

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### **Abstract**

*This research focuses on the extent of judicial control over proportionality in administrative decisions, considering that administrative judiciary, in general, is a creative judiciary, based on the judge's discretion in examining the case files, even in the absence of explicit legal provisions that restrict and regulate its proceedings. This allows it to depart from the rule that states there is no crime or punishment without a legal provision, thereby opening the door for thorough examination of the merits of the case, which is based solely on challenging the legitimacy of the administrative decision. This provides space for the rights and freedoms guaranteed by laws and constitutional legislation to create a balance between the administration and individuals, serving as a barrier against any abuse by the administration in the pretext of implementing the law and regulations, without replacing it. Furthermore, it highlights the role of comparative jurisprudence in addressing the principle of proportionality and its significant and influential role in establishing this principle.*

**Keywords:** *Constitutional legislation, Discretionary power, administrative judiciary, Administrative decision, Judicial oversight.*

### **Introduction**

Judicial oversight of administrative decisions revolves around examining the legitimacy of the administrative decision based on its five pillars. However, the pillars of jurisdiction, form, and purpose limit the scope of the administrative discretionary power, as it is governed by clear laws and provisions that define its jurisdiction. The law determines the jurisdiction of each entity, and compliance with these determinations is mandatory. The form refers to the content of the decision issued by the administration, which involves respecting the formal and procedural rules specified by the law when a specific form is required. The purpose represents the objective that the administration seeks to achieve through its actions, primarily the public interest and the extent to which its decisions align with the legislative intent.

On the other hand, the pillars of cause and location require the administrative judge to thoroughly analyze them and assess their legitimacy. The administration should be based on a real cause and circumstance that compels its intervention and reveals its binding will manifested in the administrative decision, which leads to a legal effect that is permissible and possible. The location of the decision is known, and in case of any deficiency or deviation by the administration that necessitates intervention, the administrative judge is

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not helpless in administrative litigation if there is no specific provision to rely on. Instead, the judge creatively devises solutions to ensure the application of the principle of legitimacy and fill any gaps left by the law's shortcomings. The administrative judge plays a significant role by establishing legal principles that they apply to the cases brought before them, which distinguishes administrative judiciary from ordinary judiciary. One of these principles is the principle of proportionality, which aims to strike a balance between the administration's will and the consequences resulting from its actions, in order to restrain its abuse in a manner inconsistent with the principle of separation of powers.

Significance of the research:

The significance of the research lies in the judiciary's unclear and inconsistent stance towards the administrative discretionary power. This constitutes a shortcoming in terms of individuals' rights and freedoms, contradicting the principles of justice and the rights guaranteed by constitutions. The most important of these rights is the protection of these rights and freedoms and ensuring they are not violated. The legislature has created, in some cases, ambiguous legal provisions, resulting in a divergence in legal interpretation and creating a gray area regarding the causes and facts. This has led the administration to issue different decisions with varying legal consequences, despite the similarity of some of the circumstances, particularly in disciplinary decisions.

Study Approach

We will follow a comparative analytical methodology, highlighting points of divergence and agreement between judicial rulings, juristic opinions regarding the principle of proportionality, and the legislative and judicial developments in this field

Research problem:

The topic of judicial oversight of proportionality in administrative decisions raises several issues and problematics that can be presented in the form of the following questions:

- What are the limits of judicial oversight over administrative decisions?
- To what extent are the legal provisions and regulations leading to the administrative decision adapted?
- How is the balance between cause and location achieved in the administrative decision?
- The discretionary power and its contribution to the abuse of administration.
- Is it possible to restrict and limit the discretionary power?

By addressing these questions, the research aims to explore and analyze the complexities and challenges associated with judicial control over proportionality in administrative decisions

Search Plan

This research consists of an introduction and two sections, which are divided as follows:

Section 1: The concept of the principle of proportionality in administrative decisions.

First subsection: Defining proportionality and its relationship to the elements of administrative decision-making.

Second subsection: The legal basis of the idea of proportionality in administrative decision-making.

Section 2: Aspects of judicial control over proportionality and its scope.

First subsection: Aspects of judicial control over proportionality.

Second subsection: Areas of application of the principle of proportionality.

The first topic

### Concept of the Principle of Proportionality in Administrative Decisions

In this section, we address the definitions given by jurists for the concept of the principle of proportionality, its legal basis, and the pillars upon which the principle is based.

First Subsection:

#### Defining Proportionality and its Relationship to the Elements of Administrative Decision-Making

##### Subsection 1: Definition of the Principle of Proportionality Linguistically and Terminologically

Linguistically, proportionality is derived from the word "nisb" which means connection or relation, indicating a proportionate and shared relationship (1).

Terminologically, it refers to the concept used by administrative jurists to define the measure of conformity to the principle of proportionality. However, there are variations in its definition due to the diverse approaches adopted by different legal systems or jurisdictions (2).

One of the definitions in this regard is provided by Veidil, who defines proportionality as "the behavior where the administration commits itself not to impose burdens or damages on individuals more than what is required to safeguard the public interest entrusted to it" (3).

In the discipline of disciplinary actions, Dr. Khalifa Salem Al-Jahmi defines proportionality as "the estimation of the disciplinary punishment, both in type and degree, in line with the seriousness and gravity of the committed offense, thereby achieving an acceptable or apparent proportionality between them" (4).

In general, and in our estimation, the principle of proportionality is based on the balance between the cause of the decision, which is the situation or incident that falls outside the administration's will, necessitating the decision, and the effect of the decision, which is the legal consequence resulting from it.

Despite the consensus among jurists regarding the definition of the principle of proportionality, there is still disagreement regarding its relationship to the elements of administrative decision-making.

#### Second Subsection: The Relationship of Proportionality to the Elements of Administrative Decision-Making

It is known that the administrative decision has external and internal elements, just as the idea of proportionality is not linked to its external elements related to legitimacy from the pillar of jurisdiction and the element of form, because the authority of the administration in them is restricted. The idea of the pillars related to the internal legitimacy of the administrative decision (1) Represented in the pillars of purpose, place and reason?

##### A: The Element of Purpose (Goal)

The purpose or goal is the outcome that the administration seeks to achieve in pursuit of the public interest. If the administration deviates from its purpose, which is the public interest, and the decision is tainted with a defect in the purpose or an abuse of power, it falls under the scrutiny of judicial control. This scrutiny involves legal and substantive review. It is worth noting that the administration bears the burden of proof in demonstrating the achievement of this purpose, while the affected party is responsible for proving any malicious intent or deviation from the intended purpose of the decision (2). If the judge examines the documents and underlying aspects of the public interest sought by the decision, the challenging party must prove any malicious intent or deviation through various means, such as providing evidence of personal conflicts between them and the

administrative official. If such conflicts exist outside the official record, it is incumbent upon the judge to establish the deviation of the decision from its intended objective.

#### B: Legal Grounds:

It is the legal effect established by the administrative decision, represented by the establishment or modification of a legal center. The administrative decision is flawed with regard to legal grounds in the following cases:

- Direct violation of the legal rule.
- Legal error resulting from the interpretation of the legal rule.
- Error in interpreting the legal rule (3).

#### C: Causal Grounds:

It refers to the material and legal circumstances that compel the source to take action, and it is a cause that is beyond the administration's control, prompting it to take action in response. For example, a resignation decision may be caused by the employee's request.

Proponents of this approach argue that proportionality control in administrative decisions is a control over the cause in its maximum form. This ensures the assessment of the importance of the actual situation, its severity, and the level of proportionality between it and the outcome.

Originally, the role of administrative control was limited to supervising the legality of administrative decisions based on the conformity of the decision with legal norms. However, this concept has evolved to include the supervision of the cause and its development, meaning the control of the administrative action in relation to the development of the cause and its consequences. This expansion of scope resulted from the need to consider the development of the decision-making process and its effects on management. Thus, it entered the realm of administrative control to ensure the development of the cause in line with the management's objectives. However, this approach has led to the emergence of a new debate within the field of administrative control regarding the extent to which this type of control affects the legal guarantees for the management.

This discussion and its implications arise from the specific nature of the causal link, which is difficult to determine in cases where several factors influence multiple administrative decisions, particularly those related to public freedoms and disciplinary decisions.

#### The Second topic:

#### The Legal Basis of the Proportionality Principle in Administrative Decisions

##### First Branch: Legal and Practical Considerations

##### First: Legal Considerations:

##### 1. Gradation in mentioning penalties:

The purpose of the legal objective in administrative action is to ensure that administrative decisions are based on the assessment of the actual situation and the severity of the misconduct. In this context, the administrative judiciary emphasizes the importance of proportionality in administrative action with regard to the development of the cause and its consequences. This approach reflects the requirement that administrative decisions align with the management's objectives and comply with the principles of justice and the rule of law.

This principle is confirmed in the decisions of the administrative judiciary, particularly in its ruling dated 8/6/1963, in appeal case number 25/9. The judiciary stated that penalties should be commensurate with the offense, otherwise it would constitute an abuse of

discretionary power and violate the principles of justice. The inclusion of graduated penalties in the range of permissible sanctions reflects the need to consider the nature and circumstances of the offense, taking into account the principles of proportionality. Thus, it is essential to strike a balance that prevents excessive punishment and arbitrary measures, as the objective of such gradation is to ensure the appropriate match between the punishment and the proven offense committed by the employee (1).

Some jurists, such as Fuad Al-Attar, supported the issue of gradation in mentioning penalties to interpret the administrative judiciary's control over proportionality. They considered it a legal basis, arguing that when the legislator mentions penalties in a gradual manner, the intention is to assess the extent of the mistake committed by the employee. Therefore, they interpret the judiciary's rulings on proportionality in disciplinary decisions as being in line with the legislator's purpose of gradation in punishments (2).

However, this basis has been criticized by a group of jurists, led by the jurist Sulaiman Al-Tamawi. He believes that this does not understand the disciplinary crime, which differs from a criminal offense. Disciplinary crimes are not subject to the rule of "no crime and no punishment without a text." Instead, disciplinary authorities, under the supervision of the Council of State, are allowed to consider any act committed by an employee as a disciplinary crime if it does not comply with professional obligations. Therefore, disciplinary crimes cannot be predetermined and limited as is the case with criminal offenses. This may result in a separation between the disciplinary crime and the disciplinary punishment because it has become impossible to determine disciplinary crimes in advance. Consequently, it became impossible to assign a specific punishment to each disciplinary crime. However, on the other hand, the legislator did not intend to leave the disciplinary authority free to impose any punishment it wishes. Instead, the legislator only specified the types of punishments that can be imposed. When mentioning these punishments, the legislator is bound by the nature of things to start with the simplest and end with the harshest because this is the logical approach. Based on this, the gradation in mentioning penalties does not, by itself, indicate anything (3).

## 2. Violation of the law in its spirit and meaning:

Some jurists argue that the administrative judiciary's oversight of proportionality in disciplinary matters is based on the violation of the law in its spirit and meaning. However, this basis has been criticized, among the critics is Suleiman Al-Tamawi, who believes that the flaw of violating the spirit of the law is nothing more than a label for the abuse of power.

Thirdly, scientific considerations:

As for the proponents of this approach, their argument is that judicial oversight of proportionality in local arrest decisions is not interpreted in legal terms but in scientific terms. This is because local authorities, being elected authorities, are often driven by local circumstances to abuse their power.

However, several criticisms have been directed at this approach, the most important of which is the opinion of Dr. Tamawi. He believes that considerations of justice are flexible and undefined, and therefore, if they can guide the judiciary, they cannot determine its course (1).

Second branch: The constructive role of the administrative judge and the principle of legality.

Firstly, the constructive role of the administrative judge:

The administrative judiciary, in its essence, is a creative judiciary that relies on the judge's innovation and discretion when there is a dispute before them without a legal provision

regulating it. It is a burden that falls on their shoulders and grants them the scope to determine the appropriate punishment for the incident (2).

It is worth mentioning that alongside the authority limited by the law, there is the authority of the judge in creating new rules that define the jurisdiction of the administration and restrict its discretionary power within a certain scope. Therefore, some jurists have embraced the authority of the judge in establishing judicial rules as the basis for oversight of proportionality. Among these jurists is Dr. Essam Al-Barzanji, whose argument is that the oversight of proportionality in the field of arrest does not find its basis in legality but in the judicial rule established by the judge himself in this matter. He explains that the administrative judiciary, as a constructive judiciary rather than merely an applicative one, establishes a rule that requires the disciplinary measures to be necessary, essential, and proportionate to the importance of the circumstances that call for them. Based on this legal rule, the judge exercises their oversight over the appropriateness of the disciplinary measures taken by the administration (1).

Secondly, the principle of legality:

General administrative principles acknowledge that the discretionary authority of the administration is not subject to judicial oversight. Jurists express this principle by stating that the authority of the judiciary is limited to reviewing legality and should not extend to reviewing appropriateness. The judge is a judge of legality, not appropriateness. Based on this, some jurists have interpreted judicial oversight in administrative decisions as essentially a review of legality. According to the jurist Dugult, judicial oversight only occurs when there is a legal issue that the judge adjudicates according to the law. It should be noted that the law is not limited to what is issued by the legislative authority, but also includes general legal principles. Therefore, when the judge aligns the actions of the administration with the law in its broad sense, they are scrutinizing the appropriateness of these actions, but the oversight remains a review of legality (2).

## Topic 2

### Judicial Oversight of Proportionality and its Scope

In this topic, we will discuss the different aspects of judicial oversight of proportionality, as well as the theories and important areas of applying this principle in jurisprudence and comparative law.

#### First Demand

#### Aspects of Judicial Oversight of Proportionality

##### Subsection 1: Manifest Error (1)

Firstly, the definition of the theory of manifest error in judgment and its criterion:

##### A. Definition:

Jurist Kornprobst defined manifest error as "a tool of analysis that allows for more effective oversight of the assessments carried out by the administration in precise technical matters. It is based on a description of facts and is not related to material issues" (2).

On the other hand, administrative justice, particularly in France, defines manifest error as a clear and significant error in the legal assessment of facts. It is subject to judicial oversight, especially when the administration exercises its exceptional or discretionary authority. In cases where the administration enjoys such authority, for example, the appointment of a commander in the merchant navy in the General Inspection Office of National Libraries may be nullified due to a manifest error in the assessment, as the new commander lacks the required qualifications to perform his duties adequately (3).

Therefore, manifest error is the technical tool that administrative justice resorts to in exercising oversight over the discretionary power of the administration, particularly concerning the causal and territorial elements of the administrative decision. Thus, if the administration's assessment takes into account various circumstances and exceeds reasonable limits, it is tainted by a manifest error in judgment (4).

Hence, when overseeing manifest error, the judge does not rule on the assessment itself but on the mistake that affected this assessment. In terms of appropriateness, the oversight focuses on the appropriateness of this assessment, and thus the manifest error can be attributed to the principle of proportionality (1).

Based on the above, it is certain that manifest error is not related to the material existence or non-existence of facts.

B-Criterion of the Apparent Error Theory in Estimation:

1. Linguistic Criterion:

The apparent error is based on two elements: magnitude and clarity. Magnitude refers to the error being greater than a simple error. Clarity means that the error is evident and can be measured by the standard of an ordinary person. Therefore, the administrative judge does not need to conduct an in-depth investigation or inquiry into the facts to identify this error. However, it is essential that there is no doubt in the judge's conviction in order to determine the existence of an apparent error.

2. Objective Criterion:

Unlike the linguistic criterion, the objective criterion illustrates the extent of discipline or lack thereof in the administration's evaluation of the facts related to the subject matter of the administrative decision. This criterion is considered objective because it does not depend on individuals or their psychology in determining the apparent error. Instead, it is derived from the facts of the dispute and its circumstances. However, jurists have attempted to reconcile both criteria. Among them is Dr. Ramadan Batikh, who defined it as "an error that the judge perceives through his examination of the lawsuit file and the various circumstances in which this estimation took place, exceeding the limits of reasonableness and clarity to the extent of obviousness."

Secondly, the Reasons for Formulating the Apparent Error Theory in Estimation:

One of the reasons that prompted the judge to formulate the theory of the apparent error in estimation is his realization that his control over the facts on which administrative decisions are based is limited and ineffective. It is limited to verifying the accuracy of these facts from a material perspective, without addressing their legal adaptation by the administration. Therefore, the judge sought to rectify this by introducing the concept of the apparent error committed by the administration in its estimation of the facts. He established that such an error undermines the legitimacy of the decision issued as a result of it, as it renders the content of the decision beyond the bounds of logic and sound reasoning. This was done in an effort to resist the deficiency of control over some adaptation issues and to prove that the technical considerations were not merely a means for the administration to evade the legal rule.

Second Branch: Theory of Excessiveness (Ghuluw)

The Egyptian administrative judiciary, which was at the forefront in this regard with many of its judgments, addressed the term "excessiveness" as a legal term within the scope of its practice of oversight over proportionality in the disciplinary field. Many jurists have taken on the task of defining it. Dr. Abdel Fattah Abdel Bar sees "excessiveness control" as a control that imposes that there is a punishment, and this punishment should be disproportionate to the offense, whether it is excessive severity or excessive leniency. As for Dr. Mohamed Abdel Aal, he says that "the flaw of

excessiveness is when the punishment is visibly disproportionate to the committed offense, without labeling the decision as deviation, because the administration did not aim to achieve any other purpose than what it is obligated to aim for (3).

Third Branch: The Theory of Balancing Benefits and Costs:

First: The nature of the balancing theory:

In the face of increasing scientific progress and the complexity of scientific and technical issues, especially in economic fields, which has resulted in the broadening of discretionary powers of administration in those areas, administrative justice had to work on limiting the administration's arbitrariness and control over these issues, especially when it comes to confiscating funds and expropriating properties. This has led to the emergence of the theory of balancing between costs or benefits and damages.

Dr. Fouad Farhat defined the theory of balancing between benefits and damages as the comparison or balancing of the positive outcomes of a specific administrative management with the negatives it leaves behind. Therefore, this management measure is not considered legitimate unless its positives outweigh its negatives, meaning if its balance is positive.

Thus, we find that most of what relates to the theory of balancing between benefits and costs pertains to decisions of expropriation for the public interest.

Second: Criterion of the Theory of Balancing between Benefits and Damages:

1. Economic Criterion:

Economic benefit is related to achieving development in various sectors of the state. Therefore, it differs from financial benefit, which is pursued by the administration for financial purposes. The reason for considering economic benefit and recognizing it as a public benefit is the link between the economic capacity of the state and providing welfare to its citizens and improving their living conditions.

2. Financial Cost Criterion of the Operation:

The administrative judge, when evaluating a certain operation, must take into consideration the financial costs that will be borne by the executing entity of the project.

3. Criterion of Private Benefit:

The administrative judge, according to this criterion, compares between the damages that may affect individuals, i.e., private benefit, and the benefits that may result from the intended project. Private benefit refers to the benefit of an individual, such as the benefit derived by the owner from the use, exploitation, or disposal of their property, or the benefit of a certain number of individuals or a specific group, such as a union or association. This is opposed to the public benefit, which represents the benefit of everyone or the majority.

4. Social Criterion:

It refers to the social impacts that this project may cause, whether on individuals, the environment, or the framework of social life in general.

Second Demand:

Areas of Applying the Principle of Proportionality

First Branch: Public Function

This field may be the most prominent in establishing judicial control over proportionality because the judge has used the three means used in this regard. Therefore, each means should be clarified separately:



First: The means of apparent error in estimation:

Some jurists trace the origin of the theory of apparent error in estimation back to the decision of Denezet, while others attribute it to the decision of Lagrange. However, jurists agree that this theory began within the scope of the public function.

The French Council of State began implicitly using the theory of apparent error in estimation in its judgments without explicitly using a specific term to describe the error affecting the decision. Therefore, it was difficult to assert that the Council of State embraced it as a restriction that defines the discretionary power of the administration. However, for the first time, the term "clarity" was used in the judgment of Denezet.

In the early year of 1961, the Council of State explicitly referred to the content of the theory in its judgment of Lagrange in the field of job equivalence, going beyond mere allusion to it. Despite acknowledging this ruling, the Council considered that the administration has the power to reorganize the administrative apparatus, considering it more capable of doing so due to its expertise and knowledge in this matter. Nevertheless, the Council concluded in this judgment that the administration, although free to assess the establishment of job equivalence or its absence, this assessment should not be based on a lack of clarity (3).

Regarding disputes related to employee discipline, the French Council of State has traditionally refrained from reviewing the administration's assessment of the importance and seriousness of the cause, as well as the proportionality between the cause and the measures taken against it. However, it deviated from this position in its famous judgment in the case of Lebon in 1978. In this case, a teacher at the Toulouse Academy was accused of committing acts of indecency with his students. A decision was made to retire him, and when he appealed the decision based on the severity of the punishment imposed on him for the acts he committed, the Council of State rejected the appeal, stating that "it is not evident from the records that this punishment is based on an apparent error in estimation" (1).

Secondly: The means of exaggeration:

Originally, the Egyptian administrative judiciary emphasized the administration's exclusive authority to assess the appropriateness of the punishment for disciplinary offenses without any review. However, the administrative judiciary made exceptions for certain groups such as mayors, sheikhs, and students. It required that the punishments imposed by disciplinary authorities on these groups must consider the proportionality between the disciplinary offense and the punishment. The Egyptian administrative judiciary ruled on October 26, 1951, that the prescribed punishments in Article 24 of the Mayors and Sheikhs Law indicate that the legislator intended to measure the punishment based on proven wrongdoing. This implies that the severest punishment of dismissal should not be resorted to except in cases where mayors or sheikhs commit serious acts that correspond to the punishment (2).

The Libyan administrative judiciary also adopted the theory of exaggeration. In a case where a student challenged her expulsion decision on the grounds that the punishment imposed on her was more severe than the punishment imposed on her accomplice for the same act, the court initially rejected the claim. However, upon appeal to the Supreme Court, the court overturned the judgment and annulled the expulsion decision, opting for the same punishment that was imposed on her accomplice.

Despite these exceptions, the Supreme Administrative Court has clearly expanded its oversight over the proportionality of punishments and violations, establishing an important restriction on the administration's discretion in assessing appropriate punishment for disciplinary offenses, which is the avoidance of exaggeration.

### Third: Balancing between Benefits and Harms

The administrative judiciary considers the principle of balancing in administrative litigation, particularly in the field of administrative compensation. This principle revolves around weighing the interests of the administration against the damages suffered by the aggrieved party, based on the provisions of the legal system and the principles established by judicial precedents.

One of the notable cases in this regard is the case of S.A.F.E.R, where a worker challenged a dismissal decision before the administrative court. The court examined the case and concluded that the administration's decision lacked proper consideration of the employee's rights and imposed excessive harm, leading to the annulment of the administrative decision (1).

In Libyan judicial practice, this principle is also applied. One significant case involved a municipality issuing a decision to construct roads for public interest, including a route through farmland, causing harm to citizens and farmers. Despite the availability of public forests that could have been used for road construction, the Supreme Court ruled in favor of canceling the decision based on the appeal filed, under case number 44/39Q, on January 22, 1994 (2).

#### Second Branch: Public Liberties:

##### First: The Apparent Error in Estimation:

The theory of apparent error in estimation has been applied to numerous disputes in this field. Among them are cases related to agricultural lands, such as the Gesbert case, where the administration seized a piece of land owned by the party concerned in exchange for providing him with another piece of land. However, he believed that the quality of the offered land was inferior to his expropriated land. Consequently, he appealed the seizure decision, and the court ruled in his favor, annulling the decision. The Council of State also supported the ruling by examining the equivalence between the two disputed plots (3).

Furthermore, this principle has been repeatedly applied to various cases concerning public liberties, including the protection of foreigners in France. The French Council of State encouraged the application of the theory of apparent error in estimation in its monitoring of control measures concerning foreigners, whether related to their expulsion or procedures for obtaining citizenship.

##### Secondly: Balancing between Benefits and Harms:

Based on what has been previously mentioned in this research regarding the nature of the balancing theory, the area where this theory is most commonly applied is in decisions related to expropriation and their relationship to public liberties.

One of its applications is evident in the case of Grassin, where the administration intended to expropriate land for the construction of an airport in agricultural areas. However, the Administrative Court ruled that the expropriation decision for the public interest exceeded the benefits derived from the project due to the negative impacts on the local economy, the disruption of the village's resources and capabilities. Another airport was located just 50 kilometers away. Therefore, the Council of State decided to annul the expropriation decision based on the aforementioned reasons (1).

From this, we can conclude that the French Council of State was proactive in employing the method of balancing between benefits and harms in a sophisticated manner. It went beyond considering the personal harm to individuals and took into account the extent of the public interest sought through expropriation decisions and the long-term benefits associated with them.

## **Conclusion:**

While the legislature has granted the administration wide discretion in its decision-making authority, this power can lead to abuse and deviation from the correct path if its ultimate goal is far from the public interest and not based on sound principles. This applies to decisions related to expropriation, public liberties, and any misuse or misconduct in their exercise. The misuse of this discretionary power often occurs when the objective, reason, and scope of the administrative decision are distorted. This is where the role of the administrative judge comes into play. The judge has the ability to identify this flaw through legal assessment of the facts on which the administration relied upon when exercising its discretionary power. Furthermore, the judge can also oversee disciplinary decisions, especially if the punishment is disproportionate to the committed offense.

Therefore, when the judge exercises this oversight, they act as an appropriate judge to enter the realm of the administration's discretionary power as a judge of legality. This has led to the development of administrative justice in its scrutiny of proportionality in administrative decisions through theories such as apparent error in estimation, excessiveness, and the balance between benefits and harms.

## **Recommendations:**

1. It is necessary to work on intensifying scientific and academic seminars that address the principle of proportionality in administrative decisions and shed light on it.
2. We recommend that the Libyan administrative judiciary keep pace with the developments in the principle of proportionality, especially in the field of public liberties, and focus on the theory of apparent error due to the scarcity of its application in this area.
3. Legislative bodies should regulate the work of the discretionary power of the administration.
4. It is crucial for the administrative entities to consider the interests of the administrative recipients and take them into account when exercising their discretionary powers, by assessing the risks and ensuring that they are not harmed, and by providing them with the necessary support in dealing with discretionary decisions.

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