

Judicial Oversight of the Discretionary Power of the Secretary-General in Imposing Disciplinary Measures

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Abstract

Under the basic regulations, international public service regulations, and other administrative publications, the Secretary-General typically enjoys broad discretionary powers in areas such as appointments, promotions, terminations, and the imposition of disciplinary measures, as well as other authorities specified in these texts. Consequently, each legal system contains specific rules and standards of conduct that international employees must not violate. In the event that an employee fails to comply with their obligations or refrains from fulfilling them, they are considered in violation of their international duties, which requires the Secretary-General, based on their discretionary powers, to impose disciplinary measures. However, administrative stubbornness may sometimes lead to the issuance of a decision that, although it is fundamentally within the discretionary power of the administration, may adversely affect the employee's position in a way that contradicts justice. Therefore, international administrative courts have played a significant role in exercising oversight over the administration's discretionary power by restricting the issuing authority to the legal texts that granted it this right, using various methods that have been established through judicial precedents.

Introduction

First - Research Topic:

To ensure the smooth functioning of international organizations, two types of authority are required: discretionary authority and restricted authority. The discretionary authority of the administration, represented by the Secretary-General, is a legal power derived from the flexible legal rule outlined in the basic regulations and rules pertaining to international public service, which the administration is responsible for applying. This authority should ideally not be exceeded by the international administration, ensuring its use within the bounds of legality and the public interest, under specific controls such as the oversight of international administrative courts, including the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. These courts ensure that the administrative authority does not misuse its power.

Second - Importance of the Research Topic:

The importance of this topic arises from the significance and position of the Secretary-General of the United Nations as the highest administrative head of the organization. He stands at the top of the administrative structure and is responsible for all employees working within the organization and for the smooth functioning of the organization itself. Therefore, the Secretary-General's administrative role is just as important as his political role. To enhance and activate this role within the international organization, the Secretary-General is granted broad discretionary powers corresponding to his importance and position. However, in the case of abuse of this power, the exercise of discretionary authority becomes unlawful and thus subject to judicial review by international administrative courts.

Third - Research Problem:

The important role played by the administrative apparatus, headed by the Secretary-General, in efficiently managing the work of the international organization leads us to discuss a series of questions that constitute the research problem: Who is the Secretary-General? Is he considered an international employee who can resort to international administrative courts if a decision violates the terms of his employment contract? What is meant by the discretionary authority of the Secretary-General of the United Nations? What is the restricted authority? What are the discretionary powers vested in the Secretary-General? Are these powers absolute? Can they be delegated to his subordinates, considering that the United Nations is a global organization with a broad geographic scope? Can international administrative courts, including the United Nations Dispute Tribunal and the Appeals Tribunal, intervene to oversee the administration's discretion if

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the decision affects the legal status of an international employee? What methods have these courts used in this regard?

Fourth - Research Methodology:

The topic of this research requires the use of certain scientific methodologies, such as the inductive and analytical approach, by examining and analyzing specific legal texts related to international public service, highlighting their shortcomings and ambiguities. Additionally, the comparative approach will be employed by examining the judicial precedents of international administrative courts that have addressed the administration's discretionary authority and the oversight mechanisms applied to it.

Fifth - Research Plan:

To comprehensively address the research topic, the research will be divided into an introduction and two main chapters. The first chapter will focus on the definition of the Secretary-General's discretionary authority, which will be divided into two sections. The first section will clarify the concept of the Secretary-General's discretionary authority, while the second section will discuss the discretionary powers of the Secretary-General and how they are reviewed. The second chapter will be titled "Judicial Oversight of the Secretary-General's Discretionary Authority," and it will be divided into two sections: the first will address oversight over the reasons for administrative decisions, and the second will cover oversight over the appropriateness of disciplinary measures (proportionality review). The study will conclude with a summary of the key findings and recommendations aimed at strengthening the rules and regulations of international public service.

Definition of the Secretary-General's Discretionary Authority

To ensure the smooth functioning of international organizations and to achieve their goals effectively and flexibly, away from rigidity, the provisions and regulations of international public service, with their flexible texts, grant the Secretary-General broad discretionary authority in areas such as appointments, promotions, termination of service, and in the disciplinary field, to achieve this goal. Therefore, we will divide this chapter into two sections. In the first section, we will define the concept of the Secretary-General's discretionary authority, and in the second section, we will discuss the discretionary powers of the Secretary-General and the mechanisms for reviewing them.

Concept of the Secretary-General's Discretionary Authority

First, who is the Secretary-General? The Secretary-General is the highest administrative officer¹ in the organization and heads its administrative apparatus². He is appointed by either one of the two main bodies of the organization³ (the General Assembly or the Security Council) or by both of them together, as is the case with the appointment of the Secretary-General of the United Nations. The process for the appointment of the Secretary-General is based on the Charter of the United Nations, supplemented by the temporary rules of procedure of the Security Council from 1946 and the rules of procedure of the General Assembly from 1947⁴.

Furthermore, the selection of executive heads in the United Nations system, including the Secretary-General, is a decision made by member states. The terms of service for the executive heads of specialized agencies and the International Atomic Energy Agency are determined through elections, while the Secretary-General appoints the executive heads of the UN funds, programs, specialized bodies, and other entities, usually in consultation with their executive boards and advisory committees, with the General Assembly approving such appointments⁵.

In addition, the selection process for the Secretary-General is unique, justified by his political functions derived from Article 99 of the UN Charter, which take precedence over his administrative role⁶. The Secretary-General is assisted by a team of administrative staff, including deputies and assistants, who are selected by the Secretary-General himself according to the terms set out in the founding documents and their internal regulations.⁷ This process takes into account the need for expertise and competence, in line with the organization's objectives.

The internal regulations consider the discretionary and independent authority of the Secretary-General in making the final decision in the process of appointing the executive heads of the United Nations funds, programs, specialized agencies, and other entities⁸ .

Regarding the criteria for selecting the Secretary-General, the General Assembly emphasizes the importance of candidates for the position having, among other things, a commitment to the purposes and principles of the United Nations Charter, broad leadership qualities, and diplomatic administrative experience. Therefore, candidates for the position of Secretary-General are not required to meet other detailed criteria⁹.

The duration of the Secretary-General's term varies across organizations¹⁰. Some do not specify a term for the Secretary-General, such as the League of Nations, while others set a term in their charter, such as the Organization of American States, which is ten years. Some leave this matter to the organization's internal regulations, like the United Nations, where the General Assembly, by its 1946 resolution, set the term of the Secretary-General to five years, which can be renewed for another five years. The Security Council and the General Assembly have the freedom to amend the term of office for future Secretaries-General¹¹, which is the same term for the Secretary-General of the Arab League¹² meanwhile, the term is only two years for the Organization of Islamic Cooperation, and the Secretary-General of the Organization of African Unity was appointed for a term of four years. The practice has been to renew the Secretary-General's term upon the completion of the first term.

In practice, a five-year term is sufficient to ensure the stability and independence of the Secretary-General. We do not agree with extending the term beyond that, as in the Organization of American States, for several reasons. One of these is that extending the term could negatively affect the Secretary-General's performance, as they might move beyond the authority of the member states, feeling they do not need their support. Moreover, after five years, many circumstances may change, which may call for a change in the Secretary-General. Therefore, extending the appointment term could hinder the activation of the Secretary-General's role, and thus the activation of the organization's role¹³.

As for the conditions for appointing the Secretary-General, they have been determined by the United Nations General Assembly¹⁴. Meanwhile, the legislative bodies of specialized agencies and the International Atomic Energy Agency set the conditions for appointing the executive heads of these institutions. In some organizations, such as the United Nations, the International Atomic Energy Agency, and the World Health Organization, executive heads are elected and negotiate the terms of their appointment after the election, except in certain exceptional cases. Any changes or amendments to the terms of appointment must be approved by the legislative bodies of the organization. The conditions for appointing the executive heads of the UN funds, programs, specialized agencies, and other entities are equivalent to the conditions for appointing other senior UN officials at the level of Assistant Secretary-General¹⁵. However, in the case of the United Nations Secretary-General, the UN Staff Regulations and Rules apply to them, as well as other specific GUIDELINES. His rights and duties are outlined in the relevant provisions of the Charter, particularly Article 100¹⁶. The Security Council and the General Assembly have the authority to decide on terminating the term of the Secretary-General, as is the case for the legislative bodies of the specialized agencies and the International Atomic Energy Agency regarding their executive heads. Most organizations, such as the International Telecommunication Union, the World Health Organization, and the World Intellectual Property Organization¹⁷, have provisions that allow for the termination of the terms of their executive heads in cases of serious misconduct or other violations, including breaches of loyalty or other significant misconduct. To avoid any future disputes on this matter, the Inspectors of the Inspection Unit believe that United Nations institutions should also consider the rulings issued and to be issued by the Dispute Tribunal, the Appeals Tribunal, and the Administrative Tribunal of the International Labour Organization. For instance, in the case of the Organization for the Prohibition of Chemical Weapons, the former executive head was awarded compensation paid by the organization after a decision by the Conference of States Parties, which decided to terminate his term before its usual end. The decision was made on the grounds that the termination violated the terms of his employment contract and the general principles of international civil service law¹⁸.

Furthermore, the Secretary-General of the United Nations enjoys the diplomatic immunities and privileges granted to diplomatic envoys¹⁹. In addition, the administrative role of the Secretary-General is no less important than their political role²⁰. The Secretary-General is at the head of the organization's administrative structure, responsible for all the staff working within the organization and for ensuring the smooth functioning of its work²¹. Administration is usually granted powers that are subject to discretion, such as appointments, terminations, promotions, and other authorities specified by legal provisions. It is natural that the judiciary may review these administrative decisions to ensure they do not infringe upon the rights of employees or contradict principles of fairness, especially when it impacts the employee's status in a way that goes against justice. Therefore, courts have the power to intervene to correct such administrative decisions if they fail to uphold justice. This review can take place in several ways, such as requiring justification for the administrative decision under penalty of invalidation, examining the proportionality of the justification to the decision, ensuring that reasons do not contradict each other, and scrutinizing whether the administration, in its actions for the benefit of the organization, has violated fairness²². The Secretary-General has wide discretionary powers, allowing them to delegate some of their responsibilities. This delegation is usually allowed within the boundaries of what the regulations permit²³. As mentioned, what is meant by the administrative discretion of the Secretary-General? It can be defined initially²⁴, though this definition of discretion contrasts with the meaning derived from limited or constrained authority, which refers to the prior and mandatory determination of action, and does not grant the official the freedom of choice and discretion²⁵. Therefore, the essence of discretionary power in its broad sense is the legal empowerment to make decisions.

In the narrow sense, administrative discretion means that the administration has discretionary power when the law granting it these powers²⁶ in relation to its dealings with individuals leaves it free to decide whether to intervene, refrain from intervening, and when and how to intervene, as well as the content of its actions²⁷. Thus, the administration, under discretionary power, is free to make a decision or to refrain from making one, or to make a choice between alternatives and various actions, provided that the choice is based on the public interest and does not deviate from this purpose. If the administration acts improperly or deviates from this goal, the decision is considered unlawful. The legislator grants the administration this authority because it believes that the administration is more capable of choosing the appropriate means to intervene and make the appropriate decisions in specific situations, recognizing that no legislator can anticipate all possible administrative cases and propose solutions for each. On the other hand, restricted authority is based on the idea of administrative decision legality²⁸. Discretionary power means the choice between two or more alternatives or between a series of organized procedures²⁹. Discretionary power represents the freedom that the administration enjoys in its dealings with both the judge and the legislator³⁰. It is not in the public interest for administrative authority to become a mechanical tool that operates without considering the context or consequences. Therefore, the law grants the administration discretion, enabling it to act according to its judgment in the best interest of the public³¹.

While there is a difference between discretionary and restricted powers, the conflict between them is relative—it's a difference in degree, not in essence or nature. In reality, there is no absolute discretionary power in any area or competence, just as there is no restricted competence that is absolute. The existence of discretion in the administration does not mean it is completely freed from adhering to the law³², legitimacy, or oversight³³. This means the possibility of accompanying the decision itself³⁴.

Therefore, both legal scholars and administrative courts agree that discretionary authority does not imply absolute power. Submitting to absolute authority is illogical, and the administration's freedom to infer what is best for the organization does not exempt it from ensuring that its inferences are logical.³⁵ Not every reason for a decision is a valid and convincing reason. Only logical reasons can be justified, and only those are worthy of respect because they carry legitimate persuasive force. This was affirmed by the now-dissolved United Nations Administrative Tribunal on many occasions, including the Hamad case,³⁶ where it stated that the administration's discretionary authority is not without limits. The administration must act in good faith, respect procedural rules, and its decisions must not be arbitrary or influenced by factors that conflict with sound administration. In the same vein, the UN Appeals Court, in the Ortiz case against the Secretary-General of the International Civil Aviation Organization, held that while the administration possesses a

wide margin of discretion, its discretionary authority is not absolute. It must act in good faith and respect procedural rules. As a general rule, decisions cannot be based on grounds that are misleading, flawed, or unlawful³⁷. Similarly, the Administrative Tribunal of the World Bank in the (**De Merode**) case concluded that the Bank would abuse its discretionary authority regarding employment condition modifications if such changes were based on reasons not aligned with the functions and proper performance of the organization. Modifications should be based on a sound study of the relevant facts and should aim to ensure that employees possess the highest levels of competence and merit, carried out in good faith, and without inappropriate objectives, avoiding unnecessary harm to employees. In this regard, the court must consider all these factors in light of its discretion³⁸. There are terms that refer to the meaning of the administration's discretionary authority, such as optional, subjective, or even arbitrary. Since 2010, approximately 141 rulings have been issued by the now-dissolved EU Civil Service Tribunal³⁹, either explicitly or implicitly mentioning discretionary authority⁴⁰, often referred to as the 'wide margin of discretion.' The Service Tribunal confirmed this interpretation when it reviewed the Schönberger case.⁴¹ The Dispute Tribunal notes that the Pension Fund Regulations for United Nations Staff, in Article (45), use the word "may" as a reflection or indication of the Fund's discretion.

The administrative courts have emphasized the necessity of following fair procedures in making discretionary administrative decisions. Recognizing the right of staff members to fair procedures in discretionary decision-making holds particular importance, as it is often difficult to prove the existence of unlawful motives or diversion of decision-making for judicial review of a discretionary decision. Therefore, judicial review serves as an important mechanism to curb arbitrary actions by the administrative authority⁴².

The now-defunct United Nations Administrative Tribunal generally stated that exercising broad powers without adequate procedural safeguards inevitable leads to arbitrary restrictions on the exercise of any authority⁴³. Preserving the Secretary-General's authority to effectively and decisively manage and operate the Secretariat with flexibility and adaptability largely depends on adherence to procedural guarantees. In a very real sense, the method must serve as the measure of authority.

The common denominator among all discretionary decisions is the requirement to follow a "fair" procedure or "due process" when making them, particularly in decisions related to termination of service. It should not be understood that international administrative courts have granted organizations a blank check in exercising discretionary authority over their staff. Instead, they require that this authority be exercised in compliance with established controls, which constitute

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An example of this in international administrative tribunals can be found in the judgment of the United Nations Appeals Tribunal in the case of (**Abu Hamda**), where, as a general rule, administrative courts do not interfere with the exercise of discretionary authority unless there is evidence of illegality, irrationality, or procedural flaws⁴⁶. Similarly, the NATO Administrative Tribunal dismissed a case seeking to annul a

decision to abolish a position, ruling that such decisions fall within the discretionary authority of the administration⁴⁷. Therefore, such decisions are subject to limited judicial review and cannot be annulled unless they are made by an unauthorized entity, involve an error in law or fact, or constitute an abuse of authority. On the other hand, it is generally accepted that discretionary authority should not be confused with arbitrary authority⁴⁸. It need not be repeated here that discretionary authority does not mean arbitrary authority, as administrative decisions⁴⁹ often involve choosing between several options that all comply with the law. It is up to the administration to assess whether the relevant decision is appropriate. However, judicial bodies or courts should not substitute their decisions for those of administrative authorities.

Nevertheless, the application of international administrative law by judicial bodies is dominated by an unwritten principle: limited review of discretionary authority⁵⁰. The scope of "relevant administrative issuances" of international organizations, which regulate nearly every conceivable aspect of employment, does not entail a wide range of alternative outcomes. From the appointment of an international civil servant to the termination of their employment, the exercise of discretionary authority by the employing international organization prompts judicial bodies to limit the scope of their review.⁵¹ Judicial bodies consistently apply this approach. For instance, the judgments of the Administrative Tribunal of the International Labour Organization (ILO) state that the appointment of an employee by an international organization is a decision that falls within the discretionary authority of its executive head. Such decisions are subject only to limited review and can only be annulled if they were made without authorization, violated procedural or formal rules, were based on factual or legal errors, disregarded essential facts, involved abuse of authority, or if conclusions were clearly and demonstrably erroneous based on the evidence⁵². This approach is mirrored by every other international court. In other words, for a discretionary decision to withstand annulment, it must meet the following conditions: reorganization, promotion, reassignment, discrimination, sexual harassment, lack of due process, disciplinary measures, salary cancellations, and retirement are all areas where discretionary authority may be exercised. However, if such authority is abused, its exercise becomes unlawful. Judicial review of the administration's exercise of discretionary authority does not imply that courts can substitute their assessments or judgments for those of administrative authorities⁵³.

Additionally, the now-defunct United Nations Administrative Tribunal referred to well-established legal jurisprudence,⁵⁴ stating that the court cannot replace its own judgment with that of the administrative authority regarding the reorganization of positions and staff in favor of economic efficiency or effectiveness⁵⁵. However, administrative discretionary authority must be exercised lawfully⁵⁶.

Administrative courts worldwide continue to develop legal principles to help address the abuse of discretionary authority. While there can be no exhaustive list of applicable legal principles in administrative law, injustices, unreasonableness, illegality, irrationality, procedural irregularities, bias, inconsistency, arbitrariness, and disproportionality are some of the reasons courts may intervene in the exercise of administrative discretion, provided there is a valid reason to do so. This was also confirmed by the Administrative Tribunal of the International Labour Organization⁵⁷ in the case of **Ms. A.T.R. v. OTIF**⁵⁸. In the case of **(Lindsey)**, the Administrative Tribunal of the Asian Development Bank outlined certain principles it follows regarding the review of the bank's exercise of discretionary authority. It stated that while the court may review the discretionary authority of the bank, this does not mean that the court can replace the bank's discretionary authority with its own. The court cannot decide whether the essence of any policy decision is sound or unsound but can only determine whether the decision was reached through appropriate procedures, whether it was arbitrary, discriminatory, or unjustified, or whether it was reasonable based on the facts collected and appropriately weighed⁵⁹. The respondent's (bank's) evaluation is final unless the court finds, as a result of its review of the bank's discretion, that the latter acted arbitrarily, discriminatorily, or with improper motives. Thus, the Secretary-General holds broad discretionary powers, which will be discussed as an example in the following section.

The Secretary-General's Discretionary Powers and Their Review Mechanisms

First: The Secretary-General's Discretionary Powers

The Dispute Tribunal departed from established norms and overturned the settled jurisprudence of the old system. The now-defunct Administrative Tribunal had consistently upheld the Secretary-General's broad discretionary authority in matters relating to personnel⁶⁰, particularly in three main areas: appointments, promotions, disciplinary actions, and job classifications. Similarly, the Administrative Tribunal of the International Labour Organization (ILO) has, in many rulings, recognized the administrative authorities of international organizations as having a significant degree of discretionary power over their staff⁶¹.

This indicates that the general principle followed by international administrative courts in this regard is that discretionary administrative decisions are subject only to limited review. This is based on the assumption that administrative authorities are better positioned to assess the appropriateness of their decisions.

For example, administrative discretion includes promoting employees based on merit, selecting the appropriate penalty for a violation from the available options, granting regular, exceptional, or study leave, and making decisions regarding transfers, secondments, and temporary assignments⁶².

In a case reviewed by the Dispute Tribunal involving an applicant named (**Hepworth**), the court found that employees on "fixed-term appointments," like the applicant, do not have a right to renewal unless there are improper circumstances. According to the tribunal's precedents, improper circumstances may include the misuse of discretionary authority in not renewing the contract, a clear promise by the organization that created a legitimate expectation of renewal but was not fulfilled, or the organization's exercise of discretion in a manner tainted by misuse of authority, such as violating the principle of good faith in dealing with staff, bias, arbitrariness, or other external factors that could compromise the decision. Applying these standards, the court rejected the applicant's claim of having a reasonable expectation of renewal⁶³.

In another case heard by the Dispute Tribunal regarding the "termination of an appointment" (**Galbraith**), a former Deputy Special Representative of the Secretary-General for the UN Mission in Afghanistan had his contract terminated before its expiration⁶⁴. The court found that the contested decision was made as part of the Secretary-General's discretionary authority in the organization's best interest⁶⁵. Through analyzing the reasoning and explanation for the termination, the court examined whether the Secretary-General had abused his discretionary authority or violated any of the applicant's rights. It concluded that the decision was neither arbitrary nor motivated by improper purposes. In a similar case reviewed by the Dispute Tribunal, the court found that the contested decision "not to renew the contract" of the former Assistant Secretary-General, (**Shook**), fell within the Secretary-General's discretionary authority.⁶⁶

The court's role was limited to determining whether there had been an abuse of this discretionary power. The Dispute Tribunal concluded that the Secretary-General possesses the legal authority to terminate the permanent appointment of the applicant. Similarly, in the case of (**Coleman**), the court found⁶⁷ that the decision to place the complainant on "Special Leave Without Pay (SLWOP)" was a lawful exercise of the administration's discretionary authority and that the contested decision was neither biased nor motivated by improper purposes⁶⁸.

In the same vein, the Appeals Tribunal in the previously mentioned (**Sanwidi**) case emphasized that when assessing the legality of the Secretary-General's exercise of discretionary authority in administrative matters, the Dispute Tribunal must determine whether the decision was legal, reasonable, procedurally sound, and proportionate. The tribunal may examine whether relevant matters were disregarded, irrelevant issues were considered, or whether the decision was unlawful or arbitrary. However, it is not the tribunal's role to evaluate the correctness of the Secretary-General's choice among the available courses of action, nor is it the tribunal's role to substitute its judgment for that of the Secretary-General⁶⁹.

Similarly, the Administrative Tribunal of the Council of Europe observed that, in matters concerning staff management, the Secretary-General, who holds the authority to make appointments under the Statute of the Council of Europe and the Staff Regulations, enjoys broad discretionary powers. These powers enable the Secretary-General to assess the operational needs of the organization and the professional qualifications of staff candidates. Nevertheless, such discretionary powers must be exercised lawfully. It remains the

tribunal's duty to ensure that the contested decision was made in accordance with applicable regulations and the general principles of law governing the legal frameworks of international organizations⁷⁰.

In a well-established precedent, the Administrative Tribunal of the International Labour Organization (ILO) ruled in the case of **AK v. ITER International Fusion Energy Organization** that a decision regarding the "restructuring" of the organization's services, which led to the abolition of a position, may be made at the discretion of its executive head and is subject only to limited review by the tribunal. Consequently, the tribunal must confine its inquiry to determining whether the decision was taken in accordance with jurisdictional rules, procedural requirements, or formalities; whether it involved a factual or legal error; whether it constituted an abuse of power; whether it failed to consider material facts; or whether it drew clearly erroneous conclusions from the evidence. However, the tribunal cannot substitute its own views for those of the organization. Any decision to abolish a position must be based on objective grounds, and no staff member may be removed for undesirable reasons; otherwise, the restructuring measure would constitute an abuse of authority⁷¹.

The Appeals Tribunal reaffirmed this concept in its 2013 ruling on the case of **Pacheco v. Secretary-General**, stating that established legal jurisprudence recognizes that international organizations inherently possess the authority to restructure some or all of their departments or units, including the abolition of positions, the creation of new ones, and the redistribution of staff⁷².

Additionally, the Administrative Tribunal of the Asian Development Bank (ADB) noted that decisions related to the "performance evaluation of staff" fall within the discretion of the bank. However, this discretionary authority is not unlimited. The tribunal must ensure that the bank's exercise of discretion is neither arbitrary, discriminatory, unreasonable, improperly motivated, nor conducted without adherence to due legal processes⁷³.

Similarly, the Administrative Tribunal of the League of Arab States held that the Secretary-General has discretionary authority to determine the academic qualifications or their equivalent that qualify individuals to occupy positions within the first and second categories. The second category typically refers to specialized positions within the League of Arab States and its organizations⁷⁴.

Regarding the process of "evaluating candidates" for employment, the Administrative Tribunal of the International Bank for Reconstruction and Development (IBRD) ruled that the primary purpose of such evaluations is to enable the organization to assess whether a candidate is qualified to hold a permanent position at the bank. In this context, it is evident that the respondent holds discretionary authority to decide whether or not to endorse a candidate's appointment after evaluation. The tribunal cannot replace its judgment with that of the respondent regarding the suitability of a candidate for permanent employment⁷⁵. It is worth noting that the discretionary authority in evaluation cases is typically broader due to the nature of the evaluation process itself⁷⁶. This principle was also affirmed by the Administrative Tribunal of the International Labour Organization (ILO), which found that in the case of a probationary employee, the organization should be granted the broadest possible latitude in its decision-making. The tribunal will uphold the decision unless a particularly severe or egregious flaw is demonstrated⁷⁷.

Regarding the "authority of the administration to transfer employees," it is established in international administrative law that the discretionary power of a supervisor to transfer staff must not be abused. The (now-defunct) Administrative Tribunal of the United Nations, in the case of **SaaF**, stated that while the administration has discretionary authority to transfer employees, this authority must not be abused. Abuse of this authority may occur if the proper procedure is not followed, or if the transfer is carried out arbitrarily, resulting, for example, in damage to the employee's reputation, dignity, or unjustified harm⁷⁸.

While the tribunal is cautious about intervening in the exercise of a supervisor's discretionary authority, it will intervene if abuse of that authority is proven. The burden of proving such abuse lies with the applicant. If a transfer is used as a light disciplinary measure, it must also comply with specific rules designed to protect staff in cases of disciplinary actions⁷⁹.

Furthermore, the Internal Justice Council referred to a recent bulletin titled "**Staff Selection and Managed Mobility System**" (ST/AI/2016/1). This complex document on mobility starkly contrasts, and perhaps even conflicts, with the supreme standard set out in **Article 1.1(c)** of the Staff Regulations, which imposes only one limitation on the Secretary-General's discretionary authority regarding staff assignments. It stipulates that staff are subject to the authority of the Secretary-General, who may assign them to work in any UN activity or office. However, in exercising this authority, the Secretary-General must ensure, considering the circumstances, that all necessary safety and security arrangements are made for staff as they carry out their assigned responsibilities⁸⁰.

On the matter of "benefits," such as "end-of-service compensation," the Administrative Tribunal of the Asian Development Bank ruled that the bank has discretionary authority in determining these benefits⁸¹. It is the court's duty to ensure that discretionary authority is not abused. The Secretary-General also possesses discretionary power to make sound and fair decisions in cases of "employee indebtedness to third parties." In such cases, the administration has both the right and the obligation to exercise its discretion by taking all relevant factors into account, including, if necessary, adjusting the deductions taken from the employee's salary or other benefits⁸².

The Appeals Tribunal affirmed the findings of the Dispute Tribunal in a case brought before it following the Secretary-General's unsuccessful appeal⁸³. Similarly, the Appeals Tribunal, in the case of **Sheryda, Onogi, and Elguindi**, found itself convinced that the United Nations Joint Staff Pension Fund (UNJSPF) had exercised its discretionary authority fairly when determining the amount to be deducted from pension benefits under Article 45 of its regulations to fulfill a legal obligation (spousal maintenance) established by national court rulings. It emphasized that the deducted amount under this article must not exceed **50%** of the employee's monthly pension. However, the Appeals Tribunal noted that the Permanent Committee of the Fund, through its policy language, implicitly acknowledged the possibility of cases requiring fair discretion to allocate amounts exceeding 50%⁸⁴.

Regarding "promotion matters" for international staff, the (now-defunct) UN Administrative Tribunal found that, concerning an applicant's claim of being denied promotion, employees do not have an inherent right to promotion. Instead, the right lies in having their candidacy considered fully and fairly⁸⁵. The tribunal concluded that the Secretary-General's decision not to promote was an exercise of his discretionary authority, which cannot be challenged unless driven by improper or external motives promotion is among the most critical powers of the administration, which possesses broad authority, particularly when the staff regulations explicitly grant absolute discretion in determining eligibility and the need for promotion. The Administrative Tribunal of the League of Arab States addressed explicit provisions granting the Secretary-General wide authority in promotions in a case brought by an employee who was passed over for promotion despite possessing qualifications and academic credentials equal to those of his peers who were promoted. The court rejected the General Secretariat's argument that the matter was subject to the Secretary-General's discretion, finding the promotion decision discriminatory⁸⁶. When individuals hold equal legal positions, discretion cannot be exercised arbitrarily. The court ruled that the General Secretariat had abused its discretionary powers and strayed from the intended purpose of ensuring the ability to supervise and lead. Consequently, the court determined that the General Secretariat's decision to bypass the plaintiff in favor of promoting his colleagues from Senior Specialist to Second Director was legally flawed, rendering the contested decision tainted by abuse of authority. Similarly, the Administrative Tribunal of the Asian Development Bank (ADB) ruled that appointment and promotion decisions fall within the bank's discretion. The tribunal stated that it is not the court's role to substitute its judgment for that of the bank. The judge's role is limited to determining whether the bank's decision was made in accordance with the applicable rules and procedures⁸⁷.

Furthermore, in the case of (**Vangelova**), the Dispute Tribunal emphasized that, given the discretionary nature of promotion decisions, the court's jurisdiction over the legality of such decisions is confined to assessing the procedural steps taken to reach the decision and any factual errors in reviewing the employee's professional record⁸⁸.

Regarding the standard of review, the Appeals Tribunal in the case of (**Abbassi**), held that when reviewing administrative decisions related to appointments and promotions, the Dispute Tribunal examines the following:

1. Whether the procedures outlined in the staff regulations and rules were followed.
2. Whether the employee received fair and adequate consideration⁸⁹.

The tribunal concluded that the Secretary-General has broad authority in making promotion and appointment decisions. In reviewing such decisions, it is not the role of either the Dispute Tribunal or the Appeals Tribunal to substitute their judgment for the Secretary-General's decision regarding the outcome of the selection process. The Secretary-General also possesses discretionary authority in "disciplinary matters." The Appeals Tribunal affirmed this principle in the previously mentioned case of (**Abu Hamda**), noting that disciplinary matters fall within the discretion of the Commissioner-General of UNRWA. The general principle of administrative justice requires administrative bodies and officials to act fairly, reasonably, and in compliance with their legal obligations⁹⁰.

Furthermore, the Secretary-General and their delegates exercise significant discretion during the investigation and reporting phases of disciplinary proceedings following an allegation. If there is sufficient and compelling evidence of misconduct⁹¹, the Secretary-General retains the discretion to consult, notify, or communicate with a Member State regarding the matter. If local authorities in the host country become aware of the misconduct, initiate an investigation, and request a waiver of immunity, the Secretary-General must waive immunity provided it does not harm the organization and must cooperate with local authorities in the interest of justice. The Secretary-General may also submit the report from the Office of Internal Oversight Services (OIOS), including its recommendations and evidence, to the offender's home country and formally refer the case. The (now-defunct) UN Administrative Tribunal affirmed that the Secretary-General has discretionary authority to determine whether an employee has adhered to the standards of conduct required by the UN Charter and the staff rules⁹². This view aligns with the provisions of the UN staff regulations and rules, which state explicitly that initiating an investigation into allegations of misconduct, conducting disciplinary proceedings, and imposing disciplinary measures fall within the Secretary-General's discretionary authority and that of delegated officials⁹³.

Second: Cases of Abuse of Discretionary Authority and Mechanisms for Review

The Administrative Tribunal of the World Bank, in the aforementioned Demerode case, identified the main grounds for abuse of discretionary authority. These include arbitrariness, discrimination, improper motives, legal and factual errors, and the violation of fair and reasonable procedures. Similarly⁹⁴, the Administrative Tribunal of the International Monetary Fund recognized these instances as being constrained by the guiding principles in cases dealing with abuse of discretionary authority.

In the (**Galbraith**) case, the Dispute Tribunal examined the reasoning and explanation for terminating a contract to determine whether the Secretary-General had abused their discretionary authority or violated any of the applicant's entitled rights⁹⁵. In the same context, the Administrative Tribunal of the Council of Europe addressed the case of **Ms. (Kurttorun)**, which involved an internal promotion procedure for advancing an employee from category (B) to category (A). The appeal concerned an internal competition enabling employees in category (B) with a certain number of years of experience to transition to category (A). The competition consisted of three phases: a series of psychometric tests (verbal reasoning, numerical reasoning, and logical reasoning) to assess candidates' abilities. Employees who passed these tests proceeded to written examinations, and those with the highest scores were admitted to an oral examination. A significant number of employees (approximately 200) were eliminated after the psychometric tests. The applicant decided to bring her case before the tribunal and received support from the Staff Union of the Council of Europe (SACE), which agreed to finance the appeal. The tribunal found that, in selecting the type of tests required for candidates, the Secretary-General exceeded the bounds of discretionary authority. This was particularly relevant in a procedure designed to assess the skills of employees already holding positions within the organization. Consequently, the tribunal upheld the appellant's claims, annulled the

contested decision, and awarded compensation to the appellant on the grounds that the Secretary-General had exceeded the limits of their authority⁹⁶. Thus, when examining cases on the merits, the United Nations Administrative Judge ensures that the discretionary authority of the administration remains within its lawful bounds. Given the broad discretionary power available to the administration in most cases, the United Nations judge often exercises only limited control. For this reason, among others, procedural rules protecting civil servants occupy a prominent place in administrative litigation.

On the basis that the Secretary-General has exceeded the limits of his authority, the administrative judge of the United Nations, in particular, ensures that the administration does not exceed the boundaries of its discretionary power and the judge's margin of discretion. Given the discretionary authority available to the administration in most cases, the UN judge often exercises only limited control. This is one of the reasons, among others, why the protection of civil service employees through procedural rules plays a dominant role in administrative litigation. Due to the importance of the latter, we find that the role of international administrative courts in enhancing the guarantees for international staff is significant⁹⁷, and this can only be achieved through the explanation in the following paragraph.

Judicial Control over the Secretary-General's Discretionary Power

The Secretary-General has wide discretionary powers defined by the rules and regulations of international public service in several areas, such as appointment, promotion, termination of services, disciplinary measures, and other authorities specified by these texts. Based on this, international administrative courts cannot intervene in these powers unless there has been an abuse of power, granting administrative courts the right to intervene and exercise control over the administration's discretion. This is done through several methods, such as requiring the justification of the administrative decision and examining the appropriateness of disciplinary measures in terms of their proportionality to the severity of the violation committed. Therefore, we will divide this chapter into two sections: the first deals with the control over the reason for the administrative decision, and in the second section, we will clarify the control over the appropriateness of imposing disciplinary measure.

Control over the Reason for the Administrative Decision

International administrative courts play an important role in exercising control over the administration's discretion, even though there is no explicit text allowing them to do so. They have achieved this through several methods, such as requiring the justification of the administrative decision under penalty of annulment, examining the appropriateness of the justification in relation to the decision, verifying the coherence of the reasons, ensuring they do not contradict each other, and considering whether the administration, in pursuing the interests of the organization, has violated justice⁹⁸.

While exercising control over discretionary power through the concept of "abuse of power" seems feasible when the administration discloses the reasons for its decisions, it is the opposite when the administration fails to justify its decision, which is the norm in discretionary matters. In an attempt to exercise control⁹⁹, the abolished United Nations Administrative Tribunal concluded that the obligation to justify appears mandatory, even in cases where the administration has pure discretionary power, as in decisions not to renew temporary contracts. This is because the administration's retention of these reasons in secrecy would hinder the court's ability to perform its duties. Thus, the judiciary cannot exercise control over the administration's decision without justification for that decision¹⁰⁰. The Administrative Tribunal of the International Labour Organization addressed the necessity of justification and nullified decisions lacking reasons. For example, in the case of Ms. Pankey, an employee at UNESCO, she requested the annulment of the decision terminating her services because it was made without justification¹⁰¹. The organization argued that it was not obligated to justify its decision to terminate services, but the court rejected this argument. The court ruled that for the administrative decision to be valid, it must be based on a legitimate reason justifying its issuance¹⁰², and the administration must explicitly disclose the reasons for the decision, especially if the regulations governing the service require it¹⁰³. The same court also rejected claims by the organization that the decision had valid reasons, but that these reasons were kept confidential, as the

decision was based on a recommendation from the organization's advisory council. The court did not accept this argument, because keeping the reasons for the decision secret would contradict the protection the organization seeks to provide its employees against arbitrary decisions that affect their rights and interests. This requires that the reasons for these actions be made public and known so that international administrative courts can verify their legality and validity¹⁰⁴.

Meanwhile, the Administrative Tribunal of the Arab League went further and ruled that it had the authority to assess the "real reason" for the administrative decision, even if legal and sufficient reasons were given, but these were not the true reasons that led the administration to make the decision. For example, in a case filed by an employee of the Arab Economic Unity Council against the Secretary-General, the court found that if the administrative body disclosed the specific reasons for terminating the plaintiff's service, the administrative judiciary had the right to scrutinize the facts attributed to the plaintiff and the correctness of their legal interpretation. It could also verify whether the result reached by the contested decision was reasonably derived from the available facts, or if it was not, in which case the decision would lack an essential element, which is the reason for its existence, and would be contrary to the law. Judicial review of the administrative decision in this context is legal control. Therefore, the reasons provided for the contested decision would be deemed unsupported by a solid basis of fact and law, and the decision should be considered as lacking the necessary reason for its issuance, leading to its annulment and the consequent financial and employment effects that the employee is entitled to under the ruling.¹⁰⁵

Thus, the obligation of the organization is not limited to merely stating the reasons but also requires the organization to present all documents related to the matter before the court, so that the court can extract the true reasons and monitor their accuracy and legality. The Administrative Tribunal of the International Labour Organization confirmed this in the case of McIntire¹⁰⁶, stating that retaining a document related to the plaintiff, which forms the basis of his defense, leads to an unjust and unfair application of the staff regulations, causing harm to the employee's interests and justice.¹⁰⁷ The administrative courts of the International Monetary Fund and other administrative courts have also acknowledged that one of the important elements in the legal practice of discretionary power in relation to individual administrative acts is that conclusions should not be arbitrary or capricious but should be reasonably supported by evidence. In contrast, a decision may be annulled if it is based on a legal or factual error, if some essential facts have been ignored, or if conclusions have been clearly drawn from the evidence and reasons presented. Similarly, the UN Appeals Tribunal confirmed in the case of *Islam* that when the administration justifies the exercise of its discretionary power, it must be supported by facts.¹⁰⁸

In the same context, the UN Appeals Tribunal confirmed in the case of *Islam* that when the administration provides a justification for exercising its discretionary authority, it must be supported by facts.

Thus, requiring the justification of an administrative decision is one of the methods that enable international administrative courts, including the Dispute Tribunal, to exercise their control over the administration's discretionary power, serving as a real guarantee for protecting the rights of the claimants, who are international employees.

Control over the Appropriateness of Disciplinary Measures (Proportionality Control)

After recognizing the obligation to justify, the process of issuing administrative decisions has become more transparent. As a result, the control over these decisions in terms of their legality, appropriateness, and alignment with the organization's interests has become clearer and easier to verify, ensuring that the decision adheres to the necessary systems and procedures for its issuance¹⁰⁹. Therefore, the main principle governing judicial control previously was to examine the legality of administrative decisions, leaving the issue of the appropriateness of the decision to the discretion of the administration, considering that the head of the administrative body of the organization enjoys broad discretionary powers in determining the appropriateness of the decision to the facts¹¹⁰. However, now, international administrative judicial control is based on the reason for the administrative decision, extending to the administration's authority to make the appropriate decision. The judiciary examines the factual existence of the alleged facts and the legality and appropriateness of the decisions in relation to those facts. The administrative judge is thus a judge of

legality,¹¹¹ and they do not have the authority to challenge the appropriateness of administrative actions. The administration remains independent, and the judiciary has no right to intervene as long as the decision is not tainted by an abuse of power. However, the administrative judiciary has decided to review the element of appropriateness when the decisions affect the rights of employees

Appropriateness in administrative decision-making refers to the alignment of decisions with the specific circumstances that necessitated their issuance and the surrounding context, making the decision suitable for the time, place, and other relevant considerations.¹¹²

In the context of disciplinary sanctions, appropriateness is understood as the proportionality between the administrative sanction imposed on the employee and the misconduct that violated the duties of public service¹¹³

From these concepts, it can be concluded that the idea of appropriateness is relative. Appropriateness in action not only concerns guaranteed advantages but also the timing of the decision and the surrounding circumstances. This means that appropriateness is considered a standard for the value of the action based on foundations and considerations that may differ from one person to another. As a result, the assessment of appropriateness depends in part on personal discretion and, in another part, on the demands of time and place¹¹⁴

This means that appropriateness, in this sense, is a characteristic of the administrative decision that it acquires when made while considering various aspects of its issuance and a number of factors and situations. It often relates to three elements: the decision on whether to intervene or refrain, the timing of that intervention, and finally, the assessment of the procedure that is proportionate to the seriousness and importance of the reason¹¹⁵.

The decision is also described as appropriate if the action taken aligns with the reason for the decision. Consequently, it can be said that proportionality is one of several factors that, if considered, describe the decision as appropriate. Proportionality refers to the internal relationship between some components of the administrative decision or its pillars and elements, particularly between its reason¹¹⁶, its place, and sometimes its goal¹¹⁷. Proportionality, in this context, is one of the elements of appropriateness in the area of the administration's discretionary power. This indicates that proportionality is limited to a specific aspect of the many aspects that form appropriateness, with proportionality being one of its components. Therefore, the concept of appropriateness is broader than the concept of proportionality, as it encompasses and includes proportionality as one of its parts. Thus¹¹⁸, the administrative judiciary adopted another solution to defend rights and public freedoms against any arbitrariness and oppression. After it completed its control over the material existence of the facts claimed by the administration as the reason for the decision and verified their legal interpretation, it made a bold step forward. It began to monitor the administration's assessment of the importance and seriousness of the facts and the proportionality between these facts and the action taken, which is known as proportionality control or appropriateness control¹¹⁹.

Naturally, the most crucial element for international administrative courts when exercising control over discretionary power is the principle of proportionality. The UN Appeals Tribunal, when reviewing the case of *Sandwidi*, as previously mentioned, stated that both the Appeals Tribunal and the Dispute Tribunal are concerned with applying the principle of proportionality. In the context of administrative law, the principle of proportionality means that the administrative action should not be more excessive than necessary to achieve the desired result. The requirements of the proportionality principle are met if the actions taken are reasonable without exaggeration. This includes determining whether the goal and objective are significant enough to justify the administrative decision. In other words, the decision must reasonably relate to the objective without exceeding it. This requires examining the balance struck by the decision-maker between the considerations and priorities available in determining the decision to be made. However, the court acknowledges that decision-makers have a margin of discretion to make legitimate decisions after weighing the available options against the priorities".¹²⁰

Through reviewing the judicial precedents of international administrative courts, including the Dispute Tribunal and the Appeals Tribunal, it is clear that these courts may intervene in the discretionary power of Secretaries-General in imposing disciplinary sanctions against international employees. In a similar vein, the Administrative Court of the Asian Development Bank, in the case of *Abat*, stated that after the claimant ultimately admitted to his misconduct, the only question to be considered was whether the penalty was proportionate to the claimant's unsatisfactory behavior. Since the president has discretionary authority to determine the penalty when imposing disciplinary measures, the court's role before intervening in the president's judgment is to assess whether the penalty is disproportionate to the employee's misconduct.¹²¹ Similarly, the Administrative Court of the International Labour Organization (ILO) ruled that the court cannot substitute its own evaluation for the Director-General's evaluation unless there is a clear disproportion between the seriousness of the committed offense and the imposed penalty, which did not apply in the current case.¹²²

Similarly, the United Nations Dispute Tribunal has attempted in several cases to intervene and limit the Secretary-General's authority by reviewing the imposition of disciplinary measures and examining whether the facts on which the penalty was based are established, whether the behavior constitutes misconduct, and whether the penalty is proportionate. In the *Mejo* case, the Dispute Tribunal stated that if a behavior violates an obligation, the court may reduce the imposed penalty if there are mitigating circumstances that were not previously considered¹²³. One factor to be considered when evaluating whether the disciplinary measure taken against an individual is reasonable is how the measure compares to similar cases within the same organization. Additionally, the Dispute Tribunal found in the *Baidya* case that the disciplinary action consisting of a written reprimand and a one-month fine was proportionate to the severity of the claimant's misconduct and aligned with the penalties the organization widely applies in similar case¹²⁴s. The disciplinary penalty is intended not only to punish the employee's dishonesty but also to prevent similar actions in the future, whether by this employee or others. Therefore, the imposed penalty was proportionate to the misconduct. Likewise, the United Nations Appeals Tribunal in the *Abu Hamda*¹²⁵ case (as previously mentioned) replaced the penalty of demotion and salary reduction with a written reprimand due to the disproportion, and similarly replaced the penalty of immediate dismissal with a written reprimand for the same reason in the *Doleh* case¹²⁶. However, the court found that the administration has discretionary power to evaluate the aggravating and mitigating circumstances when deciding on the appropriate penalty to impose¹²⁷.

From the above, it can be concluded that the discretionary power of the administration, represented by the Secretary-General, is a legal authority derived from the flexible legal rule outlined in the basic regulations and rules concerning public service"

Conclusion

At the conclusion of our research titled "Judicial Oversight of the Discretionary Power of the Secretary-General in Imposing Disciplinary Measures, " we reached several findings and recommendations, which are summarized as follows:

First – Findings:

1. The discretionary power of the administration does not imply absolute authority. International administrative courts have defined its scope and regulated its limits, just as in national systems. Therefore, international administrative courts do not limit their oversight of international administration's discretion to legality but extend it to appropriateness, though within narrow limits.
2. The Secretary-General of an international organization is not subject to the employee regulations and bylaws. The basic and administrative regulations for United Nations staff do not apply to the Secretary-General, as he is the principal administrative authority within the organization and not an employee. As a result, in principle, if a decision violates the terms of his contract or breaches the general principles of international civil service law, he cannot resort to internal procedures or other measures within the organization for the same reason. However, he may directly appeal to international administrative courts, taking into account the terms of his contract outlined in the appointment letter and related agreements.
3. The application of international administrative law by judicial bodies is dominated by an unwritten principle not stated in the laws of these bodies: limited review of discretionary power. International administrative courts, including the United Nations Dispute Tribunal, do not intervene in the exercise of international administration's discretionary power unless it is misused. Injustice, unreasonableness, illegality, irrationality, procedural violations, bias, abuse of power, and disproportionality are some of the reasons that may justify judicial intervention in the exercise of discretionary administrative power. However, the judicial body or courts should not replace the decisions of administrative bodies with their own decisions.
4. International administrative courts play a significant role in overseeing administrative discretion, despite the lack of specific provisions granting them this power. They have achieved this through the requirement to justify administrative decisions, under penalty of invalidity. They have the authority to review the accuracy of the facts presented as grounds for the decision, the legal qualification of those facts, and whether the outcome of the challenged decision is supported by valid legal and factual grounds. If the decision is found to lack justification, it is considered invalid, and the court may annul it, along with the resulting financial and employment consequences.
5. The principle of proportionality is the most important factor on which international administrative courts base their oversight of discretionary power. In international administrative law, the principle of proportionality means that administrative action should not be more excessive than necessary to achieve the desired result. The requirements of proportionality are met if the conduct is reasonable and not excessive, meaning the decision should reasonably align with its goal without exceeding it. Based on judicial precedents of international administrative courts, including the Dispute and Appeals Tribunals, it is evident that they may intervene in the discretionary power of Secretaries-General in imposing disciplinary sanctions on international employees, based on the principle of proportionality.

Second – Recommendations:

1. We recommend amending the basic and administrative regulations for United Nations staff by adding a clear provision indicating that the designation "highest official of the organization," represented by the United Nations Secretary-General and the Secretaries-General of other United Nations institutions, falls under the category of international employees. This amendment should be made to ensure their rights, particularly the right to appeal to international administrative courts if violated. Until such an amendment is made, the United Nations institutions should take into account the rulings issued and to be issued by the United Nations Dispute and Appeals Tribunals and the International Labour Organization Administrative Tribunal, as in the case of the former Executive Director of the Organization for the Prohibition of Chemical Weapons.
2. We recommend amending international staff regulations by adding a provision requiring international administration to justify its administrative decisions, in line with judicial practices of administrative courts that have followed this approach. The administration should be obligated to base its decision on the true grounds, and it should not justify withholding the reasons for a decision as a matter of confidentiality. Keeping the reasons secret would conflict with the protection the organization seeks to provide employees against arbitrary decisions made by the administration. It would also enable international administrative courts to exercise their oversight by verifying the legality and correctness of the decision.

References

¹ There are several other titles used by international organizations for the head of the administrative body. For example, in the Food and Agriculture Organization (FAO), the title is "Director-General," while in the International Bank for Reconstruction and Development (IBRD), the title is "President of the Organization" or "Secretary-General."

² For example, the administrative body is referred to as the "General Secretariat" according to the charters of the United Nations and the Arab League, as the "International Labour Office" under the Constitution of the International Labour Organization, and as the "International Bureau" under the Universal Postal Union Treaty.

³ For example, the Director-General of the Food and Agriculture Organization is appointed by the main body of the organization (the General Conference), while the Managing Director of the International Monetary Fund is appointed by the organization's specialized body (the Executive Directors). See: Dr. Hamada Badawi Metwally, *Guarantees for International Employees: A Comparative Study*, no publication location, 2004, p. 236.

⁴ (97) of the 1945 United Nations Charter states: "... The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. The Secretary-General is the chief administrative officer of the Organization .

⁵ See: Articles (27, 97) of the 1945 United Nations Charter, Article (48) of the Provisional Rules of Procedure of the Security Council, and Article (141) of the 1947 Rules of Procedure of the General Assembly.

⁶ See Mohamed Mounir Zahran, Babalu Louis Voll, Enrique Roman-Murby, *Selection of Executive Heads in United Nations System Organizations and Their Conditions of Service*, Joint Inspection Unit Report, Document JIU/REP/2009/8, 2009, p. iii.

⁷ (Bruno Simma, *The Charter of the United Nations: A Commentary*, Second Edition, Volume II, Munich: C.H. Beck, 2002, p. 1193.).

⁸ Paragraph (1) of Article (101) of the United Nations Charter states: "The staff of the Secretariat shall be appointed by the Secretary-General under regulations established by the General Assembly".

⁹ Muhamid Munir Zahran et al., "Selection of Executive Heads...", Document 8/2009/REP/JIU, previously cited, para. 41.

, "Article 8 of the staff regulations of the Arab League stipulates that the appointment of Assistant Secretaries-General is for a period of five years, renewable only once."

¹⁰ General Assembly resolution, Revitalization of the work of the General Assembly, Session.60 Agenda item 116, document 286/60/RES/A, 18 September 2006, annex, para. 22, p. 5.

¹¹ see: General Assembly resolution, terms of appointment of the secretary – General , document : A/RES/1/11 ,(24 october /1946 , para. 11: 3,4.(12)

¹² Article 8 of the Staff Regulations of the Arab League stipulates that the appointment of Assistant Secretaries-General is for a period of six years, renewable only once."

¹³ "Dr. Mohamed Ahmed Safwat, *The Disciplinary System for International Employees*, 1st edition, Publisher, 2009, pp. 180-181.

¹⁴ General Assembly resolution A/RES/1/11, op.cit, para. 11:1.

¹⁵ 15) Mohamed Munir Zahraan et al., *Selection of Executive Heads...*, document 8/2009/PRE/JIU, previous source, paragraphs 90, 89, p. 24.

¹⁶ : Report of the Secretary-General 695/54/A, entitled "Proposed Draft Framework for the Organization of the Status of Officials Other than Secretariat Staff, and Experts Performing Tasks, and Their Basic Rights and Duties," and Report of the Secretary-General 710/54/A, entitled "Framework that Organizes the Status of the Secretary-General and His Basic Rights and Duties," as requested by the General Assembly in its Resolution 252/52/RES/A, dated September 8, 1998.

¹⁷ Mohamed Mounir Zahra and others, *Selection of Executive Presidents...*, Document 8/2009/REP/JIU, op.cit, paragraph 133, p. 35.

¹⁸ The facts of the case are summarized in that the complainant is the former Director-General of the Organization for the Prohibition of Chemical Weapons, and a decision was made to terminate his contract before the end of its stipulated term, based on a decision issued by the Conference of the States Parties of the organization, at the request of a State Party (the United States) in 2002, on the grounds of 'lack of trust in his administration.' Since the complainant was the highest official in the organization and had no other recourse to resolve the dispute other than resorting to internal procedures or others, he appealed directly to the Administrative Tribunal of the International Labour Organization. The organization contested the Tribunal's jurisdiction for the following reasons:

First, the complainant, in his capacity as the Director-General of the Organization for the Prohibition of Chemical Weapons, falls under the category of senior officials of the organization, and as such, the internal dispute resolution mechanisms do not apply to him. Furthermore, the decision that was taken to terminate his contract was a political decision made by the highest political body, i.e., the Conference of the States Parties, and this could affect the jurisdiction of the Tribunal. The complainant could have resorted to negotiations, third-party mediation, or arbitration to resolve the dispute.

The court, when considering the case, found that the primary issue that needed to be addressed was whether the complainant was covered by the status of a senior official in the organization. The agreement between the organization and the Kingdom of the Netherlands specifically includes that the responsibilities of the Organization for the Prohibition of Chemical Weapons include the Director-General and all members of the organization's technical secretariat, with the exception of those in other categories. The court found that it had jurisdiction over this case based on the provisions of the status agreement between the organization and the Netherlands and the relevant staff regulations. It concluded that the case was within its jurisdiction, as the decision to terminate the appointment of a senior international official before the end of their term is an administrative decision, even if it is based on political considerations, and that the decision was made by the highest political authority (the Conference of the States Parties)."

¹⁹ See: Article 5 of the 1946 United Nations Convention on Privileges and Immunities..

²⁰ It is worth noting that the Secretary-General of the Organization of African Unity had no political powers. He was referred to as the "Administrative Secretary-General of the Organization." The Organization of African Unity is the only organization whose charter explicitly mentions the term "Administrative Secretary-General," emphasizing his administrative role and denying any political powers for the Secretary-General of the Organization. This was due to a lack of trust and fear among member states of the misuse of political powers by the Secretary-General, which could be used as a pretext for interfering in their internal affairs. This approach is criticized, as the Secretary-General should be granted some political powers since they are inherently linked to the nature of his international administrative role. Furthermore, this situation reflects a failure to understand the nature of the Secretary-General's duties, especially in an organization concerned with political relations between states.

²¹ See: Dr. Mohamed Ahmed Safwat, *The Disciplinary System for International Employees...*, op.cit, p. 186.

²² Faiz Abu Ajeeb, "The Role of International Administrative Courts in Strengthening the Guarantees of International Employees Against Administrative Decisions," Volume 41, Issue 4, *Journal of Law, Kuwait University*, 2017, p. 363.

²³ Iman Obaid, "The Role of International Administrative Judiciary in Settling Disputes of International Employees," PhD Thesis, Faculty of Law, University of Babylon, 2017, p. 76.

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²⁴ Dr. Essam Abdel Wahab Al-Barzanji, "Discretionary Authority of the Administration and Judicial Supervision," Al-Nahda Al-Arabia Publishing House, 1971, p. 61.

²⁵ The Restricted Authority of the Administration," where the legislator requires the administration to meet conditions for exercising its authority and defines its limits, obligating it to act in a specific manner that it must aim to achieve. It also specifies

the conditions under which the administration must act to achieve the desired goal, ensuring that the administration does not exercise its authority unless those conditions are met within the specified time frame. The predetermined conduct means that the law does not allow the administration any freedom of choice or discretion regarding the elements of the administrative decision. The law alone dictates how the administration must act and pre-regulates the conduct it must follow, which may extend to the minutiae and details of that activity."

²⁶ Gisen man cours de droit administratif D.E.S de droit public 1949 , 1950 , p 240.

²⁷ Dr. Suleiman Mohamed Al-Tamawy, The General Theory of Administrative Decisions, Arab Thought House, Cairo, Egypt, 1965, p. 30.

²⁸ At first glance, it may seem that a constrained authority is the best situation from the perspective of the rule of law and legality, as well as in terms of guaranteeing the rights and freedoms of individuals against administrative misconduct. However, it is neither possible nor in the public interest for the administration to always remain confined within the framework of such constrained authority, which deprives it of any degree of discretion or freedom of choice. For further reading, see: Dr. Ghazil Saad Al-Essa, Determinants and Controls of Discretionary Power in Administrative Decision-Making and the Role of the Judiciary in Monitoring It, Arab Journal of Administration, Vol. 39, Issue 3, September 1, 2019, pp. 181-182

²⁹ De Smith's Judicial Review of Administrative Action, 4th edition, by J. M. Evans, London: Stevens & Sons Ltd, 1980, p. 278.

³⁰ Dr. Suleiman Mohamed Al-Tamawy, The Theory of Abuse of Power, 2nd edition, Arab Thought House, Cairo, Egypt, 1966, p. 44

³¹ Mohamed Rifaat Abdul Wahab, Principles and Provisions of Administrative Law, Halabi Legal Publications, Beirut, Lebanon, 2002, p. 592

³² Mohamed Rifaat Abdul Wahab, Principles and Provisions of Administrative Law, op.cit, p. 590.

³³ Dr. Essam Abdul Wahab Al-Barzanji, The Discretionary Authority of the Administration..., op.cit.,

³⁴ The term "accompaniment" does not imply a balance or equilibrium between the discretionary elements and the constrained elements in the action, nor does it mean that there are more discretionary elements than constrained ones, or vice versa. See: Ali Hussein Al-Fahdawi, Modern Trends in Judicial Review of Discretionary Authority, PhD Thesis Submitted to the Faculty of Law, University of Baghdad, 2000, p. 16.

³⁵ Fayez Abu Ajeeb, The Role of Administrative Courts..., op.cit p. 62., p. 367

³⁶ The court concluded that the defendant (the Commissioner-General), in exercising his discretionary authority to terminate the applicant's work, was not guided by any improper motive, and the decision was not arbitrary, even if it violated the permitted legal procedures.

³⁷ United Nations Appeals Tribunal, Judgment, No: UNAT /2012/231 , para .37

³⁸ World Bank Administrative tribunal (WBAT) , Decision , No . 1 ,(1981) , para .4

³⁹ The court was established by a decision from the European Parliament and Council on November 2, 2004, under Decision 2004/752/EC. It was the only court that dealt with cases related to the institutions of the European Union and its employees between 2005 and 2016. In 2016, this court was dissolved, and its responsibilities were transferred back to the General Court as part of the judicial restructuring of the European Union. For more details, refer to the website: <https://eur-lex.europa.eu/Legal-content/EN/TXT/?> accessed on 9th December.

⁴⁰ piotr Glonek session 6 – discretionary power and its Review before tribunals in the various fields of human resources management , in common focus and autonomy of international administrative tribunals international colloquy , 50 th anniversary of the establishment of the council of Europe administrative Tribunal , 19-20 march 2015, p 183.(

⁴¹ On February 11, 2009, in the case of *Schönberger v. the European Parliament*, the court found that the administration enjoys a significant degree of discretionary power in the decision regarding the award of merit points in the 2003 evaluation procedures. The court cannot replace the appointment authority's evaluation of the candidates' skills and merits with its own assessment.

⁴² United Nation Dispute, Tribunal Judgment , No: UNDT/2018/55 para. 65.

⁴³ C.F Amerasinghe , principles of the institutional law of international organizations , , p.305

⁴⁴ (United Nations Administrative Tribunal ,Judgment , No:UNAdT/1951/4 ,(45)

⁴⁵ Ghazil Aisha, *The Legal Protection of International Employees*, op.cit, p. 177.

⁴⁶ (See : United Nations Appeals Tribunal , Judgment ,No: UNAT/2010/22 , para37

⁴⁷ (NATO Administrative tribunal , AT-J(2015)0003 Case No. 2014/1030, (23 April 2015) , yy V.NSPA , Para.299

⁴⁸ Among other things that it has always exercised legally, the Court must hear an appeal against a decision taken under that discretion, specifying: Whether this decision was made by a competent authority, whether the correct procedure was followed, and whether the administration's decision was based on an error of law or fact, Or whether the basic facts were not taken into account or whether the conclusions were clearly false and had been extracted from the documents contained in the file and, lastly, whether there was abuse of authority.

See: ILOAT.gudgment,NO.191,(15 may1972),Ballo V.UNESCO,p.3.

⁴⁹ (Jean waline , common focus and Autonomy of international administrative tribunals , international colloquy... , op. cit , p. 199.

⁵⁰ An administrative action is subject to review if it is unreasonable to the extent that no decision-maker could have made it. The concept of reasonableness, like fairness, inherently resists a rigid definition. What is reasonable in a particular case depends on various circumstances and factors relevant to the investigation, such as the nature of the decision, the identity and experience of the decision-maker, the set of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved, and the impact of the decision on those affected. This highlights the inherent variability of the concept and the need for flexibility in its application. See: Anne-Marie Thévenot-Werner, *Activities and Jurisprudence of the Administrative Tribunals of the United Nations and ILO* (2017), in: *Annuaire Français de Droit International*, Volume 63, 2017, p. 399.

⁵¹ Peter Quayle , the modern multilateral Bureaucracy: The Modern Multilateral Bureaucracy: What is the Role of International Administrative Law at International Organizations?, part1,the rol of international administrative law at international organizations , AIIB year book of international law , volume 3 , keninklijke Brill NV, loiden , the Netherlands

⁵² ILOAT, judgment , No.3652 , (17 may 2016) , P.(Nos .1 and 2) V. (FAO) , Para . 7.

⁵³ (Peter Quayle , the modern multilateral Bureaucracy: The Modern Multilateral Bureaucracy.....op.cit, P.13

⁵⁴ C.F amerasinge he , principles of the institutional law of international organizations op.cit , P.331.(57(United Nations Appeals Tribunal , Judgment , No : UNAT/2010/84 , Para .3759)

⁵⁵ (United Nations Administrative Tribunal , judgment , No :UNAdT/1968/117

⁵⁶ (ILOAT , judgment , No 191 , op.cit , p.3

⁵⁷ (United Nations Appeals Tribunal , Judgment , No : UNAT/2010/84 , Para .37.

⁵⁸ 3... Finally, it should be noted that in the area of post classification the Tribunal leaves a considerable degree of discretion to organisations. It cannot simply substitute its own assessment for theirs. Decisions taken in this area are subject to only limited review, and can be set aside only if they were taken without authority, show some formal or procedural flaw or a mistake of fact or of law, overlook some material fact, draw clearly mistaken conclusions from the facts or involve an abuse of authority, See: ILOAT judgment No.3350 .(9 July 2014) , Ms (A.T.R) V. Intergovernmental Organisation for International Carriage by Rail(OTIF) , para .3.)

⁵⁹ As the court generally stated, the discretionary authority subject to review is one that can affect the position of employees in their individual relationships with the bank. See: ADBAT , Decision No.1 (18 December 1992) , Lindsey V. ADB , Paras . 11, 12.

⁶⁰ ILOAT , Judgment No. 169 , (17 November 1970) Loomba V. (FAO) Paras . 1,4

⁶¹ Imane Obaid, op.cit, p. 178

⁶² Dr. Ghreel Saad Al-Essa, op.cit, p. 180.

⁶³ chapter V Decision of Administrative Tribunal of the United Nations and related intergovernment organization , Extract from : United Nations Juridcal Year Book , 2009 , P.340. and for more see: United Nations Dispute Tribunal, judgment ,NO: UNDT/2009/3 ,Para.12

⁶⁴ Rule 9.6(a) of Article 9 of the Staff Regulations and Rules of the United Nations and the Secretary-General's Bulletin (1/2014/SGB/ST) states that termination of service, as intended in the Staff Regulations and Rules, refers to the termination of service by the Secretary-General of the United Nations.

⁶⁵ United Nations Dispute Tribunal, judgment ,NO: UNDT/2013/102 ,Paras.88,91.

⁶⁶ United Nations Dispute Tribunal, judgment, NO:UNDT/2011/83 ,Para .35

⁶⁷ In the case of a job cancellation or reduction in the number of staff, the organization may be expected to review all available suitable positions that have become vacant or are likely to become vacant in the near future. These positions can be filled through transfer or lateral appointment. For more details, see: United Nations Dispute Tribunal, Judgment No: UNDT/2016/181, Paras. 109, 125.

⁶⁸ In fact, it is reasonable for the organization to conclude that it is not in its interest to retain the applicant when the work is not being performed for the institution until the end of the appointment. Established case law indicates that the administration has an obligation to act fairly, equitably, and transparently when dealing with employees. If the applicant claims that the decision was made with improper motives, the burden of proof lies with them. In the present case, the applicant failed to prove a causal connection between their complaint and the contested decision. Therefore, the court decided to reject the application. See: United Nations Dispute Tribunal, Judgment No: UNDT/2021/11, Paras. 58-60.

⁶⁹ United Nations Appeals Tribunal judgment , No , UNAT / 2010/84 , op.cit , Para .40.

⁷⁰ See : ATCE , Appeal No.250/1999 , (18 december 1998) (Danielle Schmitt V.Secretary General , paras .25-27, and See also : ATCE , Appeal No.413/2008 , (11 march2009) (Nathalie V.Secretary General , paras.42,50,52

⁷¹ ILOAT , Judgment , No.3770 , (8 February 2017) , (A.K) V. the (ITER) international Fusion Energy organization , Para . 7

⁷² The Dispute Tribunal concluded in its judgment 8/2012/UNDT, January 2012, when considering the case of Ms. Pacheco, that no evidence was presented to convince the court that the abolition of her position was clearly unreasonable or motivated by bad faith or a calculated intent to remove her from her position, which would have required the court's intervention. It seems that the abolition of Ms. Pacheco's position was an acceptable exercise of discretionary authority. See: United Nations Appeals Tribunal, Judgment No: UNAT/2013/281, Para. 11, 22, and see also Judgment No: UNAT/2012/236, Para. 25.

⁷³ ADBAT, Decision No. 11 (No. 2), (8 January 1996).

⁷⁴ Judgement of the Administrative Court of the League of Arab States, No. 10 of 11, judicial session 17/11/1977.

⁷⁵ WBAT, Decision, No. 10 (8 October 1982), Sale V. IBRD, Paras. 27, 30.

⁷⁶ ADBAT, Decision, No. 43, (7 January 1999) Haider V. ADB, Para. 18.

⁷⁷ ILOAT, Judgment, No. 1127, (3 July 1991), Mrs. Evelyn Verlaeken-Engels V. The European Organization for the Safety of Air Navigation (Eurocontrol)

⁷⁸ United Nations Administrative Tribunal, Judgment, No: UNAdT/2000/954

⁷⁹ see: ILOAT, Judgment, No. 2229, (16 July 2003), Mr. (R.A.O.) V. (UNESCO), Paras. 3-4. and see also ADBAT, decision No. 83 (25 January 2008), Agliam V. ADB, paras. 28-29.

⁸⁰ Report of the Internal Justice Council, Administration of Justice in the United Nations, 71st session, document 158/71/A, dated July 10, 2016, para. 106, p. 29

⁸¹ ADBAT, Decision No. 12, (8 January 1996), Viswanathan V. ADB, Para. 13.

⁸² The facts of the case are summarized as follows: the applicant, Ozturk, challenged the administration's decision to deduct 25% of his salary for child allowance (EI). The court found that the administration was wrong in assuming it had no discretionary authority regarding the amount to be deducted from the employee's salary. The administration holds discretionary authority under Rule 3.18(c) of the Staff Regulations and Section 2.1 of the Secretary-General's Bulletin 4/1994/SGB/ST to determine the amount to be deducted. The Dispute Tribunal considered that the administration legally failed to exercise its discretionary authority by not considering all relevant factors. See: Judgment No: UNDT/2018/55, op.cit, Paras. 54, 77, 80.

⁸³ United Nations Appeals Tribunal, judgment, No: UNAT/2018/892, paras. 35-40

⁸⁴ United Nations Appeals Tribunal, judgment, No: UNAT/2012/189, Paras. 5, 14, 59

⁸⁵ Chapter V, Decision of administrative tribunals of The United Nations and related – inter Governmental organizations, Extract from: United Nations Juridical Year Book 2006, p. 400.

⁸⁶ Judgment of the Administrative Court of the League of Arab States in Case No. 4, 36th Judicial Year, issued on 7/4/2002, p. 12.

⁸⁷ See: ADBAT, Decision, No. 87, (23 January 2009), Ms. (A.V.) V. ADB, Paras. 30, 31.

⁸⁸ The facts of the case are summarized as follows: the applicant, Ms. Vangelova, was recommended for promotion and transferred from group 3 to group 1 under the 2008 promotion methodology, which is applied to each candidate. She was then recommended and promoted. However, it is not for the court to substitute its own judgment on the merits of employees with that of the Promotion Committee or the High Commissioner. The court confirmed that the applicant was correct in asserting that the High Commissioner cannot promote a member who has not been considered by the APPB. After reviewing the file related to promotions to the P-4 level, the judge concluded that the High Commissioner promoted an unqualified employee who was not considered by the Promotion Committee. Therefore, the High Commissioner committed an error that necessarily invalidated the legality of the decision to deny the applicant's promotion. See: United Nations Dispute Tribunal, Judgment No: UNDT/2010/179, Paras. 25, 35, 36, 37.

⁸⁹ United Nations Appeals Tribunals, Judgment, No: UNAT/2011/110, Paras. 23, 24

⁹⁰ Judgment No: UNAT/2010/22, op.cit, para. 37.

⁹¹ Allison Kowalski, The Black Box of international civil servant Accountability: searching for order in the disordered United Nations system, vol. 39:2, Penn Carey Law: Legal Scholarship Repository, 2018, pp. 543-544

⁹² United Nations Administrative Tribunals, Judgment, No: UNdT/1997/85.

⁹³ Paragraph (c) of Rule 10.1 of Article 10 of the 2014 United Nations Staff Regulations.

⁹⁴ Catherine organ, Some reflections on the role and importance of international Administrative Tribunals section 1, common focus and Autonomy of international Administrative tribunals, op.cit, p. 17

⁹⁵ Judgment , No: UNDT/ 2009 /3 ,op.cit,para.12.17

⁹⁶ TACE , Appeal ,No . 543 /2014 , (30 January 2015) , (Bilge Kurttorun v. Secretary Ganeral , Paras . 13, 20, 57

⁹⁷ Pierre Bodeau – Livince et annmiarie thévenot werner Activité et jurisprudence des tribunaux administratifs des Nations Unies Années (2014-2015) , Annuaire français de droit international LXI 2015 , p.427

⁹⁸ Fayez Abu Ajeeb, The Role of International Administrative Courts..., op. cit., p. 364, 365.

⁹⁹ Dr. Issam Mohammed Ahmed Zanaty, International Administrative Judiciary, Dar Al-Nahda Al-Arabiya, 1994/1995, p. 83.

¹⁰⁰ In this case, the decision must be justified, and if it is not, it will be considered a procedural flaw. Therefore, it is necessary to distinguish between the requirement to justify an administrative decision and the lack of such justification. This involves identifying the legal and factual elements that guide the administration in making its decision. When the administration makes its decision, it evaluates it based on a legal rule or principle of general law, in addition to a specific factual situation. The decision thus results from these two sets of reasons. For more details, see: Dr. Issam Abdul Wahab Al-Barzangi, Discretionary Authority of the Administration and Judicial Oversight, op. cit., pp. 236, 164.

¹⁰¹ Rule 9.6(c) of Article 9 of the 2014 United Nations Staff Regulations and Rules states that "c- The decision-making process should be carried out in accordance with the established procedures, with the relevant regulations applied and justifiable reasons provided..."

¹⁰² ILOAT, Judgment No. 23, (29 October 1955), Pankey v. UNESCO, pp. 3, 7, 8.

¹⁰³ ILOAT, Judgment No. 22, (29 October 1955), Part 2, Miss Ruth Forma v. UNESCO, paras. 2, 7, 8.

¹⁰⁴ Fayez Abu Ajeeb, The Role of International Administrative Courts..., op. cit., p. 365.

¹⁰⁵ Judgment of the Arab League Administrative Court, Case No. 13, 11th Judicial Year, Session of 17/11/1977.

¹⁰⁶ ILOAT, Judgment , No.13 , (3 September 1954) , McIntive v.(FAO) ,

¹⁰⁷ IMFAT , Judgment , No .2002-2 (5 march 2002) , Ms. Y (No.2) , Applicant V. International Monetary Found . Paras. 63,64(108

¹⁰⁸ Judge Adams also confirmed that if the decision-maker has several valid reasons for not renewing an employee's contract, the decision-maker may choose to rely on any of those reasons in making the decision. See: United Nations Appeals Tribunal, Judgment No: UNAT/2011/115, paras. 28, 29.

¹⁰⁹ Fayez Abu Ajeeb, op. cit., p. 367.

¹¹⁰ Iman Obeid, op. cit., p. 83.

¹¹¹ Dr. Haider Abdul Nabi Tuli, Zaid Ajmi Sheet, The Authority of the Administrative Judge in Requiring the Administration to Disclose the Reasons for Its Decision (A Comparative Study), Journal of Law for Legal Studies and Research, University of Thi Qar, Faculty of Law, Vol. 19, 2019, p. 46.

¹¹² Dr. Issam Abdul Wahab Al-Barzanji, Discretionary Power of the Administration and Judicial Oversight, op. cit., p. 164. Also see: Boulahna Aadel, Judicial Oversight of the Discretionary Power of the Administration, Master's Thesis, Faculty of Law and Political Science, University of Tebessa, 2013/2014, p. 121.

¹¹³ Dr. Adel Al-Tabtabani, Judicial Oversight of the Principle of Proportionality between Disciplinary Punishment and Job Misconduct, Journal of Law, published by the Scientific Publishing Council, University of Kuwait, Vol. 6, Issue 3, Kuwait, 1982, p. 80.

¹¹⁴ Falah Mutlaq Fahid, Abdul Majid Abdul Hafiz Suleiman, Judicial Oversight of the Appropriateness of Disciplinary Sanctions by the Supreme Administrative Court, Journal of the Faculty of Law, University of Al-Minya, Vol. 3, Issue 1, June 30, 2020, p. 126.

¹¹⁵ Rafiq Bou Madine, Judicial Means of Oversight of Proportionality in Administrative Decisions, Master's Thesis, Faculty of Law and Political Science, Mohamed Boudiaf University, Algeria, 2015, p. 48.

¹¹⁶ In legal theory, 'proportionality' is understood as the consistency between two elements of an administrative decision: the reason and the subject. This means that if an employee commits a violation, proportionality implies that the penalty imposed on the employee is consistent with the nature of the violation. For further reference, see: Falah Mutlaq Faheid, Abdul Majid Abdel Hafeez, 'Judicial Review of the Supreme Administrative Court...', Previous Source, p. 129."

¹¹⁷ Dr. Khalifa Salem Al-Jahmi, Judicial Oversight of Proportionality between Punishment and Crime in Disciplinary Matters: An Attempt to Outline a General Theory of Cancellation Jurisprudence, Study in Comparative Arab Law, Dar Al-Jamiah Al-Jadida, Alexandria, 2009, p. 101.

¹¹⁸ Tariq Fath Allah Khidr, Administrative Judiciary - Nullification Lawsuits, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1998, pp. 58-59.

¹¹⁹ Arous Aisha, Qasouri Rafiq, Judicial Oversight of the Discretionary Power of the Administration on the Ground of Cause in the French Council of State and the Impact of Algerian Jurisprudence, Al-Bahith Journal for Academic Studies, Vol. 7, Issue 2, June 2020, p. 343.

¹²⁰ (120(Judgment , No: UNAT/2010/84 ,op.cit , para .39.

¹²¹ See: ADBAT ,Decision , No.78 (7 march 2007) Abat V.ADB, Para .43 , and see also . ADBAT ,Decision , No .17 (1996) II , zaidi V. ADB , Para. 10.

¹²² ILOA , Judgment , No .207 , (14 may 1973) , khelifati V. (UNESCO) ,P.3.(

¹²³ United Nations Dispute Tribunal, Judgment , No: UNDT/2012/138 , paras.31,32.

¹²⁴ (124(United Nations Dispute Tribunal, Judgment , No: UNDT/2014/106 , paras .74 ,75.(125(judgment , No : UNAT /2010/22 , op.cit , para .39-43.(126(United Nations Appeals Tribunal, Judgment , No:UNAT /2010/25 , para .20 .22

¹²⁵ 125(judgment , No : UNAT /2010/22 , op.cit , para .39-43

¹²⁶ United Nations Appeals Tribunal, Judgment , No:UNAT /2010/25 , para .20 .22

¹²⁷ United Nations Appeals Tribunal, Judgment , No:UNAT /2014/407, para .31 and see also , judgment, No: UNAT/2014/408 , Para.27 . and Judgment , No:UNAT /2015/523para . 23-24. and , Judgment , No:UNAT /2015/545, paras .16-20.23C

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