THE LEGAL GUARANTEES OF ELECTRONIC ADMINISTRATIVE DISCIPLINARY PROBLEMS AND SOLUTIONS

a Nisrein Fathi Adwan, b Hadeel Mohammad Al Ttili, c Amani Ahmad Altarawneh

ABSTRACT

Purpose: This study addressed discipline across electronic means as one of the new alternatives for traditional discipline, where the whole world is gradually transforming towards the idea of electronic public facilities and electronic governments instead of the traditional methods of administration. Indeed, the various administrations in several occasions were forced to adopt this change, especially during corona pandemic, where this was no longer a matter of luxury or administrative need. Since discipline is viewed as one of the important and sensitive administrative decisions, it is, obviously, governed by several guarantees. In this vein, the in-presence nature during interrogation, confrontation and reviewing the interrogation file are important guarantees that raise many questions concerning the discipline that is based on modern technological means. This study addressed the extent to which those procedures are valid in case they are performed via the internet.

Design/methodology/approach: The study used the analytical critical descriptive approach.

Findings: Indeed, a legislative gap was noticed in this issue during distance work. Therefore, there should be a comprehensive legal organization for electronic discipline in a similar way to most legislations that regulated distance litigation as well as using the visual and audio electronic means during the court proceedings.

Research, Practical & Social implications: the study sheds light on the evolving landscape of discipline in the digital era and calls for a careful consideration of legal, practical, and social implications to ensure a smooth and just transition to electronic means of disciplinary decision-making.

Originality/value: The insights provided by this research contribute to a better understanding of the challenges posed by electronic disciplinary decision-making, calling for a balanced approach that ensures both efficacy and justice in the changing administrative landscape.

Keywords: disciplinary decision, electronic public facility, distance investigations.

Received: 09/10/2023
Accepted: 08/01/2024
DOI: https://doi.org/10.55908/sdgs.v12i1.1891
AS GARANTIAS LEGAIS DE PROBLEMAS E SOLUÇÕES DISCIPLINARES ADMINISTRATIVAS ELETRÔNICAS

RESUMO

Propósito: Este estudo abordou a disciplina através de meios eletrônicos como uma das novas alternativas para a disciplina tradicional, onde o mundo inteiro está gradualmente se transformando em direção à ideia de instalações públicas eletrônicas e governos eletrônicos em vez dos métodos tradicionais de administração. De fato, as várias administrações em várias ocasiões foram forçadas a adotar essa mudança, especialmente durante a pandemia de corona, onde isso já não era uma questão de luxo ou necessidade administrativa. Uma vez que a disciplina é vista como uma das decisões administrativas importantes e sensíveis, é, obviamente, regida por várias garantias. Neste sentido, a natureza de presença durante o interrogatório, confronto e revisão do processo de interrogatório são garantias importantes que levantam muitas questões sobre a disciplina baseada em meios tecnológicos modernos. Este estudo abordou até que ponto esses procedimentos são válidos no caso de serem executados através da Internet.

Projeto/metodologia/abordagem: O estudo utilizou a abordagem analítica descritiva crítica.

Constatações: De fato, foi notada uma lacuna legislativa nesta questão durante o trabalho à distância. Por conseguinte, deve haver uma organização jurídica abrangente para a disciplina eletrônica de forma semelhante à maioria das legislações que regulamentaram os litígios à distância, bem como a utilização de meios eletrônicos visuais e sonoros durante os processos judiciais.

Investigação, implicações práticas e sociais: o estudo lança luz sobre a evolução da paisagem da disciplina na era digital e apela a uma consideração cuidadosa das implicações legais, práticas e sociais para garantir uma transição suave e justa para meios eletrônicos de tomada de decisões disciplinares.

Originalidade/valor: os insights fornecidos por esta pesquisa contribuem para uma melhor compreensão dos desafios colocados pela tomada de decisões disciplinares eletrônicas, exigindo uma abordagem equilibrada que garanta tanto a eficácia quanto a justiça no cenário administrativo em mudança.

Palavras-chave: decisão disciplinar, instalação pública eletrônica, investigações à distância.

1 INTRODUCTION

The scientific and technological advancement had a considerable effect on the methods of public facility administration which, in turn, necessitated reconsidering the traditional principles of administrative discipline and the necessity of inventing new methods and registrations that cope with using technology and achieving the most possible advantage of it in this context.

Electronic investigation is considered as one of the most important stages of discipline that differs from the traditional character, where we apply the extended geographical domain in performing investigations without the need to exist actually in the same place. However, this type of disciplinary encounters legislative and technical
restrictions. For example, remote communication technology may, sometimes, fail to achieve confrontation between litigants where that requires the availability of a robust internet connection between the place where investigations take place and the place where the accused and any witnesses exist - this condition doesn't always apply.

Also, the legal difficulties are viewed amongst the problems of electronic discipline, where there aren't sufficient legislations to regulate the mechanism and procedures of remote discipline or the guarantees for that.

This research is divided into two topics as follows:

**The first topic:** investigation guarantees in the light of electronic discipline.

**The second topic:** the obstacles of electronic investigation procedures.

2 THE STUDY PROBLEM

This study addressed the great transformation in the concept of traditional discipline in conjunction with the concepts of electronic administration, and other societal and technological developments, in addition to comparing distance litigation proceedings and the guarantees of disciplinary investigations to make advantage of that in the domain of electronic discipline and come up with a legislative regulation that contributes to the validity of the investigation procedures via the electronic means.

3 THE STUDY METHOD

The study used the analytical critical descriptive approach, where the study investigated the guarantees of disciplinary investigations in the comparative legislations and constitutions. Then, the study addressed various models of using the electronic methods in the court proceedings in order to project them on the electronic disciplinary system which, in turn, facilities using such a disciplinary procedure in the normal and urgent cases without worrying about the breach of those guarantees.

4 THE FIRST TOPIC

4.1 INVESTIGATION GUARANTEES IN THE LIGHT OF ELECTRONIC DISCIPLINE

Given the importance and risks relating to electronic investigations, in terms of affecting individual freedom as well as the legislative and technical restrictions resulting from it, it was necessary to focus on the guarantees that should be available in this type
of investigations, in addition to the guarantees passed by legislator in traditional investigations.

Electronic investigation refers to: (investigating the accused in more details concerning the evidence and suspicions, and asking him to respond to them using modern technological means) (Sa'id, Namour, 2016, p. 396).

This context necessities the existence of powerful visual and audio communication means in the investigation place and the place where the accused exist to guarantee good communication between them (Al-Hawamdeh, Hamza, 2022, p. 22).

4.2 THE FIRST REQUIREMENT

4.2.1 Confrontation in electronic discipline

Confrontation is based on the idea of notifying the accused individual about the disciplinary breaches with which he was accused as well as informing him of all relevant evidence to enable him to present his defense (Al-Batarseh, Sulieman, 1997, p. 383).

The court proceedings are invalid without confrontation; therefore, confrontation should obviously include all the information relevant to the breach, which ensures the right to defense (Fahmi, Abu Zeid, 2001, p. 217).

Even though the Jordanian legislator didn't explicitly mention the principle of confrontation, it is implicitly from the case of notification before signing any disciplinary sanctions (Al-Ajarmeh, Nofan, 2019, p. 420).

The concept of remote communication includes the stage of investigations, including notifying the accused of the offences and violations for which he is charged and informing him of the investigation file via the modern communication means despite the far distance that could reach hundreds of miles between investigation parties (Al-Karaawi, Baseef, 2017, p. 25).

Remote investigation imposes taking accurate measures that are compatible with the interest of all the parties. In this vein, we should make sure that the work of all the concerned agencies is to its fullest and that the internet service is available before and during the investigation process, in addition to verifying the personal identity of all the parties communicating via the modern communication technology (Al-Hamadi, Mohammad, 2012, p. 17).

In this context, article 146/b of the Jordanian civil service system No. 9 of 2020 provided that the following measures should be taken while performing investigations:
1- Notifying the employee referred to the investigation committee about all the papers related to the violation or the complaint for which he is being investigated and allowing him to present his defense either verbally or written, in addition to his right to discuss the witnesses and call anyone to testify.

2- The procedures of investigations should be documented in certain forms signed by the employee, the members of the investigation committee and the witnesses as appropriate.

4.3 THE SECOND REQUIREMENT

4.3.1 Hearing the Electronic Testimony

Testimony is considered as one of the most common means of evidence (Zobaidat, Yassir, 2010, p. 14). Electronic testimony has been implemented in some states of the USA (e.g. Michigan, North) since the beginning of the 21st century in order to resolve disputes between litigants without the need to personal attendance (Al-Shar'a, Hazim, 2010, p. 17).

The domain of confrontation includes the employee's right and the right of the disciplinary committee to call anyone to testify, and hear the witness's testimony under oath (Al-Azemi, Fawaz, 2010, p. 35).

It is noteworthy that the Jordanian legislator gave more significance to hearing witnesses via the electronic means; indeed, this can be utilized at the level of administrative investigations under the same controls, where article 9 for the system of using electronic means in the civil judicial proceedings No. 95 of 2018 stated that:

a- the court has the discretion power to decide either by itself or based on a request by one of the litigants to hear the witnesses by using visual and audio electronic means adopted by the ministry in case the witness resides in an area outside the relevant court's jurisdiction, or the witness can't come to the court for any reason.

b- The relevant court remotely hear the witnesses according to the judgments of paragraph "a" of this article by using the electronic means in the nearest court to the witness.

c- The court should the guarantees stated in law when hearing testimonies by using the electronic means.
Here, it is noteworthy that there are a number of guarantees that should be available either hearing witnesses took place traditionally or electronically, such as the oath, hearing each witness individually, and documenting testimony (Al-Zoboun, Sojoud Salameh, 2022, P. 63).

In this vein, hearing the electronic testimony in the domain of administrative discipline entails the same characteristics included in the traditional methods (Al-Ghanem, Abdulaziz, 2016, p. 132). However, it implies several characteristics that save the time of coming to the court and enable the committee to investigate easily by using the modern audio and visual means (Al-Omar, Tariq, 2009, p. 100).

5 THE SECOND TOPIC

5.1 THE OBSTACLES OF ELECTRONIC INVESTIGATION PROCEDURES

Several questions have been raised concerning the extent to which the electronic disciplinary investigations are valid, such as the difficulty of verifying the identity of litigants, ensuring the lack of physical or morale coercion, or indoctrinating the witness certain information (Al-Asali, Mohammad Talal, 2011, p. 44 and follow).

Also, there are several legal issues represented by the legislative gap about the safety of a number of electronic investigation procedures, and the extent of their validity, especially with the lack of a comprehensive legislative regulation despite the urgent conditions faced by the various countries all over the world during corona pandemic. Indeed, this made electronic discipline as a necessity, but not just a legal luxury.

5.2 THE FIRST REQUIREMENT

5.2.1 The Technical Issues in Electronic Discipline

First, the lack of robust infrastructure:

Discipline via electronic means requires the existence of a robust infrastructure, in terms of the availability of modern computers in the general administration, as well as the qualified and well-trained staff to work in this domain, in addition to adding more change and development to the human element to change the traditional pattern in discipline (Al-Maani, Aiman, 2012, p. 233).
Second, the electronic hacking and viruses:

Hacking is defined as "stealing software, data, or information from the computer devices owned by others in order to publish them, damage them or convert them which, in turn, causes harm to their owner" (Nabeeh, Nisreen, 2010, p. 4).

The computer viruses are programs that are developed to hack other programs. They have the ability to access and hide in another program without its owner's realization of its existence (Al-Khalida, Mohsen, 2009, p. 144).

It is worth mentioning that such risks may damage all the data relevant to investigations which, in turn, adversely affects the litigants' trust in using the electronic means for the purposes of discipline, and thus may result in an unexpected loss of documents. In this vein, we should confirm the necessity of bridging the legislative gap related to electronic discipline by taking all the necessary measures for hearing witnesses remotely, saving investigation documents as well as not disclosing them and dumping data in electronic and written form.

It is worth nothing that the Jordanian legislator has already considered the issues of hacking and virtues, as stated in article 4 of cybercrime law of 2015, later amended in 2019 "shall be exposed to a punishment of imprisonment of not less than three months and not more than a year, or a fine of not less than 200 JD, and not more than 1000 JD, all those Inserting, publishing or intentionally using the internet or information system program to cancel, erase, add, damage, disclose, ban, modify, change or copy information. The same applies to those impeding the work of information system, or access to it, or damage, cancel or modify its content, or plagiarize the character of its owner without permission, or in a way that breach that permission ".

5.3 THE SECOND REQUIREMENT

5.3.1 The legal difficulties of electronic discipline

The first requirement: the guarantees of audio and visual testimony

It is worth nothing that the system of using electronic means in the civil legal proceedings of 2018, only recognized using visual and audio communication means together (article 9 of the system of using visual and audio electronic communication means). This case has been adopted by several legislations, where only the video recordings, such as (Vide Conferencing and Tele Presence) are recognized.
In case this condition was deleted from electronic discipline, the concerned agencies should verify the witness's identity and reconcile data. The court may also ask the witness to install the camera in a certain angle with a high position to verify showing the widest area of the room. Also, there should be more focus on the clarity of image and sound, and the testimony should be overlooked in case the internet connection was interrupted more than once (Salmon and Louysa, 2020).

Second, inflexibility in interpreting the traditional legal rules to cope with the technological development. This case applies in the light of the absence of sufficient legislations which threaten the guarantees of fair investigations (Al-Odwan, Majid, 2020, p. 93).

In the light of resolving the argument concerning implementing the rules of proceedings and presenting smart services, we should refer to the experiments of several countries in this domain, where the number of electronic cases based on the electronic program (Al-Salfa)– that allows for registering all cases electronically- exceeded (40,000) cases in 2015, and obtained the best award at the level of the Arab Gulf (Ali, Khalid, 2021, p.16).

Third, the absence of core modifications about electronic discipline in the Jordanian civil service system and the independent systems of institutions.

In order to enable all those dealing with administration to convert to entrepreneurship in this domain, we should make modifications to these systems so that individuals can file a complaint electronically, and the committees relevant to investigations can exchange data and discuss litigants and witnesses without the need to be physically existent.

Article 141 of the Jordanian civil service system provided the necessity of notifying the employee, in a written form, about the accusation without referring to the possibility of notifying him electronically which, in turn, causes confusion and urges administrations to be more committed to the traditional way; in fact, there should be no disagreement about this issue in the current era.

Also, the 16th chapter of the disciplinary penalties and procedures in the Jordanian civil service system of 2022 didn't include any indication about electronic administration for any of those procedures.
Furthermore, all the disciplinary texts in the systems of independent institutions, such as universities didn't include any reference to the disciplinary procedures (see the system of the University of Jordan employees No. 52 of 2003).

It is worth mentioning that the scientific reality during corona pandemic resulted in the technical and legislative need to manage the investigation procedures via the electronic means. For example, the University administrations faced difficulties in handling disciplinary cases to students via the electronic applications during the transformation towards distance learning. In this vein, the disciplinary breaches existed, even though students were outside the University campus- they were even more prevalent than usual, as the students and the administrative staff communicated via the cyber space, where several breaches related to not respecting others as well as verbal abuse and others.

6 CONCLUSION

At the end of this research, we will present a number of results and recommendations, as follows:

The results:
1- The results showed that the civil service system and the Independent systems in Jordan, including the University executive systems, that deal with a wide range of public employees and students in Jordan, don't match with the requirements of electronic public facility, in terms of discipline. Also, these systems suffer from obvious rigidity and texts that support traditional administration which results in real problems in reality.

2- Most public facilities suffer from an obvious disruption with reference to the requirements of electronic transactions in all disciplinary stages, starting from filing a complaint, through investigations, electronic testimony and others.

3- The administrations of public facilities with their various levels still view remote discipline as a type of luxury, where the traditional administrations overlook the various characteristics of those electronic procedures, with regard to overcoming the difficulties of meetings as well as saving time and effort.
7 RECOMMENDATIONS

1- There should be a comprehensive legal regulation of electronic discipline similar to that applicable in most legislations that regulated remote litigation and the use of visual and audio electronic means during the court proceedings.

2- Remote discipline requires the existence of a robust infrastructure, by providing the developed computer devices by the general administration. Also, this entails the existence of qualified and trained human staff to work in this domain and change the traditional way of discipline.

3- Inserting a number of texts that instill the culture of electronic administration in the systems that govern public employees in all the levels.

4- Cancelling the texts that requires the employee's knowledge of computer skills and replacing that with texts related to training courses, in addition to linking those skills with the requirements of promotion by requiring the various departments to provide their employees with training programs before promotion in order to qualify them to deal with electronic discipline.
REFERENCES


Cybercrime Law No. 15 of (2015).

Civil Service Regulation No. 9 of (2020) and its amendments.

The University of Jordan Staff Regulations No. 52 of (2003).

The regulations for flexible working hours in the civil service of 2021.