

The Impact of Criminal Restrictions on Some Administrative Decisions in Jordanian Legislation (A Fundamental Analytical Study)

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The importance of this research stems from its examination of a precise legal and practical issue that intersects with the constitutional rights of individuals in the Hashemite Kingdom of Jordan, namely the impact of "criminal records" on administrative decision-making. The problem of the study lies in the administrative expansion of relying on security clearances and criminal records as a ground for excluding individuals from their rights to employment or practicing commercial activities, without sufficient distinction between a record based on a final judgment and a mere security "request," or considering the effects of general amnesty and rehabilitation.

This research aims to analyze the legality of the "motive" (Cause) in administrative decisions based on criminal history and to clarify the limits of the administration's discretionary power in characterizing crimes involving moral turpitude. It also highlights the role of the Jordanian administrative judiciary under Administrative Judiciary Law No. (27) of 2014 in supervising such decisions. The study adopted a descriptive-analytical approach to examine legislative texts and review the rulings of the Supreme Administrative Court.

The study reached several findings, most notably: that a criminal record does not constitute a valid legal ground for an adverse administrative decision unless it is based on a final judicial verdict, and that the General Amnesty Law No. (5) of 2024 imposes a duty on the administration to erase the administrative impact of the records covered by it. The research recommended the necessity of automating the deletion of criminal records and defining precise legislative criteria for crimes involving moral turpitude and dishonesty to prevent administrative arbitrariness.

Introduction

Criminal and security restrictions are among the most delicate issues in which the requirements of the public interest and the preservation of national security intersect with the individual rights and fundamental freedoms of the citizen. In a legal State, such restrictions should not remain a sword hanging over the necks of individuals forever, but must be subject to strict legal and judicial controls to ensure that the administration does not abuse them as a pretext to deprive individuals of their rights to work, move or engage in commercial activities.

First: The Problem of the Study

The problem of the study is that there is "legal and procedural ambiguity" surrounding the consideration of criminal restrictions when making administrative decisions in Jordan. The problem is that the security restriction in electronic records continues to have an impact even after the expiration of the sentence or the issuance of a general amnesty, which leads to a "continuous punishment" that prevents the individual from obtaining certificates of good conduct or non-conviction, and thus excluding him from public and private jobs without a clear legal basis in some cases.

Second: The Importance of the Study

1. **Scientific Importance:** Providing the legal library with specialized research on a delicate topic that combines administrative law and the law of criminal procedure.
2. **Practical Importance:** Trying to find legal solutions for people who have served their sentences and repented, to ensure their integration into society and their right to a decent life.

Third: Objectives of the Study

- Determine the exact concept of criminal registration and the legal basis for its registration.
- Describe the impact of these restrictions on administrative decisions (appointment, licensing, discipline).
- Clarify the role of the Jordanian administrative judiciary (the Supreme Administrative and Administrative Court) in overseeing these decisions.
- Explain the legal mechanisms for the expiration of the effect of criminal registration.

Fourth: Study Questions

1. What is the legal difference between a security restriction and a criminal request?
2. To what extent does management have discretion in disqualifying an applicant based on "security restrictions"?
3. How does the administrative judiciary monitor the "cause" element in decisions based on criminal records?
4. Does the amnesty have the desired legal effect of completely deleting the records from the records?

Fifth: Study Methodology

The study relies on **the descriptive-analytical inductive approach** through the analysis of the legislative texts in the Penal Code, the Procedure of Criminal Trials, and the Law of Administrative Justice, while reviewing the latest judicial principles issued

by the Jordanian administrative judiciary.

Chapter One: The Conceptual Framework and Legal Basis for Criminal Registration

Introduction: A distinction must be made between the right to register a criminal record and the exploitation of this record in a manner that is contrary to the principle of the legality of crimes and penalties.

The first topic: What is the criminal restriction and the distinction between it and the security request

The first requirement: Definition of Criminal Restriction (Precedence): The legal effect that is recorded in the person's file with the Criminal Information Department following his conviction with a final judgment or his referral to the judiciary for a felony or misdemeanor; The criminal record is also defined as the historical record of the criminal acts for which final judicial rulings have been issued against the person, and the Department is responsible for archiving this data for security and administrative purposes. A precise distinction must be made between "Criminal Registration" Document of the judgment, and between "Security Request" which is considered a prosecution procedure that has not yet ended with a judicial decision, and "Precedence" which may include mere suspicion or administrative detention (1), a security source also explained that the so-called security restriction or the so-called precedence, which is registered against a person who is deposited in the judiciary after his arrest for committing an act that violates the provisions and provisions of the law, whether it is classified as a violation, misdemeanor or felony, and after the investigation of a registered complaint against him or a crime is completed.¹

- **The second requirement: the distinction between a restriction and a request:** a security request means that a person is "currently wanted" for justice, while a restriction is a "historical record" of a previous act.

Second Topic: The Legal Basis for Registering Entries and the Competent Authority

- **First Requirement: Legislative Basis:** The registration derives its legitimacy from the Jordanian Code of Criminal Procedure and the regulations and instructions issued thereunder.
- **The second requirement: The Criminal Information Department:** It is the entity entrusted with archiving and documenting these entries through the computerized control system.

Chapter Two: The Impact of Criminal Restrictions on the Legality of Administrative

¹.Public Security Magazine, Issue 128, p. 22

Decisions

Introduction: Criminal restrictions affect the legal status of individuals by requiring "good conduct" in most transactions.

First Topic: The Impact of Restrictions on Appointment Decisions and Public Employment

- **The first requirement: The condition of good conduct and behavior:** It is considered an obstacle to obtaining a certificate of non-conviction.
- **Second Requirement: Disciplinary Decisions and Withdrawal of Appointment Decisions:** If the management discovers that the employee has been concealed for a criminal record that violates honor, it has the right to withdraw the appointment decision as a defective decision.

Second Topic: The Impact of Restrictions on Licenses and Tenders

- **The first requirement: Professional and commercial licenses:** Refusal to grant licenses for public driving or licenses for sensitive professions based on a criminal record.
- **The second requirement: tenders and tenders:** the exclusion of the bidders if the tenders system requires a certain code of conduct.

Chapter Three: Judicial Oversight of Decisions Based on Criminal Restrictions

Introduction: Jordan's administrative judiciary has moved to a two-tier system under the 2014 Administrative Justice Law, which has strengthened oversight of the "cause" and "purpose" pillars.

The first topic: Monitoring the causal element (the material incident and the adaptation)

- **The first requirement: The requirement of a final ruling:** The Supreme Administrative Court's ruling has established that mere "accusations" or "restrictions that have not ended in a conviction" are not sufficient to be a legitimate reason for the administrative decision.
- **The second requirement: Legal adaptation of crimes against honor:** The judiciary has the authority to determine whether the crime violates honor or not, not the administration.

Second Topic: Monitoring the Purpose Element (Deviation by Authority) and the Condition of Proportionality

- **The first requirement: Deviation in authority:** Annulment of the decision if it is proven that the management used the criminal restriction to abuse the employee or for malicious reasons.
- **The second requirement: The principle of proportionality:** The deprivation must be proportionate to the gravity of the crime committed and the extent to which it is related to the job.

Chapter Four: Expiration of the Effect of Criminal Restrictions and Rehabilitation Mechanisms

Introduction: Jordanian legislation establishes means of erasing the impact of criminal registration in order to give a second chance to the penitents.

First Topic: Erasure of Registration under General Amnesty and Innocence

- **The first requirement: The effect of the general amnesty:** According to the general amnesty law of 2024, the criminal case is eliminated and any original or subsidiary punishment is dropped.
- **The second demand: The problem of "blocking" instead of "deletion":** The practical reality indicates that the administration withholds the registration and does not delete it completely, which sometimes hinders the individual in in-depth security checks.

Second Topic: Judicial and Legal Restoration

- **The first requirement: conditions for rehabilitation:** the execution of the sentence, the passage of the legal period (6 years for felonies, 3 years for misdemeanors), and proof of good conduct.
- **Second Requirement: Procedures:** Submitting a request to the Public Prosecutor and referring it to the competent court to issue a decision to rehabilitate.

Conclusion, Findings and Recommendations

Results:

1. An administrative decision based on a criminal record that does not end in a final conviction is a decision that is tainted by a defect of reason and must be revoked.
2. There is a gap between the legal text of the general amnesty (which stipulates the erasure of crime) and the practical reality of withholding registration electronically.
3. Jordan's administrative judiciary is a safety valve in the face of the administration's arbitrariness in adapting "crimes against honor."

Recommendations:

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1. **Legislative Amendment:** Establishing a comprehensive and preventive definition of crimes against honor in the Public Service Law to unify standards and prevent administrative jurisprudence.
2. **Automate Write-offs:** Link the criminal information system to the court system to automatically drop the restrictions immediately after acquittals are issued or include them in a general amnesty without the need to submit cumbersome requests.
3. **Principle of specialization:** The necessity of requiring a "direct link" between the type of offense and the nature of the job when making the decision to exclude oneself.
4. Facilitating the administrative procedures related to submitting requests for rehabilitation to the Public Prosecutor, and reducing the time periods for security checks, to ensure the rapid integration of repentants into society and the labor market

Bibliography (updated)

1. **The Jordanian Constitution and its amendments.**
2. **Jordanian Administrative Judiciary Law No. (27) of 2014.**
3. **Jordanian Penal Code No. (16) of 1960 and its amendments.**
4. **The Code of Criminal Procedure No. (9) of 1961 and its amendments.**
5. **General Amnesty Law No. (5) of 2024.**
6. **The latest rulings of the Jordanian Supreme Administrative Court (published on the website of the Bar Association and the Qistas Rule).**
7. **Websites:**
 - Jordanian Judicial Portal (Annual Report of the Administrative Courts).
 - Jordanian Official Gazette (for the latest amendments to the laws).