



المعهد القومي للملكية الفكرية  
The National Institute of Intellectual Property  
Helwan University, Egypt

## المجلة العلمية للملكية الفكرية وإدارة الابتكار

دورية نصف سنوية محكمة يصدرها

المعهد القومي للملكية الفكرية

جامعة حلوان

العدد الرابع

يوليو ٢٠٢١



**الهدف من المجلة:**

تهدف المجلة العلمية للملكية الفكرية وإدارة الابتكار إلى نشر البحوث والدراسات النظرية والتطبيقية في مجال الملكية الفكرية بشقيها الصناعي والأدبي والفني وعلاقتها بإدارة الابتكار والتنمية المستدامة من كافة النواحي القانونية والاقتصادية والإدارية والعلمية والأدبية والفنية.

**ضوابط عامة:**

- تعبر كافة الدراسات والبحوث والمقالات عن رأى مؤلفيها ويأتي ترتيبها بالمجلة وفقا لإعتبارات فنية لا علاقة لها بالقيمة العلمية لأى منها.
- تنشر المقالات غير المحكمة (أوراق العمل) فى زاوية خاصة فى المجلة.
- تنشر المجلة مراجعات وعروض الكتب الجديدة والدوريات.
- تنشر المجلة التقارير والبحوث والدراسات الملقاه فى مؤتمرات ومنتديات علمية والنشاطات الأكاديمية فى مجال تخصصها دونما تحكيم فى أعداد خاصة من المجلة.
- يمكن الاقتباس من بعض مواد المجلة بشرط الاشارة إلى المصدر.
- تنشر المجلة الأوراق البحثية للطلاب المسجلين لدرجتى الماجستير والدكتوراه.
- تصدر المجلة محكمة ودورية نصف سنوية.

**ألية النشر فى المجلة:**

- تقبل المجلة كافة البحوث والدراسات التطبيقية والأكاديمية فى مجال حقوق الملكية الفكرية بكافة جوانبها القانونية والتقنية والاقتصادية والإدارية والاجتماعية والثقافية والفنية.
- تقبل البحوث باللغات (العربية والانجليزية والفرنسية).
- تنشر المجلة ملخصات الرسائل العلمية الجديدة، وتعامل معاملة أوراق العمل.
- يجب أن يلتزم الباحث بعدم إرسال بحثه إلى جهة أخرى حتى يأتيه رد المجلة.
- يجب أن يلتزم الباحث بإتباع الأسس العلمية السليمة فى بحثه.
- يجب أن يرسل الباحث بحثه إلى المجلة من ثلاثة نسخ مطبوعة، وملخص باللغة العربية أو الانجليزية أو الفرنسية، فى حدود ٨ - ١٢ سطر، ويجب أن تكون الرسوم البيانية والإيضاحية مطبوعة وواضحة، بالإضافة إلى نسخة إلكترونية Soft Copy، ونوع الخط Romanes Times New ١٤ للعربى، و١٢ للانجليزى على B5 (ورق نصف ثمانيات) على البريد الالكتروني: [ymgad@niip.edi.eg](mailto:ymgad@niip.edi.eg)
- ترسل البحوث إلى محكمين متخصصين وتحكم بسرية تامة.
- فى حالة قبول البحث للنشر، يلتزم الباحث بتعديله ليتناسب مع مقترحات المحكمين، وأسلوب النشر بالمجلة.



مجلس إدارة تحرير المجلة	
أستاذ الاقتصاد والملكية الفكرية وعميد المعهد القومي للملكية الفكرية (بالتكليف) - رئيس تحرير المجلة	أ.د. ياسر محمد جاد الله محمود
أستاذ القانون الدولي الخاص بكلية الحقوق بجامعة حلوان والمستشار العلمي للمعهد - عضو مجلس إدارة تحرير المجلة	أ.د. أحمد عبد الكريم سلامة
سكرتير تحرير المجلة	أ.د. وكيل المعهد للدراسات العليا والبحوث
أستاذ الهندسة الانشائية بكلية الهندسة بالمطرية بجامعة حلوان - عضو مجلس إدارة تحرير المجلة	أ.د. جلال عبد الحميد عبد اللاه
أستاذ علوم الأطعمة بكلية الاقتصاد المنزلي بجامعة حلوان - عضو مجلس إدارة تحرير المجلة	أ.د. هناء محمد الحسيني
مدير إدارة الملكية الفكرية والتنافسية بجامعة الدول العربية - عضو مجلس إدارة تحرير المجلة	أ.د. وزير مفوض / مها بخيت محمد زكي
رئيس مجلس إدارة جمعية الإمارات للملكية الفكرية - عضو مجلس إدارة تحرير المجلة	اللواء أ.د. عبد القدوس عبد الرزاق العبيدلي
أستاذ القانون المدنى بجامعة جوتة فرانكفورت أم ماين - ألمانيا - عضو مجلس إدارة تحرير المجلة	Prof Dr. Alexander Peukert
أستاذ القانون التجارى بجامعة نيو كاسل - بريطانيا - عضو مجلس إدارة تحرير المجلة	Prof Dr. Andrew Griffiths

### المراسلات

ترسل البحوث إلى رئيس تحرير المجلة العلمية للملكية الفكرية وإدارة الابتكار بجامعة حلوان  
جامعة حلوان - ٤ شارع كمال الدين صلاح - أمام السفارة الأمريكية بالقاهرة - جاردن سيتي

ص.ب: ١١٤٦١ جاردن سيتي

ت: ٢٠٢ ٢٥٤٨١٠٥٠ + محمول: ٢٠١٠٠٠٣٠٥٤٨ + ف: ٢٠٢ ٢٧٩٤٩٢٣٠ +

<http://www.helwan.edu.eg/niip/>

ymgad@niip.edu.eg



## **The Infringement of IPRs by the Public Employee and the Rule of Administrative Prosecution**

**Ahmed Haggag Kamal Hussin**

---

**The Infringement of IPRs by the Public Employee and the Rule  
of Administrative Prosecution**  
**Ahmed Haggag Kamal Hussin**

**Introduction**

Like any other person, the public employee might commit a crime or break the law, whether criminal law, civil law, or disciplinary law. While doing his job, the public employee is committed to a general rule stipulates that he will be responsible for any act would violate the duty of the job or appears with any indecent behavior. So if there is any violation of the intellectual property rights made by the employee, he will be asked about it under criminal law, civil law, and disciplinary law. And what concern the researcher is the disciplinary responsibility that ensues and the extent of the existence of that responsibility if the violation is committed at the workplace, during official working hours, outside work or during non-official working hours.

This paper will deal with infringing intellectual property rights as a disciplinary offense made by a public employee and will answer specific questions like: When is a public servant disciplinary responsible for violating IPRs? What is the legal basis on which the employee is disciplinarily asked upon? What are the similarities and differences between disciplinary responsibility and criminal and civil responsibility of violating IP rights? What is the authority responsible for investigating the employee? What is the procedural organization of the investigation before the administrative prosecution into the employee's violation of intellectual property rights? What is the legal action, if the violated IPR is owned by the state or owned by others? What are the forms of IPR infringement made by public employees? And finally what are the



recommendations to raise the public employees' awareness of the risks of violating intellectual property rights and what are the means to avoid the violation?

## **Chapter One**

### **Violating intellectual property rights as a disciplinary offense**

Article ٥٨ of the Egyptian Civil Service Law No. ٨١ of ٢٠١٦ stipulated the following: Every employee who violates the duty of his job or shows an appearance that violates the dignity of the job shall be punished. and in the same sense of this text, Article ٢٩ of French Law No. ٨٣/٦٣٨ regarding the rights and duties of employees in France stipulated the same content, however the legislator did not specify disciplinary violations exclusively, as result the employee is committed to all laws wither criminal civil or disciplinary law<sup>١</sup>, so talking about laws the Egyptian intellectual property law No ٨٢/٢٠٠٢ is what matters in these papers.

Article ١٨١ of law No ٨٢/٢٠٠٢ for example state clearly that “without prejudice to any more severe sanction under any other law, shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than ٥,٠٠٠ pounds and not more than ١٠,٠٠٠ pounds, or any of those sanctions, any person who commits any of the following acts: ..... (٧) Infringing any of the moral or economic copyrights or related rights provided for in this law. ....” and in light of the disciplinary rule stated before, any employee infringing the moral copyright by attributing the work of others to himself for example, will place himself under legal liability for that rule, which may lead to his employment termination.

<sup>١</sup> Yakot, Maged Mouhamed (٢٠٠٦). , Explanation of disciplinary law for public service Minshat Elmaaref publishing house. p ٢٦٦ (in Arabic)

As an application for the situation aforementioned above, the supreme administrative court in Egypt ruled to dismiss a university professor from work permanently for plagiarizing three scientific papers and attributing them to himself to obtain a professorial degree, and the verdict stipulated that “The duty of scientific honesty is the most important thing that the professor possesses and it is imperative for him to attribute this knowledge to his owners, in any form in which this science is published, whether in the form of a reference or a scientific thesis for a scientific degree or research or a scientific article in a periodical or a specialized scientific journal that it publishes A scientific institution or research center or the like, and therefore the faculty member - in the event of a need for complete verbatim transfer from the writings of others - must refer in his book to that in all the places subject of transmission, otherwise this would represent a serious breach of the duties and requirements of his position as a faculty member at the university”<sup>١</sup>.

### **١,١ Similarities and differences between disciplinary responsibility and criminal responsibility of violating IP rights:**

The legal pillar of the criminal offense is that “there is neither crime nor punishment except by a legal text”<sup>٢</sup>, while in the administrative or disciplinary milieu it is not the law only that determines disciplinary crimes, but rather the presidential authority has the right to create disciplinary descriptions based on its regulatory responsibility, but there must be a mistake according to a general rule, whatever its source<sup>٣</sup>. And by comparing the principle of legality in the criminal field and the principle of legitimacy in the

---

<sup>١</sup> <https://www.youm7.com/>

<sup>٢</sup> Article ٦٦ of the Egyptian constitution.

<sup>٣</sup> Asfour, Mohamed.(٢٠٢٠) Towards a general theory of discipline. P ١٢٠ (in Arabic)

disciplinary field, we find that they are two sides of the same coin, because the principle is the rule of law in the general sense<sup>1</sup>.

The violation of intellectual property rights can represent a criminal and disciplinary offense at the same time, but one of the differences is that criminal responsibility is legalized to protect society from criminal behavior, but disciplinary responsibility aims to ensure the functionality of the public facility, and accordingly, the public employee is punished for violating intellectual property rights, considering his behavior leads to disruption of the public facility, and charging the state unnecessary expenses, due to the possibility of the owners of intellectual property rights suing the administrative apparatus.

For example, if an employee infringes the intellectual property rights in his workplace by placing a registered trademark for others on government products and attributing it to himself, then he will expose the administrative body to litigation and paying compensation for that based on "the superior's responsibility for the actions of his subordinate" rule, in addition, the inappropriate appearance that he exposed himself to. And he will administratively be punished in this regard based on the rule of "violating the requirement of job duty", regardless of whether he is criminally responsible for that act or not.

---

<sup>1</sup> Abo AlEneen, Mohamed Maher. (٢٠٢٠). The detailed, on discipline in the public employment, and disciplinary councils. Frist edition. Rawae Elqanoon publishing house, ١٨, ٢٦ july St. Downtown. Cairo. Page ٢٣ In Arabic.

## ١,٢ Similarities and differences between disciplinary responsibility and civil responsibility of violating IP rights:

The basic rule of civil liability is that “every mistake that causes harm to others is required to be compensated”<sup>١</sup>. Therefore, the act of a mistake that causes harm to others is described as a civil crime, and its penalty is compensation, and the conditions for incrimination are the existence of a harmful act associated with a mistake, this is in contrast to the disciplinary responsibility that may exist even if there is no harm.<sup>٢</sup>

Thus, an employee who is proven to have attempted to infringe IPRs can be punished even if his actions did not lead to any harm. For example, if an employee is caught in the preparation stage for copying books for the purpose of selling without the author's permission, then he will be responsible for that, even if he has not been guilty civilly or no damages resulting from it.

## ١,٣ Forms of IPR infringement made by public employees.

Disciplinary crimes are divided - in terms of the material component- into positive crimes and negative crimes: Positive crime is the action made by the employee in violation of a legal text or in violation of the requirements and duties of the job, whether inside or outside the place of work and work time<sup>٣</sup>. For example exploitation of artistic works owned by the Egyptian Federation of Television and Radio without permission.

---

<sup>١</sup> Act ١٦٣ the Egyptian civil law.

<sup>٢</sup> Yakoot, Mohamed Maged (op. cit.)

<sup>٣</sup> Ghanim, Tarik Faysal.(٢٠١٦) The relationship between the criminal offense and the disciplinary offense.

On the other hand, the negative disciplinary crime: which means the employee's failure to perform an act that he is legally obliged to do, or is required by the duties of the job. Such as the failure of an employee to take legal action toward those who violate the intellectual property rights owned by the state, if his role is to monitor these violations and report them<sup>١</sup>. And this would be the case if the legal affairs of the National Media Authority in Egypt did not submit a report to the artistic works investigation office against "Cairokee" band, for the exploitation of part of the song "Ansak" by Umm Kulthum, whose ownership rights of many of her works belong to the Egyptian television<sup>٢</sup>.

There is another division of the violation of intellectual property rights as an administrative offense: which are financial offenses and administrative offenses.

Financial violations: It is a breach of financial rules or committing mistake or negligence that results in the loss of a financial right for the state or public entities. we can find this in two ways, first when the employee directly infringes the intellectual property owned by the state, such as disposing of a literary or artistic work or exploiting a trademark owned by his workplace without a permit, which leads to financial loss in the state's public treasury based on the loss of some of the returns resulting from his act. And the other way when he infringes intellectual property owned by others for the sake of his job, which will lead the owners of intellectual property rights to sue the state for a large compensation, which will ultimately lead to a financial loss for the state's public treasury as well.

---

<sup>١</sup> "Tbid"

<sup>٢</sup> <https://www.emaratalyoum.com/life/culture/٢٠١٩-٠٤-٠٣-١,١١٩٨٦٥٧>

Administrative offenses: It is a breach of presidential orders, which indicates the lack of discipline and commitment of the worker, so “The assignment of a piano teacher in the Conservatoire to participate in the revival of a certain occasion, and refused without a prior notification or warning to the organizers, shall be guilty of not complying with the instructions described in the law.”<sup>1</sup>

## **Chapter Two**

### **Authorities responsible for disciplining public officials in the event of intellectual property rights violations**

Article ١٩٧ of the Egyptian constitution ٢٠١٤ stipulates that “The Administrative Prosecution is an independent judicial body. It investigates financial and administrative irregularities, and those referred to it. Regarding these irregularities, it has the authorities vested in the administration body to inflict disciplinary penalties. Challenging its decisions takes place before the competent disciplinary court at the State Council. It also initiates and conducts proceedings and disciplinary appeals before the State Council courts in accordance with the law”.

We can discern from the previous article the bodies that have the mandate to discipline government officials, namely the administration and the administrative Prosecution.

Article No. ٦٠ of the Egyptian civil service law stipulates that : The Administrative Prosecution Office is exclusively competent to investigate the occupants of leading positions, as well as the exclusive authority to investigate financial irregularities that result in the loss or infringement of a state’s financial right. It also undertakes the investigation of other violations that are referred to it, and it shall

<sup>1</sup> C.E ١٤ fevrier ١٩٩٢, De Hoogh, Leb. T. D. P. ٤٧٥٠.

have, in respect of these violations, the powers established for the competent authority to impose penalties or dismiss it. The competent administrative authority with regard to all the violations shall suspend its investigation into a certain incident or facts and what is related to it if the administrative prosecution has begun the investigation into it, and every procedure or action contrary to that shall be null.

An important question arises here, is the violation of intellectual property rights by the public servant considered an administrative offense or a financial violation? Because answering this question will show us the responsible authority for the investigation and discipline of the violator.

As we explained previously, all violations that constitute an infringement of intellectual property rights are considered financial violations, and based on the contents of Article ٦٠ previously referred to, the authority exclusively competent to investigate crimes of violation of intellectual property rights by the employee is the administrative prosecution.

#### **٢,١ The procedural organization of the investigation before the administrative prosecution into the employee's violation of intellectual property rights.**

The administrative prosecution starts its investigations based on three sources, either by informing the prosecution through legal affairs of the administration for an employee's violation of state-owned intellectual property, through reports of the supervisory authorities, or by complaining of individuals who own intellectual property that was infringed by the public employee.

The administrative prosecution - when conducting the investigation procedures regulated by the law - aims to uncover the truth and reach the perpetrator of the violations, and for that, the law has granted the prosecution many procedural powers that it exercises under its jurisdiction to enable it to track the truth, identify the perpetrators and hold them questioned, and grantee the right of society to their punishment.<sup>١</sup>

## ٢,٢ Procedures

The procedures that the prosecution has during the investigation to reach the employee who violated intellectual property rights and punish him disciplinary are: Inspecting, perusal, moving to venue, summoning witnesses, delegating experts, and individual monitoring procedures, suspending the accused from work.

The law guarantees to the member of the Administrative Prosecution - in Article ٧ of the Prosecution Law - the right to review what he deems necessary from the papers and documents to form his belief in the facts he is investigating to reach the truth and this right enables him to seize these papers.<sup>٢</sup> Accordingly, the prosecutor can seize papers related to the crime of violating intellectual property rights, such as papers and photos kept by the employee to exploit a device protected by a patent without the permission of the patentee.

---

<sup>١</sup> Ismail, Maiada Abd Al Qader.(٢٠١٩) The mandate of the administrative prosecution to impose disciplinary sanctions.. Minsha Al Maref publishing house

٤٤ Saad Zagloul St. Alexandria, Page ١٢٨.

<sup>٢</sup> Ibid



Moving to the venue is one of the most important procedures for collecting evidence in some disciplinary offenses, so the investigator will not be able to make the inspection before moving to the place where the inspection is taking place.<sup>١</sup> Article ٩ of the Prosecution Law stipulates that "a member of the administrative prosecution has the right to inspect the accused and his residence ... or his workplace ...." Applying this article to reality, a member of the prosecution can inspect the accused employee himself, his place of work, or his home if there are signs that his violation of intellectual property rights is linked to his workplace or residence, such as keeping copies of books printed illegally for the purpose of selling them.

The law gave the administrative prosecutor many powers including testimony, so the prosecutor can call whoever sees the need for his testimony, whether he is an employee or not, and whoever is summoned to testify and refuse will be subjected to legal accountability. In addition to the saying of the expert which is considered as testimony, because the expertise is the technical advice that the judge or the public prosecutor uses in the field of evidence to assist him in assessing the issues, and to provide technical information related to specific facts, whether medical, geometric or mathematical.<sup>٢</sup>

The experts that the prosecutor demands in the field of infringement of intellectual property rights are: the technical members of the Egyptian Patent Office, the General Administration for Investigation of Artistic works and the Protection of Intellectual Property Rights, the Supervisory Authority for Artistic Works, and

<sup>١</sup> Abo El Eneen, Mohamed Maher. (op. cit) page ٢٨٩

<sup>٢</sup> Ismail Maiada Abd El Qader. (op. cit) page ١٣٢, ١٣٥

the Office for the Protection of Intellectual Property Rights in the Information Technology Industry Development Agency.

The precautionary suspension from work for the benefit of the investigation is merely a preventive measure that may be taken if motives arise against the employee, which is to exclude him from his job on the occasion of the investigation, and he withdraws from it until he is purified from what he was attached to, and this procedure may be taken because the employee being investigated may have authority or influence that would affect the progress of the investigation by terrorizing other employees, whom may be subordinated to him or hiding important documents to mislead the investigation. it is an authority that may only be carried out within the scope of discipline by accusing the employee of an accusation that requires disciplinary accountability and requires punishment.<sup>١</sup>

And this procedure is usually taken towards senior employees, or technical employees who can hide their violations, for example, if there is investigation with a senior employee who stole the idea of his subordinate employee for a method of displaying and arranging monuments of the Egyptian museum, attempting to attribute this idea to himself. So the presence of this president at work may intimidate some of the employees who have testimonies from testifying before the prosecution's investigations, or might allow him to hide important documents related to investigation.

### ٢,٣ Sanctions

The administrative prosecution has the right to punish the employee who violates the intellectual property owned by the state or

---

<sup>١</sup> The Supreme Administrative Court - Appeal No. ٨١١ of the ١٤th judicial year at a hearing of ٥/٥/١٩٧٣. and Appeal No. ١١٣ of the ٣٢nd judicial year, hearing ٢٥/١١/١٩٨٦.

individuals, as stipulated in the Civil Service Law, with the following penalties: Warning, deduction from the wage for a period or periods not exceeding sixty days per year, or suspension from work for a period not exceeding six months with payment of half of the full wage.

According to the provisions of Articles ١٢ and ١٤ of the Law on Organizing Administrative Prosecution and Disciplinary Trials, the prosecution can referral cases to the disciplinary court when the prosecution considers that the violation deserves a more severe penalty than it can impose, for example the two penalties of dismissal from service or referral to the pension<sup>١١</sup>.

At the end, we had referred to the violation of intellectual property rights by the public servant, and the authority responsible for investigating him in this regard, and the penalty that can be imposed on him. we would like in conclusion to recommend the establishment of a technical unit within the administrative prosecution to follow up cases related to the violation of Intellectual property rights and take steps to raise employee's awareness of the importance of IPRs.

---

<sup>١١</sup> Ismail Maiada Abd El Qader. (op. cit) page ١٤٥