

The Theory of Manifest Error of Assessment as a Means of Reviewing the Principle of Proportionality in Administrative Decision

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Abstract:

The principle of proportionality is one of the most important controls governing the legality of administrative decisions, as it requires the administration not to take measures that exceed what is necessary to achieve the desired objective. However, oversight of this principle often clashes with the discretionary power of the administration. Hence, the theory of manifest error of assessment emerged as a judicial mechanism that allows the administrative judge to intervene in cases where the administration exceeds reasonable limits.

This study raises the question: what constitutes manifest error of assessment and what is its impact on monitoring the principle of proportionality in administrative decisions? This study aims to highlight the concept of manifest error of assessment and distinguish it from other forms of illegality, and to explain its role as a means of achieving a balance between the principle of proportionality and the requirements of discretionary power, based on French case law as the originator of this theory. Accordingly, the study was divided into two parts, using a descriptive and analytical approach: the first part deals with the concept of manifest error of assessment, and the second part deals with the applications of this theory in French jurisprudence.

The study concluded that this theory has become an effective tool in establishing judicial oversight of the principle of proportionality without going so far as to replace the administration in its decisions.

Keywords: manifest error, proportionality, administrative decision, judicial review, discretionary power.

Introduction:

Administrative decisions are among the most important manifestations of the activity of public administration, as they represent the legal tool that enables it to perform its functions and achieve the public interest. However, these decisions are not always immune from deviation or abuse of power, especially in cases where the administration enjoys broad discretionary authority.

Among the most prominent legal principles that restrict this authority is the principle of proportionality, which requires the administration to choose the least restrictive means to rights and freedoms, in order to achieve the intended purpose without excess or neglect. However, exercising judicial oversight over compliance with this principle is not an easy matter, given

the intertwining of technical and substantive considerations involved in the administration's assessment.

In this context, the theory of manifest error of assessment emerged as a mechanism created by administrative jurisprudence, led by the French Council of State, to enable the judge to intervene in cases where the administration's error is so obvious and grave that it leaves no room for doubt. Many judicial systems have adopted this theory, which has become an effective tool for achieving a balance between the requirements of the public interest on the one hand, and the protection of individuals' rights and freedoms on the other.

The study of this theory is of great theoretical and practical importance, as it allows an understanding of the limits of administrative judicial intervention and the role it plays in reinforcing the principle of legality. Thus, the study problem revolves around: what is the theory of manifest error of assessment and how effective is it in reviewing the principle of proportionality in administrative decisions?

To answer this question, we will first address the doctrinal definitions of manifest error of assessment and analyze them by determining the criterion by which the existence of a manifest error can be affirmed or denied, and how it can be proven—this will be discussed in the first section of the study.

Furthermore, tracing the development of this idea through its various stages reveals the expansion of its scope and its inclusion of all areas of administrative activity. The best way to examine this is by clarifying the various fields of application of this theory, which will be discussed in the second section related to the applications of the theory of manifest error of assessment.

Chapter One: The Concept of the Theory of Manifest Error of Assessment

The idea of manifest error of assessment originated and developed within the French Council of State, which constantly sought to keep pace with the evolution of public administration and its intervention in all areas. However, it only referred to the concept without giving it a precise definition that would remove any ambiguity that might hinder its application. Thus, legal scholars attempted to define it based on French judicial interpretations. Accordingly, this section will address, first, the doctrinal definitions and development of the idea of manifest error of assessment, then the criteria for identifying it, and finally, how to establish its existence.

First: Definition and Development of the Idea of Manifest Error of Assessment

Given the expansion and diversification of public administration's activities, it was not easy for scholars—relying on the jurisprudence of the French Council of State—to formulate a comprehensive and precise definition of the idea of manifest error of assessment. This will be illustrated through the following points.

A. Definition of Manifest Error

The jurist **Kornprobst** defined manifest error as:

“An analytical tool that allows for more effective control of the assessments made by the administration in complex technical matters, as it depends on the description of facts and does not concern material aspects.”¹

This definition focuses on the function of manifest error as enhancing judicial oversight, especially in technical matters, and indicates that it does not relate to the materiality of facts.

However, this definition is criticized for addressing only the effects of manifest error and its place within judicial review without clarifying its substance or characteristics—the main goal of defining it.²

The jurist **Braibant** defined it as:

“An error that is simultaneously serious and obvious, making annulment inevitable for any administrative act tainted by such a defect. The administration has the right to exercise its powers, but it is not permitted to commit absurdities or morally unacceptable excesses, even if it is not easy for the judge to determine what constitutes an absurdity or manifest error in assessment.”³

In his report on the *Sieur Lambert* case, Braibant further noted:

“The review of manifest error aims to impose upon administrative authorities a minimum of logic and sound judgment... Manifest error appears when the administration, intentionally or not, abuses the discretion it enjoys and goes beyond reasonable limits in its assessment of appropriateness.”⁴

Thus, this jurist links the idea of manifest error with *unreasonableness*, which leads to the illegality of administrative acts that exceed reasonable limits. The application of manifest error does not deny discretionary power but requires that it remain within the bounds of reasonableness.⁵

Professors **Auby** and **Drago** defined manifest error as:

“A clear, gross, and even serious error that is visible even to non-specialists in law.”⁶

George Vedel defined it as:

“A gross and apparent error, noting that its first applications concerned cases where the error was serious and obvious, and annulment was justified only if this was the case.”⁷

It is observed from these definitions that most scholars relied more on the linguistic sense of the term. Nevertheless, they revealed certain attributes of manifest error without delving deeply into its substantive content.⁸

Vincent argued that:

“A manifest error is the error committed by the administration in assessing the facts upon which it bases its decision, and this error must be so serious that it leaves no room for doubt.”⁹

He added that:

“Any breach of a legal rule committed by the administration in its assessment of facts may be considered a violation of the law in the broad sense.”¹⁰

This definition is criticized because equating manifest error with a violation of law makes it too broad, encompassing all grounds for annulment of administrative decisions, and extends judicial review beyond legal qualification to factual assessment.

In his report on the *Société Beaugregard Cie* case, the government commissioner **Baudouin** stated:

“The criterion of manifest error is not to be sought in the extent, gravity, or obviousness of the error, but rather in the degree of inadequacy and lack of discipline regarding the factors considered by the administration in its assessment.”¹¹

This definition links manifest error to a *deficiency in assessment*, whether due to an incorrect qualification of reality, reliance on irrelevant elements, or the absence of necessary legal conditions for the act.

However, this concept is criticized as being too narrow to encompass all the characteristics of manifest error and thus unsuitable as a comprehensive definition.¹²

From the preceding definitions, although they differ in wording, it appears that each highlight one feature of manifest error. Some identify its position within judicial review (as affecting the legal qualification of facts), others associate it with *unreasonableness* (restricting administrative action to reasonable bounds), while others emphasize its *obviousness*, *seriousness*, and *gravity*, or its relation to *breach of law* in a broad sense.

Hence, no definition is entirely comprehensive or exclusive of other defects.

For this reason, **Dr. Mahmoud Salama Jabr** proposed the following definition:

“It is a defect that affects the administration’s qualification and assessment of the facts constituting the cause of an administrative decision, and appears clearly and grossly in a manner contrary to common sense, whereby the administration exceeds reasonable limits in its judgment of the facts, thus constituting grounds for annulment.”¹³

From this definition, manifest error is a *technical tool* used by administrative courts to oversee discretionary power in the relationship between cause and subject. If the administration’s assessment is clearly unreasonable, the administrative decision is tainted with manifest error.

The following section explains the reasons and motives that led the French Council of State to adopt and shape this theory as a means of limiting administrative discretion.

B. Emergence and Development of the Theory of Manifest Error of Assessment

When the balance between the proper functioning of the administration and the protection of individual rights and freedoms became distorted—especially with the expansion of administrative discretion and the inadequacy of traditional oversight mechanisms¹⁴—the administrative judge had to readjust this balance continually. This required reconsidering the scope of discretionary power to restrict it and expand the domain of legality.¹⁵

Thus, the French Council of State departed from its traditional jurisprudence, which had refused to question administrative assessment in appeals for abuse of power unless the act was based on incorrect facts, a legal error, or misuse of power. It introduced the concept of *manifest error of assessment* to counter the expansion of discretionary authority and its immunity from review—marking an evolution from review of legal qualification of facts to review of factual assessment and even choice of administrative action.¹⁶

This development in administrative judicial oversight was not coincidental. It had been anticipated by many administrative law scholars who questioned whether the administration, when exercising discretionary authority, could commit errors in assessment.

Within the French Council of State, this theory took shape and enabled the judiciary to achieve a balance between discretion and legality.

However, scholars differ on identifying its origin. Some attribute it to the **Denizet**¹⁷ case, while others to the **Lagrange**¹⁸ case as the true birth of the theory of manifest error of assessment.

The **Denizet** decision concerned *equivalence of functions*, where the Council of State began to verify whether a position offered to an employee was equivalent to his former one—marking a

departure from the *Mélaméd*¹⁹ decision, which held that the Council would not review the administration's assessment of functional equivalence.

Although the decision did not explicitly use the term "manifest error," it opened the way for judicial review of administrative assessments of equivalence²⁰ (reassessment of administrative qualification).

Therefore, the **Lagrange** decision is considered the first explicit recognition of the theory of manifest error of assessment. Although the Council of State had applied its substance in the **Gesbert** case²¹ (1960) concerning agricultural land consolidation, it formally adopted the theory in **Lagrange**, also concerning job equivalence.

The facts of the **Lagrange** case are as follows: Mr. Lagrange worked as a field guard; his position was abolished, and the municipality offered him a road maintenance job, which he refused. He claimed compensation under Article 84 of the Law of April 28, 1952, concerning the status of municipal employees and public institutions. The municipality rejected his request, and the administrative court dismissed his appeal. Upon further appeal, the Council of State ruled:

"The administration's assessment of the equivalence between positions cannot be contested before the administrative judge except in cases of manifest lack of equivalence."²²

After this decision, the Council of State issued another ruling on the occasion of the *Achart*²³ case, where Miss Achart filed a lawsuit before the Administrative Court requesting the annulment of the decision of the Regional Committee for Agricultural Consolidation, under which she was granted a plot of land of lower quality than the one expropriated from her. The Administrative Court rejected this appeal, and consequently, the plaintiff appealed the judgment before the Council of State, which upheld the ruling and decided that the assessment made by the Regional Committee for Agricultural Consolidation was not marred by an obvious error.²⁴

Following this, the decisions of the Council of State multiplied, and the scope of application of the concept of manifest error extended to other administrative fields, such as decisions concerning scientific and technical matters, as well as in the domain of building permits and urban planning and engineering.²⁵

The theory of manifest error in assessment reached the peak of its development when it entered the field of proportionality between sanctions and disciplinary faults within the framework of public service, through the famous ruling of the Council of State issued on June 9, 1978, in the *Lebon* case.²⁶

The facts of this case can be summarized as follows: *Lebon*, a teacher in the Toulouse Academy, was accused of committing indecent acts and gestures toward his female students in class, which were confirmed by the investigation. The Director of the Academy decided to punish him by referring him to retirement. He filed a lawsuit before the Toulouse Administrative Court requesting the annulment of the decision, claiming the penalty was disproportionate, but the court rejected the appeal for lack of sufficient grounds. Consequently, the plaintiff appealed before the Council of State, which also rejected the appeal and ruled as follows: "The facts proven to have occurred, as presented in the case file, require administrative punishment. The Director of the Academy, by issuing a decision to refer Mr. *Lebon* to retirement based on these facts, exercised his discretionary power within the limits of the law without any manifest or

obvious error, which makes the challenged decision based on sufficient and justified factual reasons.”²⁷

After this decision, the concept of manifest error in assessment became an essential element of minimum judicial review, a limit that the administrative judge examines in every case brought before him, regardless of its subject.

If these are the stages through which administrative jurisprudence went in creating the theory of manifest error in assessment and establishing it as a legal principle, then what is the criterion relied upon to verify the existence of a manifest error and thus establish it?

Second: The Criterion and Proof of Manifest Error in Assessment

The importance of determining the criterion of manifest error in assessment lies in facilitating its verification as a technical tool with a functional role in controlling proportionality.

Since manifest error is one of the grounds for annulment that affect the administrative decision, the question arises: Is manifest error one of the defects related to public order, thereby obliging the annulment judge to raise it *ex officio*?

A/ The Criterion of Manifest Error in Assessment

The criterion of manifest error is the method used to infer the degree of discrepancy between the cause of the decision and its object, and the extent of this discrepancy’s gravity.²⁸

Doctrine has differed in defining a criterion for manifest error in assessment. Some formulated a linguistic criterion, meaning it is inferred from its seriousness and obviousness.

According to jurist Jean-Paul Costa²⁹, manifest error is the apparent error that can be seen with the naked eye without delving into the case file. For the judge to detect disproportionality, the error must be striking, that is, clear and serious — one that “jumps before the eyes.”

In this context, Government Commissioner Braibant, in the *Librairie François Maspéro* case, considered that the administration had committed a manifest error by prohibiting the publication of the newspaper.³⁰

As for the aspect of clarity, the error must be evident and explicit, and the degree of clarity is measured by the standard of the ordinary person — one that is perceptible even to non-specialists in law.

The degree of clarity manifests when the error is self-evident, flagrant, serious, obvious, or gross; the presence of any one of these attributes qualifies the error as “manifest.”

According to this criterion, the meaning of manifest error implies that the administrative judge does not conduct research, inquiry, or investigation into the facts, as he can detect the manifest error merely by examining the case facts.³¹

However, saying that seriousness and clarity are the criteria for verifying manifest error³² is disputed, because clarity is a descriptive quality of an existing state — a gradable description that can extend to non-assessment errors.³³

As for seriousness, it concerns the degree of the manifest error; therefore, seriousness alone cannot be considered a criterion of manifest error according to this view.

By analyzing the rulings of the French Council of State, it becomes clear that it tends toward setting an **objective criterion** for the theory of manifest error. This criterion does not depend on the good or bad faith of the administration, nor is it left solely to the judge’s discretion; rather, it rests on objective elements that reveal the defect in assessment.³⁴

Accordingly, the French Council of State, in the context of functional equivalence, ruled that the discretion enjoyed by the administration must not be based on an obvious imbalance. The judge derives objective considerations from the elements of the case enabling him to determine the existence of a manifest error tainting the administration's assessment when this assessment exceeds reasonable limits.

In the field of deporting foreigners, the French Council of State found a manifest error in the deportation of the Bulgarian refugee *Pardov*, ruling that his presence in French territory did not pose a threat to public order.³⁵

In the area of proportionality between disciplinary sanctions and committed faults, an objective criterion of manifest error can be adopted, taking into account considerations that allow any reasonable person to perceive the lack of proportionality from the outset.

Some scholars believe that identifying the nature of the incident, the circumstances in which it occurred, the conduct of the employee under scrutiny, his career record, and the degree of harm caused by the error to the service and other employees — all constitute objective elements that may serve to determine the extent of proportionality between the sanction and the fault.³⁶

However, some jurists consider that the linguistic and objective criteria complement each other; the judge cannot rely solely on the objective criterion to detect error, since the clarity of the error aids the judge, while examining the case file and circumstances surrounding the administration's assessment, in swiftly identifying it.

In this regard, contemporary doctrine holds that determining the existence of manifest error depends on the judge's personal conviction, which he derives from reading the file. Manifest error is not one that cannot be debated simply because it is "clear," as there are often conflicts between the positions of Administrative Court judges and those of the Council of State, and even among the Council of State's own judges.

This divergence stems from the judge's personal conviction regarding the existence or absence of manifest error, for when the judge harbors doubt, it is interpreted in favor of the administration.

This was evident in the *Librairie François Maspéro* case, where Government Commissioner Braibant considered that the administration had committed a manifest error by banning the newspaper, but the Council of State disagreed and rejected the appeal on the grounds that there was no manifest error in assessment. Hence, manifest error is not necessarily the obvious error that cannot be debated, but rather the one the judge becomes convinced of after conducting a thorough investigation into the case documents.³⁷

B/ Proof of Manifest Error

Before addressing the proof of manifest error, it is necessary to examine the nature of proof in administrative matters.

Rules of Proof before the Administrative Judge

The procedures concerning proof before the administrative judge differ from those before the ordinary judge,³⁸ due to the special nature of administrative litigation and the active role played by the administrative judge in completing the case.

This active role has been enhanced by the judge's freedom to determine the appropriate methods of proof for each case and to decide their probative value without preferring one form of

evidence over another. All proofs are thus equal before the judge, who derives his conviction from whichever evidence he finds convincing.

Accordingly, the system of proof in administrative law is based on the principle of **freedom of conviction**, while excluding certain means incompatible with the nature of administrative disputes.³⁹

Administrative litigation always involves a public person vested with public authority, who controls most elements of the dispute by virtue of his power to issue and enforce decisions directly.

Therefore, the power asymmetry of the administration constitutes a breach of equality before the law. For this reason, the administrative judge intervenes to restore balance between the parties by ensuring the right of defense and taking an active role in gathering evidence.⁴⁰

This balance is achieved by establishing presumptions to temporarily exempt a party from the burden of proof, or by shifting the burden from the claimant to the administration, or by defining the subject matter of proof so as to eliminate evidentiary difficulty.⁴¹

The administrative judge plays a procedural role in ensuring balance between the parties — by preparing the case, conducting means of proof, and overseeing litigation procedures — and a substantive role by deriving judicial presumptions, which are among the most accepted proofs before administrative courts, as they ease the burden of proof for the claimant (e.g., the presumption of certain knowledge or abuse of power).⁴²

French administrative jurisprudence shows that the burden of proof does not always rest on the claimant. Unlike civil cases, it may shift to the administration under specific conditions set by administrative courts, to achieve balance between the parties without placing the full burden on either side.⁴³

Hence, the question arises: Does proving manifest error in assessment follow these same rules?

Proof of Manifest Error

Since manifest error is a defect affecting the administration's classification and assessment of facts, it logically follows that it should be subject to the general principles of proof applicable before the administrative courts, as are all grounds for annulment.

The active role of the administrative judge in alleviating the burden of proof on the claimant is reflected in requiring the administration to disclose the reason for its decision whenever the judge deems it necessary, based on the circumstances of the case.⁴⁴

The French Council of State initiated this approach in a ruling issued on May 1, 1936, where it required the administration to state the reasons for its decision. This judicial trend was reinforced by the *Barel*⁴⁵ ruling and subsequent judgments, which established the principles for proving manifest error, particularly in the *Maison Genestal* case.⁴⁶

In this case, the French administration rejected an application submitted by Mr. *Barel* and his colleagues to join the National School of Administration (ENA). The applicants challenged the decision, claiming that the administration excluded them for political reasons — specifically, their membership in the French Communist Party. They based their claim on a newspaper article quoting government statements announcing its intention to bar Communist Party members from ENA. The plaintiffs argued that their exclusion constituted a legal error and a breach of the principle of equality among French citizens regarding access to public service.

Government Commissioner Letourneur prepared a report concluding that the plaintiffs had presented credible and convincing evidence supporting their claim, while the administration refused to disclose the reasons for its decision despite the Council's request. Thus, the Commissioner recommended annulling the decision, reasoning that the administration's refusal constituted proof of the plaintiffs' allegations.

Ultimately, the Council of State adopted the Commissioner's opinion and annulled the administrative decision on the grounds that Mr. *Barel* and his colleagues had presented valid evidence, whereas the administration's refusal to disclose its reasons served as proof of the validity of their claims.⁴⁷

This judgment established an important precedent in administrative proof: it affirmed the administration's duty to present the legal and factual reasons for its decision whenever new presumptions are raised by the claimant⁴⁸t. It also emphasized that the administration's discretionary power is subject to a minimum level of judicial control, represented by the judge's right to require the administration to disclose its reasons.⁴⁹

The Council of State went even further in the aforementioned *Maison Genestal* case, requiring the administration to explicitly state the factual and legal grounds for its decision, whereas it had previously been sufficient for the judge to infer them from the documents submitted.

Subsequent rulings of the French Council of State have consistently applied general rules of proof to establish manifest error across all domains, refining them in accordance with the nature of the error itself.⁵⁰

Chapter Two: Applications of the Theory of Manifest Error in Assessment

The rulings of the French Council of State tend to be concise and devoid of doctrinal elaboration. This style allows the Council to avoid constraining itself and to retain flexibility to develop its jurisprudence whenever the opportunity arises.

Thus, the Council does not develop its judicial trends all at once but does so gradually and cautiously, in a stable and confident manner, so as not to provoke distrust or hostility from the administration.

On this basis, when the Council of State first developed the theory of manifest error in assessment, it did not extend it to all fields of administrative activity — a reflection of its cautious approach. It first applied the theory in the field of public service in 1978 in the *Lebon* case, when for the first time the Council exercised its review over the proportionality between disciplinary punishment and professional fault, after having previously refused to do so before that date.

The Council of State also applied this theory in the field of administrative policing in 1968, after it had, before that date, excluded certain administrative police decisions from its supervision over the legal characterization of facts, limiting its control to the material existence of facts, errors in law, misuse of power, and in some cases, the appropriateness of the decision.

First: The Theory of Manifest Error of Assessment in the Field of Public Service

The Council of State's control over manifest error went through two phases, separated by the ruling in the *Lebon* case. Before this ruling, the Council exercised traditional control, refusing to review proportionality. Thus, it only verified the material existence of facts and their legal characterization.

However, after the 1978 ruling, the French Council of State penetrated the stronghold of administrative discretion and revealed the new effect of the concept of manifest error—judicial control over the administration's choice of its decision.

A/ The Period Prior to the Lebon Ruling (The Traditional Approach of the Council of State)

During this phase, the French Council of State exercised control over the legality of disciplinary decisions in terms of their internal legality. It verified that the acts attributed to the employee constituted a disciplinary fault and that such acts justified the imposition of the disciplinary penalty.⁵¹ However, it stopped there, refusing to exercise any control over the seriousness of the sanction or its proportionality to the committed fault, considering that the choice of disciplinary penalty falls within the discretionary power of the administration, which the judge may not question.⁵²

The justification was that the disciplinary authority, when imposing a penalty, considers several non-legal factors unknown to the judge, who is distant from the administrative environment and the circumstances surrounding the misconduct⁵³. The employee's prior conduct and the circumstances of the offense influence the authority's assessment of the penalty. These factors remain beyond the judge's reach, making his evaluation detached from such influencing factors. Many jurists argued that if the judge reviewed the seriousness of the penalty in relation to the facts, he would substitute the administration's discretion with his own. They affirmed that the employee cannot contest the disciplinary sanction itself but may only contest the administrative assessment linking the sanction to the fault. They added that evaluating the seriousness of the penalty is a sovereign, purely administrative matter, not a legal one.

The Council of State issued several rulings confirming this stance, including in *Sieur Cowent*, where it held that "the assessment of the proportionality of the suspension penalty imposed by the governor cannot be challenged before the Council of State."⁵⁴

Similarly, in *Bensamin Ghalem Ben Hadi*, it affirmed its refusal to review the proportionality between the disciplinary penalty and the committed fault, stating: "It does not appear that the Council of State reviews the significance of the sanction imposed by the administrative authority in relation to the punished acts."⁵⁵

The administration also exercised its discretionary power without the Council's interference when the legislator allowed the administration to choose from among disciplinary penalties but left the determination of their degree, amount, or duration to the administration itself, as confirmed in *Société Charnoz*.⁵⁶

This policy of the Council of State was severely criticized by scholars who argued that refusing to review the proportionality of sanctions left employees vulnerable to arbitrary administrative action. A minor fault could lead to dismissal without judicial remedy, raising questions about the judiciary's role.

These criticisms pushed the Council of State to reconsider its position cautiously. It began to issue rulings deviating from the traditional doctrine, extending its review to the seriousness of disciplinary sanctions compared to the committed fault.⁵⁷

In *Sieur Kopackis*,⁵⁸ the Council delved into the administration's discretion to assess whether the sanction matched the fault. The claimant, who worked in postal services, committed errors

causing harm to the service. The administrative court annulled his warning penalty, but the Council of State overturned this decision, holding that the sanction matched the misconduct.⁵⁹ However, the Council soon reverted to its earlier stance, reaffirming that the proportionality of the sanction falls within administrative discretion and is beyond judicial review.⁶⁰ In *Gouet*, the Council held that the evaluation of the claimant's professional competence and prior technical duties was not based on incorrect facts and could not be challenged before the administrative judge.⁶¹

These rulings show that in disciplinary matters and public service evaluations, the administrative judge could not go beyond reviewing the material facts and their legal qualification, representing the highest form of judicial control over the "reason" element of legality. This led the Council to reconsider and move toward a phase where it could review the proportionality between the sanction and the fault and the equivalence of positions.

B/ The Lebon Ruling and Beyond (The Modern Approach of the Council of State)

The continued reluctance of the Council of State to review the proportionality of disciplinary sanctions expanded administrative discretion, undermining employees' legal safeguards. This drew heavy scholarly criticism.⁶²

The adoption of Labor Law No. 73/680 of 13 July 1973, requiring a serious and grave cause for dismissal and allowing ordinary courts to verify the real reason for dismissal, had a major impact on the Council's jurisprudence⁶³. It compelled the Council to apply similar scrutiny to labor disputes within its jurisdiction.⁶⁴

Additionally, repeated reports by government commissioners urged the Council to change its stance. One such call came from Commissioner Kahn in 1967 in the *Chevreau*⁶⁵ case, urging the Council to exercise limited control over the appropriateness of disciplinary sanctions, but the Council rejected the proposal.⁶⁶

In that case, Nurse Chevreau⁶⁷ was dismissed for treating a patient harshly. The administrative court annulled her dismissal, holding the penalty disproportionate to the offense. However, the Council of State overturned the ruling, asserting that assessing the seriousness of a sanction is beyond judicial control.

Government commissioners sharply criticized this ruling. Commissioner Mouregeon argued that justice required finding a manifest disproportion between the sanction and the fault. Commissioner Kahn added that excessive administrative freedom undermined legal safeguards and called for applying the concept of manifest error to disproportionate disciplinary sanctions. All these developments convinced the Council of State to break the last barrier and extend its control—at least minimally—over the proportionality between sanctions and faults. The landmark *Lebon*⁶⁸ ruling of 9 June 1978 marked a turning point in the Council's approach to disciplinary proportionality. It guaranteed that the administration no longer had absolute freedom in imposing sanctions⁶⁹. The administrative judge could now intervene when the penalty was manifestly excessive.⁷⁰

Although in *Lebon*⁷¹ the Council did not annul the sanction, this did not signify rejection of the new doctrine. Rather, the Council exercised its new control negatively, confirming that the penalty matched the misconduct.⁷²

Soon after, in *Sieur Vinolay*,⁷³ where the claimant was dismissed for negligence, the Council annulled the dismissal for disproportionality between the fault and sanction. This was the first positive application (active form) of the manifest error doctrine, establishing judicial review⁷⁴ over disciplinary proportionality.⁷⁵

Since *Lebon*, the Council of State has applied the manifest error theory across disciplinary matters, thereby subjecting administrative discretion to judicial scrutiny, ensuring rationality and proportionality in disciplinary decisions, and preventing abuse of power⁷⁶. The Council then extended this theory beyond public service to administrative policing and agricultural consolidation.⁷⁷

Second: Application of the Manifest Error Theory in Administrative Policing and Agricultural Consolidation

A/ Application in Administrative Policing

Traditional Jurisprudence of the Council of State

Initially, the Council's review of police decisions was minimal—limited to verifying the material existence of facts underlying the decision. This applied especially to cases involving foreigners (entry bans, residence restrictions, and bans on distributing foreign publications). The justification was that the administration had exclusive discretion to assess national security⁷⁸ and public order risks, which judges could not question. Thus, judicial review only verified material existence and legal basis of facts.⁷⁹

Modern Jurisprudence of the Council of State

This situation evolved as police measures, by restricting liberties, required judicial balancing between public order and individual freedoms.

On 20 November 1968, the Council ruled in *Sieur Anger* that when administrative discretion involves factual assessment, judicial review includes verifying external legality, misuse of power, legal or factual error, and “manifest error of assessment.”⁸⁰

Subsequent rulings—like *Librairie François Maspero* (1969)—expanded this principle. Here, the Minister of the Interior banned the magazine *Tricontinental*. The court first refused to intervene, but the Council of State held that the minister's discretion is valid unless tainted by manifest error, thereby introducing proportionality control in press restrictions. The Council later annulled expulsion orders of foreigners when based on manifest error, as in *Pardov*, where expulsion was unjustified by any threat to public order, and upheld others when no manifest error existed, as in *Diridi*.⁸¹

Through these cases, the Council began comparing the factual basis of police decisions with their outcomes, annulling those suffering from manifest error.⁸²

B/ Application in Agricultural Consolidation

Traditional Jurisprudence

In agricultural land consolidation, the Council initially refused to review regional committees' ⁸³evaluations, as they had wide discretion in assessing land productivity and equivalence. However, unequal land redistribution led the Council to develop a new control technique—manifest error review—allowing examination of substantial inequality in land value.⁸⁴

*Modern Jurisprudence*⁸⁵

The first case applying this was *Gesbert*, involving an unfair land exchange. The Council confirmed the annulment of the administrative decision due to a major imbalance in land value, marking a shift toward manifest error control.⁸⁶

Although the decision did not explicitly mention the theory, it inaugurated its application in land consolidation matters.⁸⁷

The Council later formalized the doctrine in *Achart*, where it upheld a regional committee's decision, finding no manifest error in its valuation. This case entrenched the doctrine in agricultural matters, enabling review of both quantitative and qualitative equivalence between exchanged plots.⁸⁸

In *Dame Veuve Devis*, the Council annulled a decision for failing to ensure equality in productive value, recognizing both quantitative and qualitative equivalence as judicially reviewable.⁸⁹

Through such rulings, the Council sought to limit administrative arbitrariness while respecting its discretion, maintaining judicial oversight without encroaching on merit assessment.⁹⁰

Conclusion

In conclusion, the theory of manifest error of assessment represents one of the most significant judicial safeguards for the principle of legality, ensuring a balance between administrative discretion and individual rights.

It allows the administrative judge to intervene when the administration exceeds its authority or commits a manifest and unreasonable error, without transforming judicial review into full substitution of administrative judgment.

The application of this theory has profoundly enhanced judicial oversight over administrative decisions, restricting arbitrary discretion and reinforcing legality and fairness.

Thus, manifest error of assessment serves as an effective tool for ensuring proportionality and lawful exercise of power, forming a cornerstone in the rule of law, where the administration remains subject to judicial control without impairing its operational efficiency or independence in decision-making.

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³ Braibant, Guy. *Le droit administratif français*. Presses de la Fondation Nationale des Sciences Politiques et Dalloz, 1988, p. 240.

⁴ Mahmoud Salama Jabr, *previous reference*, p. 82

⁵ Hazem Bayoumi Al-Masri, *The Legality of Administrative Acts under the Theory of Manifest Error in the Legal Qualification of Facts in Light of Jurisprudence and the Jurisprudence of the Council of State*, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 49.

⁶ Auby et Drago. *Traité de contentieux administratif*, 2 vols., L.G.D.J, Paris, 1975, p. 394

⁷ Mahmoud Salama Jabr, *previous reference*, pp. 83–84.

⁸ Khalifa Salem Al-Jahmi, *Judicial Oversight of the Proportionality between the Penalty and the Offense in the Field of Discipline*, New University House, Alexandria, 2009, p. 127.

⁹ Jean-Yves Vincent, “L’erreur manifeste d’appréciation”, *Revue administrative*, Presses Universitaires de France, No. 142, August 1971, p. 408. *Decision: A Comparative Study between France, Egypt, and Lebanon*, 1st ed., Modern Book Foundation, Lebanon, 2011, pp. 12–71.

¹⁰ Mahmoud Salama Jabr, *previous reference*, p. 85

¹¹ Maya Muhammad Nizar Abu Dan, *previous reference*, p. 82.

¹² Mahmoud Salama Jabr, *previous reference*, pp. 86–87.

¹³ Mahmoud Salama Jabr, *same reference*, p. 89.

¹⁴ Boukthir Abdelrahman, *The Burden of Proof in Annulment Actions*, Doctoral Thesis in Public Law, University of Algiers 1, Faculty of Law, 2013, p. 323

¹⁵ Mahmoud Salama Jabr, *previous reference*, p. 211.

¹⁶ Mahmoud Salama Jabr, *same reference*, p. 219.

¹⁷ C.E., 13/11/195, *Denizet, Rec.*, p. 489.

¹⁸ C.E., 15/02/1961, *Lagrange, AJDA*, 1961, p. 200.

¹⁹ C.E., 27/04/1951, *Mélamède, Rec.*, p. 226.

²⁰ Mahmoud Salama Jabr, *previous reference*, p. 216

²¹ C.E., 02/03/1960, *Gesbert, Rec.*, p. 162.

²² Boukthir Abdelrahman, *previous reference*, p. 324.

²³ C.E., 12/06/1961, *Achart, Rec.*, p. 476. Quoted in: Boukthir Abdelrahman, *same reference*, p. 324.

²⁴ Boukthir Abdelrahman, *same reference*, p. 324.

²⁵ Decision of the French Council of State dated 17/12/1965, *Sepoux Plantey et autres, Recueil administratif*, p. 695. Quoted in: Salim Salama Hatamla, “Judicial Oversight of the Principle of Proportionality between the Disciplinary Penalty and the Administrative Offense: A Comparative Study between French, Egyptian, and Jordanian Jurisprudence,” *Jerash Journal for Research and Studies*, Faculty of Law, Jerash National University, Jordan, Vol. 10, No. 2, 2006, pp. 229–253, p. 239.

²⁶ Salim Salama Hatamla, *same reference*, p. 239.

²⁷ C.E., 09/06/1978, *Lebon*, in M. Long, P. Weil, and G. Braibant, *Les grands arrêts de la jurisprudence administrative*, 8th ed., Dalloz, 1984, p. 573. “En prononçant ... la sanction de la mise à la retraite du sieur Lebon, le recteur s’est livré à une appréciation qui n’est pas entachée d’erreur manifeste.”

²⁸ Khalifa Salem Al-Jahmi, *previous reference*, p. 138

²⁹ Jean-Paul Costa, *Le principe de proportionnalité dans la jurisprudence du Conseil d’État*, *A.J.D.A.*, 1988, p. 435.

³⁰ Hanan Hajjāl, *Judicial Control of Proportionality in Administrative Case Law (A Comparative Study between Lebanon and France)*, Thesis for the Diploma of Advanced Studies in Public Law, Islamic University of Lebanon, Faculty of Law, 2005, p. 115.

³¹ Maya Muhammad Nizar Abu Dan, *previous reference*, p. 80.

³² Mahmoud Salama Jabr, *previous reference*, p. 122.

³³ Khalifa Salem Al-Jahmi, *previous reference*, p. 139.

³⁴ Mahmoud Salama Jabr, *previous reference*, p. 127

³⁵ Mahmoud Salama Jabr, *same reference*, p. 114

³⁶ Khalifa Salem Al-Jahmi, *previous reference*, p. 142

³⁷ Hanan Hijal, *previous reference*, p. 115

³⁸ Khalifa Salem Al-Jahmi, *previous reference*, p. 144

³⁹ Mahmoud Salama Jabr, *previous reference*, pp. 232–233

⁴⁰ Khalifa Salem Al-Jahmi, *previous reference*, p. 145

⁴¹ In Algeria, the Code of Civil and Administrative Procedure regulates the methods that allow the judge to participate in the search for evidence. These methods are:

1. Article 817 of the CCAP states that the administrative judge may request the claimant to submit a corrective petition if the initial petition does not raise any legal point.
2. Article 819/02 provides that if it is impossible to present the decision subject to annulment due to administrative authority's refusal, the administrative judge may deduce the legal consequences of this refusal, i.e., consider the claimant's requests as valid.
3. Article 844/02 allows the reporting judge to request from the parties any document or evidence useful for resolving the case.
4. Using any investigative means deemed appropriate.
5. The judge may, after using expert evaluation, disregard its results and decide according to their own conviction.

See also: Rachid Khloufi, *Law of Administrative Disputes (Administrative Litigation)*, Vol. 3, 2nd ed., University Press, Algiers, 2013, p. 67.

⁴² Mahmoud Salama Jabr, *previous reference*, pp. 235–241

⁴³ Khalifa Salem Al-Jahmi, *previous reference*, p. 146 this context, the Egyptian Administrative Court states:

“Although the general principle is that the burden of proof rests on the plaintiff, in administrative disputes this principle does not fully apply, because the government's failure to provide documents related to the subject of the lawsuit establishes a presumption in favor of the plaintiff, allowing the court to rely on the submitted documents. The Supreme Administrative Court also holds that the principle of the burden of proof on the plaintiff cannot be applied absolutely in administrative disputes, since the administration usually retains the papers, documents, and files that are decisive in the case. Consequently, the administration is obliged to provide the documents used in the litigation, and any failure or loss of such documents establishes a presumption in favor of the plaintiff, shifting the burden of proof to the administration.”

Supreme Administrative Court of Egypt, 11/11/1967, Appeal No. 108/13, cited in: Mahmoud Salama Jabr, *previous reference*, pp. 243

⁴⁴ The general rule regarding justification states that the administration is not required to provide reasoning unless stipulated by law.

See also: Barel et al., C.E., 28/05/1954, Rec., p. 509, cited in: Ashraf Abdel Fattah Abu Al-Majd Muhammad, *Justification of Administrative Decisions Before the Annulment Judge*, Al-Maaref Publishing, Alexandria, 2007, p. 477

⁴⁵ See also: C.E., 26/01/1968, Maison Genestal, Rec., p. 62

⁴⁶ Ashraf Abdel Fattah Abu Al-Majd Muhammad, *previous reference*, pp. 477–479

⁴⁷ Mahmoud Salama Jabr, *previous reference*, p. 237

⁴⁸ Ashraf Abdel Fattah Abu Al-Majd Muhammad, *previous reference*, p. 478

⁴⁹ See also:

- C.E., 06/05/1970, Société civile immobilière résidence "Reine Mathilde", R., p. 308
- C.E., 09/11/1966, Peyron, Rec., p. 592
- C.E., 05/11/1969, Epoux Parquier, Rec., p. 466
- C.E., 26/04/1972, Sieur Stoll, Rec., p. 311
- C.E., 12/06/1968, Guintini, R., p. 353
- C.E., 17/01/1963, Gazelles, R., p. 43

Cited in: Mahmoud Salama Jabr, *previous reference*, pp. 248–253

⁵⁰ Adel Al-Tabtaba'i, "Judicial Control over the Principle of Proportionality between Disciplinary Punishment and Job Offense," *Journal of Law*, Kuwait University, Issue 3, Vol. 6, 1988, p. 86

⁵¹ Ashraf Abdel Fattah Abu Al-Majd Muhammad, *previous reference*, p. 478

⁵² See also:

- C.E., 15/02/1963, Dame Lerary, Rec., p. 57
- C.E., 19/05/1950, Le Clain, Rec., p. 296

Cited in: Salim Salama Hatamleh, *previous reference*, p. 239

⁵³ Hanan Hijal, *previous reference*, p. 123

⁵⁴ See also:

- C.E., 16/07/1947, Bensamin, R.D.P., p. 687
- C.E., 09/01/1963, Société Charnoz, A.J.D.A., 1963, p. 362

Cited in: Salim Salama Hatamleh, *previous reference*, p. 239

⁵⁵ Mahmoud Salama Jabr, *previous reference*, p. 431

⁵⁶ See also: C.E., 21/02/1969, Sieur Kopackis, Rec., p. 133, cited in: Mahmoud Salama Jabr, *same reference*, p. 433

⁵⁷ Mohamed Sayed Ahmed Mohamed, *Proportionality between Disciplinary Offense and Disciplinary Punishment*, Modern University Press, Alexandria, 2008, p. 408

⁵⁸ Adel Al-Tabtaba'i, *previous reference*, p. 92

⁵⁹ Mahmoud Salama Jabr, *previous reference*, pp. 327–329

⁶⁰ Adel Al-Tabtaba'i, *previous reference*, p. 92

⁶¹ Khalifa Salem Al-Jahmi, *previous reference*, p. 256

⁶² Ashraf Abdel Fattah Abu Al-Majd Muhammad, *previous reference*, p. 478

⁶³ Mahmoud Salama Jabr, *previous reference*, p. 434

⁶⁴ See also:

- C.E., 22/11/1967, Demoiselle Chevreau, Drout ouvrier, 1967, p. 113, Concl Kahn, D. 1969, J51, Note Mourgeon

This decision is considered the first step of the Council of State towards applying the theory of manifest error in discretion in the field of discipline.

Cited in: Mohamed Sayed Ahmed Mohamed, *previous reference*, p. 411

⁶⁵ Adel Al-Tabtaba'i, *previous reference*, p. 9

⁶⁶ Mahmoud Salama Jabr, *previous reference*, p. 435

⁶⁷ Hanan Hijal, *previous reference*, p. 124

⁶⁸ Khalifa Salem Al-Jahmi, *previous reference*, p. 257

⁶⁹ Adel Al-Tabtaba'i, *previous reference*, p. 93

⁷⁰ Mohamed Sayed Ahmed Mohamed, *previous reference*, p. 415

⁷¹ Salim Salama Hatamleh, *previous reference*, p. 241

⁷² See also: C.E., 27/07/1978, *Sieur Vinolay, Rec.*, p. 315; *A.J.D.A.*, 1978, p. 576

⁷³ Salim Salama Hatamleh, *Ibid.*, p. 241.

⁷⁴ See also:

C.E., 27/07/1978, *Sieur Vinolay, Rec.*, p. 315; *A.J.D.A.*, 1978, p. 576.

⁷⁵ Boukhtir Abdelrahman, *Ibid.*, p. 326.

⁷⁶ See also:

C.E., 01/12/1978, *Mme Cachelière, Rec.*, p. 483; *A.J.D.A.*, 1979, No. 07, p. 42.

C.E., 07/11/1979, *Mme Boury-Nouron, Rec.*, p. 781; *R.D.P.*, 1980, p. 1447.

C.E., 05/12/1979, *Kiener, Rec.*, p. 846; *A.J.D.A.*, 1990, p. 740.

□ Quoted in: Boukhtir Abdelrahman, *Ibid.*, p. 326.

⁷⁷ Mahmoud Salama Jabr, *Ibid.*, p. 444.

⁷⁸ Mahmoud Salama Jabr, *Ibid.*, p. 444.

⁷⁹ Mahmoud Salama Jabr, *Ibid.*, p. 377.

⁸⁰ Mohamed Abdel Hamid Masoud, *Problems of Judicial Control over the Legality of Administrative Regulation Decisions*, 1st ed., unpublished, Cairo, 2007, pp. 616–617.

⁸¹ Mahmoud Salama Jabr, *Ibid.*, p. 377.

⁸² Issam Abdel Wahab Al-Barzanji, *Ibid.*, p. 419.

⁸³ Mahmoud Salama Jabr, *Ibid.*, pp. 378–379.

⁸⁴ Mohamed Abdel Hamid Masoud, *Ibid.*, p. 616. The Council of State confirmed its position in this regard in another ruling dated 30/01/1980 concerning the Maspiro Library itself, where the Minister of Interior issued a decision prohibiting the circulation, distribution, and sale of the book *The Rise of Mobutu*, which was printed and published by the library company, on the basis that the author posed a threat to public order and relations between France and Zaire. After consideration and response, the Council of State concluded that it was not evident from the case file that the Minister's assessment was marred by a manifest error.

Quoted in: Mahmoud Salama Jabr, *Ibid.*, pp. 385–386

⁸⁵ Maya Mohamed Nizar Abu Dan, *Ibid.*, p. 153.

⁸⁶ Ali Hussein Ahmed Al-Fahdawi, "Judicial Control over Manifest Errors in Administrative Discretion," *Journal of Anbar University for Legal and Political Sciences*, Faculty of Law, University of Baghdad, Issue 5, p. 43.

⁸⁷ Mohamed Abdel Hamid Masoud, *Ibid.*, p. 616.

⁸⁸ Mahmoud Salama Jabr, *Ibid.*, p. 291.

⁸⁹ Maya Mohamed Nizar Abu Dan, *Ibid.*, pp. 150–151.

⁹⁰ Mahmoud Salama Jabr, *Ibid.*, p. 294.