



Position of the Principle of Proportionality in Judicial Review: A Comparative Study of Iranian and U.S. Administrative Law

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This essay comparatively examines the systems of **judicial review** over the **principle of proportionality** in administrative law to identify how different countries balance governmental efficiency with citizens' rights. Using a descriptive-analytical approach, this article seeks to answer the fundamental question of how differences in legal and constitutional traditions affect judicial review and the application of the principle of proportionality, and what impact these differences have on the relationship between the state and its citizens.

The research findings indicate that the principle of proportionality in European systems allows for more active judicial oversight through a structured test (suitability, necessity, balancing), whereas the United States, by emphasizing reasonableness and doctrines like Chevron deference, grants greater discretionary latitude to administrative bodies. Iran has a distinct approach that combines religious values with administrative efficiency. Developments such as Kenya's move toward the proportionality test demonstrate a trend toward more structured oversight. The concept of the **margin of appreciation**, particularly in human rights law, combines national decision-making power with judicial review to ensure compliance with democratic principles.

The results show that despite the diversity in approaches, the shared objective of legal systems is to ensure reasoned and balanced decision-making, which strengthens the **rule of law** and protects citizens' rights through judicial review.

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Introduction

The **principle of proportionality** is recognized as one of the fundamental concepts in administrative law, providing a structured framework for courts to scrutinize the legitimacy of government actions that impact citizens' rights. In essence, proportionality analysis is concerned with justifying political interventions and assessing the effectiveness of regulatory measures in achieving relevant policy objectives that may affect citizens' rights. This principle guides courts in evaluating whether state interventions to restrict rights or serve legitimate public interests are justified, even though the nature of these evaluations is inherently political. The principle of proportionality, widely recognized in judicial review, comprises four essential components. First, it assesses the **legitimacy** of a legal action by examining whether the government has the constitutional and legal authority to undertake it. Second, it scrutinizes whether the **means** adopted by the government to achieve legislative objectives are appropriate and rational. Third, it examines the **necessity** of the intervention; that is, whether the action taken infringes upon individuals' rights no more than is necessary and if there is no less-intrusive alternative available. Finally, it involves a **balancing** of the costs and benefits of the rights infringement to determine which constitutional values should prevail.¹

This principle has been widely accepted and implemented internationally. It initially emerged in German constitutional law through its Federal Constitutional Court and has since been "recognized as a common ground in various constitutional systems."² The principle is often applied as a three-stage test involving **suitability, necessity, and proportionality in a strict sense**.³ According to Robert Alexy's theory on fundamental rights, "the nature of principles necessitates the principle of proportionality, and vice versa," which establishes an intrinsic relationship between constitutional principles and proportionality analysis.

To date, fragmented discussions about judicial review in Iran and the U.S. have appeared in books and articles, but no comparative research on the principles of judicial review, including the principle of proportionality, has been conducted in both countries. Therefore, it can be said that

1. Poorter, J.C., & Gestel, R.V. (2016). Putting evidence-based lawmaking to the test : Judicial review of legislative rationality. *The theory and practice of legislation*, 4, 155-185.

2 . Moreso, J.J., & Valentini, C. (2021). In the Region of Middle Axioms: Judicial Dialogue as Wide Reflective Equilibrium and Mid-level Principles. *Law and Philosophy*, 40, 545 - 583.

3. (stricto sensu)

this article is the first comparative work on the principle of proportionality.

This article examines the position of the principle of proportionality in judicial review across four sections: first, an introduction to the research topic; second, a historical overview of the principle of proportionality; third, a comparative conceptual analysis and examination of the foundations of the principle of proportionality in judicial review and judicial precedent in both countries; and finally, the conclusions drawn from this research are presented, followed by the sources used in compiling the article.

1. The Concept of the Principle of Proportionality

The conceptual basis of the principle of proportionality rests on the idea that any exercise of power or use of rights must be subject to internal limitations to prevent excessive behavior by those in authority. This principle plays a specific role in various legal fields: in **constitutional law**, it acts as a constraint on the state's power to limit individual or local rights, and in **administrative law**, it is a tool to prevent the potential abuse of authority by administrative officials. The interaction between the principles of proportionality and justice is decisive in the judicial interpretation of laws; today, scholars analyze this interpretation from the perspectives of "value," "norm," and "reality."¹

The framework for proportionality analysis provides a systematic method for courts to evaluate the legality and justifiability of administrative actions. This structured approach includes four distinct but interconnected components that guide the judicial review process. In the **first step**, courts examine the **legitimacy** of the legal action by considering whether the government has the constitutional authority to enter that domain. This foundational step ensures that the government has not exceeded its legal framework of authority.

The **second step** is dedicated to examining whether the **means** adopted by the government to achieve legislative objectives are appropriate and have a logical connection to the intended goals. This stage scrutinizes whether the government's actions are "in principle, capable of achieving the legislature's intended objectives."

In the **third step**, courts examine the **necessity** of the intervention. This stage considers whether the action in question restricts citizens' rights more than is necessary and whether there

1. Sikorski, R. (2022). Towards a More Orderly Application of Proportionality to Patent Injunctions in the European Union. *Iic; International Review of Industrial Property and Copyright Law*, 53, 31 – 61.

was a less-intrusive alternative solution available to achieve the goals. Finally, the **fourth step** is dedicated to a **balancing** of the benefits and costs resulting from the infringement of rights. This balancing is not limited to financial dimensions but encompasses fundamental constitutional values to determine which value should prevail in a specific case.¹

The role of administrative courts in applying the principle of proportionality is to examine alternative courses of action in light of the administration's objectives. If alternative means or methods exist, other than those chosen by public officials, that would impact individuals' interests less while being equally effective in achieving public objectives, then the administration's action is unnecessary and disproportionate. In fact, administrative courts are committed to applying an objective balancing act to determine whether it was truly feasible for the administration to use alternative means. Therefore, the principle of proportionality is a key tool of modern administrative law for ensuring the purposeful rationality of public actions.² One of the most important topics of discussion regarding the principle of proportionality is its observance within the administrative system of organizations.[7]

Others have defined the principle of proportionality as follows: "The principle of proportionality seeks to establish a logical relationship between the decision taken and the objectives upon which a public official bases that decision. Therefore, a reasonable relationship must exist between the results obtained and the means used and the decision taken. Accordingly, any decision or action that is outside the intended objective, or any action that is excessively strict and beyond the limit of necessity, is prohibited."³

Furthermore, in explaining the concept of the principle of proportionality, it has been stated: "The principle of proportionality originates from the domain of police law and the rule of law. This principle limits government actions. If the administration has multiple options to achieve its intended goal, it must choose the option that imposes the least burden on individuals. No action should result in harm that is disproportionate to the intended outcome. The principle of propor-

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1. Sadowski, P. (2023). Israel - In Search of Constitutional Common Sense. *Review of European and Comparative Law*.
 2. Zarei, Mohammad Hossein; Moradi Berlian, Mahdi. "The Concept and Position of the Principle of Proportionality in Administrative Law with a Special Focus on the European Union's Legal System." *Journal of Legal Research*, No. 66, 1393 [2014], p. 149.
 3. Abbasi, Bijan. "Analysis of the Rules and Conditions for the Formation of Unilateral Administrative Acts." *Journal of Private Law Studies*, Vol. 43, No. 3, 1392 [2013], p. 126.

tionality requires that a measure and action be appropriate and commensurate with the goal being pursued. The means are appropriate when the intended legal goal is achievable. The means are commensurate when they are the most suitable means among all possible and appropriate means, and are likely to be the ones with the least burden and harm. This measure must be the mildest and least restrictive among all means and methods. In fact, the harm inflicted should not be disproportionate to the intended and desired outcome. Reasonableness is exemplified when the government's intervention does not cause excessive burden and distress to individuals.¹ The implementation of these components may differ across various legal systems, although the general structure remains similar. The German Federal Constitutional Court pioneered the three-stage test (suitability, necessity, and strict proportionality), which has now gained global attention. However, the intensity of judicial review varies depending on the specific legal context (whether in European Union law, national law, or within the framework of the European Convention on Human Rights).

2. The Historical Context of the Principle of Proportionality in Administrative Law

The evolution of the principle of proportionality from a philosophical concept to a legal principle marks a significant turning point. When proportionality became “institutionalized in law,” it moved from the realm of theoretical discourse to the arena of practical application in judicial systems. This transformation demonstrates how fundamental philosophical principles can become specific legal doctrines that guide judicial decision-making in diverse legal systems. The global appeal of the principle of proportionality also stems from its connection to the foundations of justice and fairness in philosophy.²

The principle of proportionality originated and developed in German law. Its roots trace back to the constitutional state in the Prussian Empire. In the second half of the 18th century, Prussia was a military and economic power. Frederick the Great, the country's leader, believed that the king's authority was not unlimited; he therefore sought to establish the Prussian legal system on the basis of rationality, religious tolerance, and individual freedoms. During the time of his successor, Frederick William III, the codification of Prussian law was completed. Article 10 of the **Allge-**

1. Hadavand, Mahdi; Mashhadi, Ali. *Principles of Administrative Law with a Comparative Study*. Khorsandi Publications, 1st ed., 1389 [2010], p. 183.

2. Hadavand, Mahdi et al. *Decision-Making Procedures in Administrative Law*. Khorsandi Publications, 3rd ed., 1395 [2016], p. 132.

meines Landrecht law of 1794 allowed the state to exercise police powers to maintain public order. However, these powers were limited to actions that were necessary to achieve the goal. This article stipulated: “The police will take necessary measures to maintain peace, security, and public order.” Legal scholars have considered this provision to be the first codified basis for the principle of proportionality.

The concept of a constitutional state allows the government to restrict individuals’ rights, but only when such authority is explicitly permitted by law, while the exercise of such authority is subject to the principle of proportionality; that is, the government is allowed to take actions that are necessary to achieve its legitimate objectives. The first application of the principle of proportionality in this legal system was to limit police actions for maintaining public order and security. For example, the Prussian Supreme Administrative Court ruled in one case that the restriction of individuals’ rights to assembly and demonstration must be based on objective reality; that is, such a reality must demonstrate a concrete danger to public order.¹

Although the principle of proportionality grew and developed in the German legal system, European countries and the U.S. used this principle as a foundation in their administrative systems. Various rulings issued by the courts of these countries show different examples of attention to this principle. On the other hand, the principle of proportionality is also reflected in the legislative systems of many countries.[12]

2. The Place of the Principle of Proportionality in Modern Administrative Law

The principle of proportionality should be considered a significant branch of the rule of law because judicial review of administrative actions can only occur within the framework of law. Although the principle of proportionality comes to the fore in the discretionary power stage, the most important branch of the principle of proportionality is the **rule of law**. If we want to discover the position of the principle of proportionality in the rule of law system, we can say that the tradition of obedience has been continuously challenged by the liberal tradition while also complementing it. According to this tradition, the government, or political power, is fundamentally “evil.” This is because it entrusts the reins of authority to some humans to exercise over others.²

1. Zarei, Mohammad Hossein; Moradi Berlian, Mahdi. *Ibid.*, p. 66.

2. Some examples of this principle in the legislative system are mentioned:

Article 5 of the 2007 Recommendation of the Committee of Ministers of the European Union stipulates: “1. Public au-

However, this very political and supreme power is a necessary thing, as no society can continue to exist without the superior authority of the state. But efforts must be made to restrain the government's actions as much as possible. To achieve this goal, different solutions have been envisioned. First, the most fundamental rights of every citizen, such as liberty, property, security, and life, have been specified and established in declarations of rights and constitutional texts so that citizens can demand them and power is obligated to respect them. Second, the government was divided into separate branches, and this division of power weakens and disperses authority so that the individual has greater mobility and freedom against the arbitrary power of the state. Third, the government is obligated to follow legal rules that are the manifestation of the public will.¹

This is the principle of legality that all government branches must obey. The concept of the rule of law is that government action must be based on a legal rule. The administrative body never has the authority to act arbitrarily, and its competencies are never absolute or unlimited; rather, each of its actions must be implicitly or explicitly provided for in legal texts.²

thorities should act in accordance with the principle of proportionality; 2. Administrative authorities must use measures that affect the rights or interests of private persons only to the extent necessary and to the degree required to achieve the intended goal; 3. When exercising discretionary authority, administrative authorities must strike an appropriate balance between any adverse effects that the decision may have on the rights and interests of private persons and the goals being pursued, and no action taken should go beyond what is necessary.”

Article 12 of the Icelandic Administrative Procedures Act stipulates in this regard: “Administrative authorities may only take a disadvantageous decision if the intended purpose does not exceed its slightest significance. Precautionary measures must not go beyond what is necessary.”

Article 13 of the Latvian Administrative Procedures Act stipulates: “The social benefits resulting from the limitations imposed on the addressee must outweigh the limitations imposed on the addressee's legal rights or interests. Fundamental limitations on the legal rights and interests of private persons are only justifiable for important public interests.”

Article 4, Paragraph 3 of the Lithuanian Administrative Procedures Act stipulates: “... The scope and intensity of administrative decisions must be appropriate to the objective of the administration.”

1. Aslani, Firouz. “The Concept of the Rule of Law and its Interpretation with an Emphasis on the Constitution of the I.R.I.” *Quarterly Journal of Islamic Revolution Studies*, Vol. 8, No. 26, Autumn 1390 [2011], p. 267.

2. See Raei, Masoud. “The Rule of Law and Governmental Decrees in the Constitution of the Islamic Republic of Iran.” *Journal of Islamic Governance*, No. 63, Autumn 1390 [2011], p. 263; Gorchi, Ali Akbar. “The Rule of Law and Limitations on the Right to Redress in the Administrative Justice Court.” *Journal of Constitutional Law*, No. 9, 1387 [2008], p. 150.

3. The Principle of Proportionality in Iran's Legal System

The principle of proportionality is a principle that is still unknown in Iran's legal system, and there is not much evidence of it in laws, regulations, and judicial rulings. However, its spirit can be observed in some laws and rulings issued by the **Court of Administrative Justice**.

3-1. The Principle of Proportionality in Laws and Regulations

One of the objectives of the principle of proportionality is that no obligation or cost beyond what is necessary to serve public interests and maintain public order should be imposed on citizens. In this regard, although there are typically no general regulations governing all administrative decisions and measures in Iran, the spirit of this principle has been reflected on a case-by-case basis in some laws and regulations. One of the notable new laws approved in this regard, which if implemented could address many of the problems in Iran's administrative system and improve government-citizen relations, is **Article 62 of the Fifth Five-Year Development Plan of the Islamic Republic of Iran**. The provisions of this legal article are consistent with the principle of proportionality, as they indicate that the stages for obtaining licenses, permits, and administrative inquiries, as well as the payment of fees for administrative services by citizens, should be at a minimum and to the extent of necessity. In other words, the obligation to obtain an administrative license and its procedures, and the payment of a fee for it, should not be imposed on the people more than is necessary, and if obligations beyond what is necessary are currently being imposed, they should be reformed. **Note 3** of this legal article is also noteworthy, as it states that executive bodies are not permitted to collect amounts exceeding the legal provisions, even by agreement. As can be seen, the text of this article and its recent note aim to prevent the imposition of unnecessary obligations and costs on citizens, and thus can be considered consistent with the principle of proportionality, as this principle's goal is exactly this.

Another law in which the principle of proportionality is reflected is **Article 100 of the Municipality Law**. This article addresses building violations by landowners and property owners during construction. Based on this, if a violation is committed by the owner, the matter is referred to a commission composed of a representative of the Ministry of Interior, a judge from the judiciary, and a member of the city council. This quasi-judicial body, after deliberation, will issue a ruling to demolish the constructed building or to pay a fine by the violator. The amount of the fine is proportional to the type of space created and the type of building in terms of the materials used. It can be seen that in this legal article and its notes, the punishments are specified to be proportional to the type of violation committed, which is in line with and consistent with the principle of pro-

portionality.

Another law in Iran's legal system that addresses the principle of proportionality is **Article 145 of the Code of Criminal Procedure ratified in 2013**. This article states: "If the occupant of a house or the objects being inspected refuses to open locked places and objects, the investigator can order them to be opened, but as much as possible, actions that cause damage should be avoided." The requirement of the principle of proportionality is that legal goals should be achieved with the least possible cost and harm to citizens. This issue is well reflected in the aforementioned legal article. There are other legal instances in Iran's legal system that are consistent with the principle of proportionality, but this is sufficient.

3-2. The Principle of Proportionality in the Jurisprudence of the Court of Administrative Justice

The Iranian administrative law system is a unique blend of Islamic jurisprudential traditions and modern administrative law principles. Iran's legal framework has incorporated elements of Shi'a jurisprudence into various branches of law, including administrative law.¹ This combination offers a different approach to proportionality in administrative judicial review compared to Western or purely Islamic models. Iran's approach to proportionality is particularly unique in its use of jurisprudential concepts like **maslahat (public interest)** and **adl (justice)** to scrutinize administrative decisions. These concepts guide the court in balancing state objectives with citizens' rights. Unlike the reasonableness standard in the U.S. or the structured tests of proportionality in Europe, in Iran, religious values are explicitly incorporated into the proportionality analysis. In this system, proportionality analysis across all four components –legitimacy, suitability, necessity, and balancing– is conducted not only from the perspective of administrative principles but also through the lens of Islamic jurisprudence.

If we want to refer to the system governing the Court of Administrative Justice in dealing with the principle of proportionality, it must be said that several rulings have been issued in this regard² that provide a suitable criterion for the principle of proportionality:

In an old ruling (**the case of levying tolls by the Mazandaran governorate**), the Court of Administrative Justice, while emphasizing the collection of proportional tolls from citizens, made

1. Hadavand, Mahdi; Aghaei Togh, Moslem. *Specialized Administrative Courts*. Khorsandi Publications, 2nd ed., 1394 [2015], p. 69. See Abbasi, Bijan. *Administrative Law*. Dadgostar Publications, 4th ed., 1395 [2016], p. 67 et seq.

2. For a detailed study, refer to: Abbasi, Bijan, *Ibid.*, p. 291.

its collection conditional on the insufficiency of the municipality's income. Given that, according to **Clause 1 of Article 35 of the Law on the Formation of Country Islamic Councils**, ratified on November 22, 1982, the method of determining tolls by the city council is specified and stipulated that: "As long as the foreseen revenues are not sufficient, the city council can, with the approval of the Wali-e-Amr, determine tolls proportional to the economic conditions of the area and the services provided, to cover the municipality's expenses." And considering **Article 53** of the aforementioned law, and that on the date of its ratification, all contradictory laws would be null and void, and also considering the **Law on the Addition of a Note to Article 53 of the Law on the Formation of Country Islamic Councils**, ratified on October 20, 1985, which stipulated that: "Until the formation of Islamic councils in each city, the Minister of Interior or the head of the Ministry of Interior will be the successor to the Islamic council of that city in matters related to municipalities," and given that in the process of ratifying **Resolution No. 5/28802**, dated March 12, 1984, by the Mazandaran governorate, the principles and regulations foreseen in the laws mentioned above were not observed, the aforementioned resolution is declared to be contrary to law and, based on **Article 25 of the Court of Administrative Justice Law**, is annulled.¹

In another case, the court, while emphasizing the collection of proportional tolls from citizens, declared the municipality's decision illegal and void for this reason: in other words, the collection of tolls must be proportional and cannot be collected beyond what is necessary. Given the duties and responsibilities of the municipality, as detailed in **Article 55 of the Municipality Law**, regarding the provision of various urban services within the legal boundaries of each city, and the rule stipulated in **Clause 1 of Article 35 of the Law on the Formation of Country Islamic Councils** of 1982 regarding the permission to collect proportional tolls from citizens (on the condition of the municipality's income being insufficient) to cover the costs and expenses related to providing the said services within the legal boundaries of the city, and that municipalities, by law, have no duty or obligation to provide the said services outside the legal boundaries of the city, therefore **Article 3 of the Toll Collection Regulation** of 1977, ratified by the former city council of Yazd, which concerns the collection of tolls from owners of factories and brick, lime, and plaster kilns located outside the legal boundaries of the city, is found to be contrary to the law and outside the scope of authority of the former Yazd city council due to their location outside the legal boundaries of the city and their not receiving urban services, and based on **Clause 1 of Article 19**

1. Hadavand, Mahdi; Mashhadi, Ali. Principles of Administrative Law, p. 186.

and Article 42 of the Court of Administrative Justice Law of 2006, is annulled.¹

Similarly, in another similar ruling, the court emphasizes the observance of proportionality in the collection of tolls by the municipality: It is explicitly stated in **Clause 1 of Article 35 of the Law on the Formation of Country Islamic Councils** of 1982 that the imposition of tolls by the city's Islamic council is contingent on the insufficiency of the municipality's income to cover its expenses, with due regard for the proportionality of the local economic capabilities and the services provided. As stated in **Note 1 of Article 5** of the law known as the Aggregation of Tolls and the Election of Mayors of 1996, it is permitted to impose new local tolls or increase the rate of local tolls with due regard for the regulations of that note and also in consideration of the general government policy announced by the Ministry of Interior. Therefore, the **Single Article** dated January 27, 2004, which was ratified by the Tehran City Islamic Council, and pursuant to which, for the purpose of creating balance and expanding sports facilities in all parts of Tehran, a toll was imposed on private pools in residential homes and complexes, with the revenue from it to be used in deprived areas, is found to be contrary to the law and outside the legal authority of the city's Islamic council, as it does not contain the objectives of the legislator and does not fulfill the necessary legal conditions. Based on the latter part of **Article 170 of the Constitution of the Islamic Republic of Iran and Clause 1 of Article 19 and Article 42 of the Court of Administrative Justice Law** of 2006, it is annulled.²

As can be seen, in all the rulings mentioned, the principle of proportionality is implicitly referenced. However, the most important issue in this regard is that the issued rulings do not provide a proper and suitable criterion for the principle of proportionality. It seems that this leads to the judicial review bodies having different interpretations of this situation, and the principle of proportionality being interpreted broadly.

In line with the principle of proportionality, an administrative authority does not have the right to interpret laws and regulations in a way that deprives a person of their legal rights. The administrative authority must provide a proper interpretation of the law. For example, in one case, the court did not consider merely being employed as a teacher as a sign of a person's financial capacity and declared the administrative authority's decision, which was issued on this basis, to be void: "Merely being employed as a teacher and receiving its salary and benefits, without considering the

1. Hadavand, Mahdi; Mashhadi, Ali. Principles of Administrative Law, p. 186.

2. Hadavand, Mahdi, Mashhadi, Ali. Principles of Administrative Law, p. 187.

amount received, the number of dependents, and other material resources, does not prove a person's financial capacity and consequently does not deprive them of the legal right provided for in **Note 5 of the Single Article of the Law on Temporary Cultivated Lands** ratified on October 30, 1986. Therefore, **Ruling No. 438** dated September 28, 1992, by the Thirteenth Branch of the court, to the extent that it conveys this meaning, is recognized as being in accordance with legal principles and standards. This ruling, based on the latter part of **Article 20 of the amended Law on the Court of Administrative Justice**, is binding on the court branches and other relevant authorities in similar cases.”

Also, in **Ruling No. 751**, dated February 19, 2006, by the General Assembly of the Court of Administrative Justice, regarding the annulment of **Clause 7 of Circular No. 65/710**, dated January 30, 2002, by the Ministry of Education and the distinction between the meanings of the words “indigenous” and “volunteer” in both word and term, and that being born and being indigenous to a deprived area does not necessarily entail a desire to volunteer for service in that same area, therefore the application of the latter part of Clause 7 contained in Circular No. 65/710, dated January 30, 2002, by the Ministry of Education, which was prepared and organized based on the resolutions of January 1, 1996, and January 21, 1997, of the Council of Administrative and Employment Affairs of the Country, is found to be contrary to the law and is annulled based on the latter part of **Article 25 of the Court of Administrative Justice Law**.¹

4. The Principle of Proportionality in the U.S. Legal System

The U.S. approach to judicial review of administrative actions differs significantly from jurisdictions that explicitly apply the principle of proportionality. In U.S. administrative law, instead of using a formal proportionality test, the **reasonableness standard**² is applied. This standard “is rooted in English and American judicial practices” and is recognized as the primary tool for judicial control over administrative actions in the U.S. According to this standard, courts can void administrative decisions if they have failed to consider relevant factors or have given disproportionate weight to these factors, even if those decisions do not violate specific laws or regulations. This approach has similarities to proportionality analysis but differs from it in structure and theo-

1. Hadavand, Mahdi, Mashhadi, Ali. *Principles of Administrative Law*, p. 188.

2. Hadavand, Mahdi. *Comparative Administrative Law*. SAMT Publications, Vol. 1, 1st ed., 1389 [2010], p. 242.

retical foundations.¹

The difference between the reasonableness review in the U.S. and the proportionality test in other systems becomes clearer in comparative examples. For instance, countries like Kenya have moved away from the traditional “**Wednesbury unreasonableness**” standard (similar to the U.S. approach) and towards adopting the principle of proportionality; a method similar to human rights tests. These differences stem from the distinct legal and constitutional structures that shape the courts’ approach to administrative actions. The U.S. reasonableness standard, although not structured, allows courts to review the reasoning and balancing of administrative decisions, but it generally grants more deference to the expertise and discretion of executive agencies than proportionality-based systems do.

In general, the combination of duties that are usually divided among the three branches of government and their centralization in administrative agencies has led to a position of superiority for these agencies. Because of this concentration of power, one of the main goals of administrative law is to control the risks resulting from arbitrary action and exceeding authority by administrative agencies without harming the proper and appropriate use of institutional power to deal with specific issues intended by Congress. The judiciary, through judicial review by the courts, controls the powers of these agencies. The executive and legislative branches also impose controls on the powers of administrative agencies. These actions are carried out according to principles that are accepted in most legal systems, for example, the principle of the rule of law, the principle of accountability, the principle of transparency, etc., are among the cases that are also recognized as a principle in U.S. law. However, the principle of proportionality is one of the principles that is the subject of judicial review, and judges, based on this principle, find the competent bodies to be in violation of their legal duties, and with this principle, the illegality of an action is determined with respect to its specified goal.

4-1. The Concept of the Principle of Proportionality in U.S. Law

The principle of proportionality is not specifically defined in the U.S. legal system. However, one of the important legal provisions in this regard, which also refers to the principle of proportionality, is **Article 706 of the Administrative Procedure Act**, which provides:

1. Abry, K. (2024). Conditional quashing orders: A missed opportunity for introducing a new relief in judicial review proceedings? *Common Law World Review*, 53, 79 – 104.

“1-(Legality) compel agency action unlawfully withheld or unreasonably delayed.

2- The court shall declare unlawful and set aside agency action, findings, and conclusions found to be:

- a. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- b. contrary to constitutional right, power, privilege, or immunity;
- c. in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- d. without observance of procedure required by law;
- e. unsupported by substantial evidence;
- f. unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.”

Clause “c” of this article well contains the rulings related to the principle of proportionality. Therefore, it must be said that U.S. administrative law contains features that exist in the principle of proportionality, as some features of the principle of proportionality are reflected in the rulings of U.S. courts.

4-2. The Impact of U.S. Judicial Precedent on the Formation of the Principle of Proportionality

Since the U.S. system is based on common law, many judicial proceedings are influential in subsequent proceedings. Therefore, federal and state courts, by deciding on lawsuits, issue judicial rulings that are later used by other courts. In the written text of the issued ruling, judges usually explain the legal arguments used for the decision. These arguments and opinions often include the interpretation of laws, local directives, administrative regulations, and the declaration of legal principles used to issue the ruling. Many rulings are published in books available to the public. Although the principle of proportionality has been the subject of review by many court judges as a principle, an effort has been made to refer to this principle alongside other principles, and the most important principle that is always raised with the principle of proportionality is the **rule of law**.

According to the doctrine of **stare decisis** and based on the common law tradition, previous court rulings are considered precedent for deciding on subsequent lawsuits. Lower courts must follow the precedent created by higher courts. For this reason, all federal and state courts must follow the judicial precedent created by the rulings of the U.S. Supreme Court. Of course, courts of equal rank are not obligated to follow each other’s judicial precedent. For example, the precedent created by a state court is not enforceable for another state. Also, a court that has created a

precedent can change its legal arguments in new cases that are raised or argue the complete opposite. This doctrine leads to the uniformity of law in a judicial jurisdiction, increases the efficiency of the courts, and guarantees the predictability of judicial rulings for individuals and businesses. However, in general, the U.S. Constitution and treaties take precedence over all laws. Federal laws govern federal administrative regulations. State constitutions are the highest law in each state. State laws take precedence over state administrative regulations, and valid state laws also take precedence over local laws.¹

When reviewing the principle of proportionality, U.S. courts pay attention to two important issues: first, the actions of state administrative officials, whether on a specific, case-by-case basis or on a general, typical basis, will be subject to the principle of proportionality. Second, the review of the principle of proportionality in administrative actions is based on the criteria that exist in U.S. administrative law and the judicial system, so that the judicial system stands against anything that is outside the scope of the legal system.²

Among the issues that are reviewed in the principle of proportionality in the U.S. judicial system is a reference to the goal for which administrative actions are performed, in such a way that the actions committed must be proportional to the intended goal.³

4-3. The Principle of Proportionality in the U.S. System of Public Property (Public Law)

In the U.S. legal system, public law, like other branches of legal knowledge, is regulatory in nature and seeks to manage relationships, but unequal relationships in which a citizen is on one side and the government is on the other. In this context, public law seeks to limit the domineering and absolutist nature of political power through tools such as the separation of powers, decentralization, and the creation of systematic institutions such as parliament, parties, etc., to stop power with power by creating conflict between the components of power. However, the ultimate goal and compass of public movement in the U.S. is on one hand to guarantee the rights and freedoms of citizens and on the other hand to protect the interests of a separate, interconnected entity called

1. Hadavand, Mahdi. *Comparative Administrative Law*. SAMT Publications, Vol. 1, 1st ed., 1389 [2010], p. 242.

2. Garry Downes AM, President of the Administrative Appeals Tribunal Judge of the Federal Court, REASONABLENESS, PROPORTIONALITY AND MERITS REVIEW in usa, NEW SOUTH WALES YOUNG LAWYERS SEMINAR ISSUES OF ADMINISTRATIVE LAW, 24 September 2008, p 11.

3. Ajoy P.B. Administrative Action and the Doctrine of Proportionality, *Journal of Humanities and Social Science (JHSS)*, ISSN: 2279-0837, ISBN: 2279-0845. Volume 1, Issue 6 (Sep-Oct. 2012), P17.

society in the form of concepts such as the public good. But in some cases, the conflict between individual rights and the public good and establishing a balance between these two important issues will be an extremely complex and difficult matter.

In general, there are two interpretations of the principle of proportionality in constitutional law theories: the first model emphasizes the **primacy of rights**[37] and the second model emphasizes **efficient management, optimization, and the promotion of competing values**. [38] One of the most important examples of this confrontation is the issue of public appropriation of private property for public use and the right to private property.

Based on the new interpretation of the principle of proportionality by New York courts, the areas eligible for appropriation for redevelopment are not limited to slums and densely populated areas, but confronting economic stagnation and decline is also determined as a public benefit. Therefore, in 1985, in the case of **North East Parent**, it was ruled that projects that increase tax revenue meet the condition of public use for the exercise of public appropriation of private property. In this case, an organization proceeded to expropriate a school that had been previously purchased by a civil entity. The organization's goal was to lease this property to an oxygen enrichment company to increase the district's tax revenue. The court ruled that such an appropriation is within the framework of the authority for public appropriation of private property and that the benefits that accrue to the private company from it will not be sufficient to undermine the condition of public use. The court believed that appropriations that lead to the creation or increase of tax revenue, in accordance with the law on the appropriation of private property in the state of New York, constitute a legitimate public use or purpose.

Also in 2001, in the case of **Vitioci**, the New York Court of Appeals stated that the appropriation of a property for the purpose of implementing an urban redevelopment project is considered a valid public use; in this case, the New York Urban Development Corporation decided to appropriate a property for the purpose of implementing an urban redevelopment project. Such a plan led to the development of the food production company's business. The court declared that the municipality is authorized to appropriate a property for the purpose of commercial and business development because it is profitable for the area, even though this plan may bring benefits to a private commercial entity. This case shows the tendency of New York courts to broadly interpret public use to include projects whose goal is economic advancement.

In the **Fisher** case in the same year, the expropriation of properties by the New York Urban Development Corporation to create a location for the New York Stock Exchange was considered a valid public use because this project led to an increase in tax revenue and the creation of job op-

portunities and enhanced New York's credit standing as an economic and financial center. Thus, the aforementioned cases, on the one hand, indicate that economic growth and advancement are conditional on public use, which includes an increase in tax revenue and the creation of job opportunities, and on the other hand, are considered a serious threat to individuals' property rights.¹

4-4. The Principle of Proportionality in Administrative Law (Judicial Precedent) in the U.S.

Judicial review is recognized as a fundamental pillar of administrative law systems, serving as an independent body that can evaluate administrative actions against a standard of **proportionality**. This process is carried out by courts that act as neutral institutions, independent of political and administrative powers, to ensure that administrative decisions remain within legal boundaries. The primary purpose of judicial review is to uphold the principle of **legality** in administrative actions and to eliminate arbitrary and discretionary conduct by administrative authorities. Through this oversight, administrative activities are subject to scrutiny by an independent judiciary, which is a vital factor in preventing the abuse of power.

The significance of judicial review is not limited to mere formal and procedural oversight; rather, it is recognized as a cornerstone of democratic governance in administrative law. As a fundamental mechanism in democratic societies, it provides legal protection to citizens against unfair behavior and unlawful actions by administrative officials. This protection is so fundamental that, in its absence, the rule of law in modern democratic public administration would be seriously jeopardized. The ultimate goal of judicial review is to enforce the principle of legality in a transparent, effective, and meaningful way, ensuring that proportionality considerations are properly applied to administrative actions that affect citizens' rights.²

In the American legal system, to establish the principle of proportionality and align existing criteria with this principle, a review of administrative actions against specific objectives is conducted. In other words, in cases where an administrative agency's action is taken through informal, case-by-case decision-making, and where its formal findings are not subject to judicial review under the "substantial evidence" standard, the Administrative Procedure Act (APA) permits judicial review of the agency's fact-finding under the **arbitrary and capricious** standard.³

1. Bethards, Matthew S., condemning a patent: taking intellectual property by Eminent Domain, *Aipla Quarterly journal*, vol. 32, No. 1, 2004, p 63.

2. Batalli, M., & Pepaj, I. (2022). Citizens' right to seek judicial review of administrative acts and its impact on governance reforms. *Corporate Governance and Organizational Behavior Review*.p.132

3. Mathews, Jud, *Proportionality Review in Administrative Law*, Penn State Law eLibrary Faculty Works, 2017, p 6.

Based on an initial understanding of the arbitrary and capricious standard, it is a highly deferential standard for administrative agencies and does not pose a serious challenge to them, to the extent that judicial review of fact-finding could not even be expected. This initial understanding was presented by the Supreme Court in 1935 in the case of *Baltimore & Ohio Railroad v. United States*. A Californian manufacturer sued against an order from the head of the Oregon Plant Industry Division concerning the type, size, and shape of containers used for selling raspberries. The Court upheld the order simply on the basis that a reasonable relationship existed between the order, which aimed to prevent consumer confusion, and the regulations set forth in it. The Court explained the standard for judicial review of an administrative agency's evidence and findings as follows: "If the agency's fact-finding report can reasonably support the issued order, that is sufficient, and anyone who disagrees with this presumption bears the burden of proving the action was arbitrary."¹

In 1983, the Court explicitly rejected this understanding of the arbitrary and capricious standard for judicial review of fact-finding. In the case of *Motor Vehicle Manufacturers Association v. State Farm*, the Court stated that an administrative agency's action is generally considered arbitrary and capricious if the agency relies on factors that Congress did not intend it to consider, fails to consider important aspects of a problem, or offers an explanation for its decision that runs counter to the evidence before the agency. Alternatively, the explanation might be so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Furthermore, an agency's action is also considered arbitrary and capricious if it represents a departure from the agency's own precedent, and the agency fails to justify and explain the basis for its change in approach.²

One of the most important applications of the principle of proportionality is in administrative agencies.³ The actions of administrative agencies can, at a minimum, encounter two different types of constitutional issues: first, the violation of substantive rights, and second, the violation of procedural rights. The Supreme Court's decision in the case of *Johnson v. Robinson* illustrates both. Robinson was a conscientious objector to the Vietnam War who had served two years in the Army Reserves but was denied veterans' benefits. He sought judicial review of the decision to deny benefits on two grounds: first, that the refusal to grant veterans' benefits to a conscientious objector who had served in the Reserves violated the First Amendment's Free Exercise Clause; and second, that the refusal to grant veterans' benefits without due process of law violated the Fifth Amendment's Due Process

1. Garry Downes, *op.cit.*, 13.

2. Hadavand, Mahdi; Mashhadi, Ali. *Principles of Administrative Law*, p. 670.

3. Abbasi, Bijan. "An Inquiry into the Sources of Constitutional Law." *Journal of Private Law Studies*, Vol. 40, No. 3, 1389 [2010], p. 249.

Clause. Based on its interpretation of legislative intent, the Court ruled that Robinson had a right to judicial review on both issues. Although Congress had prohibited judicial review of the Veterans' Administration's decisions regarding eligibility for benefits for two reasons – 1) to ensure the uniformity of eligibility decisions and 2) to avoid imposing time and cost on the Veterans' Administration and the courts– the Court concluded that Congress had not intended to prohibit judicial review of constitutional issues arising from the actions of the Veterans' Administration, as judicial review of these issues would not create the problems that Congress sought to avoid.¹

In the case of *Czerbies v. Department of Labor*, a local worker sought judicial review of a decision by the Department of Labor's compensation office, which he claimed had denied him his rightful wages. The judges of the court unanimously interpreted the law to mean that Congress intended to preclude judicial review of such decisions. However, the majority of the judges present (eight judges) stated that the worker could seek judicial review based on the claim that the agency had not observed procedural requirements (one of the rights recognized in the Constitution), even if the literal text of the ordinary law prohibited review in this matter.

The issue may be raised in a different way. In the case of *University v. Cleland*, six judges of the district court strongly stated that a constitutional right to judicial review of an administrative agency's actions exists when an **ultra vires** act is alleged—that is, the claim that the administrative agency acted beyond its legal authority. However, the conclusion of these judges is questionable, as the issue of *ultra vires* (acting beyond authority) is not a constitutional matter. It does not appear that acting beyond authority is a constitutionally prohibited act. Actions beyond authority are illegal simply because they are not permitted by ordinary laws. Moreover, it would be difficult to limit the scope of a constitutional right to judicial review of actions alleged to be *ultra vires*, as a skilled lawyer could convert any claim that an administrative agency has committed an error into a claim that the agency has acted beyond its legal authority.²

Different approaches to the principle of proportionality in administrative law show significant differences between the United States and European legal systems. These differences stem from the distinct philosophical foundations and constitutional traditions of these systems. In Europe, proportionality analysis is typically conducted within a structured three-part test (including suitability, necessity, and balancing) that systematically examines whether administrative actions are

1. Hadavand, Mahdi et al. *Decision-Making Procedures in Administrative Law*, p. 236.

2. Hadavand, Mahdi et al., *Ibid.*, p. 237.

sufficiently proportionate to their intended goals. This approach strongly emphasizes preventing arbitrary or excessive actions by administrative officials and provides a robust structure for protecting individual rights against state power. In contrast, the US administrative law system is more grounded in a review of **reasonableness** rather than explicit, structured proportionality analysis. American courts typically grant a high level of deference to administrative agencies in interpreting and implementing laws within their specialized fields, often through doctrines such as **Chevron deference**. This approach represents a different balance between judicial oversight and the independence of administrative agencies, which differs from the prevailing approaches in European systems. Despite these methodological differences, both systems ultimately aim to achieve legal and fair administration, although they have taken different paths to address the fundamental challenge of balancing state power with the protection of individual rights.¹

Conclusion

The principle of proportionality is one of the fundamental principles in administrative and constitutional law, serving as a key tool for evaluating legal norms and their implementation in judicial practice. At its core, this principle establishes a relationship between “means” and “ends,” providing an objective and logical basis for legal decisions based on constitutional provisions; at the same time, it denies interpretations that lead to discrimination or inequality. This approach ensures that legal decisions are made based on appropriate balance, justice, and fairness.

The comparative analysis of judicial review systems on the principle of proportionality in administrative law shows deep differences in the legal approaches of countries, rooted in legal traditions, constitutional structures, and philosophical views on the role of the judiciary in supervising the executive branch. The principle of proportionality, as a tool to evaluate the balance between the legitimate goals of the state and the rights of citizens, is applied in European systems as a structured test that enables more active judicial review. In contrast, countries like the United States adhere to reasonableness standards and deference to the expertise of executive agencies, giving the government a broader margin of appreciation. The concept of the margin of appreciation, especially in human rights law, allows national authorities to make decisions based on their specific circumstances, but this discretion is subject to judicial review to ensure compliance with democratic principles. Recent developments, such as Kenya’s move from the **Wednesbury unreasonableness**

1. To Doan, U.T., & Van Vu, T. (2024). IN-DEPTH COMPARATIVE ANALYSIS OF THE PRINCIPLES OF LAW ON ADMINISTRATIVE PROCEDURES IN VIETNAM COMPARED WITH THAT IN EUROPEAN LAW. *InterEULawEast: Journal for the International and European Law, Economics and Market Integrations*.p.741



standard toward a human rights-like proportionality test, show a trend in some countries toward more structured judicial review.

In Iran, judicial review follows a distinct approach influenced by religious values and constitutional principles, combining religious considerations with administrative efficiency. These differences, beyond technical issues, point to fundamental questions about the relationship between the state and its citizens, the role of courts in democratic governance, and the balance between efficiency and individual rights. Despite the diversity in approaches, the common goal of all systems is to ensure justified, necessary, and balanced decisions that lead to improved governance and the protection of citizens' rights.

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