

RESPONSIBILITY OF MANAGEMENT FOR THE DIRECT IMPLEMENTATION OF THE ADMINISTRATIVE DECISION

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ABSTRACT

The study dealt with the enforcement of the administrative decision in Iraqi law compared to other laws, where we presented the concept of the administrative decision as a work related to the administrative authorities only, and we presented the pillars of this decision and we referred to the negative and positive administrative decisions and the extent of their impact, whether it is related to the authorities or persons, and the consequences of the legitimacy of administrative decisions in accordance with the presumption of safety. Since the matter is related to the implementation of administrative decisions and whether the implementation is carried out directly or indirectly, the responsibility of the administration for the implementation of administrative decisions is manifested, and the case of the administration's choice to issue a decision, as well as the role of the political administration in the implementation of judicial rulings, and since the administrative decision is issued to achieve a purpose, its implementation is one of the things required by various legislations, including Iraqi legislation, where the various laws required the need to respect judicial rulings in compliance with the principle of legality while recognizing the presumption of safety as a basis for legitimacy Administrative decisions.

Keywords: enforcement of administrative decision. Administrative decisions, retroactivity of administrative decisions, general annex. Administrative Law.

1.Introduction

The study of the mechanism of implementation of the administrative decision in general is one of the most accurate and important topics in administrative law, as the administrative decision and its implementation is one of the most important forms and manifestations of administrative authority, because of what occurs and is formed by the implementation of the administrative decision in a number of its aspects, as it is from the date of its issuance is considered an argument in the face of its addressees, and it is also considered a way to invoke it by stakeholders in the face of the authority of the administration.

1.1 The importance of the study

The importance of the study lies in that it seeks to clarify the difference between the subject of the enforcement of the administrative decision and its implementation, as a serious scientific

attempt to remove all confusion about the enforcement of the administrative decision, and the importance of the study came in its quest to clarify the importance of considering the study and analysis of the implementation of the administrative decision . The study also seeks to clarify the various guarantees developed by Iraqi, Egyptian and French legislation in order to surround them with the decisions issued by the administration, whether these guarantees are decided in favor of the administrative body that issued the decision, or were Decided in favor of the individuals addressed by the administrative decision.

1.2 Study problem

The research problem revolves around the researcher's attempt to identify the mechanisms of implementing the administrative decision in accordance with what is stated in the Iraqi, Egyptian and French legislation, in addition to trying to identify the position of those legislations of the effects of the implementation of the relevant administrative decisions, and the research problem can be crystallized in an attempt to answer the following question: What are the mechanisms for implementing the administrative decision in accordance with Iraqi and comparative legislation?

1.3 Study Questions

1. What are the mechanisms for implementing the administrative decision?
2. What is the definition of administrative decision according to Iraqi and comparative legislation?

1.4 Study Methodology

The study relied on the analytical approach and the comparative approach in order to identify the administrative decision in Iraqi law and comparative laws, and to analyze the position of Iraqi legislation on the implementation of the administrative decision and the effects of its enforcement, and the mechanisms of distinguishing between administrative decisions according to their pros and cons and the implications of that.

1. What is the administrative decision?

If it is possible to imagine the establishment of the state without legislation (legislative authority) and without judges a jurisprudential authority, it is difficult to imagine its existence without the management of an executive authority, because the latter is a vital work that complements the life of the state, hence the logical and natural transcendence of the administration in the state over all other organs and authorities, which lasted for a long time in the life of states and nations. From one country to another according to the degree of awareness, urbanization and advancement of its peoples ¹

The administration during the exercise of power issues administrative decisions for the purposes of achieving the public interest, and we in this chapter deal with the definition of administrative decision in the first section and then explain in detail his legacy in the second

⁽¹⁾Nawaf Kanaan, Al-Wajeez in Jordanian Administrative Law, Bright Horizons for Publishing, vol. 2, 2012, p. 218.

section and then the third section we will address the types of administrative decision.

1.1 Definition of the administrative decision

The legislator did not define the administrative decision, despite the reference to it in many constitutional and legislative articles, on the occasion of the report of the authority of the administration to issue it on many issues and competencies, or on the occasion of the report of judicial oversight by the judiciary in its various bodies, it left the task of definition to jurisprudence and the judiciary, and therefore jurisprudence and the judiciary addressed the issue of determining and defining the administrative decision, which are mostly similar and agree on the basic elements of the administrative decision² and therefore we will first discuss the definitions of jurisprudence for the administrative decision and then address the definition of the judiciary him.

1.1.1 Jurisprudence definition of administrative decision

The jurists dealt with the definition of administrative decision, each according to his opinion, as it was defined and defined by Brigadier General Hu Rio as a declaration of will with the intention of producing a legal effect vis-à-vis individuals issued by an administrative authority in an executive form, i.e., in a form leading to direct implementation³. Brigadier General Dickey defined it in his definition of legal action as: (Any voluntary act that deliberately intervenes to bring about a modification in the legal situation that exists at the moment of its adoption or that will exist at the moment of Professor Regio as: The act by which the administration uses its authority to modify legal positions is received⁴. Brigadier General Bonar defined legal action, from which the definition of an administrative decision or act can be deduced as follows: Legal action is any act that modifies existing situations of its own volition⁵.

Linguistically, the administrative decisions are those visions that revolve around the issues of governance and decisions that settle according to a specific system and specific where⁶ we find in this sense has been mentioned multiple verses in the Holy Qur'an Almighty "security make the earth a decision and make rivers and make her Rawasi and make between Bahrain a barrier

⁽²⁾ Ibid., p. 220.

⁽³⁾ Dr. Shab Touma Mansour, Administrative Law, Book Two, 1st Edition, University of Baghdad, 1980, p. 389.

⁽⁴⁾ Suleiman Mohamed Al-Amari, The Theory of Abuse of Power, 2nd Edition, Dar Al-Fikr Al-Arabi, Cairo, 1991, p. 30. Essam Abdel Wahab Al-Barzanji, The Discretionary Power of Administration and Judicial Oversight, PhD thesis submitted to Cairo University, 1971, p. 210.

⁽⁵⁾ Mohamed Kamel Leila, Judicial Control of the Administration's Actions, Dar Al-Nahda Al-Arabiya, Cairo, 1970, p. 948.5

⁽⁶⁾ The scholar Sheikh Abdullah Al-Alayli, Al-Sahih fi Language and Science, Volume Two, Dar Al-Hadara Al-Arabiya, Beirut, p. 307.6

God with God, but most of them do not know " The decision is the place where it can stay ⁷As stated in this sense in the Almighty's saying, "and that the hereafter is the abode of decision" As for its terminological definition, we find that it was said in the definition of administrative ⁸ decision jurisprudence ⁹ and the judiciary of a lot, in its definition of jurisprudence, we find that the efforts of jurisprudence tended to develop a definition of the administrative decision without reaching a unified definition agreed upon. The relevant administrative, or those decisions that are issued as a result of the different objective of the definition, there is the material criterion of the administrative decision, which looks at the content of the administrative decision, the administrative decision is the individual application decision¹⁰.

The follower of the literature of administrative law in general and the administrative decision in particular, notes that there are many definitions received for the administrative decision, and that these definitions, despite their multiplicity and difference, refer to a specific definition centered on administrative decisions and the latter is considered a unilateral act with legal effects¹¹ and that the administrative judiciary interprets the idea of arranging the legal effects on the issuance of the administrative decision a broad interpretation to create ways for those concerned to appeal administrative decisions, it is sufficient for him to affect the decision interests of individuals or It somehow affects their situation immediately or at reception¹².

Here, we limit the definition of the administrative decision to a statement of the aspect related to the fact that the decision is a reason for the possibility of appealing it, and then the administration stands in this regard in the position of the defendant.

In order to clarify the characteristics of the decision in general, and being a reason for challenging it in an administrative lawsuit, it can be defined as an administrative decision as a legal act taken unilaterally by an administrative authority, this act affects the legal positions of the parties concerned with their judgment, which leads to them obtaining rights or obligations that they did not request or agree to, without their consent.

Administrative decision is a legal act: a legal act is a disclosure or expression aimed at arranging

⁽⁷⁾Surah An-Nahl, verse 67

⁽⁸⁾The scholar Ahmad Reda, Dictionary of the Language Text, Al-Hayat Library, Beirut, 1960, p. 528.

⁽⁹⁾Al-Mu'min, verse 38, p. 505

⁽¹⁰⁾Muhammad Ismail Alamuddin, The Development of the Idea of Administrative Decision, op. cit., p. 14010

⁽¹¹⁾Hamdi Yassin Okasha, Administrative Decision in the Judiciary of the State Council, Knowledge Foundation in Alexandria, 1987, p. 17

⁽¹²⁾Emad Mohamed Abdel Mohammadi, Retrograde Administrative Decisions: A Comparative Study between Iraqi and Egyptian Laws, PhD Thesis, Faculty of Law, Mansoura University, 2022

a certain legal effect and the characteristic of arranging the legal effect is what distinguishes the administrative decision from the physical work of the administration that does not produce any legal effect directly¹³

The legislation relating to the administrative authority and its activities did not define the administrative decision, and there was no consensus on a unified definition of the administrative decision in jurisprudence or the ¹⁴ judiciary.

In addition to the above, formal criteria can be relied upon in defining administrative decisions, in this case, the administrative decision is that decision issued by the public authorities or the administrative authority and under administrative methods, templates and formalities.¹⁵

One of the jurisprudential definitions accepted in this regard, for example, was described by the jurist (Fidel) as a legal document issued by an individual administration that would change the legal conditions with the obligations it imposes and the rights it grants.¹⁶

Doge defines it in his definition of legal action and does not differentiate between public and private legal action as "any administrative action aimed at changing the legal conditions as they existed at the time of their promulgation or as they will be at a specific future moment."¹⁷

Some have defined an administrative decision as that taken by an official authorized to issue it in the form prescribed by law to establish a legal centre that was taken specifically for the benefit of the public. ¹⁸

Others defined it as "the legal act issued by the administration alone, i.e. by its own wills" ¹⁹It

⁽¹³⁾Mohamed Refaat Abdel Wahab, Mohamed Abdel Rahman Sharaf El-Din, Administrative Judiciary, Arab Printing Office, 1988, p. 411.

⁽¹⁴⁾Khaled Khalil Al-Zahir, Administrative Law, Dar Al-Masirah for Publishing, Distribution and Printing, 1997, p. 110.

⁽¹⁵⁾Awabdi Ammar, Lessons in Administrative Law, Cairo, Diwan of University Presses, third edition, 1989, p. 213.

⁽¹⁶⁾Ahmed Hafez Negm, Administrative Law, Cairo, Dar al-Fikr al-Arabi, first edition, 1981, p. 108.

⁽¹⁷⁾Suleiman Muhammad al-Tamawi, The Theory of Abuse of Power, third edition, Ain Shams Press, 1978, p. 397.

⁽¹⁸⁾Abd al-Razzaq Ahmad al-Sanhouri, Legislation Violates the Constitution and Deviates in the Use of Power, article published in Majlis al-Dawla, third year, 1952, p. 6.

⁽¹⁹⁾Khaled Samara Al-Zoghbi, The Legal State and its Elements, Journal of Law, Second Issue, 1993, p.

is clear from the above definition that Mr. Khaled Samara Al-Zoghbi has relied on the issuer as an element in the definition of the administrative decision.

As for its definition in the French administrative judiciary, we find that the French judiciary in the past was linking the definition of the administrative decision and the authority that issued it, but later this judiciary tended to approve the status of the administrative decision issued by the competent legal personality, provided that that authority undertakes to a group of individuals that they have to carry out a set of tasks aimed at achieving the public interest,²⁰

In Egypt, the Administrative Court defined administrative decisions as "those decisions issued unilaterally, provided that such decisions are in conformity with the relevant texts, legislation or regulations".²¹

Iraqi jurisprudence has been concerned with the definition of administrative decision. However, its definitions of the administrative decision were limited to mentioning the elements of the administrative decision, while another section was identical to previous definitions. Thus, Dr. Shaba Touma Mansour listed the elements of the administrative decision by saying "a legal act of the administrative authority, unilaterally and producing a legal effect".²² Dr. Ali Mohammed Bdeir and Dr. Essam Abdul wahab Albarzanji and Dr. Mahdi Yassin Al-Salami The administrative decision is a legal act issued by the unilateral and binding will of one of the administrative authorities in the state to bring about a change in the existing situation, either by establishing a new legal center or amending an existing legal center or canceling it²³

Prof. Diaa Sheet mentioned the letter of definition of Prof. Dr. Abdul Razzaq Al-Sanhouri and the definition of the Administrative Court in Egypt.

Based on all of the above, we see that the administrative decision is a legal act issued by an administrative authority of its own will in order to bring about a change in the legal status by

⁽²⁰⁾See the judgment of the Council of State (20mon Pernt) (Bngue) issued in 1942 and 1943, where the Council of State approved the status of administrative decision of the decision of the organizing committees and in professional associations to explicitly state that these committees are persons of private law, see Dr. Muhammad Ismail Alam Al-Din, The Legality of Depriving Women Working in Marriage, Journal of Administrative Sciences, First Issue, Seventeenth Year, 1975, p. 153.

⁽²¹⁾Ahmed Samir Abu Shadi, A Set of Legal Principles Decided by the General Assembly, Advisory Section for Fatwa and Legislation of the State Council, commenting on it in ten years, 1960, 1970, Part III, p. 2168, and see also the principle published in the Arab Journal of Jurisprudence and the Judiciary, State of Kuwait, 1994, p. 334. 21

⁽²²⁾Ibid. p.335.

⁽²³⁾Ibid. P32336.

establishing a new legal center or amending or canceling an existing legal center, and that administrative decisions are legislative acts that are necessarily concerned with making decisions issued by the administration or the competent authority in accordance with the legislative function that bears the constitutional character, which has the powers to implement laws and conduct the work of the public facility, and this in turn imposes It is known that the administrative decision has five pillars, represented in jurisdiction, form, place, reason and purpose, and that any defect caused to one of these pillars, as a result of the administration's violation of the law, allows an appeal against the decision to invalidate, and then request its cancellation and compensation for illegality

For our part, we prefer in the definition of the administrative decision, which comes with brevity, which does not omit any of the components of the administrative decision, as follows: It is among the legislative acts issued by the administration and its own will with the intention of producing legal effects.

2.1.1 Elements of the administrative decision

It is agreed that the administrative decision is based on five pillars and that any one of them should meet the conditions for its validity so that the decision is therefore valid, legitimate and productive to raise it, otherwise it is illegitimate, and we will deal with those elements in two sections as follows

1.2.1.1 Formal elements of the administrative decision

First: Specialization Pillar:

One of the results of the principle of separation of powers is that this principle does not require defining the competencies of the three public authorities only, but also follows the distribution of competencies within the scope of one authority. ²⁴.

On the other hand, it can be noted that the competence itself refers to the powers carried by the public administration entrusted with the implementation of administrative decisions according to a set of limits determined by laws, and according to a number of actions that may be carried out, as well as according to the place and time, i.e. the period in which administrative decisions are taken.

Competence or competence is the ability of the manager to implement what has been delegated to him within the criteria of the objective (the work that he may perform), spatial (his work

⁽²⁴⁾Suleiman Muhammad al-Tamawi, Administrative Judiciary (Judiciary of Cancellation), Book One, Dar Al-Fikr Al-Arabi, 1986, p. 695.

circle) and temporal (direct period)²⁵ It is clear from the previous definition that the elements of competence are four, namely the personal element²⁶, temporal, spatial and objective.²⁷

The administrative authority derives its competence in issuing the administrative decision from the sources of legitimacy, i.e. the legal rules that make up the legal system in the State, the administrative authority may derive its competence in issuing the decision from constitutional legislation and may derive its competence from the ordinary subsidiary legislation (regulations and instructions) and the administration may base its competence on a set of rules of an objective nature that are not written such as custom or public bases in accordance with the law in the event of silence of written legislation.²⁸

Some jurists compare public law specialists to private law capacity. However, there is a fundamental difference between the two: the rules of capacity are imposed in the interest of the individual, while the rules of jurisdiction in public law are imposed in the public interest.²⁹

Second: Shape Corner:

The general principle is that it is not required that the administrative decision be issued in a specific form, in the absence of a legislative provision for this, and then the decision may be issued in writing and may be oral, as is the case with unwritten instructions issued by the head of the department to his subordinates, or it may be by reference as in the traffic signal for the traffic policeman to stop or go, or it may be by symbol (such as traffic signs)³⁰ It may be silence, as in the case of silence of the administration, the administration may deliberately not disclose its will and not respond to the requests of individuals to cut the damage to their interests, so the legislator in order to protect the interests of individuals from the intransigence

⁽²⁵⁾Muhammad al-Madani, *Libyan Administrative Law*, Cairo, Dar al-Nahda al-Arabiya, 1964, 1965, p. 380.

⁽²⁶⁾Bashar Abdul Hadi, *Delegation of Competence*, Dar Al-Furqan, 1982, p. 36.

⁽²⁷⁾Bakr Qabbani, *Administrative Law*, Publisher, Cairo, Dar Al-Nahda Al-Arabiya, unpublished, p. 408. Ibrahim Abdul Aziz Shiha, previous source 1981, p. 228.

⁽²⁸⁾Suad Al-Sharqawi, *The Judiciary of Cancellation and Destruction*, Cairo, Dar Al-Nahda Al-Arabiya, pp. 62, 63.

⁽²⁹⁾Mahmoud Helmy, *Administrative Decision, Its Pillars and Conditions of Health*, Research Published in the *Journal of Administrative Sciences*, Ninth Year, Second Issue, 1967, p. 107.

⁽³⁰⁾Abdul Qadir Al-Sheikhli, *Administrative Law*, Dar Baghdadi for Publishing and Distribution, Amman, 1994, p. 201.

of the administration considered that the silence of the administration or its refusal to respond as an acceptance of the requests of individuals³¹ From the above, it is clear that the component of the form is (procedural and formal rules that the law imposes on the man of the administration to follow before issuing any administrative decision).³²

2.3.1.1 Substantive elements of the administrative decision

First: Shop Corner:

It is required that the place of administrative decisions is possible, meaning that the solution of the decision is possible to achieve from the actual aspects, if this place is impossible, i.e. it cannot be implemented, the decision has become impossible to implement as the impossibility of demolishing a house has already fallen, so it is impossible to replace the decision, which is the demolition of the house. The impossibility may be legal, as in the case of a decision to appoint a staff member of a certain grade, and then it becomes clear that this grade has already been occupied, so that the place of the decision is impossible because of the lack of legal status and the effect of the decision³³ may not reach the degree of absolute impossibility, then the decision is wrong because of the difficulty of implementing it in practice, especially if it is cumbersome, such as issuing a decision obliging the employee to work all hours of the day and night continuously, then this decision is considered a cause of fatigue for this employee.³⁴

Second: Reason Pillar:

There are a number of definitions that have been issued with regard to the factors causing administrative decisions, where some jurisprudence has pointed out that the element of reason in administrative decisions are those elements that arise in specific cases, as well as those material or legislative acts that raise factors that cause the issuance of decisions of an

⁽³¹⁾Muhammad Yaqoub al-Saidi, Principles of Administrative Law, Part I, Al-Zahra Press, Baghdad, p.216.

⁽³²⁾Hanna Ibrahim Nada, Administrative Judiciary in Jordan, Central Library, University of Baghdad, 1972, p. 373

⁽³³⁾Abdel Ghani Bassiouni, Administrative Judiciary, Book Two, Publisher Al-Maaref in Alexandria, 1996, p. 622.

⁽³⁴⁾Nawaf Kanaan, Jordanian Administrative Law, Book Two, 1996, p. 276.

administrative nature³⁵

Some jurists pointed out that the element of the reason in the administrative decision is that decision, which is considered for legislative cases or realistic cases that are characterized by distance from the men of the administration, and to be characterized by independence from the will of the administration and therefore the pillar of reason in the administrative decision is those pillars that are made by taking something³⁶

The administrative decision is not characterized by validity or credibility except in specific cases where the reasons for the administrative decision must be correct, and there must be a set of reasons that are characterized by legitimacy and justice, and the reasons for administrative decisions may vary according to the administrative authorities, whether discretionary or restricted authorities, or that the absolute authority is entrusted with issuing administrative decisions.

The legislator specifies, in cases of restricted authorities, a set of specific reasons that must be available before taking administrative decisions, in the case of those factors, the administration is obliged to issue administrative decisions, but in cases of discretionary powers, the legislator may determine the factors or reasons on which administrative decisions can be relied upon.³⁷

Third: Purpose Pillar:

The official must try to achieve the desired result of the legislative intent through the decisions he issues, in the event that the legislation entrusted with the administrative decision is not specified, the authority or the public administration must aim to achieve the public interest in general. The end result that the executive branch hopes to achieve through the direct effects of the administrative decisions it makes).³⁸

Just as the decision issued by the administration is required to be issued with the aim of achieving the public interest, it is also required that the administration abide by the special objectives specified by the legislator when making its decisions, otherwise it becomes defective

⁽³⁵⁾Abdul Hamid Abdul Mahdi, The Impact of Changing Facts on the Legality of Administrative Decision, Letter Submitted to the College of Law, University of Baghdad, May, 1997, p. 16.

⁽³⁶⁾Suleiman Muhammad al-Tamawi, The General Theory of Administrative Decisions, A Comparative Study, Cairo, Dar al-Fikr al-Arabi, 1984, p. 194.

⁽³⁷⁾Mohamed Abdel Aal al-Sinnari, The Origins of Administrative Law, Publisher, Legal Library, Cairo, p. 190.

⁽³⁸⁾Khaled Khalil al-Zahir, op. cit., p. 189.

by abuse of authority if the administration violates the specified goal, even if it invokes targeting the public interest.³⁹

In this regard, the Supreme Administrative Court in Egypt ruled that "the issuance of the decision to dismiss the plaintiff from the unusually controversial service reflects a dispute between the ministry and the president of the republic at the time. The administrative authority did not provide anything to deny this, despite the fact that sufficient dates were established for this purpose, which supports the validity of the plaintiffs' claim in the above decision that it was issued for partisan motives."⁴⁰

2. Responsibility of management in direct execution

Direct execution is the most important privilege of the administration, which distinguishes administrative law from private law,⁴¹ since the administration can, on the basis of this privilege, forcibly implement its decisions towards individuals without prior recourse to the judiciary, if individuals refrain from implementing voluntarily. If individuals want to challenge the execution procedures if it results in a violation or assault on the rights and freedoms of individuals or their private property, it can be challenged before the judiciary. The individual is therefore in the position of the plaintiff and the administration in the position of the defendant.⁴²

Administrative bodies may violate the rights of individuals protected by law, because administrative bodies are public authorities, subject to the same jurisdiction as individuals, and they have an obligation not to deviate from the principle of legality.⁴³ If the decision of the administrative authority is contrary to the law, The concerned parties may submit an objection to the judicial authority, request the cancellation of the administrative power of attorney, and compensate for the losses resulting from the execution.⁴⁴

In this case, the penalties that fall on the administration if it chooses to use physical force in carrying it out can be determined, this will include an attack on individual freedom or a violation

⁽³⁹⁾Diaa Sheth Khattab, Appeal by Cassation in the New Modern Code of Procedure, research published in the Journal of the Judiciary, issued by the Bar Association, third issue, year 25, 1970, p. 36.

⁽⁴⁰⁾Compilation of Judgments Decided by the Supreme Administrative Court, Fifth Year, 1960, p. 669.

⁽⁴¹⁾Mohamed Kamel Leila, The Theory of Direct Implementation in Administrative Law, Dar Al-Fikr Al-Arabi, first edition, Cairo, 1962, p. 207

⁽⁴²⁾Hani al-Tahrawi, op. cit., p.246.

⁽⁴³⁾Mohamed Fouad Muhanna, Principles and Provisions of Administrative Law, vol. II, Dar Al-Maaref in Alexandria, 1978, p. 763.

⁽⁴⁴⁾Ibrahim Shiha, op. cit., p. 208.

of the maximum law. What is the penalty that can be imposed on the administration if its direct implementation is illegal or illegal?

To answer this question, it is necessary to identify cases in which the administration's direct execution is illegal, and this can be summarized in three examples: -

The first case: It is the case in which the ruling can be made through the administrative judiciary by canceling the administrative decisions that are being implemented at later times, the cancellation of the decision categorically shows that the decision was illegal. ⁴⁵ .

The second case: If the administration does not leave individuals the necessary time to implement the decision and before resorting to direct implementation, the administration must force the individual to comply with the decision, and the administration must first voluntarily demand that he do so and give him sufficient time, otherwise the implementation of the administration is illegal. ⁴⁶ .

The third case is the case in which the administration executes administrative decisions irregularly, whether the decisions are legitimate or illegitimate, as irregular implementation may lead to accountability before the judicial authorities⁴⁷.

If the direct action taken by the administration falls into one of these three categories, the person against whom the decision was taken directly or coercively, or who has an interest in appealing the decision, has the right to request its annulment by demanding the annulment and requesting a stay of its implementation until the decision is annulled, especially in the case of arranging the implementation of decisions with irreversible consequences. It is also possible to obtain a judgment of compensation for damages resulting from the implementation of Illegal administrative decisions through a lawsuit for full elimination⁴⁸ This is in addition to the possibility that the implementation by the administration of its decisions in a forced manner, and acts that are considered a misdemeanor beyond the limits of legality, as they result in the violation of the right to property or one of the personal freedoms, and therefore the implementation is non-administrative, and therefore the ordinary judiciary has the right to consider it⁴⁹.

1.2 The case of usurpation of power

(45) Ibrahim Taha al-Fayyad, op. cit., p. 398.

(46) Atef al-Banna, op. cit., p. 410

(47) Ibrahim Taha al-Fayyad, op. cit., p. 398.

(48) Al-Fayyad, op. cit., p. 399

(49) Mustafa Kira, The Theory of Physical Assault in Administrative Law, Dar Al-Nahda Al-Arabiya, Cairo, 1964, pp. 173 et seq

When the executive branch performs its executive administrative functions entrusted to it under the Constitution and legislation, it enjoys many privileges, and is in a privileged position compared to the normal situation of individuals or previous judicial authorities, because if it considers that the executive authority is the guardian of the public interest, then most of the means resorted to by the executive authority in carrying out that function can be privileges, including its power to order and forbid.

It is noted that legal systems have granted the administration many privileges, such as the privilege of discretion, as the administration may take certain administrative decisions in accordance with the discretionary authority of the administration and the privilege of acts of sovereignty permanently excluded from the Judicial Appeal Chamber^{50 51} in addition to the privilege of making administrative decisions and⁵² their direct implementation.

The sum of these privileges and others, which we did not mention because of their abundance, requires the individual concerned to always initiate litigation procedures and file a lawsuit against the administration, and this matter entails that the administration is always in the position of the defendant.

In view of the legal consequences that the administrative decision may have, legal centres can be affected and radical changes occur in those centres, in addition to the infringement that may affect the rights and private property of individuals as a result of the direct implementation of that decision .

Administrative acts can generally be divided into material and legal acts, and these administrative acts are not the same, whether in form, material or in terms of their effects⁵³.

Material administrative work is not intended to produce legal effects, such as the technical work performed by managers by virtue of their functional responsibilities, such as engineers in preparing designs for projects and technical works for the implementation of those projects⁵⁴.

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(50) Essam Abd al-Wahhab al-Barzanji, op. cit., 1970.

(51) Mohamed Fouad Abdel Basit, *The Works of the Administrative Authority*, Alexandria, 1989, p. 135.

(52) See in the privileges of administration: Ibrahim Abdel Aziz, *The Origins of Administrative Law*, Manshaat Al-Maaref, Alexandria, p. 175, Mohamed Fouad Muhanna, *Principles and Provisions of Administrative Law*, Volume Two, Dar Al-Maaref, Alexandria, 1978, p. 754, Muhammad Suleiman Al-Tamawi, *Al-Wajeez in Administrative Law*, Dar Al-Fikr Al-Arabi, Cairo, 1979, p. 572.

(53) Hussein Othman, op. cit., 1988, p. 14.

(54) Cheb Touma Mansour, op. cit., p. 391.

(55) Maher Saleh Allawi, *Administrative Decision*, Dar Al-Hikma, Baghdad, 1991, p. 4.

The legislative work of the public administration is divided into a set of actions in which the unilateral will of the public administration is clear in the face of other parties, and the second aspect of the scope of work of the legal department, these are actions in which the will of the administration itself appears, and does not depend on any other will, where the authority of the administration to prevent is clearly visible here,⁵⁶ these are called administrative decisions⁰.

Administrative decision is the most important means of public authority granted to the administration under public law and the most effective legal means that enable the administration to carry out its activities in a different way⁵⁷ It is an expression of the will of the administration, which can be imposed through the use of force, and this can force individuals to rule the decision, without taking into account their will. The importance of the administrative decision is also evident in that it is the subject or center of the most important case in the Administrative Court. It is a lawsuit that seeks to annul or codify⁵⁸ the decision⁰. Rather, most administrative court cases are due to damage caused to individuals as a result of the administration's adoption of binding decisions against individuals and then the direct implementation of those decisions.⁵⁹

2.2 The role of the political administration in the implementation of the provisions of entry into force

This may be the motive behind the administration's refusal to implement the sentences issued against it, the administrative bureaucracy, which is what the majority of administrative systems represented in departments and offices tend according to instinct to hinder any new force that may threaten the retention of its positions and try as much as possible to limit judicial control over its actions as an adversary aimed at revealing their work and holding them accountable for error, they seek to disrupt the judicial work, and they thus empty the judicial activity of its content, the procedures for the implementation of the judgment and It was within the jurisdiction of the administrative authority, but it is an integral part of judicial work aimed at applying the law to the facts presented to it.

One of the forms of the administration's refusal to implement administrative rulings in the Sultanate of Oman is the narration of the judgment issued by the Court of Administrative Justice, the second circuit in the session of 13/5/2005 of the case of an employee who was the director of the information center department in one of the ministries, in which a royal decree was issued to merge it into another ministry. The ministry from which he was transferred, this employee has challenged the decision to transfer him before the Administrative Court

⁽⁵⁶⁾Khaled Samara Al-Zoghbi, previous source, p. 7

⁽⁵⁷⁾Ibrahim Taha Al-Fayyad, previous source, p. 281

⁽⁵⁸⁾Ghazi Faisal Mahdi, op. cit., p. 181.

⁽⁵⁹⁾Mahmoud Khalaf Hussein, Legal Protection of Individuals in the Face of Administration in Iraq, A Comparative Study, PhD Thesis, Balronio Publication, University of Baghdad, 1986, p. 360.

demanding a ruling that it is invalid, and he answered the wisdom, as it turned out that this decision was invalid, so it ruled that it was invalid and because the administration did not implement the judgment and procrastinated in its implementation for nearly four years, the convict submitted a request for compensation for that decision, ruling that it was invalid, so the court sentenced him to a compensation of 10.000 thousand Omani riyals, and to uphold this judgment by rejecting the appeal submitted by the administrative authority before the Appeals Chamber.

In an attempt to sow ashes in the eyes, the adjudicated administration issued several administrative decisions claiming that these decisions were the implementation of the ruling on the invalidity of the transfer of the said employee.⁶⁰

Rather, the administration of the sentenced against it has persisted in wasting the executive power of the judgment and ignored the letter addressed by the wisdom to it, as it asked it to restore the situation to what it was before the issuance of the judgment invalidating it, and this body asked the plaintiff to go to another ministry to implement the judgment issued to him on one of its jobs, but the convict when he went to this last ministry was surprised that the needs of this ministry of jobs are limited to the jobs of clerks and their level, which are all fewer jobs of his job.

Upon the return of the convict to his original ministry, the latter began to pressure him not to demand the implementation of the sentence issued to him through some unfair practices against him, such as) leaving him without an office or actual work, rejecting his request to grant him his annual leave, withdrawing the car that was allocated to him when he occupied his job from which he was transferred, canceling the parking lot allocated to him, canceling the benefits that were scheduled for him, such as the direct telephone and the daily newspaper, and promoting him to the higher position similar to With colleagues who are at the same level as him.

The end

The administrative judiciary in Iraq took the principle of immunizing the administrative decision against cancellation, as well as the administrative judiciary in a number of Arab countries, and the Iraqi administrative judiciary has taken immunization in three stages, the first immunizing it against individuals by blocking in their faces the opportunity to require their rights to expire the deadline for filing a lawsuit to cancel the administrative decision, and the second stage immunizes it against individuals and administrative bodies, and the third stage immunizes it before the judiciary by returning the judge in form before considering its subject.

It is agreed that the administrative decision is based on five pillars and that any one of them

⁽⁶⁰⁾Hamid bin Ali Mustahail Al-Shahri and others, The Authority of the Administrative Judiciary under Islamic Sharia and Omani Law, Journal of Sharia Research and Studies, Issue Eighty-Seven, University of Islamic Sciences Malaysia, 1440 AH, pp. 224-227.

should meet the conditions of its validity so that the decision is therefore valid, legitimate and productive to raise it, otherwise it is illegal, and one of the most important pillars of the administrative decision is the corner of competence, the element of reason and the corner of form.

The administrative decision is not characterized by validity or credibility, except in specific cases where the reasons for the administrative decision must be correct, and there must be a set of reasons that are characterized by legitimacy and justice, and the reasons for administrative decisions may vary according to the administrative authorities, whether discretionary power or restricted authorities, or that the absolute authority is entrusted with issuing administrative decisions.

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