



Research Paper

Administrative decision: Post Correction by Public Bodies

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ABSTRACT: *The question of administrative decision defective raises the problem of the possibility of correcting this defect or covered. Therefore, this study aimed to retain the possibility of a statement on the administrative decision despite the lack of legitimacy which marred this resolution, through the subsequent correction by legislation or by the administrative body. This study has emerged from the results of the most important: that the Jordanian and the Saudi regulator legislator did not able to address the subject of subsequent correction of administrative decision flawed legal texts, but rather sought Jurisprudence and eliminate administrators to devise appropriate solutions to avoid a new resolution and to avoid the problem during the subsequent version of the patch. The study recommended the Jordanian and the Saudi regulator legislature need to address the subject of subsequent correction within the organisation of legislative legislation regulating the work of the administrative body, and through legislation on the competence of the administrative court in Jordan, and the board of grievances in Saudi Arabia.*

KEYWORDS: *Administrative Decision, Post correction, Afterwards Correction.*

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I. Introduction

The question that arises here is: Is it permissible for the administration to complete the form and procedures after it has issued the administrative decision? A part of legal jurisprudence raises the question: Regardless of the difference in the permissibility or inadmissibility of subsequent correction, as long as this correction will achieve its purpose in order to achieve legitimacy for the decision taken, is there any obstacle that prevents the management from interfering in the procedure for correcting the defect of form and procedures?

In order to answer this question, we must clarify the meaning of correction by management, and then explain its characteristics, legal basis, controls, and cases of management decommissioning from that correction, so we will discuss these issues in three demands.

Definition of post correction by public bodies

Subsequent correction by management means the recognition of the decision-making administration of the authority to amend the defective decision with defective form and procedures, in order to achieve legal legitimacy aspects. (Najm 1981)

The subsequent correction of the defective administrative decision with defective form and procedures represents a legal process that enables the administrative authority that administered this decision to reconsider it if it is illegitimate without having a retroactive effect, whether the defect that befell the decision was afflicted by it at the moment of its issuance or this defect arose after its issuance. (Gwairi 1989)

The Saudi Board of Grievances affirmed the administration's right to correct the defective decision with defective form and procedures by saying: "The regulator has established, in addition to the judicial challenge, the right of grievance to the administrative authority to reverse its decision and correct it for similar formal and procedural defects, so the plaintiff will suffice the litigation in his regard." (Haykel 2012)

Thus, the administration may undertake the subsequent correction of the defective administrative decision with defective form and procedures, whether this administration is centralised such as ministries, attached decentralisation such as public institutions, or regional decentralisation such as municipal and village councils. The administrative head can only be deprived of it by an express text, and this right exercised by the administration issuing the decision to correct its defective decision with defective form and procedures is due to the fact that one of the duties of the administration is to work on the rule of law and apply it correctly, and it would be logical then to allow the administration to correct the situation on its own There is no need for judicial intervention. (Burhan 1984)

Characteristics of post-correction by administration

The characteristics of the post-correction can be derived from its definition as has been demonstrated above, which are as follows:

First: Post-correction is a legal act: the administration exercises its activity in general through two types of business: legal and material business. As for legal action, it is the voluntary action in which the administration's intention is to create a specific legal effect. (Najm 1981)

In this concept, legal work is distinguished from physical work in two aspects: the first is that legal work is voluntary, while material work may be voluntary, such as setting up road paving equipment or constructing a bridge, and it may be involuntary, such as vehicle accidents belonging to the administration. (Burhan 1989)

As for the second aspect, the legal action results in a certain legal effect, while the material action does not generate a legal effect. (Tahri 1999)

Based on the foregoing, the subsequent correction through the administration, like any other administrative decision, is a legal act with complete elements, and this entails an important result, which is that the material actions undertaken by the administration, no matter how important and time they are, will not end the sound individual administrative decisions in accordance with the idea Subsequent correction, rather, it must be through an administrative decision that fulfils all its formal and substantive conditions. (Drwaish 1981)

Second: The subsequent correction is issued by a competent public administrative authority: by the competent administrative authority, it is meant that is, looking at the extent of the objectively authority of a member of the administrative authority to express the binding will of the administration. The jurisdiction in the field of public law is determined by the legislator, and these rules are complemented, when necessary, by general legal principles. For example, if the law stipulates the competence of a certain authority to issue a decision with me (such as appointing an employee, granting a license) and was silent about the statement of the competent authority issuing the reverse decision to withdraw it, cancel it, amend it or correct it. The organic standard currently prevalent in the law as a general asset). Thus, in order for the subsequent correction by the administration of the defective decision with defective form and procedures to be considered an administrative decision, it must be issued by one of the administrative bodies, whether central or decentralised. The subsequent correction does not deviate from the general rules that must be followed regarding The availability of jurisdiction, as it is issued by an administrative authority, and this authority is either the authority that issued the first decision or the presidential authority for it, and it is required for the member to be considered the administrative Irrigation of an administrative body in general the fulfilment of two conditions: the first is the legal competence to issue administrative decisions, and the second is that it has a legal personality. (Tahri 1999)

Third: The subsequent correction is a legal act issued by a unilateral will: the subsequent correction of an administrative decision tainted by a defect in form and procedures does not arise except by the will of the administrative authority alone, explicitly or implicitly and in the form and procedures that suit it, unless the law obligates it in a specific form or procedure. Only one individual, it is not the number that matters, but the will that he represents, because in some cases more than one person participates in the process of issuing a single administrative decision, because they represent one administrative body, such as decisions taken after deliberation, and the approval of the majority is sufficient for the issuance of the decision. An administrative, legal, and consensual act that requires the concurrence of two wills, the will of the administrative authority and the will of the contracting party. (Tahri 1999)

Fourth: Subsequent correction creates legal effects: jurisprudence and administrative judiciary tend to determine the legal effect of the correction subsequent to the establishment, amendment or cancellation of a legal centre, and this effect varies according to whether the decision is an organisational or individual issue, and as far as the topic of research is concerned, the effect of correcting the individual decision is either to establish a self-legal centre such as the decision A decision to appoint or amend an employee, such as a decision to promote or terminate an employee, such as a decision to dismiss an employee. (Qbylat 2010)

Hence, the issuance of the administrative decision for the subsequent correction entails either the establishment of a new legal centre, as in the correction of the decision issued to appoint an employee, or the amendment of a legal position, and finally the termination of a legal position, such as the decision to correct the procedures for cancelling the appointment of an employee or referring him to retirement without replacing him with another employee. (Akasha 1987)

Therefore, correcting the defective administrative decision with defective form and procedures is not limited to the termination of a legal centre, but, in turn, has a positive effect by establishing a legal centre. (Qbylat 2010)

Fifth: The subsequent correction has an executive nature: there is a difference between the implementation of the administrative decision and its enforcement. Enforcement is a legal process that takes place by issuing or declaring, while implementation is a material action subsequent to the enforcement of the administrative decision that may take place directly or may not take place until after a period for one reason or another, and the original is in the administrative decision issued to correct the defect of form and procedures It is obligatory to implement, and the means of implementing it vary according to the reality of the situation. (Akasha 1987)

The Legal Basis of the Administration's Right to Subsequent Correction

According to the nature of administrative work, the administration is unique in correcting its administrative decisions for reasons it seeks in the failure of those decisions to pursue the public interest. It also has the same effect for individual decisions that do not generate rights. The administration has the right to make a decision that is tainted by defects in form and procedures, and the wisdom of correction is to reconcile two conflicting principles: the first principle: that it can correct the errors involved in its decision, the second principle: the stability that must be observed in decisions that generate rights. (Haykel 2012)

It is recognised that the legislator did not grant the administrative authority the right to correct its decisions except to give it an opportunity to correct situations that violate the law and bring its actions to the scope of legality and the achievement of the public interest. (Ajarmh 2010)

But what is the legal basis that gives the administrative authority the right to correct its decisions? Is it the realisation of the principle of legality, the achievement of the public interest, or the desire for the necessity of stabilising the legal statuses and positions of individuals?

The jurisprudential opinions that were said to justify the management's right to correct its defective decisions in form and procedures differed, and they were divided into several basic theories, namely:

The First Theory: The Social Interest Theory: it is established in the administrative judiciary that correcting decisions has been initiated to enable the administrative authority to correct errors that occurred in it, and this requires that the decision to be corrected has been issued in violation of the law. The reason for which the rules of correction were legislated, respecting the decision, stabilising the situation, and achieving the public interest, and jurisprudence has unanimously agreed that the defective decision is immune from correction by the passage of the judicial appeal periods without appealing to it by cancellation, where the decision in this case becomes legitimate. (Al Alwai 2013)

A part of jurisprudence believes that the public interest is the legal basis for the administration's right to correct its administrative decisions. The public interest is a general goal that the administration must seek to achieve while exercising its authority and management of public utilities. The proponents of this theory argue that the basis for which the administration has been granted the right to correct its decisions is the necessity of stabilising the positions and legal status of individuals, because this undoubtedly achieves the public interest or the social interest of individuals. Their observance is to ensure the regular and steady smooth running of public utilities. (Jamal 2004)

The Second Theory: The Theory of Respect for the Principle of Legality: this trend is led by Brigadier General Deji, who argues that the legal basis for the administration's right to correct its defective decisions is the principle of legality, and according to this principle, the administration must be committed to respecting the principle of legality in issuing its decisions, and that this principle is dominant over all its actions, if it violates it by leaving. Therefore, she must revert to her decisions in violation of the law, and she is not tempted if she returns to the law at any time. (Al Alwai 2013)

Brigadier General Deji says that this principle is not for him, it cannot be, and it should not have any exception, and based on this principle, the administration has the right to refer to its decisions or correct legal errors that occur in it at all times and that no one has the right to complain about correcting them. For its administrative decisions, because if this authority is decided, it is decided in the interest of individuals, and if this correction harms someone, it is sufficient for him to decide for him the right to compensation. (Al Tamawi 1979)

Brigadier General Deji concluded that the principle of legality must be the highest and therefore has priority and always prevail over the principle of prejudice to the individual positions acquired whenever there is a conflict between them, and his argument in this is that the invalid decision does not generate rights, and accordingly he sees the possibility of correcting the invalid decision at all times in order to achieve. To the principle of legality and to say otherwise put the principle of legality at risk, which cannot be accepted. (Al Tamawi 1979; Neda 1990)

In the opinion of the researcher, what Brigadier General Deji called cannot be accepted in all its aspects, because he exaggerates in defending the principle of legality and makes it higher than considerations of the necessity of stabilising the conditions and legal positions of individuals. Restricted to a certain period as long as the decision is flawed, if it would lead to respect for the principle of legality, but it would lead to destabilisation of the legal positions and positions of individuals, and lead to harming the public interest in the end. (Al matai 1991)

Therefore, it can be said the combination of the two aforementioned theories, and the reconciling of them as a sound legal basis for the right of the administrative body to correct its defective decisions, so the basis is as follows: The necessity of stabilising positions and the legal rights of individuals, bearing in mind the need to work to respect the principle of legality. (Qbylat 2010)

The controls for subsequent correction by the administration

The authority of the management in the subsequent correction of the administrative decision defective in form and procedure is limited by legal controls that must be observed; To ensure respect for the principle of legality and to ensure the stability of legal positions and conditions. These controls are represented in the administration's commitment to the deadlines set for judicial appeal, and the administration's commitment to a rule that parallels procedures and forms. Also, this correction is subject to the oversight of the administrative judiciary, so the content of this oversight must be clarified as it is an important control in the field of subsequent correction of defects in form and procedures. (Dwydar 2013)

In light of the foregoing, this section will be divided into two subsections: legal controls for subsequent correction of defective form and procedures. These controls are represented in the administration's commitment to the subsequent correction within the dates specified for the judicial appeal of the administrative decision, and the administration's commitment to a rule that parallels procedures and forms.

First: The subsequent correction should take place within the period specified for the judicial appeal of the defective decision with the defective form and procedures: the administration issuing the decision may correct its defective decision by faulting all and the procedures, considering the period specified for judicial appeal, which is the six-day period in Jordanian law and the Saudi system. (Fawzi 2010; Alshahri 2012)

However, the administrative judiciary distinguishes in the time of correction of the defective administrative decision with defective form and procedures between individual decisions and organisational decisions. With regard to individual decisions, the administrative judiciary has established that the administrative body may not cancel the individual administrative decision on the grounds of violating the law for a defect in the form and procedures, after the six-day deadline for which The law enacted it for individuals to request the cancellation of these decisions, as they do and in appreciation of the equation between them, and in order for stability to take place after one time has elapsed. "The wisdom in authorising the correction of defective decisions with defective form and procedures within the time of appeal is that the administrative decision in violation of the law remains for a period of time subject to cancellation by the judicial path. That the decision is threatened with judicial revocation, and it is so as long as the time for appeal is open until it is closed with a grievance, or if the appeal is submitted until a ruling is issued. (Fawzi 2010)

And in a ruling by the Saudi Board of Grievances, it stated: "If, based on the decision, individual legal centres are established that require the interest of work, the stability of regularity of workers, and the proper functioning of the public utilities handled by the administration, that these legal centres be established and entrenched as long as the administration has missed the opportunity to correct them during the period of judicial appeal before the Bureau". (Ajarmh 2010)

By extrapolating the previous rulings, it becomes clear that the administrative judiciary affirms the principle of the necessity of stabilising the legal status of individuals, bearing in mind that the principle of legitimacy should not be neglected, and that a date has been set for appealing the decision, and the administration must correct during this time. (Alshahri 2012)

Regarding organisational decisions, the administrative jurisprudence has been based on the permissibility of correcting defective organisational decisions with defective form and procedures at any time without being bound by the appointment system that governs individual administrative decisions. (Ajarmh 2010)

The administrative judiciary also emphasised the distinction between individual decisions and organisational decisions in the field of violating the law in general, as evidenced by some of its provisions. The Egyptian Administrative Court ruled in one of its rulings that: "A distinction must be made between organisational administrative decisions (such as regulations) and individual administrative decisions as The administration may withdraw organisational decisions, whether by cancellation, amendment, or correction at any time as required by the public interest, while it may not withdraw, amend or correct individual decisions that violate the law, except on the condition that this takes place within the sixty-day period stipulated in the law of the Egyptian State Council. (Fawzi 2010)

Therefore, the subsequent correction must take place within the period set for appealing the cancellation. If the law requires, for example, the reasoning of the administrative decision, then in this case this reasoning is considered one of the essential forms. First, in this case there is no need to say that this correction is not permissible, because it does not affect any change in the management's assessment of the subject of the decision, in addition to the fact that adhering to the inadmissibility of correction in this case is useless and a waste of time, especially if we take into account That the administration can issue the same decision with the same content. (Al Alwai 2013)

Second: The administration's commitment, upon subsequent correction, to a rule that parallels procedures and forms:the rule of parallelism of procedures and forms means that the administration follows

the same formal and procedural rules that it applied when issuing its administrative decision when withdrawing, cancelling, or correcting the same decision. (Garaf 1973)

This rule means, in the context of subsequent correction, that the decision issued to correct a previous decision must be issued in the same form and in the same procedures as the previous decision was issued, in cases where the legislator does not specify the form and procedures of this last decision, except that it excludes cases from the application of this rule in which the wisdom for imposing the form and procedures for issuing the decision is not available in the subsequent decision. (Dwydar 2013)

For example, the disciplinary decision issued to impose a disciplinary penalty on the employee is issued after confronting the violating employee and hearing his defence, but correcting this decision does not require adherence to these required procedures when issued, because the wisdom of them is available when issued and does not appear when correcting the decision, and in the appointment decision may be The job contest is an essential procedure that precedes the decision to appoint the employee, but it is not envisaged that there is such a contest when the employee's service is terminated because there is no wisdom in this procedure in this case. One of the important principles associated with the rule of parallelism of procedures and forms, which was drawn up by the administrative judiciary, is the principle that an administrative decision that takes a written form is superior to or transcends a decision that takes an unwritten form, such as an oral decision, and that the rule of parallelism of forms and procedures states that if a chief issues a written decision, it He may not correct it by an oral decision because the administrative order can only be corrected by another administrative order with the same tool as the first command, which is writing. (Dwydar 2013)

However, the rule of parallelism of procedures and forms does not apply to its release, but rather two restrictions are imposed on it, namely:

The first restriction: to include a text that disables its application, meaning that the forms and procedures to be followed in the decision issued for the subsequent correction are specified in a special text, such as making the jurisdiction to correct the decision to someone other than the body that issued it, or by changing the form and procedures between the original decision and the subsequent decision, in such a case it is not permissible Examination of the implementation or non-implementation of the rule of parallel procedures and forms. (Najm 1981)

The second constraint: that the procedure is linked to administrative control decisions aimed at preserving public order, as the administration in such a situation can take the decision for the subsequent correction without following the imposed forms and procedures, and in the case of exceptional circumstances, the administration can be exempted from implementing a rule that parallels the procedures And the forms in the event that they should be implemented, "such as if the administrative control authority overrides some of the procedures for the expropriation decision, and the judiciary estimates that exceptional circumstances allow the seizure authority to proceed with the procedures for appropriating the property for the public benefit without the values of some procedures for which the non-fulfilled expropriation decision is not considered legitimate in normal circumstances for violating the required legal procedures. (Thahiri 1999)

Administrative Judiciary's Oversight of Subsequent Correction

The administrative judiciary agrees on recognising the decision-making administration with the authority to correct the defective decision with defective form and procedures, in order to achieve respect for legal legitimacy. (Al Alwai 2013)

Therefore, in this section, cases of judicial oversight on the subsequent correction will be presented as well as the extent to which the administrative judge's authority is permissible to compensate for the subsequent correction of defects in form and procedures. (Jamal 2004)

Cases of judicial oversight on subsequent correction: If the basis is that judicial oversight (the oversight of the Administrative Court in Jordan and the Board of Grievances in Saudi Arabia) is carried out on administrative decisions to determine their legality, cancel them in case of illegality, and compensation in case of damage, then the extension of this to the subsequent correction of defective form and procedures is a matter, since the form The procedures are the basis on which the decision is built and for the issuance of the administrative decision. The judiciary as a lawsuit for cancellation or a lawsuit for cancellation and compensation, if it violates the legality and the damage is achieved as a result of it, unless the administration does the subsequent correction of the defect in form and procedures within the controls which have been examined earlier.

Therefore, the administrative judiciary in Jordan and Saudi Arabia has learned that it is possible to avoid cancelling the defective decision with the defective form and procedure by following four means by which this defect can be corrected, namely: completing the formalities, exceptional circumstances, the acceptance of the person concerned, and the subsequent fulfilment of the form or procedure. (Akasha 2011)

In the Saudi system, it is stable that hearing the statements of the accused and the investigation of the defence of a principle established by law and jurisprudence, and that failure to achieve it in disciplinary

sanctions results in making the disciplinary decision tainted with a defect in its form, and it entails the possibility of cancelling the decision, and therefore the administrative authority must ensure this guarantee for the employee. The accused, however, may take a negative attitude when he has the opportunity to defend himself, and refrain from making his statements before the investigator. The employee's refusal to make his statement; Whereas Article (14) of Chapter Two related to the investigation of the regulation stipulates: "If the employee refrains from making his statements, this shall be recorded in the minutes and he shall be notified through his review that he has reversed his position, so that if he insists on abstaining, the case procedures may proceed in light of the facts established therein. So I made it the right of the investigation body to proceed with the investigation procedures, but on condition that the employee be notified through his review of the danger of his refusal to make his statements. She hastened to punish him with the evidence that was proven to her, and the employee has no choice but to appeal the decision issued against the penalty before the Board of Grievances after following the previous procedures for filing the case stipulated in Article (3) of the rules of pleadings before the Board of Grievances. However, the employee cannot argue that there is a defect in the cornerstone of the disciplinary decision; Because it is he who missed the opportunity to express his opinion, and the Court in this case estimates the value of the evidence that the administrative authority relied upon when issuing its decision. From the evidence on which the administrative authority's decision is based, the Court will rule to dismiss the case. (Al Matai 1991)

The same principle contained in the Internal Regulations of the Control and Investigation Authority was adopted in Paragraph (3) of Clause (Fourth) of Article (152) of the Executive Regulations of the Government Competition and Procurement Law issued by the Minister of Finance Resolution No. (362) dated 20/2/1428 AH, where This paragraph stipulates that: "The committee may not consider requests for compensation, and prevent dealing with contractors and contractors, to issue a decision before summoning the concerned person or his agent in presence, hearing his statements and completing his pleas. Through the administrative governor, or by any appropriate means, and whoever does not attend for the third time after being notified twice, the committee has the right to issue the decision in his absence." Therefore, if the committee follows the procedures related to the notification referred to above, and the person concerned does not respond, the committee has the right to issue a decision, and its decision is sound in terms of The form, and the person concerned has no choice but to appeal the decision issued by the committee before the Board of Grievances after following the previous procedures for filing the case stipulated in Article 3 of the rules of pleadings before the Board of Grievances. However, the person concerned may not invoke a defect in the form of the decision; Because he missed the opportunity to express his opinion. (Dwydar 2013)

By contemplating the provisions of the Saudi Board of Grievances, it was found that the Bureau, in one of its rulings, accepted the approval of the person concerned with the defective decision in its form in order to correct the defective form; Where it stated in one of its provisions: "Since the plaintiffs' goal is to rule for them to cancel the evaluation committee's decision dated 4/11/1419 AH, the Board of Grievances is competent to consider this dispute under Article 8/1/b of the Grievance System issued by Royal Decree No. M/51 dated 7/17/1402 AH, and since that decision was issued on 4/11/1419 AH, and their representative was informed of it on the same date and signed with consent, and the plaintiffs at the Court did not complain about it until on 3/15/1425 AH in violation of the periods stipulated in Article The third of the rules of pleadings and procedures before the Board of Grievances, which must not accept the invitation in form, and does not affect what the representative of the heirs mentioned that the committee's decision is considered one of the non-existent decisions because it was issued by two people only; the defect that affected the decision was in its form, and the defect of form The decision is not executed, but the same applies to defective decisions to fortify it with the passage of the regular periods, in addition to the fact that the plaintiffs emptied the land to the defendant and received the amount, which indicates complete satisfaction on their part. (Burhan 1984)

In another ruling of the Saudi Board of Grievances, it acknowledged the permissibility of redressing the defect of the form and rejected the claim to cancel the decision because the administration had completed the subsequent completion of the form, so this ruling came: "The plaintiff's grievance against the decision of the administration, which included his transfer from an educational position to an administrative position, and a final judgment has already been issued. By cancelling the decision to transfer the plaintiff to an administrative position based on a defect in the form of the decision represented in the failure to submit the case to the committee formed to study the teachers' cases, and the failure of the authorised person to agree to the decision, and the failure to transfer by job classification and considering this case is not considered a consideration of the subject of the previous case, even though The content of the contested decision agreed that the decision in question is different from the previous decision in terms of form and following the procedures, especially since the previous decision was cancelled for a formal defect and the decision to remedy the formal defects and missing procedures in the previous decision makes it issued in accordance with the provisions of the system and in accordance with the necessary formal rules As a result, the case was dismissed." (Ajarmh 2010)

The Jordanian High Court of Justice decided to authorise the form with a subsequent procedure, including its ruling which stated: “The ambiguity in the appellant’s name is just a material error and does not rise to the level of a defect in the form that flaws the contested administrative decision.” (Qbylat 2010)

Including its ruling: “The principles established in administrative jurisprudence allow correcting a false administrative decision with a subsequent procedure that removes the defect that was involved in the decision.” (Ajarmh 2010)

The Jordanian High Court of Justice also ruled, saying: “The appearance of the petitioner before the governor who issued a decision against her ensured that she was guaranteed a guarantee of her good behaviour for a year without issuing a warrant summoning her and responding to the accusation against her. This is considered a waiver of her adherence to the invalidity of the governor’s decision.” (Qbylat 2010)

In some of its rulings, the Jordanian High Court of Justice has tended to take into account the material impossibility of the stakeholder himself, ruling that: “If the petitioner was notified to appear before the disciplinary body on the specified date and did not attend, then conducting the investigation in his absence is in accordance with the law, and it is not stated that the investigation committee did not The petitioner was able to defend himself, as the defaulter takes precedence over the loss, according to the general rules in the litigation procedures.

Second: The extent of the administrative judge’s authority to compensate for the subsequent correction:

If you do not find the means to correct the defective administrative decision with the defect of form and the procedures that the administration is tired of in the manner previously stated to protect the principle of legality, then the person concerned may resort to administrative litigation to achieve respect for this principle if he feels that the administration issuing the decision has not respected this principle. (Najm 1981)

The administrative judiciary has settled on cancelling defective administrative decisions with a defect in form and procedures, by expressly stating the aspects of cancelling the administrative decision, including the presence of a defect in the form and procedures of the administrative decision. (Alshahri 2012)

In Jordan, the Administrative Judiciary Law stipulates that the reference for appealing the annulment of the administrative decision be “the association of the administrative decision or the procedures for issuing it with a defect of form,” as is the case in the Saudi Board of Grievances. (Alshahri 2012)

The principle is that the defective administrative decision with defective form and procedures is a reason for ruling compensation for the illegality of this decision, and this is what the administrative judiciary in Jordan has taken, as the Administrative Judiciary Law stipulates that the Administrative Court shall have jurisdiction in requests for compensation for the resulting damages as a result of the decisions and procedures stipulated in the law if they are raised to it as a dependency. (Dwydar 2013)

The same applies to the system of the Saudi Board of Grievances, as Article (13/c) of it stipulates the jurisdiction of the administrative courts to consider compensation claims submitted by those concerned for the decisions and actions of the management body.

The administrative judiciary has settled that the defect in the form of the administrative decision is like other defects related to this decision and is the cornerstone of the error in the liability lawsuit, but it is required in this defect that it reaches the amount of the serious error so that it affects the subject and essence of the decision, otherwise it is not made the error concerned in the compensation claim. (Drwaish 1981)

This means that the judiciary differentiates between the essential procedures and forms whose failure results in a change in the content of the decision, and the non-essential procedures and forms whose failure does not result in a change in the content of the decision, and in order of that, it is possible to award compensation in the first case (in case the defect of the procedure is substantial) if The other pillars of liability are not available without the second (in case the defect of the procedure is secondary). (Dwydar 2013)

However, for the administration’s responsibility for its decisions to subsequently correct the defective decision with a defect in form and procedures, the conditions of liability that therefore require compensation must be met: the error, the damage, and the causal relationship between the error and the damage. (Jamal 2004)

Error means that the administrative decision issued for correction by the administration is illegal, and the administrative decision is illegal if it is affected by one or more defects identified by law and established by jurisprudence, including defects in form and procedures, and damage means proof of assault on a personal or financial right or deprivation of This right is for the person concerned who challenges the defective correction decision with defects in form and procedures, and the causal relationship between the error and the damage means the establishment of a causal link between the error and the damage, provided that the error is the direct cause of the damage that occurred, and the direct cause is the reason that alone is sufficient to cause damage. (Najm 1981)

The question arose in the administrative jurisprudence about the possibility of exempting the administration from the penalty of responsibility for its defective decisions with the defect of form and procedures, which is compensation. This form or procedure is not part of the public order, or if the

administration rectified its mistake or missed procedure without affecting the content of the decision, or if the formality of the decision was decided in the interest of the administration.

By contemplating the provisions of the Saudi Board of Grievances, it was found that the Board recognised, as a general principle, the administration's responsibility for its defective decisions, and the consequent damages, as it came in one of its provisions: On its part, that the administrative decision is illegal, because it is tainted by any defect that affects the administrative decision and makes it contrary to the system, and that the person concerned causes harm, and that the direct causal relationship exists between the error and the damage. (Drwaish 1981)

Cases of management dissolution from subsequent correction

There are cases in which the administration may deviate from the formalities established in the law, and these cases are as follows: the formalities decided in favour of the administration, the formalities that do not affect the objectively soundness of the decision, the impossibility of completing the formality, and the completion of the formality after neglecting it.

First: Formalities prescribed for the administration: originally, the formal rules were decided to protect the public interest, that is, the interest of individuals and the administration alike, but it seems that the French Council of State, based on the necessity of the stability of administrative transactions, did not allow individuals to rely on the formal rules established for the interest of the administration alone in order to cancel administrative decisions, so that the administration has the freedom to assess It is appropriate to follow it or not to follow it in issuing its administrative decision without the individuals having the right to adhere to the invalidity of the administrative decision based on its violation, based on the fact that the formalities established for the interest of the administration are not permissible to adhere to, as they are not considered part of the general system. (Najm 1981)

The formalities prescribed for the administration's interest aim at improving the performance of administrative work, such as signing a medical examination for a candidate for a public position. Among the procedures established for the administration is the view of the French State Council, which did not accept the appeal submitted by a person against the decision to accept him in the army despite the lack of a medical examination. Therefore, this formality is decided in favour of the army and not in favour of the volunteer. (Dwydar 2013)

"Just as the administrative judiciary decides regarding the procedures for removing a student who has cheated in the exam or attempted cheating, he is immediately expelled and deprived of entering the exam in the rest of the subjects, and his exam is legally void. And I left the student to take the exam in the rest of the subjects, taking care of his favour, until his matter is investigated, and this does not result in invalidity of the procedures." (Gwairi 1989)

As the form and procedure that was violated is not one of the investigations guarantees whose failure threatens the interest of the student, rather this procedure was initiated in the interest of the administration as a precautionary measure. (Gwairi 1989)

Accordingly, the administration's ignoring of the formalities that were decided in its interest alone cannot be a reason for individuals to challenge the cancellation, and the difficulty in this area is focused on determining the cases in which it is recognised that the formalities were decided in the interest of the administration alone, because in most cases we find the public interest next to the interest Administration. (Burhan 1984)

Of course, the public interest includes the interest of individuals, as well as the distinction between the formalities established for the interest of the administration, and those for the benefit of individuals faced jurisprudential retaliation, as some went that the administrative procedures are decided to achieve the public interest and not in the interest of the administration alone or individuals alone, this being the case for cancellation Addressed to the administrative decision itself without considering the interests of the litigants in the case. The administrative judge may not exercise an estimate or balance between the interests of the administration and the interests of individuals. If the ordinary civil judge, for example, or a commercial judge, is looking into the litigants' interests to determine who legislated the form for his benefit, then the analogy here is not permissible. As the interests of the opponents in civil or commercial disputes are private interests, among which the law stands on the neutrality of the balance between its two parties, while in administrative disputes the litigation is between two parties, one of whom is looking for his own interest and the other is defending the public interest, which is the interest that should have priority on special interests regardless of who benefits from their achievement, whether the beneficiary is the administration or individuals. (Najm 1981)

And from the judiciary of the Court of Justice in Jordan in this regard, its ruling in which it went to say: "Providing the guarantee or the insurance bond with the bid is a stipulated condition for the administration's interest to ensure that the pledger implements his commitment, and therefore if the pledger does not provide a

guarantee with his bid and the bid is awarded to him, it is not permissible to Another contractor may adhere to this formality, because the guarantee is established in the interest of the administration. (Najm 1981)

The Saudi Board of Grievances has decided that the formalities established in the interest of the administration do not lead to the invalidity of the decision, as it was stated in one of its provisions: "... the administrative judiciary is the practice of the judiciary that there are secondary formal procedures whose violations may not result in the invalidity of the administrative decision, and they are of two types: The first is the prescribed procedures for the benefit of the management body alone. (Haykel 2012)

Among the applications of the Board of Grievances in this regard is that it decided: "The validity of the decision to send employees to train abroad, without obtaining the approval of the Training Committee, and considered that the violation of the system in the decision was due to reasons beyond the control of the employees, rather it is due to the management error, and that it is not fair to correct the error At the expense of the employees and bearing the training costs, otherwise such a procedure would involve an error, which would make it contrary to the system. Correcting the error is not through a procedure that also involves a mistake like it, as the rule is that the error does not justify the error." (Gwairi 1989)

Second: Formalities that do not affect the objectively soundness of the decision: when the administration completes the legal procedures, even if it partially violates them, the administrative judiciary in this case condones this violation provided that it does not affect the decision in terms of the subject matter and does not detract from the guarantees established for individuals, for example the administration's shortening of the stipulated period if it is proven that this period granted to individuals It was practically sufficient to prepare their defence or to express their point of view so that no harm would befall them in shortening this period. (Haykel 2012)

As for the judiciary of the Saudi Board of Grievances, we find an application of this formality, as it affirmed in one of its rulings that: "If the regulator had requested that the annual confidential reports for some years be presented to the authority concerned with promotion, and that some of the reports were not presented by themselves but presented an adequate summary of them, then the presentation stage would be It was completed because the statements presented to the Director-General were a summary of these reports that included the essential elements of the reports, and because presenting these reports in themselves to the Director-General would not have caused any change in his final assessment, whether with regard to the plaintiff or the promoters. (Dwydar 2013)

We find that the Jordanian High Court of Justice followed the same path, as it affirmed: "The failure to sign the expert whose opinion was guided by his opinion on the minutes of the session does not invalidate the decision to refer the bid because his signature is not one of the essential procedures whose neglect results in nullity as long as it is established that he attended the session." If the principle of legality requires the validity of the administrative decision to fulfil the form required by law, but this principle limits its launch with the rule that (no assignment is impossible). (Haykel 2012)

Hence, the administrative decision is valid, although it is devoid of the form and procedure required by law to issue it whenever it is impossible for the administration to fulfil that form, even if the impossibility is material or legal, or the reference of the person concerned himself.

Physical Impossibility: what is meant by physical impossibility is that real impossibility that prolongs its duration to the extent that it is not possible to complete the legally required form, that is, the defect of the form cannot be covered simply because there is a temporary impossibility in completing the required form, because the transient impossibility is not counted and does not justify the administration's omission of the forms required by the legislator. The material impossibility that prevents the completion of the formalities is that if the law requires taking the opinion of a particular employee, the decision is less, then the absence of this employee on a short vacation is just a transient impossibility, while if it turns out that the job itself is vacant and it is not foreseeable that it will be filled in the near future, the material impossibility has been achieved.

As well as not hearing the defence of the accused employee if this is due to a real material impossibility due to him not leaving his address, and the impossibility of inferring this address, as well as the impossibility of gathering the members of the advisory committee whose opinion should be taken before issuing the decision. (Drwaish 1981)

In application of the foregoing, the Supreme Court of Justice ruled that: "The absence of the petitioner from the disciplinary session due to illness that prevents him from attending and is supported by a medical report is a legitimate absence. Therefore, the staff committee's hearing of the evidence witnesses and its issuance of the contested decision in the same session, which missed the petitioner's opportunity to discuss the evidence and defend the case." himself, and therefore the procedures taken in that session were taken in contravention of the requirements of securing the right of defence of the plaintiff, making it defective and in violation of the law." If the impossibility of completing the form may be physical, then that impossibility may be legal. (Haykel 2012)

Legal Impossibility: if disregarding the prescribed form for the physical impossibility of its completion does not lead to annulment of the decision, the legal impossibility of completing the form, as in the case of exceptional circumstances, also does not lead to the annulment of the administrative decision, even though it was issued under the influence of those circumstances devoid of the form decided by the law. As if exceptional circumstances prevented the administration from fulfilling the form required to issue the decision, which is not likely to be issued a delay, in this case the administration can issue the decision without fulfilling this form where the decision is still legitimate. (Neda 1990)

Presenting executive regulations and decisions to the name of the legislation is not only an obligatory procedure, but also a fundamental procedure, and the penalty for breaching this essential procedure is nullity, but what is required by necessity is an exception to special, secret circumstances that may not be disclosed or opportunities that cannot be missed are subject to the rule of this necessity according to the theory of exceptional circumstances or force majeure. (Tahri 1999)

The administration sometimes faces exceptional circumstances such as wars, natural disasters, or disturbances that force it to take some measures that are illegal under normal circumstances. This is to protect public order and the proper functioning of public utilities, thus giving their procedures exceptional legality, including issuing administrative decisions without being bound by the formalities and procedures stipulated by law. However, for the application of the theory of exceptional circumstances, it is required that there be an exceptional circumstance that threatens public order and the proper functioning of public utilities. Whether this circumstance is the outbreak of war, disorder, or natural disaster, and the management body is unable to perform its function by using its powers under normal circumstances; It resorts to using its exceptional powers provided by this theory, and to limit the exercise of exceptional power to the duration of the exceptional circumstance only. (Ajarmh 2010)

The idea of exceptional circumstances finds many applications through the theory of necessity and its well-known provisions in Islamic law, and among the most important jurisprudential rules that are the basis for the theory of exceptional circumstances is the rule (necessities permit prohibitions) and the rule (necessity is estimated by its value). (Fawzi 2010)

The impossibility of completing the procedure by the action of the person concerned: it may be impossible for the administration issuing the decision to issue it in the proper form for a reason that belongs to the person concerned, who is the addressee of the decision. In this case, the decision may be taken despite the lack of the form required for issuing the decision. (Al Tamawi 1979)

If an employee refrains from attending an administrative investigation to give his statement regarding the violations that he is accused of committing, his refusal to attend without an acceptable justification does not preclude issuing a decision to sanction him despite the absence of an investigation with him, although this investigation is a formal procedure that must be respected before issuing the penalty decision, as it is an important disciplinary guarantee that invalidates the investigation due to its failure, but the administration can neglect it in this case, and the decision to sanction is still formally correct, in implementation of the general rule in this regard that when the participation of an individual or an organisation is committed to making a decision, neither of them is justified To make his negative attitude of non-participation impede the issuance of the decision. (Burhan 1984)

Completing the formality after neglecting it: the principle is that the administration is not allowed to retroactively correct the defective administrative decision with the defective form and procedures. The decision that neglected the formalities in its issuance is a defective decision. A copy of the content of the decision or the sheet of its issuance. (Al Tamawi 1979)

The Egyptian State Council has confirmed this principle, in a ruling of the Egyptian Supreme Administrative Court, which ruled that: "Neglecting the formality of the necessity of submitting the order to dismiss the employee to the Personnel Affairs Committee does not arrange nullity because it can be completed, and that it does not change anything from the fact that the Ministry did not submit the matter to a committee." Personnel affairs only after dismissal of the plaintiff from service, as long as this committee considered the dismissal as of the date on which it was actually decided."

This ruling was issued regarding the driver of the car of the Central Minister of Education in light of the unity between Egypt and Syria, as the driver was using the government car to deceive and entrap girls. The Ministry realised that it had missed presenting the driver's order to the Personnel Affairs Committee to give an advisory opinion, which is then presented to the Undersecretary to issue his final decision, so it presented the matter to the Committee to complete the formality and the dismissal was approved as of the date on which the worker was dismissed. (Haykel 2012)

The defect of violating the form does not have its effect if the administration makes up for what it missed in it, because the defect of the form falls short of its effect if the administration makes up for what it missed in fulfilling the form without that remedying would affect the change in the content of the administrative decision or the appropriateness of its issuance.

Administrative jurisprudence and the judiciary have settled on adopting the general rule that there is no retro activeness in administrative decisions, and therefore a new administrative decision may not be issued to correct an administrative decision with retroactive effect.

"The Jordanian High Court of Justice has taken this direction, and in some of its rulings it held that the decision not to retract an invalid decision is not considered an authorisation for this invalid decision." (Al Alwai 2013)

The Saudi Board of Grievances, as an exception from the general rules of the administrative body that issued a defective decision with a defective form, has permitted to correct it with a subsequent procedure in which the established formalities are adhered to. The decision if this signature is made after the decision has been issued for a subsequent action. (Al Alwai 2013)

However, it sometimes happens that the administration neglects the form required to issue its decision, and then the person concerned accepts this omission, or waives adherence to invalidity if this form is not related to public order. Generally determined by the legislator, it affects the public interest, and therefore the acceptance of the defective decision by the defective of the form does not lead to the correction of this defect and the removal of the invalidity. (Haykel 2012)

II. CONCLUSION:

Despite the widespread belief that the subsequent correction of administrative decisions is not permissible because of its negative impact on the instability of legal centres, the practices in Saudi Arabia, Jordan and Egypt confirm the administration's adoption of this approach.

However, as was previously mentioned, the subsequent correction sometimes has a positive effect, but its expansion may indicate that the administration has exceeded its authority, and we may be facing an abuse of power.

Therefore, the use of this right must be within a very narrow scope, given that the law does not prevent it, and thus limit this right to the court, where it has the upper hand in the annulment or subsequent correction of the administrative decision.

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