

Compensation for Invalid or Nonexistent Administrative Decisions

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Abstract

Invalid or null administrative decisions constitute one of the issues and disputes that administrative justice seeks to address and resolve. Compensation serves as the judicial means through which an aggrieved party can obtain full protection by redressing the harm caused by an administrative decision. This research aims to clarify the nature of invalid or null administrative decisions and the extent of the right to compensation for invalid and null decisions. The study concludes that for an administrative decision to be a source of compensation, it must be irregular; there is no compensation for a decision if it is valid and without flaws, as there is no room for regular and valid administrative decisions. It also recommends the importance of informing citizens, and specifically employees and workers, about the role of administrative justice in protecting their rights, their right to annul flawed administrative decisions, and the fair compensation for damages suffered due to these decisions.

Keywords: Administrative Justice, Decision, Compensation, Invalidity, Nullity

INTRODUCTION

It is well-known that the annulment of flawed administrative decisions can be due to a procedural reason related to the form of the decision and its procedures, due to lack of jurisdiction with the decision issued by an unauthorized person, or it may be substantive, such as the decision being tainted with a defect in its subject matter, cause, or purpose.

The Board of Grievances has established an important distinction between the reasons for the annulment of an administrative decision and its invalidity, implying that the annulment of an administrative decision for procedural reasons does not always entail administrative liability, whereas the annulment of an administrative decision for substantive reasons does lead to administrative liability.

This research aims to clarify the nature of invalid or null administrative decisions and the extent of the right to compensation for such invalid and null decisions.

This study addresses the issue of compensation for invalid administrative decisions and null administrative decisions, by elucidating the extent of the right to compensation for an invalid administrative decision, and clarifying the extent of the right to compensation for a null decision.

RESEARCH METHODOLOGY

The research methodology on compensation for invalid or null administrative decisions relies on using an analytical approach to understand the legal nature of these decisions. This is achieved by identifying the flaws affecting these decisions and their types, as well as the circumstances under which a decision is considered null, and the judicial applications recognized by the Saudi administrative judiciary in this area.

The Scope of the Right to Compensation for Invalid Administrative Decisions

An administrative decision is defined as: a declaration of unilateral will issued by an administrative authority that produces legal effects (Barakat, 1947). It was also described as: the administration's declaration of its binding authority under the laws and regulations to manifest its will in creating a certain effect that is possible

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and legally permissible (Al-Jurf, 1993; El Dessouky, 2023).

For an administrative decision to be a source of compensation, it must be irregular; there is no compensation for an administrative decision if it is valid and without flaws.

This principle was adopted by the Board of Grievances, which rejected compensation in many of its rulings on the basis that the administrative decision was valid and regular. As stated in a ruling by the Administrative Court, supported by an Administrative Appeal Court ruling: "The panel concludes the validity of the administration's decision, its correctness, and its compliance with the correct system. Hence, there is no basis for the plaintiff's claim for the annulment of the detention decision... Since it has been proven that the administration made no mistake in taking the regular procedures against the plaintiff... thereby, the claimed tortious liability is negated" (Board of Grievances, 2007).

Similarly, when the Administrative Court refused to compensate the plaintiff for the administrative decision to disconnect the water services from his property because the decision was correct (Board of Grievances, 2011).

Procedural Defects

A procedural defect is the administration's failure to adhere to the formal conditions required in issuing its decisions. An administrative decision is considered to be flawed in form if the administration neglects the legally required form or procedure when making it, or if it is carried out incompletely or incorrectly (Al-Ani, 2015).

The establishment of administrative responsibility for a procedurally flawed administrative decision is not solely based on its proof or annulment. For compensation to be awarded to the person harmed by this flawed decision, the defect affecting this decision must be significant and impactful.

An impactful defect means that the decision would have been issued differently had it not been for this defect. Conversely, it is considered non-impactful if the decision would have been issued with the same content if the rules of jurisdiction or formality were observed (Board of Grievances, 2011).

This is affirmed by a ruling of the Administrative Court, which stated that established jurisprudence and administrative judiciary consider that procedural and jurisdictional defects that may affect an administrative decision leading to its annulment do not necessarily serve as a basis for compensation unless these defects are impactful on the content and subject matter of the decision, due to the decision being issued with the same content if the administrative authority had observed jurisdiction or formality in its decision (Board of Grievances, 2001).

From this ruling, it can be said that the Board of Grievances has begun to adopt the idea of distinguishing between procedural and substantive defects concerning the establishment of administrative liability for compensation.

Accordingly, the Administrative Court ruled in a judgment that defects in jurisdiction and form leading to annulment do not necessarily constitute a basis for compensation (Board of Grievances, 2011).

Therefore, it is judicially established that a procedural defect, whether related to jurisdictional defect or procedural flaw, does not fundamentally serve as a basis for administrative compensation, unless this defect is grave and likely to impact the decision's content and essence. In such cases, it becomes a reason for the right to compensation for the person harmed by the flawed decision.

Applying the concept of compensation for an impactful procedural defect, the Administrative Court awarded compensation to the plaintiff affected by the suspension of construction work for a period, due to the significant and impactful damages caused by the annulled decision to the plaintiff's property, such as decreased value, lost investment opportunities, and increased construction costs. Even though the defect in the annulled decision was a lack of jurisdiction, it was considered a significant and impactful defect. Thus, the ruling stated: "From the foregoing, it is clear that the harm incurred by the plaintiffs was caused by the defendant's action in the suspension without following the regular procedures, which means that had the defendant followed the regular procedures in suspending the work permit, it would not have been related to the occurrence of the harm. Since the three pillars of compensation are met in the claimed matter, the panel sees that the plaintiff

and his representatives have the right to fair compensation," (Board of Grievances, 2013).

The judgments of the State Council in Egypt have settled that defects in jurisdiction and form do not necessarily lead to the establishment of administrative responsibility and judgment for compensation. Instead, it is required for the judgment of compensation that the defect in jurisdiction or form be impactful on the subject or essence of the decision. If the decision is valid in its content and cause, and it was possible for the administration to issue the decision with this content and cause after correcting the lack of jurisdiction or procedural defect, then there is no basis for holding the administration accountable for compensation based on these two defects (Ruslan, 1982; Al-Shaar, 2000).

Substantive Defects

Administrative responsibility for the annulment of substantive decisions differs from that for the annulment of formal administrative decisions. As previously mentioned, administrative responsibility does not arise in the latter case unless the defect is significant and impactful. However, if the defect is substantive, administrative responsibility arises regardless of the defect's severity or its impact on the decision.

Applying the principle of administrative responsibility for the annulment of an administrative decision due to a substantive defect, regardless of the defect's severity, the Administrative Court, in determining administrative responsibility for a violation of the system, stated: "Detaining the plaintiff based on this decision, which was annulled by the authority, is a mistake on their part. It is not permissible for them, while monitoring and overseeing the residency system, to initiate his detention before considering the subject of his accusation and verifying the existence of legal and regulatory documents that justify his detention, especially since the defendant has no regulatory basis for his detention even if the plaintiff violated the residency and employment system. The utmost that can be done is to deport him from the country, which was decided in their decision that was later changed, and deportation does not require the foreigner to be detained or imprisoned... From this, it is clear that the defendant's act of detaining the plaintiff for this violation is a mistake in any case, whether his guilt was proven or not, and this mistake by the authority obligates them to bear responsibility for the damages caused" (Board of Grievances, 2014).

The Administrative Court has issued numerous rulings obligating the administration to compensate for its decisions flawed by the defect of cause, regardless of the defect's degree of severity, including obliging the defendant authority to compensate the plaintiff for demolishing his farm and the resulting removal and imprisonment on the claim of encroaching on government land, on the pretext that it was outside the deed owned by the plaintiff without verification. In reality, this was contrary to the truth, as this land was included in the plaintiff's deed and genuinely owned by him, resulting in damage to the plaintiff, thereby necessitating administrative responsibility (Board of Grievances, 2013).

Therefore, the cause must be legitimate. If the administration relies on reasons other than those specified by the system in the restricted authority of the administration and in the discretionary power, then the cause must be legally correct and justify the issuance of the administrative decision (Al-Sinari, 1994).

Confirming this, the Administrative Court in a recent ruling compensated the plaintiff when the administrative authority - the defendant - circulated about him, brought him in, and fingerprinted him more than once, all due to a mistake resulting from confusion between the plaintiff and the actual suspect due to similarity in names. The ruling stated: "Since it is established that the defendant admitted to the mistake against the plaintiff as mentioned in their defense against the claim, and corrected this mistake by lifting the circulation against the plaintiff and punishing the employees by suspending them for (72) hours... It is also established that the plaintiff suffered damage as a result of reviewing the defendant more than once to lift his fingerprints and clear his civil record despite his old age, tarnishing his reputation among his family and tribe members... Therefore, the division ruled: to obligate the General Directorate for Drug Control to compensate the plaintiff" (Board of Grievances, 2013). The Administrative Court also made misuse of power a constant source of administrative responsibility in cases where this defect is proven and causes damage requiring compensation, as well as compensating the plaintiff due to a violation of the rule of specifying objectives.

From the above, we deduce that the annulment of decisions flawed by a substantive defect obligates the right of administrative responsibility and requires the administration to compensate, without investigating the severity of this mistake, but merely by the impact of this mistake on the subject of the decision, the administrative responsibility arises on the administration causing this damage. Some legal scholars justify this distinction by the lack of administrative responsibility in some cases of procedural defects due to a separation in the causal link; there is a separation between the defect itself and the decision. This separation appears if the administration could re-issue the decision with the same content if it observed the formal and jurisdictional rules, while in substantive defects, there is a relationship between the mistake and the damage, hence the administration cannot re-issue the decision anew as it is flawed by violating the system or misusing power, necessitating compensation (Al-Tamawy, 1986; Fahmi).

The Scope of the Right to Compensation for a Nonexistent Administrative Decision

A nonexistent administrative decision is defined as: a decision that suffers from a severe legal violation stripping it of its legal act status, reducing it to mere usurpation of authority, and rendering it a mere material act devoid of any legal effect (Abdul Basit, 2005). It is also defined as: a decision marred by a severe flaw, such that the loss of one or more of its essential elements leads to its disruption, reaching a point of nonexistence, and thus it is considered a material occurrence that does not create a legal right or obligation (Fouda, 2005). Additionally, it is described as a decision that does not exist, thus distinguishing nonexistence by the absence of the flawed decision, losing its administrative nature as an administrative decision (Shatnawi, 2004).

To determine the extent of the right to compensation for a nonexistent decision, it is essential to explore the judicial rulings issued by the Board of Grievances in this regard, including:

A ruling by the Administrative Court decided to compensate a military personnel dismissed from service for the period he was dismissed until his reinstatement. The ruling stated: "Considering thirty years of service as a reason justifying the termination of an individual's service is an act beyond the limits set by the regulatory authority, and it creates an overlap between the regulatory and executive powers, essentially amending Article (11/b) of the Military Retirement System ..., and since this system was issued by a royal decree, it cannot be amended except by the same instrument by which it was issued" (Board of Grievances, 2005). In another ruling, the Administrative Court compensated the plaintiff, justifying that: "The system does not allow for the plaintiff's detention due to his refusal to fulfill his guarantor's obligation; the authority to order the detention of a guarantor belongs exclusively to the competent judiciary; what the defendant did was an encroachment on this authority; a final judicial ruling following its legitimate procedures, obliging the plaintiff to repay the debt... Since the defendant's action in detaining the plaintiff lacked legal justification, and in circumstances not regulated by law as previously explained, this constitutes an error on the part of the defendant, causing harm to the plaintiff, resulting in deprivation of income, dishonor, contempt, and significant suffering for the detainee and his dependents. Therefore, the elements of the defendant's liability are met, thus entitling the plaintiff to fair compensation for the damages incurred" (Board of Grievances, 2009).

Confirming the previous judgment, the Administrative Court obliged the Taif Municipality to pay compensation to the heirs of the property owner; due to the municipality's encroachment on the judicial authorities when it annulled the permit granted to the property owner without legal or judicial basis, causing significant harm to the property owners for over (14) years (Board of Grievances, 2013). Similarly, the court compensated an individual forced into retirement before reaching the statutory age for the rank he held, a blatant violation of the regulatory authority that determined the statutory retirement age by law. Therefore, the court obliged the administrative authority to compensate the plaintiff for the damage caused by this severe defect (Board of Grievances, 2013).

Through the aforementioned judicial rulings, it is clear that the Board of Grievances established the administrative responsibility of the authority issuing a decision marred by a severe defect descending to the level of nonexistence, based on the criterion of authority usurpation.

Given that a nonexistent administrative decision is as if it did not exist at all, and that it is equal to nonexistence, as though it never existed in the first place, it is inconceivable in such a case that it could be corrected in the

future (Abu Al-Enein, 2007).

RESULTS

The findings of the research on compensation for invalid or nonexistent administrative decisions highlight the following points:

Compensation for invalid or nonexistent administrative decisions is the judicial means through which an aggrieved party can obtain full protection by rectifying the harm caused by the administrative decision.

An administrative decision must be irregular to serve as a basis for compensation; there is no compensation for an administrative decision if it is valid and without flaws, as there is no place for regular and valid administrative decisions.

A procedural defect in an administrative decision is characterized by its issuance in a form or procedure not legally required, or in a manner that is incomplete or incorrect.

The Saudi judiciary, along with some comparative judiciaries, does not consider jurisdictional and procedural defects as bases for compensation for an administrative decision unless the defect is severe.

If the defect affecting the administrative decision is substantive, then administrative responsibility arises regardless of the severity of the mistake.

One of the effects of a nonexistent administrative decision is its incapacity for correction, whether such correction is future approval or ratification. A decision that is born nonexistent must always remain in that state; it cannot conceivably transform into a legitimate decision in the future.

Recommendations

Based on the conclusions drawn from the study on compensation for invalid or nonexistent administrative decisions, the following recommendations can be made:

Administrative authorities should ensure that administrative decisions comply with the laws and regulations governing their issuance and are informed by all relevant data and information before making an administrative decision.

It is essential to provide easy and sufficient time for appealing administrative decisions.

Administrative authorities must adhere to standards of transparency and integrity when making administrative decisions.

Citizens, particularly employees and workers, should be informed about the role of administrative justice in protecting their rights, their right to annul flawed administrative decisions, and their entitlement to fair compensation for damages incurred due to those decisions.

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