

JUSTIFICATION OF ADMINISTRATIVE DECISIONS IN THE SAUDI LAW

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ABSTRACT

The following study examines the subject 'justification of the administrative decisions in Saudi Arabia', by explaining of the concept, its practical importance, and stating the conditions for a valid justification, the study further looks at sample cases to clarify the extent of commitment to justification by the administrative body. That may be achieved by a thorough explanation of the principle stating that 'the administrative body is not obliged to justify its decisions' and any existing exceptions to such principle.

Keywords: Administrative Decision, Justifying a Decision, Control of the Board of Grievances.

INTRODUCTION

The importance of this study is that it deals with justification in administrative decisions within the Saudi Law. A subject that hasn't captured the interest of many law scholars, though it is an important cornerstone to a transparent administrative policy. Justification gives an opportunity to people of concern to have access to the reasons that compelled the administrative body to pronounce its decision; in addition it is a stimulant to the Saudi legislator to put forward legal systems-pertaining administrative procedures-good for the protection of individual rights from any fault by the administrative body under the pretext of public interest.

What is problematic here is the absence of a system pertinent to the administrative decisions in Saudi Arabia. The Saudi law in general hasn't offered enough justification to its administrative decisions, and instead they underestimated the subject and dealt with it like any other issue, notwithstanding its importance to individuals and law administration alike.

Essence of Justification of Administrative Decisions

This research deals with the concept 'justification of administrative decisions' in addition to clarifying the conditions necessary to give it the character of legitimacy, and be distinctive of other law concepts that may be mixed with it, and finally clarify the practical importance in two requests.

The concept of Justification in the Administrative Decision

What is meant by 'justification in the administrative decisions' is declaration of the legal factual elements that the administrative body relied on in pronouncing its decisions, either the declaration was a legal must, or based on a judicial obligation, or a spontaneous one by the administration itself, in other words the mention of reasons of the decision in the text. Basically the administration is not obliged to declare reasons in the core of the decision, and the Board of Grievances emphasized in one of its verdicts that:

"...The administrative decision either subject to justification as a formal procedure or not, it must be based on a reason that justifies it truthfully and realistically, i.e. in reality and in law".

Therefore the decision comes out with the presumption of being right and flawless, and the party of concern has to prove otherwise (Kan'an, 2009). As a general rule, even though the decision is not justified, its legitimacy is not affected unless the law obliges the administrative body to give reasons to its decisions, and in this case justification is a formal condition the law asks for, and as a result, non-commitment makes the decision flawed in form and must be cancelled.

As already known, justification is tied to the external form (i.e. if it is written, verbal, etc.) of the administrative decision, and the legal rules that identify it are part of the formal legitimacy of the decision, and it has been agreed that the administrative decision, basically has no specific form except within the limitations of what the law states (Aldaher, 2013), thus the administrative body can pronounce verbal or written administrative decisions, justified or unjustified, explicit or tacit. Defining the form that the decision exhibits must conform to the text (legal or regulatory), therefore when a text is put forward to oblige the administration to fill its decision in a specific form, and then they are obliged to do so (Aljarbou, 2012). The Board of Grievances emphasized that:

"The administrative body is not committed to a specific way in declaring its obliging will in whatever decision it takes, unless the law imposes a specific form". (Decision no. 6/86 year 14021h the collection of civil a canonical principles, 1401h).

It also ascertained that:

"In the case where the administrative body doesn't respect the procedural and formal rules stated in the law-necessary for the issuance of administrative decisions-either by neglecting the rules in whole, or it was a partial violation to the rules, the 'form' becomes prominent, and in this the decision comes out flawed in form". (Rule of audit no. 433/t/year 1427 in case no. 3375/1/L year 1425h).

It is our duty to refer to specific conditions essential for justification so that it will assume legitimacy (Shatnawi, 1995) and these conditions are:

Justification must be in Arabic as being one of the forms of the administrative decision, and as mentioned earlier justification enables the party of concern to have knowledge of the reasons that the decision relies on, additionally, writing the justification makes the judge's task easier when spreading his control over the factual and legal reasons that the decision was based on.

When sampling comparative laws, we find that the French legislator in article 3 'the law of justification' (Law 11 Julian 1979), insisted that justification must be written, where he stated that *"the justification required by this law must be written"*, whereas in Saudi Arabia such law doesn't exist. It may be convenient that the Saudi legislator states a similar law.

According to comparative jurisdiction, the Jordanian Supreme Court (the administrative court) does not stipulate a written justification since one cannot imagine the existence of verbal administrative decisions when there is legal necessity to have justification, and we in turn share the court its opinion.

Justification being direct, i.e. the person of concern will have knowledge of the justifying reasons the moment he reads the decision without going back to any other documents. (Aldaher, 2013) Here we refer to a verdict issued by the Egyptian administrative court asserting that justification by reference is not right, thus:

“Referring to files and documentation is not considered as justification, where justification means a case where there is a mention of all reasons that called the administration to pronounce such decision, and these reasons must be mentioned clearly and explicitly in the core of the decision” (verdict of the Egyptian supreme court no. 1815, s 40, in session 1996/6/9).

Therefore we can't use reasons as evidence by taking a common vision about it, or refer to reasons mentioned in the legal text that must be applied, and therefore justification will not be correct in the case of reference to reasons mentioned in another decision (Albashir, 2016).

The Jordanian Supreme administrative court pronounced that

"The mere mention of the terms of a certain law article or text will not be considered as justification, because its mention doesn't clarify the reasons-that lead to the issuance of a decision against which there is a complaint-in a conspicuous manner intelligible to whom the decision was against, and therefore the decision has to be rescinded" (Supreme court, Jordan 12/82, magazine of lawyers association 1983 no.4 page 494).

Phrasing of the decision concisely and comprehensively with no defects, and phrasing the reasons of the administrative decision accordingly, and deducing them in an acceptable manner-from fixed resources found in papers and from the words said by the claimant himself-and tersely detailing them and tailoring them in conformity with the law leads to giving the claimant the complete right of defending himself and therefore the decision will be right.

Accordingly we must differentiate between 'justification i.e. giving reasons' that justify the administrative decisions as being a formal procedure and 'reasons' as being crucial elements in it, and the differences are explained as follows (Khalifah, 2008):

The administrative decision should always be based on a legal cause, where the cause is a cornerstone in the decision and must be present. Therefore when the administration issue a decision they rely on a legal rule and on a legal position (position with authority) at the same time, and the decision will be the result of two groups of reasons, legal reasons and factual reasons regardless of their legality, i.e. either legitimate or non-legitimate, therefore the reason is always present, while giving reasons is not necessary unless the law demands that by an explicit text.

Justification is related to the external look of the administrative decision, and the legal rules that define it are listed within the formal legitimacy of the decision, while the reasons behind the decision are legal and factual reasons, and they are listed within the subjective or the substantial legitimacy (Shatnawi, 1995).

The administrative body practices control over the reasons behind the administrative decision. These reasons are independent and present elements and they are conditional for a right decision, so for each decision there is a reason that drives the administrative authority to take it, and if the decision is not based on a factual or legal status that justifies its issuance, it becomes

flawed, and the absence of the reason as being an important element leads to voiding the decision (Alshaikhali, 2015), and the correctness of the decision depends on how good the reasons that support it are regardless of any other considerations (verdict by Board of grievances, no. 11/86, 1401h case no.535/1/k year 1400h the group, page 122), while the administrative body has no control over justification of decisions unless the law necessitates so.

The practical importance of justification of administrative decisions

According to the administration, procedures and formalities-including justification-are important because they are a kind of guarantee to public interest (Aljailani, 2017), and they compel the administration to deliberate and study the administrative conduct prior to taking action, and be sure of its legality. Therefore the intention of the Saudi legislator from insisting on these forms and procedures is to adapt them as a mechanism to avoid a criticality or prevent wronging, or be sure of the convenience of the decision; so his intention is not obstructing the administrative activities or handcuffing the administration with restrictions that prevent them from carrying out their administrative role. Therefore a compromise is a must between individual freedom that entails holding to formalities and procedures stated by the law, and public interest that requires that the administrative activity not to be hindered by inundating it with formalities.

The Board of Grievances stressed that

"... Rules that govern formalities and procedures are there to protect the public interest, and violating them entails the voiding the decision..." (Verdict no. 223/t/5 year 1427h in administrative case, year 1427, page 1145)

Justification is of importance to individuals because it enables them to spread their control over the legitimacy of administrative decision (Kan'an, 2009), so they can have a look at the reasons that the administrative body relied on when they took the decision without need for explanation, and this leads to rest assurance provided the cause was sufficient, clear and productive, and enables them to defend themselves and come out of doubt, and it eases the task of proof before the administrative judge (Al-Batarseh, 2008), so they can protect their positions through grievance an objection if necessary. Therefore justification creates a mutual confidence between the administration and the individual, and constructs communicative bridges permanently and regularly, and it leaves an important psychological impact in persons related to the decision, because of being convinced that the administrative decisions are just and unbiased.

According to the administrative judge, justification of decisions eases the task of spreading his control over the legitimacy of administrative decisions by knowledge of how true the causes proclaimed by the administration were without the effort of searching, or need to oblige the administration to disclose the reasons. Justification also leads to lessening the number of cases-lawsuits where the claimants accuse the administration of exceeding their limits-submitted to the Board of Grievances. Here the individuals can-after being informed of the legal and factual reasons that support the decision-evaluate the extent of success of judicial objections in advance, so they will not submit a judicial objection to dispute the legality of the administrative decision if the chances of success were low, seeing that submitting an objection is exhaustive and time consuming because of the slow motion of litigation (Alabbadi, 2008).

Limitations in Obliging the Administrative Body to Justify their Decisions

The administrative body has the responsibility to conduct personnel affairs and manage public facilities. The mechanism of accomplishing this is by issuing administrative decisions with a unilateral will, and because it has authority; it has to find means characterized by transparency to retain confidence between itself and individuals. To what extent the administrative body can be pushed to give reasons, and what are exceptions where they are not obliged to do so? The answer to these two questions will be in two requests:

The General Rule 'the Administration is not obliged to Justify Decisions

As earlier mentioned, the administrative body in the Kingdom of Saudi Arabia is not obliged to justify its decisions, and this is a general rule decided without a legal text, adversely to some countries that consider justification as a legal and a constitutional obligation, even though there is no explicit legal text that states so, whereas there is no justification without a text. Therefore justification may be compulsory and may be optional, but if the law does not stipulate justification, this doesn't imply that the administration is absolutely free in this regard, so the decision must be based on an acceptable reason. In this case the burden of proving that the decision is based on a non-legal or factual reason is the responsibility of the claimant.

The researcher sees that the general rule gives the administrative body an opportunity to occasionally exceed the limits of authority, and as long as it has discretionary authority, it has the right to hold onto the rule of secrecy that grants it the authority to confront individuals who the decision is against as long as they are away from the arena of administrative jurisdiction and as long as there is no objection. Here the administration forces the addressed individuals to carry out with whatever authority they have the administrative decisions, without having the right to request the administration to disclose the reasons that compelled it to issue its decisions, but this doesn't bar the administration from disclosing the reasons voluntarily (Aldaher, 2013), and may spontaneously resort and without any legal obligation to justification with intent to convince the individuals of the legitimacy of these decisions, here we are before optional justification.

The question that assumes itself in this stance is what if the administration doesn't reveal the reason behind the decision, or if the law does not oblige them to do so?

Originally the decision is considered as based on a true cause, and he who claims the opposite has to provide the evidence, i.e. the burden of proving the incorrectness of the cause is the responsibility of the claimant, where it is a hard burden because he is an outsider who can't provide specific evidences because these evidences are mostly in the custody of the administration. The administrative judge tries in turn to mitigate this burden, he doesn't impose conditions that the evidence provided by individuals is decisive in proving the flaw in the reason or conclusive in proving corruption in the administrative decision, while it is enough to disrupt the presumption that the decision is right, in addition any evidence the court sees enough to disrupt the presumption of legitimacy would transfer the burden of proof from being the responsibility of the claimant to be the responsibility of the administration, especially that the files-whatever papers therein which have a relation with the conflict between the individuals and the administration-are in the custody of the latter. It is the claimant who is obliged to provide evidence that the reasons that support the administration in issuing its decision are untrue, or prove that tailoring of these reasons is wrong, while the burden of proof can move from the claimant to the administration when the latter refuses to clarify its stance before the

administrative jurisdiction and refrain from submitting what the court demands while studying the claim and investigating its conditions (Aldaher, 2013).

Exclusions Mentioned in the Principle of Non-Justifying of Administrative Decisions

There are exemptions to justification and those exemptions are defined by the will of the Saudi legislator in an explicit legal text, where some of them defined by the judicial implementation, and those exemptions grant clarity to the administrative work as clarified hereafter:

Legal obligation of justification

There are certain cases where the Saudi legislator obliges the administrative body to justify decisions as follows:

1. Article 7, The Saudi law of municipalities and villages. It states that *"the minister of municipalities and villages (Royal decree, no. 5/ date 21/2/1297h) can request the municipality council or the mayor to rescind or amend the procedures taken against the law, and he can rescind or amend those procedures with a justified decision"*.
2. Articles (13, 21) Nationality law of Saudi Arabia: It requests justification for the act of dropping or withdrawal of nationality.
3. Article 8, paragraph (2) Litigation law of the Board of Grievances. It obliges the administrative body either military, or civil that they justify their decision of rejecting a grievance, given that justification is only requested in the case of explicit rejection, and it doesn't oblige the administration to justify their silence regarding a passive or tacit decision.
4. Article 14, the executive regulations of foreign investment law. It states that *"if the commission rejects a request for licensing or amendment, it must be a justified rejection"*.
5. Justification of disciplinary decisions (Ethnaibat & Hamdi, 1431). In principle these disciplinary decisions may not be justified, because the employee may have depleted all guarantees subject to the judge's control, like investigating and looking at the file papers, but the methodology of jurisprudence entails that every disciplinary punishment be justified, and justification of disciplinary decisions is dictated by the necessities of justice and the general principles of the law; thus a disciplinary decision is like a judicial verdict because it rules between two parties, the administration and the employee. Conclusively, disciplinary decisions must be justified unless there is a special text that doesn't stipulate justifying.

According to comparative laws we point here to the law issued in France no. 79-587 date 11/7/1979 that required the administrative bodies to justify all decisions that involved rejection, and those that restrict individual freedom (Kan'an, 2009), hopefully the Saudi legislator will follow the French course and pronounce a system with rules that govern non-judicial procedures.

Of the most important decisions that require justification according to the law 11 July 1979 in France are the following:

Decisions that restrict individual freedom and all procedures of restriction, Decisions that involve penalty, Decisions where a license or permission may be suspended because of stipulation, or stipulating additions, Decisions that withdraw or rescind decisions that granted an

earned right, Decisions that decide time-barring or end of period, Decisions that reject granting a privilege to a person who has the right conditions to have it.

What was exempted of justification in the French law were decisions where justification may divulge secrets protected by law, or cause harm to the public law, knowing that organizational decisions are not included in justification because they don't initiate earned rights. Similarly, individual administrative decisions that don't involve rejection, and some decisions of special character and those pertinent to military (Ahmad, 1992) are not included in justification. For justification to be acceptable; it should include all whereas that disclose the real cause that supported the decision, and if the administration relied on several causes they must include the effective cause that is enough to justify a fitting decision, and it is enough that the decision refers to the opinion of the party (the justifier) mentioned in the decision (Aljailani, 2017).

Here we see that justification is a must in all administrative domains unless exempted by a legal text.

Judicial Obligation of Justification

The judge interferes in some cases where he obliges the administrative body to justify its decisions, thus jurisprudence is creative of all legal rules in the domain of administrative law, and in this case if the administration doesn't comply with the judge, he in turn would rescind its decisions for a flaw in the form. Here we have to distinguish between the obligation that is occasionally imposed by the judge on the administration to justify its decisions and the supposition that the judge doesn't require justification as a formal condition. Here the judge sees the unjustified decisions good in shape; but for him to look into any objection directed to the decisions, he calls the administration to disclose the reasons behind issuance.

The question that assumes itself here, what is the foundation that the administrative judge depends on in order to oblige the administrative body to justify its decisions?

Some scholars (Ahmed, 1992) mentioned several interpretations for this obligation as follows:

1. In the absence of a legal text the judge may oblige the administration to justify its decision because the case is critical and of special importance. Here the interpretation of the legislator gives permission to the judge-when being sure of the criticality of the case-to oblige the administration to justify its actions and decisions it took against the party concerned. But the critique to this interpretation that there is difficulty in defining when the case is considered as important and when not. It seems that the importance and criticality meant in this interpretation is concentrated basically on the person that the decision was taken against. This critique is not enough; because in the case of criticality, the principle incomplete procedure is applied. With all this the legislator doesn't oblige the administration to justify their decisions.
2. Another opinion interpreted the conduct of jurisdiction relying on the nature of things. Professor (Alma'mari, 2002) Aubyet Drago decided that there are administrative actions where justification appears to be a necessity; because it is the only tool the judge can use to evaluate its legitimacy. The critique to this opinion is that justification is not the only way to evaluate the correctness of the administrative work. It is true that justification is an essential element in controlling the correctness of work, but the judge can always find other ways to conclude that the work is correct or not. In fact the rule of justification is

more convenient to the party of concern than to the judge, and its absence has no effect on the judge's control, in addition this interpretation is superficial as declared by professor Latoumerie

"The nature of things doesn't discover anything about reality except what the law reveals to the party of concern, but it doesn't reveal the basis of judicial obligation".

CONCLUSION

Justification of administrative decisions means the disclosure of legal and factual elements that the administrative body relies on when issuing administrative decisions, either the disclosure was a legal must, or depending on a judicial obligation, or spontaneous from the administration itself.

There are certain conditions that have to be present in justification in order to gain legitimacy; it has to be written, direct and clear, and should be concisely phrased and integral without flaws, and based on legal cause.

According to the administrative body, the importance of justification is that it leads to deliberation and study of the administrative conduct before going for it, and be sure of the extent of its legality so that their work will not be cancelled by the administrative jurisdiction. For individuals, justification is important because they can look at the reasons that the administrative body relied on in taking its decision and this leads to rest assurance. Finally it eases the task of the judge in spreading his control over the external legality of the administrative decisions by knowing the extent of rightness of reasons claimed by the administration.

The administrative body in Saudi Arabia is not obliged to justify its decisions, and this is a general rule decided without a legal text, where there is no justification without a legal text. There are exemptions to justification and those exemptions are defined by the will of the Saudi legislator in an explicit legal text, where some of them defined by the judicial implementation, and those exemptions grant clarity to the administrative work.

RECOMMENDATIONS

1. Make the general rule justification of administrative decisions is obligatory unless the administration is exempted with a special legal text; barring the administration from abusing its discretionary authority under the pretext of public interest.
2. The Saudi legislator legislate a law related to justification of administrative decisions inclusive of the definition of justification, its conditions, its elements, and its kinds, and clarify the decisions that have to be justified, and the penalty in the case of not justifying.
3. Let the administrative organizations be aware of the importance of justification of the administrative decisions, especially those granted authority to issue decisions.

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