

# THE PROVISIONS FOR THE ADMINISTRATIVE DECISION ISSUED BY PASSING ON. AN ANALYTICAL INDUCTIVE STUDY COMPARED TO SOME OTHER SYSTEMS

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## ABSTRACT

*This research aimed to define the administrative decision issued by passing on and the legal implications of it, as an attempt to find the legal dye, which treats this kind of decisions if it issued by the competence holder, by providing a realistic picture and a clear process for it, aimed to enrich the legislative side.*

*This study revealed that the general principle makes it obligatory for government agencies in the country to make their administrative decisions After discussion and scrutiny according to a meeting to be held for this purpose. The exception to this principle is to take administrative decisions by approval or passage. And it is resorted to through clear and legal procedures, when discussing the administrative decision and voting on it, leading to the requirement that unanimity be achieved in voting, as a member objects to this decision, it is nullified.*

*The high Administrative Court in Egypt has kept pace with the judicial development in the field of administrative decisions issued by passing on, clarifying in its provisions that this type of decision should not be issued except by consensus, which is considered subjective and based on the decision itself, And a cornerstone of its establishment, it is something the study commended.*

*Nevertheless, the administrative judiciary in most countries of comparative law has not been subjected to this type of administrative decisions, neither from near or from afar, Without legal wording of its own or an indication of its practical or legislative existence. And due to its importance and the pursuit of its followers in our present time, the study called for its consecration and legislative provision in line with the legislative and administrative development.*

*By following an inductive comparative analytical approach, the topic came in two sections. The first concerned with stating the nature and characteristics of the administrative decision, and the second focused on the legal aspects of the administrative decision issued by passing on.*

**Keywords:** Administrative Decision, The Administrative Decision Issued by Passing On, Administrative Committees

## INTRODUCTION

The public administration is considered part of the executive authority, which in turn represents one of the three authorities in the state. Therefore, it enjoys the authority and sovereignty in its legal actions, whether it is administrative decisions issued by it or administrative contracts to which it is a party. Administrative decisions are one of the most important and most common means in the public administration's performance of its administrative activity with the aim of achieving the desired public interest, ensuring the regular and steady functioning of the public utility that operates under its authority (Shiha, 2002).

As is well known, any administrative decision must meet its five pillars; the competence, the form, the place, the reason, and the end, with which it completes its existence. Without one of them, it will be affected by a defect through which the stakeholder can initiate a suit to cancel it due to the violation of the legality of one of the aforementioned pillars, so that he can rely on it as one of the reasons for appealing and canceling it (Al-Saghir, 2008).

We particularly highlight in this study the question - the validity of administrative decisions made by passing or approval - emphasizing the scarcity of similar studies in a detailed statement of this type of decisions. So; We continue with our proposals and based on the propositions we present, the extent to which these decisions can be added within a group of their own, similar to all other recognized administrative decisions, to take a description and a legal position closely related to them, resorting to them if necessary to use them or compare them based on administrative issues that require Take this approach of decisions (El-Helou, 1996).

### **The Importance of Study**

The importance of this study does not stem only from the fact that it deals with a recent topic related to the validity of issuing administrative decisions by passing, but it goes beyond the legislative void on the one hand, and the issue of the doctrinal side, which did not address this issue with that thing in detail and statement on the other hand. It is necessary to describe and analyze its legal framework (Attia, 2011).

Here, we see privacy in defining a legal space with legal texts for an internal treatment specific to each of the public state administrations dealing with the issue of administrative decisions issued by passing. This issue has become a necessary thing. If we ask who of us reads the texts of the systems and regulations of the public administration on their various labels and finds a legal text that deals with administrative decisions issued by passing? The answer will inevitably be that there are no such texts, not even at the minimum level that indicates the dedication of this type of decisions, its legal frameworks, and the way to deal with it and whether or not to adopt it (Kanaan, 1983).

In view of the seriousness and importance this issue poses in the career life of the public administration during the stage of issuing such decisions, or after the stage of their issuance and their becoming to the truth and realistic implementation. This study aims to shed light on the position of administrative legal regulations and instructions on these decisions, especially in light of the absence of explanations of jurisprudence from a detailed statement about them, similar to other administrative decisions (Al-Tamawi, 1984).

### **The Problem of the Study**

The nature of this research and what is required by the limits of its scope raise a major problem revolving around: The extent of the legality of administrative decisions issued by local public administrative bodies (councils and committees) by passing? These decisions were issued in accordance with exceptional and emergency procedures and circumstances that made it impossible to complete the form or procedure required to be taken without the intervention of these circumstances, which prompted the public administration to accept administrative decisions issued by its local bodies from councils and committees without taking into account the form or procedure originally established, in order to achieve the public interest (Al-Tamawi et al., (n.d.)).

In the same regard, and based on the foregoing, are such decisions considered administrative decisions in the strict technical sense? As if taken by scroll? Or does it require certain conditions and means to be issued and validated? If the answer is yes, then what are the conditions for its issuance? And if the answer is no, are they considered void administrative decisions? Or administrative decisions with which it is correct to say that the defect in form and procedure can be corrected by taking them, with the public administration bearing the

responsibility to compensate for them? Or are they correct administrative decisions by virtue of the fact that imposed their existence? (Khalifa, 2007).

## **The Method of the Study**

The study depends on the inductive method using the descriptive analytical method. This is done through objective reading, and in-depth analysis of legislative texts and judicial rulings related to administrative decisions and their role in formulating and drawing administrative decisions in general, including administrative decisions issued by passing in particular, arriving at specific conclusions and recommendations, which contributes to analyzing the nature of the administrative decision issued by Passing, and making recommendations that help to clarify it and devote it in the regulatory aspect by the legislator (Shatnawi, 2015).

## **Difficulty of the Study**

The most prominent difficulties encountered by the study are: The absence of previous administrative legal studies at the heart of the matter, the researcher did not find specialized legal studies that detail and clarify the administrative decision issued by scrolling in an accurate manner. This prompted the researcher to move forward with this study (Al-Deghaither, 2014).

In order to determine the scope of administrative decisions issued by scrolling, and to arrive at a comprehensive answer to the aforementioned problems related to this type of decisions, a number of questions are raised in this regard, which focus on the following points (Abdullah, 2012):

- What are the administrative decisions? And what are its characteristics?
- What is the administrative decision issued by passing?
- What are the administrative systems that were based on the application of this kind of decisions?

## **The First Topic**

- What is the administrative decision and its characteristics?

It should be noted that any legal action issued by government administrative agencies is essentially nothing but the embodiment of a higher interest for society, arranging its legal and regulatory effects in the state as a whole. It is a tool, by which legal positions are acquired, and others are modified or canceled, and based on the foregoing, these works are classified according to the standard adopted - formal or substantive - so what is classified according to the formal standard will be divided into three categories or categories of legal works. The first is what is issued by a unilateral will - administrative decisions -. The second is bilateral legal acts, and finally multilateral legal acts, as is the case in acts issued based on discussions of local councils and boards of directors of public institutions <sup>1</sup>.

## **The First Requirement: The Definition of the Administrative Decision**

The legislative texts were devoid of setting a special definition for the administrative decision, leaving the matter to the administrative jurisprudence and judiciary. However, they did not address this matter by singling out a definition for it, so the definitions varied each time according to the angle from which the administrative decision was viewed. In the end, several definitions of it were issued, all of which revolve around one meaning, specifying its basic elements, its own methods of issuance, and the strength and penetration it enjoys based on its issuance from a public authority (Mahmoud, 2009).

In the context of the foregoing, we see that what the legislation, legal and jurisprudential studies, and judicial rulings have concluded, in addressing the statement of the nature of the administrative decision, did not reach the eye of perfection in what it ended with, devoid of a comprehensive definition that prevents it. This will reflect its role on the definition of the administrative decision issued by passing. For this reason, we ask the honorable reader to define the administrative decision as: {The unilateral legal action, issued by the public administration in its executive capacity, subordinate to the three authorities in the state, emphasizing categorically in its content to establish, amend or cancel an existing legal situation, in accordance with laws and regulations and in the normal circumstances of its adoption} (Al-Sayed, 1999).

### **The Second Requirement: The Characteristics of the Administrative Decision**

The administrative decision is issued by the public administration, which is an integral part of the executive authority, according to its free will, in implementation of the law and the organization of an important issue that calls for the regular and steady functioning of the public facility. In this regard, the question revolves around whether everything issued by the public administration is an administrative decision or not?

In fact, the answer to this question requires us to discuss the characteristics of the administrative decision, so that we can take the initiative to classify what is considered an administrative decision or not from the decisions of the public administration. The characteristics of the administrative decision, according to the aforementioned definitions, are limited to the following (Al-Turkmani, 2016):

#### **First: Issued by an Administrative Body**

It is indisputable that; Any decision that is not issued by an administrative authority, and at the same time legally competent to carry out its administrative functional tasks, whether it is a central or decentralized authority, is not considered an administrative decision in the strict technical legal sense. Point out frankly that any administrative judicial appeal is directed only against an act issued by a public administrative authority, including administrative decisions of various types<sup>2</sup>.

#### **Second: Issued based on the Administrative Body Enjoying the Privileges of a Public Authority.**

The decision is not considered an administrative decision unless it was issued by a national public administrative body in its capacity as a public legal person and not as a private person. In this regard, we point out that the issuance of the administrative decision by an administrative body is not sufficient only to consider it an administrative decision in the strict technical legal sense. In order to achieve this it is also necessary to issue it by a public administrative body as the holder of a public authority, noting in this regard that the public administration can undertake to issue decisions for it in its capacity as an ordinary person and no more, like ordinary individuals and within the limits and scope of private law, and all those works and activities that it exercises in accordance with its decisions emanating from this capacity does not apply to the description of administrative decisions<sup>3</sup> (Al-Suwaylimeen et al., 2013).

#### **Third: Issued to Achieve a Specific Legal Effect**

The supreme purpose of issuing any administrative decision is to achieve a specific legal effect, like any other legal action, which is to achieve that legal result either by establishing a

completely new legal center for the person concerned, such as the decision to appoint a public employee, or by amendment, such as the decision to transfer the public employee from one department to another in the administrative body in which it operates, or the cancellation of an existing legal position, such as the decision to withdraw a driver's license (Salama, 2015).

## **The Second Topic**

### **Legal Aspects of an Administrative Decision by Passing**

Administrative decisions in their entirety occupy a very important position because they are issued by a public administration, as well as because they aim to achieve the public interest and run the public facility regularly and steadily, and finally because they affect the rights of individuals. For all this and that, and our attempt to keep pace with the legislative regulation of administrative decisions in all their forms, we are trying to reveal the legislative, jurisprudence, and judicial deficiencies in confronting or even detailing and describing administrative decisions that are issued by passing, explaining what they are, and how they differ from other administrative decisions? And the administrative body entrusted with the task of issuing it, filling in the gaps or opinions that may be due to the legislative deficiencies and its provisions in the face of such kind of decisions. This is something that clearly drew the researcher's attention while reading the views of legal jurisprudence and administrative judiciary by extrapolating the administrative courts' paths. For this reason, we decided in this research and to include the subject in all its aspects, to research the nature of the administrative decision issued by passing and its characteristics that distinguish it from other administrative decisions, and its legal basis Which is based on it and derives its actual, real existence from it, in addition to the cases of resorting to it, with an explanation of its special nature, and the legal effects that may result as a result of taking such kind of decisions by identifying its most prominent advantages and disadvantages (Al-Zubaidi, 2008).

#### **The First Requirement: What is the Administrative Decision Issued by Passing and its Legal Basis?**

There is no doubt that the issue of developing a comprehensive definition that prevents the administrative decision issued by passing, and determining its own legal basis, in order to clarify its character in the legal and judicial administrative system, is one of the thorny issues in the fields of legal studies in general, and the saying is true to a large extent with regard to Conducting specialized studies in the field of administrative law with its two departments; The purely academic jurisprudence did not include specific legal descriptions, phrases, or templates for the administrative decision issued by passing in particular, or even by the vital judicial aspect that did not set clear, specific and reliable definitions in dealing with the administrative decision by passing, explaining it in its narrowest limits, despite the fact that The administrative judiciary is characterized as a creative judiciary that lends permanent flexibility to the rigidity of legislative texts (Zygham, 1945).

#### **Section One: Definition of the Administrative Decision Issued by Passing and its Characteristics:**

By extrapolating the provisions of public office systems in other countries of comparative law, I took the path of safety by not entering the battlefield of defining - the administrative decision issued by passing - even though we believe that it is not feasible to leave this type of administrative decision without a comprehensive definition preventing it. As for the administrative judiciary, and by extrapolating the relevant decisions issued by the esteemed administrative courts, I did not find that they provided a specific definition for it. And in order of

the above, and based on it, we can define - administrative decisions issued by passing - as: {A form of administrative decisions issued by administrative committees or councils in exceptional and emergency circumstances related to an important administrative issue that must be decided by taking the necessary action resulting from it. This decision or anything related to it is never discussed at the meeting." In the same regard, we can also define it as: - {It is a set of administrative decisions that are characterized by a comprehensive view, by presenting issues related to them to the meeting of the committee or the council for consideration, according to an emergency nature that does not accept inaction, slowness, delay or even postponement in deciding By its order and in the final and final form, without taking into account the completion of the form to be followed in accordance with the law in its issuance (Karim, 2010/2011).

In this sense, the administrative decisions issued by passing do not come except by a "committee or an administrative council" with the necessity of the presence of the element of exceptional and emergency circumstance. It should be noted that the administrative decision to pass in its literal or skillful sense means: "a decision issued by something that is not familiar, including a transgression in the specific formality of issuing administrative decisions and recognized, aiming to achieve a supreme interest, in order to stand on it and find appropriate administrative solutions, so A pass was taken."

Based on the foregoing, it is necessary to adjudicate the issue of the administrative decision issued by passing, with the absence of a jurisprudential, judicial or legal definition blocking it, to establish for it in return a set of characteristics so that its image becomes clear and its construction and its actual unregulated existential space are complete, or even declared. About it officially in the regulations and regulations of the administrative function, or even in real administrative practices, and in order we see that the characteristics of the administrative decision issued by passing are limited to (Al-Zanati, 2017):

### **First: A Stand-Alone Administrative Decision**

One of the most prominent characteristics of the administrative decision issued by passing is that it is an independent decision, not based on organized administrative procedures that precede its issuance, imposed by an exceptional painful reality that has afflicted the administrative body, the need for it to intervene and formulate this decision to ward off an imminent danger or avoid it with minimal losses. Therefore, its subjectivity stems from the fact that it constitutes an element that is external in form from the normal decision that is taken in normal circumstances, as it is subject, in whole and in detail, to conditions and procedures completely different from those administrative decisions that are produced according to the normal mechanism used in the corridors of public administrations in their government agencies, whether from administrative councils or Even government institutions.

On this basis, we see: - The administrative decision issued by passing has its own significance, and is independent from the rest of the other administrative decisions, as it is an exercise of the discretionary administrative competence of the administration again according to precise special controls (Dalal, 2016).

### **Second: An Administrative Decision Issued by an Administrative Body**

Based on the first characteristic, and in fact, the administrative decision issued by passing is nothing but a decision issued by the public administration with its administrative organs affiliated to it, regardless of the title used by an administrative board or an administrative committee. It is an administrative decision within the jurisdiction of the executive authority by virtue of - The Constitution - (4) regulating the three authorities in the state and their working methods.

### **Third: An Administrative Decision of Exceptional Emergency Character**

It is worth talking in this regard about the character of the exceptional emergency circumstance of the administrative decision issued by passing, as it serves as the basis and the legal basis for its issuance, which will be dealt with in detail in the second section of this requirement.

#### **Fourth: A Decision as the only Legal Administrative Means to Avoid the Emergency Situation:**

The origin, as it is known as a general rule, is that administrative decisions are issued according to a specific form and procedure. On the other hand, a serious and blatant exception to the general rule in making administrative decisions, as the public administration allows itself legally sound and procedurally restricted to take an administrative decision without following the rules of the accepted form in issuing administrative decisions.

On this basis, the administrative decision issued by passing does not produce its legal effects except with regard to the cases it deals with, as it deals with the elements of its health and its objective or even formal conditions of safety, and does not apply in the future to any new cases that may appear. Its actual, real effect is embodied in the immediate situation that it deals with, and hence the importance of the administrative decision issued by passing, therefore, and as we will see successively, in the second requirement of this topic that there are specific controls for issuing such kind of decisions.

By analogy with the foregoing characteristics of the administrative decision issued by passing, it is worth talking here about the most important stages of taking this kind of decision, according to a deductive perspective, and based on the surrounding circumstances and facts. Therefore, we see that the most prominent of these stages are:

The first stage: the existence of a real emergency circumstance coupled with making an administrative decision

This stage certainly indicates the realization of an emergency circumstance, necessitating the necessity of taking an administrative decision, with the inability to do so, in accordance with the normal formalities and procedures followed in making administrative decisions in such normal circumstances, with an agreement that conclusively confirms the content and content of this circumstance, which reflects negatively on Following the specified approach and pattern in making administrative decisions if they were in their normal, natural state. The public administration feels that this circumstance is not easy or even soft, and it would obstruct the administrative work within its corridors if it did not address it by taking an administrative decision, and thus negatively affect the continuation of the public facility to operate regularly and steadily.

#### **The Second Stage: Ascertainment and Consolidation**

This stage certainly indicates that there are no options for the public administration to follow to issue its administrative decision according to the emergency circumstance, except by means - approval or passing -, and there is no room for activating the formalities and procedures followed by the system in issuing administrative decisions, because this is actually not permissible. Although the development of options and alternatives before entering into the approach of the administrative decision issued by the usual methods was followed with little avail, or could not be followed in the first place, the matter called for an independent self-decision to confront the problem that the emergency circumstance surrounded and surrounded, making the public administration in an unenviable position Accordingly, it motivated it to take a positive side in solving the problem and issue an administrative decision by passing on the one hand, and a negative side by detaching from following the formalities and customary procedures

in issuing administrative decisions, placing it with certainty and consolidation of the need to confront and resort to the administrative decision by passing.

### **The Third Stage: Initiation and Decision-Making as the Last**

This stage certainly indicates the last resort to follow the administrative decision approach by passing, which calls with it and in the context of the emergency circumstance holding a meeting of members to vote on the decision and make it come into force and implementation, by inviting members, deliberating and voting unanimously without any objection to this decision. This stage is the focus of the second section of this requirement, as this will be shown in detail in what follows.

#### **Section Two: The Legal Basis for the Administrative Decision Issued by Passing**

The general principle which requires; the issuance of administrative decisions according to specific formalities that must be properly fulfilled, as they are considered correct administrative decisions free from defects, and specifically free from defects in form and procedure. The impossibility of completing the basic formalities for issuing administrative decisions by the public administration indicating that this impossibility may be an actual or real physical impossibility due to force majeure, or a legal impossibility due to exceptional circumstances, or the emergence of a state of necessity that prevents the completion of the form and procedure required by law for the issuance of the administrative decision by the competent authority<sup>5</sup>.

In the context of the foregoing, and by analogy with this, it is clear that the basis for issuing administrative decisions and their legal basis by passing is due to it or its legal justification, which makes it impossible to follow the formalities and procedures that the system requires the source of the decision to follow and not to deviate from<sup>6</sup>. However, due to the realization of this impossibility in its second form, which is represented by the legal impossibility resulting from exceptional circumstances and the emergence of a state of necessity that prompted the inability of the public administration and the source of the administrative decision to complete these formalities and procedures required by the system before its issuance.

Based on the foregoing, and according to the theory of necessity recognized by the jurists of administrative law, the public administration fell into an unenviable position, represented by an emergency circumstance that was an obstacle for it to fulfill the legally prescribed form before issuing the administrative decision, which does not tolerate delay or even inaction. In issuing it, it in turn, out of necessity, neglects this formality or procedure, issuing its legal decisions based on the requirement of the theory of necessity<sup>7</sup>.

In light of the foregoing, the process of issuing administrative decisions by passing is due to the realization of a legal impossibility due to the occurrence of an exceptional circumstance as we mentioned above, and the exceptional circumstance in the practical life approach, as we see “is a crisis facing the state, bearing a grave danger, threatening its public interests, It impedes the functioning of its facilities to operate regularly and steadily.”

In this regard, it should be noted that the administrative decision issued by passing revolves around the presence and absence of committees and administrative councils. Its legal form and basis is related to the procedures for forming these committees and councils. It is a prerequisite for saying that there is an administrative decision issued by passing, otherwise we go back to the customary administrative decision, and often the administrative systems of each administrative governmental body determine the way and how these committees are formed and the determinants of their work entrusted to them. In fact, we note by examining the texts of administrative legal systems in different countries of comparative law that they did not explicitly provide for such decisions.

In the same regard, there is no doubt that carrying out some administrative activities, such as issuing administrative decisions, this task may be entrusted to a group of employees



called a description or name (committee, council or body). And the administrative decision issued by this committee or council adopting the form of passing depends on the correctness of the formation of this committee or council in terms of formality and their commitment to the specific rules and standards related to the formation, taking into account the procedures to be followed to issue such type of decisions, and - procedures - that must be taken When forming councils and committees the following:

### **First: Formation of Administrative Committees**

Administrative committees are described as formations with special tasks and specific jurisdiction in the decision to establish them, and the committee defines “it is a number of people who are collectively, not divided, entrusted with specific powers and duties, and they are officially chosen by the public administration to consider a specific problem and make a decision to solve it, or it is sufficient to suffice By examining this problem, collecting information related to it, and making recommendations and suggestions regarding it <sup>8</sup>. The committee must be formed from the persons occupying the positions specified by the law or the regulation, and no member may replace another member unless permitted by law. The rules of formation must also be taken into account in full, as every breach of them is considered a formal defect that invalidates the committee and then the decisions issued by it <sup>9</sup>.

Committees are divided into several types, each of which differs from the other, according to the powers they enjoy, the extent of their formality in their formation, time range, organizational position and mission entrusted to them an advisory whose mission is to present the proposal and recommendation only. As for the extent; they are classified into official committees entrusted with specific tasks that are clear and specific, and informal ones formed by the competent director with the aim of assisting him in a personal capacity. In terms of their time range, the committees are classified into permanent ones with permanent competencies, and temporary ones that end with the end of the task for which they were formed.

As for the administrative councils, they are not far from the committees, as they are administrative formations with specific tasks and jurisdiction in the decision to form them. However, they differ from them in terms of:

- 1) In terms of its legal nature: it has a high administrative level that may reach the top of the administrative organization, unlike the administrative committees, which do not in themselves constitute a high administrative level as they are an auxiliary body.
- 2) In terms of the formation decision: usually the administrative councils are formed by decisions issued by the higher administrative authority in the administrative organization, unlike the administrative committees that are formed by any decision issued by any level in the administrative organization of the public administration.
- 3) In terms of jurisdiction: it is concerned with issues of comprehensiveness and generality. Most of its administrative decisions issued by it are an expression of important general administrative policies and strategic plans, unlike the administrative committees that specialize in detailed administrative issues.

In this regard, and based on the foregoing, we believe that even if it comes to the necessity of forming a meeting of an administrative board or an administrative committee to take an administrative decision by passing. It is necessary to schedule the work of this meeting in its emergency and correct form, by notifying the members of the date and place of the meeting with an explanation of the urgency along with that notification and that it is urgent. As well as providing the members with all the necessary documents, documents and data immediately, with which it is decided whether or not to take an administrative decision by passing.

### **Second: Deliberation**

In order to achieve the legitimacy of a meeting of an administrative board, and similar to the legality of its administrative decisions issued by it, a certain number of members must be present, since with the completion of the legal quorum, the legitimacy of this meeting is achieved conclusively. Consequently, the correctness of the decisions issued by it follows. The sound administrative decision must be taken with a correct administrative environment and a full-fledged administrative arrangement. Among the most prominent of these images is the administrative decision issued by passing to - the order and correctness of the law - the real circulation of it within the Council of the meeting, which was held in a manner An exceptional emergency dedicated to it, with a real actual presence for all members, in which they exchange ideas and respond to each other's questions, and comment on ideas or developments that are put forward regarding the unanimous topic, presenting their visions, and at the same time, either supporting these visions or correcting them and modifying them violating it or setting it aside. For this reason, the administrative decision is crystallized by passing in its exceptional, circumstantial form, emphasizing this capacity for it, leading to the decision to issue it unanimously without objection from any member; otherwise it is considered an incorrect administrative decision and consequent nullity

In light of the foregoing, and in the same sense, and similar to the issuance of administrative decisions in their normal, quiet, and customary ways, we categorically confirm the content and the result that the deliberation followed in making administrative decisions by passing is completely different from the deliberation in making ordinary administrative decisions, as the first type of these deliberations is dominated by the holistic view in limiting the issues presented to the meeting of the council or the administrative body With the characterization of the decisions issued by this council or body of audacity and steadfastness. We may reach the level of sharpness in decision-making, by being assertive in its issuance due to its connection to exceptional, emergency, force majeure circumstances on the one hand, as well as addressing any issue and delving into it even if it is left to the jurisprudence of the administrative judiciary, because with this type of decisions these issues and what surrounds them are not postponed. of solutions to those judicial jurisprudence, or even waiting for a decision on them, and limiting the difference in content to it.

### **Third: The Vote**

The voting rules must be taken into consideration, including the requirement - unanimity - in the event of approval of the decision by passing as an exception, as the meeting of the council or the committee is not valid unless all members are invited to attend <sup>10</sup>. If the invitation is limited to a certain number of members, with a quorum being completed only, the meeting is void.

The chairman of the council shall be assumed by the person specified by the law. Also, the council or committee must meet in the place designated for it. Determining this is due to the provisions of the laws and regulations regulating it, taking into account the commitment to the agenda, and if a topic outside the agenda is to be considered, a date is set for a new meeting to be held later for consideration, and the case is sent to all members at the date of the new meeting, accompanied by the proposal in which the discussion will take place In order for the members to be informed of the subject that will be presented to the meeting in the event that not all the members attend <sup>11</sup>.

With regard to the rulings of the Egyptian administrative judiciary represented by the judiciary of the Supreme Administrative Court, in relation to the administrative decision issued by the committees, it ruled in one of its rulings that: "The legislator specified the formation of the permanent committee for leadership positions - if his case before the committee occupies the position of general manager, the rank of members must not be less than The committee is assigned the rank of general manager - if he is occupied... to the end of the decision.

## **The Second Requirement: Controls for Administrative Decision-Making by Passing**

As a general asset, administrative decisions do not have to be issued according to a specific formula, or according to a specific form, and this was confirmed by the Saudi Board of Grievances by explicitly saying, “The public administration authority is not bound by a certain form in which it expresses its binding will in the decisions it issues unless the system requires a specific form”.<sup>12</sup> In this way, it is equal to the issuance of the decision, express or implied, in writing or orally, by telephone, or even by telegraph, or even by sign.

Based on the foregoing, the defect of form in the administrative decision is mostly considered secondary unless the system stipulates its essentiality. As an exception to the general principle, referred to above in the mechanism for issuing administrative decisions, the allocation and identification of specific procedural rules for administrative decisions issued by committees and boards of public administration, more precisely; Its administrative decisions issued by passing. Here, passing, in our opinion, is considered an exception to the exception to the general origin. The general origin is as previously clarified; the administration’s issuance of its decisions without a specific or specific form, and the exception is its issuance according to a specific approach in the event that the system stipulates that, and the exception to the exception is centered on the issuance of the administrative decision by passing.

For this reason, the administrative decisions issued by way of passing occupy a very serious importance, both for the public administration that issued them on the one hand, as well as for the treatment of the desired interest in issuing them in this way on the other hand. Therefore, several controls must be taken to issue this kind of decisions, which are as follows:

### **First: The Nature of Decisions made by Passing**

At the outset, it must be noted that these decisions are characterized by a holistic view in limiting the issues presented to the meeting of the committee or the council for consideration, as we mentioned earlier. For this reason, these decisions must be characterized by an “emergency” character or nature, with the presence of which no delay in deciding on them is accepted in a final and urgent manner. As this delay would affect its effectiveness, and may take it out of the scope of the administrative decision issued by passing the scope of the ordinary administrative decision issued in its recognized ways, due to the demise of the emergency circumstance that permitted the issuance of such kind of decisions.

In the same regard, we stress that if it is impossible for the general administrative body to complete the form to be followed in accordance with the law in issuing the administrative decision. It is possible to bypass this form so that its failure does not result in the aforementioned decision being affected by one of the defects of cancellation. The impossibility of its existence is considered a legal justification to cover the defect in the form in making the administrative decision by passing. It may be due to the administration’s inability to take it due to an actual physical impossibility as a result of force majeure, or the act of a foreign person who is not addressed by the decision and it may be due to a legal impossibility of a legal capacity as a result of exceptional circumstances<sup>13</sup>.

The material impossibility to be justified by the defect of form in making the administrative decision issued by passing is required to be long-term, so that it is not worth waiting for it. Thus, the accidental impossibility does not excuse the administration from going beyond the required form.

### **Second: Decisions made under the Pass-through System are Subject to Approval**

These decisions are called the term “administrative decision by passing” and while another is known by the term “administrative decision with approval” and both are two sides of the same coin, that is why it is called “administrative decision by passing or approval”, and

based on that, these decisions and those presented for approval by passing are distinguished by their emergency nature. Therefore, and in order to be taken based on data, documents and documents that enlighten the decision-makers, not to misuse the emergency nature of the transaction, and to be fully aware of the consequences surrounding the transaction, those decisions must be approved unanimously.

### **Third: Unanimity is Achieved in the Decisions Issued by Passing**

Here, we may ask about the amount of legal quorum that must be achieved in the event of an administrative decision by passing? The general principle is that administrative decisions are taken by the majority of their relative or absolute types. However, as a departure from this principle, the decisions taken must be issued by passing unanimously.

This distinct percentage of administrative decisions issued by passing, was decided only because the circumstances that required the issuance of the decision are the ones who created and innovated it as a general procedural principle that must be taken care of by taking and implementing it accurately, otherwise this decision is considered an innovation by the public administration and nothing more, consequent nullity as an effect of cancellation. The form and procedure required to be followed carefully. In view of the lack of administrative decisions, judicial rulings, or jurisprudential references that regulate the issue of the administrative decision issued by passing, it is necessary to exercise the utmost caution and caution in adopting a consensus approach in issuing such decisions.

And if we come to the experience of the Egyptian administrative judiciary in organizing the procedures for issuing administrative decisions by passing before the esteemed Egyptian Administrative Court, I made it clear with frankly that: - "The decision that ends by passing must be legally approved by all members."

Because of the importance of this type of decision, and with our strong reservations about using it according to its specified scope only, and in order to go in the right direction regarding it, and even acknowledge the tendency to deal with it, it is necessary for us to develop a set of advantages, which are offset by a set of negatives that surround it.

## **CONCLUSION**

The study evaluates the subject of the administrative decision issued by passing in its current state in terms of; Attempting to find a legal adaptation of its own, and its advantages and disadvantages, and to propose a new organization that governs its idea, so that we make it an administrative legal situation that achieves its theoretical objectives on the one hand, and the desired application on the other hand, as this study explained the concept of an administrative decision issued by passing, and the stages of its issuance, and the legal implications arising from it, explaining the supreme and basic objective of issuing such kind of decisions, both for the public administration with the aim of achieving the public interest and conducting the work of the public utility regularly and steadily, or for those against whom the decision was issued. With an explanation of the role of this type of decision in influencing and affecting the granting of rights and the arrangement of administrative obligations, it is a legal act in its place and its legal and realistic axis stems from and affirms itself. Aiming from all of this to enrich the legislative aspect, and so that the administrative legislator corrects through it all the previously mentioned defects of the administrative decision issued by passing and making it a purposeful administrative situation that fulfills the aspirations and hopes of administrative law jurists and the aspirations of its judiciary and achieves its desired theoretical and practical legislative objectives. This study concluded with a set of results and suggestions:

### **First: The Results**

- Administrative decisions are the means of the public administration in expressing its will in order to achieve the public interest and to conduct the work of the public utility regularly and steadily, taking an external form, appearance, or template for its issuance, accompanied by steps, procedures and stages to follow in bringing it into existence.
- In order to exercise its powers, the public administration takes correct administrative decisions free from any formal or objective defects. The defects of jurisdiction, form, procedure, reason, violation of laws and regulations or error in their interpretation, deviation or abuse of authority, are among the reasons for canceling the administrative decision.
- Administrative decisions constitute an important and dangerous turning point in the powers of the public administration due to the legal effects that they may have for the administration itself, or for those against whom the decision was issued. For this reason, administrative decisions issued by passing - as an exception to the exception - on the general origin are considered a means and an end in themselves achieving what they want it is taken from a public good without wasting the principle of legality and violating it.
- Making administrative decisions by passing is invalid for the following reasons:
- If a specific place or location for the meeting has not been specified, assigning its members the task of issuing an administrative decision by passing, and this procedure is an essential and binding matter for the purposes of transparency, discussion and expressing opinions clearly and unambiguously for the Administrative Council with the mandate to issue the administrative decision, which is what the legislator aspires to from forming the Council to take Administrative decision by pass.
- If the nature of the formation of public administration councils and committees is not characterized by a collective consensual character, the most prominent goal is to preserve the public interest and the interest of individuals at the same time.
- If the administrative decisions issued by passing are dominated by the nature of confidentiality and this character is completely contrary to the nature of the administrative decision issued by passing because the person who passes the administrative decision in most cases is not one of the decision-makers.
- If the administrative decision issued by passing does not have a place, a reason and a source, which is usually the council (a number), and that these pillars are not achieved by dividing the council through the process of passing.
- Finally, do not be encouraged to issue administrative decisions by passing - as an exception - on the general principle that this is not permissible in the first place, in the event of exceptional and urgent circumstances, in response to the primary goal of achieving the public interest in accordance with the rules of form and procedure specified by the system in a way that guarantees it Legal stability and therefore do not become subject to appeal for cancellation.

## Second: Suggestions

- It becomes clear through the legal, jurisprudence and judicial treatment of this study that the administrative decisions issued by passing in their nature are completely different from the ordinary administrative decisions. By analogy, the emergence of a difference in judgments is a presumed matter between them, and there is no room for interpretation. Accordingly, it is logical in jurisprudence, law and judiciary to recommend and work with individuals of this type of decisions with their own legal provisions, completely different from ordinary administrative decisions. From this point of view and based on it, we suggest adding a legal presence to administrative decisions issued by passing to disappear with it all legal and jurisprudential problems on the one hand, And to

strengthen the legislative side on the other hand. And all of this is achieved through the formulation of a paragraph or an independent legal text in the civil service system that says “Consideration of administrative decisions issued by administrative committees and councils of government agencies and issued by passing.”

- We hope that the purposeful administrative judiciary, the explainer, the construction, the renovator revealing solutions to everything that is new, and as a prelude to the administrative legislature to include these decisions in the explicit judicial text on them in its future judicial rulings.
- We suggest to the government agencies affiliated with the two authorities - legislative and executive - to take into account the text on administrative decisions issued by passing in their internal systems by singling out special legal texts, to be relied upon in the event of resorting to them. For this reason, we also suggest the necessity of adopting a clear legal text in order to regulate the provisions of administrative decisions issued by passing and in line with the first proposal made by this study.
- We suggest that the governmental administrative bodies affiliated to the executive authority take into account the provision in their bylaws and internal regulations on the appropriate legal guarantees in the event that they issue administrative decisions by way of passing, explaining in them their lack of administrative responsibility to compensate or cancel such decisions, and the damages that may result from them Material or moral may be attached to those against whom it was issued, since it was passed by passing based on an exceptional emergency circumstance that prompted it to take it.
- Finally, we suggest to - the executive authority - represented by its governmental bodies of institutions or bodies and the subordinate committees and administrative councils, the necessity of singling out a corner or a legal division within the staff of the legal departments assigned to it, and that this division contains a qualified legal administrative cadre specialized in this kind of Decisions with a view to reviewing them and expressing opinion and advice regarding them before referring them to the emergency meeting, which will decide on them by passing. And all of this is to ensure that it conforms to the principle of legality on the one hand, and to ensure that it is free of any violations that may lead to its placement in the courts of revocation on the other hand, before it is approved and implemented in its final form.

## FOOTNOTES

- 1) See in this regard: - Ali Shatnawi, Encyclopedia of the Saudi Administrative Judiciary (The Board of Grievances), Al-Rushd Library Publishers, Book One, Second Edition (2015), 13.
- 2) It should be noted in this regard about the most important types and forms of administrative decisions, which are: “In terms of the generality of the discourse, decisions are divided into: organizational administrative decisions (regulations) and subdivided from them; executive regulations and independent regulations, and individual administrative decisions, and on the other hand there are administrative decisions In terms of public administration expressing its will, and branching from it; explicit as well as implicit and finally negative decisions. See in this regard: - Rabeh Abdullah, Administrative Decision, Dar Al-Hamid for Publishing and Distribution (2012 AD, 1433 AH) first edition, 38.
- 3) In the same sense, “Every person of the law who applies and possesses the capacity of public administration is legally authorized to issue administrative decisions, and the rest of them do not have this authority, in order to achieve the desired public interest on the one hand, and to serve public utilities and the perpetuation of their regular and steady work. on the other hand". See in this regard: - Aib Dalal, Unilateral Administrative Decision, Master's Thesis (2016), Mohamed Boudiaf University - M'Sila, Faculty of Law and Political Science, pages (8,9).
- 4) Most of the constitutions of the countries of the world - including us - went to the meaning of administrative procedures (decisions), specifically in their emergency and exceptional character, considering that these procedures are in fact based on a higher national public interest throughout the state as a whole, from that which came explicitly in The text of Article - 62 - of the Basic Law of Saudi Governance, which states:- “If a danger arises that threatens the safety of the Kingdom, its territorial integrity, or the security and interests of its people, or hinders state institutions from performing their

duties, he may take any quick measures He guarantees confronting this danger, and if the King deems these measures to have the capacity of continuity, he shall take what is necessary in order to do so. The Basic Law of Saudi Governance issued by Royal Decree No. 27/8/1412 AH, published on 2/9/1412 AH. Corresponding to Article 149 of the amended Constitution of the Arab Republic of Egypt for the year 2014, issued on Rabi' al-Awwal 17, 1435 AH, corresponding to January 18, 2014 AD, and published in the Official Gazette - Issue 3/A bis.

- 5) See in this regard: - Ibrahim Shiha, Administrative Judiciary - Jurisdiction of Administrative Judiciary - Annulment Case, (2002), Mansha'at al-Maaref, 529.
- 6) In the same regard, we believe that: The justification and the legal basis for taking administrative decisions by passing is governed by the emergency nature that is achieved with it. It does not accept delay in issuing such kind of decisions, as the delay would affect their effectiveness and feasibility.
- 7) See in this regard: - Ibrahim Shiha, Administrative Judiciary - Jurisdiction of Administrative Judiciary - Annulment lawsuit, previous reference, 530.
- 8) See in this regard: - Nawaf Kanaan, Administrative Decision-Making between Theory and Practice (1983), second edition, Al-Farazdaq Commercial Press, 318.
- 9) By extrapolating the provisions of the bylaws and regulations of the Saudi Civil Service Council with regard to the formation of committees and the conduct of their work, the Council decided in its Resolution No. 1/1270 dated 11/21/1428 AH, which includes the Council's approval of the list of joint government committees and the organization of their work.
- 10) See in this regard: - Shaaban Salama, Shaaban, the defect of form in the administrative decision: an analytical study compared to the provisions of the Egyptian State Council, published research, volume one, number thirty-first, volume one (2015), yearbook of the Faculty of Islamic and Arabic Studies for Girls in Alexandria, p. 697.
- 11) See in this regard: - Shaaban Salama, Shaaban, the defect of form in the administrative decision: an analytical study compared to the provisions of the Egyptian State Council, previous reference, pg. 697.
- 12) Resolution No. 6/86 of 1401 AH, Case No. 497/1/Q. For the year 1400 AH, published in the Collection of Shariah and Regulatory Principles for the year 1401 AH, p. 291.
- 13) See in this regard: - Omar Al-Turkmani, The illegality of the form, the procedures, and the place in the administrative decision (2016), published research, Al-Isra University Journal for Human Sciences, first issue, pages 187-188. In the same regard, Dr. Abdulaziz Khalifa went to That "ignoring the prescribed form for the physical impossibility of its completion does not lead to the invalidation of the administrative decision, as well as the legal impossibility of completing the form, as in the case of exceptional circumstances, does not also lead to the invalidation of the administrative decision, even though it was issued under the influence of those circumstances devoid of the form decided by the law ". See in this regard: - Abdel Aziz Khalifa, Administrative Decisions in Jurisprudence and the Judiciary of the State Council (2007), Mansha'at al-Maaref, Alexandria, pages 115-116.

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