

## REQUIREMENTS FOR AN ACTION FOR ANNULMENT OF ADMINISTRATIVE DECISIONS AND GROUNDS OF APPEAL IN IRAQ AND IRAN

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### **Abstract**

An action for the annulment of an administrative decision is subject to certain conditions that must be satisfied in order for the claim to be admissible before the competent court. These conditions constitute some of the most important preliminary matters that must be fulfilled before the administrative judiciary proceeds to adjudicate the merits of the case. Although these requirements vary to some extent from one legal system to another, there are general conditions commonly recognized in most legal systems, including the Iraqi and Iranian legal frameworks. These conditions differ according to their subject matter: some relate to the contested administrative decision itself, others pertain to the legal interest of the claimant who brings the annulment action, and still others concern the time limits for filing the claim.

There are numerous grounds upon which an administrative decision may be challenged through an action for annulment. These grounds are represented by defects affecting one or more of the essential elements of the administrative decision, rendering it unlawful and ultimately leading to its annulment. Such defects may arise in the element of jurisdiction, where the administrative decision is issued by an authority lacking legal competence. The defect may also relate to the form of the administrative decision. Furthermore, the defect may concern the subject matter of the decision, particularly where it violates applicable legal rules. Likewise, a defect may occur in the purpose of the decision, commonly referred to as misuse or abuse of power.

**Keywords:** Conditions of annulment action; administrative decision; grounds for challenge

### **Introduction**

An action for the annulment of an administrative decision is a judicial claim brought by an interested party before the administrative judiciary, seeking the annulment of an administrative decision issued in violation of prevailing legal rules.

The action for annulment originated in French administrative law through the Conseil d'État after it was granted the authority of delegated jurisdiction. It is considered the principal means of confronting unlawful administrative decisions due to the existence of one or more defects in their constituent elements. In Iraq, the legal basis for the establishment of the action for annulment is found in the legislative provisions contained in Law No. 106 of 1989 (the Second Amendment to the Law of the State Consultative Council), which established the Administrative Judiciary Court and defined its jurisdiction. Accordingly, the action for annulment in Iraq is a creation of the legislature, which regulated its provisions explicitly and clearly within the Law of the State Consultative Council (currently the State Council).

In the Islamic Republic of Iran, the origins of the action for annulment are linked to the development of the concept of judicial oversight over administrative actions, based on the

principle of the rule of law and the necessity of protecting individual rights. Its constitutional foundation is found in Article 173 of the Constitution of the Islamic Republic of Iran of 1979, as amended. Pursuant to this article, the Administrative Justice Court Law was enacted in 1982 and subsequently amended. Under Article 10 of the Law of the Administrative Justice Court (Divan-e Edalat-e Edari), the Court has jurisdiction to examine complaints brought by individuals against decisions, regulations, and instructions issued by administrative authorities that conflict with laws and regulations or exceed the powers of the issuing authority.

Accordingly, this study is limited to examining the conditions required for the admissibility of an action for annulment before administrative courts, followed by an analysis of the grounds for seeking annulment.

## **Section One**

### **Conditions of the Annulment Action**

The conditions of an annulment action are the requirements that must be satisfied for the claim to be admissible before the competent court. Where these conditions are met, the court proceeds to examine the merits of the dispute presented in the action. Conversely, if one or more of these conditions are absent, the court will dismiss the action without addressing its substance and without examining the legality of the challenged administrative decision. Only when all the conditions required for the admissibility of the annulment action are fulfilled does the court move to the stage of ruling on the merits of the claim.

Administrative legal doctrine and judicial practice have established a set of fundamental conditions for the admissibility of an annulment action. These conditions include those relating to the administrative decision challenged by annulment, those relating to the legal interest of the claimant, and those relating to the statutory time limit for filing the action. These conditions will be examined as follows.

### **First subsection**

#### **Conditions Relating to the Administrative Decision Challenged by Annulment**

The conditions that must be met by the administrative decision challenged by annulment consist of three essential requirements: the challenged decision must constitute a final administrative decision; it must have a direct effect on the legal position of the claimant; and it must have been issued by a national administrative authority.

#### **First part : The Requirement that the Challenged Administrative Decision Be Final**

A final administrative decision is one issued by an administrative authority without the need for its approval or ratification by a higher authority. However, if the decision is not enforceable because it requires approval by a superior authority or another higher administrative body, it is not considered final. In such a case, the decision cannot be challenged through an annulment action.<sup>1</sup>

Administrative decisions must pass through all stages of the administrative hierarchy in order to acquire legal existence, including recommendation, deliberation, proposal, drafting of the decision, and its ratification by the authority legally empowered to do so. Prior to ratification, a decision constitutes merely a preparatory measure that produces no legal effects and, therefore, is not subject to challenge by way of an annulment action.

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<sup>1</sup> - Mahmoud Atef Al-Banna, *Al-Waseet fi Al-Qada' Al-Idari (The Mediator in Administrative Judiciary)*, 2nd edition, without publisher, 1999.

Likewise, preparatory and preliminary measures that precede the adoption of the final decision are not open to challenge by annulment, such as directions, notifications, and recommendations. The same applies to subsequent acts that follow the issuance of the decision and do not produce independent legal effects, including instructions issued solely to facilitate the implementation of such decisions.<sup>2</sup>

### **Second part: The Requirement that the Challenged Decision Affect the Legal Position of the Claimant**

This condition requires that the challenged administrative decision produce legal effects on the claimant's legal position, in the sense that the decision must cause harm or prejudice to

the claimant. The fulfillment of this condition presupposes that the decision, by its very nature, generates binding legal effects.<sup>3</sup>

On this basis, the challenge by annulment must be directed against the operative part of the decision that produces legal effects affecting the claimant's legal position. Consequently, it is not permissible to challenge the individual elements of the administrative decision in isolation; for example, the reason for the decision cannot be challenged independently of its operative part. Likewise, annulment actions may not be brought against preparatory acts that pave the way for the issuance of a decision on a particular matter, nor against internal administrative measures adopted by the administration to organize work within a public facility. This prohibition also extends to measures taken by the administration for the interpretation, application, or implementation of a specific administrative decision, insofar as such measures do not in themselves produce independent legal effects.<sup>4</sup>

### **Third part: The Requirement that the Decision Be Issued by a National Administrative Authority**

This requirement is consistent with the concept of state sovereignty, under which public authorities derive their powers and competences from the sovereignty of the state as its principal expression. The state exercises sovereignty over its territory and in relation to its citizens, whereas such sovereignty does not extend to other states or to bodies affiliated with them. Accordingly, an annulment action is admissible only with respect to administrative decisions issued by national administrative authorities, and it is not admissible against decisions issued by foreign authorities.

Consequently, annulment actions cannot be brought against decisions issued by representatives of other states residing within the territory of the state. Nor are such actions admissible against decisions taken by individuals working on behalf of a foreign state or an international organization, such as employees of the United Nations. The decisive criterion in this regard is that the decision must emanate from the autonomous will of a

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<sup>2</sup>George Shafik Sari, *Decisions Subject to Separation in Administrative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 18 and following.

<sup>3</sup> Khaled Samara Al-Zoghbi, *Administrative Decision: Theory and Practice*, 2nd edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1999, p. 34

<sup>4</sup>Hisham Abdel Moneim Akasha, *The Role of the Administrative Judge in Evidence*, Dar Al-Nahda Al-Arabiya, Cairo, 2003, pp. 149–150.

Khaled Khalil Al-Zaher, *Administrative Law*, 1st edition, Dar Al-Maysara for Publishing and Printing, Amman, Jordan, 1997, p. 114.

national administrative authority, issued in application of domestic laws and by virtue of the authority's national public powers.<sup>5</sup>

It is also required that the decision be issued by an administrative authority, whether centralized or decentralized. Accordingly, annulment actions are not admissible against decisions issued by private entities, even if they possess legal personality, as such entities are considered persons of private law. Consequently, they do not issue administrative decisions in the legal sense, and their acts are therefore not subject to challenge by way of annulment.<sup>6</sup>

### **Second subsection**

#### **Conditions Relating to the Legal Interest of the Claimant**

One of the well-established principles in litigation is that legal interest constitutes the basis of any action; without an interest, no action may exist. Legal interest therefore represents the justification for bringing a claim on the part of the claimant.

In order to clarify this requirement, the conditions and types of legal interest in annulment actions will be examined.

#### **First part: Conditions of Legal Interest in an Annulment Action**

The admissibility of an annulment action requires the fulfillment of two fundamental conditions relating to the claimant's legal interest:

##### **First: The Interest Must Be Personal and Direct**

This means that the challenged decision must have produced a direct effect on the claimant's legal position. Such an interest may be material or moral in nature, and it may be either actual or potential.<sup>7</sup>

##### **Second: The Existence of Legal Interest at the Time of Filing the Action**

At the time of filing an annulment action, the existence of legal interest is a fundamental condition. However, a question arises as to whether this condition must continue to exist until the court renders its final decision. The answer to this question has been a matter of debate among scholars and administrative courts.

The French Conseil d'État has established that what matters is the existence of legal interest at the time the action is filed; it is not necessary for the interest to persist until the judgment is issued. This approach reflects the notion that an annulment action serves as a means to defend the principle of legality, protect public interest, and at the same time safeguard the personal interest of the claimant.

In contrast, the administrative judiciary in Iraq has taken a different stance, requiring that the legal interest continue to exist until the case is finally adjudicated.

As for the Iranian Administrative Justice Court (Divan-e Edalat-e Edari), the existence of legal interest at the time of filing the action is a necessary condition. However, there is no explicit provision stating that the action automatically lapses if the interest ceases before the judgment is issued. In line with administrative judicial principles particularly the

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-6 a'eema Al-Jarf, *Judicial Control over Public Administration Acts: Annulment Jurisprudence*, Dar Al-Nahda Al-Arabiya, Cairo, 1984.

Zaki Mohamed Al-Najjar, *Principles and Rules of Administrative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1994, p. 418..

-7Suleiman Mohamed Al-Tamawi, *Administrative Judiciary (Annulment Jurisprudence)*, Dar Al-Fikr Al-Arabi, Cairo, 1976, p. 370..

-8Mohamed Anas Qasim Jaafar, *Al-Waseet fi Al-Qanun Al-Aam – Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 1987, p. 329.

principle of preserving the effectiveness of justice it can be inferred that if the interest disappears or the underlying reason for the action ceases, the court may reject the claim due to the absence of a continuing subject matter or because the defendant is no longer affected. Scholarly opinions on this matter vary, reflecting the divergent approaches of administrative courts<sup>8</sup>

### **Second part : Types of Legal Interest in an Annulment Action**

It is well established that in ordinary civil actions, legal interests are classified based on the rights on which they are founded. In annulment actions, however, legal interests are generally categorized according to the status or capacity of the claimant.

#### **First: Interests of Individuals**

The status of individuals varies, particularly for non-employees, and consequently their legal interests and positions differ from one person to another, as follows:

##### **1. Interest of the Owner**

An owner has the right to challenge any infringement of property rights granted by law. Similarly, an owner may file an annulment action against any defective administrative decision that affects their legitimate interests, even if the interference does not rise to the level of an outright violation of ownership rights, provided that the decision interferes with the exercise of their lawful rights as an owner.

##### **2. Interest of the Beneficiary of Public Services**

A beneficiary of a public service has the right to challenge administrative decisions that regulate access to or the provision of such services. For instance, in the case of an economic facility, beneficiaries may challenge decisions organizing the operations of the facility if such decisions cause harm to those receiving its services.

##### **3. Interest of the Financier (Taxpayer)**

The term "financier" refers to individuals who bear financial obligations, such as paying taxes. A financier has the right to challenge any administrative decision that violates the law and results in the expenditure of public funds. In this capacity, the taxpayer has a legitimate interest in filing an annulment action.<sup>9</sup>

##### **4. Interest of the Professional or Practitioner**

Every professional, craftsman, trader, or manufacturer has the right to challenge administrative decisions that regulate their profession or trade if such decisions infringe upon the freedom of trade or industry. This is because the regulation affects a personal interest of the claimant.

##### **5. Interest of Members of a Religious Community**

Members of a religious community have the right to challenge administrative decisions that affect their beliefs or the practice of their religious rites.

#### **Second: Interests of Employees**

An employee's right to challenge decisions is determined by the extent to which the decision affects their professional interests. The legal position enjoyed by the employee confers a personal interest and right to request the annulment of defective administrative decisions affecting their employment. Conversely, decisions relating to the organization of public facilities do not confer a personal interest on the employee, as such decisions are aimed at serving the public interest. It is the duty of the employee to perform their

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<sup>9</sup>Fouad Al-Attar, *Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 1967, p. 616  
10-C.E.29 mars,1901.Gasanova.Rec .p.333 .

professional responsibilities in accordance with the laws governing the operation of the public facility.<sup>10</sup>

### **Third: Interests of Legal Entities**

Legal entities possessing corporate personality, such as associations, unions, syndicates, and similar organizations, have the right to request the annulment of unlawful administrative decisions that affect the collective interests of their members or that may cause harm to the objectives for which the entity was established.

However, if an administrative decision primarily affects the personal rights of a specific member, that member has the right to challenge the decision to protect their individual interests. The entity to which the member belongs may intervene after the action is filed. Additionally, the entity may file an annulment action on behalf of its employee based on a power of attorney, in which case the role of the entity is equivalent to that of an ordinary agent.

### **Subsection Three**

#### **Conditions Relating to the Time Limit for Filing the Lawsuit**

The legislator has set a specific time limit for filing an annulment appeal against administrative decisions in order to ensure the stability of legal positions and to avoid leaving disputes between the administration and individuals open-ended and indefinite. The time limit for filing the appeal is considered a matter of public order; therefore, no agreement may be made to contravene it.

#### **First Part : Commencement Date of the Appeal Time Limit**

The time limit for filing an annulment appeal begins from the date of publication of the contested administrative decision, the date of notification, or the date of certain (actual) knowledge of the administrative decision.

#### **First: Publication**

Publication refers to the dissemination of administrative decisions in the official gazette or in official administrative bulletins. Publication is considered the legally recognized procedure for initiating the time limit for filing an annulment lawsuit against regulatory administrative decisions, which contain substantive rules characterized by abstraction and generality. Publication in local newspapers or through media outlets is not taken into account with respect to such decisions.

Publication constitutes an irrebuttable presumption of knowledge on the part of the concerned individuals regarding the administrative decision. Accordingly, no person may plead ignorance or lack of awareness of the legal rules issued by the state, whether these rules are contained in ordinary legislation or in regulatory administrative decisions.<sup>11</sup>

#### **Second: Notification**

As a general rule, notification constitutes the primary means of knowledge with respect to individual administrative decisions. It is the method through which the administration conveys the content of the decision to one or more specifically identified individuals. For notification to produce its legal effect in initiating the time limit for filing an annulment appeal, it must encompass all the elements of the administrative decision.

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11 Sami Jamal Al-Din, *Al-Waseet fi Da'wa Ilgha' Al-Qararat Al-Idariya* (The Mediator in Administrative Decision Annulment Cases), 1st edition, Mansh'at Al-Ma'arif, Alexandria, 2004, p. 248.

-12 Mohamed Marghani Khairi, *Al-Wajeez fi Al-Qanun Al-Idari*, Part Two, previous source, p. 374..

Furthermore, notification must satisfy the requirements of proper notification, including the identification of the authority that issued the decision, the competent official, and that it be addressed personally to the concerned individual if he or she enjoys full legal capacity, or to his or her legal representative in cases of partial or lacking legal capacity. Where the decision is directed at a legal person, notification shall be made to its legal representative.

### **Third: Certain (Actual) Knowledge**

Certain knowledge serves as a substitute for publication and notification, provided that the interested party's awareness of the content of the decision is definite and eliminates any ambiguity or ignorance. In such cases, the time limit begins to run from the date on which such certain knowledge is established.

Mere presumptive or hypothetical knowledge is not sufficient; rather, certain knowledge must be fixed and ascertainable in time so as to determine the date from which the time limit is calculated. In general, certain knowledge of an administrative decision may be established through any fact or presumption indicating its occurrence, without being restricted to a specific means of proof. It is for the judiciary to verify the existence of such fact or presumption and to assess the legal effect that may be attributed to it, particularly as to whether it is sufficient to establish knowledge of the contested decision. It should be noted that the burden of proving certain knowledge rests with the administration.

### **Part Two: Cases in Which the Time Limit Is Extended**

Although the time limit prescribed for filing an annulment lawsuit is considered a matter of public order and may not be exceeded or departed from under any circumstances, the appeal period may nevertheless be extended for specific legal or judicial reasons. Such extension results in a prolongation of the time limit, either through the suspension or the interruption of the period.

### **First: Suspension of the Time Limit**

Suspension refers to the temporary cessation of the running of the time limit after it has already commenced, provided that the running of the period resumes once the cause of suspension has ceased. Consequently, the portion of the appeal period that has already elapsed is taken into account, and the remaining part continues to run so as to complete the original time limit.<sup>12</sup>

The time limit for filing an annulment lawsuit may be suspended due to force majeure when it becomes impossible for the interested party to undertake the necessary procedures to safeguard his or her rights. The administrative judge enjoys broad discretionary authority in determining whether an unforeseen circumstance qualifies as force majeure; accordingly, such a circumstance may lead to the suspension of the running of the time limit.

### **Second: Interruption of the Time Limit**

Interruption of the time limit occurs when a specific act is performed or a particular event takes place, resulting in the nullification of the days that have already elapsed from the calculation of the time limit for filing an annulment lawsuit. In such cases, a new and complete time limit begins to run after the act or event has ceased or ended.

The occurrence of the interrupting act or event has the same legal effect regardless of whether it takes place at the beginning, during, or at the end of the original period. In all cases, the previous period is cancelled, and a new time limit starts to run upon the termination of the cause that led to the interruption.

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-15Sami Jamal Al-Din, *Al-Waseet fi Da'wa Ilgha' Al-Qararat Al-Idariya*, previous source, p. 312.

Interruption of the time limit for filing an annulment lawsuit occurs through one of the following three procedures:

1. Submitting an administrative grievance;
2. Filing a request for exemption from judicial fees;
3. Bringing an annulment lawsuit before a court lacking jurisdiction.

### **Subsection Three**

#### **Legal Effects Resulting from the Expiry of the Appeal Time Limit**

The lapse of the prescribed time limits for filing an annulment lawsuit is considered a matter of public order. Accordingly, the court may not disregard it. The consequence of the expiry of the time limit for filing an annulment appeal against an administrative decision without initiating the lawsuit is that the decision becomes final and immune from any challenge based on illegality.

Nevertheless, administrative jurisprudence has developed certain solutions aimed at overcoming the effects of an unlawful administrative decision that has become immune from annulment. These solutions include the following cases:

**First:** Where the possibility of annulment is precluded due to the lapse of the time limit, the avenue of compensation remains open. A compensation claim is not time-barred except after the lapse of a long period, which may extend to fifteen (15) years in accordance with the rules of civil law.

**Second:** The plea of illegality leads to results equivalent to those of annulment. Thus, if the contested decision is regulatory in nature and the time limit for filing an annulment action has expired, any person subject to its provisions may raise a plea of illegality against the regulatory decision sought to be applied to him or her. However, the regulatory decision remains effective with respect to third parties.

**Third:** If the time limits for challenging a regulatory administrative decision by way of annulment have expired, an individual may wait until an individual decision is issued pursuant to the provisions of the regulation, and then challenge that individual decision by an annulment action, basing the claim on the illegality of the regulation upon which the individual decision is founded.

**Fourth:** Where an administrative decision was issued under specific circumstances and those circumstances subsequently changed such as when the decision was based on legislation that was later repealed or amended the interested party may request the annulment of the decision so as to bring it into conformity with the new circumstances or the new legislation. If the administration refuses such a request, the individual may challenge the decision judicially. As for a void decision, which is tainted by a grave defect depriving it of its administrative character, it is deemed non-existent and equated with material acts.

### **Section Two**

#### **Grounds Justifying an Annulment Action**

It is well established that an administrative decision is based on five essential elements: jurisdiction, form, subject matter, purpose, and cause. When any defect affects one of these elements, it constitutes a ground for challenging the decision by way of an annulment action.

#### **Sub Section One**

##### **Defects Affecting the Element of Jurisdiction**

A defect of jurisdiction refers to the lack of legal authority to adopt a specific decision, due to the requirement that such decision be issued by another official or by a different administrative body.<sup>13</sup>

A defect of lack of jurisdiction is characterized as a matter of public order, which entails several legal consequences:

1. If it appears to the judge that the administrative decision was issued by an authority lacking jurisdiction, the judge may raise the issue proprio motu and rule accordingly, even if it has not been invoked by the claimant.
2. The rules of jurisdiction are not established for the benefit of the administration, but rather to serve the public interest; therefore, the administration may not agree with individuals to modify the jurisdictional rules prescribed by law in any contractual arrangement between them.
3. Any violation by the administration of the rules of jurisdiction under the pretext of urgency or for any other reason is legally impermissible, except in cases of necessity that justify such violation and remain subject to judicial review.
4. A plea of lack of jurisdiction may be raised at any stage of the proceedings.
5. The judge may not adopt an extensive interpretation of the legal texts governing jurisdiction.
6. The administration may not rectify or validate an administrative decision tainted by lack of jurisdiction through a subsequent measure; rather, a new decision must be issued in accordance with new procedures that fulfill the requirements of a valid administrative decision.

A defect of jurisdiction may take the form of a gross lack of jurisdiction or a simple lack of jurisdiction.

#### **First : Gross Lack of Jurisdiction (Usurpation of Power)**

When the defect of jurisdiction is gross in nature, it amounts to usurpation of power. In such cases, the administrative decision is not merely void, but rather deemed non-existent and deprived of its administrative character, and it is therefore not subject to immunity resulting from the lapse of the appeal time limit.

Both doctrine and case law have agreed upon specific instances constituting usurpation of power, including the following:

**First:** Issuance of the decision by an ordinary individual who does not possess the status of a public official. Administrative decisions issued by individuals who do not enjoy the status of public officials, whereby they unlawfully assume the exercise of administrative powers, are considered non-existent and devoid of any legal effect. Such conduct constitutes a gross defect of lack of jurisdiction.<sup>14</sup>

**Second:** Issuance of a Decision by an Unauthorized Employee

When a clerical or subordinate employee issues an administrative decision, this constitutes usurpation of power. Such a decision is considered non-existent and devoid of any legal effect, as these employees lack the legal authority to issue administrative decisions. Consequently, the decision cannot produce any binding or enforceable legal outcomes.<sup>15</sup>

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-16 Suleiman Mohamed Al-Tamawi, *General Theory of Administrative Decisions*, 5th edition, Dar Al-Fikr Al-Arabi, Cairo, 1984, p. 303.

18 -C.E., 5 March 1946, *Marion*, p. 113, cited in Dr. Abdel Ghani Bassiouni Abdullah.

-19 Adnan Al-Ajlani, *Administrative Judiciary and the State Council*, Damascus University Press, 1959, p. 41..

. **Third:** Encroachment by the Executive Authority on the Jurisdiction of the Legislative Authority

The enactment of laws falls within the exclusive jurisdiction of the legislative authority. Therefore, any intervention by the executive authority in regulating matters that the law has assigned to the legislature constitutes an encroachment and an overreach of authority. As a result, any administrative decisions issued in such circumstances are considered null and void and have no legal effect.

The Egyptian Administrative Court of Justice ruled in 1957 that “an administrative decision is deemed null only in cases of usurpation of power, such as when the executive authority undertakes an act that falls within the jurisdiction of the legislative authority.”<sup>16</sup>

**Fourth: Overstepping by the Executive Authority into the Jurisdiction of the Judiciary**

It may occur that the executive authority issues a decision concerning matters that fall within the jurisdiction of the judiciary. Such an act constitutes a usurpation of authority, and the decision issued in this regard is considered null and void, except in cases where the law grants councils or administrative committees the power to adjudicate a specific category of disputes, which is regarded as an exception to the general rule.<sup>17</sup>

**Fifth: Overstepping by One Administrative Authority into the Jurisdiction of Another Unrelated Administrative Authority**

An encroachment by one administrative authority on the jurisdiction of another administrative authority, with which it has no hierarchical or subordinate relationship, constitutes a usurpation of authority. Consequently, this represents a serious defect in jurisdiction, rendering the decision null and void.

. **part Two: Simple Defect of Jurisdiction**

A simple defect of jurisdiction occurs within the administration of the executive authority and its employees as a result of violating the rules of distribution of powers, whereby the source of the decision exceeds the limits of its authority. This type of defect does not render the decision null and void but leads to its invalidity and makes it subject to annulment. However, it is not permissible to challenge it through annulment once the statutory period for filing such a challenge has expired, as the decision becomes immune from annulment after the lapse of the prescribed period.<sup>18</sup>

The doctrine and judicial practice have agreed on three forms of a simple defect of jurisdiction: a defect of jurisdiction in terms of the subject matter, a defect of jurisdiction in terms of time, and a defect of jurisdiction in terms of place.

**First: Defect of Subject-Matter Jurisdiction**

This refers to the issuance of a decision on a particular matter that falls within the jurisdiction of an official or authority other than the one that issued it. This occurs when an administrative body encroaches on the jurisdiction of a parallel administrative body, when a higher administrative authority encroaches on the jurisdiction of a lower one (or vice

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<sup>20</sup>Refer to its judgment issued on 18-3-1957, Case No. 2796, Judicial Year 9, *Principles Established by the Administrative Judiciary in Ten Years 1947–1957*, Year 11, p. 386

<sup>-21</sup>Othman Khalil Othman, *State Council and Oversight of Administrative Acts*, 5th edition, Alam Al-Kutub, no year, p. 30.

<sup>-22</sup>Khidr Akoubi Youssef, *The Iraqi Judiciary's Position on Oversight of Administrative Decisions*, 1st edition, Al-Hawadith Press, Baghdad, 1976, p. 104.

versa), or when a central authority exceeds the jurisdiction of decentralized bodies. Examples include one minister encroaching on the jurisdiction of another minister, the head of one authority acting beyond the powers of another authority, or a head of a department imposing a penalty on an employee when such power is reserved to the minister.<sup>19</sup>

### **Second: Defect of Temporal Jurisdiction**

The exercise of powers granted to members of an administrative authority is limited to a specific period, which ends upon the expiration of that term. Accordingly, an employee may not issue a decision before assuming their position or after the termination of their public service relationship; any decisions issued in such circumstances are defective due to temporal jurisdiction. Similarly, elected councils or administrative committees may exercise their powers only within the period specified for them.

Moreover, if an employee is suspended from work or placed on compulsory leave, they may not exercise their powers during that period. However, if the employee is on regular leave or an official holiday and then returns to work after cutting the leave short, they are entitled to exercise their powers upon resumption of duties..<sup>20</sup>

### **Third: Defect of Territorial Jurisdiction**

Legal rules specify a particular territorial scope within which an administrative officer may exercise the powers granted to them. Accordingly, no employee may exceed the limits of this jurisdiction; otherwise, their action is considered defective due to lack of territorial jurisdiction. For example, if a governor issues a work permit to a person employed in another governorate, this constitutes a territorial defect. Although this type of defect is rare, members of the administrative authority generally ensure that they carry out their activities within the territorial boundaries defined by law.<sup>21</sup>

### **Second sub Section: Defects Related to Form**

A defect of form refers to the failure of the administration to adhere to the rules, procedures, and formal requirements that must be followed when issuing administrative decisions. Compliance with these rules prevents the issuance of arbitrary decisions, ensuring both the proper issuance of decisions and the smooth functioning of public services. Furthermore, formal rules are often designed to protect the interests of individuals, granting them safeguards against the broad powers of the administration. However, an excessive focus on formalities may lead to delays and complications in administrative processes, potentially harming both the public interest and the interests of individuals.<sup>22</sup>

The administrative judiciary has distinguished between **substantial (essential) and non-substantial (non-essential) formal rules**.

### **First part : Forms of Formality in Administrative Decisions**

#### **First: Essential Formalities**

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-25 Judgment of the Egyptian Administrative Court issued on 12/12/1954, cited in Dr. Hamdi Yassin Akasha, *Administrative Decision in the State Council Jurisprudence*, Mansh'at Al-Ma'arif, Alexandria, 1987, p. 432.

-26 Maher Saleh Alawi Al-Jubouri, *Al-Waseet fi Al-Qanun Al-Idari*, Dar Ibn Al-Atheer for Printing and Publishing, University of Mosul, 2009, p. 329..

-27 Mohamed Abdel Harari, *Oversight of Administrative Acts in Libyan Law*, Publications of Al-Fateh University Complex, Libya, 1990, p. 199.

-28 Maher Saleh Alawi, *Administrative Decision*, Dar Al-Hikma for Printing and Publishing, Baghdad, 1991, p. 112

A formality is considered essential to an administrative decision if the law explicitly requires its observance. In such cases, a decision issued in violation of the required formalities is deemed null and void. Essential formalities generally appear in two aspects: **pre-decision procedures** and the **external form of the administrative decision**.

### 1. Pre-Decision Procedures

Preliminary procedures become essential when the legislature mandates them for issuing specific administrative decisions. Failure to comply with these procedures renders the administrative decision null. The administrative judiciary has consistently held that preliminary procedures for disciplinary decisions such as notifying the accused of the alleged facts, providing access to relevant documents, or giving the opportunity to defend themselves are essential; neglecting these steps results in the annulment of the disciplinary decision.

Occasionally, the law requires the administration to seek the opinion of another designated authority before issuing a decision. If the administration fails to follow this procedure, its decision is considered null, whether the requested opinion is binding or non-binding.

### 2. External Form of the Administrative Decision

Generally, administrative decisions are not required to take a specific form and may be issued orally or by gesture. However, the law sometimes requires the decision to be issued in writing. In such cases, the administration must comply with the legal requirement and issue the decision in written form; failure to do so renders the decision null and void.<sup>23</sup>

reasoning (justification) is also linked to the external form of the administrative decision. Reasoning refers to the administration's disclosure, within the body of the decision, of the reasons that led it to issue that decision. In this context, reasoning becomes an essential formal requirement, and failure to provide it renders the administrative decision null and void.

Providing reasons in a decision serves as a means to enable the judiciary to review the legality of the administrative decision, particularly with regard to the accuracy of the facts and their legal characterization. Moreover, informing the concerned party of the reasons behind the decision facilitates the task of providing evidence if the decision is challenged in court.<sup>24</sup>

### Second: Non-Essential Formalities

Non-essential formalities are those procedures that the law does not explicitly require to be observed and, therefore, whose violation by the administration does not result in the annulment of the administrative decision. A formality is considered non-essential when it is established solely for the benefit of the administration, so that failure to comply with it does not invalidate the decision.

For example, failing to respect organizational deadlines set primarily for the administration's convenience where the law does not prescribe any sanction for their

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29 Maher Saleh Alawi, *Administrative Decision*, previous source, p. 114..

-30 Abdel Fattah Hassan, *Causation as a Formal Condition in Administrative Decisions*, *Journal of Administrative Sciences*, No. 4, 8th year, 1966, p. 175

Ahmed Salem Al-Shoura, *Reasoning of Judgments and the Oversight of the Court of Cassation*, *Al-Muhamah Journal*, No., 35th year, 1954, p. 166.

violation constitutes a non-essential formality. Such procedures were originally designed solely to serve the interests of the administration.<sup>25</sup>

### **Second part : Correcting Defects in the Form Requirement**

In order to reduce the issuance of unlawful administrative decisions and to spare the concerned party from challenging the decision, the administration may correct essential defects in the form of an administrative decision. Such correction is carried out through **subsequent completion**, which involves fulfilling the formal requirements that should have been observed before the decision was issued.

Some legal scholars argue that it is not permissible to correct defective procedures. Their reasoning is that allowing post-issuance correction undermines the purpose intended by the legislature in establishing formal requirements for administrative decisions. The possibility of correcting formal deficiencies after the decision is issued may encourage the administration to act hastily, potentially disregarding the safeguards for individuals that these procedures are meant to ensure. Therefore, according to this view, correction through subsequent completion after issuance is generally impermissible, except in exceptional cases, such as the presence of material errors that do not affect the substance of the administrative decision.

On the other hand, another group of scholars supports the permissibility of subsequent correction to avoid annulment of the decision. This view distinguishes between **material errors**, such as typographical mistakes or the absence of a date, and **legal errors**, which render the decision subject to annulment by the concerned parties.<sup>26</sup>

Another form of correcting a formal defect occurs when the concerned parties **accept an administrative decision that is defective in form**. Scholars have differed regarding this scenario.

Some argue that the acceptance of a decision with a formal defect by the concerned party does not correct the defect. They base this view on the principle that formal procedures in administrative decisions are not established solely for the benefit of individuals but also to serve the public interest. Furthermore, a party's waiver of a formal defect would imply their acceptance of a decision defective in form and procedure, which is not permissible, because the right to seek annulment is considered a matter of **public order** and cannot be waived in advance.

On the other hand, another group of scholars contends that the acceptance of a decision defective in form by the concerned party can remedy the defect and prevent the administrative decision from being annulled.<sup>27</sup>

Another case in which a formal defect in an administrative decision may be remedied arises when the defect results from circumstances that the administrative judiciary has recognized as justifiable. Among these is **physical impossibility**, where it is genuinely impossible to complete the legally required formalities. For example, failure to hear the defenses of a violating employee may be excused if it is due to a true physical impossibility, or if the employee refuses to provide statements during the investigation.

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-31El-Sayed Mohamed Ibrahim Suleiman, *Oversight of Facts in Annulment Cases*, *Journal of Administrative Sciences*, No. 1, 2nd year, 1963, pp. 110, 117.

-33Suleiman Mohamed Al-Tamawi, *General Theory of Administrative Decisions*, previous source, p. 503.  
Abdel Fattah Abu Al-Lail, *Rules and Provisions of Administrative Judiciary*, previous source, p. 216..

-35Abdel Fattah Hassan, *Causation as a Formal Condition in Administrative Decisions*, *Journal of Administrative Sciences*, No. 4, 8th year, 1966, p. 175.

Impossibility may also arise from **exceptional circumstances**, such as force majeure, which may compel the administration to omit, partially fulfill, or fail to complete the required formalities.<sup>28</sup>

### **Third Section: Defects Related to the Content (Substance) of the Decision**

A defect of **violation of the law**, or a defect of content, occurs when the administration acts contrary to written law such as the constitution, legislation, and regulations or unwritten law, such as custom and general legal principles. This type of defect is considered one of the most significant grounds for annulment and is also among the most common in practice.

The Iraqi legislator explicitly addressed the defect of violation of the law in Article (7), paragraph (e) of the Second Amendment to the State Shura Council Law No. 106 of 1989, which states: “...*the order or decision shall not contain any breach or violation of the law, regulations, or instructions.*”

The defect of violation of the law (defect of content) is limited to the **substantive aspect**, as “content” refers to the substance of the decision or the legal effects that the decision produces on the legal positions of individuals<sup>29</sup>.

In order to examine this defect, we will address, in two branches, the **subject of the administrative decision and its conditions**, as well as the forms of the defect of violation of the law.

#### **First part : Subject of the Administrative Decision and Its Conditions**

The subject of an administrative decision lies in the **matter or content of the decision**, which is embodied in the legal effects that the decision directly produces on legal positions, whether by creation, annulment, or modification. This applies to both regulatory and individual decisions.

The distinction between them is that a **regulatory decision** organizes general legal positions, whereas an **individual decision** regulates personal or specific legal positions.<sup>30</sup>

#### **First: The Substance of the Administrative Decision Must Be Possible**

This means that the substance of the administrative decision must be possible both **legally** and **factually**. If the substance of the decision is impossible either legally or factually, the decision becomes null and void.

Legally, a decision is impossible when the legal position to which the decision’s effect is to be applied does not exist. For example, issuing a decision to appoint a person to a position that is already occupied by someone else renders the decision impossible, as there is no legal position available for the appointment.

Factually, a decision is impossible if the action required cannot be realized in reality. For instance, if a decision is issued to demolish a house that is in danger of collapsing, but it is discovered that the house has already collapsed before the issuance of the decision, achieving the purpose of the decision (demolishing the house) becomes impossible. Consequently, the decision is null and void.<sup>31</sup>

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-36Abdel Aziz Abdel Moneim Khalifa, *Modes of Annulment of Administrative Decisions in Doctrine and State Council Jurisprudence*, pp. 138–148.

-38Hamdi Yassin Akasha, previous source, p. 356..

-39Ta’eema Al-Jarf, *Judicial Oversight of Public Administration Acts – Annulment Jurisprudence*, p. 352..

-40Abdel Aziz Abdel Moneim Khalifa, *Annulment of Administrative Decisions and State Council Jurisprudence*, Mansh’at Al-Ma’arif, Alexandria, 2004, p. 165.

### **. Second: The Substance of the Administrative Decision Must Be Lawful**

This condition requires that the substance of the administrative decision be permissible under the existing legal framework. If the substance of the decision is unlawful, meaning it conflicts with the applicable legal rules, its execution becomes impossible. For example, imposing a penalty on an employee based on a certain decision, and then discovering that a subsequent law contradicts that decision regarding the subject matter of the challenge, renders the enforcement of the decision impossible.

#### **Second part: Forms of Violation of the Substance Requirement**

There are three main forms of a defect due to legal violation, or substantive defect: **direct violation of the legal rule, error in applying the legal rule, and error in interpreting the legal rule.**

##### **First: Direct Violation of the Legal Rule**

This occurs when the administration completely or partially disregards a legal rule, either by performing actions prohibited by the rule or by failing to perform what the rule requires. The violation may be **positive or negative.**

- A **positive violation** occurs when the administration deliberately acts contrary to the law. This applies to both written and unwritten legal rules.

A **negative violation** occurs when the administration refuses to apply the legal rule or neglects to fulfill its obligations under the rule. For example, if the administration refuses to grant a license to an individual who has met all legal requirements for the license, despite being legally obliged to grant it, this constitutes a negative violation.<sup>32</sup>

##### **Second: Error in Applying the Legal Rule**

This type of error occurs when the underlying facts do not actually exist, meaning that the decision is issued on a basis that is not supported by reality. In such cases, the administrative judiciary focuses on verifying whether the facts on which the administrative decision was based actually occurred. For example, if a decision is issued to dismiss an employee, and it is later found that the employee committed no disciplinary violation warranting such action, the decision is invalid.

Another form of error in applying the law arises when the administration **misjudges the significance of the facts.** It is not sufficient that the facts exist; they must also meet the legal conditions justifying the decision. For instance, if an employee commits a certain act that does not warrant dismissal, and the administrative judge determines that the facts relied upon by the administration do not constitute a disciplinary offense justifying a penalty, the judge will annul the disciplinary decision.<sup>33</sup>

##### **Third: Error in Interpreting the Legal Rule**

This occurs when the administration interprets a legal rule incorrectly, attributing to it a meaning other than that intended by the legislature. An error in legal interpretation may be **intentional**, where the administration seeks to circumvent the law through an unsound interpretation of the legal rule. This is exemplified by situations in which the administration deliberately evades certain legal rules under the guise of interpretation, such as by adding

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-41Suleiman Mohamed Al-Tamawi, *Concise Administrative Judiciary*, 2nd edition, Dar Al-Fikr Al-Arabi, Cairo, 1972, p. 451..

-42Mohamed Hassanein Hamza, *Disciplinary Law for Public Employees and its Judicial Oversight*, 1st edition, Dar Al-Fikr Al-Arabi, Cairo, 1960, p. 112..

an additional condition to a statutory provision beyond those expressly stipulated by law for the granting of a specific license in a particular field.

Alternatively, the error in interpreting the legal rule may be unintentional, arising from ambiguity, vagueness, or lack of clarity in the wording of the legal text. In such cases, the rule itself may be open to multiple interpretations or differing legal constructions.<sup>34</sup>

#### **Fourth sub Section: Abuse of Power (Defect of Purpose)**

Abuse of power refers to the administration's use of its authority to achieve an unlawful objective, whether by pursuing a purpose unrelated to the public interest or by deviating from the purpose expressly designated by law.

The significance of the defect of purpose is evident from both legal and practical perspectives. From a legal standpoint, it relates to the objective and purpose of administrative action within the sphere of the administration's discretionary authority. This arises in situations where the legislature grants the administration a degree of freedom in deciding whether to intervene, or in determining the timing of such intervention. Consequently, there is a close correlation between abuse of power and the administration's discretionary power.

Nevertheless, the defect of purpose may also arise within the domain of bound competence, where the administration's authority is strictly regulated by law. In such cases, an administrative official may deliberately delay the issuance of a decision in order to harm the interests of the person concerned or to deprive them of an opportunity they seek to achieve through that decision.<sup>35</sup>

From a **practical perspective**, judicial review of the defect of purpose constitutes a precise and difficult form of review. This is because it does not merely involve examining the external or apparent legality of the administrative decision; rather, it requires an inquiry into the true motive that the administrative official sought to achieve.

Accordingly, this defect relates to the psychological or subjective element of the decision-maker, which renders the task of the administrative judge in uncovering abuse of power particularly challenging. This difficulty is especially evident when judicial precedent is relied upon. In such cases, if any administrative decision is challenged on grounds that include abuse of power, the administrative judge typically begins by examining the other alleged defects. If one of these defects is established, the judge will annul the decision without the need to address the defect of abuse of power.<sup>36</sup>

#### **. First Branch: Forms of Abuse of Power**

There are several forms of abuse of power, including the following:

##### **First: Pursuing a Purpose Unrelated to the Public Interest**

When an administrative decision lacks a specific objective set by the legislature, the administrative official is nonetheless bound to ensure that their actions aim at achieving the public interest. It is universally acknowledged that public authority is not a personal privilege of the public official; rather, it is vested in the public office for the purpose of serving the public interest. Accordingly, an administrative decision that contravenes the

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<sup>34</sup>George Shafik Sari, *Principles and Rules of Administrative Judiciary*, previous source, p. 549.

<sup>45</sup>- Reger Bonard, *précis droit administrative part cenrad- Recueil paris, 1933 P.223.*

- Mahmoud Mohamed Hafez, *Administrative Judiciary*, previous source, p. 573..

<sup>46</sup>Issam Abdel Wahab Al-Barzanji, *Discretionary Power of the Administration and Judicial Oversight*, Dar Al-Nahda Al-Arabiya, Cairo, 1971, pp. 483 and following..

public interest is defective due to abuse of power. This situation is particularly serious because the deviation is intentional, as the administrative official exploits their authority to achieve purposes unrelated to the public interest.

Several instances constitute manifestations of this form, including:

**1. Use of Authority to Achieve Personal Benefits**

An administrative official may issue an administrative decision with the intent of securing a personal benefit for themselves or for others. Examples include a public official using their powers to appoint relatives or friends to government positions without merit or qualifications, or granting a promotion or reward to a favored employee in exchange for loyalty or personal services.

**2. Use of Authority for the Purpose of Revenge**

This represents one of the most severe forms of abuse of power, as authority is exercised to inflict harm on others for reasons of personal revenge or vindictiveness, without regard for the public interest. An example of this is a ruling by the General Disciplinary Council, which annulled a decision terminating a public employee's service and ordered their reinstatement, on the grounds that the spirit of hostility and revenge was evident on the part of the authority that issued the decision.<sup>37</sup>

**3. Abuse of Power for Political Purposes**

An administrative officer may use the authority vested in them to achieve objectives of a political nature rather than serving the public interest. For instance, an administrator might exploit their position to direct state decisions in favor of their political party or electoral campaign, instead of prioritizing the public good. Similarly, they might appoint political supporters to sensitive positions to ensure control or advance personal influence.

**Second: Violation of the Principle of Purpose Limitation**

This case is considered less severe than deviating entirely from the public interest because the administrator acts within the scope of public service. The legislator may define a specific objective for the administrator to achieve through administrative decisions. If a decision is made to pursue a different objective, it is deemed invalid due to abuse of power, even if the underlying goal is aligned with the public interest.

**Examples of This Include the Following:**

**1. The Field of Administrative Control**

Maintaining public order, which comprises its three elements public security, public health, and public tranquility is the objective defined by the legislator and is required to be achieved by the administrative control authority. When administrative control authorities act beyond these purposes and use their powers to achieve objectives unrelated to public order, their actions are considered flawed due to abuse of power, even if these objectives do not conflict with the public interest.

For example, administrative officers may target the protection of private funds owned by the administration, even though there are other means available to the administration to safeguard these funds, such as imposing criminal penalties on those who violate its private property.<sup>38</sup>

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-47Decision of the General Disciplinary Council, Decision No. 96/1964, dated 16/4/1964, *Diwan Al-Tadween Al-Qanuni Journal*, Nos. 1 and 2, 4th year, 1965, p. 196..

-48Mustafa Abu Zaid Fahmi, *Administrative Judiciary and the State Council*, 3rd edition, without publisher, 1966, p. 889.

## 2. The Field of Public Service

The administration fundamentally possesses the authority to transfer its employees, either geographically or functionally, to achieve the public interest by appropriately distributing staff among different positions and locations, thereby ensuring that the public service fulfills its objectives. However, if a transfer decision is issued with the intent of imposing disciplinary punishment on a particular employee, such a decision is considered flawed in its purpose.

The Supreme Administrative Court of Egypt has articulated this principle, stating in one of its rulings:

*"The administrative authority has deviated in exercising its power to transfer employees from one place to another from the purpose for which it was established, using it as a tool for punishment. By doing so, it has created a form of disciplinary penalty not stipulated by law and imposed it on the plaintiff without any justified reason..."*<sup>39</sup>

## 3. Abuse of Procedures

This situation arises when the administration employs an administrative procedure that it is not authorized to use in order to achieve a specific objective. In other words, the administration deliberately uses one procedure in place of another that should have been followed to attain its goal. Here, the administration resorts to a procedure it considers easier than the one legally prescribed for achieving a particular objective, rendering its decision flawed due to abuse of power through procedural deviation.

For example, this occurs when the administration temporarily seizes a property instead of following the legally mandated expropriation procedures for public benefit, in order to avoid prolonging the process.<sup>40</sup>

### Section Two: Methods of Proving the Defect of Abuse of Authority

As previously noted in this study, the intent to abuse authority is an internal, personal matter that relates to the mindset of the decision-maker. Therefore, proving it is not considered an easy task. Accordingly, administrative courts have been compelled to rely on various methods to establish this defect, which can facilitate the judge's task in detecting such abuse.

Among the most important methods is:

#### First: Reliance on Case Papers and Documents

To prove the defect of abuse of authority, reliance is placed on the employee's service file, committee reports and minutes, correspondences, discussions preceding or following the issuance of the decision, or any other documents that may help uncover the administration's objective and establish the presence of deviation in the decision.<sup>41</sup>

#### Second: Rebutting the Presumption of Legitimacy of the Decision

The presumption of legitimacy with respect to the purpose of administrative decisions is the default rule. However, this does not prevent the interested party from proving that the decision deviates from the objective of serving the public interest. If such deviation is

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<sup>39</sup> Judgment issued in Case No. 643, dated 1/3/1956, *Collection of Supreme Administrative Court Judgments*, 7th year, p. 1317.

<sup>40</sup> Mahmoud Atef Al-Banna, *Al-Waseet fi Al-Qada' Al-Idari*, previous source, p. 557..557ص

<sup>41</sup> Suleiman Mohamed Al-Tamawi, *Administrative Judiciary – Annulment Jurisprudence*, previous source, p. 889.

established, the decision is considered flawed due to abuse of authority and is subject to annulment.<sup>42</sup>

### **Third: Reliance on the Circumstances of Decision-Making**

Through this method, the circumstances surrounding the issuance of the decision can reveal a defect of abuse of authority. For example, a decision may be issued hastily by the administration or under inappropriate circumstances.

### **Fourth: Reliance on the Text of the Contested Decision**

In this case, proving the defect of deviation from authority is based on the circumstances preceding or accompanying the issuance of the decision, particularly when the administration provides the reasons that prompted it to adopt the decision. These reasons must justify the decision and serve its intended purpose; otherwise, the decision may be annulled due to abuse of authority.

### **Fifth: Reliance on the Presumption of Disproportion in Imposing Disciplinary Penalties**

One method to prove abuse of authority is the apparent mismatch between the disciplinary penalty imposed and the offense or violation committed by the employee. Such disproportionality may serve as grounds for annulment of the decision imposing the penalty.

As for the defect of the reasoning (motivation) of the decision, it is considered one of the last defects recognized by the French Council of State in annulling administrative decisions. This was established in the *Decis* case of 1901 and further affirmed in the *Mono* case of 1907, which concerned the verification of facts and the correctness of their legal characterization.<sup>43</sup>

In Iraq, the Second Amendment to the Council of State Law No. 106 of 1989 does not explicitly recognize the defect of reasoning (*défaut de motivation*). Instead, the provision contained in Article (7), paragraph (e) ("...error in applying laws, regulations, or instructions, or in interpreting them...") has been interpreted as encompassing the defect of reasoning.

It is noteworthy that some scholars in France and Egypt have denied the existence of the defect of reasoning as an independent defect. Some considered it part of the abuse of authority defect if the administrative power is unrestricted. However, if the power is restricted, the defect of reasoning is viewed as part of the defect of jurisdictional view advocated by the scholar Douki. Others regarded it as a form of illegality, most notably the scholar Horio, followed by Professor Al-Tamawi, who classified it either as a defect of legal rule violation or within the defect of abuse of authority.<sup>44</sup>

## **Conclusion**

It is well established that legal rules are designed to organize human life and to safeguard individuals' rights against violations and abuses. The annulment action for administrative decisions constitutes one of the legal guarantees provided by law through the administrative judiciary to protect the rights of state employees, ordinary individuals such

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-52 Sami Jamal Al-Din, *Procedures of Administrative Disputes in Administrative Decision Annulment Cases*, Mansh'at Al-Ma'arif, Alexandria, 2005, p. 760. 760ص، 2005، بالاسكندرية.

56 -Andre de Lanbadere, *Traite de droit administrative*, OP.cit .p. 563.

-57 Suleiman Mohamed Al-Tamawi, *Administrative Judiciary – Annulment Jurisprudence*, previous source, pp. 933 and following..

as beneficiaries of public services, professionals, or legal entities with corporate personality, such as unions and associations.

The annulment action is subject to specific conditions that must be met for an interested party or beneficiary to bring it before administrative courts. In Iraq, the competent court for adjudicating annulment actions is the Administrative Court. A notable issue affecting the performance of this court is the significant delays in resolving cases, highlighting a legislative gap in Iraq due to the absence of branches of the court in regions or governorates not linked to an autonomous region, resulting in the concentration of cases in Baghdad only.

In contrast, the Islamic Republic of Iran has established the Administrative Justice Court, comprising more than fifty first-instance courts distributed across the country and over twenty administrative appellate courts. This structure demonstrates the Iranian legislature's attention to protecting individual rights and ensuring access to justice, whereas the Iraqi legislative framework shows clear deficiencies that can result in the loss of rights for employees and others whose legal protection depends on the decisions of these courts.

The Iraqi Administrative Court system, established under Law No. 65 of 1979 (as amended) and operational since 1980, is among the oldest administrative courts in the Arab world. However, a major shortcoming remains the absence of branches in governorates outside autonomous regions, limiting access to administrative justice and affecting the timely protection of individual rights.

## References (Arabic Sources)

### Books:

1. Ahmad Kamal Abu Al-Majd, *Judicial Oversight of Administrative Acts*, Dar Al-Nahda Al-Arabiya, Cairo, 1964.
2. Ahmad Medhat Ali, *Theory of Exceptional Circumstances – A Comparative Study in France and Egypt*, Egyptian General Book Organization, 1978.
3. George Shafiq Sari, *Severable Decisions in Administrative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2005.
4. Hamdi Yassin Akasha, *Administrative Decisions in the Council of State Jurisprudence*, Mansh'at Al-Ma'aref, Alexandria, 1987.
5. Counselor Hussein Amer, *Abuse in the Exercise of Rights*, 2nd Edition, Dar Al-Fikr Al-Arabi, Cairo, 1968.
6. Khalid Khalil Al-Zaher, *Administrative Law*, 1st Edition, Dar Al-Maysara, Amman, Jordan, 1997.
7. Khalid Samara Al-Zoghbi, *Administrative Decision: Theory and Practice*, 2nd Edition, Dar Al-Thaqafa, Amman, Jordan, 1999.
8. Khidr Akoubi Youssef, *The Iraqi Judiciary's Position on Oversight of Administrative Decisions*, 1st Edition, Al-Hawadith Press, Baghdad, 1976.
9. Ra'fat Fouda, *Sources of Administrative Legitimacy and Its Curves*, Dar Al-Nahda Al-Arabiya, Cairo, 1994.
10. Zaki Muhammad Al-Najjar, *Principles and Rules of Administrative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1994.
11. Sami Jamal Al-Din, *The Annulment of Administrative Decisions*, 1st Edition, Mansh'at Al-Ma'aref, Alexandria, 2004.

12. Sami Jamal Al-Din, *Procedures of Administrative Dispute in Annulment Actions*, Mansh'at Al-Ma'aref, Alexandria, 2005.
13. Suleiman Muhammad Al-Tamawi, *Lessons in Administrative Judiciary*, Ain Shams University Press, no year.
14. Suleiman Muhammad Al-Tamawi, *Concise Administrative Judiciary*, 2nd Edition, Dar Al-Fikr Al-Arabi, Cairo, 1972.
15. Suleiman Muhammad Al-Tamawi, *Administrative Judiciary, Vol. 1 – Annulment Jurisprudence*, Dar Al-Fikr Al-Arabi, Cairo, 1976.
16. Suleiman Muhammad Al-Tamawi, *General Theory of Administrative Decisions*, 5th Edition, Dar Al-Fikr Al-Arabi, Cairo, 1984.
17. Ta'ima Al-Jarf, *Conditions for Admissibility in Administrative Disputes*, 1st Edition, Cairo Modern Library, no year.
18. Ta'ima Al-Jarf, *Judicial Oversight of Public Administration – Annulment Jurisprudence*, Dar Al-Nahda Al-Arabiya, Cairo, 1984.
19. Abdel Aziz Abdel Monem Khalifa, *Annulment of Administrative Decisions and Council of State Jurisprudence*, Mansh'at Al-Ma'aref, Alexandria, 2004.
20. Abdel Ghani Basyouni Abdullah, *Jurisdiction of Administrative Courts over Administrative Acts (Annulment Jurisprudence)*, Mansh'at Al-Ma'aref, Alexandria, 1983.
21. Abdel Ghani Basyouni Abdullah, *Administrative Law*, Al-Dar Al-Jami'iyah, Beirut, 1986.
22. Abdel Fattah Hassan, *Administrative Judiciary – Annulment Jurisprudence*, Maktabat Al-Jalaa Al-Haditha, 1987.
23. Othman Khalil Othman, *Council of State*, 5th Edition, Alam Al-Kutub, 1965.
24. Adnan Al-Ajlani, *Administrative Judiciary and Council of State*, Damascus University Press, 1959.
25. Adnan Amro, *Administrative Judiciary – Annulment Jurisprudence*, Mansh'at Al-Ma'aref, Alexandria, 2004.
26. Issam Abdel Wahab Al-Barzanji, *Discretionary Authority of Administration and Judicial Oversight*, Dar Al-Nahda Al-Arabiya, Cairo, 1971.
27. Ali Khatat Shatnawi, *Encyclopedia of Administrative Judiciary – Vol. 1*, Dar Al-Thaqafa, Amman, Jordan, 2008.
28. Omar Muhammad Al-Shobaki, *Administrative Judiciary*, Dar Al-Thaqafa, Amman, Jordan, 2007.
29. Maher Saleh Alawi, *Administrative Decisions*, Dar Al-Hikma, Baghdad, 1991.
30. Maher Saleh Alawi Al-Jubouri, *Administrative Law – The Mediator*, Dar Ibn Al-Atheer, Mosul University, 2009.
31. Mohsen Khalil, *Lebanese Administrative Judiciary and Its Oversight of Administrative Acts*, Dar Al-Nahda Al-Arabiya, Cairo, 1982.
32. Mohsen Khalil, *Annulment Jurisprudence*, Dar Al-Matbou'at Al-Jami'iyah, Beirut, 1989.
33. Muhammad Anas Qasim Ja'far, *The Mediator in Public Law – Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 1987.
34. Muhammad Anas Qasim Ja'far, *Administrative Decisions*, Dar Al-Nahda Al-Arabiya, Cairo, 2005.

35. Muhammad Hasanin Hamza, *Disciplinary Law for Public Employees and Judicial Oversight*, 1st Edition, Dar Al-Fikr Al-Arabi, Cairo, 1960.
36. Muhammad Hussein Abdel 'Al, *The Concept of Cause in Administrative Decisions and Annulment Actions*, Dar Al-Nahda, 1971.
37. Muhammad Abdullah Al-Harari, *Judicial Oversight of Administrative Acts in Libyan Law*, Publications of Al-Fateh Universities, Libya, 1990.
38. Muhammad Abdullah Al-Harari, *Principles of Libyan Administrative Law – Vol. 2 (Direct Means of Popular Administration for Its Functions)*, Nasser University Publications, 1992.
39. Muhammad Ali Al-Yassin, *Administrative Law*, 1st Edition, Modern Library, Beirut, no year.
40. Muhammad Marghani Khairi, *Concise Administrative Law – Morocco, Vol. 2*, Dar Al-Maghrib, 1978.
41. Mahmoud Atef Al-Banna, *The Mediator in Administrative Judiciary*, 2nd Edition, no publisher, 1999.
42. Mahmoud Muhammad Hafiz, *Administrative Judiciary*, 4th Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1967.
43. Mustafa Abu Zaid Fahmy, *Administrative Judiciary and Council of State*, 3rd Edition, no publisher, 1966.
44. Hisham Abdel Monem Akasha, *The Role of the Administrative Judge in Evidence*, Dar Al-Nahda Al-Arabiya, Cairo, 2003.

#### Arabic Research Articles

1. Ahmad Salem Al-Shura, "Reasoning of Judgments and the Oversight of the Court of Cassation," *Al-Mohamah Journal*, Issue 1, Year 35, 1954.
2. Al-Sayyid Muhammad Ibrahim, "Judicial Oversight of Facts in Annulment Actions," *Journal of Administrative Sciences*, Issue 1, Year 2, 1963.
3. Ayman Muhammad Hassan, "Administrative Legitimacy and the Limits of Appropriateness Review," *Government Affairs Management Journal*, Issue 1, Year 38, March 1984.
4. Salem Muhammad Al-Shawabkeh, "The Time Limit as a Condition of Annulment Actions," *Journal of Legal Sciences*, Faculty of Law, University of Baghdad, Vol. 15, Issues 1 & 2, 2000.
5. Abdel Fattah Hassan, "Reasoning as a Formal Condition in Administrative Decisions," *Journal of Administrative Sciences*, Issue 4, Year 8, 1966.

#### Arabic Journals and Compilations

1. *Journal of Legal Sciences* (مجلة العلوم القانونية)
2. *Judiciary Journal* (مجلة القضاء)
3. *Journal of Legal Codification* (مجلة ديوان التدوين القانوني)
4. *Journal of Administrative Sciences* (مجلة العلوم الإدارية)

#### Constitutions

1. Iraqi Basic Law of 1925
2. Permanent Constitution of Iraq, 2005
3. Constitution of the Islamic Republic of Iran, 1979

#### Foreign Sources

1. Andre de Laubadere, *Traité de Droit Administratif*, 5th Edition, L.G.J, Paris, 1970.

2. Roger Bonard, *Précis de Droit Administratif*, Recueil, Paris, 1933.
3. Conseil d'État (France), 29 March 1901, *Gasonova*, Recueil.