

Theories and methods of judicial control of administrative decisions

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Abstract

The “obvious error in estimation theory” is one of the types of judicial oversight of the French State Council, which is embodied in the control over the legal adaptation of the material existence of the facts taken by the administration as a reason for issuing its administrative decision. Disciplining the violating public employee, and according to the administrative judiciary in Iraq, most of its rulings relate to the content of proportionality and appropriateness. The term “obvious error” was not dealt with in explicit and clear terms, meaning that the rulings of the administrative judiciary in Iraq have many commonalities, which are consistent with the content of the theory of apparent error, but implicitly, as well. On that, the administrative judiciary in Iraq took the content of the theory of exaggeration, but also implicitly through many rulings in the field of job discipline, based on the principle of proportionality and appropriateness. This combines with the theory of apparent error in estimation with one common link, which is the idea of proportionality between cost and benefits, i.e. between the damages inflicted by The administrative decision of ownership or private interest on the one hand and the benefit that is achieved for the public interest on the other hand, and there is no role for the administrative judiciary in Iraq oversight over decisions of expropriation for the public benefit, which is the focus of this theory because the legal legislation in Iraq regulating expropriation decisions has These decisions were taken out of the control of the administrative judiciary.

Keywords: Obvious Error Theory, The Exaggeration Theory, The Theory of Balancing Benefits and Harms, The Principle of Proportionality and Appropriateness

1. Introduction and Background

Judicial oversight is an essential safeguard to create a balance between the rights and duties of individuals on the one hand and the requirements of the public interest and the proper functioning of the public facility on the other. and since many administrative decisions were outside the control of the French Conseil d'Etat, The Board was therefore obliged to find a means of censoring the Administration's actions and decisions in the areas in which it had discretion and to ensure that the administration is not derailed and that its work is not flawed by the so-called apparent error, the French Conseil d'Etat must strive and find the way to limit the discretion of the administration.

At the same time, the administrative judiciary in Egypt has worked hard to develop the theory of exaggeration, which is an application of the theory of obvious error in the field

of discipline. In addition, the French State Council invented the theory of balancing benefits and harms in administrative decisions.

2. Definition of the theory of manifest error in judgement and its legal nature

This requirement will be divided into two sections. In section I, we will define the theory of "apparent error" in estimation and its legal nature. In section II, we will then refer to the theory of "apparent error" between adaptation and estimation, as described below:

2.0 Definition of the theory of manifest error in estimation

In this section, we will deal with the definition of the theory of manifest error of appreciation first and then with the legal nature of the theory of manifestation error second, and we wish to distinguish the theory of manifest error from other ideas as described in the following:

2.0.1 Definition of "manifest error" theory in the estimation

The French Conseil d'Etat's judgements failed to define the theory of manifest error and were therefore inspired by the jurisprudence, which defined the defect of manifest error as a defect in the adaptation of the administration and its assessment of the facts taken as a reason for the administrative decision and which appeared to be clear and gross in contravention of common sense and beyond reasonable judgement and as a reason for revoking its decisions (Gabr, 2007).

The apparent error is also known as the error in which the administrative judge considers his examination of the case file and the various circumstances in which this estimate was made more than the limits of reasonableness and its prima facie clarity (Ahmed, 1992).

It is also defined as a defect affecting the Department's actions leading to the apparent error and is in the process of assessing and adapting the facts on which it relied, which would constitute a reason to overturn its decision if proven before the administrative court (Al-Tahan, 2019).

The jurisprudence was divided in naming the theory, some of them called it the theory of "obvious error" and some of them called it the theory of "clear or apparent error." There is an opinion that the term "clear error" is the closest to the truth, to distinguish it from the theory of error in civil law, given that each theory has provisions to distinguish it from the other (Al-Mallah, 2020).

The theory of manifest error has not been defined by the administrative judiciary in Iraq but has been taken into account in the content of this theory through the theory of proportionality and appropriateness (Al-Tahan, 2019). Adequacy means that the conduct taken by the administration was appropriate, acceptable or valid in time, place, circumstances and considerations (al-Barzanji, 1971).

For our part, the notion of manifest error can be defined as "a type of judicial oversight that is reflected in the supervision of the legal adaptation of the physical existence of facts taken by the administration as a reason for issuing its administrative decision".

2.0.2 The Legal Nature of the Obvious Error Theory (Obvious Error):

The supervision by the administrative judiciary of the legal qualification of the facts is futile only because its control before the question of the legal adaptation of the facts extends to the verification of the physical existence of the facts, so the administrative judiciary upholds its right to control the facts in terms of their physical existence and legal adaptation (Masud, 2007).

In the sense that the facts are the basis of the dispute in each administrative decision, and therefore the effectiveness of judicial oversight is not sufficient to verify the veracity of the material facts on which the administrative decision is based, but these facts need to have a legal existence in the sense that the administration's adaptation of these facts is consistent with the intention of the legislature to serve as a reason for carrying its decision (Al-Einin, 2022).

The control of manifest error is characterized by a judicial means, the aim of which is to restrict the Department's discretion in assessing the appropriateness of its administrative decisions, whether in determining the obligation to intervene or refrain from it or in choosing the time of intervention and determining the procedure that is proportionate to the gravity and relevance of the factual reasons (Shatawi, 2011). In other words, the notion of manifest error is a means by which an administrative judge can simplify his control over management while exercising discretion, especially regarding the cause-and-effect elements of an administrative decision. When the administration's assessment is unbalanced and exceeds the reasonable threshold, the discretion is flawed (Faraj, 2020).

The obvious error is achieved in two cases where the first situation is reflected when there is excessive severity. The use of cruelty causes the public facility to be paralysed by staff members' fear and reluctance to take responsibility. The second situation, when there is excessive compassion, is reflected in the fact that the Department's pity and disregard for the error may lead to staff members' disregard for duty, and the General Facility becomes a theatre for their identities and interests (Dan, 2011).

2.0.3 Distinguishing the theory of manifest error from other ideas

The obvious error falls into the mental process of adapting the administration and appreciating the facts. It is different from the material error and is different from the existence of the facts or the absence thereof. The obvious error is characterized by the apparent or apparent error, which is a serious error. However, the correlation between these descriptions and the manifest error is unnecessary. The inference and verification of the manifest error are subject to objective assessment. This discretion is not subject to the judge's self-assessment but is based on an objective assessment of the case file and papers (Gabr, 2007).

The defect of the defect is due to the defect of the cause of the administrative decision, either its relationship to the defect of the purpose. (Purpose) or the so-called disadvantage of deviation from authority. The latter relates to the failure to achieve the public interest or depart from the rule of allocation of objectives or not to achieve the purpose of the resolution. Thus, an error in the assessment or adaptation of the facts would result in the substantive purpose of the resolution not being achieved (Gabr, 2007) d. Although the defect of purpose is close to the personal criterion and the defect of a manifest error is objective, control of a manifest error can dispense with control of the defect of purpose or the so-called defect of deviation of authority. The relationship between them is a reflection of the relationship between purpose and reason in the

administrative decision (Al-Einin, 2022).

The defect of purpose relates to the psychological and hidden intentions and motives of the source of the decision. Therefore, it is difficult to prove it. Therefore, the French Conseil d'Etat may not look into this defect if it finds another reason to overturn the decision in the sense that it is considered a precautionary means of examining other aspects of the annulment (al-Banna, 1999).

To distinguish the theory of manifest error from the notion of unreasonableness, the latter arose under the unified justice system and found its source in legal texts requiring the reasonable nature of the conduct and its compatibility with administrative practices. And the idea of unreasonableness, even though it constitutes a limitation on the Department's actions, could not constitute a solid theory, contrary to the theory of inequality, which has become a judicial theory (Gabr, 2007).

Adjustment error control differs from proportionality error control. The former relates to the adaptation of facts. The second assumes that management adaptation is correct and not incorrect. The judge examines the compatibility of the place of the decision with the reason as the last stage of control over discretion (Radi, 2018).

2.1 *The theory of the apparent error between adaptation and estimation*

In this section, we will address the theory of manifest error as an adaptation and assessment control. We will therefore apply the scope of judicial control over a manifest error in administrative decisions as described below:

2.1.1 *Hybrid Theory Control Conditioning and Estimation*

The introduction of the notion of discretionary miscalculation by the Conseil d'Etat of France has led it to go beyond the control of the legal adaptation of the facts to control the assessment of those facts, as well as to assess the appropriateness of the decisions, i.e. the control of the choice of the administration for its decision. Thus, control over the apparent error has become an integral part of the theory of discretion and thus is a new opening to appeal by overstating authority (Gabr, 2007).

Thus, the theory of discretionary miscalculation was the culmination of the State Council's effort to strike the desired balance between freedom and power, making the administration's discretion conscious to ensure a delicate balance between considerations of the protection of individual rights and freedoms and those of the effectiveness and activity of the administration in changing circumstances (Faraj, 2020).

Thus, the theory of manifest error managed to make its way through the judiciary of the French Conseil d'Etat with judicial support and support for jurisprudence to become an important judicial theory. Thus, the manifest error eventually stabilized as a flaw in the administrative decision along with other traditional flaws and was able to extend to all the activities of the Department and became viable to accommodate the various aspects of administrative activity in the last quarter of the century (Gabr, 2007).

The Conseil d'Etat of France appreciates the importance of the facts and considers their compatibility with the decision when appropriate is a requirement of legality and the decision is illegal. However, the line between appropriate and strictly legitimate is not fully defined and leaves some control to the administrative judge. Therefore, the Conseil d'Etat boldly and rightly refuses to observe them (Al-Hilu, 1995).

Furthermore, the administrative judiciary in both France and Egypt recognizes itself as the authority to control the physical existence of facts permanently and in any event, cannot have the discretion of the administration to assess the physical existence of the facts or to assess whether or not they do so. The judiciary ascertains the validity of the facts justifying the decision, but the decision is flawed and the judgement deserves to be revoked (al-Barzanji, 1971).

The Conseil d'Etat of France and Egypt became both a judge of law and a judge of fact at the same time and the adaptation process is essentially only communication between the fact and the law by interpreting the fact on the one hand and interpreting the law on the other. To establish a state of communication between them and thus apply the rule of law, the judge takes the position of induction and research when dealing with this process by censorship for each case without confining himself to a framework of abstract ideas in the description of the adaptation process (al-Barzanji, 1971).

2.1.2 Scope of judicial control over the theory of manifest error in administrative decisions

The scope of application of the manifest error theory is no longer limited to specific cases but has expanded to cover different aspects of administrative activity, in which the Department has discretion in the appropriateness of the administrative decision, whether in technical, scientific, disciplinary or administrative control matters. In the area of restrictive authority, there is no such theory because the legislator determines the facts and does not leave the administration free to assess its suitability for the decision taken (Radi, 2018).

The application of this theory has been extended and has been able to encroach on all elements of public office, for example, recruitment, promotion, transfer, occupancy and dismissal, as well as on areas related to building permits and decisions to deport foreigners and determine their residence (Gabr, 2007).

The jurisprudence differed in determining a specific criterion of manifest error. "Apparent error": Those who have taken the criterion of gravity or the criterion of incompatibility with common sense or the criterion of unreasonableness. "Apparent error" is not a public order defect, and the administrative judge is not obliged to raise it, but the plaintiff must prove it by the general principles of evidence (Ali, 2018).

The French Conseil d'Etat has therefore stressed the need to distinguish between serious errors and minor errors in the field of administrative discipline. As a result, the notion of blunder has been confirmed and proven when there is a clear mismatch between both serious and serious penalties and minor administrative errors (Amiri, 2020). Thus, the theory of a manifest error is of an objective and objective nature. It does not mean consistency and determination. It means the objectivity of the assessment and how it is intended to infer a defective error. This error can be demonstrated by the examination of the proceedings. This manifestation of a manifest error once it has begun to examine the file (Faraj, 2020).

According to the administrative judiciary in Iraq, many decisions of judgment relating to the content of proportionality and appropriateness do not address the term "manifest error" in explicit terms, namely that the judgements of the administrative judiciary in Iraq have many participants, which consistent with the content of the theory of manifest error, but implicitly and from another angle, which is proportionate and appropriate (Al-Tahan, 2019). whereas the French administrative judge exercises his

power of control by explicitly using the concept and term "manifest error". "Apparent misjudgement" of decisions that are manifestly or manifestly disproportionate, whether the apparent disproportionality arises from excessive severity or excessive punishment. At the same time, the Egyptian administrative judiciary has launched the term "overload" when the administration uses its power to impose disciplinary sanctions. (Disciplinary) There is an apparent inappropriateness between administrative guilt and the type and amount of the penalty, and their disproportionality leads to the wrongfulness of the penalty decision (al-Shinawi, 2017).

Therefore, the control of proportionality is a tool developed by the administrative judge to use it to control the discretion conferred on the administration to reduce the tolerance and control of this authority to the extent possible to balance and reconcile the values, principles and conflicting interests protected by law and that the control of proportionality is not conducted in a single harmonized manner in all legal systems, since there is a discrepancy in the number of steps constituting the analysis of proportionality and in the degree of stringency of control adopted for their different elements even in their names such as "appropriate", "necessity", "proportionality stricto sensu", "reasonableness", "benefit and cost analysis" and "rationality" (al-Shinawi, 2017).

3. Definition of hyperbole theory

The theory of exaggeration is an application of the judiciary of the obvious error that was invented by the French State Council, Discipline in the field of public office was the fertile field of Glow theory in the Egyptian judiciary to face cases of failure to control legal adjustment and to monitor the seriousness and proportionality of the penalty to the guilt committed in the disciplinary sphere ". By the foregoing, we will divide our study in this requirement into two sections. In section I, we address the definition and legal nature of Glow theory (Gabr, 2007). In section II, we refer to judicial oversight of Glow in the Department's administrative decision, as described below:

3.1 *Definition of the theory of exaggeration and its legal nature*

To clarify the content of the definition of the hyperbole theory, this requires a statement of its definition and hence the legal nature of it, as described below:

3.1.1 *Definition of hyperbole*

The judgements of the Supreme Administrative Court of Egypt did not contain a definition of the theory or the precise meaning thereof but merely referred to the idea of the overload by echoing certain words in its judgments, such as "apparent inappropriateness, apparent irony, blatant disparity or disproportionality" between the gravity of administrative guilt and the type of penalty (Gabr, 2007).

The theory of exaggeration was defined as the technical tool devised by the Egyptian administrative judiciary to exercise its control over proportionality in the field of job discipline in evaluating the aspects of appreciation in the disciplinary decision to put an end to the discretionary authority in which the oversight varied from the administrative judiciary starting from the state of lack of oversight and then scrutinizing the reasons Realism and the correctness of the material existence of the facts on which the administration relied, leading to the fact that this assessment should be free from exaggeration in the use of those powers (Al-Tahan, 2019).

It is also defined as a judicial instrument that allows for the extension of the State Council's oversight of cases for which such control is previously restricted. It is not punishable for disproportionality unless it is apparent and gross. The description of gravity shows the widening difference between disciplinary error, disciplinary sanction and control aimed at establishing the disciplinary authorities' assessment of the seriousness of disciplinary error and disciplinary sanction within reasonable limits (Gabr, 2007).

3.1.2 *The legal nature of hyperbole*

The basis for judicial oversight by the hyperbole theory is embodied in the Administrative Court's legal rule, which is the requirement of proportionality between disciplinary error and disciplinary sanction. improper ", so that there is no overestimation of the significance of the facts on the one hand and of the choice of punishment on the other, and therefore the defect of the aggravation relates to the flaws of the reason for the administrative decision and is not related to the defect of the deviation of authority (Gabr, 2007). In other words, if the Supreme Administrative Court, after assessing the importance of the offence committed and the gravity of the action taken thereon, determines that the penalty is manifestly disproportionate to the offence, it abolishes the punitive penalty, which is too high and expects the penalty it deems appropriate (Dan, 2011).

Thus, the hyperbole theory, like the theory of blurred error, is independent of the judicial defects in the annulment proceeding. The two theories are consistent in resisting unreasonable and excessive estimates of the administration's and disciplinary authorities' discretion and represent a judicial renewal to close the vacuum in judicial oversight, increase the area of legality and expand control of grounds according to an objective criterion (Gabr, 2007).

Hence, hyperbole theory is judicial oversight, which confronts the seemingly disproportionate estimates of disciplinary authorities. to allow the judge to examine the administrative adjustment and to exercise more in-depth oversight to identify cases of discretion in favour of limiting the relationship between administrative guilt and disciplinary action, this control aims to place the disciplinary authorities' estimates of the seriousness of administrative guilt and disciplinary sanction within reasonable limits (Faraj, 2020).

3.2 *Judicial oversight of the administration's excessiveness in its administrative decisions*

To identify the content of judicial oversight of the Department's predominance in its administrative decisions, we must address the scope and spheres of application of the hyperbole theory as described below:

Disciplinary is one of the most important areas in which the administrative judge in Egypt applied the theory of manifest error through the theory of hyperbole or so-called disproportionate discipline (Al-Mallah, 2020).

Proportionality is a fundamental idea of administrative law and can be analysed into three elements: the decision issued, the factual situation and the target, and it is obvious that the administrative decision is disproportionate except for three conditions, namely the previous definition of disciplinary error, the previous definition of disciplinary sanctions and the conformity between errors and sanctions (Ali, 2018).

The supervision of the administrative judiciary in Egypt was proceeding on the

physical existence of the facts as well as on their legal existence and does not extend to the appropriateness of the decision or an assessment of the gravity of the incident. The Egyptian State Council was able to override the limits of such traditional control to extend its control over the appropriateness of the disciplinary sanctions, i.e. an assessment of the gravity of the incident and an assessment of the gravity of the penalty (Gabr, 2007).

Egypt's administrative judiciary has expressed the theory of hyperbole as the apparent incompatibility between the degree of gravity of administrative guilt and the type and amount of penalty. And then the consequences of the apparent incompatibility run counter to the law's objective of discipline, namely, to ensure the regularity of the public facility. This insurance is not possible if the penalty is a flagrant irony. Riding aboard the cruelty leads to the reluctance of public workers to take responsibility for fear of being subjected to such extreme cruelty and excessive compassion leads them to disregard less of their duties (Fahmi, 1999).

The notion of proportionality is one of the general principles of law. Under the principle of proportionality, the administrative judge shall examine the penalty signed in administrative decisions, which represents the place of the decision, and any legal effect and shall examine the proportionality of the penalty or the place with the reason for the decision (Ali, 2018).

The administrative judiciary in Egypt has shown that the criterion of hyperbole theory is objective rather than personal, since the degree of gravity of administrative guilt is not commensurate with the type and amount of the penalty, resulting in the disciplinary authority's departure from the scope of legality to the scope of wrongfulness (Dan, 2011).

The Supreme Administrative Court of Egypt has used several terms to express the overestimation of disciplinary sanction, including the term "apparent inappropriateness", "apparent disproportionality", "apparent irony" or "manifest disproportionality" (Faraj, 2020).

Referring to the administrative judiciary in Iraq, we have already indicated in the statement of the administrative judiciary's position on the theory of manifest error that its content has been taken into account without explicitly referring to it, as well as in the case of the theory of aggravation where it has been taken into account but implicitly through many provisions in the field of functional discipline, based on the principle of proportionality and relevance. Adequacy means proportionality between the decision and its place (Al-Tahan, 2019). It is based on two elements: cause and place. In the area of disciplinary punishment, it means proportionality between the offence committed. (The reason) and the penalty prescribed for the offence (the shop), by weighing the offending administration with the balance of justice and taking into account the personal and substantive aspects of the offence committed to ensure the administrative singling out of the penalty, by public interest considerations and to ensure the regular and steady functioning of the public facility (al-Aboudi, 2012).

by the balance of the installment, including the seriousness of the infringement on the management's interests, the extent to which the offending employee benefits from the offence, and the amount of the offence to which the employee's status and other criteria are attributable to proportionality and reasonableness (al-Aboudi, 2012).

In one of its provisions, the General Disciplinary Board used the term "glut" on the

issue of an employee objecting to his punishment by the Disciplinary Committee by reducing his salary by 5% for two years owing to the frequent absence and delay in his attendance. The objector violated the instructions and did not always maintain the punishment, which he found to be severe and disproportionate, since it was possible to take lesser measures to avoid it and that it was proportionate to his infractions. The penalty was not overly estimated, since the penalty was not an end in itself. The objector was sick and compassionate. "Judgement No. 3/971 of 23/1/1973, No. 300/1971 (Al-Qaisi, 2017).

3.3 *Definition of the theory of balancing benefits and damages*

Rapid and successive developments in administrative activity have prompted the French Conseil d'Etat to exercise its constructive role in the creation of solutions to keep pace with these developments, which have led to the creation of new technical tools by which the administrative judiciary imposes deep control over the estimates of the administration's discretion one common link, the notion of proportionality, which aims to counteract management's slippage in rational and unreasonable estimates that require restitution of maturity and reasonableness, The outcome provides reassurance to individuals, guarantees their rights and, at the same time, constitutes a guarantee of the public interest (Nweji, 2016). This requirement will be divided into two sections. In section I, we will deal with the definition and legal nature of the theory of balancing benefits and damages. In section II, we will then refer to the scope of application of the theory of balancing benefits and damages, as described below:

3.4 *Definition and legal nature of the theory of balancing benefits and damages*

This section will be divided into the definition of the theory of balancing benefits and damages in the first and then we will address the legal nature of the theory of balancing benefits and damages in the second, as described in the following:

3.4.1 *Definition of the theory of balancing benefits and damages*

The theory of balancing benefits and damages by relying on their content is known as the essence of this theory is the principle of proportionality between cost and advantages ", i.e., between the damages inflicted by the administrative decision on the property or private interest on the one hand and the benefit to the public interest on the other, The decision is therefore legitimate only where the cost of any damage to the private interest is less than the benefit of the public interest (Fahmi, 1999).

Proportionality control is defined as control carried out through the analysis of benefits and disadvantages. This control is manifested when the court cancels the project if it is manifestly harmful or its negative effect is excessive compared to its positive benefits or effects (al-Shinawi, 2017).

It is also known to reflect the broad meaning of proper control by replacing the vision and understanding of the judge with the full understanding of the administrative authority. This is the so-called principle of harmonization of benefits and damages in the administrative decision, which was first applied in the scope of expropriation decisions in France (Al-Einin, 2022).

3.4.2 *Nature of the legal theory of balancing benefits and damages*

Control over the balancing of the costs and benefits of the administrative decision is a type of judicial control over proportionality. It is appropriate to control the administrative decision. However, the administrative judge examines the proportionality of the costs involved in implementing the content of the decision as compared to the

benefits resulting therefrom (Radi, 2018). In the sense that proper control is an inherent part of the role of the administrative judge in establishing legitimacy, Therefore the assessment and balancing of the public and private interests of stakeholders and individuals with an accurate balance are one of the administrative judge's delicate tasks (Munir, 2005).

The supervision of the administrative judiciary has achieved a considerable degree of progress when it monitors the balancing of interests in the decision, according to which the administrative authority is dissolved in balancing the benefits and damages in the decision, and imposes its vision of the proportionality of the place of the decision with its purpose (Aboul-Enein, 2021).

By introducing the theory of balancing between benefits and harms, the French State Council aimed for two purposes: preventing the issuance of hasty and irrational decisions on the one hand, and obligating the various management bodies to provide serious justifications for their projects on the other hand, but at the same time, the Council of State resorted to this type of oversight with great caution and scale (Hamad, 2003). Disciplined The analysis of costs and benefits or benefits and harms is equivalent to controlling proportionality in the narrow sense, or so it is called proportionality in the narrow sense in the judiciary of the State Council (al-Shinawi, 2017).

The emergence and birth of the theory of balancing benefits and damages in the field of expropriation for public benefit were exemplified by the fact that the French Conseil d'Etat recognized the broad discretion of the administration in deciding and determining the notion of public benefit. in particular that it is such a flexible notion of indetermination or lack of clarity that it has become synonymous with the notion of public interest, This led the Administration to use it in favour of special interests when the latter led to public benefit, so the State Council worked to curb the Administration's involvement in this area (Al-Sayed, 2006).

While it is true to say that expropriation is one of the prerogatives of the administration in which the administration desires to achieve the public benefit, this objective is undefined, unstable and influenced by social, economic and political conditions, which compels the judge, through his constructive role, to adopt this theory in the form of a criterion measured by the administration's claim that it achieves public benefit and is the essence of proper oversight, which is one of the most proportionate types of the decision (Radi, 2018).

The budgeting process is based on two bases: the protection of individual rights and the observance of the requirements of good governance and its requirements, in the sense that it balances the positive and negative aspects of the project, which initially presupposes a public benefit to compare the burdens and damages of its implementation (Al-Sayed, 2006).

3.5 *Scope of application of the theory of balancing benefits and damages*

In this section, we will examine the application of the theory of balancing benefits and damages in both the French Conseil d'Etat and then the application of the theory in the Egyptian Conseil d'Etat.

The scope of application of the theory of balancing benefits and damages in the field of expropriation for public benefit is reflected for the first time in the famous case

(Eastern New City) in 1971, when the French government tried to remove the higher education of Lille University from the city centre to a new university city so that it could receive more than 30 thousand students and accommodate from 20 to 25 thousand citizens. The implementation of the project necessitated the expropriation of approximately 250 homes and was reduced by pressure to expropriate 88 homes. and the Association for the Defence of Dispossessed Persons insisted on an appeal to overturn the administrative decision in question. J. Preban said that the demolition of one hundred houses was offset by the construction of a new city for 20,000 residents and thirty thousand university students. The importance of the process must be put in balance with the number of houses that will be demolished. It is certainly not reasonable to remove one hundred families from their homes to house fifty, but it is very normal to demolish one hundred dwellings in a process that allows the construction of several beds (René Casan, 1995).

The General Assembly of the Judicial Section of the French Council of State issued its ruling, which indicated that it is not possible by law to consider a process of public benefit unless it involves prejudice to individual property and the financial costs and possible harms at the social level are not excessive about the interest it represents. The appeal submitted by the Homeowners Defense Association, and this ruling are the basis for the theory of balancing between benefits and harms (René Casan, 1995).

In this connection, the Dean of the Faculty of Law of Bordeaux University, Leon Duque, stated that he had read in the author of Mr Misina about the "Administrative Judiciary of Mixed Courts" a page (92) saying "If individuals cannot... Based on the damage and losses resulting from the direct consequences of the war, this is not the case when such losses are the result of precautionary measures suggested by the forecast and caution calculations that this is a kind of expropriation of public benefit which always gives the right to compensation because no one can be deprived of his property even for public benefit without prior compensation " (Rashid, 1980).

It is worth noting that the general principles of law approved by the French Council of State did not stop at their theoretical limit, but had a practical effect, as the administration adopted the dissemination of those principles approved by the State Council to the concerned departments to consider them when preparing a draft decision on expropriation (Kamel, 1993).

Referring to the Administrative Court in Egypt, he worked on the content of this theory, although he did not use the same name in his judgments. (1681 of 83), which was endorsed by the Supreme Administrative Court in a case In the Dar es Salaam area, where an administrative decision was issued by Cairo Governorate to hand over State-owned land, including installations and buildings, to Maadi Development and Construction Company, resulting in the demolition of approximately 20 thousand dwellings and the displacement of approximately 50 thousand people, the court decision referred to "... If it is legally recognized... The administrative authority has the right to remove any encroachment on the property of the State by administrative means, but its power to do so, although discretionary, is subject to the control of the administrative judiciary.... The origin of the Department's activity is to target the public interest and the essence of the Department's function is to satisfy the public needs in order to achieve this goal.... The target of the contested decision is a public interest that is undoubtedly based on the preservation of the property of the State. But on the other hand, the contested decision, in aiming to achieve that face in the public interest, has sacrificed another public interest. should not displace a large number of citizens with their families, movements and

belongings, as the large number of citizens will find themselves as a result of the implementation of the resolution and have lost shelter, possession and leg of their families to the non-headquarters.... " (Fahmi, 1999).

Regarding the regulation of the control of expropriation decisions for public benefit in Iraq, he did not let any room for the administrative judge to intervene and monitor the process of determining the public benefit, since there were many legislation and resolutions of the dissolved Revolutionary Command Council, which removed expropriation decisions from judicial control (Radi, 2018).

The ordinary role of the judiciary is limited to conventional or administrative ownership To estimate compensation for the methods of assessment that constitute for this purpose and (Iraqi Acquisition Law No. (12) of 1981), as far as judicial power is concerned, the ordinary role of the judiciary is no more than to consider the conditions established by law, namely legitimate control and the judge's decision is tantamount to a judgement adjudicating a dispute, but it is a dispute over the assessment of compensation and has nothing to do with assessing the availability of the benefit of expropriation (Radi, 2018).

We would like to show the theory of balancing benefits and damages is one of the most important types of judicial control over the work of the administration's discretion "Because it creates a kind of balance in the relationship between the advantages and benefits derived from the administrative decision on expropriation and the damages and disadvantages resulting from that decision, usually borne by the injured individual, It serves as a guarantee to both management to ensure that expropriation is intended for public benefit and public interest while ensuring that individuals are protected from the administration's arbitrariness that expropriation is not for personal purposes.

Conclusion

1. Judicial oversight is an essential guarantee to create a kind of balance between the rights and duties of individuals on the one hand, and the requirements of the public interest and the proper functioning of the public utility, embodied in the administration's activity in various fields on the other hand, and since many administrative decisions were outside the control of the French State Council and therefore it was necessary The council must find a way to impose its control over the actions and decisions of the administration in the areas in which those decisions have discretionary authority. Therefore, the administrative judiciary in France has worked hard to invent the theory of obvious error (apparent error) in estimation and the theory of balancing between benefits and harms. At the same time, the State Council worked hard to Egypt in establish the theory of exaggeration about the disciplinary field.
2. The theory of apparent error in estimation is one of the types of judicial oversight, which is embodied by controlling the legal adaptation of the physical existence of the facts taken by the administration as a reason for issuing its administrative decision. Assessing the appropriateness of its administrative decisions, whether in deciding whether to intervene or refrain from it, or choosing the time of intervention and deciding the procedure that is commensurate with the seriousness and importance of the real reasons.
3. According to the administrative judiciary in Iraq, many of its rulings are related to the content of proportionality and appropriateness, and the term "obvious error" is not addressed in explicit and clear terms. As there is no difference about the content of the

- theory and its applications.
4. The theory of exaggeration is an application of the judiciary of the obvious error that was invented by the French State Council. The basis of judicial oversight by the theory of exaggeration is embodied in the rule of the requirement of proportionality between the disciplinary error and the disciplinary penalty so that there is no exaggeration in the assessment of the importance of facts on the one hand and the selection of the penalty on the other hand.
 5. According to the administrative judiciary in Iraq, the content of the theory of exaggeration has been applied, but implicitly, through many provisions in the field of job discipline, by deduction and based on the principle of proportionality and appropriateness. Estimating the penalty according to the balance of the premium between many data, including the extent of the seriousness of the violation to the interests of the administration, the extent to which the violating employee benefits from that violation, the amount of the employee's status and other criteria and data, down to proportionality and reasonableness.
 6. The rapid and successive developments of administrative activity have prompted the French Council of State to exercise its constructive role in devising solutions to keep pace with these developments, which led to the invention of new technical tools for the administrative judiciary to impose a deep control over the discretionary assessments of the administration, including the theory of balancing between benefits and harms, which meets with the theory of error Clarity in estimation with one common link, which is the idea of proportionality, which aims to confront the administration's slipping in estimations that are not rational and unreasonable, which necessitates its response to the seriousness of rationality and reasonableness, which in the result provides reassurance to individuals and guarantees their rights and at the same time represents a guarantee to take into account the public interest.
 7. The essence of the theory of balancing between benefits and harms is the principle of proportionality between cost and benefits, i.e. between the damage inflicted by the administrative decision on the property or private interest on the one hand, and the benefit that is achieved for the public interest on the other hand. The administrative judiciary in Egypt worked with the content of this theory, even if it did not use the same name.
 8. Regarding decisions of expropriation for the public benefit in Iraq, there is no role for the oversight of the administrative judge, because the legislation regulating expropriation decisions has taken these decisions out of the control of the administrative judiciary, and the role of the ordinary judiciary about an agreement or administrative expropriation is limited to estimating compensation through the means of a commission Assessment formed for this purpose, but in judicial appropriation, the role of the ordinary judiciary does not go beyond examining the conditions specified by the law, which is legal control. Availability of the desired benefit from expropriation.

References

- Aboul-Enein, M. M. (2021). *Modern Judicial Principles of Egypt's Supreme Administrative Court* (Vol. Third Edition). Law Masterpieces House for Publishing and Distribution.
- Ahmed, T. A. (1992). *Judicial Control of the Appropriateness of Administrative Decisions*. Egypt: University of Assiut.
- al-Aboudi, O. S. (2012). *explaining the provisions of the Law on Discipline of State Employees and the Public Sector No. (14) of 1991 amended*. Law Library and the Judiciary.
- al-Banna, M. A. (1999). *a mediator in the administrative judiciary* (Vol. second edition).
- al-Barzanji, E. A.-W. (1971). *Judiciary Administration and Oversight Discretion*. Arab Renaissance
- Res Militaris*, vol.12, n°2, Summer-Autumn 2022 6592

- House.
- Al-Einin, M. M. (2022). *Regulating the Legality of Administrative Decisions According to the Judicial Curriculum Analytical and Theological Study of the Rulings of the State Council of Egypt*. Egypt: House of Law Masterpieces for Publishing and Distribution.
- Al-Hilu, M. R. (1995). *Administrative Judiciary, Principle of Legality, Organization of Administrative Judiciary, Jurisdiction of Cancellation Judiciary, Compensation Judiciary, Disciplinary Judgment*. University Press.
- Ali, H. A. (2018). *Judicial Control of the Department's Discretion* (Vol. First Edition). Alexandria: BCL Alexandria.
- Al-Mallah, R. F. (2020). *Administrative Judge's Role in Administrative Dispute Comparative Study* (Vol. First Edition). Arab Renaissance House.
- Al-Qaisi, H. M. (2017). *Judicial Control of Adequacy in Disciplinary Decisions* (Vol. First Edition). Arab Center for Studies and Scientific Research for Publication and Distribution.
- Al-Sayed, M. S. (2006). *Modern trends of the administrative judiciary in controlling the appropriateness of expropriation decisions for the public benefit, a general study* (Vol. second edition). Dar Al-Nahda Al-Arabiya.
- al-Shinawi, W. M. (2017). *Recent Developments of Judicial Control of Proportionality in Administrative Law, a Comparative Analysis Study*. Dar al-Thawr and Law.
- Al-Tahan, A. M. (2019). *Role of the Administrative Judiciary in Monitoring the Factual Causes of the Administrative Decision, Comparative Study*. Arab Center for Scientific Studies and Research.
- Amiri, A. H. (2020). *Administrative Litigation France - Egypt - Iraq*. Ali Al Shindi Printing and Publishing Library.
- Dan, M. M. (2011). *Judicial Control of Proportionality in Administrative Decision Comparative Study between France, Egypt and Lebanon*. Modern Book Foundation Lebanon.
- Fahmi, M. A. (1999). *Administrative Judiciary and State Council Abolitionist Magistrate*. Alexandria: Alexandria University Publications.
- Faraj, M. A. (2020). *Role of Legality in Limiting Management Discretion, Comparative Study* (Vol. I). National Centre for Legal Publications.
- Gabr, M. S. (2007). *The Theory of Albin Error in the Cancellation Court* (Vol. 2nd edition). The Children of Wehba Mohammed Hassan Press.
- Hamad, H. O. (2003). *The Discretionary Authority of the Administration and the Extent of Oversight by the Judiciary* (Vol. First Edition). Naif Arab Academy for Security Sciences.
- Iraqi Acquisition Law No. (12) of 1981, a. (n.d.). *Iraqi laws and legislation*. Retrieved from <http://wiki.dorar-aliraq.net/iraqilaws/?p=2443>.
- Kamel, N. A. (1993). *Administrative Judge's Role in Supervising the Public Benefit Requirement in Case of Expropriation*. Arab Renaissance House.
- Masud, M. A. (2007). *issues of control over the legality of administrative control decisions* (Vol. first edition).
- Munir, M. K. (2005). *Administrative Judge's Role in Establishing Legality through Judicial Rulings*. Arab Organization for Administrative Development and the Ombudsman's Office.
- Nweji, M. F. (2016). *heoretical and practical aspects of administrative control comparative study*. Mansoura, Egypt: House of Thought and Law in Mansoura.
- Radi, M. L. (2018). *Administrative Judge between Legality and Convenience* (Vol. First Edition). Obelisk House for Printing, Publishing and Distribution.
- Rashid, R. K. (1980). *Lessons in Public Law, State Responsibility and the Judiciary of Mixed Courts, Lectures Delivered at the Faculty of Law at the Egyptian University. Ministry of Justice in Iraq*(6).
- René Casan, M. F. (1995). *Rulings of Principles in the French Administrative Judiciary* (Vol. Tenth Edition). Alexandria: Alexandria School of Thought.
- Shatawi, A. K. (2011). *Encyclopedia of Administrative Justice* (Vol. II). Culture Publishing and Distribution House.