

## **The effect of changing circumstances on the validity of administrative decisions**

**By**

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### **Abstract**

The administrative decision is the most important aspect of the activity and privileges of the authority that the administration enjoys and derives from public law. Through it, the administration can unilaterally in some circumstances exercise its function, contrary to the general rules in private law, to establish rights or impose obligations, and the reason for this is for the sake of public interest as a priority over individual interests. The administrative decision, as an important activity of the administrative authority, consists of several pillars, which are the pillar of jurisdiction, form, location, reason, and purpose, which is the body of the administrative decision. They also represent limits that the administration may not violate, or else its decisions will be tainted with voidable defects. Finally, we hope that this study will come out, even in a few words, that will contribute, even with one brick, to the Libyan administrative law system.

### **Introduction**

The administrative decision is the preferred method of legal management in carrying out its multiple functions due to its speed and effectiveness in administrative work, and the administrative decision is also the most important and most privileged recognized by the administrative law, where the law recognizes the administration in the face of those dealing with it, the right to issue decisions that include a right determination for them or the establishment of obligations on them, unilaterally, without regard to their acceptance or not.

The administrative decision is of very great importance, as it is the essence of the administrative work itself, and the administration and its public facilities, and even the authority and the executive, will not be able to move and manage various affairs and exercise their function without the administrative decision. Something similar, but the question that arises here is, what is the administrative work on which the affairs of the state and citizens depend together? The answer to it and its clarification requires us to clarify the definition of the administrative decision.

The legislator avoided defining the administrative decision in the Administrative Judiciary Law No. 88 of 1971 AD, nor in any other law, but left this issue to the judiciary and jurisprudence, the administrative decision states that: "every administrative act issued with the intention of amending the legal conditions as they existed at the time of its issuance" or as it is at a particular future moment. "Rivero" is defined as: "The act by which the administration uses its power to modify individual legal positions."

In Arabic jurisprudence, Dr. Sami Jamal Al-Din defined it as: “An expression of the unique will of an administrative authority with the intention of creating a specific legal effect.” Dr. Maged Ragheb Al-Helou’s definition stated that: “The administrative decision is the administration’s disclosure of a unique will issued by an administrative authority and arranges legal effects.”

Dr. Hossam Mor defines the administrative decision as: “the administration’s declaration of its binding will with its authority under the laws and regulations with the aim of establishing or amending a legal center whenever it is possible and legally permissible and the aim is to achieve the public interest, so the decision is explicit or implicit.”

We know the administrative decision as an expression of uniqueness will be issued by a general administrative authority that has legal authority and certain legal effects.

As for the judicial definition, our Libyan Supreme Court has dealt with the definition of the administrative decision in several rulings since its inception, including its ruling on December 29, 2002, as: “The administration’s disclosure of its binding will with the authority it has with the intent of creating a specific legal effect whenever that is possible and legally permissible.” Motivated by the pursuit of public interest.” The idea of changing circumstances, then, is based on two important elements, through which the administration exercises its decisions in order to keep pace with the changes that occur in it, and they are the element of appropriateness and legitimacy, without the absence of legal controls that govern the administration within the limits of a certain authority, so that it is not allowed to exceed them, and under the supervision and control of the judiciary. The administrator is entrusted with the role of judicial protection necessary for the rights resulting from administrative decisions that the administration deems necessary to withdraw or cancel the reason for changing circumstances.

## **The importance of the topic**

The importance of studying the subject of the impact of circumstances on the validity of administrative decisions lies in respecting the rights of individuals to their freedoms, as well as the existence of strict rules that prevent the administration from violating the principle of legality. Exceptional legality.

The importance of this study is that it shows us the true meaning of the circumstances that may occur in administrative decisions and the effects of these changes and their observation within the limits of the authority of the administration.

## **Objectives of the study**

The objectives of this study lie in the fact that it shows us what are the circumstances that occur in administrative decisions, and their effects on the validity of these decisions, whether they are legal or functional changes, in addition to clarifying the limits of influence on the legality of individual and organizational decisions, leading to the statement of the role of the administrative judiciary in reconciling the public interest or special interest in light of these changes.

## **Study problem**

The problem is about the extent of the impact of changing circumstances on the validity of administrative decisions in light of the oversight of the Libyan administrative judiciary.

## Study Approach

In this study, we followed the analytical approach, as this study requires the analysis and interpretation of legal texts and judicial decisions related to this study, in addition to relying on the inductive approach due to the need to read legal and jurisprudential particles in order to reach a unified legal base that the researcher in the field of administrative law can rely on. Based on the foregoing, this topic has been divided into two sections as follows:

**The first topic:** Management authority in exceptional circumstances.

**First requirement:** The legal basis for the theory of exceptional circumstances.

**The second requirement:** Conditions for applying exceptional circumstances.

**The second topic:** The effect of changing circumstances on the elements of an administrative decision.

**First requirement:** Changing circumstances on the external legality of the administrative decision.

**The second requirement:** Changing circumstances on the internal legality of the administrative decision.

## The first topic: Authority to manage in exceptional circumstances

To issue laws regulating the authorities of the administration in exceptional circumstances after its occurrence, this method is used to protect the rights and freedoms of individuals because it deprives the executive authority of resorting to the powers of exceptional circumstances. Therefore, there must be laws organized in advance to address conditions before they arise, and the constitution authorizes the executive authority to announce the state of circumstances and work according to these laws.

The principle of administrative legality finds its strict application under normal circumstances, and the control of the administrative judiciary over the work of the administration reaches its extent under these circumstances, as the administration must fully comply with the rules of administrative legality, and it seems that it is unacceptable that this responded in times of crises and difficult periods that the state is going through, as is the case when war breaks out, natural disasters occur, epidemics spread and internal strife, which shakes the entity of society, and may describe the state's data, which is seen as the correctness of mitigating the stagnation of the principle of legality that correlates with these unusual circumstances, by enabling the administration to Confronting those circumstances, and if necessary, exempting them from some of the rules of legality that were originally developed to be applied in normal circumstances, and from here the theory of exceptional circumstances emerged.<sup>0</sup> as another scope to which the principle of administrative legality expands, without conflicting with it, as necessities allow prohibitions.

The theory of exceptional circumstances is a legal theory of judicial origin, as it owes its first inception to the French State Council, which pledged it to build until its features appeared, then the legislator seized it in most countries, and dedicated the majority of its provisions, and the ideal model for the applications of this theory, martial laws, and the state of emergency, and general mobilization. However, the shortcomings of the provisions of these legislations do not mean that the administration is incapable of dealing with exceptional circumstances that arise, as long as the conditions necessary for the application of the theory are fulfilled, considering that what is stated in those laws in this regard is an example but not

count to, and It does not negate what has been established about it from the general principles of law, which is the principle of the necessity of preserving the survival of the state, and the extent to which the administration is committed to this was ascertained through judicial oversight of its actions.

## **The first requirement: The legal basis for the theory of exceptional circumstances**

Jurisprudence about determining the legal basis for the theory of exceptional circumstances is divided into two directions, the most important of which is that this basis is represented in the idea of circumstances, and the other depends on the idea of the general duties of management as a basis for that.

The idea of necessity: This idea is very succinctly stated that if the administration has an obligation to submit when practicing the various aspects of its activities, then this obligation is limited to normal circumstances, but if exceptional circumstances arise that threaten the entity and safety of the state, then the administration has the right to take measures to preserve the survival of the state, even if they violate the normal legal rules, since protecting the principle of legality requires first of all the necessity of the state's survival.

## **The idea of general duties of management**

The premise of this idea is that the first and basic duty of the administration is to maintain public order and to ensure the regular and steady functioning of public utilities. If unfamiliar matters arise that impede it from performing this duty under the rules of legality in force in normal circumstances It is justified for it to deviate from these rules temporarily, to the extent that it can carry out its duties regarding these matters.

In the place of comparison between the two ideas, we note that the idea of the general duties of the administration does not provide us with an adequate basis on which the theory of exceptional circumstances can be based, because the duty of the administration is to maintain the general system and ensuring the functioning of the facilities, it is a general duty that accompanies them in both normal and unusual circumstances. As for the idea of necessity, it adopts a logical basis for the theory of exceptional circumstances, because it makes no sense to adhere to respecting the principle of legality, and the existence of the state itself is threatened, since this respect does not require sacrificing the state, which is the tool that perpetuates the principle of legality on the ground. The principle of legality does not exist without the presence of the state first, provided that the administration, for the sake of the need to preserve the survival of the state, adheres to the use of its exceptional power in the narrowest scope, as the necessity is estimated by its value.

The administrative judiciary takes the idea of necessity as a basis for the theory of exceptional circumstances, including what the Egyptian Supreme Administrative Court ruled in its ruling issued on 4/14/1962 in Appeal Nos. 656, 658/5 BC, which stated, "There is a rule that regulates all laws and their superiority, the summary of which is the necessity of preserving the state, protecting the principle of legality requires first and foremost working on the survival of the state, which will follow the government's authorization of an exception in case of necessity from the authorities, allowing it to take measures that require situations, even if it violates that law as long as it seeks the public interest.

## **The second requirement: Conditions for applying the theory of exceptional circumstances**

It is learned from judicial rulings and jurisprudence that the existence of exceptional circumstances that result in the expansion of the normal legality for the management account is subject to the availability of conditions, including:

### ***The first condition: the occurrence of unusual circumstances:***

Any unfamiliar or exceptional real situation, such as a state of war or an earthquake, that would expose the safety and security of the state to grave danger, equal to the fact that this danger is immediate, i.e. has already occurred and has not ended, or is likely to occur, regardless of whether that danger includes all parts of the country or is limited to a part of it.

### ***The second condition: It is not possible for the administration to confront these circumstances by the usual legal means:***

That is, the administration's inability to confront extraordinary exceptional circumstances with the legal means available to it in normal circumstances, due to the insufficiency of these means in deflecting the risks arising from those circumstances.

### ***The third condition: The administration should target, from that, important and vital interests.***

This means that the administration should rely on serious and essential facts to justify what taken on of the actions and exceptional measures that be worthy of protection and derogation from the rules of ordinary legality, to achieve the first and expressed interests, such as those related to defense and national security, provided that they do not exceed the amount dictated by necessity.

### ***The second topic: The effect of changing circumstances on the parts of administrative decision***

The general rule is that the decision issued by the administration is not legitimate unless several elements are present in it. However, in light of changes in the circumstances, the judiciary authorizes the administration to be free from commitment to some elements of the administrative decision, in normal circumstances, its authority in the control of projects decisions is different from that under exceptional circumstances, so that the authority is restricted in front of the emancipation of the authority of the administration, and this emancipation is one of the most important manifestations of the expansion of the authority of the administration and a departure from the principle of legality in changing circumstances, especially exceptional. Therefore, the change of the circumstances has repercussions whether on the external legality of the administrative decision in the element of competence and the element of form and procedures, or on the internal legality of the administrative decision, which is the cause, the place and the end.

### ***The first requirement: Changing circumstances on the external legality of the administrative decision***

In order for the work of the administration to be a legal, it must respond to the rules or formal conditions relating it, which are represented in the rule of jurisdiction, which is related to the owner of the disposal or the administrative work, i.e. the source of the administrative decision and the rule of form and procedures, which is related to the disposition itself in terms of its external appearance and how it is issued. The emergence of changing circumstances that impose on the administration freedom from the rules of jurisdiction, in order to serve exceptional circumstances or the actual circumstances that occurred, and the latter also leads



to freedom from the fundamental procedures whose violation in normal circumstances results in the invalidity of the work of the administration. Accordingly, we summarize that changing circumstances allow the administration to violate the formalities established in the law for reasons of maintaining ordinary system, so that the control authority must intervene quickly at the same time and prevent the administrative judge from observing the defect of the form or procedures, In the event of exceptional circumstances, they are legitimate, even if they are not carried out in accordance with legal procedures.

***The second requirement: Changing circumstances on the internal legality of the administrative decision***

The legality of the administrative decision is not limited to the external aspect only, but must also extend to the internal legitimacy, that is, the content of the decision, which is based on three conditions: the legitimacy of the term, the legitimacy of the cause, and the legitimacy of the end. Thus, the administrative act may be tainted with internal illegality when its content is illegal, which is known as the defect of violating the law or what is known as the defect of reason, or before the defect of deviation is the reason for the illegality of its goal.

## **Conclusion**

After God Almighty enabled us to complete this research entitled The Impact of Changing Circumstances on the Correctness of Administrative Decision, in which we presented all the legal and practical aspects of the idea of changing circumstances, through which we reached a number of results and recommendations, the most important of which are the following:

***First, the results:***

- We have seen from the above that the theory of changing circumstances is a realistic legal theory that appears in multiple cases and the administration has discretionary power to maintain, cancel or withdraw the administrative decision.
- Changing circumstances include the validity of the decision, with its internal and external elements, and results in effects that affect the essence of the legality of administrative decisions.

***Second: Recommendations:***

- Given the lack of clarity in the position of the Libyan legislator regarding the idea of the administration's authority to terminate its administrative decisions during changing circumstances, in this regard the study recommends the Libyan legislator to draw up rules for withdrawal in order to avoid confusion and interference between them, in keeping with the position of comparative law, and we suggest that, this be by making withdrawals limited to decisions.
- We also recommend taking into account the conclusion of the French Council of State in terms of defining between the period of withdrawal and the period of judicial appeal by setting the withdrawal period of four months for illegal decisions that generate rights instead of sixty days, because this will contribute to strengthening the foundations of the principle of legality.

## **References**

Hamdi Yassin Okasha, Administrative Decision in the State Council District, Mansha'at al-Maaref, Alexandria, 1987 AD.

- Muhammad Kamel Leila, *Judicial Oversight of Administration Works*, Dar Al-Nahda Al-Arabiya, Beirut, 1970.
- Sami Jamal Al-Din, *Administrative Cases and Procedures before the Judiciary*, Mansha'at Al-Maaref, 1990 AD.
- Maged Ragheb Al-Helou, *Administrative Law*, Ain Shams University, Dar Al-Nahda Al-Arabiya, Cairo, 1972.
- Hossam Morsi, *The Origins of Administrative Law*, Dar Al-Fath for Printing and Publishing, 2013.
- Mazen Lilo Radi, *Al-Wajeez in the Libyan Administrative Judiciary*, University Press, Alexandria, for the year 2003.
- Sobeih Bashir Makknouni, *Libyan Administrative Judiciary*, Benghazi University Publications, Faculty of Law, 1974 AD.
- Ahmed Medhat Ali, *Theory of Exceptional Circumstances*, General Egyptian Book Organization, Cairo, 1978.
- Sami Jammal Al-Din, *Regulations of Necessity to Ensure Judicial Oversight*, Mansha'at Al-Maaref, Alexandria, 1982.
- Khalifa Salem Al-Jahmi, *Judgments and Principles of the Libyan Administrative Judiciary*, Al-Fadil Library House, Benghazi, Libya, 1<sup>st</sup> edition, 2009 AD.
- Muhammad Abdullah Al-Kharazi, *Oversight of Administration Work in Libyan Law, Administrative Judicial Departments Oversight*, National Book House, Benghazi, Libya, 4th edition, 2003 AD.

***Second, university theses:***

Muftah Agnina Muhammad, *Disciplinary Responsibility of the Public Employee in Libyan Administrative Law between Management Effectiveness and Employee Guarantees, A Comparative Study with Egyptian and Moroccan Law*, Master's Thesis, Seventh of October University, Tripoli International Scientific Library, Libya, 1<sup>st</sup> edition, 2008.

***Third, periodicals:***

Al-Daywamoni Mustafa Ahmed, *The Impact of the Defective Procedures and Form on the Responsibility of Management*, *Journal of Administrative Sciences* issued by the Egyptian Division of the International Institute of Administrative Sciences, 34th year, first issue, June, 1992 AD.

***Fourth, Judgments of the Judiciary:***

- Journal of the Supreme Court, Technical Office, Tripoli.
- The Journal of Administrative Sciences is published by the Egyptian Division of the International Institute for Administrative Sciences.

***Fifthly, the laws:***

- Law No. 88 of 1971 AD regarding the Libyan Administrative Judiciary.