

Judicial Control on Administration Deviation within Administrative Decisions: The Case of UAE

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Abstract

Judicial control is an effective means to protect individual's rights and freedom from the iniquity and arbitrariness of administration power. The present study has addressed the subject matter of judicial control on administration deviation within administrative decisions in United Arabs Emirates (UAE). This study has been divided into three themes where in the first theme the concept of deviation of power is addressed. While, the second theme has addressed the cases of deviation of power and the third theme illustrated how to substantiate administration deviation with power. The study concluded that the concept deviation of power is a hidden defect strongly connected with psychological intents of the administrative decision maker. Therefore, it among the most difficult to prove by an administrative judge. The study finally provided certain recommendations.

Keywords: *Judicial Control, Rights and Freedom, intentional defect, Administration power, Discretionary power, Deviation*

Introduction

The flaw of deviation with power or "abuse of power flaw" is one of the administration resolution flaws related to a significant pillar of goal. This flaw is represented in both forms of violating public interests or deviation from the allotted objective of issuing the resolution; whereas, the burden of revealing deviation with power is assumed by the claimant by substantiating the occurrence of either of its two forms.² Emirates legislator, contrary of Emirates jurisdiction, has not referred to the deviation with power flaw as an aspect of challenge by repealing the administration resolution.

The significance of study

The significance of examination in of review of deviation defect emerges from being an unseen defect, associated to the issuing of the administrative resolution. Therefore, it will be difficult to be substantiated especially when taking into consideration that administrative resolution is validly issued in all aspects. It is issued by competent entity in accordance with the form and procedures required by the legislator. It is has to be legitimate in terms of the subject and ground on which it relied in addition to the consequences of affecting such resolution on compromising individuals' rights and freedom.

The hypothesis of study

The problematic issue of the research is the Emirati legislature not drafting a legislation dealing with the causes to nullify illegal administrative decisions. Therefore, the dire need to identify the concept of deviation with discretionary power, demonstrating its instances in addition to clarifying the manner of its substantiation through the following themes;

- First theme: The concept of deviation with discretionary power
- Second theme: Instances of deviation with discretionary power

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² Dr. Aldaidamoni Mostafa, Procedures and Forms in Administrative Resolution, General Book Organization, 1994, P 119.

- **Third: Substantiation** of deviation with discretionary power.

The Aims of study

The subject-matter of the study aims to shed the light of Emirati Supreme Federal Court jurisdiction in a critical analysis of to examine and evaluate its role in revising the administrative actions especially those based on discretionary powers in order to provide a number suggestions that protects and safeguards the rights and freedoms of individuals.

The present study has followed qualitative analysis approach and comparative analysis on other situations to describe and analyse the different judicial jurisprudences judicial applications, under study.

[A] First Theme: The concept of deviation with discretionary power

Deviation with discretionary power is identified as utilizing particular power by an administrative entity to attain an objective other than the objective for which law conferred such power.³ While others defined the deviation flaw as; "Having deviation with power when the administration utilizes its competencies for a purpose other than the public interests whether such purpose is private interest or political objective furthermore, deviation with power exists when the administrative entity takes adopts a resolution for public interest objective but it is far away from the objective set by the legislator which the administration pretends its implementation".⁴

Some criticized the above definition as it encompassed both forms of deviation represented in targeting an irrelevant objective to the public interest or targeting public interest in a different manner to legislator's setting in some administrative resolution. In this situation the deviation occurs in a form contradicting the rule of allotment of objectives.⁵⁽³⁾ In its legal meaning, some jurisprudence concluded that if an employee abused his power he serves an objective other than the one intended by the legislator. Deviation may occur from the perspective of the art of administration, in case when the man of administration fails to readily accomplish the outcomes that result in effecting changes as desired by the society.⁶

From the perspective of the art of administration, deviation varies from its legal meaning in terms of the objectives aspired by the administrator, which deem to balance between legitimate objectives for the purpose of opting among them what will accomplish the best results and hence accomplishing the goal targeted by society.⁷ The two researchers agree with the opinion perspective of the art of administration may have not less severance than deviation in legal definition.⁸ It incorporates the society objectives, which are the goal of the existence of entire administration authority. The administrator is not recognizing society objectives to vest them with preferences in his resolutions, which will result in sacrificing key society interests and objectives to attain other secondary objectives. The administration shall conduct training sessions for its employees while setting its completion successfully to assume the career level by which he is enabled issuing the resolution.

Meanwhile, some jurisprudence⁹ believed that deviation with power occurs when the administration entity utilizes its discretionary power conferred upon it intentionally to attain an objective other than for which it's conferred such power. It is notable that this definition links deviation with power. To this extent, the Supreme Federal Court in the United Arab Emirates adjudicated in a ruling that "Abusing the power or deviation therefrom deem intentional flaws in administrative conduct and its substance is that the administration entity shall have the

³ Dr. Raafat Fodah, *The Elements of Administrative Resolution Existence*, Dar Alnahda Alarabia, Cairo 2010, P 83

⁴ Dr. Salim Salam Hatamleh, *Jurisdiction Control over the Principle of Commensurability between Disciplinary Punishment and Administrative Violation*, Jerash Magazine for Researches and Studies, Jordan, Vol. 10, Edition 2, June 2006, P 152.

⁵ Dr. Mostafa Abu Zaid Fahmi, *Nullification Jurisdiction*, University Publications House, Alexandria, 2011, P 117

⁶ Dr. Abdul Ghani Basyouni – *Causes of Nullification*, Monshaat Almaaref, Alexandria, 2006, P 187.

⁷ Dr. Yaaquoub Yousef Alhammadi, *Jurisdiction and Controlling Administrative Discretionary Power*, Almaaref Corporation, Alexandria, 2012, P 96.

⁸ Dr. Abdul Aziz Abdul Moneam Khalifa, *Jurisdiction of Nullification*, Dar Alkitab Alhadeeth, Cairo, 2008, P 79.

⁹ Del Altabtabaei, *Jurisdiction Control over the Principle of Commensurability between Disciplinary Punishment and Administrative Violation*, Magazine of Rights, Vol. 6, Edition 3, September 1998, P 212.

intention to abuse the power or deviate with it given that the flaw of abuse of power justifying nullifying the administrative resolution or compensating therefore shall restrain its goal itself so that the administration entity has refrained from the side of public interest targeted by the taken administrative resolution or has issued the resolution for causes entirely carved out from such interest".¹⁰

Nevertheless, there is inherence between the construction of deviation flaw and the bad intention of the administration. Whereas, good and bad faith are equal in its attainment as it carved out from the intention targeted by the legislator being the public interest.¹¹ It is established by jurisprudence that the flaw of deviation with power is an inherent flaw to the discretionary power conferred to the administration entity.

It is noted that when administration power is limited, it conducts on the light of what legislator imposes. Therefore, it takes its resolution as duly outlined for it and no domain to raise the flaw of deviation with power.

Notably to say that the deviation with power flaw occurs in many forms as to encounter flaw if the issuing person of administrative resolution did not seek the public interest objective or sought attaining an objective falling under public interest.¹² Finally, deviation with power flaw deems paucity by the administrative resolution as it is unseen and not apparent. This flaw is related to the personal intentions and purpose of administrative resolution issuer, which sustains the flaw of deviation in the form, procedures, competence, grounds. Furthermore, this flaw is featured with non-relation to public order and hence, administrative judge may not raise it by himself unless stacked to be the claimant himself.¹³

Instances of deviation with power

The administration entity aims at issuing its resolution to attain an objective for which it is conferred. The administration is not always complied with its aims and objectives that are not established by the legislator, resulting in sustained administrative resolution with the flaw of deviation with power.¹⁴ Instances of administration deviation with its power can be represented in three different instances namely; deviation with power to attain interests far away from public interest, deviation from allotted objectives, and deviation in utilizing administrative procedures. These instances have been discussed as follows;

First: deviation with power to attain an interest far away from public interest

In terms of administration activity, its mission is to attain the public interest; whereas, administration entertaining public law privileges only to attain this objective or purpose. However, if the administration aims at issuing the resolution, this deems an extremely severe issue which will result in non-legality of the administrative resolution issued by it.¹⁵ To this extent, Emirates Federal Supreme Court adjudicated in a judgment that "resolution may not sustain flaw unless the administration refrained from public interest at which the administrative resolution should aim and issued the resolution for a purpose carving out from such interest or failure to justify its conduct which renders the issued resolution lacking valid cause and sustaining the flaw of abuse of power and to be nullified".¹⁶

It is apparent from this judgment that the administration might aims at various objectives and purposes away from the scope of public interest as: the forms of deviation from public interest is utilizing power for the purpose of revenge or to attain personal interest.

Second: Utilizing power for the purpose of revenge

¹⁰ Judgment of Supreme Federal Court in appeal No. 1 of 2010, administrative, session of 19-5-2010.

¹¹ Dr. Ahmed Hafiz Najm, Administration Discretionary Power and Law-Suits of Deviation with Power, Administrative Science Magazine, Second Vol., December 1983, P 342.

¹² Dr. Faisal Abdul Hafiz Alshawabkeh et al., Control of Jordanian Supreme Court of Justice over Administration Power in Discretion, tenth edition, January 2014, P 134.

¹³ Dr. Magdi Dsouki Hussain, General Principles of Law and Resolution's Internal Legitimacy, University Book House, Alexandria, 1998, P 367.

¹⁴ Dr. Abdul Aziz Abdul Moneam Khalifa, Jurisdiction of Nullification, OP. cit. P 184.

¹⁵ Dr. Faisal Abdul Hafiz Alshawabkeh et al., Control of Jordanian Supreme Court of Justice over Administration Power in Discretion, tenth edition, January 2014, P 136.

¹⁶ Supreme Federal Court judgment in the appeals: 566 and 591 of 2013, administrative, session of 26-3-2013.

It is noted that this is a repulsive form of the deviation of administrative resolution issuer, who exploit his influence and power conferred by the administrative for serving public interest. However, he issues the resolution for the purpose of revenge or prejudicing someone else to satisfy a devil desire of himself. The fertile environment for this form is the civil service with revenge of dissenting, competitors, and favourite people.¹⁷

No doubt that exploitation by the administrator to his power and influence deems severely serious indication and reveals weakness of ethics. It will also prejudice political regime in the state. If anyone is tempted to carve out from the outlines set by the legislator and law or compromised civil service. Ethics must be held accountable to serve repulsive purposes.¹⁸ Therefore, administrative jurisdiction confronts such administrative deviations. However, it has to be stated there has been no judicial application of this situation in the Emirati Supreme Federal Court jurisprudence.

Third: Exploiting power to attain personal interest

Power entertained by administration is not a purpose in itself but a means to attain the purpose represented in society public interest. Its resolution will sustain the flaw of abuse of power or deviation with it as this flaw deems one of the appeals for nullification against administrative resolution. Whereas, administrative resolution will sustain abuse of power flaw if the administrator exploited it to attain personal interest other than the public interest prescribed by law.¹⁹ The law does not confer the administration powers and privileges it for to attain the key purpose to which it seeks being the public interest.²⁰ A benefit to any person would be attained to give rise to deviation flaw. This form of deviation takes place in many instances as the resolution stimulated political incentives, challenging or tricking judicial judgment, or urged by revenge.²¹

This form takes place in disciplinary domain, when administrator exploits his power to issue administrative resolution and attain private interest for himself. Issuing administrative resolution dismiss an employee to vacate the vacant position for appointing another employee therein. Such resolution deems sustaining deviation with power flaw, but in case resolution issuer or the administrator attain personal interests accidental to get public interest.²²

Forth: Deviation from allotted objectives

It is known that each resolution shall aim at attaining public interest nevertheless; the legislator in some cases allots specific objective obligating resolution issued to aim at attaining this objective particularly. The resolution deems sustaining deviation with power flaw even if the purpose of resolution issuer falls within the scope of public interest.²³ That was the adjudication of the Supreme Federal Court when it stated that “the flaw of abuse of power may not take place unless having deviation in utilizing power, that is to say when the administration takes resolution to protect purpose other than those intended by the legislator when conferring it such power”.²⁴

The purpose targeted by the administrator in this instance revolves within the domain of public interest but contradicts the purpose required by legislator. However, this instance is less severe than the instance to attain interest far away from public interest. Forms and instances of violating the rule of objectives allotment vary. The most significant application is to exploit administrative order-keeping to attain financial interest. It is known that the administrative order-keeping is conferred to the administration to maintain public order in its various elements (public security, public health, accommodation, public morals). However, the administration is not all times

¹⁷ Dr. Faisal Abdul Hafiz Alshawabkeh et al., Control of Jordanian Supreme Court of Justice over Administration Power in Discretion, tenth edition, January 2014, P 279.

¹⁸ Dr. Ahmed Hafiz Najm, Administration Discretionary Power and Law-Suits of Deviation with Power, Op. cit. P 176

¹⁹ Dr. Mostafa Abu Zaid Fahmi, Nullification Jurisdiction, Op. cit. P 191.

²⁰ Dr. Sulaiman Mohamed Altamawi, Administrative Jurisdiction, third volume, Dar Alfekr Alarabi, Cairo, 1997, P 362.

²¹ Faisal Abdul Hafiz Alshawabkeh, Graduation of Nullifying administrative resolution on the light of the latest judiciary jurisprudence in United Arab Emirates – comparative study, Op. cit. P 141.

²² Dr. Aldaidamoni Mostafa, Procedures and Forms in Administrative Resolution, Op. cit. P 121.

²³ Dr. Faisal Abdul Hafiz Alshawabkeh et al., Control of Jordanian Supreme Court of Justice over Administration Power in Discretion, Op. cit. P 279.

²⁴ Supreme Federal Court judgment – appeal No. 173 of 2009, session of 11-5-2009.

complying with the purposes for which it is conferred. Accordingly, jurisdiction nullify it for this cause, French Council of State encountered this deviation of administrative order-keeping power to attain financial interest for the administration.²⁵

According to United Arab Emirates Supreme Federal Court, its jurisdiction followed the route of French Council of State as it adjudicated as follows in one of its judgments “the administration disclosed the cause impelled it to issue the complained resolution being maintaining the money of the company where the government shareholding amounts to 51% and this cause is not intended by the legislator to be attained according to applicable law and therefore, it abused its power as it is known that deviation in utilizing power exists when the administration takes a resolution to protect purposes other than those intended by the legislator when conferring such power upon it even if such purposes are related to public interest”.²⁶

The civil service system confers the entire power of administration to transfer its employees as required by public facility interest. This helps in attaining public interest but if the administration utilizes this power to impose disciplinary action on an employee, then such resolution deems deviation from the purpose for which the administration was conferred. This power of transfer and administrative jurisdiction rules illegality of such resolution as it sustains the flaw of deviation and abuse of power.²⁷ In this regard, Supreme Federal Court asserted that “Should administrative entity be permitted transferring employee whether in terms of place or qualitatively by virtue of its discretionary power to be able to manage the public facility and attaining public interest, its shall undertake performing the same within the frame of the law and its resolution may not sustain abuse of power.”²⁸

The practical application of violating the rule of objectives traces thereof in referring employee to pension. The legislator aimed at proper streamlining of public facilities by removing those employees whose existence doesn't contribute to attaining public interest and conferred the power of referring any employee to pension. But if the administration turned away from such objective then its issued administrative resolution in this regard sustains the flaw of abuse of power that should be nullified.²⁹ Accordingly, any resolution issued by administration entity deviated from the rule of objectives allotment, or administration entity utilized the provisions of law with intention of deviating from its objective or intentionally violated the law.

Fifth: Deviation in utilizing administrative procedures

Procedure is stipulated by law that needs to be followed to attain particular purpose as expropriation or disciplining. For instance, disciplining must be affected by applying the disciplinary code, which includes all procedures and formalities from encountering job violation till issuing the disciplinary action against the violating employee for attributed violation, enable him defend himself, and reasoning of issued resolution on punishment. This applied system is the legal instrument for disciplining and also known as disciplinary procedures.³⁰

Deviation is defined as a utilizing procedures or deviation with procedure from the concept of administrative procedure or legal instrument. It is decided to take place when administration power utilizes administrative procedure or any legal instrument for attaining public interest.³¹ The concept of deviation with procedure should be limited to the concept of deviation with the procedure where it is applied for another subject other than the subject for which it is designated without investigating the purpose.³² While others compiled to the deviation with procedure between the concept of purpose and the concept of procedure. They believe that deviation with

²⁵ Sulaiman Mohamed Altamawi, Administrative Jurisdiction, third volume, Op. cit. P 449.

²⁶ Supreme Federal Court judgment – appeal No. 106 of 2010, session of 13-4-2010.

²⁷ Dr. Mostafa Abu Zaid Fahmi, Nullification Jurisdiction, Op. cit. P 193.

²⁸ Supreme Federal Court judgment in appeal No.: 390 of 29, administrative, session of 30-12-20017.

²⁹Dr. Faisal Abdul Hafiz Alshawabkeh, Graduation of Nullifying administrative resolution on the light of the latest judiciary jurisprudence in United Arab Emirates – comparative study, Op. cit. P 145.

³⁰ Dr. Mohamed Refaat Abdul Wahab, Administrative Jurisdiction, Volume one, Alhalabi Legal Publications, Beirut, 2003, P325.

³¹ Mohamed Alsennari, Law-suit of compensation and Law-suit of nullification, Alisraa Printing Press Publications, Cairo, 2008, P 668.

³² Dr. Yaaquoub Yousef Alhammadi, Jurisdiction and Controlling Administrative Discretionary Power, Op. cit. P 176.

procedure is represented in intentional non-compliance of the procedure with the objective. The administration utilizes a procedure to accomplish purposes other than those utilized to attain them.³³

Deviation with procedure might occur when administration body possesses various competencies in punishment and then resorts to utilize the instruments and procedures designated to one competence. Each crime has distinguished procedures of punishment from the other, and the administration applies the procedures prescribed for one of them in other crimes.³⁴ Accordingly, deviation with procedure is represented along with the instrument prescribed by the legislator for him to resort to other instrument for the purpose of rules of competence. Whatsoever is the administration purpose in denying the procedure prescribed by the legislator to exercise its competencies, it actually deviated with its power just on violating the prescribed procedure.

The basis of deviation with procedure is that the administration utilizes an administrative procedure it shouldn't utilize related to the purpose of the project it aims to attain. However, the same could be utilized to achieve another purpose. Therefore, deviation with procedure takes place when the administrator utilizes another instrument other than that is duly established.³⁵ Based on the above, deviation with procedure can be defined as administrator's violation while seeking a public interest objective. The procedure prescribed by the legislator to attain the objective exists regardless the stimulus induced by the administrator to deviate from the duly established procedures.

Significance of deviation with procedure underlies the fact that clearly reveals the flaw of deviation with power without investigating the intentions of resolution issuer. It incorporates the subjective evidence for deviation with power and thus deviation with procedure impairs the difficulty of proving deviation with power flaw, whose proofing in most cases relies on self-elements.³⁶ The significance of deviation in procedure is materialized due to double replacement of law in its broad meaning. On one hand it includes breaching of the provision creating the procedures utilized by the administration; while, on the other hand it involves breaching the applicable provision which will result in amending the conditions and scope of law application to the contrary of legislator's intentions. In majority of the cases, it is also accompanied by unreal causes and ignoring some formalities. It tends to implement law in contradiction to legislator's intentions. Moreover, it is often accompanied by some formalities and from this point emerges the severity of deviation with the procedure it justified in reality.³⁷

From the above, it is apparent that deviation with procedure is represented in utilizing some procedures that are not aligned with the objective. The administration here utilizes the procedures to attain objectives other than those that have been utilized to reach the real objective or purpose. The administration by utilizing these procedures intended to attain specific end by avoiding prolonged formalities and procedures to nullify some guarantees for individuals. This procedure takes place in majority of the cases of transferring and disciplining employees. The jurisdiction in France, Egypt, and Emirates are stabilized on nullifying administration resolutions with the intention of attaining financial goals. These goals are based on the deviation of these resolutions from the allotted objective for which the administration conferred the power of determination. Jurisdiction persevered nullifying such resolution whatsoever instrument followed by the administration to attain public interest whether by administration deviation with the power of order keeping, its deviated utilization of dispossession for public interest, temporary appropriation on properties, or its deviation with the power of issuing organization line.³⁸

Accordingly, the power of administrative order keeping to attain its financial objective is one of the most severe forms due to the difficulty of administration resort, under the cover of administrative order keeping to attain its financial interests. This deviation is apparent in concealed punishment as transferring or seconding employee instead of imposing disciplinary action against him, which is a punishment under the cover of work organization in public administrations.³⁹

³³ Dr. Yaaquoub Yousef Alhammadi, Jurisdiction and Controlling Administrative Discretionary Power, Op. cit. P 176.

³⁴ Abdul Aziz Abdul Moneam Khalifa, Jurisdiction of Nullification, Op. cit. P 277.

³⁵ Dr. Aldaidamoni Mostafa, Procedures and Forms in Administrative Resolution, Op. cit. P 251.

³⁶ Dr. Aldaidamoni Mostafa, Procedures and Forms in Administrative Resolution, Op. cit. P 251.

³⁷ Dr. Mohamed Alsennari, Law-suit of compensation and Law-suit of nullification, Op. cit. P 351

³⁸ Sami Jamaludin, Jurisdiction of Appropriateness and Administration Discretionary Power, Op. cit. P 411 et seq.

³⁹ Dr. Faisal Abdul Hafiz Alshawabkeh, Graduation of Nullifying administrative resolution on the light of the latest judiciary jurisprudence in United Arab Emirates – comparative study, Op. cit. P 133

The issue of concealed punishment actually relates to administration ethics and behaviour against its employees as it intentionally imposes punishment in the proper meaning by a concealed illegal method utilizing. Sometimes procedures, which are not stipulated by law, utilize stipulated procedures for purposes other than those established for them to eliminate such sort of punishment. The administration first abides by reasoning all resolution of punitive and prejudicing impacts issued by it. On the other hand, the legislator shall legalize all procedures and arrangements through which the administration seeks punishments. The jurisdiction system in its capacity as protecting individual's right shall not carve out from reality upon implementing law on facts. However, it shall examine them and identify its features accompanied by circumstances leading to the interests of administration, employees, and public facility.⁴⁰

Proofing deviation with power flaw

The deviation with power is connected to the intention or purpose of administrative resolution issuer, which is a concealed flaw covered by some facets of legality covering the sustaining resolution. Such flaws are rendered valid in terms of competence, form, procedures, subject, and cause. Therefore, its proofing will be extremely difficult making this flaw a precautionary cause to nullify the administrative resolution and may not be investigated as far as it is possible to embark on another cause to nullify the administrative resolution. In addition to this, the resolutions entertain the presumption of its validity in terms of purpose and dropping the burden of proofing deviation with power on the appellant.

Difficulty in proofing is doubled by the fact that this flaw is not of the types related to public order. Therefore, administrative jurisdiction may not cope with by itself, if it is not raised by the appellant in his statement of claims. Jurisprudence indicated one of the impediments to proof this flaw, while investigating administration stimulus and incentives. It is incapable to question the administrator or perform investigation in this regard due to the principle of separation between the adjudicating administration and operating administration.⁴¹

There are various instruments of proofing deviation with power. The instruments addressed in the present study are as follows:

First: Proofing the deviation from appealed resolution expression

Deviation with power defect appears once after reading the administrative resolution. The French Council of State used to proof such flaw by the expressions and clauses of the resolution itself. Even though the general rule is presumption of accuracy of the verdict. In the same meaning the Supreme Federal Court adjudicated that "It is established in administrative jurisdiction and jurisprudence that administrative resolutions – as a general rule – entertain legal presumption which is assuming its validity in terms of its purpose i.e. targeting public interest or the allotted object by law. Whoever alleges the contrary shall proof it".⁴² It has to be mentioned that there has been no judicial application of this situation in Emirati Supreme Federal Court jurisprudence.

Proofing deviation with power requires assuring matters related to the mentality, state of mind, and intents of resolution issuer. Therefore, administrative judge determines stimulus motivating him to issue the resolution to attain spirit of law or public interest as it is the overall objective aimed by all resolution within the field of stimulus, intents, objectives and purposes which are relative but not bare concepts.⁴³

Nevertheless, the research and investigation conducted by the administrative judge to be familiar with the actual stimulus and objective of resolution issuer cannot readily be proofed to determine deviation with power. The judge resorts to proof administration deviation with its power towards the objective intended by the legislator in many other ways. From this point, the concerned can proof deviation with power from the wording of the resolution, i.e. by reading the administrative resolution which might reveal its non-legality.⁴⁴

⁴⁰ Dr. Mostafa Abu Zaid Fahmi, Nullification Jurisdiction, Op. cit. P 179.

⁴¹ Dr. Sulaiman Mohamed Altamawi, Administrative Jurisdiction, third volume, Op. cit. P 342

⁴² Supreme Federal Court judgment in appeal No. 566 of 2013 dated 12-4-2013.

⁴³ Dr. Faisal Abdul Hafiz Alshawabkeh, Graduation of Nullifying administrative resolution on the light of the latest judiciary jurisprudence in United Arab Emirates – comparative study, Op. cit. P 135.

⁴⁴ Dr. Yaaquoub Yousef Alhammadi, Jurisdiction and Controlling Administrative Discretionary Power, Op. cit. P 241

Based on the above, it is believed that relying on the explicitly of text eliminate the flaw as the issuer of the administrative resolution sustaining deviation flaw usually conceals the actual purpose, when he is not obliged to demonstrate the causes of its issuance.

Second: Proofing deviation through suit file documents and papers

Jurisdiction of United Arab Emirates Supreme Federal Court tends to reach the objective of administration in issuing the administrative resolution to inspect file documents and review the correspondences proceeding or succeeding the appealed resolution. It also inspects the directions of administrative superiors pursuant, to which the resolution is taken. To this end, Supreme Federal Court adjudicated that "Accordingly and as established by the minutes of violation committee affiliated by the defendant that the appellant showed up before it at Ministry's premises in Dubai and responded to the attributed violations pertaining to exams progression and explained that the procedures of opening and sealing envelopes are made in a manner in contradiction to law and further detailed the violation of amending student marks.... and sustained violations thereof, and since the said committee was aware of the violations attributable to the appellant and its circumstances in all aspects and concluded in its outcomes to terminate appellant's service, and as such its conduct is within the power mandated to it pursuant to law but no proof arise to demonstrate that its conduct involves flaw or ill conduct in processing its procedures".⁴⁵

This judgment signifies that the court supports administration resolution and dismisses the appeal after it extended its control on suit file. However, no evidence was found on administration's deviation with its power.

Third: Proofing deviation by presumptions

Concerning the jurisdiction, the presumptions are divided into legal presumptions. When their source is the provision of law, the judicial presumptions are not explicitly determined by law estimating the asserted relation between the absolutely proven and known incident for which the court has no evidence.⁴⁶

Supreme Federal Court considered presumptions as a means of proofing deviation with power provided that the claimant shall proof the deviation in administration resolution. Therefore, it adjudicated that⁴⁷ "and that the claimant did not provide any evidence that the administrative entity disaffected public interest or issued the resolution for stimulus irrelevant to such interest and accordingly this challenge is merely groundless statements lacking evidence and shall therefore be disregarded".

Fourth: Proofing deviation with power from out of dispute circumstances

French Council of State acknowledges the possibility of proofing deviation, particularly from the circumstances out of the disputer. It may proof that resolution issuer deviated in utilizing his power, such as the resolution of the minister of health when he declined an application to obtain pharmacy permit. This satisfied the requirements of citizens on basis of the permit obtained for a specific region. The administrative jurisdiction nullified Minister's resolution based on the facts of opening pharmacies, which deems an evidence of Minister's deviation in utilizing his power.⁴⁸ As regards to Emirates Supreme Federal Court, it was found that the assumed presumption of legality is present within the resolution. The court quoted "our court finds in the file of claimant and the requirements accompanied issuing the appealed resolution what destabilize the assumed presumption of legality in the appealed resolution".⁴⁹

Nevertheless, difficulty in proofing deviation with power resulting from the personal nature was not available in such instance where the target is proofing deviation with administrative procedures. The law related to the intention and purpose of personal nature aimed by the administration from its administrative resolution. In this situation, deviation can be proven by analysing and comparing the procedures utilized by the administrative and utilized in

⁴⁵ Supreme Federal Court judgment in appeal No. 415 of 2012, administrative, session of 5-12-2012.

⁴⁶ Dr. Faisal Abdul Hafiz Alshawabkeh, Graduation of Nullifying administrative resolution on the light of the latest judiciary jurisprudence in United Arab Emirates – comparative study, Op. cit. P 137.

⁴⁷ Supreme Federal Court judgment in appeal No.: 1 of 2010, administrative, session of 19-5-2010.

⁴⁸ Dr. Ahmed Odah Alghowairi, Jurisdiction of Nullification in Jordan, Althaqafa Publication House, Amman, 1998, P 401.

⁴⁹ Supreme Federal Court judgment in appeal No.: 143 of 2013, session of 8-10-2013.

both cases. The comparison is made between the results, to which the administration aims at attaining legally.⁵⁰ Therefore, it is said that the flaw of deviation with power withdraws back before the administrative jurisdiction rarely resorts to nullify the resolution based on the flaw. The causes of deviation with power withdrawal are attributed to the emergence of judicial control over the other causes of the resolution.

Conclusion

The present study in judicial control on administration deviation within administrative decisions stated the significance of administration discretionary power. It requires safe shelter for protecting the principle of illegitimacy. The legislator mandated the administration issuing resolutions within restricted competence by issuing administrative resolution according to its discretionary competence within the extent of exercising its discretionary power. This might result in committing the flaw of deviation in exercising such discretionary power. This flaw deems a breach of rules of the principle of illegitimacy. Therefore, jurisdiction control is considered over the purpose of issuing the administrative resolution as the purpose deems the dividing line between illegitimacy and non-illegitimacy.

The flaw of deviation or abuse of power deems intentional flaws related to the intents and state of mind incentives. Therefore, administrative jurisdiction considered that this flaw will not be resorted to precautionary, i.e. the judge may not resort to it unless administrative resolution involves any other nullifying aspect. Furthermore, deviation flaw is characterized with the difficulty of proofing. This difficulty is relative but not absolute especially when proofing deviation from the rule of objectives allotment and deviation with procedures as it relates to subjective considerations.

Deviation with power has general characteristics that must exist if resolution issuer violated the public interest. Jurisprudence of the Emirates Supreme Federal Court achieved advanced degree to extend their control over administration's discretionary power as they controlled the deviation with power flaw by all methods of proofing.

It is wished that Emirates legislator will issue a law regulating the litigation of nullifying administrative resolution and lay down the causes of nullifying illegal administrative resolution. Moreover, the Emirates Supreme Federal Court need to rely on the explicitly of wording and clarity of expressions to proof the deviation with a view of mitigating this flaw.

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