

Compliance with the disguised administrative decision As a reason for accepting the cancellation claim An inductive and analytical study compared to the provisions of the civil law

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Abstract

Administrative law and judiciary have a unique approach in their own systems, which distinguishes them from all other laws and judicial systems, as they are based mainly on the idea of the executive and supervisory role for the practice of public administration, to which extent it can be performed with high efficiency and without exaggeration or error in terms of implementation by controlling their activities according to a correct legal administrative approach.

This research aims to define compliance with the disguised administrative decision, and its legal implications, as an attempt to find the legal character that deals with this type of decisions as one of the reasons for accepting the cancellation suit, and everything related to the state of non-compliance with administrative decisions in the event that they are issued by a competent person and in a manner that is inconsistent with Logic and law, by presenting a realistic and clear picture of it, with the aim of enriching the legislative aspect thereof.

According to this study, it's clear that the general principle obliges a civil servant to accept the administrative decisions issued against him in compliance with the implementation of the functional presidential orders. However, the desired exception to this principle is to draw the attention of the administrative judiciary to make the administrative decisions following the disciplinary penalties complied by a decision-maker subject to consideration, examination, and scrutiny, for a judgment to accept the case thereof, if the subsequent disguised disciplinary action against the basic fixed disciplinary action has been achieved, provided that this is exceeding the general principle, which requires that in order to accept the cancellation claim, it is necessary not to comply with an

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inconclusive administrative decision and to contest it within the prescribed period for cancellation thereof.

Following an inductive and analytical approach, the subject herein came in two chapters, the first concerned with a brief statement of the cancellation claim and the conditions for its acceptance, and the second focused on compliance to the disguised administrative decision as a reason for accepting the claim and as a justification for rescission of the contested decision within the framework of the legal periods for disputing the contested decision.

Keywords: administrative decision, disguised administrative decision, cancellation claim, compliance to the administrative decision, acceptance of the cancellation claim.

1- Introduction

There are many conditions for accepting a lawsuit for cancellation of administrative decisions. If those conditions are met, the administrative claim for cancellation is considered to be within the competence of the administrative judiciary and it is legally permissible for it to adjudicate it in accordance with the correct system. Therefore, a court intends to examine whether or not these conditions are met in order to decide whether to proceed with the case and decide on it or reject it because the required conditions have not been fulfilled. However, a court aims shortening the duration of the dispute and achieving the desired public interest for the administrative body, the source of the administrative decision on the one hand, and the interest of the appellant if he was harmed by this decision on the other hand. In this regard, it should be noted that the interest in a civil lawsuit is only an imperative that must be met, as the Jordanian Civil Code stipulated in Article 3 of the Jordanian Civil Procedure Code that “a plaintiff should have an interest in filing the lawsuit, as it explicitly stated, “It is not accepted.” Any request or defense in which a stakeholder does not have an existing interest approved by the law, and the potential interest is sufficient if the purpose of the request is to precaution to ward off imminent damage or to verify a right whose evidence is feared to disappear when disputed.” (Al-Thunaibat & Al-Rabadh. 2017: 106)

As is customary, any administrative decision must have its five pillars, namely; The jurisdiction, the form, the place, the reason, and the purpose, since with both of the latter the existence of a decision is complete, however without one of them it suffers a defect through which a stakeholder can initiate a lawsuit for cancellation, due to the imbalance of the legality of one of its aforementioned pillars, to rely on it as one of the reasons for appeal and cancellation. In addition to the general principle, we note that the public administration does not

always stand before the administrative courts except in the capacity or position of the defendant. (Al-Alawi. 2011:157)

In this study, we highlighted in particular the issue of the extent to which the principle of compliance with the disguised administrative decision and the acceptance of the cancellation claim is implemented despite its verification by the administrative judiciary. However, we emphasized the scarcity of similar studies in a detailed statement of this type of decisions, comparing it to the provisions of the Civil Code. Therefore, based on our propositions, the extent to which the administrative judiciary can accept a claim for cancellation despite compliance to the disguised administrative decision based on a previous disciplinary administrative decision? In other words, the extent to which the principle of compliance with the administrative decision is considered as one of the reasons for accepting the cancellation claim once it is certain that this compliance has been achieved based on a disguised decision that follows a previous decision? Thus, a court accepts the consideration of the case from the appellant as an exception to the principle followed by the necessity of providing the condition of non-compliance with the administrative decision by the appellant.

In this way, given the seriousness of this condition for accepting the cancellation claim in the judicial and administrative side, at the same time its importance for not ruling the dismissal of the lawsuit submitted by the appellant of a subsequent decision on a previous decision and the consequent legal and judicial effects in terms of validity and the material result thereof, which inevitably affects a civil servant in his legal, material and moral position. We decided to discuss the issue of compliance with the disguised administrative decision by a subsequent sentence over a previous sentence for him, in terms of; The extent of the legitimacy of this compliance and reliance on it as a reason for filing a lawsuit for cancellation from a stakeholder and its acceptance by the administrative judiciary?

1-1 The importance of the study:

The importance of this study does not stem only from the fact that it deals with a recent issue related to the possibility of accepting a cancellation claim despite the compliance of a stakeholder with the administrative decision issued against him. Rather, it transcends the legislative and judicial vacuum on the one hand, and the issue of the jurisprudential side that did not deal with this issue in such detail and clarification on the other hand. So, it was necessary to describe and analyze the legal framework thereof.

Here, we see the peculiarity in allocating a legal space with legal texts for an internal treatment of each administrative court of the country's courts along its geographical extent that deals with the issue of

compliance with the disguised administrative decision as a reason for accepting the cancellation claim from a stakeholder in terms of filing it, not a reason and a condition for its rejection, contrary to the applied general principle.

This issue has become a necessary concern. Thus, if we ask who among us reads the texts of the administrative judiciary systems and the management of the administrative case with its various titles and finds a legal text that addresses the issue of compliance with the disguised administrative decision as a decisive and firm reason for accepting the cancellation claim from a person concerned not as a condition for refusal? The answer will inevitably be that such texts are not available, not even at the minimum level that indicates its dedication, the statement of its legal frameworks, and the way to deal with and its adoption.

This study aims to: highlight the importance and seriousness of what this issue constitutes in the functional life of the public administration during the stage of issuing its repressive and disguised administrative decisions, or after the end of the stage of issuing it and its transformation into truth and realistic implementation, as a reason to deter and abandon it on the one hand, and as conclusive evidence for the administrative judiciary to accept the lawsuit despite the concerned person's compliance to such a decision on the other hand. This study also aims to shed light on the position of the administrative legal regulations and instructions on this issue, especially in light of the lack of a detailed statement of the jurisprudence explanations thereof, similar to other conditions and reasons for accepting and rejecting the cancellation lawsuit.

1-2 Study problem:

The nature of this research and the limits of its scope raises a major problem revolving around the following: the extent of the legitimacy of complying to the disguised final administrative decision issued as a disciplinary offence subsequent to a basic sentence in accepting a claim for cancellation from the administrative judiciary and the ruling for the contestant of his legally forfeited right? Noting that such compliance came in the light of the master of administrative principles represented in ensuring the regular and steady operation of public utilities, although this compliance was built primarily, not permissibly, according to painful real procedures and circumstances that prompted the appellant to accept the appealed decision and comply to it.

In the same regard, based on the foregoing, would such a step, if the judiciary dared and adopt it in the folds of its judicial rulings, be considered a violation of the general rules that necessitate an employee not to comply with the administrative decision issued against him and to dispute it within the legal period estimated by

regulations? So if the appellant acquiesces to the administrative decision in compliance with the master of administrative principles, which is a dynamic turning point in determining the extent to which the appeal is accepted or not before the Administrative Court?

Hence, based on the above questions, the main problem of the current study emerges, which lies in: - The effective legal treatment of administrative decisions issued against a concerned person if it was based on a previous decision and was built mainly as a disciplinary administrative offence, by highlighting the provisions of the internal administrative rules governing such kind of decisions, which requires us to describe, analyze, and discuss the reasons and methods for its issuance, thus give it the appropriate legal framework.

In the same context, the problematic of this study also revolves around the following question: - What about the rest of the administrative judicial systems and the rulings of other courts in the comparative law of countries in terms of accepting a cancellation claim submitted by a concerned person who complied with a contested decision and accepted it by consideration, judgment and scrutiny? Likewise, we can formulate guiding judicial rulings as judicial precedents to maintain this approach by explicit provision thereof, and thus propose a broad framework that governs these decisions in all their details and minute particles. On the above, we are putting appropriate legal solutions in the internal regulations of the public administration in order to adhere to their implementation when issuing such disguised decisions, and calling on the judiciary to accept them if an administrative judge is certain that they are in fact subordinate to previous decisions and were issued as a disguised offence despite the acceptance of its concerned person.

1-3 Study methodology:

This research relies on the inductive approach using the descriptive and analytical method, through objective reading and in-depth analysis of the legislative provisions and judicial rulings related to administrative decisions and their role in formulating and drawing the acceptance of cancellation claim or not, leading to specific conclusions and recommendations, which contributes to the analysis of the nature of compliance with disguised administrative decisions. Thus making it a justification for accepting a cancellation claim, and making recommendations that help clarify this issue and enshrine it on the organizational and judicial side by the legislator and the administrative judge alike.

1-4 Study difficulties:

The most prominent difficulties encountered by the study are: - The absence of previous administrative legal studies on the subject matter. The authors did not find specialized legal studies that detail and clarify

the issue of compliance with the administrative decision as a legal justification for accepting the cancellation claim from a concerned person and not as a penalty for rejecting and not accepting it accurately. Based on the above facts, the two authors, herein, proceeded with this study.

However, in order to determine the extent to which a claim for cancellation can be accepted by the administrative judiciary in disguised administrative decision by a concerned person despite his compliance thereof. Nevertheless, to reach a comprehensive answer to the aforementioned problems related to this type of compliance, a set of questions raised in this regard, which focus on the following points:

❑ What is a cancellation claim? And what are its conditions?

❑ What is a condition of compliance with the administrative decision and its legal effect resulting thereof?

For all this, this study was divided as follows:

Chapter one: the nature of the cancellation claims and the conditions for its acceptance

Section one: definition of cancellation action.

Section Two: Conditions for Acceptance of the Cancellation Claim.

Chapter Two: compliance with the disguised administrative decision as a reason for accepting the case and as a justification for annulment of a contested decision.

Section One: What is a compliance with the administrative decision and its legal basis.

Section Two: the criteria for accepting the cancellation claim despite compliance to the administrative decision subject to appeal.

Finally, the study concluded with a set of results, which are followed by a set of proposals, in the hope that they will be taken into account by the legislator and the administrative judiciary.

2- The nature of a cancellation claim and the conditions for its acceptance

At the beginning, it should be noted that the cancellation claim is a dispute against an administrative decision issued by a public administrative body affiliated with the executive authority, which is considered one of the three authorities in the state. It is submitted to the administrative judiciary that has general jurisdiction against illegal administrative decisions. It is initiated by the direct stake holder. The Jordanian Administrative Judiciary Law No. (27) of 2014 stipulates in Article 5, paragraph (E), that: "A lawsuit shall not be accepted from a

person who has no personal interest” He is the person who has been harmed by an administrative decision issued against him as a final sentence by one of the departments of the general government agencies, asking the judiciary to rule on him based on the evidence and support he provides to cancel this decision due to its violation of the principle of legality. (Al-Alawi. 2011:24)

This legal and judicial procedure performed by the stakeholder is basically nothing but the embodiment of the supreme interest of society, as the cancellation claim is related to public order, in order to raise legal and judicial effects that benefit the private interest, and to correct the behavior of the public administration in the public domain. Thus, it is a tool by which you acquire rights and legal positions, either by canceling what is incorrect and contrary to the law, or amending or canceling what is existing. Based on the foregoing, the cancellation claim is classified as related to public order.

Based on the foregoing, the cancellation claim is considered one of the most important judicial legal means, and the most dangerous one in upholding and consolidating the principle of legality, given the tangible results it achieves in re-evaluating the illegal or legal public administration work. We can liken it as a magic lamp in the hands of the concerned person against whom the defective decision was issued on the one hand, and in the hands of the administrative judiciary on the other hand, to achieve the rules of justice and fairness, especially in disguised administrative decisions, and to return the public administration to the path of righteousness in making its administrative decisions. It should be noted here that: Administrative litigation procedures differ from civil litigation procedures in that they are independent, although civil procedures are considered more organized and sufficient than administrative procedures. Therefore, administrative procedural rules are considered original rules, and are not merely an exception to the rules of civil principles, and administrative procedural rules are characterized by shortcomings. This is why it is completed by resorting to civil procedural provisions. (Shatnawi. 2015:815)

As is well known, the public administration exercises its unilateral administrative work by its own will, by issuing a number of unilateral administrative decisions that achieve the manifestations of the privileges of the public authority. These decisions are characterized by an executive nature, as once they are issued - centrally or locally - in accordance with legal procedures and forms, they become effective against those addressed from the date of their knowledge of them by the legally prescribed means without the need to resort to the judiciary.

2-1 Definition of cancellation claim

There are many definitions of the cancellation claim, combined by agreement that it is an administrative lawsuit aimed at annulling an illegal administrative decision, so its definitions varied each time according to the angle from which it is viewed. In the end, several definitions were issued, all of which revolve around one meaning, defining its basic elements, methods of resorting to it, the party to which it is addressed, and the power and prestige it enjoys based on the inability to waive it after submitting it to the administrative judiciary due to its attachment to a public interest.

If we look a little closer at the definitions provided for the cancellation claim, we find that its main axis is the contention of an administrative decision issued by a national administrative authority, and the claim through it to achieve the rule of law due to the lack of respect by the issuing authority of this decision for the principle of legality, as a result of which the rule of law is achieved in the state. Therefore, one side of the administrative jurisprudence defined the cancellation claim as: "a legal litigation whereby the administrative judiciary is required to monitor the legality of an administrative decision and rule to cancel it if it was found to be unlawful." (Shatnawi. 2015: 249) Another side of the administrative jurisprudence defined it as: "a lawsuit referred to a judge, from a concerned person, requesting the cancellation of a particular administrative decision arguing that it was illegal". Others defined it as: "A lawsuit that is brought against a specific administrative decision and a request to cancel it due to its illegality." (Al-Sagiri. 2008:139) Another aspect of administrative jurisprudence dealt with it under the name of a case of exceeding the limit of authority, defining it as: "a lawsuit filed to demand the execution of an administrative decision issued in violation of the law." (Al-Helou. 2010:267)

In this sense, and on the aforementioned definitions of a cancellation claim, it is clear that it is a lawsuit that is subject to a dispute with an administrative decision issued by an administrative body, whether general or individual, seeking the one who submits it from the administrative judge to verify the legality of the contested decision or its illegality, and to correct the matter in accordance with the validity of the law, by ordering cancellation, if it is established with certainty that the claimant's appeal of the illegality of the decision and its clear violation of the law. Then a judgment is issued to cancel it without the right to amend or replace it. What concerns us in this regard - while acknowledging the impact of the illegality of the contested decision - is that if the administrative judge proves that the decision violates the provisions and the validity of the law, he rules to cancel it without extending his judicial authority to this decision by amending or replacing it with something better or in favor of the appellant.

Within the framework of the foregoing, and based on the principle that the administrative judge may not exercise his judicial function against any administrative decision on his own, except on the basis of a lawsuit filed to him by the concerned party, to then begin his mission in exercising judicial control over it, we see that the cancellation claim is; a lawsuit filed by - a civil servant - who works in a public administration and a defective administrative decision was issued against him by a public administrative authority and he is affiliated with its administrative staff, to the competent administrative judiciary, asking him to execute its administrative decision that violates the law.

2-2 Conditions required for accepting the cancellation claim and civil lawsuit

2-1-1 Conditions for accepting the cancellation claim:

The cancellation claim is one of the most important means of protecting and preserving rights and not infringing them by the public administration that issues administrative decisions as it is a public administrative body affiliated with the executive authority, and because it is issued by it according to its free will, and in implementation of the law and organization of an important issue that requires the functioning of the public facility regularly and steadily, so the question arises in this regard, we are about the conditions that must be met to accept a lawsuit to cancel an administrative decision?

In fact, the answer to this question requires us to address a number of conditions, including what are considered objective conditions for accepting the lawsuit, and the other are formal conditions related to the date for filing the lawsuit, as follows:

It is indisputable, however, that it is necessary to meet objective and formal conditions for the acceptance of any administrative or ordinary lawsuit set by the legislator with clear provisions in order to achieve the supreme interest of resorting to the judiciary and shorten the duration of the dispute and the seriousness of the lawsuits filed, including the cancellation claim in addition to the availability of reasons for cancellation of the administrative decision represented by its aforementioned defects. In this sense, a number of these conditions must be fulfilled after examining them by the judge, and once they are met, the cancellation claim is accepted, and it is divided into two basic categories, the first is the objective conditions and the other is the procedural conditions, considering that the failure of one or both of them leads to the saying that the cancellation claim is not accepted in form without delving into its content. Those condition are as follows:

A) Substantive conditions for accepting a cancellation claim:

Including what is related to the administrative decision that is the subject of a cancellation claim, as it is required that this decision be

the subject of a cancellation claim that; It is issued by an administrative body affiliated with the executive authority due to an administrative activity it carries out related to a public utility. This decision should also be issued in its final capacity, realizing its resulting effects, and is enforceable by the person against whom it was issued. In addition, the condition of the interest in filing a cancellation claim, which is embodied in the motive for its filing and the intended purpose of that, so the interest is the basis and essence of filing the lawsuit and must be available when starting the filing of the lawsuit and its continuation until it is decided, as it begins and ends with the initiation and end of the cancellation claim based on it, The most prominent thing that is evident in the requirement of interest to accept the cancellation claim is that it be personal, direct and legitimate. The authors believe that one of the most important objective conditions for accepting the cancellation claim before the administrative arbitrator, or even accepting the civil lawsuit before the civil courts, is the availability of the interest condition, whether by the availability of the interest condition in the litigation as a legal basis for initiating the litigation before the administrative and civil courts, which in civil law the case is considered necessary and essential due to the validity of the litigation procedures in the civil lawsuit, or their availability as a formal condition as is the case in the administrative courts' approach to accepting the cancellation claim, let us conclude by emphasizing that the condition of interest is an essential formality that must be met in the civil and administrative lawsuit for the purposes of their residence before their competent court.

(B) Formal conditions related to accepting a cancellation claim:

The formal conditions are limited to the legal deadline for the cancellation claim, predetermined, which is once it expires, the appellant's right to file a lawsuit against an unlawful administrative decision issued against him is revoked, due to the expiry of this deadline and the immunization of such decision. However, in most cases the deadline ranges from a period of sixty days, starting from the date of publication of the administrative decision or notification of a concerned person, or his knowledge is certain thereof. The cancellation claim should be preceded by resorting to the obligatory grievance, according to the legally prescribed time periods, and this grievance is not consistent with the provisions of Islamic law, unless it is required to resort to it, given that neglecting it leads to the loss of rights for stakeholders due to their inability to judge them due to the failure of a condition of the appointment is in resorting to the obligatory grievance. Accordingly, it entails a loss of rights and the money of the weak party in exchange for public administration, as verse 881 of Surat Al-Baqara indicated this rule, in compliance with the

Almighty's saying {And do not devour your wealth among yourselves unjustly}. (Bin Muhammad. 2004:133)

2-1-2: Conditions for accepting a civil lawsuit compared to a cancellation claim:

A) Substantive conditions for accepting a civil lawsuit:

Professor Al-Sanhouri believes that the legislator has given judicial protection to contracts of obedience, so from where the judiciary respects these contracts and what is stipulated on them. Nevertheless, in cases, the written conditions prevail over the printed conditions, invalidate the agreement exemption from liability, interpret the obligation in the interest of the obedient party, and abrogate the previous will by the subsequent will. (Al-Sanhouri . 2000: 247-238)

Paragraph (a) of Article (3) of the Jordanian Civil Courts Code stated that the case, its requests, and its defenses are not accepted without its plaintiff having an existing interest determined by the law. No. 5300 issued on 26-2-2023, which indicated that the Court of Appeal violated the law and misinterpreted it by not dismissing the case for the reason that the litigation was invalid because the existing interest condition was not met in accordance with the provisions of Article (3) of the Code of Civil Procedure, as it is established for the court that the villa, upon filing the lawsuit does not belong to the cassation petitioner. Therefore, any defect or damage and any rights related to the contract given that the cassation petitioner has any existing and legally valid character or interest to claim thereof. Hence, any claims related to the contract are the right of the owner of the villa at the date of filing the lawsuit, which makes the case filed by an incompetent person.

However, there is a difference in the condition of interest between the civil lawsuit and the cancellation claim. The latter is considered more comprehensive than the civil lawsuit. The cancellation claim preserves two interests related to legality and the protection of a personal interest for the contested decision. As for the civil lawsuit, it is in a narrow aspect represented by the assault on the personal right of the appellant. The lawsuits related to personal right only are called personal lawsuits and their aim is to protect personal or individual legal positions. As for the lawsuits that protect the public interest, they are real or substantive lawsuits even if they have personal interests. Likewise, the litigation in the cancellation claim is between a person and an administrative decision, while the litigation in the personal lawsuit is between two parties. (Al-Thunaibat & and Al-Rabadh. 2017: 107)

Therefore, the authors, herein, believe that the civil lawsuit by contracts of adhesion is a personal lawsuit, while the lawsuit for cancellation claim is a real lawsuit due to the existence of an element of legality. As this element is concerned with the conformity of the

administrative decision with the law and its legitimacy, and this is all related to the general legal system not only to the personal one. The two lawsuits (civil and administrative), however, may share that both require the existence of an interest or infringement on the personal interest of the claimant. For example, in the cancellation claim, it is not acceptable to file a claim for the public interest only.

(B) Formal conditions related to the acceptance of the civil lawsuit:

This defense is raised at the beginning of the trial sessions, this is indicated by paragraph (1) of Article (110) of the Jordanian Civil Procedure Code. However, some believe that the law presupposes the occurrence of harm in the presence of a violation, so there is an interest in formal defenses in the presence of this violation.(Adaileh .2017: 478) Thus, it becomes clear to us that the Jordanian legislator has given the plaintiff, who is subject to compliance in his claim, an advantage that is not given in the rest of the contracts. As Paragraph (1) of Article (240) of the Jordanian Civil Code came to provide an exception to the general rule in that the doubt is interpreted in favor of the debtor, so that in contracts of obedience the doubt is explained to the obedient party, either a creditor or a debtor.

The subject matter of the case is not directed, but the appeal is made by certain procedures that the claimant did not undertake in accordance with the law, or the formal defense may be the absence of interest. Thus, we can say that the formal condition that there is an interest for the claimant includes both the civil lawsuits and the cancellation claim and that the difference between the two claims is in the continued existence of the interest during the course of the lawsuit. So, the interruption of this interest in the civil lawsuit later entails the dismissal of the lawsuit, while this matter is controversial in the cancellation claim. Therefore, some believe that the Jordanian judiciary took the path of the French State Council, which considered the condition for the existence of the interest only at the time of filing the lawsuit where it does not require to continue until adjudication, on the pretext that the dispute is based on the administration's failure to adhere to the principles of legality and thus will harm the legal system of the state. However, the Jordanian administrative judiciary has retracted this principle and indicated in its decisions that the interest must exist from the beginning of the case until adjudication. (Al-Thunaibat & and Al-Rabadh. 2017: 110) The two authors, herein, believe that an administrative judiciary should maintain the right to continue with some cases that affect a clear transgression of the administration in its decisions, while the personal interest of the claimant is denied due to the existence of the public interest in the need to detect and correct the mistakes of the administration that violate the law.

3- Compliance with the disguised administrative decision as a reason for accepting the case, and as a justification for cancellation of the appealed decision

It is customary in the judiciary that a cancellation claim is accepted from a concerned person, he shall not comply to the administrative decision issued against him, where the period allotted to him legally to challenge it by cancellation has expired. As in these two cases, he loses his right to acceptance of his claim. The importance of these conditions emerge entirely due to their practical importance to the administrative judiciary on the one hand, and because it aims to achieve the public interest and to run the work of the judiciary facility to the fullest, on the other hand. For all this and that, as an attempt from us to keep pace with the judicial regulation related to the acceptance of cancellation claims or its refusal thereof in all their forms in which they are issued, we try herein to reveal the legislative, jurisprudential, and judicial deficiency in confronting or even detailing and describing compliance with administrative decisions, especially compliance with administrative decisions that are characterized as disguised based on impartiality on the basis of target determination. Explaining the nature of compliance with a disguised administrative decision, and how the implementation of decisions differs from respecting the principle of the regular and steady functioning of public utilities in the state, and filling gaps or opinions that may be due to legislative shortcomings and its provisions in confronting this type of compliance with such type of decisions.

Therefore, this matter has clearly drawn the attention of the authors while examining the opinions of legal jurisprudence and administrative and civil judiciary that may be devoid of addressing the issue in its broad and detailed form, especially from the administrative side. Thus, for this reason we decided in this chapter, given the comprehensiveness of the subject in all its aspects, to examine the nature of compliance with the administrative decision and its legal basis and the controls for accepting the cancellation claim despite compliance with the administrative decision subject to appeal and the legal implications thereof.

Chapter one

3-1 What is a compliance with the administrative decision and the civil contract and their legal basis

First, it must be noted that compliance to the administrative decision, in its precise and specific sense, leads to acceptance of it, explicitly or implicitly. Based on this, it cannot be accepted from a compliant to deviate from his obligation to accept and follow the path of appeal due to the availability of the justification for compliance, based on the

legally established rule of “the fallen one does not return”. In this case, as soon as the matter is raised to the competent administrative court, the matter is decided by accepting the payment submitted by a stakeholder and dismissing the case as a form of the availability of the reason for compliance.

On the other hand, the administrative judiciary set conditions for accepting a cancellation claim of an administrative decision, which are; Its issuance by an administrative authority, and it must be final and have a legal effect, in addition to stipulating a set of conditions for the appellant, represented in; His eligibility in litigation, capacity, and interest, with the obligation to file a lawsuit within the legally specified deadline, in addition to his non-compliance with the administrative decision, which is the focus of our attention in this study.

3-1-1 Definition of a compliance with the administrative decision and the civil contract

A. Definition of a compliance with the administrative decision

The definition of compliance with the administrative decision was mentioned in many legal studies of its various classifications and designations in both its public and private parts, in its general form on the one hand, and what is related to specialized studies in the field of administrative law in its purely academic and jurisprudential sections by mentioning a description, phrases or specific legal templates, especially on compliance with the administrative decision, or even the vital judicial aspect, which it dealt with using clear and specific definitions that can be relied upon to clarify its nature and limits. A compliance is “the stakeholder’s acceptance of the contested decision in a way that definitively indicates, explicitly or implicitly, his acceptance of it and his satisfaction with it before the expiry of the legal appeal deadline. The duration of the appeal based on the fact that he agreed to this decision. (Al-Khraisat, 2021, 2019)

By extrapolating the opinions of administrative jurisprudence in all countries of comparative law, we find that they have advanced the definition of compliance with the administrative decision from that; One aspect of jurisprudence defined it as: - “The issuance of consent and approval from a stakeholder to the defective administrative decision that affected his interest, whether this approval was explicit or implicit.” (Ba’lousha.2017: 98)

On the above, and based on these rules, we can define - compliance with the administrative decision - as: {voluntarily complying with the administrative decision of a concerned person and implementing all the orders and directives that came with it without showing any intransigence or disagreement with the passage of time that prevents it from being challenged in court}.

In this sense, compliance with the administrative decision is an issue that only comes through “submission and acceptance of this decision without expressing any objection to its content.” The administrative authority to ensure the regular and steady functioning of public utilities in the country without litigating it with an obligatory grievance or even a lawsuit for cancellation.

Based on the foregoing, it’s worth to say that there is no compliance with the administrative decision that should be followed by a grievance procedure to the authority that issued this decision by expressing the non-acceptance of this decision due to its violation of the correct law. However, should the grievance procedure refused to stop the administrative decision, he is entitled to challenge them before the administrative courts by cancellation claim, according to a specified period of time following the submitted discharged grievance.

B. Definition of a compliance with civil contract

The fundamental rule in civil law states that “Consent makes the law”, as the contract is concluded according to the mechanism of submitting an offer from one party that is matched by acceptance from another party. In such process the existence of a civil contract is achieved, with the existence of the consideration agreed upon between the two parties, by which the agreed contract becomes enforceable by the force of law. On the other hand, there are exceptions in the civil law that respond to this fundamental rule, to the effect that {Adhesion contracts} are one of the forms of civil contracts where its preparation depends on a formula with specific features and effects. It has a ready-made standard form prepared individually by one of the parties to the contract, which he presents to the other party who has no way to confront this contract except by accepting and complying with its pre-prepared conditions and template, either such contract is complete or incomplete. So, the other party will either fully accept it with all its recitals and clauses with which it was prepared, or reject it completely. However, once he accepts, he has no right to change or even alter the phrases, not even the terms or conditions stipulated in the Adhesion Contract.

In this regard, it must be noted that this type of contracts has a direct connection with some basic requirements in the daily life of individuals, so we find that most of the texts of civil law in various countries of the world have clearly stipulated this type of contracts. In addition, the legislators of civil law put in place detailed provisions to control this type of contracts in order to ward off the problems that result from the failure of the second party - the compliant - to this contract in accordance with the provisions stipulated thereof, which leads us to the following question: If the compliant party is harmed by the adhesion contract, does he have a way to resort to the judiciary seeking justice?

3-1-2 Legal basis for compliance with administrative decision:

According to the general principle, which stipulates: It's necessary to adhere to the general system and what is required by the nature of this system of explicitly defined legal periods according to specific formalities that must be met in the correct manner in time to dispute the administrative decision within its specified scope so that the lawsuit filed before the administrative judiciary is considered valid and free from defects and specifically sound if the form and procedure are defective, otherwise the case is rejected in form, the appellant shall submit his appeal within the time specified by law. (Al-Dughaither.2014:166)

Based on the foregoing, and by analogy with that, it is clear that the time limit for filing a cancellation claim is characterized by caution and attention in taking them and not neglecting them and putting them aside. This include that its time is characterized by shortness in its period of time, due to the stability of legal centers and to ensure the proper functioning of administrative work in a correct and elaborate manner. This is why administrative law legislators in various countries of the world require that this deadline be short-lived in order to decide on the fate of administrative decisions quickly on the one hand, and to reduce the burden on the judiciary in cases pending before it on the other hand. It is also a date related to public order, and this arranges a basic result represented in the judge's ability to raise the issue of not accepting the cancellation claim, because the deadline set for its acceptance has expired spontaneously, and the plaintiff can also raise this issue at any stage of the litigation. (Al-Dughaither.2014:173-174)

Based on the foregoing, and according to the connection of the limit for appeal to public order, the deadline has a specific term that begins from the date of knowledge of the decision, including the elements of the administrative decision, either through publication, announcement, or certain knowledge, whether the decision is explicit or implicit.

3-1-3 The legal basis for compliance in a civil contract

According to the readings of the Civil Transactions Law - the Civil Code - in various states of law, we find that the legal basis for adhesion contracts are based on clear legal texts. Article 83 of the Omani Civil Transactions Law No. 29/2013 issued by Royal Decree No. 101/69 stipulates that: {Acceptance in adhesion contracts is limited to mere acceptance of unified conditions set by the imposer and it is not acceptable to discuss thereof}. Corresponding to it is Article 104 of the Jordanian Civil Law No. 43 of 1976, which stipulates that: {Acceptance in adhesion contracts is limited to mere acceptance of established conditions set by an imposer, and it is non-negotiable}.

Chapter Two

3-2 Criteria for accepting cancellation and civil claims

3-2-1 Criteria for accepting the cancellation claims despite acquiescence to the administrative decision subject to appeal

Overall, the issuance of a subsequent administrative decision may correspond to the issuance of a previous disciplinary decision against a civil servant, with a disguised procedure, in which a public administration deviates by taking it from the principles of justice and the rule of specialty, leaving all that behind with the aim of harming this employee with another punishment under the cover of an administrative decision for the benefit of the public utility. Whereas it is basically not a matter of revenge for this employee. With this perception, and by analogy with the sudden retaliatory administrative decision based on a previous punishment, it makes the civil servant a prisoner of shock, losing his administrative and legal capabilities to address the previous disciplinary decision and the subsequent disguised decision, surrendering and submissive to both of them.

In this case; Is his compliance considered as a reason for the loss of the right of the judiciary acceptance of a cancellation decision based on a disguised penalty, given that he has complied to it, or do we make the rules of justice and fairness and the rule of allocating goals a reason to remove the veil of compliance to the administrative decision, and make the issue of acceptance and recognition of compliance not a reason for refusing to accept the cancellation claim by the administrative judiciary, by adding clauses of a valid and factual petition that oblige the judiciary to verify first before ruling the case dismissed because the condition of non-compliance is not fulfilled, by establishing with certainty that this compliance occurred based on a valid decision from the public administration, and therefore the case is dismissed and not accepted, or has it complied with the administrative decision and found out that this decision is, in fact, nothing but a disguised disciplinary punishment, and therefore the case is accepted despite the proof of compliance.

Consequently, we call for activating the spirit of innovation and deliberation and finding the aforementioned question regarding the legal aspects or legal flaws surrounding the administrative decision through which it is necessary to accept a cancellation claim of an administrative decision or not.

3-2-2 Criteria for Accepting civil case

The Jordanian Civil Code clarified in Article (204) the authority of the judge to amend contracts if they include arbitrary conditions. The authority given to the judge in this field is either to amend these arbitrary (submissive) conditions, or to exempt the compliant party from these conditions based on the principles of justice. The Jordanian

legislator, however, considered any agreement in the contract, that exempts any party from claim on the terms of compliance, invalid. Hence, it becomes clear to us that once the Jordanian legislator considers the exemption condition invalid, it is to protect any party to a contract that has been subjected to a state of compliance and has accepted the contract under compulsion. Therefore, we believe that it is well done by a legislator to give this authority, as it will be derived from the law not subject to interpretations between one judge and another. Thus, the authors, herein, find that the controls for accepting compliance claims in civil lawsuits are easier than accepting cancellation claim. As the authority of a judge in the civil case, due to the conditions that are complied with, is a wide authority for the judge to cancel and amend, and it may violate the well-known rule "Consent makes the law". That is, the role of a civil judge for submission conditions goes beyond a course in the traditional interpretation of a contract. Practically, in a decision of the Court of Appeal it has indicated that the judge has the right to study contracts according to the principle of good faith and cancel the conditions that are inconsistent with this principle as adhering conditions. Contracts must be based on good faith, and any condition that violates this principle and deprives any party of its right due to what has been incurred by the other party requires intervention from the court to realize the right and cancel the condition adhering to it. (Decision No. 4632, of Amman Instance Court in its appellate capacity).

Likewise, we can describe it as not only a discretionary authority for the judge, but a legal authority drawn by a legislator in Article (204), to support the judge in his decision to achieve justice and fairness to the weak compliant party. We can also say that the broad authority of the civil judge through the phrase "relying on the principles of justice" shall mean generality. As for the position of Islamic law, it did not address adhesion contracts, because it prohibits withholding what people need of goods, benefits, and otherwise. As the ruler usually sets the price of such needs and prevent its selling except under specific ceilings (Abdel Mohsen. 2020: 634-644), according to its current form, because Sharia (Islamic law) hates monopoly. Meanwhile, the French Civil Code previously did not provide for adhesion contracts and left the matter to the general rules and what is known as the distress sale. Some believe that the French Civil Code adopted submission contracts, which is to accept the contract without prior negotiations or discussion that precedes the contract. However, due to the importance of the subject, it was stipulated in the amendments to this law in 2016 in Article (1110) by stipulating that the adhesion contract is "a contract in which one of the two contracting parties imposes the contractual conditions in advance, without giving a choice to the other contracting party to discuss them.

Consequently, every condition or clause contained in the adhesion contract is considered as if has not been”.

4- Conclusion:

This study evaluates the compliance with the disguised administrative decision issued arbitrarily as a result of a decision preceded by a public administration in terms of. It is an attempt to find a particular legal adaptation for such case, and its defects. It has also proposed a new organization that governs the idea of compliance to disguised administrative decisions, so that we make it an administrative legal situation that achieves fairness to a stakeholder on the one hand, and the protection of public interest on the other hand. This study explained the concept of compliance to the disguised administrative decision, its unlawful issuance, and its legal implications, explaining the purpose of accepting a cancellation claim by the administrative judiciary despite the compliance of a person against whom the decision was issued on the one hand, aiming to achieve the public interest and respect the principles of justice and humanity, and clarify the role of this type of compliance in terms of affecting and influencing the granting of judicial rights by accepting the case from the person concerned, and arranging administrative obligations on the shoulders of the public administration issuing this decision. It is a legal act in its place and its legal and factual axis emanating from it itself and affirming it, aiming from all of this to enrich the judicial and legislative side.

In addition, This study evaluated the issue of compliance with the disguised administrative decision for its current situation that is not included in the administrative functional systems and administrative court rulings in terms of explaining its legal adaptation and advantages and proposing new general legal texts that deal with this type of compliance in its exact details, so that it rectifies through it all the current defects previously referred to and makes it a purposeful administrative situation that fulfills the aspirations and hopes of administrative law jurists and the aspirations of its judiciary on the one hand, and achieves its desired theoretical and practical legislative goals on the other hand. However, this study concluded a set of results and proposals as shown below:

5- Results:

☐ Administrative decisions - It is the means of the public administration to express its will with the public authority it possesses, achieving the public interest and conducting the work of the public service regularly

and steadily, under the cover of the principle of legality and not deviating from its scope.

☐ The public administration exercises its powers entrusted to it by law by taking a set of correct administrative decisions free from any defects - formal or objective -; It is considered both a defect; Jurisdiction, form and procedures, reason, violation of laws and regulations or misinterpretation, deviation or abuse of power are among the reasons for cancellation of the administrative decision.

☐ The issuance of administrative decisions entails legal effects for the administration itself, or for the person against whom the decision was issued. Therefore, there is no justification for deviating from the use of power or deviating from the rule of allocating goals in issuing such decisions in respect of the principle of the rule of law and the principle of not immunizing any administrative action or decision from the oversight of the administrative judiciary.

☐ Taking any administrative decision based on a disciplinary penalty against a civil servant is illegitimate, and decisions issued in such a way, if their truth is proven, are considered illegitimate, because they lack the rules of justice and fairness and are stripped of human values.

☐ Adherence to disguised administrative decisions is invalid for the following reasons:

- o The issued administrative decision must deal with an independent issue in itself, not based on a previous decision affected by it, especially functional disciplinary decisions, which is essential for the purposes of transparency, justice and non-discrimination in the realization of rights.

- o The nature of the issuance of any administrative decision that aims to achieve the public interest, aiming to preserve the interest of the public administration and the interest of those against whom the decision was issued, however if this result is exceeded, then this means that the rule of specialty has been exceeded.

☐ Finally, the issuance of administrative decisions aimed at preserving the public office and the public facility has no effect in accordance with the correct law, in a way that guarantees it legal stability and thus does not become subject to appeal for cancellation before the administrative courts.

6- Recommendations:

☐ It's clear through the legal treatment of this study that compliance was not recognized for its legal status as a reason or condition for accepting cancellation claim. Accordingly, it is logical - jurisprudence, law and jurisprudence - to recommend and work to single out this type

of act for those against whom decisions were issued with particular legal provisions. It explicitly clarifies the issue of compliance or non-compliance with the administration's decisions, and the extent to which a cancellation claim is accepted or not in both cases if their options are fulfilled. From this standpoint and based on it, the authors suggest adding a legal existence "to the issue of compliance with the administrative decisions issued by the public administration, and non-compliance thereof", highlighting Paragraphs explaining in detail the legal implications of accepting or rejecting a case in order to eliminate all legal and jurisprudential problems with this proposed legislation on the one hand, and to strengthen the legislative aspect on the other hand, and all of this is achieved by drafting a paragraph or a legal text in the civil service systems with a separate paragraph The meaning of {examining the compliance or non-compliance with the administrative decisions issued by the national governmental administrative bodies and their impact on accepting the administrative grievance and the subsequent impact of resorting to the administrative court with the claim of cancellation}.

☐ The authors suggest that legislators in law countries take the initiative - by enacting legal texts - in the administrative judiciary systems of each country that would regulate the issue of non-compliance with administrative decisions as a condition for accepting cancellation claims before the administrative judiciary on the one hand, as well as considering compliance with disguised administrative decisions as a reason for accepting a lawsuit cancellation, explicitly, with justification for this in the text and in detail that the disguised decision based on a previous decision is in itself a decision that subverts the rule of specialty with which it is necessary to accept the lawsuit even if the complainant was compliance to the administrative decision.

☐ The authors suggest that government public administrations affiliated with the legislative or executive authorities take into account and monitor the administrative decisions issued by them through a specialized legal committee to monitor the legality of their administrative decisions and their agreement with logic and the rules of justice and fairness and follow the specialty rule set thereof, while not exceeding them with punitive administrative decisions based on personal goals. That is why we suggest to the internal regulations of the two authorities to adopt a clear legal text in order to regulate the monitoring of the method and manner of issuing administrative decisions and the extent of their agreement and the validity of the law.

☐ One of the conditions for accepting the cancellation claim is that a person against whom the decision was issued does not comply with it; Leaving the final word on recovering his right and restoring balance in interests and rights to the administrative judiciary. Despite this, the

authors suggest that the administrative judiciary wait to accept the cancellation claim against the appealed decision, even if the one against whom the decision was issued comply with, deviating from it on the general principle, and activating the discretionary power of the judge to ascertain and determine the recitals and reasons for compliance that prompted the stakeholder to surrender and accept the contested administrative decision.

Finally, in the light of the above suggestions, the authors propose to the legislator and the administrative judiciary in various countries of the world to adopt a clear and strict approach to the issue of disguised administrative decisions issued against a civil servant who complied with, and insist on monitoring the legality of these decisions even if the statutory limitation has passed, or if it was not contested by a concerned person and was proven by chance or by another claim associated with it, to make it a barrier against collusion in issuing disguised decisions that affect the noblest and greatest principles of administrative judiciary, including the principles of - justice and fairness - provided that this approach is practiced according to a special legal and legislative template, with specific legal or judicial articles or provisions that deal with this issue and indicate the consequences of taking it in terms of rights, duties and effects on the one hand, or with a purposeful, explanatory, constructive judicial ruling by the administrative judiciary as a prelude to canceling it and punishing the perpetrator with appropriate administrative punishment, on the other hand.

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- 1) Jordanian Administrative Judiciary Law No. (27) of 2014.
- 2) Omani Civil Transactions Law No. (29) of 2013.
- 3) Jordanian Civil Law No. (43) of 1976.
- 4) Jordanian Civil Procedure Law No. (24) of 1988 and its amendments.