



Judicial control on pro-rate in decision

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Abstract

This research aimed to know Judicial control on pro-rate decision. The descriptive analytical method is used through addressing the comparative laws' text in Jordan, and using the comparative method to know the applications of Judicial control on pro-rate decision in Jordan.

The study reached a number of results, the most prominent are: Administration authority being subject to the law represents an important results to the principle and requirements of legitimacy principle, especially when issuing the administrative decision which is considered a basic and principle aspect for the administration means in initiating their activities without exclusion, and the main recommendations were to benefit from the experiment of the comparative administration Judicial in the field of control on the events upon which the administrative decision is based, especially regarding control on extent of the events suitability with the decision issued based on them through making between the supreme administrative court and the French countries council.

Keywords: judicial control, pro-rate decision

Introduction

Legitimacy principle is considered mandatory basic principle for the establishment of the legal state, since the superiority becomes to the law considering it expressing the public wish on the individuals wish in the society and the state's general authority whatever its role in setting it, issuing and deciding it.

There is no doubt that the administration authority being subject to the law represents basics and main aspect for the administration means in initiating their activities without exclusion.

Judicial control forms one of the scientific and active aspects to protect the legitimacy, since it provides guarantee to the public authority commitment to the law principles, also provides guarantee to drive aback those authorities to the legitimacy limits in case of authority misuse, the canceling law suit is raised only against the administrative decision which is illegal since it violates the law's principles regarding one of the administrative decision elements.

Pro-rate is considered one of the basic administrative law ideas, it is possible to analyze it through three elements which are: The real case the issued decision, and the targeted objective.

The principle is that the Judicial control should monitor the administrative authority's decisions the confirm the material presence of the events, and validity of the legal adjustment with them, and the decision does not violate the legal principles, does not accede the search for the importance and risk of the reason, estimating the extent of pro-rate between it and the taken procedures based on the reason, because the Judge in that will be out of his Job and intervened in the administrative work.

So, this study comes to investigate the judicial control topic on the pro-rate decision.

Statement of the problem

Judicial administration has created many theories and

principles to encounter authority of the estimative administration, including the pre-rate theory, this pushes to ask many questions materializing the study problem, which are:

1. What is meant by pro-rate and what is its nature?
2. Does its forms consider of control from on the suitability? Or form of aspects of control development on the legitimacy?

More precisely, the study problem represents in answering the following question.

What is meant by judicial control on the pro-rate decision and its applications in the Jordanian administrative Judicial? Also, this study comes to answer the following questions:

1. What is the estimative authority?
2. What is the concept of the estimative authority?
3. What is the range of the estimative authority?
4. What are the constraints mentioned on the internal legitimacy elements of the administrative decision?
5. What are the constrained mentioned on the external legitimacy elements of the administrative decision?
6. What are the applications of pro-rate control in the administrative decision in France and the comparative systems?
7. What are the applications of pro-rate control in the administrative decision in Jordan?

Reason for selecting the Topic

The reason is the search in an important issue in the practical and legal life which is judicial control on pro-rate decision.

Objectives of the study

The basic objective of the study represents in illustrating applications of pro-rate control.

Important of the study

Important of the study from the theoretical side emerges from investigating one of the important topics in the administrative law which is the Judicial control on the pro-rate decision and its applications in the Jordanian administrative law which is one of first studies to the researcher's knowledge, which is considered an addition to the legal library, also the importance of the study represents in the attempt to set bases to achieve protection in confronting decisions made by the administration might lead to affect freedom of the public freedoms, also in the field of achieving guarantees for the employee and the individuals from the administration abuse and violation of the public interest.

Also, importance of the study appears from being away for the interesting researchers in this topic to build on it which will reflect on the practical and scientific knowledge related to the topic.

Methodology of the study

The descriptive analytical method is used through addressing texts of the comparative laws in Jordan by illustration and analyzing these laws reaching the desired results from them, also the comparative method is used to know applications of pro-rate control on the administrative decision in Jordan.

Previous studies

Following is the illustration of some related previous studies:

1. Al-Sarayra (2008) study⁽¹⁾ "Extent of Supreme Court Application of the Principles issued by the administration Judicial in its controlling the authority of the estimative administration.

This study addresses knowledge about the estimative authority enjoyed by the administration during practicing the administrative activity, and to show the estimation elements in the administrative decision, which element of the cause and the place, also to show the general theories and principles issued by the administrative Judiciary in its control on the administration actions based on the estimative authority, which is theory of the apparent error in the estimation, and the irrelevance of the phenomenon, and the balance principle between the benefits and harms, and pro-rate principle.

The objective of this study is to show extent of Supreme Court application of these principles in its control on the administration estimative authority.

The study reached that Supreme Court takes the theory the apparent irrelevance and the pro-rate principle in controlling the decisions related to discipline the employees, and this is not applied in its control on the other fields, also it did not the balance principle between the benefits and the harms applied by the French state council on decisions declaring the public benefits for the projects the administration seeks to take the property of the real estate for it.

2. Al-Shayab (2014)⁽²⁾ study entitle "Jordanian Supreme Court control on the administration authority in the estimation", this study has addressed the Jordanian Supreme

Court control on the administration authority in the estimation, which is important and dangerous authority if it is not constraint in frame of legitimacy and the law, also the study aimed to show nature and field of this authority, to clarify the Judicial control on the administration practice of its estimative authority.

This topic has been discussed through three topics: The first was about the essence of the estimative authority, it is defined and showed its range, while the second topic was assigned for the constraints regarding the estimative authority by studying the constraints pertain to all elements of the decision internal and external legitimacy.

In the third topic illustrating the Supreme Court control by studying the legitimacy and suitability control.

The study reached a number of recommendations with value in field of the Judicial Court on the administration estimative authority.

Terms of the study

Administrative Decision

"Disclosure of a single wish issued by administrative authority resulting in legal effects"⁽³⁾ while the administrative court identified it as "The administration disclosure about its mandating wish according to its authority by the laws and the regulations with the goal to make or change legal position when it is possible or legally permitted"⁽⁴⁾.

Withdrawing the Administrative Decision

"Deprivation the administrative decision from its legal power for the past and the future, vanishing all of its affects as never been, also by the specialized administrative authority"⁽⁵⁾.

The Negative Administrative Decision

"It is the administration Rejection or refraining from issue a decision that it should make it legally"⁽⁶⁾.

Estimative Power of the Administration⁽⁷⁾: "It is the authority to select from more decisions with different content whatever their course undetermined previously by the law".

Chapter Two

Applications of the pro-rate control in Decision

All the different laws and constitutions and all legislations guaranteed the litigation right and guarantee the procedures at the different stages in front of the courts, also the states guaranteed the approximation of the litigation right for the citizens by facilitating its procedures. The Judicial control appears as direct effect to guarantee the litigation rights, represents in protecting the freedoms by available judicial control on the administration actions.

Also, the administration Judiciary plays effective role in

(1) Al-Sarayra, M. (2008), Extent of Supreme Court application of the principles issued by the administrative Judicial in its controlling the authority of the estimative administration. Mutah Journal for Researches and studies, Mutah University, vol. 23, No. 1.

(2) Al-Shayab, M. (2014). Jordanian Supreme Court control on the administration authority in the estimation. Policies Book, P. 267.

(3) Asfoor, S, Khaleel, M, The Administrative Judicial – Al-Ma'aref Establishment, Alexandria, P. 88.

(4) Supreme Court Decision No. 979/137, year (1980), P. (480), and Supreme Court decision Number (1985/60) year (1980) Journal of the Jordanian Bar Association, (1985), P. 925.

(5) Al-helo, M. The Administrative Law, (no ed), Dar Al-Matbo'at Al-Jamiya, Alexandria, 1999, P. 12.

(6) Al-Athba, N. The Judicial control o the implicit administration decisions (A comparative study, Egypt – Jordan – Qatar) unpublished master thesis, Arab Amman University, Amman, Jordan, 2011, P.17.

(7) Masadeh, A. The Administrative Decision, An Analytical Study, Irbid, Jordan, 1992, P.3.

applying and forming the fixed rules for the control procedures, their means and sources⁽⁸⁾.

Also, the Judicial control is considered constraint on the authority of the estimative administration, reduces the administration arbitrariness which is clear from the executed procedures forms because of issuing effective decisions in the freedoms, also control is considered constraint on its executive authority leading to control the executive actions and works⁽⁹⁾.

For more explanation this chapter will be addressed through two topics:

1. Pro-rate control applications in the decision in France and the comparative systems.
2. Pro-rate control applications in decision in Jordan.

First Topic: Applications of pro-rate control in the decisions in France and the comparative systems.

Pro-rate is considered one of the basic ideas in the administrative law, the pro-rate can be analyzed to three elements: the issued decision, the targeted objective, and the real case. Also it can emerge through the relation between the mean and the end in one of the texts, this concept can be changed advantages and harms.

The administrative Judiciary control should consider the decisions issued by the administration authority by testing the presence of material events, and validity of the legal adaptation of these events, and the absence of the decision violation, risk of the reason, estimating the pro-rate between the decision and the procedures because if the Judge does not concern about this he will be violating his Job and intervening in the core administrative works⁽¹⁰⁾.

From this point the disciplinary authority undertakes two issues, firstly by diagnosing the error, and detecting it in the employee's behavior, secondly selecting the relevant penalty.

This topic will be addressed through two requirements:

1. Applications of pro-rate control in the decision in France.
2. Applications of the pro-rate control in the decision in the comparative systems.

1- Pro-rate Applications in the Decision in France

It is found that the French State's council rejected in his traditional Judiciary control over the disciplinary penalty risk and extent of pro-rate with what is committed of errors in the public Job field, till year 1978, this council rejected the control range over the disciplinary decisions, or relevance of the taken decisions based on selecting the disciplinary penalty.

The French Jurisprudence did not convince about that, and in year 1978 the council has constrained the traditional Administration authority to spread the control at the extent of pro-rate between the disciplinary penalty and degree of errors risk committed by the public employees⁽¹¹⁾.

The researcher sees that the French state's council control on the disciplinary decisions in field practicing the public meeting freedoms limited to the exceptional conditions or

even vanish relative to the legal adjustment element which leads to expansion in the administrative control authorities towards practicing these freedoms.

Applications of the pro-rate control in decision in the comparative systems:

The Egyptian state's council has initiated since the establishment of its control in the disciplinary field the material presence of the events undertaken as a reason for the administrative decision in all cases, also confirmed its right in imposing control over the legal adjustment of the cases, which is a limit at which the Judicial control should stop without violating the estimation of the penalty importance and risk and extent of pro-rate with the committed administrative offense⁽¹²⁾.

It is found that the Egyptian State's council has spread the control on the material events through confirming their presence and validity.

Application of pro-rate control in decision in Jordan:

The estimative authority is available when the administration faces specific real cases according to them it has the free wish and more mechanisms to take the procedure its sees appropriate from among multiple procedures it possesses.

The estimation authority grants the control man some freedom to decide by his wish to select legal means or resolution, still the administrative control freedom relative to the estimative actions differs relative to the procedure according to the legislator's wish, but it will not be absolute authority, rather always constraints in one of its elements which is the end element from the control procedure⁽¹³⁾ preserving the public order whether determined by the legislator or not and in its range the public interest should be achieved.

For more details, this topic will be addressed through two requirements:

1. The Judicial control over the material presence of the events in Jordan.
2. The Judicial control on the end of the Job by a decision from the administration in other cases than the occupational disciplinary in Jordan.

Firstly: The Judicial control over the material presence of the events in Jordan.

The upper Administrative court has adopted the idea the exaggeration in number of its decisions, it is noted that these decisions came including the disciplinary decisions issued by the disciplinary authority in addition to the disciplinary councils, so it cancelled many decisions based on the exaggeration idea, and the irrelevant penalty with the committed act, since the court has imposed the penalty discharging the employee as a guard for high establishment because of allowing travel agents to enter the sales office to receive fax out of the official time thinking he is one of the employees, the decision was exaggerated in the penalty and should be cancelled⁽¹⁴⁾.

The Jordanian legislator gave the individual the right to practice the public freedoms and the rights under the condition considering the controls and constraints of the

⁽⁸⁾ Mhana, M. Al-Wajeez in the Administrative Law, The Administrative Authority, Cairo: Dar Al-Nahda Al-Arabiya, 1961, P. 20.

⁽⁹⁾ Al-Marsafawi, H. Personal Freedom Guarantees in Shadow of the Exclusive Laws, Egyptian Bar Journal, Volume 3, P. 172.

⁽¹⁰⁾ Almarsafawi, Ibid, P. 174.

⁽¹¹⁾ Abdalateef, M. Administrative Judiciary Law, Cairo, Dar Alnahda Alarabiya, 2002, P. 332.

⁽¹²⁾ Jamal Al-deen, S. The Administrative Claims, Alexandria, Al-Ma'aref Establishment, 2003, P. 294.

⁽¹³⁾ Al-Tamawi, S, Al-Wajeez in The Administrative Law, P. 77.

⁽¹⁴⁾ Jordanian Higher Court of Justice, No. 2000/334 issued date 31/10/2000, Journal of Bar Association Year 2001, P. 139.

laws and regulations organization this practice, and the control procedures do not include abusing the individuals freedoms and rights, they should be imposed to the Judicial control as the protector of those individuals rights and freedom.

2- The Judicial control on the Job elimination by a decision from the administration other than the occupational disciplinary cases in Jordan.

Decision to refer the employees to pension are subject to the Judiciary control, in that article 3/A/9 from the Supreme Administrative Court law number 12, year 1992 sated that "The court is exclusively specialized to look at the submitted appeals from those who have interest regarding: the public employees demands to cancel the final administrative decision issued to refer them to pension, layoff, or discharging them from their Jobs or loss of them, or stop them from work illegally⁽¹⁵⁾.

Also the Supreme administrative court has spread its control on the legitimacy of the reason for the pension. The objective of the legislator regarding the pension law, especially article (15) is the ministers' council control as the higher administrative authority in the state to manage the public affairs to achieve the public interest and what is built in injustice is injustice⁽¹⁶⁾.

The Supreme Administrative court decision regarding decisions ending the employees services for his incompetence was based on distinguishing between two stages:

1. Lack of legal guarantees at which the employees is under experiment, and at this stage the administrative authority is absolute without constraints to draw to it the procedures except the constraint authority misuse.

The second stage: A stage at which the employee enjoys legal guarantees, it is the stage that follows the experiment stage, at this stage the administration authority is constraint and cannot be practiced except by making the investigation procedures to confirm the availability of specific provisions⁽¹⁷⁾.

Conclusion, Results and Recommendation

At the end of the this research, the researcher has attempted to shed light on the administrative authority because of its great importance, since the estimative authority of the public administration and the extent of its submission to Judiciary is gaining great importance to the individual and the society alike' what is evoked in these issues of discussions and evidences in such a field cannot be guaranteed and respected unless all the procedures and control of the estimative authority are to place.

Results

In light of the mentioned previously, the researcher reached the following results:

1. Administration authority being subject to the law represents important result to principle and requirements of the legitimacy principle, especially after issuing the administrative decision which is considered basic and fundamental aspect of the administration means in initiating their activities

without exclusion.

2. The Judicial control has developed on the material events upon which the administration decision is based in the comparative law and the Jordanian law, since the control has started on the material presence of the events then on the legal adaptation, and finally on the extent of the administrative decision relevance to the events it is based on.
3. initially, the Judicial control on the Judicial adaptation for the events limited to cases the administration practicing the constraint authority, then moved to subsequent cases to the cases in which it practices the estimative authority, which contributed to increase of protection of the rights and the freedoms.
4. The granted estimative authority to the administration is a practical and real need necessity, since without it the administration cannot perform its multiple functions, and in order not to exaggerate its usage or violate the legitimacy range, this can not be achieved without Judicial control on its works.
5. The basic factor and the direct reason for exaggeration in the disciplinary decision is that the legislator did not limit the disciplinary range for the disciplining violations punished by specific penalties.
6. Judicial control means that the administrative decision might be subject to appeal in front of the administrative Judiciary.
7. The Egyptian state's council has initiated since the establishment its control in the disciplining field on the material presence of the events taken as reason for the administrative decision in all cases, also confirming its right in imposing control on the legal adjustment with the events.
8. The Jordanian Supreme Administrative court has adopted the exaggeration idea in number of its decisions, it is noted that these decisions came including the disciplining decisions issued by the top disciplinary authority in addition to the disciplinary councils.

Recommendations

In light of the results the researcher recommends the follow:

1. To benefit from the experiment of the comparative Judiciary in the control field on the reality upon which the administrative decision is based especially regarding extent of control on the extent of the reality suitability with the decision issued on making twins between the Supreme administrative court and the French State's council.
2. Expanding the control range on the administrative decision suitability in the Jordanian law to include other fields side by side with the disciplinary decisions especially regarding the administrative control decisions because of their great effect on the individuals practicing the general rights and freedoms.
3. There should be greater interest in the Judicial control on the administration works by preparing and educating specialized Judges to provide the administrative Judiciary body in a way to achieve the balance between the public order and the persons' rights and freedoms, since the new Jordanian administrative system came at two degrees.
4. Presenting a text in the Jordanian administrative Judiciary no. 27 year 2014, and the Egyptian civil

⁽¹⁵⁾ Journal of the Jordanian Bar Association, year 1971, P. 903.

⁽¹⁶⁾ Supreme Administrative Court, Justice, decision 99/283 date 14/12/21999.

⁽¹⁷⁾ Al-Malt, J, The Disciplinary Responsibility of the Public Employee, Disciplinary Judiciary, 1994, P. 282.

service law number 15, year 2015 considering the exaggeration deficit an aspect of the appeal aspects to cancel after the Judiciary became stable and the continuous Judiciary rules taking it.

5. Obligation of the disciplinary authorities the necessity for considering the controls and the guarantees of the administrative Judiciary and working with them for pro-rate between the penalty and the committed disciplinary violation, whether for restricting of reducing the penalty as controls and guarantees to follow in estimating the penalty upward or downward for its decisions to be far from exaggeration that might touch them.

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