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# Defect of Misuse of Authority in Administrative Decisions in Jordanian Legislation

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**Abstract:** This research aims to identify the definition and context of the defects of misuse of authority in the administrative decisions by descriptive and the analytical approach. Being hidden and difficult to prove, it is one of the most prominent defects that may affect an administrative decision. Apparently, the administrative decisions may appear right and according to law but have a hidden defect of misuse of authority. Misuse of authority helps achieve personal, vindictive or other interests, violating the principles of legality and equality. Misuse of authority occurs when the government administrator violates in its decision the purpose specified by law or the legislator. It harms the public order and the rights of individuals, and therefore, the administrative judge may raise it on his own. Controlling the issuance of administrative decisions, and their issuers, to issue an administrative decision contrary to the purpose set by the law or allowed by the legislator will help prevent this practice.

**Keywords:** administrative decision; misuse of authority; Jordanian legislation

## 1. Introduction

The defect of misuse of authority is one of the most prominent, and serious defects affecting the administrative decisions. It is difficult to prove because it is related to the intentions behind the administrative decisions and is related to the essence of the administrative decision and not its apparent form. This defect appears when an administrative official issues an administrative decision aimed at his personal interests. Such decisions may be vindictive, not aimed at public interest but to exploit the authority granted to the administrator. This defect violates the foundations of justice and equality affecting the rights of citizens. It is also a violation of the concept of legality, by violating the purpose set by the law granted to him and using his powers to achieve interest contrary to the law (Al-Khalayleh 2020). The purpose of appointing an official employee is to achieve the principle of regular and steady functioning of public facilities. If an administrative official violates this element while issuing administrative decision, the decision is tainted with the defect of misuse of authority.

Current study defines the defect of misuse of authority, its characteristics, and prominent cases and methods of proof. The research is important as misuse of authority defect is one of the main defects in administrative decisions, and its impact on the rights of individuals is significantly affecting the principle of the rule of law and administrative justice.

## 2. Methods

Descriptive approach will be used to explain the concept of the defect of misuse of authority and indicating its characteristics, cases and methods to prove it objectively. Analytical methods will be used to analyze this topic from the legal point of view.

## 3. Defect of Misuse of Authority

The defect of misuse of authority relates to the using discretionary authority in administrative decisions. It is quite risky for the administration to exercise its discretionary authority without any restriction, as it can badly impact the rights of individuals and their public freedoms. The defect of misuse of authority is linked with the objectives of the administrative decisions. Administration must issue its administrative decisions to achieve the purpose for which it was granted the authority to issue decisions, i.e., the public interest. If the administration deviates from that end, then its decision is defective and tainted by the defect of misuse of authority. The defect of misuse of authority is defined as "the administration's use of its authority to achieve an illegitimate goal, whether

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by targeting an objective far from the public interest or by pursuing a goal other than the objective specified by law "(Al-Khalayleh 2020). The Jordanian legislator in Article V of the Administrative Judiciary Law No. 27 of 2014 called this defect "the defect of misuse of authority" while enumerating administrative decision aspects, including misuse of authority. However, some experts prefer to use the expression "deviation from authority"(Al-Khalayleh 2020).

The defect of misuse of authority affects the objective of the decision. The intended objective is the one that was present in the mind of the lawmaker and which he intended to achieve (Abadi 2013). It is a hidden defect related to the intention of the decision-maker and is one of the most difficult defects to prove before the administrative judiciary. The evidence here focusses on the objectives that prompted the administrator to issue his decision (Al-Khalayleh 2020).

#### 4. Characteristics of the Defect of Misuse of Authority

The defect of misuse of authority is characterized by a set of features described below.

##### *Objective of the administrative decision*

Being linked to the objective, the administrator's violation of the objective defined by the legislator or for which the authority was originally granted to achieve the public interest is the key characteristics of such defects. This defect is related to the essence of the administrative decision rather than its apparent form. It is different from other defects of the administrative decisions, which are clear and specific, while the defect of misuse of authority is hidden, and difficult to detect because it relates to the intentions of the decision maker.

##### *Discretionary Powers of Administration*

This defect happens when the administration is free to intervene (Al-Khalayleh 2020), and its freedom to determine the seriousness, importance and appropriate means of certain facts. If the administration's authority is restricted, this defect will disappear because the administration is obliged to follow the law prescribed by the legislator. Hence, this defect is a defect of choice, as the administration, instead of using its discretionary authority according to the objective and framework set by the legislator, misuses this authority choosing another objective (Al-Aqili 2008).

##### *Contingent defect*

If an administrative decision is challenged with any other defect besides the misuse of authority defect, the administrative judge may search for the legality of the decision by other grounds for appeal. If other defects are proved, the administrative decision will be cancelled without the need to search for the misuse of the authority defect. Since, it is easy to prove the existence of other defects that relate to the apparent legality, as the misuse of authority is a hidden defect that is difficult to detect (Al-Aqili 2008).

##### *Intentional features*

Misuse of authority is an intentional defect. The administrator must have intended to deviate from the public interest or the goal set by the law. This defect may be realized despite the good intentions of the administration. The intentional nature of this defect is related to the deviation of its intention to achieve a goal other than that specified by the legislator. Jordanian Administrative Court, ruled that, "... since the defect of misuse of authority entitles our court to extend its control to the motives that led the administration to issue its decision. The decision was made by a competent person, fulfilling the formalities and was according to the law, without intentionally deviating from the goal set by legislature. What is important in the defect of misuse of authority is a violation of the law in spirit and not in letter".<sup>1</sup>

#### 5. Creation of the Misuse of Authority Defect

In exceptional circumstances, the administrative judiciary may bypass the administration's failure to comply with the rules of jurisdiction and the formal rules and procedures, but it cannot waive matters related to the cause and purpose of the administrative decision (Al-Helou 1999). Even in exceptional circumstances, the purpose of the administrative decision must be to maintain public order. Decision will be defective, if it is influenced by political revenge against administration's opponents or the motive is to achieve public interest, without maintaining public order (Al-Khalayleh 2020).

The following conditions lead to misuse of authority defect:

##### *Unrelated to Public Order*

Administrative jurisprudence unanimously does not consider the defect of misuse of authority related to public order, unlike the defect of lack of jurisdiction. The judge cannot raise this defect on his own, but some experts related to public order can point it, due to its importance and seriousness and the violation of the rights and freedoms of individuals (Khalifah 2010), The Jordanian judiciary does not consider defect of misuse of authority related to public order.

##### *Misuse of Authority*

It is with the intention of the administrator, as he exploits his discretionary power to achieve goals that are not related to public interest (Al-Tamawi 1976). This happens when the administrator exploits his competencies and powers entrusted to him and issues a decision aimed at achieving personal benefit for himself or a third party (Al-Aqili 2008). The decision-maker uses his powers granted to him by the legislator to achieve personal benefits instead of achieving the public interest, for example when head of the Municipal Council decides to construct a road to serve his land or his relative (Al-Khalayleh 2020). When the administrator uses his powers to abuse and harm others, because of a personal difference or an ideological, intellectual, or other difference, this defect appears (Al-Khalayleh 2020). This harms the interests and freedoms of individuals and consequently the public interest (Bassiouni

<sup>1</sup> Judgment of the Jordanian Administrative Court in Case No. 2014/94 dated 19/11/2014, Qistas. Available online: <https://www.aihja.org/en/membre/jordan-high-administrative-court/> (accessed on 26 February 2025)

1983). If the administration issues an administrative decision to dismiss one of its employees based on personal grudges that have nothing to do with public interest, the administrative decision is tainted with the defect of abuse of authority because it does not achieve public interest (Fahmy 1966).

Administration is always neutral, or it should be so, as it aims to achieve public interest without being affected by a political party or partisan motives (Shafi'I 1981). If the administrative decision aims to abuse a particular political party or favor a political or partisan trend close to the ruling authority in the country (Bassiouni 1997) including arbitrary measures and decisions that the administration may take against employees having political and trade union rights guaranteed by the law (Al-Khalayleh 2020).

### ***Obstructing the Implementation of Judicial Rulings***

If the administration circumvents judicial rulings evading their implementation, then the administration's decisions are tainted with the defect of misuse of authority and require annulment (Al-Khalayleh 2020). Circumventing the force of *res judicata* is a hidden fraud, as the administration uses its administrative powers and privileges to achieve an interest other than the public interest (Al-Aqili 2008).

### ***Violation of the rule of agreed objectives***

All administrative decisions must be based on the public interest and the administration must adhere to the objectives set by the legislator. If the administration deviates from these objectives and uses its authority to achieve ends other than those intended by the legislator, its decision is flawed by abuse of power. This defect occurs when the administration appears to be pursuing public interest but using its authority towards goals other than those set by the legislator. This is less harmful than the previous cases of completely ignoring public interest, since the administrator is acting within the limits of the public interest without any revenge or personal benefit (Al-Khalayleh 2020). However, this does not diminish the seriousness of deviating from the rule of allocating objectives (Al-Banna 1999).

Administrative control aims to guide the rights and freedoms of individuals to ensure the maintenance and protection of public order through the instructions, guidelines, and directives issued by the administrative authorities (Al-Khalayleh 2018). It aims to avoid anything that can provoke strife, disasters, or unrest (Al-Aqili 2008), and the limits of the exercise of administrative control powers varies in normal and exceptional circumstances.

In exceptional circumstances, the administration may bypass the rules of jurisdiction, the rules of form and procedure, and some violations of the law. However, even in these circumstances, the administrative judiciary monitors the elements of reason and purpose in the administrative decision, and the seizure decision must aim to maintain public order. If the administration seeks a goal other than that, the seizure decision will be flawed by the defect of abuse of power (Al-Khalayleh 2020).

The public service is defined by the Jordanian legislator as "the set of tasks assigned by a competent authority to a public employee to perform them according to law or any other legislation, instructions or administrative decisions, and the responsibilities or powers related to those tasks". The Jordanian legislator defines a public employee as "a person appointed by a decision of the competent authority included in the table of job formations issued under the general budget law or the budget of a department and an employee appointed under a contract and does not include a daily wages person".

The defect of misuse of authority has various forms, the most important of which is the deviation of the administration in using its authority to transfer employees from one location to another and refer employees to retirement (Al-Helou 1999). The administration has the authority to transfer and place employees at the right place, but if the management uses this authority to discipline employees or for any other purpose, its decision is flawed, tainted with the flaw of abuse of authority and is revocable.

The Administrative Court annulled the decision to assign a group of employees from the Income Tax Department to the Ministry of Communications and Information Technology when it found that the assignment was not aimed at placing the right person for the right job or solving the problem of temporary staff shortage in one of the state's public facilities, but for getting rid of some employees (Al-Khalayleh 2020). It means that the decision to assign the appellant was made for a purpose other than the stated purpose... which necessitates its annulment.<sup>2</sup>

## **6. Proof of Defect of Misuse of Authority**

The defect of misuse of authority is difficult to prove because the administrative decision is often correct in other aspects, and apparently consistent with the public interest (Tamawi 1987). Administrative judges find it difficult to ascertain the correctness of the intentions of the decision maker by simply reviewing the case papers. The plaintiff faces greater difficulty in proving this defect due to the existence of the "presumption of integrity and legality", as these decisions are considered valid and legal by default, and the burden of proving the contrary falls on those who question this. For the plaintiff, the difficulty of proof is that the administration (Al-Khalayleh 2020) possesses the papers and documents that it can rely on to prove the illegality of the contested decision.

The burden of proving the defect of misuse of authority as a rule falls on the person who alleges the decision issued by the administration. The administrative decisions issued by the administration are inherently valid and free from defects, and those who claim the opposite must prove it. The Administrative Court ruled that "... the administrative decision should be issued intact and free of defects because it is assumed that its issuer, as a public official, aims to achieve public interest when issuing it and distances himself from personal motives or revenge, and proving otherwise lies on those who claim otherwise".<sup>3</sup>

The burden of proof on the plaintiff regarding the defect of misuse of authority can be justified in two ways. Firstly, the law gives the plaintiff the right to resort to judiciary and initiate the lawsuit, and he must provide evidence of the validity of his claim. Secondly, the judiciary establishes a presumption of the integrity of the administration's decisions and needs not prove its good faith

<sup>2</sup> Administrative Court Judgment in Case No. 138/2018 dated 12/7/2018.

<sup>3</sup> Administrative Court judgment in case 522/2017 dated 21/3/2017.

and its endeavor to achieve the public interest, which is presumed until the plaintiff proves what contradicts this presumption and refutes it (Al-Banna 1999).

Due to the difficulty of proving the defect of misuse of authority, the administrative judiciary has allowed that it can be proved including the following sources:

#### ***Through the text of the contested decision***

Perhaps the easiest way to prove the defect of misuse of authority for the judge and the plaintiff is for the administration to disclose the reasons for its decision. If these reasons are inconsistent with the purpose intended by the legislator in the exercise of the administration's authority to issue the decision, then its misuse of authority (Al-Khalayleh 2020).

#### ***Through documents and documents***

Misuse of authority can be proved through documents and papers. In a ruling by the Administrative Court, it stated: "... the applicant's employment files were devoid of any defect and all his annual reports were excellent, which indicates that the placement was in response to the aforementioned lawsuit...".

#### ***Through the evidence***

The idea of evidence is based on deducing an unknown fact from a known fact, and is divided into legal evidence, which is stipulated by law, and judicial one, which the judge deduces from the circumstances and facts of the case and its documents (Al-Khalayleh 2020). The Supreme Court of Justice in 1984 ruled that granting occupational licenses to some people and not others in an industrial area is a violation of the principle of equality. the administrative decision is then flawed and tainted with the defect of abuse of power, "... granting occupational licenses to some owners in the industrial area specified in the master plan and denying other owners in the same industrial area, including the plaintiff's lessor, is a violation of the principle of equality and constitutes an abuse of power".<sup>4</sup>

In a ruling, the Administrative Court annulled the decision of the Council of Ministers to retire the plaintiff, an employee of the Income and Sales Tax Department, when it found that his retirement was arbitrary. He filed a lawsuit and the decision regarding his performance appraisal for the year 2013 was annulled (Al-Khalayleh 2020).

The presumption of apparent inappropriateness appears in the field of disciplinary actions especially, as the administration has wide discretion in choosing the penalty commensurate with the disciplinary violation. If the penalty is disproportionate to the act, this is a presumption of abuse of authority (Al-Tamawi 1987).

The Administrative Court, in its judgment stated "... since the appellant did not provide any evidence of the invalidity of the appealed decision and as long as the penalty imposed on the plaintiff is commensurate with the action. performed. and misuse of authority by the respondent has not been proved, so the appellant complaint in the grounds for appeal does not respond to the appealed decision and must be dismissed".<sup>5</sup> The court dismissed the lawsuit filed by a lawyer regarding the disciplinary decision issued against him by the Bar Council imposing three months ban from practicing the profession for photographing a complainant doctor inside the courtroom during the hearing of a criminal case of defamation (Al-Khalayleh 2020). The administrative judge may deduce the presumption of misuse of authority from the method of issuing the decision, and the lack of a reasonable motive. If an administrative decision was issued lacking a reasonable basis and the motive was violating public order, public interest and administrative rules.

## **7. Conclusions**

The defect of misuse of authority lies in avoiding the public interest to achieve personal, vindictive or other interests, violating the principles of legality and equality. Misuse of authority occurs when the administration violates in its decision the objectives set by law or assigned by the legislator. This defect is intentional, contingent, and non-public order-related defect as unanimously agreed by most of the administrative jurisprudence. The defect of misuse of authority can be proved through the text of the decisions, documents, and evidence. This defect is related to public order, as it violates public order and the rights of individuals, and therefore the administrative judge may raise it on his own. Controlling the issuance of administrative decisions and their issuers making it difficult to issue an administrative decision that violates the purpose set by the law, or the legislator is the solution.

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<sup>4</sup> Judgment of the Supreme Court of Justice, 1982/172 of 1984.

<sup>5</sup> Administrative Court Judgment Case No. 218/2016 dated 11/1/2017.

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