

JUDICIAL OVERSIGHT AS A FORM OF GOVERNANCE IN THE FACE OF ADMINISTRATION ARBITRARINESS IN ADMINISTRATIVE DECISIONS

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Abstract

How to cite this paper: Alshawabkeh, F. A., & Shiyab, T. M. (2021). Judicial oversight as a form of governance in the face of administration arbitrariness in administrative decisions [Special issue]. *Journal of Governance & Regulation*, 10(4), 261–271. <https://doi.org/10.22495/jgrv10i4siart6>

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ISSN Print: 2220-9352
ISSN Online: 2306-6784

Received: 24.06.2021
Accepted: 25.10.2021

JEL Classification: K1, K14, K140
DOI: 10.22495/jgrv10i4siart6

This research explains judicial control as a form of governance in the face of arbitrary administrative decisions — the UAE is an example (Zwart, 2016). The aim of the study is to demonstrate how judicial control can contribute to achieving good governance of the administrative decisions in the absence of the legislative provisions related to the causes of cancellation of an administrative decision. The data were sourced from relevant books, journals, official texts, and courts decisions. The data obtained was analysed through descriptive and analytic methods. This paper is divided into three themes. The first tackles the incidents of abuse of power. The second demonstrates the ways in which abuses of power can be proved, and the third discusses the correlation between judicial control and good governance. The study found that the abuse of power is related to the discretionary power of the administration and that it is a latent defect related to the psychological intentions of the decision-maker and is difficult to prove, also that the administrative jurisdiction plays an important role in promoting the good governance. The study concluded that it is important for the UAE legislator to issue a law regulating the action for the annulment of administrative decisions.

Keywords: Good Governance, Discretionary Power, Judicial Control, Abuse of Power

Authors' individual contribution: Conceptualization — F.A.A. and T.M.S.; Methodology — F.A.A. and T.M.S.; Investigation — F.A.A. and T.M.S.; Resources — F.A.A. and T.M.S.; Visualization — F.A.A. and T.M.S.; Writing — Original Draft — F.A.A. and T.M.S.; Writing — Review & Editing — F.A.A. and T.M.S.; Supervision — F.A.A. and T.M.S.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

Acknowledgements: The Authors would also extend their gratitude and appreciation to all who have helped carry out this research paper, and to all who have provided any facility to complete this work.

1. INTRODUCTION

Some have defined the abuse of power as “the use of a particular power by an administrative body, in order to achieve a goal other than the goal for which

this power is granted thereto by law” (Fodah, 2010, p. 174). In fact, the abuse of power occurs when the administration uses its discretionary power for a purpose other than the public interest, whether this purpose is a personal interest or a political

objective. Additionally, the abuse of power occurs when the administration makes a decision to achieve a public interest objective, but this objective is different from the objective set by the legislator which the administration alleges it is applying (Hatamleh, 2006). It must be emphasised that discretionary power is the only area for abuse of power, and this defect cannot be raised when the powers of the administration are restricted.

The abuse of power is one of the serious defects in the administrative decision, as it is a latent and invisible defect. This defect is related to the personal intentions and purposes of the maker of the administrative decision. The administrative decision that is tainted with the defect of abuse of power is a valid decision in terms of form, procedure, jurisdiction, subject matter, and cause, which makes it difficult for the plaintiff or for the administrative judge to prove this defect. The judge will not consider or tackle this defect as long as it is possible to rely on another reason for the cancellation of the administrative decision. Consequently, the abuse of power is considered a reserve defect, and it is not also related to public order. Thus, the administrative judge does not have the power to raise such defect on his own unless the plaintiff adheres to it (Dsouki, 1998). However, in order to achieve the governance of the administrative decision, the administrative judge can ask the administration to explain the factual and legal causes that led the administration to issue its decision. This implies promoting the concept of good governance, which is a prerequisite for ensuring the development of the government sector and the making of rational decisions that respect justice and guarantee the rights and freedoms of individuals dealing with government administrations (Addink, 2019). For the government institutions to play their role to the fullest, these institutions have to implement good governance components in their day-to-day work (Cobbe, 2019), especially their administrative decisions, given that governance is a system of control and guidance at the institutional level (Spanou, 2020).

The present study aims to demonstrate the instances of the abuse of discretionary power by the administration in the administrative decisions it makes, and how the judicial control can confront this abuse, prove it, and stop the administration at the boundaries of legitimacy and force it to implement governance of its decisions.

The study's problematic issue is demonstrating how judicial control can effectively contribute to achieving the complete and true image of the good governance of the administration's decisions, particularly in the absence of the legislative provisions related to the causes and events of cancellation of an administrative decision due to its illegality. Here we may have a number of questions, the most important of which are:

1. What are the instances of abuse of power by the administration?
2. What are the methods adopted to prove the abuse of power by the administration?
3. What is meant by good governance?
4. Is judicial control an effective means that contribute to the governance of the administrative decisions?

The structure of this paper is as follows. Section 2 reviews the relevant literature concerning the judicial control of the instances of abuse of power and its prove. Section 3 analyses the methodology that has been used to conduct this research. Section 4 discusses the relationship between judicial control and good governance. Section 5 concludes the paper.

2. LITERATURE REVIEW

In this section, the authors will provide a summary, description, and critical evaluation of the literature concerning judicial control and good governance in administrative decisions by analysis of works in this topic, explanations of the similarities and differences between these works, comparison of different views held by other authors, and examinations of the gaps in the research. The authors organize the literature review into thematic and theoretical approaches to discuss various theories, models, and definitions of key concepts of this topic. This section has been divided into two themes: 1) Instance of abuse of power, 2) Proving abuse of power.

2.1. Instances of abuse of power

The administration entity aims at issuing its resolution to achieve the public interest. The administration is not always complied with its aims and objectives that are not established by the legislator, resulting in sustained administrative resolution with the flaw of abuse of power (Aldabbagh, 2021).

Instances of administration abuse with its power can be represented as follows.

Abuse of power to attain an interest far away from public interest

In terms of administration activity, its mission is to attain the public interest; whereas, the administration entertaining public law privileges only to attain this objective or purpose. However, if the administration aims at issuing the resolution, this deems an extremely severe issue which will result in non-legality of the administrative resolution issued by it (Alshawabkeh, 2016).

To this extent, Emirates Federal Supreme Court adjudicated in a judgment that "resolution may not sustain flaw unless the administration refrained from public interest at which the administrative resolution should aim and issued the resolution for a purpose carving out from such interest or failure to justify its conduct which renders the issued resolution lacking valid cause and sustaining the flaw of abuse of power and to be nullified" (Supreme Federal Court judgment in the appeals: No. 566 and No. 591 of 2013, administrative, session of 26-3-2013).

It is apparent from this judgment that the administration might aim at various objectives and purposes away from the scope of public interest, such as:

Utilizing power for the purpose of revenge: It is noted that this is a repulsive form of the deviation of administrative resolution issuer, who exploits his influence and power conferred by the administrative

for serving the public interest. However, he issues the resolution for the purpose of revenge or prejudicing someone else to satisfy a devil's desire of himself. The fertile environment for this form is the civil service with the revenge of dissenting, competitors, and favourite people (Alshawabkeh & Alshiyab, 2014).

No doubt that exploitation by the administrator to his power and influence deems a severely serious indication and reveals weakness of ethics. It will also prejudice the political regime in the state. If anyone is tempted to carve out from the outlines set by the legislator and law or compromised civil service. Ethics must be held accountable to serve repulsive purposes (Najm, 1983).

Therefore, administrative jurisdiction confronts such administrative deviations. However, it has to be stated there has been no judicial application of this situation in the Emirati Supreme Federal Court jurisprudence.

Exploiting power to attain personal interest: Power entertained by the administration is not a purpose in itself but a means to attain the purpose represented in society's public interest. Its resolution will sustain the flaw of abuse of power or deviation with it as this flaw deems one of the appeals for nullification against the administrative resolution. Whereas, the administrative resolution will sustain the abuse of power flaw if the administrator exploited it to attain personal interest other than the public interest prescribed by law (Fahmi, 2011).

The law does not confer the administration powers and privileges it for to attain the key purpose to which it seeks being the public interest. A benefit to any person would be attained to give rise to deviation flaw (Altamawi, 1997).

This form of deviation takes place in many instances as the resolution stimulated political incentives, challenging or tricking judicial judgment, or urged by revenge (Alshawabkeh, 2016).

This form takes place in the disciplinary domain when the administrator exploits his power to issue administrative resolution and attain private interest for himself. Issuing administrative resolution dismiss an employee to vacate the vacant position for appointing another employee therein. Such resolution deems sustaining abuse of power flaw, but in case resolution issuer or the administrator attain personal interests accidental to get public interest (Mostafa, 1994).

Deviation from allotted objectives

It is known that each resolution shall aim at attaining public interest nevertheless; the legislator in some cases allots specific objective obligating resolution issued to aim at attaining this objective particularly. The resolution deems sustaining abuse of power flaw even if the purpose of resolution issuer falls within the scope of public interest (Alshawabkeh & Alshiyab, 2014).

That was the adjudication of the Supreme Federal Court when it stated that "the flaw of abuse of power may not take place unless involving abuse of power, that is to say when the administration takes resolution to protect purpose other than those intended by the legislator when conferring it such power" (Supreme Federal Court judgment in appeal No. 173 of 2009, session of 11-5-2009).

The purpose targeted by the administrator in this instance revolves within the domain of public interest but contradicts the purpose required by the legislator. However, this instance is less severe than the instance to attain interest far away from public interest.

Forms and instances of violating the rule of objectives allotment vary. The most significant application is to exploit administrative order-keeping to attain financial interest. It is known that the administrative order-keeping is conferred to the administration to maintain public order in its various elements (public security, public health, accommodation, public morals). However, the administration is not at all times complying with the purposes for which it is conferred. Accordingly, jurisdiction nullify it for this cause, French Council of State encountered this abuse of administrative order-keeping power to attain financial interest for the administration (Altamawi, 1997).

According to United Arab Emirates Supreme Federal Court, its jurisdiction followed the route of the French Council of State as it adjudicated as follows in one of its judgments "the administration disclosed the cause impelled it to issue the complained resolution being maintaining the money of the company where the government shareholding amounts to 51% and this cause is not intended by the legislator to be attained according to applicable law and therefore, it abused its power as it is known that the abuse of power exists when the administration takes a resolution to protect purposes other than those intended by the legislator when conferring such power upon it even if such purposes are related to public interest ..." (Supreme Federal Court judgment in appeal No. 106 of 2010, session of 13-4-2010).

The civil service system confers the entire power of administration to transfer its employees as required by public facility interest. This helps in attaining public interest but if the administration utilizes this power to impose disciplinary action on an employee, then such resolution deems deviation from the purpose for which the administration was conferred. This power of transfer and administrative jurisdiction rules the illegality of such resolution as it sustains the flaw of deviation and abuse of power (Fahmi, 2011).

In this regard, the Supreme Federal Court asserted that "... Should administrative entity be permitted transferring employee whether in terms of place or qualitatively by virtue of its discretionary power to be able to manage the public facility and attaining public interest, its shall undertake performing the same within the frame of the law and its resolution may not sustain abuse of power ..." (Supreme Federal Court judgment in appeal No. 390 of 29, administrative, session of 30-12-2007).

The practical application of violating the rule of objectives traces thereof in referring the employee to pension. The legislator aimed at proper streamlining of public facilities by removing those employees whose existence does not contribute to attaining public interest and conferred the power of referring any employee to pension. But if the administration turned away from such an objective, then its issued administrative resolution in this regard sustains the flaw of abuse of power that should be nullified (Alshawabkeh, 2016).

Accordingly, any resolution issued by the administration entity deviated from the rule of objectives allotment, or the administration entity utilized the provisions of law with intention of deviating from its objective or intentionally violated the law.

Deviation in utilizing administrative procedures

Procedure is stipulated by law that needs to be followed to attain a particular purpose as expropriation or disciplining. For instance, disciplining must be affected by applying the disciplinary code, which includes all procedures and formalities from encountering job violation till issuing the disciplinary action against the violating employee for attributed violation, enable him to defend himself, and reasoning of issued resolution on punishment. This applied system is the legal instrument for disciplining and is also known as disciplinary procedures (Wahab, 2003).

The deviation is defined as utilizing procedures or deviation from the procedure from the concept of the administrative procedure or legal instrument. It is decided to take place when the administration power utilizes administrative procedure or any legal instrument for attaining public interest (Alsenari, 2008).

The concept of deviation with the procedure should be limited to the concept of deviation with the procedure where it is applied for another subject other than the subject for which it is designated without investigating the purpose (Alhammedi, 2012).

While others compiled to the deviation with procedure between the concept of purpose and the concept of the procedure. They believe that deviation with the procedure is represented in intentional non-compliance of the procedure with the objective. The administration utilizes a procedure to accomplish purposes other than those utilized to attain them (Albadawi, 2015).

Deviation with procedure might occur when the administration body possesses various competencies in punishment and then resorts to utilizing the instruments and procedures designated to one competence. Each crime has distinguished procedures of punishment from the other, and the administration applies the procedures prescribed for one of them in other crimes (Khalifa, 2008).

Accordingly, deviation with the procedure is represented along with the instrument prescribed by the legislator for him to resort to another instrument for the purpose of rules of competence. Whatsoever is the administration purpose in denying the procedure prescribed by the legislator to exercise its competencies, it actually abused its power just on violating the prescribed procedure.

The basis of deviation with the procedure is that the administration utilizes an administrative procedure it shouldn't utilize related to the purpose of the project it aims to attain. However, the same could be utilized to achieve another purpose. Therefore, deviation with procedure takes place when the administrator utilizes another instrument other than that is duly established (Mostafa, 1994).

Based on the above, deviation with the procedure can be defined as the administrator's violation of the procedure prescribed by the legislator to attain the objective exists regardless of the stimulus induced by the administrator to deviate from the duly established procedures.

The significance of deviation with procedure underlies the fact that clearly reveals the flaw of abuse of power without investigating the intentions of the resolution issuer. It incorporates the subjective evidence for abuse of power and thus deviation with procedure impairs the difficulty of proofing abuse of power flaw, whose proofing in most cases relies on self-elements (Fahmi, 2011).

The significance of deviation in the procedure is materialized due to the double replacement of law in its broad meaning. On one hand, it includes breaching of the provision creating the procedures utilized by the administration; while, on the other hand, it involves breaching the applicable provision which will result in amending the conditions and scope of law application to the contrary of legislator's intentions. In the majority of the cases, it is also accompanied by unreal causes and ignoring some formalities. It tends to implement the law in contradiction to the legislator's intentions. Moreover, it is often accompanied by some formalities and from this point emerges the severity of deviation with the procedure is justified in reality (Alsenari, 2008).

From the above, it is apparent that deviation with the procedure is represented in utilizing some procedures that are not aligned with the objective. The administration here utilizes the procedures to attain objectives other than those that have been utilized to reach the real objective or purpose. The administration by failing to utilize these procedures intends to attain a specific end by avoiding prolonged formalities and procedures to nullify some guarantees for individuals. This procedure takes place in the majority of the cases of transferring and disciplining employees.

The jurisdiction in France, Egypt, and Emirates are stabilized on nullifying administration resolutions with the intention of attaining financial goals. These goals are based on the deviation of these resolutions from the allotted objective for which the administration conferred the power of determination. Jurisdiction persevered nullifying such resolution whatsoever instrument followed by the administration to attain public interest whether by administration deviation with the power of order keeping, its deviated utilization of dispossession for the public interest, temporary appropriation on properties, or its abuse of power of issuing organization line (Jamaludin, 2010).

Accordingly, the power of administrative order keeping to attain its financial objective is one of the most severe forms due to the difficulty of administration resort, under the cover of administrative order keeping to attain its financial interests. This deviation is apparent in concealed (disguised) punishment as transferring or seconding an employee instead of imposing disciplinary action against him, which is a punishment under the cover of work organization in public administrations (Alshwabkeh, 2016).

The issue of concealed punishment actually relates to administration ethics and behaviour against its employees as it intentionally imposes punishment in the proper meaning by a concealed illegal method utilizing. Sometimes procedures, which are not stipulated by law, utilize stipulated

procedures for purposes other than those established for them to eliminate such sort of punishment. The administration first abides by reasoning all resolution of punitive and prejudicing impacts issued by it. On the other hand, the legislator shall legalize all procedures and arrangements through which the administration seeks punishments. The jurisdiction system in its capacity as protecting individual's rights shall not carve out from reality upon implementing the law on facts. However, it shall examine them and identify their features accompanied by circumstances leading to the interests of the administration, employees, and public facilities (Fahmi, 2011).

2.2. Proving abuse of power

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

Difficulty in proofing is doubled by the fact that this flaw is not of the types related to public order (Taj, 2017). Therefore, administrative jurisdiction may not cope with by itself, if it is not raised by the appellant in his statement of claims.

Jurisprudence indicated one of the impediments to proof this flaw while investigating administration stimulus and incentives. It is incapable to question the administrator or perform the investigation in this regard due to the principle of separation between the adjudicating administration and operating administration (Altamawi, 1997).

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

Proofing deviation from appealed resolution expression

Abuse of power defect appears once after reading the administrative resolution. The French Council of State used to prove such flaw by the expressions and clauses of the resolution itself. Even though the general rule is a presumption of the accuracy of the verdict. In the same meaning, the Supreme Federal Court adjudicated that "It is established in administrative jurisdiction and jurisprudence that administrative resolutions — as a general rule — entertain legal presumption which is assuming its validity in terms of its purpose, i.e., targeting public interest or the allotted object by law. Whoever alleges the contrary shall prove it" (Supreme Federal Court judgment in appeal No. 566 of 2013 session of 12-4-2013). It has to be mentioned that there has been no judicial application of this situation in Emirati Supreme Federal Court jurisprudence.

Proofing abuse of power requires assuring matters related to the mentality, state of mind, and intents of the resolution issuer. Therefore, the administrative judge determines stimulus motivating him to issue the resolution to attain the spirit of the law or public interest as it is the overall objective aimed by all resolution within the field of stimulus, intents, objectives, and purposes which are relative but not bare concepts (Shatanawi, 2004).

Nevertheless, the research and investigation conducted by the administrative judge to be familiar with the actual stimulus and objective of the resolution issuer cannot readily be proofed to determine abuse of power. The judge resorts to proof administration abuse of its power towards the objective intended by the legislator in many other ways. From this point, the concerned can prove abuse of power from the wording of the resolution, i.e., by reading the administrative resolution which might reveal its non-legality (Alhamadi, 2012).

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

Proofing deviation through suit file documents and papers

Jurisdiction of United Arab Emirates Supreme Federal Court tends to reach the objective of administration in issuing the administrative resolution to inspect file documents and review the correspondences proceeding or succeeding the appealed resolution. It also inspects the directions of administrative superiors pursuant, to which the resolution is taken. To this end, Supreme Federal Court adjudicated that "Accordingly and as established by the minutes of violation committee affiliated by the defendant that the appellant showed up before it at Ministry's premises in Dubai and responded to the attributed violations pertaining to exams progression and explained that the procedures of opening and sealing envelopes are made in a manner in contradiction to law and further detailed the violation of amending student marks ... and sustained violations thereof, and since the said committee was aware of the violations attributable to the appellant and its circumstances in all aspects and concluded in its outcomes to terminate appellant's service, and as such its conduct is within the power mandated to it pursuant to law but no proof arise to demonstrate that its conduct involves flaw or ill conduct in processing its procedures" (Supreme Federal Court judgment in appeal No. 415 of 2012, administrative, session of 5-12-2012).

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

Proofing deviation by presumptions

Concerning the jurisdiction, the presumptions are divided into legal presumptions. When their source is the provision of law, the judicial presumptions are not explicitly determined by law estimating the asserted relation between the absolutely proven and known incident for which the court has no evidence. It was early demonstrated that the French Council of State relied on the evidence to prove the abuse of power in several judgments, including its judgment issued on 19/11/1926, which considered the chronological closeness, as between the establishment of the school, the date of the signing of a contract to appoint the principal, and the date of departure of the governor of the province, as evidence of the abuse. It also considered the issuance of a decision by the governor, immediately on being appointed and before actually taking up his duties, to implement it the very next day, as evidence of abuse of power (Shatanawi, 2004).

Proofing abuse of power from out of dispute circumstances

French Council of State acknowledges the possibility of proofing deviation, particularly from the circumstances out of the disputer. It may prove that the resolution issuer abused his power, such as the resolution of the minister of health when he declined an application to obtain a pharmacy permit. This satisfied the requirements of citizens on basis of the permit obtained for a specific region. The administrative jurisdiction nullified Minister's resolution based on the facts of opening pharmacies, which deems evidence of Minister's deviation in utilizing his power (It is worth mentioning that in its judgment dated 27 June 1950, the French Council of State nullified this resolution for the abuse of power without dealing with the other causes of appeal. For more details, refer to Alghowairi, 1998).

As regards to Emirates Supreme Federal Court, it was found that the assumed presumption of legality is present within the resolution. The court quoted: "Our court finds in the file of claimant and the requirements accompanied issuing the appealed resolution what destabilize the assumed presumption of legality in the appealed resolution ..." (Supreme Federal Court judgment in appeal No. 143 of 2013, session of 8-10-2013).

Nevertheless, difficulty in proofing abuse of power resulting from the personal nature was not available in such instances where the target is proofing deviation with administrative procedures. The law related to the intention and purpose of personal nature aimed by the administration from its administrative resolution. In this situation, the deviation can be proven by analysing and comparing the procedures utilized by the administrative and utilized in both cases. The comparison is made between the results, which the administration aims at attaining legally (Shatanawi, 2004).

Therefore, it is said that the flaw of abuse of power withdraws back before the administrative jurisdiction rarely resorts to nullify the resolution based on the flaw. The causes of the abuse of power withdrawal are attributed to the emergence of judicial control over the other causes of the resolution.

Finally, as we note from this literature review, judicial oversight as a means of good governance has not received the attention required of researchers

and theoretical studies, and there are still many issues that need to be shed light on regarding the link between governance and judicial oversight, especially in the United Arab Emirates, so our paper come to fill this research gap.

3. METHODOLOGY

This study adopts the descriptive and analytical approach, in order to describe and analyse various jurisprudences and judicial applications under consideration to come up with the best results and recommendations. In this research, the authors adopted the analytical approach based on analyzing the legislative provisions that dealt with judicial oversight and governance in the UAE. Specifically, the authors employed the analytical methodology by using the document analysis of official legal documents in relation to administrative decisions and drew upon relevant theories and court rulings for our research. The authors also carried out an analysis of the literature review regarding this subject.

The researchers use specific approaches in legal research to analyze the essence of administrative decisions and their relation with governance. The main method used focuses on the doctrine approach which involves an in-depth analysis of the content of primary and secondary sources relevant to governance in administrative decisions. The doctrine method will be used to systematically explain, examine and analyze the concept of administrative decisions and governance in UAE.

There are three phases involved in this study which are data collection, data analysis, and interpretation.

3.1. Data collection

The authors began collecting data regarding administrative decisions and governance in the spring of 2020. The most relevant data was collected from many officials or non-official sources in the UAE. Other several ideas were gathered from 20 books or chapters, 11 journal articles, and 3 doctoral dissertations. The authors have collected secondary data in the form of primary legal texts and other secondary legal materials by reviewing some previous literature. These documents were collected through various online sources and the university library facilities. There were four types of documents as sources of information. The first sources of information were legal texts of Emirati legislations. The primary legal materials used in this study included the legislation that regulates governance and administrative decisions in the UAE. The second sources for the information were website contents related to this topic. The third resources of information were the journal articles and conference proceedings concerning this topic. The fourth sources were the books and chapters. The researchers collected these materials and analyzed them to reach comparative results regarding developments in the implementation and regulation of governance of administrative decisions in the UAE. The data collection regarding this topic of concern was helpful as it paved the way for the researchers to come up with the study results as well as the document analysis.

3.2. Document analysis

The second step was analyzing the current legal framework in the UAE through reviewing the contents of relevant documents, such as journal articles, book chapters, reports, and websites. The data obtained were analyzed using comparative analysis techniques in order to identify, analyze and compare the legal frameworks.

3.3. Interpretation of themes

Within the framework of this research, a legal model was built in the UAE based on literature concerning the governance of administrative decisions on a general scientific basis (analysis, synthesis, deduction, structural and functional method) and special research methods (legal construction method and systemic-logical). Upon this framework, the optimal alternative to the components of the legal model was proposed. Our main conclusions and proposals are based primarily on the analysis and enforcement of the applicable administrative legislations.

The research deals with the legal framework and the different experiences, as well as challenges related to this topic. Additionally, this current research study is an attempt to present a broad and more comprehensive theme of governance in administrative decisions legal framework. At the outset, the study provides a brief overview of the previous literature. The authors also discuss the governance of administrative decisions on the basis of publicly available information. Experiences from other countries are taken into consideration only as a model for comparing discussions, and to present a more complete thematic presentation.

4. DISCUSSION

The concept of judicial control over administrative decisions is linked to good governance (Mejía, 2021). Countries seek to develop the management and running of their institutions in order to achieve economic, financial, and social stability (Bunjevac, 2020). Thus, governments commit themselves to establish a culture of transparency and control and the allocation of responsibilities in the administrative activity as a whole, especially the aspect of administrative decisions, the extent of the transparency and fairness of which, as well as their compatibility with laws and regulations, the judiciary monitors (Vilone, 2020). In turn, the judiciary contributes to achieving the governance of these decisions. This subject will be addressed by explaining the concept of governance, first, and then clarifying the role of the administrative judge in promoting the principles of good governance.

4.1. The concept of governance

Governance, governorship, and administrative governance are all Arabicised terms. Governance is one of the concepts that have recently been introduced in democratic philosophy and its applications and then in various fields of institutional work in the countries heading towards democracy (Lindseth, 2019). This seems consistent with the global trend towards respecting human

rights (Addink, 2019). Consequently, the democratic-oriented countries promptly devised common standards of governance in order to provide a transparent opportunity to evaluate the performance of their governments (Almaamari, 2018). This paved the way for the emergence of participatory governance, which focuses on deepening democratic participation through the participation of citizens in governance processes with the state (Vilone, 2020). Citizens have to play a direct role in making public decisions (Cobbe, 2019). The International Finance Corporation (IFC)¹ defined governance as follows: "The system by which companies are directed and controlled", and the Organization for Economic Cooperation and Development (OECD)² defined governance as follows: "A set of relationships between a company's management, its board, its shareholders, and other stakeholders". There is another definition of governance that is related to the method adopted in running the company and the mechanism adopted in dealing with all company's stakeholders starting with the customers, shareholders, and employees, including executive management and board members, all the way to how the company deals with the society as a whole. (www.akhbar-alkhaleej.com), and although the names vary, they, in their entirety, focus on activating the principle of transparency, accountability, the participation of individuals and NGOs in policy-making, decision-making, and assessing the government's performance in providing high-quality public services. The concept of governance focuses on changing the role of government from singularity in policy-making and decision-making to participation and coordination between participants in the administration of state affairs (Addink, 2019). Therefore, it can be claimed that besides the role of the government as an implementer of public policies, it, under the governance model, engages beneficiaries of public services, such as civil society organizations and individuals, in managing and improving the level of public services and control over government performance (www.ipa.edu.sa). In fact, the adoption and application of governance principles in the public sector contribute to the effectiveness of the programmes provided to beneficiaries. This also promotes the individuals belonging, contributes to the promotion of human rights, and supports the participation of minorities in the management of state affairs. With the adoption of the governance model in the public sector, individuals and civil society organizations play an important role in accountability and control over government performance (Mejía, 2021). Meanwhile, several studies have linked economic growth and countries' achieving advanced levels on human and economic development indicators with achieving advanced levels on good governance measurement indicators. Therefore, the adoption and application of governance is not an end in itself, but a means to enhance the quality of public services, combat corruption, achieve justice and equality in the provision of services to all individuals without discrimination and achieve advanced levels of sustainable development (Al-Bassam, 2016). Consequently, governance is a prerequisite for

¹ www.ifc.org
² www.oecd.org

ensuring the development of the government sector and the making of rational decisions that respect justice and guarantee the rights and freedoms of individuals dealing with government administrations (Kornhauser, 2004). For the government institutions to play their role to the fullest, these institutions have to implement good governance components in their day-to-day work, especially their administrative decisions, given that governance is a system of control and guidance at the institutional level. Under good governance, responsibilities, rights, and relationships are defined for all relevant groups such as “managers, employees, and clients”. Thus, the necessary rules and procedures for making rational decisions related to the business of the institution are clarified. So, we may have arrived at a stand-alone system that promotes justice, transparency, and institutional accountability and deepens trust and credibility in the work environment (Spanou, 2020). There is no doubt that good governance relates to striking a balance between strategic responsibilities, on the one hand, and operational responsibilities, on the other hand, in an orderly and deliberate manner and making sure that the government department is managed and run in a manner governed by laws and regulations. A governance system can only be considered as good if the following principles are met:

1. *Rule of law.* The subservience of authorities and individuals to the law. This is a prerequisite of good governance, which requires the existence of legal entities that are established fairly and equally to protect the rights of the individual (Kornhauser, 2004).

2. *Stakeholder engagement.* Engagement is an integral part of good governance and it starts with the work of leaders and employees in serving individuals and providing them with all services.

3. *Transparency.* This means that the process of decision-making and implementation is applied using methods determined by legal instructions that allow the disclosure of information that may be of interest to the relevant parties, through the media and announcements issued by government institutions (Vilone, 2020).

4. *Responsiveness.* Good governance requires responsiveness to the needs of all groups within a reasonable and defined period of time (Addink, 2019).

5. *Consistency.* Points of view vary between individuals and different divisions in the government department, and this leads to different repercussions (Ficet, 2008). Hence, good governance deals equally with the different interests and thus leads to a broader and more comprehensive consistency for all groups.

6. *Efficiency and effectiveness.* Good governance means that society’s institutions work to meet the society’s needs through the optimal use of available resources, and hence, achieving efficiency by the optimal investment of these resources (www.fahr.gov.ae). Considering the foundations and principles that shape the concept of governance, we may say that governance sets the ethical and legal framework for the entire work of the institution, based on the applicable laws, regulations, and decisions to govern the relations between the main parties in the institution and determine

the responsibility of each party (Al-Sarhan & Al-Khazaleh, 2020). This, in turn, shall achieve transparency, justice, and the combating of corruption to develop quality and excellence in performance, utilizing the appropriate and effective methods to achieve the plans and objectives of the institution (Addink, 2019).

4.2. The role of the administrative judge in promoting the principles of good governance

There is a growing burden on the administrative judge, compared to the civil and criminal court judges, due to the lack of codification of legislation that combines administrative rules. Consequently, the administrative judge strives and performs an establishing, not applied role (especially in the light of the legislative vacuum), by drawing rules and principles from the established values in the society to promote the rights and freedoms of individuals and confirm the legitimacy and justice of the administration’s decisions. Thus, the administrative judge pushes towards the rationalization of the administrative decisions (Spanou, 2020). This, in fact, is a daunting task that requires the judges to be familiar with the nature of the administration and its problems. It also requires that the judge should possess special qualities such as deep legal culture and distinct mental skills. Therefore, the French Council of State was concerned, at an earlier stage, with the great role the administrative judiciary plays in protecting the legitimacy and justice of the decisions of the administration. Thus, the French Council of State is formed from the National School of Administration graduates, provided that those graduates are outstanding graduates and are qualified and prepared to shoulder the tasks assigned to the Council (Altamawi, 1997). The French Council of State is formed from several members and job categories, as follows: 44 representatives, to be appointed based on very difficult competitions and by virtue of a decision issued by the President of the Republic based on the placement of the Minister of Justice, 45 deputies, councillors in the ordinary service, councillors in the extraordinary service, heads of sections, in addition to the President of the Council of State, his deputy, and finally, the government commissioners. For more details about the formation of the French Council of State, see Shatanawi (2004).

The questions raised in this context may include the following: Is there a relationship between the adoption of the good governance model and the quality of decisions made by the administration? Is the administrative judiciary control an effective method that contributes to the governance of the administrative decisions? There is no doubt that the application of good governance requirements, especially the rule of law, will contribute legally and morally to the accuracy and justice of the administration’s decisions, on the one hand, and enhance the effectiveness of judicial control over the work of the government administration, on the other hand. This, in turn, is intensified because judicial control is based on a constitutional right.

The Constitution of the United Arab Emirates of 1971 established a constitutional status for

the judge that enables him to exercise control over all the works of the administrative authority (Alzaabi, Marni, & Shehab, 2020). Article 41 stipulates: "A person has the right to file a complaint with a competent authority, including a judicial entity, against the violation of the rights and freedoms stated in ...". Article 94 stipulates: "Justice is the basis of government. In performing their duties, judges are independent and are influenced only by the rule of law and their own conscience". The constitutional declaration is very clear in granting the judiciary full authority to realize justice, uphold the principle of the rule of law, and protect the rights and freedoms of individuals. This is offset by the administration's enjoying a wide margin of legislatively flexible discretionary power, allowing the administration to take, sometimes, partial administrative decisions. So, it becomes clear that the principle of impartiality collides with the discretionary power granted to the administration. However, the administrative judge exercises control over the discretionary power of the administration, considering it not as absolute power but as hedged by the boundaries of legality (Alzaabi et al., 2020). The judge monitors the extent to which the objective for which the administration was granted a set of privileges to achieve the common good is achieved, and investigates the extent to which the administration adheres to the principle of impartiality and public interest, which embodies the impartiality of the administration and establishes the principle of legitimacy and the rule of law. In this way, the discipline and impartiality of the administration are achieved, which is one of the most effective rules for the running of public facilities with integrity and objectivity.

Reality demonstrates that the administration sometimes tends to circumvent laws and regulations when issuing some of its decisions. The administration hides its lack of transparency in the absence of competent or effective administrative control bodies that monitor the works of government institutions, combat corruption, and are considered administrative appeal bodies that consider transparency-related grievances.

In this situation, the administrative judge becomes the main resort to combat the delinquency of the administration from the right path and protect the rights and freedoms of individuals as the guarantor of the transparency of the decisions of the administration and regular running of public facilities. Many countries established non-judicial bodies to resolve disputes over transparency, in order to improve administrative procedures and works, deepen transparency in the actions of the administrative authority, and thus reduce the number of cases filed before courts, including France, Morocco, and other countries that have granted constitutional protection to those bodies (www.sgg.gov.ma, www.conseil-constitutionnel.fr). Through full control, he/she exercises to verify the legitimacy and appropriateness of the decision of the administration. As part of the judicial control's contribution to the embodiment of good governance, the role of the administrative judge is not limited to the application of legal principles dedicated to justice and the protection of rights and freedoms. Rather, the administrative judge exercises control over transparency and impartiality that

must be achieved in the rational decisions of the administration. Therefore, the administration is required to state the causes behind the decisions it makes and to declare the legal and factual reasons that led it to issue the administrative decision, and which formed the legal basis on which the decision was based (Shatanaw, 2004). This shall achieve participatory control on the part of stakeholders and the administrative judge as well. Thus, the task of the judge is facilitated when the administration provides all the data and explanations that allow the judge to exercise his control under the best conditions.

When the judge obligates the administration to justify its decisions, especially those issued against the interests of the individuals, he reinforces the principle of legitimacy and builds basic pillars for good governance, the most important of which is transparency. Therefore, some countries have imposed, in their legislation, causation under a special legislative provision, such as the French legislature, in Law No. 78/587 on the causation of administrative decisions issued against the interest of the addressees (www.legifrance.gouv.fr). This was also confirmed by the Moroccan legislature through Law No. 01/03 on obligating public administrations and institutions to justify their administrative decisions (The Moroccan Official Gazette No. 5029, issued on 12/08/2002³). This is a commendable approach from the French and Moroccan legislators, as the reality demonstrates that the competent people in the administrative authority are not on the same level of moral elevation. Thus, we may find some decisions, especially those tainted with the defect of abuse of power, are issued on purpose, and the makers of these decisions are fully aware of the extent of their violation of the ethics of the public service and are running afoul of the objective of the discretionary power granted to them. Such decision-makers make their decisions with the aim of revenge or to realize a personal benefit, or for political leanings or partisan tendencies. This shall lead to the loss of rights and the violation of the freedoms of those who are addressed by such decisions. Those decision-makers are deterred by nothing except the administrative judiciary, which obliges the administration to abide by the boundaries of legitimacy through the control it exercises, which highlights the appropriateness and transparency of the administration's decisions.

5. CONCLUSION

The present study reached some findings and recommendations, which are presented below. As for the findings, it became clear to us that the UAE legislator did not draft a legislative text in federal or local legislation specifying the defects that affect the administrative decision, turning it into an illegal decision that requires cancellation. Also, the administrative judge plays an effective role in consolidating the requirements of governance of the administration's decisions. The administrative court judges in the French Judiciary are carefully selected and qualified in a way that enhances their understanding of the administration's nature and the problems it faces, before being sitting judges.

³ <https://portal.cor.europa.eu/divisionpowers/Pages/Morocco-Bibliography.aspx>

The defect of abuse of power is considered one of the purposeful defects related to the intentions and internal psychological motivations of the administrative decision-maker. Therefore, the judge shall not verify the existence of this defect unless the administrative decision does not entail another reason for being cancelled. The defect of deviation is difficult to prove, and this difficulty is relative rather than absolute, especially in proving deviation from the Rule of Designating Objectives, and deviation of procedures because they are linked to objective considerations. The defect of abuse of power is not related to the public order, so the administrative judge cannot raise it on his own unless it is first raised by litigants.

As for the recommendations, the study recommends that the UAE legislator issue a law regulating the action for the annulment of administrative decisions. This law shall specify the reasons for the annulment of illegal administrative decisions and administrative litigation procedures. We suggest that the litigation shall be on two instances, similar to the regular judiciary, so the plaintiff of the administrative case enjoys the advantages of multiple litigation instances. We also request that the UAE legislator follow the example of the French legislator with regard to the method and mechanism adopted in selecting and qualifying the administrative judges.

The study recommends that the UAE legislator follow the example of the French legislator and obliges the administration to justify all its individual decisions that may inflict harm upon individuals, in order to guarantee the achievement of good governance in these decisions.

The study recommends that the UAE administrative judiciary show leniency when proving the defect of abuse of power and helps individuals to reveal the deviation of the administration and its derogation from the legitimacy in using its

discretionary power. This can be achieved by expanding the means of proving this defect, such as relying on the wording of the decision to prove the abuse of power by the administration.

The study recommends that the UAE legislator instill a culture of good governance among public officials with its concepts of impartiality, transparency, accountability, and the rule of law, by means of the provision of training courses and awareness sessions, so as to minimise the abuse of power within the public service.

The significance of this topic of concern is embedded in its value by identifying the legislative strategies in encountering good governance in administrative decisions. As has been already mentioned, such results may benefit Emirati legislators concerned, in addition to filling a gap in related literature, as well as research studies. The researchers recommend further research to determine or identify alternative legislative strategies to encounter such judicial control as a form of good governance worldwide. The reason is that this study could serve as a grounded theory for research in the future. Nevertheless, this current research study has some study limitations.

These study limitations are comprised of the legal framework of judicial control of administrative decisions. Moreover, this study is limited to the conceptual framework of judicial control as a form of good governance. Finally, the researchers referred to several academic works in order to complete this research study and for future studies, future researchers are proposed to refer to and review additional related references. As a result, this paper provides a starting point for judges, lawyers, and legal academics who wish to understand how to legally assess or review automated decision-making systems and identifies areas where further research is required.

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