

Reasoned Decision as a New Horizon of Good Administration in Iraq

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Abstract: The reasoned decision principle is a modern addition to the principles of natural justice. It gives individuals the right to know why particular decisions have been made against them. Generally, administrative authorities have no obligation in Iraq to issue reasoned decisions unless expressly required by legislation. The purpose of writing this article is to examine the implications of the broad discretionary powers exercised by Iraq's administrative authorities, to what extent the reasoned decision principle can serve as a mechanism for controlling such powers and the role of Iraq's administrative judiciary in this regard. This article uses a qualitative, analytic research method that engages with material from primary and secondary sources. The study results indicate that the expansive discretionary powers enjoyed by Iraq's administrative authorities lead to abuses of individual rights and freedoms. Moreover, the embryonic state of Iraq's administrative judiciary and the absence of appropriate legislation impedes effective judicial control over administrative arbitrariness. This study argues for legal transformations to limit the scope for discretion and abuses by requiring Iraq's administrative authorities to provide reasoned decisions and to strengthen the administrative judiciary in curbing their excesses. The novelty offered by the authors in this article is that it articulates the value of the reasoned decision principle as a tool for checking the arbitrary exercise of discretionary powers and enables the determination of the right balance between individual and public interests in Iraq.

Keywords: reason, decision, administrative authorities, discretionary powers.

理性决策是伊拉克善政的新视野

摘要：本文旨在评估理性决策原则的有效性，并使其成为伊拉克行政当局义务。这是因为，合理的决定是受影响人免受行政机关任意自由裁量权的重要保障。特别是，该条确保颁布一般法律，要求行政当局提供合理的决定，是增强个人对行政决定的信心的一项重要措施。本文采用定性分析研究方法。它以宪法、法律法规、期刊、教科书和行政决定为基础。具体而言，它依赖于提交行政司法机关的案件，并对其进行仔细分析。一个关键发现是，理性决策原则可以作为对任意使用自由裁量权的检查。此外，合理的决定不足以伸张正义。相反，这样的决定必须是适当的、合理的并且与所讨论的主题相关。任何没有充分或充分理由的决定都是无效的。判例法和司法界的共识认为，上述任何一个要素的缺失都将导致行政决定无效和非法。本文的结论是，缺乏合理的决定会导致许多危害个人权利和自由的问题。政府拒绝提供合理的决定表明了对抗和恶意。

关键词：关键词：原因、决定、行政当局、自由裁量权。

1. Introduction

In most cases, individuals make certain decisions supported by reasons that justify them. Often though, people have no specific reasons for their decisions. In this case, providing reasons to justify the decisions

taken becomes an optional issue [1]. However, when it comes to the decisions issued by administrative authorities, it is vital to disclose valid reasons in their support. This is because providing reasoned decisions helps to demonstrate the good faith of administrative

authorities towards the parties to whom their decisions are addressed. It also facilitates the task of the judiciary when the relevant decisions are challenged by aggrieved parties [2].

Many legal systems, such as those of Australia and the European Union, have dealt with the reasoned decision principle legislatively by imposing a duty in this regard through their administrative laws [3]. In some other jurisdictions, the task of addressing the problems associated with the absence of the duty to provide reasoned decisions is left to the judiciary. For example, in the UK, the legal system does not impose any duty on administrative authorities to provide reasoned decisions. Nevertheless, the English courts were able to broaden the scope of administrative decisions that must be subject to the duty to provide reasons [4].

In Iraq, administrative authorities make decisions in the exercise of discretionary powers conferred on them by law. Since these decisions affect individual rights and freedoms, it is necessary for them to be reasoned. Generally, Iraq's administrative authorities are under no obligation to issue reasoned decisions, unless legislation expressly provides otherwise. This is the problem addressed in this study. The study aims to resolve it effectively by proposing the enactment of a law obliging administrative authorities to give reasoned decisions. Existing Iraqi literature does not address the issue of discretionary powers and the extent to which they relate to the reasoned decision principle. Iraqi studies tend to focus on the theoretical aspects of this duty and fail to dwell on its modern judicial applications. There continues to be lack of clarity about the Iraqi legal system, as well as its impact on decision-making in general, and the reasoned decision, in particular.

This topic raises two questions:

- 1) can the reasoned decision principle be used to regulate the exercise of discretionary powers in the Iraqi legal system?
- 2) what remedies are available in cases where administrative authorities fail to provide reasoned decisions?

This study attempts to address these issues by defining and discussing the concept of reasoned decision and its significance. In addition to examining and analyzing the cases presented to the Iraqi judicial system, this article also provides a summary of the relevant literature in this area.

2. Research Methods

This study adopts a qualitative research method, which is judged valid and reliable [5]. It utilizes primary sources, such as statutes, rules, and constitutions, as well as cases, particularly those of Iraq's administrative judiciary. The study also uses secondary sources like journal articles, textbooks, and academic theses. Legal materials are analyzed using the

deductive method, beginning with fundamental concepts and then presenting the object of study, i.e., shifting from general to specific principles.

3. Literature Review

The reasoned decision is one of the most recent and controversial topics in administrative law. This subject has been addressed by several studies in various legal systems, from the U.S., France and Germany to India and a handful of Arab countries, including Iraq, Egypt and Morocco. This section reviews some of the leading works related to the topic under study. It dwells on two principal themes. First is the significance and meaning of the reasoned decision principle. Second a well-reasoned decision regarding the abuse of discretionary powers.

3.1. Reasoned Decision: Meaning and Significance

According to [6], reasons are an essential principle of natural justice which serve as checks on the exercise of judicial power. Similarly, as maintained in [7], the giving of reasons can genuinely be described as one of the principles of natural justice, which require individuals to comply with specified moral duties. Every adjudicating authority is required to act reasonably. Any decision made and which affects the rights of individuals must have a reason [8]. These views are reiterated in [9] by pointing out that every decision must contain a reasoned support for it. The reasoned decision principle is considered vital to inspire confidence in the mind of an affected party that a decision is, indeed, correct [10]. According to [11], a good decision will always be accompanied by an explanation and justification. A party knows why a decision is made and this satisfies his right to know. The reasoned decision is one of the essentials principles that ensure the attainment of justice [12]. As added in [6], giving a reasoned decision promotes a good decision-making process. It is stressed in [13] that the giving of reasoned decision serves the interests of both the administrative authorities and the affected parties. Hence, aggrieved parties have the right to know the result as well as the reasons behind it.

However, some scholars deal with reasoned decisions as an auxiliary tool for administrative justice. From this perspective, it is argued that the reasoned decisions assist the judiciary in performing its supervisory functions [4]. Another advantage of reasoned decisions is pointed to in [14], suggesting that they could help in curbing unsustainable and time-wasting appeals. As argued in [15], the duty to give reasoned decisions contributes to the maintenance of trust between decision-makers and citizens, with transparency playing a key role. It is also claimed that, if the authorities inform citizens of the reasons behind their decisions, this will develop the relationship between both sides in an acceptable manner and discourage individuals from resorting to judicial

redress. As well, the duty to make reasoned decisions helps significantly in minimizing the arbitrariness of decision-makers.

According to [15], the reasoned decision should not simply be a rubber stamp, but a clear and brief statement that shows the material consideration behind a decision. The same approach is supported by [4] noting that administrative authorities must correctly adhere to the rule requiring the giving of reasoned decision. The mere use of general and vague words is not sufficient. While a reasoned decision does not necessarily need to be elaborate and extensive, it must, nevertheless, be clear, conspicuous and reasonable. The decision must be made 'through rational and consistent considerations;' it must be 'written,' 'proper,' 'exist and communicated' to the affected party, based on realistic and logical grounds, and with sufficient weight to justify it.

3.2. Reasoned Decision Vis-A-Vis Misuse of Discretionary Powers

The need for a court to review the decision of an administrative authority arises when that authority abuses or overrides its discretionary powers [16]. Such abuses normally occur when an administrative authority has completed decision-making freedom, which poses a threat to individual rights. This makes it vital to have some measure of control over the exercise of discretion to prevent it from becoming an absolute, unfettered entitlement [17]. One way of providing such control to prevent abuses of discretionary powers is the requirement to give reasoned decisions [18]. According to [19], this makes the task of the judiciary somewhat easy. In his opinion, whether or not a court would quash a decision would depend on its nature and the issues of justice involved. Singh similarly observes that the giving of reasoned decisions prevents arbitrariness and enables the judicial authority to exercise control over administrative decisions. He stresses that the significance of the reasoned decision principle as a check on the arbitrary use of administrative powers is quite clear. Failure to provide a reasoned decision results in lack of conviction on the part of the affected party, in which case the decision smacks of misuse of power [6]. An arbitrary decision may be based on personal feelings or even whims and prejudices, which simultaneously amounts to the misuse of administrative powers [20].

A reasoned decision is the most significant protection against any arbitrary exercise of power by adjudicating authorities [9]. Thus, any reasons provided by them will be subject to judicial scrutiny. If, according to [9], a court finds that an administrative authority misused its powers and negatively impacted the rights of individuals, any decision or order made may be set aside.

The study asserted that the disclosure of reasons

shows that the element of arbitrariness is absent and this keeps a check on the need for the exercise of judicial power.

It can be surmised from the foregoing literature review those legal systems of all kinds have dealt with the reasoned decision principle. However, they differ in terms of its application. Despite that, Iraq and Western literature is unanimous on its importance as a fundamental principle of natural justice. A significant part of the existing literature points to the advantages of a reasoned decision. As indicated above, the current literature confirms that the reasoned decision principle could serve as a check on the arbitrary use of discretionary powers and as legal argumentation, commonly referred to as legal reasoning. Legal reasoning is a legal procedure constrained by the nature of the law, legal sources, and legal levels [21]. Another point worthy of note is that there is unanimity of views that no general rule exists suggesting that the reasoned decision principle is binding on administrative authorities. More fundamentally, this principle is yet to receive attention in Iraqi literature. Iraqi scholars and jurists have hardly focused on this subject, despite its importance, considering that it interrelates with individual rights as enshrined in Chapter II of the Iraqi constitution of 2005.

4. Results and Discussion

4.1. Reasoned Decision: Terms and Requirements

Most administrative authorities may issue reasoned decisions where there is a law requiring them to do so; such a duty is imposed by the judiciary; or they simply choose to do so voluntarily. Still, the problem does not end there. Certain terms and requirements must be met for a reasoned decision to be complete and valid. Thus, in Iraq, apart from the absence of legislation obliging administrative authorities to give reasoned decision, there is also the problem of invalid reasons, such as illegitimate, inadequate, and nonexistent, non-communicated that run contrary to the law. Thus, the following section examines the terms and requirements for valid reasoned decisions from the comparative judicial perspectives of Iraq and foreign jurisdictions.

4.1.1. Legitimate Reasoned Decision

The main objective for providing a reasoned decision is to achieve the desired results. These results inform the person concerned of the reasons for the decision, which must be legitimate. A legitimate reasoned decision ought to state the relationship between the evidence presented and the decision reached. Understood in this way, the 'legitimate reasoned decision' requirement also enables a competent court to ascertain whether an administrative authority has adopted irrelevant considerations or ignored relevant ones in reaching its decision.

In Iraq, decisions taken without valid reasons are null and void, because reason is one of the key elements of a decision and its absence renders it void. The Iraqi administrative judiciary exists as a separate institution of its own, which can order the nullification or amendment of a decision or the compensation of an aggrieved party under certain conditions. For example, the administrative judiciary issues rulings under existing legal provisions regarding the transfer of public servants. Article 7(36) of the Civil Service Law No. 24 of 1960 stipulates that the transfer of a public servant from one place to another must be reasoned. However, a reasoned decision is not enough to attain justice. Rather, it must be legitimate, reasonable and relevant to the subject matter of the decision. The judiciary also monitors the intentions of decision-makers and tries to link them to the purpose element, which is one of the essential elements of administrative decisions.

In *MJJ v. Dean of Imam Al-Kadhim College, 2013 1 ECD,476*, the administrative authority decided to terminate a public servant's employment based on Article 14(2) of the University Service Act. The petitioner then argued that the decision was unlawful and based on an illegitimate reasoned decision. The staff court observed that:

the petitioner was appointed to the position in question on December 26, 2011. The administrative authority took the dismissal decision based on the performance evaluation form. However, the court found that the date on that form was the same as the date of appointment. Hence, the decision was held to have violated administrative law. The administrative authority ought to have evaluated the performance of the petitioner at the end of the academic year and not before he got the job. Accordingly, the court declared the decision void.

This study submits that the decision of the staff court in *MJJ* case was fair and just because the administrative authority violated Article 8 of the State and Public Sector Employees Discipline Act No. 14 of 1991 by imposing a dismissal sanction on the public servant without providing a reasoned decision or legitimate reason. Additionally, the administrative authority violated Article 10 of that law, which requires administrative authorities to establish an investigative committee before imposing a dismissal sanction.

4.1.2. Existence and Communication of Reasoned Decision

In democratic societies that respect the rule of law, decisions taken by the administration must be reasoned. Importantly, the reasoned decision must be communicated to affected individuals. Non-communication of a reasoned decision, if ever it occurs, must be in the public interest. If an administrative authority takes a decision that is arbitrary and devoid of reasons, then it should be set aside [22].

Communication of a reasoned decision to the party affected by it is an essential requirement; the reason for that decision must be known to him. A pertinent question that arises here is how and when a reasoned decision should exist and be communicated?

Thus, in the Iraqi case of *DBK v. Minister of Education, 2006 DFSC 201,258*, the administrative authority decided to transfer the petitioner, who worked as an expert at the Center for Research and Educational Studies of the Ministry of Education. It then issued a second decision imposing the sanction of 'drawing attention' on the petitioner. Consequently, the latter applied to the competent court to quash both decisions and return him to his previous post. The General Disciplinary Council, as an appellate body, observed that: The transfer of the public servant was made without a reasoned decision. The administrative authority has also not taken the legal measures provided in Article 10 of the State and Public Sector Employees Discipline Act. The administrative authority must set up a commission of enquiry before making any decision. It must hear the petitioner and take statements from him and witnesses. Concerning the disciplinary penalty issued two days after the first decision, it was also not supported by reason. Accordingly, the Council decided to overturn both decisions and return the petitioner to his previous post as prayed.

4.1.3. Sufficiency of Reasoned Decisions

The mandatory duty to give reasoned decisions is to ensure that aggrieved parties sufficiently understand the decisions taken against them. Thus, where a statute imposes an obligation to give reasoned decisions, they must be adequate. The legal obligation to provide reasoned decisions may be breached not only by the failure to give such decisions, but also by their insufficiency. Hence, an unsatisfactory and insufficient reasoned decision would provide a basis for the judiciary to intervene. A reasoned decision should not be vague, incomprehensible or unsatisfactory. It should be sufficient, understandable and accompanied by the reasons addressing points that are significant to the party concerned. Therefore, where a reasoned decision is insufficient, it may be quashed.

Often, administrative authorities may use terms that express insufficient reasons, such as terms that are brief, bland, unspecific or mechanical. In *SAK v. Presidency of Baghdad University, 2018 DFSC 222, 345*, the petitioner challenged the University of Baghdad's administrative order, including the termination of her appointment. The university argued that the petitioner was a graduate student at the time of her appointment and stated that she was neither employed nor a student. In other words, she combined work and study.

The court observed that the State and Public Sector Employees Discipline Act provides the mechanism for ending the services of public servants under specific

conditions. It also gives administrative authorities the right to impose disciplinary sanctions in cases defined by law. However, the court added that the petitioner was a PhD student, which did not justify the administrative authority's termination of her services. Accordingly, the court ruled that the university's administrative order was void, as it was not based on sufficient and satisfactory reasons.

Notwithstanding the cases discussed above, the author of this study argues that the quashing by the courts of decisions based on inadequate reasons is only a partial solution. Inadequacy of reasons means that the reasons need detailed disclosure. This is what the reasoned decision principle entails. In other words, the mere giving of reasons is not enough. Rather, an administrative decision must actually be reasoned, that is, clearly justified for the affected individual. Any decision, which is not based on satisfactory or sufficient reasons, is clearly invalid. The burden of proof falls on the petitioner, who contends that such a decision is void. Still, it remains open to the court to enquire and verify whether the decision taken is beyond the administrative authority's discretion because it lacks specificity.

Therefore, according to the study's findings, when the above conditions are met, the principle of a reasoned decision can be an effective tool for limiting discretion and preventing abuse of administrative authority. Otherwise, this principle will become a routine burden on the administration.

4.2. Remedies for the Infringement of the Duty to Provide Reasoned Decisions

In Iraq, administrative laws provide specific measures to ensure the protection of public servants and the rights of individuals in general. One of the most important measures to ensure such protection is for administrative authorities to disclose reasons for their decisions [23]. These decisions are subject to judicial control. It means that the judiciary, after scrutinizing an administrative decision, has the power to declare it void, if the relevant administrative authority has failed to state reasons supporting it. The invalidity of an administrative decision can be due to many factors, including the absence of reasons or the failure of any reasoned decision provided to meet the necessary requirements mentioned earlier. Administrative laws in Iraq provide certain mechanisms to remedy these situations [24].

The first concerns disciplinary decisions affecting public servants, where the law outlines a procedure that such public servants must follow. This involves the filing of administrative grievance against disciplinary decisions that impinge upon their legal status. "A grievance is described as a request made by the person affected to the administrative authority that made the decision, demanding that the administrative decision be

reviewed, either by withdrawal or amendment, prior to resorting to the judiciary" [25]. There are two types of administrative grievance, mandatory and optional. In some cases, such as the failure to provide a reasoned decision, affected public servants are required to file a mandatory grievance before instituting lawsuits. Iraqi legislation stipulates a mandatory grievance process in all cases of administrative decisions that impose disciplinary sanctions.

For instance, in *R. P v. the President of the University of Baghdad, 2017 DFSC 551, 588*, the President of Baghdad University made an administrative decision cancelling the plaintiff's housing allocation pursuant to Resolution No. 9775. The plaintiff argued that the aforementioned decision was made after her husband resigned from the institution, and that she was, therefore, entitled to the apartment. She submitted an initial grievance to the university, but it was denied, following which she brought this case before the administrative court. After reviewing the case documents, the court held that the decision of the university president violated the law and was based on invalid reasons.

The second measure relates to individuals who are not public servants. In this case, the filing of grievance is an optional matter. Thus, as a remedy, the aggrieved individual may file a lawsuit directly requesting a court to quash the administrative decision because it is not reasoned or due to the non-conformity of any given reasons with stipulated legal requirements. In other words, individual members of the public need not follow the same grievance procedure imposed on public servants. Rather, it is an optional matter for them, although, in most cases, the grievance procedure is the first stage that precedes the filing of lawsuits [26].

In *DAM v. Minister of Education for the Kurdistan Region, G B (The Shura Council of the Kurdistan Region – Iraq, 29 March 2011)*, the administrative court dismissed the case of a petitioner, who demanded the annulment of a decision compelling him to take examinations in two subjects, the Arabic and the Kurdish languages, despite a previous decision exempting him from these examinations. The petitioner challenged that decision before the General Body, which declared the administrative court's decision invalid for several reasons. First, once accepted in school, the petitioner would have a new legal status. This legal status would grant him rights and impose duties. Second, rights acquired in light of a particular law or decision must be respected and not infringed. Third, the Ministry of Education has given administrative authorities the discretion to choose appropriate educational means and policies, provided that they apply them without violating relevant laws. Fourth, means and policies have an immediate effect, but without affecting already acquired rights, unless the law states that a decision has a retroactive effect.

As a result, the quashing of administrative decisions because they are not reasoned is an essential preliminary remedy. The study argues that it is supposed to be a prelude to the compensation of aggrieved parties as real and actual justice. Thus, there is a strong link between justice and the right to compensation; without the latter, justice is incomplete. Moreover, since compensation is a matter that concerns affected parties, it serves the cause of justice by preventing decisions or actions that deny individuals of their rights. That is why the courts impose a duty to provide reasoned decisions by linking this principle to justice itself. The administrative judiciary scrutinizes the nature of the administrative authority and whether any reasons recorded lead to the attainment of justice.

5. Conclusion

Reasoned decisions are an essential element of the principle of natural justice. In Iraq, the absence of law obligating administrative authorities to provide reasoned decisions often results in abusing discretionary powers. The lack of necessary laws has left administrative authorities with wide discretionary powers in administrative decision-making.

Generally, in all legal systems, there is no mandatory duty on administrative authorities to provide reasoned decisions. Unless the law requires that. Iraq and Western jurists are unanimous on the importance of reasoned decision as a fundamental principle of natural justice. Furthermore, any decision, which is not based on legitimate or sufficient reasons, is invalid. The burden of proof falls on the petitioner, who contends such a decision is void. Moreover, a significant part of the existing studies points to the advantages of a reasoned decision and confirms that the reasoned decision principle could serve as a check on the arbitrary use of discretionary powers.

Such a situation is apparent, for example, in imposing disciplinary sanctions, where Iraqi administrative authorities are under no obligation to provide reasoned decisions. The problem of wide discretionary powers also extends to matters relating to the civil service, especially the transfer of public servants, as well as other dealings of administrative authorities with non-public service individuals.

It is vital for Iraqi administrative authorities always to strive to achieve the public interest. It can only be done through cooperation and coordination among the three organs of government; the legislative authority enacts laws to reach the public interest, an executive authority that respects and implements valid laws, and an independent judicial power that applies laws and ensures justice and equity. So far, the administrative judiciary in Iraq has played a key role in protecting the rights and freedoms of individuals. However, this has been within narrow confines due to the laws applied, such as the State and Public Sector employees Discipline Act No. 14, 1991, the Civil Service Law No.

24 of 1960 and the State Council Law No. 71 of 2017.

5.1. Recommendations

Based on the above findings, this article makes several recommendations. First, this study suggests the enactment of legislation requiring administrative authorities to provide reasoned decisions. This is expected to contribute to resolving the problems caused by the absence of reasoned decisions in Iraq. Second, concerning the administrative judiciary in Iraq, it is suggested that in addition to revoking the administrative decision, there must be adequate compensation for the aggrieved party, as overturning the administrative decision is only a partial solution and cannot provide justice on its own. A further recommendation concerns individual; In comparison with other countries with an administrative judiciary, the Iraqi administrative judiciary is relatively new. As a result, the general public needs to understand the rationale for establishing this institution and its structure and roles. All forms of media, including audio and visual, must play a critical role in increasing citizens' awareness of the importance of the administrative judiciary in Iraq. Fostering understanding, transparency, and democratic norms will help eradicate the common misperception that it is forbidden to sue the state.

5.2. Future Research

In the light of this study and the conclusions drawn, future research could benefit from examining the following issues. First, the duty to provide reasoned decisions is one of the most important issues concerning the rights and freedoms of citizens. Along this line, the current study focused on the duty of general administrative authorities in Iraq to provide reasoned decisions. New research could take up the challenge of investigating the obligation of private-sector governing bodies to provide reasoned decisions. Second, the present study concentrated exclusively on two Iraqi ministries, the Ministry of Higher Education and Scientific Research and the Ministry of Education. Future research might focus on other ministries and provide insights into the decisions made by such administrative authorities, especially in the exercise of their discretion.

5.3. Limitations

This study investigates the decisions of administrative authorities in Iraq during the 2005-2021 period, with a focus on two ministries. These are the Ministry of Higher Education and Scientific Research and the Ministry of Education. The study examines the impact of the lack of legislation obligating both ministries and other administrative authorities to make reasoned decisions. This study examines arbitrary administrative decisions that affect the rights and freedoms of individuals and public servants due to non-

compliance with administrative laws, it does not cover the rights and freedoms of individuals in other laws. However, it will not cover decisions made by private sector, the parliament, courts and political bodies.

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