

Judicial Evidence as a Means of Proof before the Administrative Judge “A Study in the Saudi System”

Dr. Duaa Mohammed Ibrahim Badran¹

¹Associate Professor of Public Law, College of Sharia and Regulations, University of Tabuk, Saudi Arabia.

Abstract

The judicial evidence - as a means of proof before the administrative judiciary - being built on the constructive role that the administrative judge enjoys, who is not a captive to the texts when considering a litigation of unequal parties regarding their legal positions, as he interferes with a positive and full authority. In fact, judicial evidence leads to creating a balance between the different legal positions of the litigants regarding the administrative lawsuit.

Judicial evidence has an effective role in the process of proof and attribution of right and contributing to the balance between the public interest and the private interest, thus it requires the care of the administrative judge.

Key-words: Judicial Evidence - Proof - Administrative Judiciary.

1. Introduction

The proof stage is considered one of the most important stages that the administrative lawsuit undergoes. It arises between two unequal parties, the administration and the individual. In most administrative cases, the administration acquires the status of the defendant, due to the public authority aspects it enjoys which makes it unnecessary for it to return to the judiciary to implement its legal or material actions vis-à-vis others with its direct enforcement authority. Whereas, the other party is often the individual and is usually devoid of any privileges or evidence and thus the problem of lack of balance between the parties to the administrative lawsuit arises, which makes the means and evidence of proof therein difficult in addition to the lack of legislation regarding the administrative evidence. In fact, judicial evidence facilitates the burden of proof which is placed on the plaintiff party. In addition, its importance and effectiveness appears in particular in cases where it is impossible or difficult to

obtain evidence in advance or with regard to incidences that would be monitored just whereby the administrative papers.

The judicial evidence is not conclusive and accepts proof of the opposite, as well as it is not binding on the judge, as he can refuse to take it into account in whatsoever case, and without mentioning the reason for the said rejection. In addition, the judge will also adapt it, estimate it and give it its weight in evidence.

The problem of the research revolves around determining the extent to which it is permissible to oblige the administration to present documents and evidence as judicial evidence, and to determine the extent of the evidence of these clues in proof, and the authority of the administrative judge in obtaining them as evidence for proof.

2. Defining the Judicial Evidence as a Means of Proof Before the Administrative Judge

Judicial evidence is considered one of the most important methods of proof which is accepted before the administrative judge, due to its suitability for the circumstances and proceedings of the administrative cases, where the administrative judge can refute or prove the claim through the use of known incidents in proof of other unknown incidents due to their connection with each other in some way.

The administrative judge enjoys a wide authority to prove using the judicial evidence, while complying with the general controls and taking into account the privacy of resorting to it in his pursuit of proof.

The administrative judge enjoys the flexibility to prove the lawsuits of the full judiciary and to rule the annulment, so he established rules whereby he changes the proof context regarding the subject matter on the one hand and the form on the other hand.

At the level of the subject matter, it appears by reversing the balance of the burden of proof by relying on the judicial evidence, in order to infer them on the unknown reality from a known reality, through induction and deduction. The judicial evidence that the administrative judge creates comes at the forefront of the methods of proof, whereby the papers and documents presented in writing are considered by the judge written evidence subject to proof of the opposite.

In the event that the party charged with proof in the lawsuit is unable to present the documents that support his request, or the case file is devoid of sufficient evidence, then the administrative judge

bases his judgment on the signs and the evidence that emerge from the various papers of the file, the origin of the judicial evidence that shifts the burden of proof on the other party.

The judge's reliance on the judicial evidence in issuing his judgment is based on the nature of the parties to the case and the lack of parity between them, which requires that the judge feels free in extracting the evidence that shifts the burden of proof on the other party to the case.

At the level of the subject matter of the lawsuit, the administrative judge performs his role, whether in the full judicial cases or in the annulment lawsuits. In full court cases, the role of the judge appears through his application of the error of evidence, as an instrument of a proof in the administrative dispute, which aims to acknowledge the responsibility of the administration for the actions it has performed. Here, the judge uses the judicial evidence to prove the element of error in a way that leads to the releasing of the weak party - the individual - temporarily from the burden of proof of the corner of the error and transferring it to the strong party - the administration, and the role of the judge in annulment lawsuits appears by reversing the principle of evidence on the plaintiff.

Here, it can be said that the judicial evidence was made by the administrative judge, which is considered one of his powers in his pursuit of the proof.

The role of the judge at the level of the procedure appears in that it is assumed that the administrative judge is prohibited from issuing orders to the administration, however, the administrative judge in order to achieve justice and prove the truth, must not be confronted with obstinacy by the administration, which leads to preventing the judge from accessing the truth, as the documents proving the right to dispute are at the hands of the administration, and if they are in the sole possession of the administration, how can the judge reach the verdict when the administrative judge does not have the legal means through which he can compel the administration to hand over the documents and comply with the request thereof.

In the event that the administrative authority does not comply with the presentation of the documents under its control, the burden of proof in the lawsuit will be reversed, given that the administration's failure to submit the document is an implicit acknowledgment of the validity of the claim of the other party, until the administration intervenes and proves the opposite.

3. The Authenticity of the Judicial Evidence in Proof Before the Administrative Judge

When the direct means of proof do not enable the judge to know the truth, he shall resort directly to the application of his thought and his acumen in the incidents of the lawsuit, in order to conclude

therefrom an evidence for the incident to be proven. The judge's authority is wide in deducting the evidence from the multiple incidents at hand. In addition, the judge has the right of assessing its validity proof.

This authenticity of proof differs according to the proof context, and if the proof context is a legal act, the legislator makes the authenticity of proof therewith restricted, then it is not permissible to prove with these evidences except in cases where it is permissible to prove by the testimony of witnesses - unlike if the proof context is an abstract or administrative incident, the sum of these incidents can be proven by all means of proof.

Judicial evidence is considered among the accepted proof evidence before the administrative judge, as the judge has a wide discretionary power in assessing all the evidence and elements presented to him without any of them having any evidence or specific power in proof that favors others, and the administrative case proceedings that arise between two unequal parties, namely; the administration, which is the strong party, its strength is represented in having the papers and documents at its hand, and the other party is the individual who is weak and needs to deal with the first party. This requires the release of the administrative judge's hand in deducting evidence that help the weak party in his lawsuit.

In many cases, the administrative judge bases his judgment on the judicial evidence alone without requiring other evidence. In the event that the party in charge of proof is unable to present the documents supporting his lawsuit, the administrative judge shall deduct the judicial evidence that leads to the transference of the burden of proof on the other party, and it shall be taken into account as a complete authenticity of proof.

By referring to the majority of Sharia jurists, we find that they did not agree on the authenticity of the evidence to judge thereby as one of the methods of proof. However, the most prevalent opinion, the one which the majority of jurists agreed on, which is permitting the authenticity of the evidence, as the majority of Maliki, Hanafi, Hanbali and Shafi's jurists agree on the authenticity of the evidence and the permissibility of relying on it and considering it a method of legitimate proof, as it was mentioned in their books that Qur'an be adopted in rulings, so it said in clarifying the facts: "The consideration of the sign as an origin in the Sharia" and Allah, the Almighty saying: "You know them by their signs". This indicates the implementation of the evidence.

4. The Authority of the Administrative Judge in Deducting Evidence and Assessing its Power of Evidence

The administrative judge relies in deducting evidence on two elements, one of which is material and the other is moral. The material element is represented in the proven incident that the judge chooses from among the incidents of the lawsuit and it is called “the incident whereby evidence or signs”.

The judge has a broad authority in deducing the connotations or signs of the incident, and he has the entire freedom in forming his conviction, provided that the incident, connotation, or sign chosen by the administrative judge as a basis for his deduction must be proven with certainty and it must be serious and beyond whatsoever doubt.

As for the moral element, it is based on the judge’s deduction of the incident to be proven from the known established incident, and here, we move the judge to a second stage, which is the assessment of the incident or incidents that are considered stable according to what is most likely to be proven in the disputed legal incident, and the judge has a broad discretionary power represented in being able to conclude the evidence in several ways, whether it is an administrative or civil investigation, or from investigations that have been conducted in another case, taking into account that the litigants are informed thereof to ensure the principle of confrontation.

Consequently, the administrative judge is governed by the principle of his freedom in choosing the incident that makes it a basis for his deduction, and his freedom to assess its significance for the evidence of the disputed incident in deducting the judicial evidence. The judge has a discretionary power and is not governed in deducing it by the rule that obliges him not to rule other than what he finds in the lawsuit procedures brought before him, including the evidence they contain.

We see that the judicial evidence is one of the means of proof that is extremely dangerous because it does not in most cases represent the complete truth, because the administrative judge may make a mistake in deducing and concluding it. The judge is a human being who may make mistakes, for example, what is the solution when the judge misunderstands the evidence and the signs, or when one of the litigating parties deliberately fabricates evidence for himself, bearing in mind that the judge in deducting the evidence is governed by the general rules established in the proof, but the percentage of his error is present, especially the legislator has not obliged the judge to whatsoever restrictions in extracting the evidence. So, the judge is entitled to take from the multiple evidences just one evidence if he is convinced of it for its power, as well as he is entitled to take several evidences if they are compatible and coherent. Therefore, what the judge deems to be important evidence and uses it for the

lawsuit, out of his point of view, another judge may see it as useless, and therefore the judge must have a high degree of caution and discernment in deducting it.

By referring to the provisions of Sharia, we find that one of the conditions for using the evidence and considering it as a proof for establishing the rulings, the reference in its assessment is the ruling judge. Therefore, it is not necessary to judge by evidence for every person to do it or to rely on it. Rather there must be a jurist ruler who is aware of the rulings and the reality of the matter and the conditions of people.

The judge or the ruler enjoys the power of extracting the judicial evidence, as well as they have the discretionary power in extracting the evidence, according to their strength.

The Sharia was also used both the material and the moral elements in extracting evidence, according to the words of Allah, the Almighty: "They stained his shirt with false blood".

The significance of the holly verse is that the brothers of Prophet Joseph, peace be upon him, as the Holly Qur'an narrated, came with the shirt of Prophet Joseph with the remains of blood on it. This is evidence that supports their claim to make their father believe them. However, Allah, the Almighty, attached this to another evidence, which is the safety of the shirt from shredding, and that is an indication of their lies, and there is no doubt that this evidence is stronger than the first one, which made Prophet Jacob, peace be upon him, say: "'Nay, but your minds have made up a tale (that may pass) with you, (for me) patience is most fitting: Against that which ye assert, it is Allah (alone) Whose help can be sought".

5. The Role of the Administrative Judge in Proof Whereby Judicial Evidence

Judicial evidence in administrative proof is considered the product of the judge's work and his positive role in proof, and it is related to the nature and circumstances of the lawsuit in question and the various incidents it raises. Therefore, the forms of these evidence and the aspects of the judge's work are numerous and varied and cannot be subject to limitation.

In proving the judicial evidence, the judge transfers the burden of proof from the shoulders of the originally obliged person thereof - the individual, in most cases - to exempt him from proof, even if only temporarily, so that the other party, in order to get rid of the claim, has to prove the opposite of the evidence, so that if he fails to do so, the plaintiff's position is stabilized according to the judicial evidence that freed him from the burden of proof placed on him.

5-1 The Evidence of Al-Nakul in Administrative Disputes

The evidence of Al-Nakul is considered one of the most important forms of judicial evidence established by the administrative judge and made it at the forefront of the methods of proof acceptable to him, whereby it the administrative judge obliges the parties to the dispute before him, especially the administration, to present documents, being the party possessing them most. This is one of his substantial means of proof. The judge established the rule of law as one of the principles that he established to uphold the rule of law.

The evidence of Al-Nakul in the administrative disputes is that evidence arising from the failure of the administration body to provide documents related to the subject of the dispute. It is objective evidence whose application is only raised when dealing with the issue of the dispute and not in a previous stage. There is no context for the possibility of applying the evidence of Al-Nakul in the stage of examining the form of the lawsuit, for example, for each stage of the administrative lawsuit has its own presumed evidence.

The scope of the application of the evidence of Al-Nakul in the administrative disputes is determined by the administrative incidents to which the administration, is a party, the defendant, and keeps the papers and documents related to the dispute or evidenced by the reality of the situation of the administration, where the administrative judge obliges the administration to provide the original documents related to those incidents, and the administration's failure to present the same stands for the work the evidence of Al-Nakul.

Among the effects that the evidence of Al-Nakul entails when it is implemented is the judge's acknowledgment of what the plaintiff evaluates in terms of copies of documents, which are in the possession of the administrative body as representing the original on which to base his judgment. One of the serious matters is the administrative judge's acknowledgment of the validity of what the plaintiff claims in his lawsuit sheet and the soundness of his dispute with the administrative body regarding the legality of its behavior before the administrative judge. Thereon, the judge relies on the incidents reported by the plaintiff and considers them sound and true.

The administrative judge's acceptance of the plaintiff's requests in this case is not a comprehensive acceptance of all that he claims. Rather, the matter relates to his claims related to the administrative incidents, such as the administration's violation of the form or certain procedures it needs to take in order to correct its behavior. On the other side, it is not conceivable that his claims related to the non- administrative incidents will be accepted by the administrative judge.

5-2 The Evidence of Certain Knowledge of the Administrative Decision

The theory of certain knowledge means the proven knowledge of the concerned person of the content of the administrative decision and its contents in a definite and a comprehensive manner that negates ignorance, and allows him to determine his position in it. This knowledge stands for the publication or reporting in an investigation which the legislator meant to have them. Thus, the legal effect which is represented in the enforcement of these decisions against the concerned parties is enforced starting from the date of this certain knowledge is proven. Such certain knowledge is considered as evidence and the validity of the time for appeal starts from this certain knowledge that entails that the party becomes in a state that makes him aware of his legal status in relation to the decision he learned about.

The evidence of certain knowledge is considered one of the simple judicial evidence that accepts proof of the opposite, like all other judicial evidence. Thus, the administrative judge enjoys freedom regarding it, and he is entitled whether to take it or leave it, and thus depends on other evidence. Likewise, the concerned person has the right to deny this evidence, by proving that he did not know about the decision or that he uncertainly knew about it, and should the person concerned be able to deny the evidence, then it is not proven on his side, and he is not judged by such decision thereof.

The methods of proving certain knowledge can be rejected by the person concerned acknowledgment of his knowledge of the decision in question and his recognition of it at a certain date, thus it is evidence and a proof against him. It is a rare matter in view of the legal implications of the case, represented in the dismissal of the lawsuit. This said acknowledgment comprises two types, they are the explicit acknowledgment which is a are one, and the implicit one which is extracted by the administrative judge from any evidence, incidence or clue denoting its occurrence, and the proceedings of the lawsuit reveal it thereof. Among the evidence that indicate the implicit acknowledgment, are the correspondence and written documents between the administration and the concerned individual.

5-3 The Evidence of Abuse of Power

The administration, in the framework of its daily work, arranges legal effects, as it may establish a new legal center, amend an existing legal center, or cancel this center, and the authority of the administration in the exercise of this work is by issuing the administrative decisions that affect those addressing it negatively or positively.

The person concerned shall resort to the administrative judge to request the annulment of the administrative decision and to execute it if its composition appears to have any defect affecting its pillars such as the corner of the purpose. The purpose of the administrative decisions is to achieve the public interest of society. Should the administration deviate in the use of this authority by issuing a decision to achieve goals that contradict the public interest, then its decision is characterized by the defect of deviation in the use of its power.

Because this defect, abuse of authority, is characterized by the difficulty of proving its personal nature, as it is related to the intention of the decision-maker, the administrative judge created a wide field of application to prove this defect in order to help the plaintiff and make it easier for him to prove it because of the considerable difficulty in proving it. Thus, the judge's application of the evidence of abuse of power to reach the truth of the dispute is one of the manifestations of the positive role the administrative judge plays in the field of providing a proof.

The issue of the administrative judge proving the abuse of power is one of the fundamental issues. It is considered one of the hidden defects that lie in the intentions and purposes of the administration man and his purposes, making the detection of this defect difficult to prove, as this depends on the integrity of those intentions and purposes.

5-3-1 Characteristics of the Defect of Abuse of Power

One of the most important characteristics of the abuse of power, or deviation of authority, it is a secondary defect, often intentional, and associated with management's discretion and difficult to prove.

Reserve “Secondary” Defect

The defect of abuse of power is always related to the motives of the source of the decision; however, it is difficult to prove, especially since the administrative decision is characterized by the evidence of soundness. The administrative judge when considering a case, the last thing he examines is the defect of abuse of power. One of its characteristics is that it is a reserve or a secondary defect that the judge uses after examining the other defects of the administrative decision.

Intentional Defect

The majority of administrative jurisprudence agrees on the necessity of having the intention to abuse power to accept this appeal against the administrative decision. It is noticed from some provisions of the Board of Grievances that the ruling to cancel the administrative decision for the defect of abuse of power does not necessarily mean the existence of bad faith on the part of the person who issued the decision. Some provisions of the Board of Grievances include “it is not meaningful to consider this decision characterized by the defect of abuse of power out of proving the bad intention of the administration in its issuance of this decision, but it has mistaken the goal set by the system thereof”.

A Defect Associated with the Discretionary Authority of the Administrative Body

The administrative judiciary rulings have been keen on limiting the area of defective abuse of power in decisions in which the administration has discretionary authority, as it was stated in one of the Board of Grievances provisions that “it is decided that the administrative body has wide discretionary authority regarding the assignment in terms of creation and cancellation and in terms of selection and appointment, however its discretionary authority is only limited by its deviation from its path of righteousness and soundness, from the requirements of the public interest in order to achieve a private interest. ”

A Difficult Defect to Prove

The basic principle in the administrative decisions is that they were taken for the public interest, and for those who claim the opposite, should provide the proof thereof. Since abuse of power is an intentional defect, it is difficult to prove, and this is why the administrative judge resorts to relying on the evidence surrounding the decision-making to reach the judge’s conviction of the existence or absence of abuse of power. Likewise, the administrative judge can also make the administration body prove not to have deviated from the purpose when making the administrative decision which is subject to appeal to cancel.

5-3-2 Forms of Abuse of Power

The Defect of Abuse of Power Takes Forms that Achieve Several Goals, Including

- Accomplishing personal interests, for instance, the issuer of the decision aims to achieve a personal interest for himself, such as issuing a decision to award a specific contract to a member of his family, or dismissing an employee for the purpose of making a position vacant to appoint one of his relatives. This is a form of abuse of power coated with the cover of the public interest, but it was originally meant for the purpose of achieving personal interest.
- **Revenge:** for example, the administration man uses his authority to issue a decision to avenge another person, or the management body delays in carrying out one of the tasks systematically assigned to it for the purpose of not accomplishing the public interest, or the administration may take a decision beyond its authority, for instance, questioning an employee who is negligent to account for something other than what it is specified in the system.

Violation of procedures: This form is achieved when the administration uses purposes other than those specified in the system in order to achieve a specific goal, for instance, the administration may intentionally transfer an employee in the event of disciplining him, and this is violating the law.

It is worth noting that if the administrative judge is sure of the extent to which the administrative authority respects the public interest condition set in the transference decision is a difficult matter. If we go back to the rulings of the Administrative Court, we will find in the case that raised widespread controversy regarding the Administrative Court adherence to its position regarding the decision to transfer an employee from the Financial Department to the Inventory Management involving disciplinary punishment, which must be canceled, and the judgment of the Court of Appeal, which overturned the judgment twice, based on the fact that the decision was not intended for punishment, but is meant for the public interest represented in the desire of the management to change the work environment for the employee.

6. Results

1 - The nature of the administrative dispute and the lack of codification of the rules of evidence or the administrative procedures made the proof stage before the administrative judge enjoy a specificity and identity different from the proof before the ordinary judge, authorizing him to have a

broad authority to consider the administrative lawsuit, and he is entitled to create the appropriate solutions as per the circumstances of the lawsuit.

2-The evidence is one of the indirect methods that are resorted to in the absence or lack of proof to support some of the evidence presented in the dispute.

3- During consideration of the lawsuit, the judge derives a judgment of an unknown incident presented before him from the judgment of a known and close incident thereof, out of his diligence, intelligence and acumen, along with his enjoyment of a wide authority in deduction and in testing the proven incident from the multiple incidents that he sees before him in order to deduce the proof therefrom.

4- The judicial evidence deduced and extracted by the administrative judge facilitates the burden of proof placed on the plaintiff party in a way that contributes to placing the burden of proof on the other party, the litigant, against whom the evidence is acting.

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