

# Analysis of tendentious delegations toward administrative violations

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**ABSTRACT-** Tendentious delegations toward administrative violations of civil servants, as a dedicated administrative authority, are considered as a subset of the executive branch that their main task is to deal with administrative and disciplinary violations of civil servants. Establishing order and tranquility in administrative is not the purpose of tendentious delegations toward administrative violations. Therefore, rules and regulations dealing with administrative violations must provide effective administration and public interest and guarantee human dignity of civil servants and their job security. Today, democratic systems seriously efforts to apply the principles of fair trial, including the administrative authorities and administrative delegations, civil servants dealing with violations. This principle is known as "the principle of listen to the statements of the parties" and its related derivatives should also be considered which includes: Observance general legal principles, participation of the parties in judgment process leading to the pass verdicts, prior notice of the case or proposed litigations and giving ample opportunity to defend, allowing behalf of other people, the votes issued by courts must be reasonable and documenting, possibility of objection to the issued votes, principle of neutrality. © 2014 Bull. Georg. Natl. Acad. Sci.

**Key words:** Violation, administrative, tendentious delegations, primitive, revision

## INTRODUCTION

This article has been written on the subject tendentious delegations to handle administrative violations, authority, competence and how to handle. In this paper, first of all, administrative violation notions are explained and in the following sections, nature of investigation about administrative Violations, structures and duties of the delegation and powers of solicitor during proceedings has been examined. We hope that this paper be useful.

### Section 1: administrative violation notions

Clause 1: the concept of administrative violation: overall, any kind of deviations from the correct practices and legal duties and illegitimate use of job position is called administrative violations (Seraj, Shahnaz, master of cultural management, the article about differences between administrative violations and administrative corruption).

Clause 2: the concepts of administrative fault: administrative fault is a type of action by which a civil servant is known in charge of a cause and in terms of disciplinary, be prosecuted and tried in the administrative court (Abolhamd, Abdolhamid, Iranian administrative law, Toos publication, 1998, p.293).

### Section2: nature of tendentious delegation toward administrative violation

Due to expansion of government intervention in the affairs and the creation of numerous administrative organizations, new ties are appeared in the legal and social relationships that in terms of difference aspects are unknown for judicial public authorities and settlement of disputes and litigations caused by them required technical information and specialized knowledge in the disciplines related to them. In other hand, dispute settlement arising from those relationships, require fast action and quick decision that was not compatible with the nature of judicial public authorities and proceedings. So, authorities outside the judicial public authorities system have been created which is called agency, delegation, dispute settlement commission and etc that based on the Substantive rules and specific manner deal with differences that arise from the implementation of specific rules. Note that the authorities called "quasi-judicial administrative authorities" which has a large number and mostly is established in accordance with law at the heart of the executive agencies and they serve in a particular competency but the mentioned authorities has no place in the judicial hierarchy chains and the judiciary does not interfere in their setting up and

proceeding. The judges who work in such authorities are not professional judges and may be chosen among individuals who their education isn't associated with jurisprudence and law (Savadkouhifar, Sam, Comparative discussion of the relationship between judicial authorities and quasi-judicial authorities, Legal and Judicial Justice Journal, No. 41, Winter 2003, p 207).

### **Section3: procedure of the tendentious delegation toward administrative violations**

Clause1: the litigants

Since each lawsuit has typically two sides and in a lawsuit and criminal case, the litigants in legal terms includes "being plaintiffs or defendants in a litigation" (Jafari Langroudi, Mohammad Jafar, Law Terminology, Fourteenth Edition, Tehran, Ganj-e Danesh Library, 2004, p. 428, No. 3412).

In the delegation of administrative dispute settlement, as article 1 of the law of administrative violations approved in 10/29/1993 has been provided "in order to deal with administrative violation in each of the organizations subject to this law, a special kind of delegation entitled "the delegation to handle administrative violations of employees" will be established".

Clause2: examined issues:

Issues that involves the adjective "violations" may includes violation of a civil servant from administrative regulations while on duty and based on special laws and regulations (not the general penal code) particular "penalty" and "punishment" is intended for them. In fact, this is the examined issues in the delegation of administrative dispute settlement. Here, one of the two litigants is government departments in a position to apply the rule, on other side, there is a "civil servant" and in most cases, the legal entity of defendant may be prosecuted and punished (same, p.143, No.1163).

### **Section4: organization and duties of authorities to deal with administrative violations**

Clause1: prime delegation: prime delegation is established in the offices and public organizations and independent agencies, each delegation has three leading members and one or two understudy member who is appointed by order of minister or the highest authority of an independent organization for three years and also reappointment is allowed. None of the members and substitute members cannot simultaneously be member of the appellate delegation in the same organization. Moreover, the mentioned members cannot participate in the appeal of cases that they had voted and judged them in the prime impression. Dismissal of the delegation member taken place by order of minister or the highest authority of an independent organization.

Article1: in order to deal with administrative violation in each of the organizations subject to this law, a special kind of delegation entitled "the delegation to handle administrative violations of employees" will be established".

Article2: the prime delegation is responsible for required jurisdiction to deal with administrative violation of civil servant. Issued votes, if there is no possibility to appeal, will be binding from the date of notification.

Note1: if the appeal is possible and the defendant does not appeal within the decreed period. Issued vote finds finality and mandated by the expiration date of mentioned period.

Clause2: appellate delegation: the prime delegation is responsible for required jurisdiction to deal with administrative violation of civil servant. Issued votes, if there is no possibility to appeal, will be binding from the date of notification. If the appeal is possible and the servant appeals to the supreme delegation within 30-days from the date of notification, appellate delegation must appeal about the issued vote.

According to clause 1 of article 1 of administrative law to address violations, the appellate delegation is established in the center of ministry or an independent organization and also a number of sectors by the act that their list approved by the cabinet and if necessary will have branches. As well, in the clause 2 of the same Article is expressed: With diagnosis of excellent staff supervision, appellate delegation will be formed in the center of provinces. The voted of appellate delegation will be binding from the date of notification. After these steps, if the defendant objected to the definite votes issued by tendentious delegations toward administrative violations, he/she can complain to administrative justice court within one month. According to article 21 of the law of administrative justice court, governmental units such as ministries, organizations and etc should implement provisions of administrative justice court and In the case of defiance and refusal, the offender, by the Court ruling, will be sentenced to dismissal from government service (Amid, Zanjani, Political jurisprudence, Volume 1, Tehran: Amirkabir, p 365).

Clause3: Member condition

Article 6: the members of prime and appellate delegations must believe in Islam and adhere to its laws and ordinances, he/she must also be committed to the Islamic Republic of Iran and the supreme leader; moreover, an eligible member must have the following conditions:

1. Being married
2. At least 30 years of age
3. The minimum qualification requirement is associate degree or its equivalent

Note1: In exceptional circumstances, having a diploma is permitted with the approval of the High Commission

Note2: in each delegation, there should be a lawyer and at least two of the original members of prime and appellate delegations should be the personnel of that organization or ministry and also must have at least 5 years work experience in state.

Clause4: Contraindications for investigation: in the following cases, the members of tendentious delegation toward administrative delegation will not be company in the issuance of votes

A. If a member of a delegation has relative or causal relationship up to quadratic from the third level.

B. a member of the delegation has with the defendant a common lawsuit or in the proposed litigation is beneficiary. (Act dealing with administrative violations adopted by Islamic Consultative Assembly in 10/07/1993).

Article35 of the constitution of the islamic republic of Iran: Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.

In this article: The term "court" is the absolute way which includes civil, penal and administrative courts. In other words, the tendentious delegation for administrative and disciplinary violation can consider as examples of administrative courts. As expressed in detail: administrative court is a kind of court which deals with administrative violation of civil servant and dependent on the government (such as the exordium). (Jafari Langroodi, MJ, detailed the right terminology, Javel, second edition, Tehran, Ganj-e Danesh, 2003, p 1855) The Civil Code states: "advocacy must be something which client would be able to do it. The solicitor should be someone who has required capacity to do it". It can be seen in the mentioned articles that advocacy is absolutely transferable and the legislators does not determined special conditions for it; Unless advocacy is unlawful (Documented to Article 35 of procedure law of public and revolution courts on civic affairs approved in 2001). Therefore, as to be understood from the context of this article, everybody can employ a lawyer to handle his own affairs in administrative dispute settlement delegation. In article of selecting a lawyer by litigants approved in 1992 stated that: "the litigants have the right to choose a lawyer and all courts, that following the law, are obliged to accept them". By consideration the course of legislation and regulation and paying more attention to their contents, it can be realized that lawyer employment is an inalienable rights of individuals and its withdrawal is not permitted; except in certain cases that denial of attorney has been stipulated.

## CONCLUSION

The most important need of the present age is transparent economic activity and salubrious administrative organizations. This requires struggle against administrative violations which is the origin of the most illegitimate abuses and this is a means to reassure investors, craftsmen, entrepreneurs and job seekers about the health and safety of government communications and integrity of financial and economic operators. For minimizing the consequences of administrative violations, develop and maintain public trust towards the organization and thereby achieving a healthy and dynamic society, establishment and strengthening of tendentious authorities toward administrative violations, compilation of administrative law, establishing proprietary administrative courts, Increase public awareness, create a national commitment to combat the administrative violations is very urgent and necessary.

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