Accuracy conditions of administrative unilateral obligation in Iranian law

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Abstract

Department for public services and maintain public order do the highest legal acts in the form of unilateral legal acts or administrative unilateral obligation. Considering that the department has a sovereign authority, it is required to perform actions under certain rules and regulations in order to people's rights not be violated and the public interest is guaranteed. Therefore, this paper with library method aims to analyze and explain accuracy conditions and the influence of administrative unilateral obligation as well as the principles governing them. Administrative unilateral contract that are accurate and valid should have internal and external legitimacy. The internal legitimacy is due to the principle of administrative unilateral obligation and controlling its compatibility with the law, rules and regulations. The external legitimacy is related to the preliminary administrative decisions and some procedural issues related to administrative decision. Competence and qualifications of administrative authority, written and dated are including conditions supplier of external legitimacy of administrative unilateral obligation. The principle of non-retroactivity of administrative decisions, principle of relative impact of individual administrative decisions, principle of credentials official document, principle of necessity of administrative unilateral obligation, principle of entry into force the administrative decisions are including the most important principles of administrative decisions.

Keywords: Administrative Legal Actions, Administrative Unilateral Obligation, Accuracy Conditions and Influence, Principles Governing.
**Introduction**

Governments are obliged to provide public services and establish public order and maintain the public interest. Therefore, the legislature power, the executive authority and the judiciary are responsible for assignments. Among these, the largest and most extensive work done by the executive authority. Executive in line with their duties performs two types of legal action, unilateral legal acts and bilateral legal acts. Bilateral legal actions or contracts are resulting from the will or agreement between the two sides. In administrative contracts, the government is on the one hand and a person from private entities is on the other hand. The aim of conclusion administrative contracts is also carrying out a public service and these contracts often contain a unique and unusual conditions in private law that such conditions to be included in the contracts due to the public authority in administration. The second type of legal acts is unilaterally legal acts or administrative unilateral obligation. In the formation of these actions, only one will is involved and it is the will of the government. Obviously, government in democratic nations cannot impose its will unilaterally and arbitrarily and without considering the principles and rules on others. In these systems, the exercise of will and authority of the government is done within the law and legal and administrative principles and rules. To ensure this, control and close supervision is done over it in various systems. This supervision can also have a political aspect as well as administrative and judicial aspects. Political control from the legislative assembly, administrative supervision within the administrative hierarchy by the government and judicial oversight from the judiciary are take place. Conduct administrative unilateral obligation properly and effective, efficient supervision on how to do it in order to guarantee the rights of the people is only possible through detailed understanding of administrative unilateral obligation and accuracy conditions and principles governing it. Administrative unilateral obligation is including administrative legal acts. Therefore, the types of administrative legal acts is mentioned (I) then the conditions of administrative unilateral obligations is investigated (II) and finally the principles governing on administrative unilateral obligations is examined (III).

1. **Administrative legal acts**

Acts that the administration is doing can be divided into two categories: material acts and legal acts. Material acts are acts that do not create legal consequences. Thus, such Administration acts in administrative law are not discussed. What is considered administrative acts in administrative law consist of administration legal acts. Legal acts of government departments are nothing more than announcing legal will of administrative entities. Legal entities will be revealed by representatives of these persons and creates legal effects. (Duguit, 1979: 23)

Legal acts of departments can be classified in different ways; legal acts departments can be classified in different ways, one based on the purpose and the other on the basis of how it is formed (in terms of form). These acts in terms of purpose are divided into two categories: Some of these acts have the purpose of public regulation; including by-law and other have individual legal status or are seeking to establish a general condition for the individual. The first is like a contract and second like appointing a servant to a specific job. In terms of form, these actions divided to unilateral and multilateral. Unilateral acts or unilateral obligations are only due to the will of authority (individual or collective) and multilateral acts (bilateral) are due to the will of several will (two will). (Rezai-Zadeh, 1387: 138)
1.1 Bilateral administrative acts (administrative contracts)

Administration concludes contracts with other parties to carry out some of its activities. All contracts concluded with other persons is not known administrative contract, but some of these agreements are private contracts and other administrative contract. Private contracts of administration are contracts that are not related directly to provide public order and public services. These contracts concluded to manage private properties of state. Such as small shopping and sales, rent properties and so on. Administration in this category of contracts is like private legal entities and does not have any privilege and authority of public law. Administration often concludes these types of contracts to perform its jure gestion. These contracts will be subject to private law and civil law. Also when the departments in accordance with bilateral contracts use individuals for employment in various jobs, the relationship of employment administration and these Individuals is subjected to the principles and rules of labor law and the administration has the same authorities that the labor law has determined to private employers.

Those administration contracts which are non-private are studied in administrative rights. In the definition of administrative contracts is said: "administrative contract is an agreement that is concluded by the administration on one hand and the other natural or legal persons for the purpose of performing a public service and is subject to administrative law and special provisions" (Moses born, 1391: 561) and to hear disputes arising from these contracts is within the competence of administrative courts. "(Ansari, 1390: 32)

According to the above definition, organizational and material elements can be identified as one of the characteristics of administrative contracts. An organizational characteristic of the administrative contracts offers that at least one side of the administrative contract meet the quality of a legal person of public law. Organizational feature alone is enough to contract is considered administrative and it is when both parties are considered as legal entities of public law unless its purpose is one of the objectives related to their private legal relations. (Rezai-Zadeh, 1387: 145)

In addition to the organizational element, it is necessary that administrative contract has material features as well. Material characteristics is divided into two branches, a contract is an administrative contract when its aim to perform a public service or contains one of the exceptional and unusual conditions in private law that this conditions are often due to having public authority in administration and by the law, known as administrative. (Rezai-Zadeh, 1387: 148-146)

1.2 Unilateral administrative acts

Most acts of administration are unilateral acts, because such acts are rooted in power and sovereignty. But all administration unilateral acts are not considered unilateral obligation but those of administrative unilateral acts are considered administrative decisions or unilateral obligations that are legal actions. Therefore administrative unilateral obligations like any legal action are administrative acts that are carried out with intention to create legal relations and to create a legal situation between the parties or amend or cancel an existing legal situation between them and becomes the origin of the right and obligation for or against them.

Administrative unilateral obligation is a legal action which only one will and intention to create legal relations is involved. If several will be involved in the development of unilateral obligation, the goal of all of them is the same and is considered one side. Such as the decision of a council which all members of the Council or a majority of them in the time of deciding
will be considered as one will. (Tabatabai Motameni, 1378: 312) Administrative unilateral obligations are two kinds: some personal and some typical. Unilateral obligation is individually or personal, If the decision of the administration is related to a specific person or persons. Certificate, license, employment law, gifts and awards are examples of personal unilateral obligation. Administrative unilateral obligations are typical, if the decision of the authority is not related to the person or persons, such as types of bylaws, decrees, circulars and guidelines. Administrative unilateral obligations are general administrative decisions and impersonal. General means that the order include all individuals or groups of people and they all are equal in terms of law, and impersonal means that the judgment, relating to certain legal condition or in other words a legal relationship between a group of people ant not certain person.

2. The accuracy conditions of administrative unilateral obligations

Administrative unilateral obligations create legal effect when they are valid or binding. It depends on the circumstances and should be governed by the principles. Validity and influence of administrative unilateral obligation is provided that administrative unilateral obligation have external and internal legitimacy. The internal legitimacy is related to the principle of administrative decision and included cases such as non- contradiction with laws and regulations and external legitimacy is related to the preparations and procedural issues for adopting an administrative decision. Competence and qualifications of administrative authority, written and historian are including conditions supplier of external legitimacy of administrative decisions.

1.2 Conditions supplier of external legitimacy of administrative unilateral obligations

1.1.2 Competent of authority and bureaucrat

The first and most essential condition for the validity of the decision of the bureaucrat is his competence. Competence in administrative law includes authorities of public officials. In other words, competence is a set of authorities that are granted to the public officer by law. Some of compared competence institution in public law for approximating the mind with capacity institution in private law, because both speak of whether the person has legal authority to act or not . (Tabatabai Motameni, 1378: 408) the subject of competence in the Science of Law in fact is the "division of labor" and "explanation of duty ". (Ali Abadi, 1383: 5) In fact, competence determines the action and activity area of administration. In general and administrative law, the principle is on "incompetence" of general and administrative officials unless kind of competence has been granted to him by law. (Rousset, 2004: 146) The source of giving competence to the administrative authorities is often legal texts, including constitutions and normal rules and regulations.

The accuracy of bureaucrat's decision is subject to competence of administrative authority. Violation and ignoring the rules relating to jurisdiction shall be considered violations to the legal order. Accordingly, a decision taken by a non-competent authority cannot subsequently with the approval of the competent authority consider lawful and like unauthorized action enforced in private law. (Abbasi, 1392: 127) Therefore, the decision of the disqualified administrative authority will be invalid.

Two exceptions in relation to the need for competent authority to take administrative decision are noteworthy: one of them is emergency theory and the other is De facto officer theory that can be studied. Acts of emergency are actions that any reasonable person does in the circumstances of the accident. In some countries, the legality of the decision and the action
taken by the non-competent authority is accepted when he had to cope with the problem in an emergency and immediate situation. Also, if the Administrative authority by reluctance take the decision out of his jurisdiction, this decision will be void and without effect. The difference between the reluctance and emergency situation is that adopting decision in the state of emergency for leaving this case has public aspect and is in line with public interest whereas in reluctance situation has a personal mode and not related to the public interest. According to the de facto officer, sometimes some people who do not have any legal competence take action to provide some public services. Actions and decisions of such individuals can be examined in two cases: First, exceptional situation, such that during the riots, war and times such as these, some without permission or official capacity put themselves shields of events and do services honestly. Such persons cannot be considered a usurper of title or government job and treated them like usurpers. Necessity of continuity and survival of public organizations and public services requires that the persons are considered as de facto officer and their actions be taken valid. The difference of these people with usurper of jobs and titles is that these persons have good faith and entered into the public jobs with the intention of serving the people and government in an exceptional situations and therefore it could not be treated with them like criminals and their actions were be considered invalid. (Abbasi, 1392: 128) Second: in the normal situation. Sometimes there are no exceptional conditions, rather someone outside the law appointed to a position and in fact is incompetent but still clients visited him and received and implemented measures that have been issued from him and sometimes perhaps received rights. In this case, those actions and decisions will be valid if it is proves that clients that informed from the actions and decisions of such individuals are not able to ascertain the qualification of decision maker and just trust to appearance, because firstly, appearance is a proof unless otherwise is proven and secondly, if other than this, public order is distributed and thirdly lack of acceptance of these decisions led to the violation of the rights of the client. In France, the actions of these individuals in the normal situation are known valid by the implementation of the appearance theory or probable appointment and acceptable of him, and in an exceptional situation because of the need to continue activities related to public services. (Tabatabai Motameni, 1385: 32-31)

2.1.2 Capacity and intent and consent of authority and administrative officer
Administrative decision is a legal act and take any legal action required legal capacity and intent and acceptance. If the agent and administrative officer in the line of the administrative decision has no intention and legal capacity, for example, if it is proved that the legal act issued by the administrative officers was in a state of unconsciousness or insanity, or issue legal action was due to the reluctance or misrepresentation or mistake, the action will not be valid and correct.

3.1.2. Written, dated, and signed
Administrative decisions concerning the specific cases or whether they are part of the erga omnes decisions should be in writing. This principle may have an exception in the area of decisions and actions concerning the specific issues and in some cases, it is orally, but in these cases, it can be cited only in minor issues and in the case of public issues and administrative decisions must be in writing. It would not be the exception In the case of unilateral decisions, such as regulations and decrees and circular, and ... and necessarily have to be in writing. (Imamifar and Ostovar Sangari , 1391: 78) In addition to being written it is
necessary that an administrative decision be dated and signed by an administrative authority as well.

2. **Conditions supplier of internal legitimacy of administrative unilateral obligation**

Internal legitimacy and administrative unilateral obligation is in fact, related to the origin of decision. To be valid or binding administrative decision, it is required the principle of administrative decision is not contrary to religion, laws, leader orders and regulations.

2.1 **Lack of contrary to the Islamic law**

Administrative decisions need not conflict with Islamic criteria in Article 4 of the Constitution have been considered. According to this principle, all of the "laws and regulations of civil, criminal, financial, economic, administrative, cultural, military, political must be based on Islamic criteria and this principle is governing absolutely and generally to all principles of the constitution and other laws and regulations ... ". The competent reference for legal control of administrative decisions at the end of Article 4 and the principle of 170 have been specified.

At the end of Article 4 of the Constitution reads as: "The recognition is on the Guardian Council jurists." According to Article 170 of the Constitution also "judges are obliged to refrain from state legislation and regulations that are contrary to Islamic laws and regulations or outside the scope of jurisdiction of the executive power and everyone can demand the cancellation of these rules of court of administrative justice." According to this principle, Court of Administrative Justice was introduced as the reference of cancellation unlawful approvals. As the Guardian Council and the Court of Administrative Justice has been deemed competent in this matter, a mechanism in Clause 2, Article 84 of Judicature act and Procedure Code Administrative Justice Court is considered that according to which, the two authorities have cooperated in cancellation of un-Islamic administrative decisions: "If the resolution of complaints is raised regarding violation of religious norms, the issue is sent for comment to the Guardian Council. Guardian Council jurist’s opinion to the public board and expert boards is binding."

2.2 **Lack of contrary to law**

Since the administrative decisions are subordinate legislation it is necessary administrative decisions are not inconsistent with all of the law. Administrative actions are considered against the law when they are in conflict to explicitly uttered or spirit of the law, and because of these incompatibility, violated law, either explicitly or implicitly, partially or wholly interrupting and disrupting its implementation or have been against it. (Sdralhfazy, 1373: 247)

Administrative decision not only be contrary to the ordinary laws, but should not have any conflict with the Constitution. It is not any doubt in the case of the competent authority to deal with decisions contrary to the ordinary laws in Iran and on the basis of Article 10 of the judicature act and Procedure Code of the Court of Administrative Justice; it is in the jurisdiction of the Court of Administrative Justice. It seems that in the case of the competent authority to deal with the decisions contrary to the constitution, this reference can be said is competent according to the general jurisdiction of the Court in addressing legality of administrative decisions and a mechanism which is forecast for complaints against the law for the Court of Justice. It is true that investigation into discrepancies with the constitution requires an interpretation of the constitution by the judge and interpret the Constitution in
accordance with Article 98 of the Iranian Constitution is in the authority of the Guardian Council, but since the interpretation depends on the non-compatibility is not in the exclusive jurisdiction of the Guardian Council, as well as the Court has general jurisdiction to address the legality of administrative decisions and the mechanism of the law is forecasted with the broad interpretation of the contrary to the law - that in cases of the Court including control measures is introduced and It can be said that an investigation into the compatibility of the administrative decision with the constitution is in the competence of Court of Administrative Justice. (Imami, Vaezi, Soleimani al, 1391: 288)

2.3 Lack of contrary to regulations
Decisions and administrative unilateral obligations should not be contrary to Islamic law and also should not be contrary to regulations - means by-law, legislations. This Lack of contrary to the principle of administrative hierarchy and control comes from the hierarchy. (Tabatabai Motameni 1378: 73)
The administrative hierarchy requires the administrative decisions of administrative authorities do not conflict with the decisions of superiors and it is natural that in the event of conflict, administrative action and decision has no validity and effectiveness because correctness and validity of such action means to cancel and ineffectiveness of Erga omnes decisions - especially decisions such as by-law and legislations and this leads to disruption of public order and provision of services which is the main objective of administration.

3. Principles governing administrative unilateral obligations
Administrative unilateral obligations in terms that make up most of the administrative decisions are subject to the same principles. Without these principles and frameworks, these decisions will lead to totalitarianism and violation of people's rights.

1.3 The principle of non-retroactivity of administrative decisions
This principle is accepted in law that is the effect of the law to the future. According to Article 4 of the Civil Code in Iran, "the effect of law is on the future and the law does not have impact on its predecessor unless certain provisions of this law are adopted ". The administrative decision is not law, however it can be said that the effects of administrative decisions is to the future? The fact is that the effect of administrative decisions is on the future, not the past and authorities never have right to give their decisions retrogressive effect unless the law allows it. This rule is the result of an administrative norm that today has been accepted in the public law as a general principle. (Tabatabai Motameni, 1378: 279)

2.3 The principle of relative impact of individual administrative decisions
This principle is linked with the principle of entry into force of administrative unilateral acts. According to Article 2 of the Civil Code of Iran, laws 15 days after publication are binding all over the country unless a particular order is required for implementing time according to the law. As it can be observed according to this article, act before the expiration of 15 days after the publication is not applicable to anybody and has no effect. This rule does not apply to the administrative law generally and is a little different in administrative unilateral obligations, in this context it should be distinguished among the general administrative unilateral obligations and individual and personal administrative unilateral obligations. French judicial procedures of the State Council on the issue of administrative regulations and administrative decisions have been distinguished. According to the mentioned judicial
procedures, Individuals can demand administration the rights and benefits resulting from decisions and judgments of individual from the time of signing and issuing even if they have not been notified. However, rights and benefits resulting from the administrative statutes are reliable and claimed only from the date of publication and their implementing. (Lanquetot popular vote dated April 16, 1943 and Baltazar vote dated November 26, 1954 French State Council)

In Iran, legislation in the Council of Ministers and the Commission provided for in article 138 of the Constitution is binding if only creates the right or duty to the ministries, public institutions and government organizations even though it has been published or not in the official newspaper as well as classified legislation (secret, very confidential, secret and secret generally) is binding from the date of notification to the ministries or government organizations that legislation is addressed to them. Also, legislation that in addition to executive organizations and their staff creates rights and duties for other people is binding like laws 15 days after publication in the official newspaper unless a special time or a certain quality for its implementation is anticipated in the legislations.

Article 11 of the publication Law and Free Access to Information adopted in 1388 also stipulates that legislation and the decision creating the right or duty to the public cannot be classified as a government secrets and its distribution will be binding. But individual decisions are not obliged to be notified and published in a special way. About these decisions, an administrative decision once properly located and issued, is binding for the administration, even though is not informed to the beneficiaries, because logically nobody can be unaware of his actions. Legal effects of administrative unilateral obligations before the notification is that whether the competent authority qualified or not and the time of notification should be considered not its disclosure. Accordingly, administration could implement its decisions before their notifications; but in a way that it does not affect the rights of individuals. (Tabatabai Motameni, 1378: 282-281)

2.4 The principle of having a valid official document
Administrative decisions are usually regulated in the form of rules and documents and issued by the sign of authority. These rules and documents have the validity of official documents, for example denial and doubt is not heard in front of them and only forgery claims can be attributed to these documents or proved that these documents are invalid in legal ways.

2.5 The principle of the necessary administrative unilateral obligations
The principle is on the necessary of administrative unilateral obligations, because the issuance of unilateral obligations from administrative officers is as a competence and implement the duties and not to implement the rights and personal authorities. In addition fixed salary usually comes to those authorities due to administrative unilateral obligations and if they want to terminate their cadence and issued sentences, legal security for the general public will be lost.

Take a closer look, administrative unilateral obligations seems to be divided into two types: first, unilateral obligations which do not create fixed salary in favor of persons. These unilateral obligations permitted and are always available. For example, a decree appointing administrative officials in the enterprise services and jobs, is not lead to a fixed right for them and is always revocable. second, unilateral obligations which create fixed salary in favor of persons. These unilateral obligations are basically necessary and irrevocable unless law has a specific rule for them. (Civil, 1386, vol. 1: 152), for example, If the servitude promotion was
in accordance with law and its mandate will be notified to staff, then its abolition has not a legal authority.

3.5 The principle of entry into force of administrative decisions
Administrative decisions and the orders of administrative authority that is adopted within the competence area are binding for those who are subject to a decision. Disobedience and violation of rulings and administrative decisions is prosecuted and punished. Sometimes, criminal or administrative or financial sanction in the law is expected for the decisions to be taken in the application of the provisions of administrative authorities. Like cutting electricity and water when the administrative order of approximately are not observed or disciplinary decisions against students who violate the exams test commands. In some cases, sanctions foreseen in the regulations is not enough to obey, for example, administration officials have invited people to vaccination, but many do not obey during an outbreak of pandemic. Administrative authorities who are enforced and restore order should decide properly in some cases which face with resistance and implement that decision. For example, when passengers are in quarantine, people may protest against the actions of the executive, in this case the complainant can complain in courts of competent jurisdiction against the officer and know the decision of the officer against his jurisdiction or do not know the decision to the extent necessary or the way that is implemented. But these complaints are not as effective in implementation and cannot delay or suspend authority decision, for example, someone who has proven the possibility of being in quarantine is not exempt. Such authority which competent administrative authorities have is necessary in public law, while it may not be acceptable in private law. People in private law cannot decide personally and enforce themselves, because people in private law do not have right to get their rights personally but they are required to the go to competent court and prove their claims and they should demand execution after the verdict in order to court decree be carried out by government officials with the certain formalities. But in public law in cases explained a government official without recourse to the courts has the right to adopt binding measures and carried out them themselves. The reason for such a privilege to public officials is that they are officers who maintain order and public security and are responsible for law enforcement and therefore decisions that are made for law enforcement should not be interrupted, but because this concession is hard in terms of individual rights and freedoms, the government could use it when the enforcement for the implementation of administrative decisions by the legislature is not predicted and if also predicted, it is insufficient or that law enforcement and administrative decisions only in terms of public order is essential. (Civil, 1389, vol. 2: 195-193)

4. Conclusion
Administrative unilateral obligations are including the most important administrative decisions that administration are adopting for public service and public interest. Since in the administrative unilateral obligations, administration unilaterally decides to adopt a decision and impose its will unilaterally, it may lead to the authoritarianism and violations of the rights of individuals. To prevent this, it is needed that administrative unilateral obligations to be regulated and are subject to the terms and principles. Existence of these conditions no only guarantees the internal legitimacy of the administrative unilateral obligation, but also suppliers of external legitimacy of administrative unilateral obligation. Administrative unilateral obligation for internal legitimacy has to not be in conflict with Islamic law, rules
and regulations and for external legitimacy should adopt preparations of administrative unilateral obligation and its arrangements should have been observed. In this regard, it is necessary that the issuing authority of administrative unilateral obligation has competent, capacity, and intention and observed formalities and form conditions such as written, dated and signed. Failure to meet any of these conditions can lead to the invalidity of an administrative decision. After the Administrative unilateral obligation to the properly adopted, is governed by principles. The most important are the principle of non-retroactivity of administrative decisions, principle of relative impact of individual administrative decisions, principle of credentials official document, principle of necessity of administrative unilateral obligation, principle of entry into force the administrative decisions. Commitment to each of these conditions and principles and enforcement effective administrative and judicial monitoring according to these principles and conditions can be largely guarantees the rights of individuals, health and the certainty and accuracy of administrative unilateral obligations.
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