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Oneself objection to traffic violations

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Abstract---The violating vehicle driver may find himself not committing a traffic crime, or that the committed violation is not commensurate with the fine imposed on him, and accordingly, the legislator in the Traffic Law did not leave the matter in doubt, by granting the right to the violator to object to the judgment decision before the (Committee to decide on The objection), which is formed in the traffic directorates, which considers the objection request submitted within the legal period, which has been extended by (15) fifteen days from the date of imposing the fine unappeasable.

Keywords---subjectivity, violation, objection, loyalty, appeal the decision

Introduction

The importance of administrative control appears to provide an opportunity for the administration that issues a wrong decision to reconsider its decision and correct it by amending, cancelling or approving, as well as allowing itself to monitor the work of its employees and address errors and lapses or their inappropriateness to laws and instructions. It is worth noting that it does not entail fees or expenses [1]. There are many types of administrative oversight, including automatic oversight and oversight based on a grievance, and there is a third type of grievance directed to a specialized committee.

Automatic control means the oversight that the administration performs automatically by reviewing its decisions and verifying the extent of their legality, compliance with the law and their suitability to issue them. Following it before the stage of judicial appeal is considered a condition for accepting the cancellation lawsuit, including what is permissible. As for the grievance addressed to a specialized committee, in which the legislator requires particular texts to be submitted to a particular administrative committee that is formed according to certain conditions that are compatible with the nature of its work and that considers the extent of legality Management decisions [2].

Administrative oversight is based on a grievance, which is either a loyalty grievance or a presidential grievance. In the field of objection to the decision of the violation, we are not in front of a presidential grievance, but we are within the framework of the state grievance, which is intended for the person affected by the decision issued against him to object before the administrative authority that was issued by it, an objection. It requires reconsideration and lifting of the harm and unfairness caused to it after the party deciding on the grievance or objection clarifies the error or ambiguity in it. [3].

The legislator in the traffic law stipulated the formation of a committee in each traffic directorate to decide on the objections submitted to it, and from the preceding, we will divide the topic into two demands; the first is the concept of violation and objection to it, and in the second requirement is the legal nature of the decisions of the committee to decide on the objection. First - The importance of the topic: The importance of researching this topic appears to show the importance of the committee to decide on the objection, as well as the objection procedures and decisions it issues as final and not subject to appeal.

Second - The issue of the issue: the issue is concentrated in the fact that the party that imposes the punishment is the same one that considers the appeal submitted to it; in addition to the nature of the decisions, it issues that they are not subject to appeal. Third - Scope of the research: The research focused on Traffic Law No. (8) for 2019 and the comparison with Traffic Law No. (86) for 2004, which was cancelled. Fourth - Research Methodology: The analytical rooting method was adopted to study this subject, and some comparisons were made with the Iraqi Code of Criminal Procedure and the repealed Traffic Law No. (86) for the year 2004. Fifth - Structure of the research: In fulfilment of the preceding, we will divide the research into two demands.

Definition of the violation and the committee to decide on the objection

To define the violation, it must state its linguistic and idiomatic meaning. The statement of the committee to decide on the objection in terms of its formation and the procedures followed in submitting the objection to the violation to the committee, as well as the content of the objection, as follows:

The linguistic and idiomatic connotation of the violation:

First - the linguistic meaning of the violation: the singular noun for the verb to contravene and to contravene, and the contravention means the opposite, i.e. deviation from the rules of a thing or departure and neutrality that is forbidden [4], so it is said that he violated his order, i.e. went out and opposed [5].

Second - Idiomatic Connotation: The violation is a crime punishable by one of the following two penalties: 1- Simple imprisonment for twenty-four hours to three months. 2- A fine of no more than thirty dinars [6].

The fine is one of the administrative penalties that focus on financial disclosure and is approved by the legislation to replace the criminal character of the penalty in the face of violating some laws and regulations that do not deserve penal confrontation. They are punitive, and the administration aims through them to achieve public and private deterrence [7].

Traffic violations are every act or act (refusing to act) by the driver, passenger or pedestrian that violates traffic regulations and rules. Violations are divided into

direct and indirect after recording all the essential data in violation [8]. The indirect violation is the violation in which the violator was not present when the violation was issued as a violation of parking the vehicle in a place where parking is prohibited [9].

Committee to decide on the objection and its procedures

In order to get acquainted with the legal basis for the committee to decide on the objection and how to form it, as well as the procedures followed by the committee upon receiving the request submitted by the objector to the violation. First - Formation of the committee to decide on the objection: The Iraqi legislator in the traffic law in force did not specify its specific formalities, but he explained to us the formation of the committee by stipulating that: Legal affairs in the relevant Traffic Directorate (Chairman) B- An officer from the security personnel (Member) C- An officer of the Audit Division (Member) [10]. The legislator in the traffic law in force provided for the formation of a committee to decide on the objection are traffic officers, meaning that The traffic authority plays the role of arbiter and opponent at the same time, and this is what makes the violating driver who has imposed on him a decision of a ruling that is not reassuring from the results of that committee. The traffic authority was excluded in its formation of the objection committee through the participation of members from outside the traffic departments, an officer from the internal affairs, a representative of the advisory council, and a representative of the community [11], and this is also criticized for the fact that the formed committee is far from jurisdiction, especially since the traffic law has precedences that do not Only a traffic man understands it, but the committee's composition has been completed Its modification is to be headed by the governorate's traffic director, with the membership of an officer from the internal affairs and a representative of the community.

The criticism directed at the composition of the committee in the traffic law in force because the majority are traffic officers, as well as the lack of guarantees for the violator against whom fines are imposed, and the difficulty of denying some violations, it is unrealistic to bring witnesses to the violation of non-compliance with the traffic light or the traffic man's signal, especially if it is a movement Peak traffic, so we think it is best to ensure the impartiality of the objection to form a committee whose members will be from the transport authority or a representative of the community (such as a jury in the Anglo-Saxon system).

Second - Procedures for objection before the decision committee: The Iraqi legislator in the traffic law in force gave the violating driver the right to object to the decision of the ruling issued against him by stipulating that:) of this article within (15) fifteen days from the date of the judgment decision) [12], the legislator did not indicate a specific formality of the objection; instead, it was received absolutely. The violation, for example, is that the objector brings an entry visa to the Kurdistan region of Iraq on the date of committing the violation or something similar. The legislator also specified that the violating driver might object within (15) fifteen days from the date of the judicial decision. However, the legislator did not indicate the legal period that the party is committed to. However, the legislator considered the fifteen (15) days remaining to be considered by the committee to decide on the objection. That is, in any case, the decision of the

committee must be issued before the period of (30) thirty days, due to the possibility that the decision of the committee to decide on the objection will be issued with approval, in which the violator must review the accounts officer to pay the fine before doubling the amount if the committee is delayed. In deciding after a period of (30) thirty days has passed from the date of its imposition. If the committee approved the decision to sentence the fine, this might violate a legal rule that (the appellant shall not be harmed by his appeal) [13]. That is if the committee's delay in deciding would harm the appellant. If he had accepted the violation at first and paid it during the reduction period that entailed paying half of the amount, he would have been handed over to him.

As for the period of objection set by the Iraqi legislator in the effective traffic law as (15) fifteen days, which may coincide with the last day of the appeal, an official holiday, according to the Civil Procedures Law, it is postponed to the next day [14]. In order to quickly resolve objections and avoid their accumulation, the Iraqi legislator did well in the traffic law in force when it stipulated the formation of an objection committee in each traffic directorate according to spatial jurisdiction [15].

Perhaps what prompts us to ask in this regard is the standard adopted by the committee to decide on the objection submitted to it? Especially since the law has authorized the committee to decide on the objection to issuing its decisions to amend, cancel or approve, and here we answer it by saying that at present, as a result of technological development on the one hand and security needs, on the other hand, the owners of shops, commercials, pharmacies and even homes install surveillance cameras to control any situation that occurs. During the day, and here the violating petitioner may submit a recording showing the traffic movement at the intersection where the violation was committed as evidence denying that he committed the violation, or provide evidence in other violations that the day against which a fine was issued was in the Kurdistan region of Iraq. Moreover, that is through the residence and entry paper to the region, which includes the vehicle number and the date and time of its entry. Humanity is like driving a vehicle quickly to save a patient from death by bringing him to the hospital, and he can bring reports to prove that the day, date and time of admission to the hospital are recorded. The objection was in violation and deserved a fine. Third - What the objection includes: The objection includes objective and formal conditions, the most important of which are:

- 1- To submit the objection to the Committee to decide on the objection.
- 2- The grievance shall be submitted within a maximum of (15) fifteen days from the date of imposing the fine.
- 3- The objection must include objectively the reasons for the objection to the ruling imposed on the traffic law violator.
- 4- Attach a copy of the judge's decision and all the documents supporting it with the objection.

The legal nature of the decisions of the Committee to decide on the objection
The administrative appeal creates a kind of understanding between the administration and the stakeholders, away from the judiciary's authority, on the one hand. On the other hand, the grievance enhances the integrity of the public

administration in the souls of those under its authority, through impartiality and integrity, without tainting their souls with fanaticism and a personal passion, in addition to the administration's avoidance of the rulings of the judiciary, whose intervention may lead to the annulment or invalidation of its decisions, which may lead to a decrease in its prestige and cause job embarrassment [16].

According to the provisions of the Constitution, administrative decisions are not immune from appeal [17]. If the individual feels the injustice he has suffered due to an administrative decision issued against him, he may file a grievance before the administrative authority that issued the decision. An administrative grievance or objection is defined as (a written objection submitted by the person in respect of whom the administrative or disciplinary decision was issued to the competent authority. It is a path that the objector takes before resorting to the judiciary, and it represents an interruption of the validity of the date of the annulment lawsuit and a case of prolonging its duration [18].

In light of the preceding, the legal nature of the Committee to decide on the objection can be adapted in two directions:

Judicial direction

The legislator in the traffic law in force grants the traffic man the authority of a misdemeanour judge to impose fines, as stated in Article (28/First) [19]. Before the Criminal Court in its cassation capacity, and its decision is final, and this is what appeared to us in the text of Article 31/Third of the Traffic Law in force by stating that: The legislator has pursued the same levels of litigation and appeal stipulated in the amended Code of Criminal Procedure No. (23) of 1971, and we have no doubts that the capacity of a misdemeanour judge for a traffic man is not limited to those present at intersections, squares and roads, but rather the adjective (misdemeanour judge) is absolute and absolute. It is being released unless a text restricts it. If we accept this logic, we can consider that the traffic officer has issued a ruling for the violation committed. At the same time, the law has allowed the violating driver to object before the decision committee, even if it is administrative. However, it has a judicial capacity under the Traffic Law In force, which prompted the legislator to take what applies to crimes of appealing the decisions of misdemeanours courts in violations before the criminal courts in their discriminatory capacity; the same applies to the appeal against violations imposed by the traffic police before the committee to decide on the objection, and this is what made its decisions final.

Administrative direction

It is a trend that does not consider it as a private or exceptional one granted under the Traffic Law (misdemeanour judge), but rather as a general one, which is the administrative capacity since the administrative penalty is focused on minor violations that do not require the provision of all procedural guarantees, the aim of following this as a means to reduce Punishment as it aims to ensure speed in procedures and avoid complexity as it is in fines.

The objection is a sufficient guarantee for individuals concerning the fines imposed as a result of their violations of the traffic rules when the violator objects,

either about their basis or type, and as it is known that every action, no matter how extreme and the employee's keenness on the accuracy of its implementation, must be tainted by an unintended error, and it may not indicate negligence or wrongdoing. Behaviour, but the nature of the work may result in errors as if the traffic officer imposes a fine amid the hustle and bustle of vehicles and heedlessly while trying to answer the violator and organize traffic he made a mistake in the number or letter of the vehicle plate. It is worth noting that the new plates that appeared in the new electronic registration system may look similar. The numbers in it, but the letters differ, and the type of vehicle differs, and these errors, even if they are few, are expected to happen.

If we accept that the objection committee is administrative and that administrative decisions have their methods of appeal, in which the individual appeals to the administrative body that issued the decision, it is called a state grievance (*Recours gracieux*). This objection is optional in general principle unless the law requires otherwise. That, and the state grievance is defined as (the grievance submitted to the authority that issued the decision, asking it to recalculate by looking into the wrong decision, either by withdrawing, amending, or cancelling it, meaning that it is a petition submitted to the one from whom the decision was complained of and in which the administration is asked to study and review its decision) [20]. This oversight also comes through the person affected by the administrative decision submitting an objection or grievance to the authority from which this decision was issued, requesting its correction, whether by reversing it, cancelling or modifying it or replacing it to alleviate its impact [21]. The legislator did not explain to us in the traffic law in force the criteria adopted by the committee to decide on the objection and whether it monitors the elements of the administrative decision (the judgment decision) in terms of jurisdiction, form, reason, place, goal or purpose.

In order to consider the objections submitted, the committee to decide on the objection must note that the decision is submitted within the legal period, to be accepted in form, and then it moves to the substantive aspect and considers: 1- Jurisdiction, that is, the authority or legal authority that the decision maker enjoys in issuing his decision in terms of time And the place [22], mainly since the decision to impose a traffic violation is limited to officers and commissioners up to the fourth degree and according to the personal jurisdiction stipulated in the traffic law in force, as well as monitoring the type of fine imposed, because the commissioners are not authorized by law to impose fines on all violations, but their powers are limited to violations. In the text of Article 25/Third of the Traffic Law in force, this is on the one hand and on the other hand a note of the spatial jurisdiction to impose the fine, it is not possible to impose a fine on the violator if he is outside the area of administrative responsibility, but this does not mean that the traffic officer sees the violation without that He intervenes, otherwise the implementation of the law becomes formally devoid of its objective content, which is the protection of public order and the prevention of breaching it. Instead, when detecting the violation, he must take what can be taken by informing the nearby controls and asking them to stop him and take legal measures against him or by contacting the relevant authorities. We believe that if the traffic man is on duty and witnesses a violation, especially with a dangerous effect, such as seeing a person drunk and driving a vehicle, through his actions or by informing him of

some of the attendees or driving a Vehicle opposite the direction of traffic. What is the legal impediment to taking legal measures against him as a witnessed crime as stipulated in Article (43) of the Code of Criminal Procedure No. (23) of 1971, as amended. It is worth noting that the legislator in the applicable criminal procedure law has subjected members of the judicial police to criminal accountability if they fulfilled their duties [23].

2- The form, which means the external appearance in which the decision appears, and the procedures followed in its issuance [24], as the judgment decision includes a number of data that the authorized traffic officer must fill in with the required information, taking into account the conformity of the type of violation (the legal text) with the amount of the fine. Hence, it is not justified to control the amount of The fine is consistent in the type of violation, as the Traffic Law, as we explained previously, divides the fines into three categories according to their gravity. It is not possible to imagine that the violation of non-compliance with the signal is from the category of first-degree fines with the amount of the fine of the second or third degree, as well as the date of the decision and the time of the violation in hours and minutes, and that To calculate the time required to reduce the amount of the fine within the time specified by law, as well as to note the name and signature of the authorized officer or commissioner, and it is worth saying that the defect in the form does not lead to the invalidity of the administrative decision unless the legislator expressly stipulates the invalidity in the event that the defect is severe or fundamental, so that Avoiding it could have affected the content of the decision and changed its essence, and with the exception of it, there is no need to adhere to formalities so as not to exaggerate [25], as if the traffic officer neglected to write the type of violation committed by the driver of the vehicle, then This is a fundamental flaw.

3- The reason is the material and legal facts or circumstances that suggest to the management man, when they occur, that he can exercise his competence to make the decision; that is, the management man, when he makes the decision, he is based on a written or unwritten legal basis, or facts or a case of the facts.

In this sense, the reason for the administrative decision is not a personal or psychological factor for the decision-maker but rather an external objective element that justifies its issuance [26]; accordingly, the National Health and Safety Committee, in light of the (Coronavirus) procedures, has taken decisions and recommendations authorizing the General Traffic Directorate to impose fines on vehicles that violate the procedures for banning vehicles during curfew times [27]. Because of the existence of a previous hostility or a dispute between him and the traffic man, and this claim is not a reason to take it unless the violator proves the validity of his claim. It is necessary to abuse and reduce the work effort practiced by the traffic man and, under all circumstances, with slanders with no objective evidence. By paying it from his personal account by paying the fine [28].

4- The shop is the change that it brings about in the existing legal situation at the moment of its issuance, thus creating a new legal centre or amending or cancelling existing centers [29], and it is also intended to be the subject of which this action is focused, which is the establishment of a new legal centre or the amendment or cancellation of an existing legal centre [30], one of the conditions for the corner of the place in the administrative decision is that it be legally or

realistically possible, but if the place is legally and realistically impossible, then the administrative decision is a non-existent decision [31].

The traffic law is the place to regulate traffic and prevent violations, so the decision of the ruling imposed by the traffic police on the violator must be legitimate, meaning that the subject of the imposed fine is not to allow the violation of traffic law, regulations and instructions, and not to disturb public order [32].

5- The goal or objective means the objective to be achieved by issuing the decision, and in this sense, it differs from the direct result of the decision or the legal effect resulting from it, and it is called the place of the administrative decision. The goal of the legislator in the traffic law in its general perspective or meaning is to regulate traffic and maintain public order. However, there is a special perspective or meaning, that is, every behaviour of the offense of traffic law aims behind the legislator to a special purpose or goal that falls under the title of traffic law, for example, the legislator's goal in stopping vehicles in places where parking is prohibited is to prevent obstruction of traffic or cause traffic accidents, and the legislator's goal in imposing a fine on the violation of not covering the vehicle's load is to prevent the flying of volatile materials and thus to prevent confusing the driver. Vehicles when these materials are blown or scattered. Some break the windshield or affect the field of vision [33].

The finality of the administrative decision that can be appealed is its issuance by an administrative body empowered by law to decide on a specific issue without the need for the approval of a higher authority; that is, the administrative decision's exhaustion of all the necessary stages for its formation, so the finality of the decision means its enforceability without the need for any subsequent action [34].

If we assume that the committee to decide on the objection is of an administrative nature, then the text mentioned by the legislator that the decision of the committee to decide on the objection is final, contradicts the text of Article (100) of the Iraqi Constitution in 2005, when it prevented the immunization of any administrative decision from appeal [35]. Accordingly, the decision of the committee to decide on the objection must be challenged before the Administrative Court.

Among the practical applications of the committee is to decide on the objection (cancellation of the fine) to the violating vehicle driver after it was found that he had not committed a violation because he was walking on a service road and the absence of signs indicating the direction of traffic [36].

Among the practical applications of the decisions of the committee to decide on the objection, the committee approved the fine imposed on the violating driver as it was valid and did not require modification or cancellation [37].

From the foregoing, we find that the legislator had to be in line with the text of the Constitution by making the decisions of the committee for deciding on the objection subject to appeal before a central, higher, impartial administrative body to consider the objections to the decisions of the committee to decide on

objections in the traffic directorates, and this committee is formed in the General Traffic Directorate, or the appeal before the Administrative Court, this is in accordance with the provisions of the Constitution that prevented the immunization of any administrative decision from appeal, in addition to the fact that the traffic violations imposed by the traffic officer are of a judicial nature, citing the text of Article (28 / first) of the Iraqi Traffic Law No. (8) of 2019 in force, in which it was granted The traffic officer and the traffic commissioner up to the fourth degree, the authority of a misdemeanor judge, this is because the Iraqi Constitution does not allow the administrative authorities to issue criminal judgments, which gave the authorized traffic authority the status of misdemeanor judge for the possibility of imposing traffic fines.

Conclusion

After we have finished discussing the subject of (self-objection in traffic violations), we will list below the most important conclusions and suggestions we have reached.

First, the conclusions:

- 1- The committee for deciding on the objection under the Traffic Law is formed of a chairperson and two members, the director of the legal affairs unit in the relevant Traffic Directorate (chairman), and the membership of an officer from the security personnel and an officer from the Audit Division.
- 2- The objection request shall be submitted within the legal period of 15 days from the date of imposing the fine.
- 3- The committee to decide on the objection issues one of three decisions, either cancelling the fine, replacing it with a lighter one, or approving it.
- 4 - The legal nature of traffic violations of a judicial capacity based on the judicial capacity granted by the Iraqi legislator to the traffic man in the traffic law in force.

Second - suggestions:

- 1- Reconsideration of the committee to decide on the objection, so that one of its members is from the Transport Syndicate, as a party representing the side of the driver of the vehicle, as it is a guarantee to the motorists of the presence of a body to represent them.
- 2- We suggest the formation of a central objection committee in the General Traffic Directorate to appeal the decisions of the objection decision committee formed at the headquarters of the directorates, in accordance with the constitutional texts in preventing the immunization of decisions from appeal.
- 3- Setting standards and controls that allow the committee to decide on the objection to issue a decision on the objection, those standards through which the fine is replaced, approved, or canceled, and that this is not left to the personal discretion of the members of the decision committee.

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