

Justification of Disciplinary Decisions according to the tunisian Administrative Court

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Abstract:

The justification of disciplinary decisions is one of the mechanisms for ensuring administrative transparency. Justification contributes to improving the quality of administrative work and enhancing the relationship between the administration and its stakeholders. It also enables the affected party to exercise their right to defense and their right to appeal. For the judge, justification facilitates their work and enabling them to exercise effective judicial review of the contested administrative decision.

Keywords: Administrative transparency /Administrative citizenship/ Proper administration of justice/ Right to a fair trial

Introduction

"The justification of administrative decisions requires stating their legal and factual basis so that the affected party can challenge their validity, and so that the administrative judge can exercise effective judicial review." (First-instance judgment in case no. 125107, dated March 15, 2016). "The administration is not required to justify its decisions unless explicitly stipulated by law, in accordance with the principle of 'no justification without a legal provision, except for disciplinary and punitive decisions, which require the administration to disclose the factual and legal reasons upon which its decision is based, even in the absence of such a legal provision.'" (First-instance judgment in case no. 18775/1, dated June 14, 2013). From this perspective, which is consistently present in the case law of the Tunisian Administrative Court, it is understood that the principle of "no justification without a legal provision" remains prevalent in Tunisian law, despite the significant legal developments Tunisia has witnessed since 2011, particularly regarding strengthening the transparency of public administration and guaranteeing citizens' right to access information. In this regard, it suffices to recall the provisions of Article 15 of the 2014 Constitution, which obliges the public administration to operate according to principles of transparency, as well as the provisions of article 32 of the 2014 Constitution and article 38 of the 2022 Constitution, which enshrined the right to access information.

However, the Tunisian Administrative Court has introduced a number of exceptions to this principle, and these exceptions have also extended to disciplinary matters. The court typically states: "The case law of the Administrative Court has established that the administration must provide reasons for its decisions, as a general principle of public law, whenever those decisions have a disciplinary character or affect the legal rights of those concerned, requiring the statement of the factual and legal grounds for such decisions, regardless of whether the legal provisions explicitly require such justification" (First Instance Judgment in Case No. 136830, dated March 5, 2020). In some court rulings, the court linked the requirement for providing reasons with the impact of the administrative decision on job security, emphasizing the following: "The case law of this court has established that, while the general rule is that reasons need not be provided unless explicitly required by law, when an administrative decision affects the job security of those targeted, especially when it definitively ends their career, it is mandatory to include the reasons for that decision." (First-instance judgment in case no. 128901, dated June 26, 2014). In other rulings, the administrative judge justified the necessity of providing reasons for disciplinary decisions due to their deterrent nature: "This court has consistently held that providing reasons in disciplinary matters is mandatory, even if not explicitly required by law, given its connection to the right to defense, and considering the deterrent nature of disciplinary measures, which necessitates revealing the reasons and circumstances surrounding the decision." (Appeal decision, case no. 25030, dated March 29, 2006). Providing reasons for disciplinary decisions requires "clearly stating the alleged misconduct with sufficient precision to inform the person concerned of the accusations against them and enable them to identify and choose the most appropriate means of defense to protect their interests." (First-instance judgment, case no. 128380, dated June 10, 2015).

Initially, the Tunisian Administrative Court linked the requirement for providing reasons in disciplinary decisions to the right to defense as a fundamental principle of law, considering it an essential element thereof. In a case dated March 29, 2006, the Administrative Court stated: "This Court has consistently held that providing reasons in disciplinary matters is mandatory, even if not explicitly required by law, given its connection to the right to defense" (Case No. 25030, March 29, 2006). Case law has established that the right to defense is a fundamental legal principle (Case No. 16946, January 20, 2000). Since 2014, the right to defense has had a solid constitutional basis, enshrined in Article 108 of the 2014 Constitution and Article 124 of the 2022 Constitution. Providing reasons is an essential component of the right to defense, as it facilitates its exercise by allowing the person subject to the administrative decision to understand the

grounds upon which it was based. Furthermore, in a subsequent stage, the Tunisian Administrative Court established that providing reasons is a general principle of public law. In a first-instance judgment dated October 19, 2007, it stated: "Although Law No. 20 of 1967, dated May 31, 1967, concerning military personnel, does not explicitly require the defendant to provide reasons for its disciplinary decisions, it remains obligated to do so, as providing reasons for disciplinary decisions is a fundamental legal principle that must be respected and observed" (Case No. 14898, October 19, 2007). Similarly, in a first-instance judgment, Case No. 124939, dated January 25, 2013, it stated that "Providing reasons is a general principle of law that must be respected whenever decisions have a disciplinary nature or concern the personality of individuals or their conduct, even in the absence of an explicit legal provision".

The requirement for providing reasons in disciplinary matters has become mandatory based on the case law of the Administrative Court. This is considered a fundamental procedural requirement that affects the external legality of the decision. In the absence of, or an insufficient explanation, the disciplinary sanction is annulled, in accordance with article 7 of the law of June 1, 1972 concerning the Administrative Court. In this context, the Administrative Court, in its first-instance judgment in case number 123078 of December 31, 2014, stated: "The requirement to provide reasons for administrative decisions in disciplinary matters is a fundamental procedural requirement imposed by the legislator, and any breach of this requirement undermines the external legality of such decisions and renders them subject to annulment." The court further clarified that "the extent to which disciplinary decisions are reasoned is a matter of interest to the parties and cannot be raised by the court on its own initiative, as it does not concern public order..." (case number 25805 of June 8, 2008).

The requirement to provide reasons in disciplinary matters is mandated, not only by case law, but also by the legislature in article 51 of the General Statute of the Tunisian Public Service, reflecting the awareness of both the judiciary and the legislature of the importance of this mechanism, whether for the employee (as a guarantee of their rights), the administration (to improve its relationship with its staff), or the judge (to facilitate and enhance judicial oversight).

The requirement to provide reasons in disciplinary matters is of paramount importance because the employment relationship is inherently unequal, existing between the employee (the weaker party) and the administration, which possesses all the documents related to the employee's career. The requirement for reasoned decisions aims to limit the administration's power in this relationship, improve its relationship with its staff, and promote transparency in its administrative actions.

What is the purpose of requiring reasoned explanations for disciplinary sanctions?

The Administrative Court, in its judgments, typically defines reasoned explanations based on their function or purpose. In a first-instance judgment issued on January 31, 1996, it stated: "The purpose of providing reasons is only achieved when the decision is clear and sufficiently detailed to allow its understanding and to explain the reasons that led the administration to take it." Similarly, in another first-instance judgment dated November 30, 2001, it added: "The case law of this court has established that a reasoned explanation is legally valid and sufficient only if it clearly states the actions upon which the disciplinary action against the employee was based, since its purpose is to inform the plaintiff about their situation so that they can take any necessary action." Legal scholars and case law unanimously agree that reasoned explanations are an important and fundamental guarantee for the proper functioning of the administration (1) and for the proper functioning of the judiciary (2). During the preparation of an administrative decision, reasoned explanations constitute a mechanism that ensures sound administrative practice; while in the dispute resolution phase, they guarantee effective judicial review of the contested decision.

THE FIRST TOPIC: THE DUTY TO PROVIDE REASONS GUARANTEES THE SOUND ADMINISTRATIVE PRACTICE

Good administration¹ requires protecting the administration and protecting the administrative subject are both important². One side should not be favored at the expense of the other. It is an attempt to reconcile conflicting interests and to establish a balance between the privileges of public authority and the rights of the administrative subject. Good and modern administration is efficient, effective, and protects rights and freedoms. It is an administration that breaks with authoritarianism, unilateral decision-making, and working in closed offices and a secretive environment. It is a transparent administration, open to its citizens. Administrative law is no longer a law of administrative privileges, but rather a protective law that imposes limitations on the administration, seeking to provide the necessary protection for the administrative subject. Legal scholars even speak of "administrative citizenship"³. These are the transformations that administrative law has undergone, and which can no longer be ignored.

¹ BOUSTA (R.), Essay on the Concept of Good Administration in Public Law, L'Harmattan, 2010, p. 400.

² MESTRE (A.), The Council of State as Protector of Administrative Prerogatives, LGDJ 1974, p. 287.

³ DUMONT (A.), Administrative Citizenship, Thesis, Paris 2, 2002.

One of the requirements of good administration is that the administration acts within a reasonable timeframe and guarantees every administrative subject's right of access to information. This obliges it to properly prepare and adequately justify its decisions⁴ which ensure the protection of the citizens (First requirement) and enhancing its image (second requirement).

First requirement :The Importance of Providing Reasons for the citizens:

Proper justification for decisions in disciplinary matters "contributes to the protection of individual rights" (Case No. 19987, November 22, 2003), such as the right to appeal and the right to defense.

Sound reasoning enables the individual to effectively exercise their right to appeal. This right was defined by the Administrative Court as follows: "The right to appeal, as the legal means for any aggrieved party to assert their legal position, vindicate their legitimate freedoms, rights, and guarantees, and obtain the corresponding remedies, is an inherent fundamental right and a cornerstone of the rule of law and democratic institutions" (Case No. 17603, June 24, 2005). Recognizing the importance of this right, the drafters of the constitution enshrined it in article 108 of the 2014 Constitution and article 124 of the 2022 Constitution.

The Administrative Judge has stated that "a decision imposing a first-level disciplinary sanction, without consulting the disciplinary council, must be reasoned, so that the person subject to the sanction is fully aware of the alleged misconduct and can either accept the sanction or appeal it to the administrative court" (Case No. 337, January 14, 1981). Providing reasons allows the affected party to review the grounds for the decision, understand their chances of winning or losing the case, and, based on the reasoning provided, decide whether to accept the decision or appeal it.

Therefore, providing reasons for a decision can rationalize recourse to the courts. If the person subject to disciplinary action decides to pursue legal action, the provision of reasons will enable them to prepare their defense effectively, thus allowing them to exercise their right to a fair trial and ensuring genuine access to justice.

Furthermore, sound reasoning allows the concerned party to exercise their right to defense, a fundamental principle of law that has attained constitutional status (article 124 of the 2022 Constitution and article 108 of the 2014 Constitution). Based on the reasoning included in the administrative decision, the concerned party can prepare their defense and choose the most effective arguments, in accordance with the circumstances of the case. We know that "the burden of proof

⁴ BOUGUERRA (F.), Essay on the Good Administration of Justice, Studies in Administrative Law, No. 1, 2022, p. 51.

lies with the claimant," which obliges the latter to prepare their defense thoroughly. Providing arguments, or even a preliminary argument, is contingent upon being informed of the reasons for the decision.

The Administrative Court consistently emphasizes the close relationship between providing reasons and the exercise of the right to defense, stating that "providing reasons is a guarantee of the right to defense" and that it "reinforces the principle of the right to a fair trial." In case number 4379 of June 25, 1996, the Administrative Court affirmed that providing reasons allows the litigant to prepare their defense optimally, ruling that: "Respect for the right to defense in disciplinary proceedings constitutes a general principle of law, recognized by case law and applied even in the absence of an explicit legal provision.

" Furthermore, this principle requires that decisions in this area be properly reasoned, so that the person concerned is fully aware of the specific errors and actions for which they are being held accountable, thus enabling them to prepare their defense effectively. The provision of reasons also allows the litigant to "identify and prepare their defense in a manner that is appropriate to those reasons" (Case No. 16946, January 20, 2000). In this regard, the Administrative Court states: "The absence of reasoned justification, as required by the case law of this Court... complicates the employee's defense and may render their arguments inappropriate, since they are required to identify the true and final reasons that led the administration to take the contested decision at the end of the proceedings" (Case No. 10571, March 6, 2003).

Reasoning cannot be replaced by the exchange of reports during the investigation, as the investigation stage¹ is linked to the initiation of a legal dispute. The reader might object by citing the active role of the administrative judge, but the administration may refuse to provide the judge with the reasons for the decision, either by not responding or by invoking various justifications, such as those related to the confidential nature of the case. Furthermore, the judge may or may not conduct an investigation, and it is the judge who determines and selects the investigative methods. The judge is the master of the proceedings (Case No. 1025, June 31, 1986). When the legislator or the judge requires the administration to provide reasons, the affected party will be informed of the reasons for the decision, regardless of whether the judge intervenes or not².

¹ Al-Qallal (N.) and Al-Arabi (M.), Investigation, Administrative judiciary after the reforms of June 3, 1996, p. 66.

² B. PACTEAU (B.), The Judge of Ultra Vires and the Grounds for Administrative Acts, Clermont-Ferrand, 1977, p. 5.

The right to reasoned decisions best embodies the right of access to information, which is classified as a third-generation human right¹. It is part of a broader right, the right to knowledge². Knowledge is the best incentive to ensure that administrative bodies comply with administrative decisions³.

Second requirement: The Importance of providing reasons for the Administration:

The duty to provide reasons contributes to the rationalization of administrative processes (Firstly) and is the best guarantee and embodiment of administrative transparency (Secondly).

Firstly. Reasoning and the Rationalization of Administrative Processes:

Rationalization, in its linguistic sense, means understanding things as they truly are. To rationalize something means to understand it, grasp its true nature, and distinguish it⁴.

For those who make decisions, justification is a means of reflection and careful consideration⁵. It involves using reason and conducting a thorough study of the situation from all its aspects – factual and legal – before making a decision, especially in areas where the administration has discretionary power. Discretionary power "does not mean absolute power exempt from any control, but rather the authority granted to the administration to choose between two possible decisions, or more, each based on specific reasons and objectives" (Case No. 10897, December 20, 2003). This choice always takes place within the framework of what the law stipulates⁶. In this context, the Administrative Court states: "The fact that a ministry is responsible for overseeing a particular sector does not mean that it has absolute discretionary power in managing its affairs; rather, it must abide by the regulations established by the legislator, not only regarding the intended objectives, but also concerning the basis for intervention, particularly those related to the exercise of public authority" (Case No. 1574, June 27, 1990).

¹ HOLLEAUX (A.), *The Laws of the Third Generation of Human Rights*, RFDA 1980, p. 527.

² BRAIBANT (G.), *Right of Access and Right to Information*, in *Mélanges R. Charlier*, 1981, p. 704.

³ DEBBASCH (CH.), *Introduction*, in *Administrative Transparency in Europe*, Paris, CNRS, 1990, p. 11.

⁴ Lissan al -Arab

⁵ JEZE (G.), *Essay on a General Theory of the Influence of Determining Motives on the Validity of Legal Acts in French Public Law*, RDP 1922, p. 386.

⁶ CHAPUS (R.), *General Administrative Law*, Volume 1, 15th edition, Montchrestien, 2001, p. 1056

It is beneficial and prudent for the administration to carefully consider all aspects before making a decision¹. This is what the Administrative Court has consistently emphasized: "Furthermore, the administrative authority may not take individual decisions without first conducting a thorough and comprehensive review of the specific circumstances of the case" (Case No. 13699, April 2, 1998). By conducting a thorough and comprehensive review of the specific circumstances of each case² the administration will be able to make the appropriate decision. The Court emphasizes the necessity of addressing each situation on a case-by-case basis when dealing with individual cases. An individual decision should not be made based on general considerations, since each case has its own unique circumstances, and therefore the administration must dedicate specific consideration to each case. The decision-maker is obliged to carefully examine the facts, which are the starting point in the decision-making process – he must be well-informed about the facts³. Based on the available facts, he decides whether to take action or not (this is the first option); then, if he decides to act and make a decision, he must decide which direction to take (this is the second option). Administrators are usually faced with more than one option, and they must choose the one that best suits the given circumstances. They determine the content of the decision based on these facts, then define the objective of the decision (the legal consequences: the rights and obligations that will result), and finally, they justify this decision by finding the legal basis for it. Conversely, when administrative authority is limited, the administration is bound to follow that specific administrative procedure and no other. It is obligated to take the same decision in all cases.

Rationality is essential and should be the approach of every administrator. However, its importance is magnified when the administration has discretionary power⁴. Discretionary power allows the administration to choose between several solutions, and to favor one solution over another, it is necessary to carefully study the situation and consider the advantages and disadvantages of each solution to arrive at the most appropriate one. Disciplinary sanctions represent one of the most common areas where discretionary power is exercised. While the Public Service Law lists the penalties in article 51, it does not define disciplinary

¹ HAURIOU(M.), Summary of administrative law and public law, 12th edition, Dalloz, 2002, p. 372].

² MOULIN (R.), The rule of individual case assessment, an equivocal extrapolation, AJDA 1980, p. 443.

³ BOURCIER (D.) and G. KOUBI (G.), Accountability of Decision-Makers and Information Systems, AJDA 1999, p. 4.

⁴ YAAGOUBI (EL.), The Motives of Administrative Decisions, Doctoral Thesis, Grenoble 1981, p. 65.

offenses. Therefore, the administration has discretion in assessing the offense and selecting the appropriate punishment.

A requirement of this discretionary power is that the facts be carefully examined on a case-by-case basis, thus preventing it from becoming an absolute power, thereby protecting the administrative subject. In one of its rulings, the Administrative Court stated: "While the medical committee has discretionary power to accept or reject sick leave requests, it is required to provide reasons for its decision when it refuses approval... Before issuing its opinion, it must verify the facts and examine the medical certificates submitted to determine whether the appellant's health condition prevents her from resuming work" (Case No. 19543, December 27, 2002).

There is a close relationship between providing reasons and thoroughly examining the facts of each case. A detailed examination of each situation and a weighing of its positive and negative aspects are essential. Generic reasons should not be given. Sound reasoning results from a thorough and individual examination of each situation, avoiding reliance on general arguments while taking into account the specific circumstances of each case. This approach ensures sound decision-making and prevents arbitrary actions by the administration. Therefore, reasoned decisions can be considered a mechanism to limit administrative abuse, especially when discretion is involved.

Furthermore, reasoned decisions contribute to the quality of administrative decisions, provided they meet the standards of clarity and precision established by case law, enabling the affected party to understand the reasons for the decision and prepare their defense if they choose to appeal.

Secondly. Reasoning and Transparency in Administrative Operations:

In optics, transparency is the physical property that allows light to pass through a material. However, transparency in the context of behavior is a metaphorical concept, referring to clarity and openness regarding the actions of individuals or groups. In the Arabic language, transparency means something that is see-through, allowing one to see what is beyond it¹. It also signifies clarity, transparency, and the creation of an environment where information is accessible and understandable. Its opposite is opacity and secrecy. Therefore, transparency enables access to what is hidden and unavailable².

Decree No. 4030 of 2014, dated October 3, 2014, concerning the approval of the Code of Conduct and Ethics for Public Servants, defines transparency as "clarity within the public administration and in its relationship with citizens –

¹ Lisan al-Arab

² CHEVALLIER (J.), The myth of administrative transparency, in Information et transparence administrative, PUF, 1988, p. 252

service users or taxpayers – and the public disclosure of procedures, purposes, and objectives."

Consequently, transparency requires the implementation of mechanisms that allow the public to monitor and access administrative activities¹. This ensures that the administration operates under public scrutiny, fostering a sense of responsibility among public servants, making them more cautious and accountable. This also makes public services more open and accessible to the public.

Numerous legal texts enshrine the principle of transparency in public administration. Among these, we can mention (listed chronologically):

- Decree no. 982 of July 26, 1993, concerning the general framework for relations between the administration and the public.

- Decree no. 1880 of 1993, dated September 13, 1993, concerning the system of communication and administrative guidance.

- Decree no. 41 of May 26, 2011, concerning access to administrative documents of public bodies, particularly Article 3: "Every natural or legal person has the right to access administrative documents."

- Decree no. 115 of November 2, 2011, concerning freedom of the press, printing, and publishing: article 10: "Journalists, like all citizens, have the right of access to information...."

- Decree no. 116 of 2011 concerning freedom of audiovisual communication and the establishment of an independent High Authority for Audiovisual Communication: article 4: "Every citizen has the right to access information and to audiovisual communication."

- Constitution of 2014: article 15: "Public administration is at the service of the citizen and the public interest; it is organized and operates according to the principles of neutrality, equality, and the continuity of public service, and in accordance with the principles of transparency, integrity, efficiency, and accountability." Article 32: "The State guarantees the right to information and the right of access to information." - Law no. 22 of March 24, 2016, concerning the right of access to information – Articles 6, 9, and 30.

- The Local Authorities Act, issued pursuant to Organic Law no. 29 of May 9, 2018, which mandates that individual decisions made by local authorities be reasoned (Articles 277 and 347).

- Law no. 46 of August 1, 2018, concerning the declaration of assets and interests, and the combating of illicit enrichment and conflicts of interest: Article 1: "This law aims to promote transparency, reinforce the principles of integrity,

¹ DABBOU BEN AYED (S.), Transparency in Tunisia : Reality or Appearance ?, Liber Amicorum in Honour of Jacqueline MORRAND-DEVILLER, Montchrestien, 2007, p. 267.

impartiality, and accountability, combat illicit enrichment, and protect public funds."

- Government Decree no. 310 of May 15, 2020, concerning the conditions, procedures, and timelines for simplifying administrative procedures, reducing processing times, using modern communication methods, and promoting transparency in transactions between public entities and investors and economic institutions.

- 2022 Constitution: While transparency was not explicitly mentioned in article 19, article 38 enshrines the right of access to information: "The State guarantees the right to information and the right of access to information. The State shall strive to guarantee the right of access to communication networks."

In legal case law, the Administrative Court has elevated transparency to the status of a general legal principle. This was demonstrated in its urgent ruling of November 24, 2016, in which it ordered the Truth and Dignity Commission to provide the "Ana Yakith" association with a draft settlement agreement with one of former President Ben Ali's relatives.

Administrative transparency requires the implementation of mechanisms that allow those affected by administrative actions to access information about those actions, including the provision of reasoned explanations. This was explicitly stated by the Administrative Court in one of its rulings: "Finally, requiring the administration to provide reasons for disciplinary decisions reinforces the rule of law, as stipulated in article 5 of the Constitution. This includes transparency in administrative actions, seeking to bring the administration closer to its staff and those affected by its decisions, and promoting public trust in the state and its institutions." (Case No. 19987, November 22, 2003).

When the administration provides reasons for its decisions, it operates transparently. Through the explanation and justification included in the decision, those affected can understand and comprehend the reasons for the decision¹. The Administrative Court states in this regard: "...the purpose of providing reasons is only achieved when they are clear and sufficient to allow understanding of the reasons that led the administration to take the decision" (Case No. 13679, March 2, 2007).

Therefore, this mechanism leads to an improvement in the relationship between the administration and those affected by its decisions, and contributes to its democratization. Providing justifications for decisions fosters communication with those affected, leading to dialogue. This transforms those affected from passive recipients to active participants, thus elevating them to the status of

¹ OBERDORFF (H.), The emergence of a right to understand the administration and the law, EDCE 1991, p. 229.

citizens. Transparency is a fundamental requirement and cornerstone of democracy and citizenship. Failing to explain the reasons for a decision diminishes the status and dignity of those affected, treating them as if they were incapable of understanding. This era has passed; it is outdated. The administration must recognize and acknowledge that it is dealing with rational, free, and responsible individuals¹]. Providing justifications enhances the status and legal standing of those affected and preserves their dignity, potentially fostering a positive human relationship between the administration and those it serves. The Administrative Court, in the Majri case, highlighted the role of providing justifications in bringing the administration closer to those it serves (Case No. 19987, November 22, 2003). This is not about geographical proximity, but rather intellectual understanding.

Providing justifications also helps reduce the tension and conflict that often characterize the vertical relationship between the administration and those affected. Making a decision without explaining its reasons creates a hostile atmosphere and undermines trust in the state and its institutions. Secrecy has always been, and continues to be, a source of suspicion and mistrust. By disclosing the reasons for a decision, the administration instills a sense of comfort and confidence in the affected party, thus enhancing the acceptability of administrative decisions and ensuring voluntary compliance (moving from mere compliance to conscious compliance). This fosters a climate of trust in the state and its institutions, as highlighted by the Administrative Court in the Majri case. Voluntary compliance is an inevitable result of understanding and comprehending the rationale behind a decision; the affected party can then decide whether to appeal to the courts or accept the legitimacy of the decision and take appropriate action. The Administrative Court has emphasized this point on several occasions: "...This is sufficient justification to ensure that the concerned party is fully aware of their rights, enabling them to challenge the decision or take remedial action" (Case No. 12060, April 26, 2005). In another case, the court stated: "The case law of this court has consistently required that the reasoning behind disciplinary decisions be sufficiently clear to allow the affected party to understand the situation and take appropriate action if necessary" (Case No. 19585, January 19, 2002).

Furthermore, providing reasons facilitates the court's supervisory role. In the Mas'ei case, the Administrative Court stated: "The case law of this court has consistently held that the reasoning behind disciplinary decisions must be sufficiently detailed to reveal the factual and legal grounds upon which the decision is based, enabling the employee subject to the disciplinary action to review the reasons and prepare their defense, and allowing the court to exercise its

¹ RIVERO (R.), "On the Transformations of Administration Today: Democracy and Administration," in *Liber Amicorum* in honour of R. SAVATIER, Dalloz, Paris 1965, p. 822.

oversight function regarding the facts of the case" (Case No. 18752, November 22, 2001).

THE SECOND TOPIC: THE DUTY TO PROVIDE REASONS GUARANTEES THE PROPER ADMINISTRATION OF JUSTICE

The concept of proper administration of justice was adopted by the French Constitutional Council (Constitutional Council, Decision No. 86-224 DC of January 23, 1987) and has been upheld by the Administrative Court in numerous cases (Cases Nos. 16000, 16337 and 16473 of November 17, 1999). Legal scholars have also extensively discussed this concept ¹. They have attempted to define it narrowly and broadly. From a narrow perspective, proper administration of justice is an objective that justifies certain exceptions to established principles and rules in order to facilitate the organization and functioning of the judiciary. From a broader perspective, proper administration of justice encompasses a range of objectives, the achievement of which depends on both the judiciary and the judges themselves. Among the requirements of proper administration of justice, according to this broader definition, is the prompt resolution of disputes. Providing reasoned judgments is one of the mechanisms that lead to faster resolution of cases (First requirement) and facilitate judicial review of administrative decisions (Second requirement).

First requirement : Providing Reasons and Faster Resolution of Cases

Disclosing the reasons for a decision tends to reduce the number of cases. The more convinced the affected party is of the legitimacy of the decision, the less likely they are to sue the administration, thus reducing the burden on the courts, which inevitably leads to shorter case resolution times. Therefore, providing reasons becomes a mechanism to avoid litigation, playing a preventive role and acting as a filtering tool; only cases that the affected party considers valid will reach the court.

Providing reasons also contributes to faster case resolution because this mechanism saves the judge from resorting to additional investigative procedures. This was affirmed by the Administrative Court in the Majri case: "Furthermore, disregarding the aforementioned general legal principle—namely, providing reasons—would force the judge, tasked with reviewing the legality of these decisions, to resort to additional investigative procedures, which could be avoided, in order to ascertain the true reasons for the decision. This inevitably leads to

¹ ROBERT (J.), "The Sound Administration of Justice," AJDA, Special Issue, June 20, 1995, p. 117; BERTEGI (B.), "Organization of Litigation and the Sound Administration of Justice," Doctoral Dissertation in Law, Faculty of Law and Political Sciences, Tunis, 2000; FAVRET (J.M.), "The Sound Administration of Justice," RFDA 2004, p. 944. It is a functional concept : CHAPUS (R.), "George Vedel and the Modernization of a Functional Concept: The Importance of a Sound Administration of Justice," RDP 2003, p. 3.

longer case resolution times, which is contrary to the principles of sound administration of justice..." (Case No. 19987, November 22, 2003). One of the advantages of providing reasons, therefore, is reducing the length of the investigation and, consequently, the duration of the dispute, especially since Tunisian law does not specify a time limit for completing investigative procedures; this is left to the judge's discretion. It goes without saying that lengthy litigation is one of the major problems facing the Tunisian administrative judiciary. Resolving a dispute within a reasonable timeframe is a requirement of fair trial. This is a dream shared by every litigant; what good are judgments that remain on court shelves for years, thus leading to the violation of rights?

Second requirement: Rationale Judicial Review of Administrative Decisions

The function of providing a rationale also contributes to facilitating the review of the legality of administrative decisions. When a judge assesses the legality of a decision, he does so based on the reasons stated in the decision itself—that is, in the rationale. The rationale also contributes to achieving justice through the thorough review conducted by the judge on the contested decision. It is well known that effective judicial review of the legality of an administrative decision requires that the judge be fully aware of the reasons for its adoption. Only then can judicial review be truly effective¹. It is true that the judge can review these reasons during the investigation phase. However, the rationale remains the most effective mechanism. Didn't B. PACTEAU describe the rationale as the simplest and most effective way to communicate the reasons for the decision to the party concerned by the administration²? The rationale is superior to simply providing the reasons to the judge during the investigation phase because, in the investigation phase, the reasons are revealed after the decision has been made, whereas when a judge assesses the legality of an administrative decision, he does so based on the reasons that existed at the time the decision was made. Is the rationale provided later by the administration truly decisive in determining the legality of the decision? It is essential to examine the justifications for a decision at the time it was made, as the legality of a decision is assessed based on the circumstances surrounding its adoption. The requirement to provide reasons is the only mechanism that ensures the administration discloses the grounds for its decision at the time it is made. When reviewing the legality of administrative decisions, the focus is on the reasons stated within the decision itself, without regard to any additional justifications that the administration may subsequently offer (Case No. 12691, December 9, 2006).

¹ LANGROD (G.), Administrative Procedure and Administrative Law, RDP 1948, p. 556.

² PACTEAU (B.), The Judge and the Abuse of Power: The Rationale of Administrative Acts, Clermont-Ferrand 1977, p. 52

While providing reasons for disciplinary penalties constitutes a fundamental procedural requirement concerning the external legality of the administrative decision, it also allows the judge to review other grounds for appeal, such as defects in jurisdiction and issues related to the internal legality of the administrative decision. Through the provision of reasons, the judge can identify defects in jurisdiction, errors of law, factual errors, and any abuse of power, etc. The case law of the Tunisian Administrative Court is the best evidence of the numerous grounds for appeal that the judge can examine through the requirement to provide reasons.

Firsty. Providing Reasons and Reviewing the External Legality of the Administrative Decision

The requirement to provide reasons allows the administrative judge to review defects in jurisdiction, which are defects that affect the external legality of the decision and public order. Providing reasons by mere reference to another document—which the Administrative Court has rejected in principle—renders the administrative decision flawed due to a defect in jurisdiction, because it was not issued by the competent disciplinary authority. "Whereas, as a fundamental principle of general law, the exercise of jurisdiction is generally vested in the authority designated by law, and the interpretation of jurisdictional rules must be strictly construed..." (Case No. 13731, dated April 3, 2007). "Whereas...the justification for the disciplinary action must be issued by the authority with disciplinary power, which alone has the authority to determine the misconduct constituting the subject of the disciplinary dispute" (Case No. 10768, dated February 24, 2004). "Whereas, the reference to the referral report (meaning the referral to the disciplinary council) included in the disciplinary decision is irrelevant, since the justification must be issued by the authority with disciplinary power, which alone has the authority to determine the misconduct subject to disciplinary action" (Case No. 24336, dated June 25, 2003). Furthermore, relying on the opinion of an advisory body (the disciplinary council), whose consultation is mandatory but whose opinion is not binding, renders the disciplinary decision flawed in terms of jurisdiction. In this regard, the Administrative Court states: « The case law of this court has established that including the recommendations of the disciplinary council in disciplinary decisions does not constitute valid legal justification, since the authority with disciplinary power is not bound by the council's recommendation or its reasoning. Therefore, the absence of the grounds for imposing the dismissal penalty on the plaintiff in the contested decision violates the principle of reasoned disciplinary decisions and necessitates its annulment on this basis » (Case No. 18804, dated November 30, 2001). In another case, the Administrative Court clarifies :« Upon examining the contested decision,

it is clear that its text omitted to state the reasons for the disciplinary action taken against the employee, merely referring in its preamble to the recommendation of the disciplinary committee ».

This Court's case law has consistently held that a legally valid disciplinary decision must precisely and clearly state the misconduct for which the employee was punished. The administration cannot simply refer to the disciplinary committee's report in the decision, as such a report is merely a recommendation that the decision-making authority may accept in whole or in part, or even disregard.

Referring to the disciplinary committee's report in the preamble of the decision does not constitute proper justification, which requires stating the reasons justifying the imposed penalty within the disciplinary decision itself. « This allows the affected employee to identify and prepare their defense accordingly, a requirement that exists even in the absence of an explicit legal provision, as it relates to the right to defense, which, as is generally accepted in legal doctrine and jurisprudence, is a fundamental principle of law ».(Case No. 18850, December 15, 2001). In these cases, the judge identified a jurisdictional defect based on a violation of a fundamental procedural requirement.

Furthermore, the administration's failure to address each situation individually constitutes a negative jurisdictional defect, as it failed to exercise the authority granted to it by law. It is essential that the disciplinary decision itself clearly and completely state the specific misconduct attributed to the employee for which the penalty was imposed. Therefore, the court only accepts "sufficient reasoning that allows for understanding the factual and legal grounds upon which the disciplinary decision is based" (Case No. 18752, November 22, 2001). Legally acceptable reasoning must meet the criteria of clarity and precision. Consequently, the court rejects general reasoning, lacking precision, in which the administration provides vague, ambiguous, or general reasons. In this context, the court states: "The reasoning must be substantial; merely stating vague, ambiguous, or general reasons is insufficient" (Civil Appeal Case No. 34328, January 13, 1995). "The purpose of providing reasoning is only achieved when the decision is clear and comprehensive enough to allow for its understanding and comprehension of the reasons that led the administration to take it" (Case No. 3628, January 13, 1996).

Secondly : Reasoning and Judicial Review of the Internal Legality of Administrative Decisions

Providing reasons for disciplinary sanctions facilitates the monitoring of the internal legality of administrative decisions, as it eases oversight regarding the motive, object, and purpose of the decision.

Regarding the motive, good justification reflects the administration's careful consideration of the facts and its appropriate selection of the legal basis. Through justification, the judge in a case of abuse of power can uncover legal or factual errors—such as the inaccuracy of the facts on which a sanction was based, or the existence of a serious misjudgment in the contested decision.

Justification can also reveal the hidden intentions of the decision-making authority. For example, in an appeal against a transfer decision, the court found it to be a disguised disciplinary sanction, made without adhering to proper disciplinary procedures. The reasoning revealed the presence of disciplinary offenses, prompting the court to annul the decision due to procedural deviation (Case No. 231 dated May 18, 1979). The case law of the administrative court has established that procedural deviation arises when the administrative authority resorts to a specific procedure in a particular situation to achieve a public interest goal, while the law required a different procedure for such a case (Case No. 128546 dated January 13, 2015).

If the declared motive of the decision does not actually exist, then it constitutes abuse of power, as the administration has deviated from the purpose for which it was granted such authority. Jurisprudence has consistently held that abuse of power is a flaw in the administrative decision, involving the intentional misuse by the administrative authority of its lawful powers to serve a goal unrelated to the purpose for which those powers were granted (Ruling in disputes of the High Council of the Judiciary, Case No. 212275 dated May 8, 2018). In one of its rulings, the court explained regarding the appeal based on abuse of power: « It is settled administrative case law that the court has the authority to oversee the element of motive in administrative decisions. If it is proven that the authority issuing the decision has declared a non-existent motive, the flaw affecting the administrative decision is considered an abuse of power, as it deviates from its intended goal, which is to serve the public interest ».

Conclusion:

Results

The duty to provide reasons cannot be reduced to a mere procedural formality imposed by statutory provisions or judicial requirements. Rather, it constitutes a substantive legal mechanism endowed with considerable normative and functional value, faithfully reflecting the profound and continuous transformation of administrative law. Reasoning epitomizes the paradigmatic shift in the relationship between the administration and its addressees: from a relationship of authority and subordination to one increasingly grounded in dialogue, accountability, and rights. The individual, once merely subject to administrative power, is now elevated—by

virtue of constitutional norms—to the status of a citizen vested with enforceable rights vis-à-vis the administration. This evolution underpins the emergence of the concept of administrative citizenship.

The obligation to state reasons further attests to the evolution of administrative action and governance techniques. Mandatory reasoning has significantly curtailed administrative secrecy¹ and, concomitantly, has contributed to the gradual contraction of the traditional prerogatives of public authority. While the administration continues to enjoy certain privileges justified by the specific nature of the public interest missions entrusted to it, these prerogatives are now counterbalanced by an expanding set of legal constraints², the primary objective of which is the protection of the administrative addressee and the reinforcement of legal certainty.

The duty to provide reasons vividly illustrates the progressive erosion of the unilateral character of administrative decisions. The administrative addressee can no longer be regarded as a passive and powerless recipient confronted with the machinery of administrative authority. Instead, reasoning fosters a more participatory decision-making process, in which the individual assumes the role of an active interlocutor and, in certain circumstances, a genuine partner in the formulation of administrative decisions.

By compelling the administration to articulate the factual and legal grounds underpinning its decisions, reasoning contributes decisively to the rationalization of administrative action and to the structuring and containment of discretionary power, thereby reducing arbitrariness and enhancing the coherence of administrative practice.

The duty to provide reasons plays a pivotal role in improving the relationship between the administration and its addressees, nurturing trust in public institutions and consolidating the legitimacy of administrative action.

Finally, reasoning constitutes a fundamental procedural guarantee ensuring the effective exercise of the right of access to justice and the right of defence, by enabling individuals to understand, challenge, and subject administrative decisions to meaningful judicial scrutiny.

¹ JENAYAH (R.), Transparency and Administrative Secrecy in Public Action, in Transparency and Law, collective volume in honour of Dean Néji BACCOUCHE, Publication of the Centre for Fiscal Studies, Faculty of Legal, Political and Social Sciences, 2020/2021, p. 113.

² MELLERAY (F.), The Exorbitant Nature of Administrative Law Reconsidered, AJDA, 2003, no. 37, p. 1961.

Recommendations and suggestions

- The traditional principle according to which « no reasoning is required in the absence of a specific legal provision » must be abandoned. Mandatory reasoning should instead be established as the general rule governing the adoption of administrative decisions, in light of its undeniable advantages for citizens, for the administration itself, and for the effectiveness of judicial review.
- In a State aspiring to forge a modern and balanced relationship with its administrative addressees—one that is fully consistent with a constitutional order enshrining the concept of citizenship—mandatory reasoning must be elevated to the rank of a general principle applicable to all administrative decisions.
- The obligation to provide reasons should be expressly enshrined at the constitutional level, thereby affirming its foundational character within the legal order¹.
- Contemporary doctrines of administrative democracy, participatory governance, administrative citizenship, and transparency of administrative action unequivocally impose upon the administration a duty to provide reasoned administrative decisions.

Bibliography List setting

- In Arabic

- Al-Arabi (M.) and Al-Qallal (N.), Investigation, Presentation delivered at the Administrative Justice Conference following the Reforms of June 3, 1996, National School of Administration, Tunis 2002, p. 66.

- In French:

- BOOKS

- BOUSTA (R.), Essay on the Concept of Good Administration in Public Law, L'Harmattan, 2010.
- CHAPUS (R.), General Administrative Law, Volume I, No. 1318, 15th ed., Montchrestien, Paris, 2001.
- HAURIOU (M.), Treatise on Administrative Law and Public Law, 12th edition, Dalloz, 2002.
- MESTRE (A.), The Council of State as Protector of Administrative Powers, LGDJ 1974.

¹ M. GARGOURI, The Reasoning of Administrative Decisions, Legal Studies, 2012, p. 116 : « Reasoning should be elevated to the status it truly deserves, namely that of a constitutional requirement. Absent such a revolution, any discourse on administrative democracy, on participatory logic in the relationship between the administration and administrative addressees, and on the transition from an administered subject to an administered citizen or partner remains substantively illusory ».

- PACTEAU (B.), The Judge of Ultra Vires and the Justification of Administrative Acts, Clermont-Ferrand, 1977.

- ARTICLES:

- BOUGUERRA (F.), Essay on Good Administration of Justice, Studies in Administrative Law, No. 1, 2022, p. 51.
- BOURCIER (D.) and KOUBI (G.), "Accountability of Decision-Makers and Information Systems," AJDA 1999, p. 4.
- BRAIBANT (G.), Right of Access and Right to Information, in Essays in Honor of R. Charlier, 1981, p. 704.
- CHAPUS (R.), « George Vedel and the Modernization of a Functional Concept: The Importance of Good Administration of Justice », RDP 2003, p. 3.
- CHEVALLIER (J.), The Myth of Administrative Transparency, in Information and Administrative Transparency, PUF, 1988, p. 252.
- DABBOU BEN AYED (S.), Transparency in Tunisia: Reality or Illusion?, Essays in Honor of Jacqueline MORRAND-DEVILLER, Montchrestien, 2007, p. 267.
- DEBBASCH (CH.), Introduction, in Administrative Transparency in Europe, Paris, CNRS, 1990, p. 11.
- FAVRET (J.M.), Good Administration of Justice, RFDA 2004, p. 944.
- GARGOURI (M.), The Justification of Administrative Decisions, Legal Studies, 2012, p. 116.
- HOLLEAUX (A.), The Laws of the Third Generation of Human Rights, RFDA 1980, p. 527.
- JENAYAH (R.), Transparency and Administrative Secrecy in Public Policy, in Transparency and Law, Collective Work in Honor of Dean Nejib BACCOUCHE, Publication of the Fiscal Studies Center of the FDS, 2020/2021, p. 113.
- JEZE (G.), Essay on a General Theory of the Influence of Underlying Motives on the Validity of Legal Acts in French Public Law, RDP 1922, p. 386.
- LANGROD (G.), Administrative Procedure and Administrative Law, RDP 1948, p. 556.
- MELLERAY (F.), The Question of the Exceptional Powers of Administrative Law, AJDA 2003, 37, p. 1961.
- MOULIN (R.), The Rule of Specific Examination of the File: An Ambiguous Extrapolation, AJDA 1980, p. 443.
- OBERDORFF (H.), The Emergence of a Right to Understand Administration and Law, EDCE 1991, p. 229.

- RIBOT (C.), Measures Taken Regarding the Individual in Public Service Litigation, RDP 1992, p. 205.
- RIVERO (R.), On the Transformations of Administration Today: Democracy and Administration, Essays in Honor of R. SAVATIER, Dalloz, Paris 1965, p. 822.
- ROBERT (J.), Good Administration of Justice, AJDA, Special Issue, June 20, 1995, p. 117.