



Research Article

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Received: 8 August 2022 / Accepted: 12 October 2022 / Published: 5 November 2022

Judicial Control Over Negative Administrative Decisions in the Saudi Legal System

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DOI: <https://doi.org/10.36941/ajis-2022-0146>

Abstract

In this study, we discuss the negative decision concept as the legal characterization approved by the Law for Administration's abstention or refusal to issue a decision, which is obligated to give in accordance with the laws and regulations. The study aims to determine the possibility of challenging its negative position and recouring if the Administrative Authority fails to perform its duty or Circumvent Law in a manner that prejudices individuals' interests. We have clarified that every silence or abstention from Administration is not a negative decision. Rather, it is required that the Authority of Administration should be restricted upon its silence or refrain from doing as per legal requirements. Further, the negative administrative decision is a legal characterization that is not embodied in a material form, and its issuance is not subject to formal and statutory rules established for issuing explicit decisions. Therefore, it does not need to be announced to be effective in facing individuals. It is also characterized by several characteristics that distinguish it from other decisions. For example, a negative decision of the Administration may be appealed by an annulment suit after the grievance to the Administrative Authority and fulfilling the annulment lawsuit conditions. In addition, compensation for a negative decision could be obtained through a compensation claim if the damage results from Administration's failure to perform its legal duty.

Keywords: Principle of legality, administrative decision, negative decision, Administrative Authority, annulment suit

1. Introduction

The administrative decision is an important legal means and a feature of the public authority that the Administration enjoys exercising its administrative activity. It is issued by Administration unilaterally as per its authority under the laws and regulations and shall have its legal effects to achieve the public interest. The rule is that Administration expresses its will explicitly by declaring it positively. However, Administration may sometimes remain silent and take a negative attitude. It is called a "negative administrative decision," being a legal characterization of the Administration's silence and failure to make decisions that it should have taken by virtue of the Law.

The aim of that legal characterization approved by Law regarding the Administration's negative attitude is to achieve the balance between the public interest sought by Administration and individuals' private interest for possible appealing against Administration's negative position in case

Administrative Authority fails to perform its duty. It prejudices individuals' interests, provided that its power is restricted. It is obliged to take that action, and the statutory conditions for its issuance are provided. This research addresses the Administration's liability for its silence and negative attitude of failure to take any action that it is legally obligated to take, which prejudices individuals' interests. It also addresses how to confront this Administration's negative attitude before administrative courts despite the lack of expression of its binding will in the form of a decision to be issued by it, and to what extent it is possible to compensate for the damages arising from the Administration's silence in the case in explicit administrative decisions.

The significance of the study is to emphasize the need for Administrative Authority to respect the principle of legality and the rule of law, not only in positive and explicit decisions issued by the Administration but also in the event of its stubbornness, arbitrariness, and taking a negative stance through failure to perform its legal duty. There is no doubt that holding the Administration liable in this case represents protection for individuals from the Administration's negative position, circumvention of the law, and deviation from the Lawfulness principle through its silence or refusal to issue a decision that it should have taken under the law, which would harm individuals' interests. The research objectives are inquiring about negative administrative decisions, distinguishing negative decisions from other administrative decisions, exploring conditions to exist in negative administrative decisions for a possible appeal, and mentioning possible compensation for negative administrative decisions.

The research requires adopting the analytical approach to the legal texts and judicial judgments issued by the Saudi Board of Grievances and the Egyptian administrative courts concerning the negative decisions in question. The aim is to clarify the characteristics and fundamentals of negative decisions, distinguish them from other administrative decisions, and determine the extent to which these can be canceled and compensated.

2. Administrative Decisions

To clarify the nature of negative decisions, we must first explain their concept and then present their pillars as follows:

2.1 Administrative decisions concept

To clarify the negative decision concept, we should first highlight the administrative decision concept to describe the conditions and characteristics of each and distinguish between them to explain the essence of negative decisions. An administrative decision means that the Administration's disclosure of its binding will comply with its authority under the laws and regulations aiming to create a legal position whenever it is possible and legally permissible to achieve public interest (Shatnawi, 2014, p.296). It is defined as a final legal action issued by an individual and binding well by the national general Administration by virtue of its authority under laws and regulations and in the form required by law to create, amend, or cancel a specific legal right or obligation, whenever possible and legally permissible and to achieve public interest (Al Ajmi and Thinibat, 2016, p.239) The Saudi Board of Grievances defines an administrative decision as the Administration's disclosure of its binding will with its authority under laws and regulations with the intent of creating a legal effect that is permissible and legally possible (Board of Grievances, 2016).

It becomes clear from the previous definitions that a will disclosure or expression is a condition for the administrative decision to have an external appearance and a physical presence. However, this is not necessarily the case. An administrative decision may exist when Administrative Authority refrains or refuses in certain circumstances. There are cases where the Administration's silence is a presumption of the existence of the decision when the Administrative Authority refrains from making a decision that the Law obliges it to take within the framework of its restricted authority, which is known as the negative decision (Al-Ajmi and Thinibat, 2016, p.239). Some legal experts have

defined the negative decision as Administration's refusal or abstention from taking an action that it should have taken following laws and regulations" (Al-Zubaidi, 2006, p.338). It is also defined as "the Administration's failure to issue decisions that it must issue in accordance with Law" (Al-Yousef, 2019, p. 218). Egyptian law provided that it shall be considered an administrative decision the administrative authorities' refusal or abstention from taking a decision that they should have taken under rules and regulations". Board of Grievances (2016) stipulated that "it shall be considered as administrative decision, administration's refusal or failure to make a decision that it should have taken under laws and regulations."

Accordingly, a negative decision does not exist unless Administration refrains from making a decision that it should have taken under laws and regulations with the availability of conditions and controls required by law to issue it. So, Administration is obligated to give the decision. Therefore, its refusal constitutes a negative decision that may be appealed by annulment. It was confirmed by the Egyptian Supreme Administrative Court when it ruled as follows: "as it is established that a negative decision cannot be said to exist and be appealed by annulment under Article 10 of the State Council Law promulgated by Law No.47 of 1972 unless it is proven that Administrative Authority has refrained or failed to comply with the conditions and controls required by Law to intervene to bring about a given procedure. Suppose it is impossible to issue such a decision, which must be issued. In that case, its refusal to issue it does not constitute a negative decision, which may be appealed against by annulment" (Shatnawi, 2014, p.301).

2.2 Negative Decision Fundamentals

Like all administrative decisions, a negative decision must have its pillars in terms of jurisdiction, form, subject, reason, and purpose. A negative decision is nothing more than an administrative decision. As a rule, its pillars must be provided and subject to the rule of all administrative decisions (Khalifa, 2018, p.2908), except that the application of this rule concerning the negative decision is not practically possible, as it contradicts its nature is just an assumption from the legislator regarding silence from Administration in some instances, it does not materially exist. The Administration remains silent to decide that it is obliged to issue under law. Here, the Administrative Authority takes a negative attitude by abstention and may announce its will to refrain from giving a decision, which should be given in case of qualification of all its conditions (Abdel Qader, 2013, p.44).

The negative decision exists in Administration's abstention in cases where the Law requires it to take legal action while it takes a negative position (Al-Atti, 2015, p.27). The elements necessary for any administrative decision are provided similarly to other administrative decisions but consistent with the negative decision's nature. The rules compiled by the Administrative Authority do not apply to the negative decision. When it comes to forming, negative decisions do not require a specific form like other administrative decisions, as it has no material existence. As for the element of reason in negative decisions, there is a difference between the obligatory causation of decisions as a formal condition required by law and the decision's mandatory reliance on a reason that justifies it as one of its pillars (Khalifa, 2018, p.2911). Here, the reason for the negative decision is that there is no legal justification for Administration to refrain from taking the required action. Concerning the condition of causation, the principle is that Administration is not obligated to cause its decisions. As for negative decisions, the rule is that it is not subject to causation because it is unwritten and does not have a physical existence. Rather, it is a legal assumption for Administration's abstention (Salamah, 2011, p.62). Regarding the pillar of a subject, it is the legal position which Administration intends to bring about. A negative decision's subject is achieved in the legal effect of the Administration's failure to perform its duty. If the abstention is not legally based, then the object is illegal, which is the subject of the negative decision (Al-Atti, 2015, p.29). If abstinence is based on law, then we will not have a negative decision. As for jurisdiction which must be met, Administration must be competent to issue the decision. If it is not, no negative decisions shall exist. However, if it is legally competent and fails to make a negative decision, then it will arise.

3. Distinguishing Negative Decisions from other Administrative Decisions

Not every silence or abstention from Administration is a negative decision. Instead, for a negative decision to exist, the Administrative Body must be legally obliged to take a specific decision so that its refusal represents a negative decision, which can be challenged by annulment (Khalifa, 2018, p.2901). Therefore, the administration's authority must be restricted in decision-making with no discretion or choice. If the law does not obligate the Administration to take an administrative decision in a particular matter and grants it the freedom of choice, its abstention, and silence, in this case, is not considered a negative decision (Salamah, 2011, p.14). Negative decisions have a special characteristic that distinguishes them from other administrative decisions and have their own features, although they are considered decisions that can be challenged by annulment. We will explain their characteristics, differences, and other administrative decisions as follows:

3.1 Negative decision characteristics

Negative decisions have the following characteristics:

3.1.1 Negative decision's enforceability does not require announcement:

The rule is that administrative decisions are considered effective against individuals only from the date they know them. Therefore, an administrative decision is not effective against individuals addressed by its provisions except the date of being known to them, whether this knowledge is certain by announcement or hypothetical by publication as per the decision type (Khalifa, 2018, p.2989). A negative administrative decision does not need an announcement to be effective against individuals for lacking material existence, which is based on the legislator's pure assumption of the Administration's negative position (Abdel Qader, 2013, p.44). This assumption is meant to protect individuals from Administration's stubbornness and silence to circumvent Law. A negative decision is considered effective as long as its conditions are met.

3.1.2 Negative administrative decisions are continuous:

In terms of their continuity of effects, administrative decisions are divided into administrative decisions with a direct impact and continuous decisions. The majority of administrative decisions have immediate effects (Al-Atti, 2015, p.30). Continuous decisions have their effects in a renewed and constant manner. They do not exhaust their content once they are applied but rather remain to have their impact until they end in one of the ways in which administrative decisions expire. A negative decision is considered a continuous decision as long as the Administration refrains from issuing the decision, which must be given. It was also confirmed by the Board of Grievances, where it decided that the "plaintiff's claim to oblige Administration to return him to his work from which he was dismissed is an appeal against Administration's negative decision represented in its refusal to return the plaintiff to his work, and negative decisions can be continuously challenged as long as abstention exists" (Board of Grievances, 2016). Accordingly, negative decisions are not immunized by the expiration of the legally established challenge period.

3.1.3 Lapse of time is not required to have a negative decision:

To have a negative decision, the lapse of a certain period after refusal or abstention is not required. Instead, it is sufficient for Administration to take a negative attitude to constitute a negative decision. It results from the Administration's refusal to issue a decision that it should have given. This characteristic distinguishes negative administrative decisions from implicit decisions (Moussa, 2002, p.11). An implicit decision is assumed by the legislator when Administration is silent about

responding to a request or grievance submitted to it within the period legally specified for rendering a judgment in addition to that. An example of an implicit decision is the acceptance of the employee's resignation that has been submitted for more than sixty days without the Administration's explicit response and the Administration's rejection of the administrative grievance, which has been submitted for sixty days without a response from the competent Authority (Al-Ajmi and Thinibat, 2016, p.227).

3.2 *Distinguishing negative decisions from other administrative decisions*

A negative decision must be distinguished from other administrative decisions due to the different legal effects as follows:

3.2.1 *Positive decision Vs. negative decision:*

A decision is considered positive if Administration discloses and issues it as required by law (Al-Yousef, 2019, p.212). Most of the Administration's decisions are positive, being disclosed and announced by Administration (Al-Ajmi, 2016, p.67). Their existence is achieved once their elements and conditions are met. A regulator does not assume their existence. However, they exist under Administration's will and intervention issuing them. But negative decisions are not issued by Administration. Rather, they are a legal characterization assumed by the regulator in the Administration's abstention and taking a negative position. Positive decisions may be claimed as direct effective decisions or continuous decisions other than negative decisions. By their nature, they are continuous only (Abu Al-Hamad, 2017). Accordingly, the deadline for appeal by the annulment of each one varies because the appeal against positive decisions is restricted to the legal appeal period, being sixty days (Shatnawi, 2014, p.296). It is not the case for negative decisions, which may be appealed without deadlines. Positive decisions differ from Negative decisions in terms of their end with the Administration's intervention. Positive decisions end with the Administration's intervention of administrative withdrawal or annulment, while negative decisions end with the Administration's intervention, positive conduct, and issuance of the decision, which must be issued. Thus, Administration's negative decision may end.

3.2.2 *Implicit decision Vs. negative decision:*

Not every Administration's silence is a negative decision. Its silence in other cases may result in considering its position a decision that has legal effects, but it is not a negative decision. The type of decision varies as per the type of Administration's Authority to take it, whether it is a restricted or discretionary authority. If it is discretionary, we will have an implicit decision and not a negative one (Al-Ajmi, 2016, p.67). But if it is restricted, we will have a negative decision. A negative decision may result only if the Administration's Authority is restricted. However, if Administration has a choice of its abstention, then it is not a negative but rather an implicit decision (Al-Yousef, 2019, p.215). Moreover, an implicit decision is not the subject of an annulment claim because it is the regulator's assumption regarding the Administration's silence in certain cases so that the person concerned is not prejudiced by the lapse of the period specified for the Administration to decide on his request and unlike negative decisions, which may be challenged by annulment. In addition, a negative decision is achieved by refusal or rejection. Still, an implicit decision may be a decision of rejection or acceptance in the case of considering the lapse of the resignation judging period, an implicit acceptance, and considering the lapse of time without deciding on the grievance of an implicit rejection (Moussa, 2002, p.15).

3.2.3 Invalid decision Vs. negative decision:

An invalid decision lacks any legal effect and is not binding to the Administration and individuals alike. Furthermore, correcting its defect does not make it valid, as the defect is so severe that it turns into a mere material act (Al-Ajmi and Thinibat and 2016, p.240). It is born dead in terms of its legal effects in the case of decisions, which lack jurisdiction and lose the pillar of the subject as if the decision was issued by an employee who does not have the authority to make a decision, or the decision was defective by violating the principle of separation of powers. For example, it is issued by a non-administrative authority. An invalid decision does not create a right nor impose an obligation. Appealing against it does not aim to annul it because it is legally void. It was confirmed by the Board of Grievances, which ruled that "the court concluded that the decision had a serious defect leading it to be deemed as non-existent. In this case it is not immune with the passage of time" (Board of Grievances, 2015). Unlike negative decisions, it is a decision that has a legal effect on the legal positions of individuals. Despite its violation of law, such a violation is not as grave as the invalid decision, which relegates it to the rank of material work.

4. End of Negative Administrative Decisions

Like other administrative decisions, negative decisions either end naturally when the Administration intervenes to issue the decision, which must take, or end unnaturally through court revocation (Al-Ajmi, 2016, p.135). A negative decision may be appealed with annulment when annulment conditions are met. The administration's silence may compensate the person affected by the Administration's negative attitude. We will explain this as follows:

4.1 Annulment of negative administrative decisions

Under Article 13/B of the Board of Grievances' Law, Administration's refusal or failure to make a decision that it should have taken under laws and regulations is considered an administrative decision. Therefore, negative decisions may be appealed by annulment because of being illegal decisions (Al-Atti, 2015, p.31). Administration, by refusing to make a decision that it is obligated to take by Law, has violated its legal obligations, which makes its negative decision defective and legally invalid (Al-Baqmi, 2011, p.131). Appeal against negative decisions is not restricted to a legal deadline for annulment lawsuits as long as the state of abstention is still in place as they are continuous decisions. Conditions for annulment lawsuits must be met for possible appeal against negative administrative decisions. These include submitting a prior administrative grievance to the Administrative Authority and the interest condition to file the lawsuit (Al-Sahrawi, 2017, p.176). When it comes to time conditions, these decisions are continuous by nature and not bound by the legal appeal deadline of 60 days. Annulment of a negative decision obliges the Administration to issue the decision that it must have given. We will discuss the two conditions of administrative grievance and interest for the possible challenge of negative decisions as follows:

4.1.1 Administrative grievance

The concerned person must file a grievance with Administration before filing an annulment lawsuit against the negative decision (Al-Zaher, 2011, p.199). Grievance in the annulment lawsuit is an obligatory grievance. It is a condition to accept the annulment lawsuit (Al-Ajmi and Thinibat, 2016, p.217). His failure leads to the non-acceptance of the lawsuit in form. There is no doubt that the condition of obligatory grievance gives the Administration a last opportunity to reconsider the negative decision and issue the decision, which must be issued. The purpose of this obligation may be to maintain the relationship between employees and Administration and to reduce administrative disputes before the administrative courts. However, the Board of Grievances' Law and the Law of

Procedure before the Board of Grievances did not provide for excluding negative decisions from the appointment's requirement in the annulment lawsuit. However, the nature of these decisions, being continuous decisions, requires it. Therefore, the grievance may be submitted to the Administration as long as it insists on its negative position. The Board of Grievances confirmed this in several rulings. It decided as follows "the period of appeal set for challenging the administrative decision stipulated in Law of Procedure before Board of Grievances does not apply in cases where the lawsuit's subject matter is the annulment of Board of Grievances' decision" (Board of Grievances, 2015).

Board of Grievances (2014) stated under paragraph 4 of Article 8 that "with respect to the case provided for in Article 13/b of the Board of Grievances' Law if it is not related to civil service affairs, it must be first submitted to the Administrative Court against issuing body within 60 days from the date of the notified decision. Knowledge is achieved by informing the concerned parties of it or publication in the official gazette if notification is impossible. Such body must decide on the grievance within 60 days from the submission date. If a rejection decision is issued, it must be justified. The lapse of sixty days from the date of grievance submission without a decision on it shall be considered the issuance of a rejection decision. Before filing the lawsuit, if it is related to civil service affairs, the grievance must be submitted to the Ministry of Civil Service alone and not the Administrative Authority within 60 days from the date of knowing the decision. The Ministry of Civil Service must decide on the grievance within 60 days from submission. Suppose a decision is issued to reject the grievance, or the specified period has elapsed without a decision. In this case, the case may be brought to the Administrative Court within 60 days from the date of knowledge of the rejection's decision or the lapse of the aforementioned 60 days without a decision on the grievance. (Board of Grievances, 2015).

4.1.2 Condition of Interest

Negative decisions that may be appealed by annulment are required to have an impact on the claimant's legal position (Al-Sahrawi, 2017, p.176). It is called the condition of interest. If it has no impact on the claimant's legal position, the case will not be accepted. Board of Grievances confirmed the rule as "the rule is that it is a condition of administrative decision to be final, enforceable and have a legal effect that would affect appellant's position. It is established that the decision under appeal was not final and enforceable and did not have any effect on the appellant's position. Therefore, it cannot be subject to appeal before courts as there is no litigation element" (Board of Grievances, 2018, p. 219). An appellant must have an interest that a person seeks to achieve. Interest means that the appellant has an interest in a special legal situation regarding the appealed decision, which would make the decision to have a direct impact on his legal position (Al-Ajmi and Thinibat 2016, p.219). In its interest, it is required that it continues until the date of issuing the ruling. Otherwise, the case will not be accepted. It is the rule, which has been established in the Board of Grievances' decisions. The annulment lawsuit is accepted only with the appellant's interest (Board of Grievances, 2016). Thus, the negative decisions that ended with the Administration's intervention and issuance of the legal capacity required decision shall fall outside the scope of the annulment lawsuit because of the absence of the condition of interest (Al-Qaisi, 2007, p.279).

4.2 Compensation for negative administrative decisions

Undoubtedly, Administration's negative attitude is a mistake on its part. Because the Administration failed to issue a decision that it should have taken under the Law. Nevertheless, this negative attitude may cause damage to the person concerned, and he shall have the right to claim compensation if tort elements are established on Administration's side. Rejection or refusal constitutes a public utility fault from Administration (Al-Yousef, 2019, p.287). We will discuss the conditions that must be met for possible compensation in favor of the person concerned about the Administration's negative decision. It is established that the Administration's responsibility for its non-contractual actions by

mistake is either making an illegal administrative decision or a material act that affected the persons concerned, which requires compensation (Al-Yousef, 2019, p.277). We present below the elements of the Administration's responsibility for its unlawful decisions, represented in fault and damage, and the causal relationship between fault and damage:

4.2.1 Fault

The fault that gives rise to Administration's responsibility may be a positive action from Administration or a refusal from Administration to issue a decision that it is legally obligated to issue. It may be deliberate or mere negligence (Al-Yousef, 2019, p.287). The cause of the Administration's responsibility for administrative decisions is that it is illegal through having illegal defects. The Administration's silence or failure to make a decision that it should have taken under laws and regulations is a public utility fault from Administration (Al-Jilali, 2016, p.288). It is the first pillar of its responsibility for negative decisions. It is left to the administrative judge to determine the fault, guided by the clear and tangible image that the fault takes in violation of the rules of legality based on not fulfilling its legal obligation and its negative attitude by refraining or refusing to issue the decision although its conditions are met. This abstention may be intentional or due to the Administration's negligence. However, it does not affect the existence of a fault on the Administration's part in both cases.

4.2.2 Element of damage as a basis for Administration's responsibility for negative decisions:

Damage is the fundamental element for establishing administrative responsibility. Without it, there is no responsibility to be held by Administration and no room for compensation (Al-Youssef, 2019, p.295). Damage and liability are inevitably associated with each other, being both existing and missing. For establishing administrative responsibility, the damage must be the direct result of the Administration's fault or action (Al-Jilali, 2016, p.275). If damage is indirect, there is no room for compensation. There must be damage that has been verified due to Administration's negative attitude. Damage may be material or moral. In order to be compensated for the damage, it must be a direct and established damage that prejudiced the concerned person's legal status (Salamah, 2011, p.98). The Board of Grievances decided, "whereas it is established in jurisprudence and by courts that so long as Administration's faults are the cause of damage to a person, then the such affected person is entitled to compensation for the damage caused to him" (Board of Grievances, 2015).

4.2.3 Causal relationship between fault and damage:

Damage must be the result of the Administration's fault to be obliged to be compensated (Shatnawi, 2014, p.266), i.e., the existence of a causal relationship between the Administration's fault of negative attitude and failure to perform its legal duty and the damage resulting from it for Administration to be committed for compensation. The Board of Grievances confirmed this in one of its rulings (Board of Grievances, 2014). It also decided in another judgment not to compensate due to lack of a causal relationship. It is ruled as "since this is the case, the causal relationship between damage and fault is not established, which prejudices the defendant's tort liability for lack of its elements" (Board of Grievances, 2014). Accordingly, Administration's fault must be the direct cause of damage. Thus, the causal relationship is a cornerstone of administrative responsibility, and it is not possible to hold the responsibility without it (Al-Jilali, 2016, p.298). Therefore, the victim bears the burden of proving the existence of a causal relationship between the Administration's fault for its illegal negative decision and the suffered damage.

4.3 Estimating compensation for negative decisions:

No legal rule obliges the administrative judge to follow certain criteria for estimating compensation value. It is left over the trial court's discretionary authority. Thus, the Board of Grievances ruled that "It has been established in Board to compensate for imprisonment if it is due to Administration's fault and the damage can be removed only by financial compensation. The compensation assessment varies as per each person's standard of living, monthly income, social status, reasonability, type of accusation, amount of material, and moral damage associated with imprisonment. Damage suffered by people due to imprisonment varies as per each person's standing and circumstances surrounding his imprisonment. Therefore, compensation varies. Estimating the compensation is left over by the competent judge after considering and examining the case file. The judge is the top expert in assessing compensation. The matter is not left to the plaintiff's or defendant's estimation (Board of Grievances, 2018). The rule is that compensation for damage resulting from Administration's fault should be in cash. However, as an exception from the rule, the administrative judge may allow Administration to choose monetary compensation or take an action that would compensate for the damage. Compensation can be as follows:

4.3.1 Cash compensation

The rule is that compensation should be in cash, i.e., the administrative judge decides to oblige the Administration that caused damage to pay a sum of money to the affected person. It is estimated by the administrative judge and not by the concerned person's request. Once Administration pays the amount decided by the judge, the compensation obligation will end (Khalifa, 2018, p.2923).

4.3.2 In-kind compensation

It means restitution to the state before damage. The matter is different in administrative disputes. A judge cannot order Administration to take a certain procedure. The administrative judge decides and does not administer, but he may let the administration choose to compensate the affected person in cash or in-kind (Shatnawi, 2014, p.281). The judge does not decide to order Administration to perform a specific action except in the case of the Administration's serious fault, which may amount to physical abuse. It includes the return of what the Administration has seized. In this way, the Board of Grievances decided the in-kind compensation "since the rule is that compensation for expropriation must be in cash, compensation may be made with the land if this is accepted by the owner" (Board of Grievances, 2018).

5. Conclusion

In this research paper, we have explained the concept of a negative decision. It becomes clear that a negative decision is Administration's refusal to issue an administrative decision that it should have issued under laws and regulations. The regulator would be established the legal characterization for Administration's silence about its failure to perform its duty in some cases. The legal characterization approved by law for Administration's negative attitude is intended to achieve a balance between the public interest that Administration seeks to achieve and individuals' private interests. It is achieved by establishing the possibility of challenging the Administration's negative attitude when it refuses to perform its duty or circumvents law to the detriment of individuals' interests. Thus, we conclude that not every silence or abstention from Administration is a negative decision. Rather, it is required that Administration's Authority be restricted upon its silence to do what Law requires. It is committed to issuing the decision when all issuance conditions are met. A negative decision is a legal assumption that is not embodied in a material form, and its issuance is not subject to formal and regulatory rules established for issuing explicit decisions. A negative decision has characteristics consistent with its

default nature, and it does not need to be published or announced to be effective. Implicit decisions differ from negative decisions. The first is not the subject of an annulment lawsuit, but the second may be challenged for annulment. Negative decisions are continuous as long as Administration refrains from performing its duty. It can be appealed regardless of appeal deadlines established by law. The administration's negative attitude of refusing to take legal and obligatory action is a violation of the legality principle and a fault on its part. So, an affected person can be compensated for such a refusal. The Saudi Board of Grievances considers a lawsuit of negative decision annulment when all its conditions are met. It is also competent to consider the claim for damage compensation resulting from such a negative decision, if tort elements of fault, cause, and the causal relationship between fault and damage are fulfilled.

Based on our conclusion, we recommend that it is necessary to amend Article 13/b of the Board of Grievances' Law issued by Royal Order No.M/78 issued on 19/9/1428AH. The Article makes the Administration's negative stance upon a judgmental decision that annulment can challenge. Because the regulator has legally allowed the Administration to remain silent and take a negative position, although its authority is restricted in this case. It is considered a legal loophole, which Administration exploits and carries a negative role to remain silent. It must be obligated to do its duty properly. In the event of inaction, it can be considered as an Administration's fault. The affected person is entitled to claim compensation directly through filing a compensation claim, whose procedures and conditions are easier than that of the annulment lawsuit that requires formal procedures and statutory deadlines that prolong the dispute. It is necessary to raise awareness about the types of decisions that the regulator assumes regarding the Administration's silence. Many people are unaware of those decisions. The regulator must intervene and decide that Administration must be committed to carrying out its legal duty to achieve the public interest to avoid any room for circumventing the law and remaining silent to prejudice individuals' interests.

6. Funding

This project was supported by the Deanship of Scientific Research at Prince Sattam bin Abdulaziz University under the research project # 2021/02/18987.

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