

Evaluation and analysis of process of addressing administrative violations in Iran

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Abstract: Since meeting general needs of people is one of the most important duties of government, government may neglect some individuals' rights in implicating these duties; therefore, administrative procedure is an important juridical issue which is considered by Iranian lawyers during the last years. Accordingly, based on laws of addressing administrative violations of governmental employees or some private organizations employees, the court of addressing administrative violations have been created. The present paper is a case study which discusses the process of addressing Iran's administrative violations according to the relevant laws and executive regulations. Since the involvement of government in doing general affairs and executing industrial and economic plans has increased, there should be special regulations to determine government's limitations for doing juridical duties and to guarantee individuals' public interests.

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Introduction

Historians believe that Iran's modern law is rooted in the years before 1906 (date of legislation of constitutionality in Iran. (Damghani, 1978, p. 17) the first European style ministry was founded in 1859, then in 1863 the ministry of Justice was founded by the commandment of Nasereddin Shah. In 1922, State Employment Law was enacted and then it replaced all previous rules. In this law, the ways of administrative procedure for different penalties and punishments were predicted. For the first time, article 64 of this law has discussed the foundation of governmental council. The existence of law in offices is not enough to guarantee people's rights; there must be rightful characters to observe the correct process of implementing laws. Therefore it is necessary for these rightful characters both to control the implementation of administrative activities and to report administrative violations of employers and employees. Finally the law of addressing administrative violations was legislated by members of Islamic parliament of Iran in 1993, then it received the affirmation of Guardian council, later its regulations were also approved in a 6 months period by the board of ministers. These regulations are feasible now in the offices. In this research according to laws related to addressing violations, the process of addressing administrative violations in Iran would be examined.

Administrative procedure is usually divided into general administrative procedure and specific administrative procedure. These two kinds are usually under authority of Executive branch of Iran.

Moreover, specific administrative offices in Iran are various. These offices include external boards addressing administrative violations, appeals boards, supervision boards, investigation groups and the court of administrative justice.

Main body

Board of magistrates addressing administrative violations

Board of magistrates of addressing administrative violations is the beginning stage of addressing administrative violations. Here we examine these boards. Article 1 related to the law of addressing administrative violations (legislated in 1993) maintains that the board of addressing administrative violations is in charge of addressing violations in offices. Considering rules related to electing members of this board is necessary. Each member of the board is elected by commandment of the minister or the highest ranked member of a governmental relevant organization for a period of 3 years. The board has three main members and one or two alternative members for three years, and electing them for the second period is not rejected. (Article 2 related to law of addressing administrative violations). These boards choose among themselves, the main members. One person takes the responsibility of being master; the other gets the master assistant and the third person gets secretary to do the official letter writings of the office. According to this article, these board letters are valid with the master's signature and in his absence with his master assistant's signature. (Article 5 related to executive regulations of law of addressing administrative

violations). Members of board are both main members and alternative members, whenever a main member could not attend in the meeting, an alternative member should be there on behalf of the main member, so that, the votes of meeting could be confirmed logically. Board members should have some personal or general characteristics to be elected.

1. Personal characteristics: according to article 6 of addressing administrative violations, members must be Muslim, have a degree higher than diploma and be married; they also must be at least 30 years old. Moreover, members not only need to be Muslim and do all commandments of Islam, they also need to accept and respect Islamic republic regime of Iran. 2. General characteristics: Not being member of appeals board and board of magistrates simultaneously (note 2 of article 6 related to addressing administrative violations). At least, two main members of board of magistrates or appeals board should be elected among employers of that ministry or organization with at least 5 years working background. (note 2 of article 6 related to law of addressing administrative violations)

At least one member of board must be familiar with juridical issues. Moreover, some say that one member should have Bachelor of Arts with a major in Law. (Abbasi, 2010,p:263)

The point is that, though having at least one member being familiar with juridical issues is necessary, his presence in the meetings is not necessary and without his presence the meeting is officially held.

As it was mentioned, the election of members happen based on decision of minister or highest ranked member of a relevant and independent organization, the members would be elected for a period of three years. Firing a member from board also happens based on decision of minister or the highest ranked member of an independent organization or other institutions included in note 1 of article 1 and with the approval of supreme board of supervision. (Article 3 of law of addressing administrative violations). According to article two, supreme board of supervision has the authority to disband the board under certain conditions. Then, if it happened, the highest ranked member of that institute would have the responsibility to make a new board within 30 days in order to observe the cases and address violations.

Duties and authorities of board of magistrates

According to article 4 of addressing administrative violations, board of magistrates is in charge of addressing administrative violations and its votes have the authority to be executed from the date of confirmation, the only exception is the time the vote needs to be appealed. However, in some

ministries there are “boards to address managers’ violations”, according to articles 1.2 and 4 of law of addressing administrative violations, it is not juridical. The reason is that in the law of addressing administrative violations and executive regulations for addressing employees’ violations, board of magistrates and appeals boards are considered and there is no such a board called “board of addressing managers’ violations”. Moreover, according to article 33 of executive regulations of addressing administrative violations, managers are elected with confirmation of highest ranked member of boards, then according to this article and other related articles there is no permission for forming such boards. (Vasei, 1997, p:49)

Some of the other duties and authorities of board of magistrates are mentioned here.

- a. Examining complaints related to individuals and managers and inspectors of supreme board of supervision.(article 15 of law of addressing administrative violations)
- b. accelerating the act of collecting needed information and documents by hiring investigation groups.(article 5 related to law of addressing administrative violations, and notes 12.13.14 related to executive regulations of addressing administrative violations)
- c. Sending violation cases which are considered criminal to judiciary. Violations which are considered criminal are different from one another; however, boards must send criminal cases to judiciary, but sending the case to judiciary does not stop the board’s issuing confirmed vote for the administrative violation(article 19 related to law of addressing administrative violations).

Ways to make cases in the boards

board of magistrates and appeals board begin their duty with the complaint of individuals, managers, official members or inspectors of supreme board of supervision.(article 5, executive regulations of addressing administrative violations)

Generally, we can say that in any way that the board gets aware of complaints, it should start doing its duties. The lawgiver does not declare that just introducing official managers and members is enough to do the addressing process, in fact, lawgiver introduces ways the boards can achieve information, so that, no limitations happen in the inception of consideration. Therefore, in order to make a decision about a violation, collecting valid documents is needed; the reason is that decision of boards should be based on documents just as the public procedures’ decisions. Hence, to accelerate the act of providing

valid information and documents, boards are allowed to take advantage of investigation groups. (Article 5 related to law of addressing administrative violations)

Generally, since recognizing administrative violations and administrative punishments are dependent on the law of addressing administrative violations, recognizing ways to prove these violations is also dependent on law. Documents and information, confession, the expert opinion, the opinion of juridical responsible person and information ministry, investigation groups and comprehensive consideration are all criteria needed for final decision of the board. Therefore, the board can never make employees swear; the reason is that boards have administrative aspect not juridical aspect. (Vasei, 1997, p:43)

Inquiry

Whenever consideration of an accusation needs the expert's opinion, the case is referred to an expert by the board. (Article 14, law of addressing violations)

In this case, after considering the expert's opinion, the vote of the board would be issued. Moreover, about the accusations to employees, board could send inquiries to judiciary and receive the response in 30 days. (Article 26 related to executive regulations of addressing administrative violations)

Announcing accusation and defensive documents of the accused

After doing needed examinations, boards are obliged to announce in written form the accusation to the accused employee, then the accused employee is given a period of 10 days to defend himself. If the employee asks for the documents, the board gives him the documents (article 17 of executive regulations of law of addressing administrative violations). However, the announcement must have written form and oral announcement is not valid. About the defensive documents, the board must accept documents represented by the accused in 10 days and then respond to him. If the accused employee did not represent his documents in 10 days, based on decision of the board, his request for having more time to provide defensive documents would be accepted or rejected. If the board accepted his request, this deadline would be just for 5 days. (Article 18, executive regulations for the law of addressing administrative violations) the important criteria which should be noticed at the time of consideration and vote issuing are mentioned here: accordance of violation committed with the issues declared in article 8 of law of punishment. It means that after receiving report of violation, making case for the violation, passing the juridical process and announcing accusation and receiving defensive

documents of the accused and so forth, the board should execute the administrative punishment based on rules and regulations. (Mir Hoseini Abasi, 2009, p:62)

The vote of board needs to be both documented by law and to be argumentative. (Article 2 related to executive regulations of law of addressing administrative violations)

The other issue is the issue of employee's wandering. It is not permitted by law to leave the accused employee wandering during the process of considering the case. Not issuing a certain vote for his case or rejecting the confirmed vote by supreme board of supervision or by court of administrative justice are two samples of leaving the employee wandering. (Article 3 related to executive regulations of law of addressing administrative violations) therefore, up to the time of final vote issuing, the employee could do his job. According to article 13 these employees can work and receive salary before the final vote issuing. If vote issued is not appealable, then from the date of issue the commandment is executable. (Article 4 related to executive regulations of law of addressing administrative violations).

If the issued vote was not executed by relevant institutes, it is necessary for the board to warn the responsible individuals in a written form and if it was not effective, it would report it to the supreme board of supervision.

Appeals board for addressing administrative violations

There are similarities between appeals board and board of magistrates from the view of number of members, vote issuing, consideration and organization. Appeals board is made in the center of ministries or governmental independent institutes, Islamic revolution institutes, center of some provinces and center of the below institutes: Hajj and pilgrimage organization, central bank of Islamic republic of Iran, telecommunication organization of Iran, national library of Iran, organization for civil registration, state welfare organization of Iran and some of the universities of the country. (article 2 related to executive regulations of law of addressing administrative violations). Moreover in mentioned organizations, if it is necessary, they can have various boards within the organizations. (note 2, article 2 related to executive regulations of law of addressing administrative violations). The recognition of request for more appeals boards is up to the organization. The general and personal characteristics of members of appeals board, the ways of organizing the board, the formalization of board and so forth are all the same as board of magistrates. Moreover, simultaneous membership in both board of

magistrates and appeals board is forbidden. (Note 2, article 2 related to executive regulations of law of addressing administrative violations).

Conditions of making case in the appeals board

If the employee asks for appeal in the issued vote during 30 days, the appeals board is obliged to do the considerations. From the date of announcement, the vote of appeals board is valid and executive. According to article 10 of law of addressing administrative violations, appealable administrative punishments include: temporary separation from 1 month to 1 year. Change of geographical location of service for a year to five years, Service redeeming, retirement, being fired from institute, complete separation from governmental services and institutes included in this law.

Other steps of appeals board such as doing investigation, announcing the accusation, and so forth are the same as board of magistrates.

Duties and authorities of appeals board

Considering case objections in a specified time

The most important duty of appeals board is to examine administrative violations in the framework of law. Therefore, votes which are not appealable will not be appealed by appeals board. Moreover, those appealable votes which are objected after the limited deadline are not examined in appeals board. Therefore, appeals board examines meticulously the votes issued which are appealable. If it is necessary, appeals board sends an investigation group and announces accusation and provides information and uses the expert's opinion and the responsible individuals' ideas in order to appeal the case and make a decision.

Examination of the claim of having an acceptable pretext

Based on article 17 related to administrative violations, "the chairman of Islamic parliament, ministers, the highest ranked member of governmental, independent organizations and Islamic revolution institutes and other institutes included in note 1 of article 1 of this law, Tehran mayor, mayors of provinces centers and masters of universities can fire employees who have been absent from their service in the relevant ministry or institution for two-continuous months or four- non continuous months without having any acceptable pretext.

Note 1. If the accused employee during three months after the announcement of commandment pretends that his pretext is acceptable, the minister or the highest ranked member of that organization is responsible to send the case to appeals

board. Appeals board will examine the case and announce its decision, it may reject the commandment to fire the employee or confirm it and in both cases its commandment is certain and executable.

Electing and sending an investigation group to do the specified duties

According to article 5 of law of addressing administrative violations, appeals board could use investigation groups in order to accelerate the process of collecting information and documents. However, the investigation group of board of magistrates is not allowed to do the investigation for the same case in appeals group. The reason is that the members of that group have once collected the information and documents related to the same case.

Supreme board of supervision

This board has an observing role in addressing administrative violations.

The necessity of existence of supreme board of supervision

Article 22 of law of addressing administrative violations declares "in order to have observation over the execution of this law in institutes and in order to provide harmony among consideration boards, the supreme board of supervision is made." This board has some means and authorities to do its duties. Sending one prescription of votes from consideration boards to supervision board and the examination of votes by experts of supervision board are the main means of it. Moreover, sending adroit experts to examine the affairs of consideration boards helps the supreme board of supervision to achieve its goals sooner.

Coordination among boards is also the responsibility of supreme board of supervision, to do so, it holds annual seminars and issues circulars. (Mousazadeh, 2012, p:289)

Organization of supreme board of supervision

According to article 22 related to law of addressing violations, the master of this board is general secretary of employment and administrative affairs organization of Iran, in this board a representative of judiciary and three members elected among ministers or the highest ranked members of governmental, independent organization are present too.

According to this article the number of members is five. According to article 1 of regulations of supreme board of supervision, with the invitation of board secretary, meeting sessions are held with the presence of at least three members and their decisions are valid with the agreement of the majority of three members.(article 2 related to administrative

regulations of law of addressing administrative violations).

Authorities of supreme board of supervision

1. Solving contrasts between considerations of appeals board and board of magistrates.(according to article 32 related to administrative regulations of law of addressing administrative violations).

2. Invalidating some decisions of appeals board and board of magistrates.

In some cases such as disrespecting law during issuing vote or discrimination in the execution of law, the supreme board of supervision has a right to invalidate decisions made by appeals board or board of magistrates.

3. Disbanding appeals board and board of magistrates in the case of seeing irresponsibility from them. (Article 22 related to administrative regulations of law of addressing violations).

4. Specifying a board in order to address administrative violations of appeals board and board of magistrates members.

5. Issuing facultative for changing confirmed votes issued by boards.(article 24 related to executive regulations of law of addressing administrative violations)

6. Electing and sending inspectors to institutes included in this law.(according to note 3 of article 22 of law of addressing administrative violations)

7. Making and announcing circular and also explaining how to execute law and relevant regulations. (Article 10, regulations of supreme board of supervision) the lawgiver has a right to determine investigation groups in order to accelerate process of collecting required documents and information. Therefore, according to article 5 of law of addressing administrative violations:" in order to accelerate collecting documents and information, boards could take advantage of investigations groups. Determination of number of group members and their duties is specified in executive regulations of this law." Investigations groups of appeals board and board of magistrates are separate from each other and the same group does not work for both boards, moreover, article 5 of this law declares that boards can have more than one consideration group. Here, the condition of formation of groups, number of members, salary condition, and general condition of

investigation group members are examined briefly.

Personal features of group members

According to article 12 of executive regulations of law of addressing administrative violations, group members should be married and responsible and act based on Islam commandments and believes the Islamic republic regime of Iran and finally they should be at least 25 years old. Therefore, not having one of the above features; a person cannot be a member of investigation group. However, considering these features is based on the elective board. Moreover, according to note 1 of article 14 of mentioned regulations, whenever a member of group is one of the relatives of the accused or whenever the member has a juridical discord with the accused, he is not allowed to do the investigation. These limitations were also considered for members of appeals board or board of magistrates. (Article 7 related to law of addressing administrative violations).

General conditions of members of investigation group

Article 13 of executive regulations of law of addressing administrative violations declares:" appeals board and board of magistrates could use one investigation group. However, in appeals board the previous group must not be used." Moreover, 2 members out of three must be employers.

Discussion and results

Members of appeals board and board of magistrates cannot attend in consideration and vote issuing in the below cases.

1. Board member is a close relative to the accused person.
2. Board member has a juridical lawsuit or criminal lawsuit with the accused employee or he takes advantage of this juridical lawsuit or criminal lawsuit.(article 7 of law of addressing administrative violations)

Lawgiver clarifies that here the article means that the board member may take advantage of the law or criminal lawsuit with the accused, not the accusation case. Moreover, the member should be aware that he may take advantage of this condition. If he is not aware of it, he can stay in the board. Board vote is valid and executable from the day of announcement. (Part 1 of article 4 of law of addressing administrative violations)

Based on article 27, all boards must declare in the form of confirmed issued vote, the one month deadline for complaining to the court of administrative justice, this condition is for the time that the accused wants to object to the issued vote.

This deadline is just for one month; after this time the vote will not be appealed in the court. Appeals boards or boards of magistrates are responsible to appeal and consider previous cases for which confirmed votes were not issued or the issued votes were invalidated by the court of administrative justice or supreme board of supervision. Cases which are not examined by previous boards should be examined by the board of magistrates. If there is a contrast between the board of magistrates and appeals board on the made decision for a case, it is up to supreme board of supervision to solve the problem between them. (article 32 related to the executive regulations of law of addressing administrative violations)

According to article 5 of this law, it is the responsibility of boards to determine investigation groups, and then the investigation group is formed based on the decision of board and commandment of board master. Moreover, the number of group members is three. (Article 12 related to the executive regulations of law of addressing administrative violations)

In the law of addressing administrative violations and executive regulations, duties of investigation group are not determined and only article 14 of regulations declares that investigation groups should do the investigations based on opinions of appeals board and board of magistrates, therefore, boards determine for investigation groups how to do the investigations, if boards recognize that for a case, local investigation, interview with the accused or investigation on financial condition is necessary, the investigation group must do just that duty, however it is better that investigation group collect all information which helps the fair issue of vote.

One of the exceptions of judicial reference unity is the organization of administrative jurisdiction. In contrast with Anglo-Saxon system, in some countries (such as Germanic or Romanian systems) all pleas are not solved in justice courts. It means that justice courts deal with law and criminal lawsuits and administrative courts deal with problems within governmental institutes and organizations. The cause of separation of justice courts from administrative courts refers back to the beginning of French revolution and the rule of "separation of powers". Therefore intervention of justice court in administrative affairs is called an intervention in executive organization, and it is against rule of separation of powers. The problem is that through solving administrative violations within the administrative institute, some individuals' rights might be neglected. Therefore, in Iran, Supreme Court of the country is at the zenith of general courts

and court of administrative justice is at the zenith of administrative courts.(Ghazi, 1989, p: 615). According to principle 175 of constitution of Islamic republic of Iran, the court of administrative justice has been founded under the observation of judiciary master in order to examine peoples' objections to inspectors of governmental regulations or units, and to take their rights from the accused ones. One of the duties of this court is consideration of votes issued by boards which are responsible for addressing administrative violations. Article 21 of law of addressing administrative violations declares:" if the accused has objection to the issued vote of consideration boards, he has one month time to go to the court. The examination of votes by the court of administrative court is based on organization form"

Therefore, the lawgiver offers the accused a right to object, so that, his rights will not be neglected, thus, the accused has a one month deadline to submit his objection to the court of administrative justice. (Rezaeizadeh, M.J, 2007, p:245)

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