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# INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



## The Principle of Non-Retroactivity of Administrative Decisions

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### Abstract

This study addresses the issue of the principle of non-retroactivity of administrative decisions. The importance of the study stems from its discussion of an issue that directly affects the rights of individuals before issuing decisions that may change their legal position. The significance of the study also lies in its review of the position of Islamic jurisprudence on the principle of non-retroactivity. The objective of the study is to identify the nature of the principle of non-retroactivity of administrative decisions and the position of Sharia and UAE law and judiciary on it. To achieve the objectives of the study, the researcher adopts the descriptive-analytical approach. One of the most important results of the study is that Islamic Sharia pioneered in adopting the principle of non-retroactivity of administrative decisions. The study also concludes that the UAE legislator, similar to the Islamic Sharia, clearly stipulates this principle under Article (112) of the Federal Constitution of 1971. The study reaches a set of recommendations, the most important of which is the necessity of approving Sharia provisions in all fields because it is the most capable of achieving justice and repaying injustices. The study also recommends the complete implementation of the principle of non-retroactivity of administrative decisions, and that there should not be exceptions except to fulfill a right, to achieve justice for the oppressed, or to apply a legal provision.

**Keywords:** UAE Legislation, The Principle of Non-Retroactivity, Exceptions to The Principle of Non-Retroactivity.

### Introduction

The large number of legislations has always led to legislative clashes, especially since the source of legislation differs according to the authority that approves it. The legislature can be the legislative, administrative, or executive authority, and sometimes it is issued by the president of the state or the king in necessary cases, as previously mentioned. In fact, every issued decision or legislation leads to the consolidation of legal positions, meaning that if

legislation establishes a legal status for a person and this legislation continues for a decade, then another legislation comes and amends the legal base that produced the legal status of that person, does this mean that the new legislation applies to the legal position retroactively? Legal systems adopt several principles, including the principle of non-retroactivity of administrative decisions. This means that the new law or decision does not apply to the past. This principle is intended to limit the effect of the new law when it comes into force (Kryvoi & Matos, 2021).

One of the most important studies that address the principle of non-retroactivity of laws and administrative decisions is the study of (Abu Al-Othm, 2011). In his book "Administrative Judiciary between Theory and Practice," he explains the legal basis for the administrative supervision over the work of the public administration. The researcher discusses administrative law and the principle of non-retroactivity of administrative decisions and laws. The researcher addresses judicial supervision of the work of public administration, he explains the concept of judicial supervision and the role of the Supreme Court of Justice. In addition, the researcher addresses the judicial supervision on the constitutionality of laws, the case of the annulment of decisions, the conditions of their approval, and the aspects of annulment of administrative decisions.

The study of Bin Saleh (2009) entitled: "The Jurisdiction of Administrative Courts in the Saudi Board of Grievances", is one of the most important studies related to the subject of this study. The problem of the study is the ambiguity in the jurisdiction of the administrative courts in the Saudi Board of Grievances. The researcher adopts the inductive analytical approach. The study reaches a set of results, the most important of which is that the purpose of the Board of Grievances in Islamic sharia is to establish justice among people. Besides, the emergence of the position of ombudsman as an independent function was late in the Islamic state, and that was at the end of the Abbasid era. The study reaches a set of recommendations, the most important of which is the necessity of publishing rulings issued by administrative courts for the benefit of researchers, litigants, lawyers, and judges. Another recommendation is to the importance of teaching judicial systems to students in specialized colleges such as the College of Sharia so that the graduate students will be qualified and familiar with the laws and will combine Sharia knowledge with the applicable laws. The study only discusses the principle of non-retroactivity of laws and administrative decisions. The researcher addresses the concept of the principle of non-retroactivity of laws and administrative decisions, the position of Islamic jurisprudence and UAE law and judiciary on the principle of non-retroactivity, as well as the exceptions made to the principle of non-retroactivity of administrative decisions, as follows:

### **The Concept of the Principle of Non-reactionary Laws and Administrative Decisions**

The principle of non-retroactivity of administrative decisions means that they are applied with immediate effect and are not applied to the past, so that they do not affect the acquired rights of individuals (Ismail Sasaa Gaidan Al-Bdary, 2020). There is a set of definitions of the principle of non-retroactivity of administrative decisions revolving around the same idea, some define it as: "the enforcement of administrative decision with a direct effect from the date of its enforcement and the inadmissibility of its application to the legal positions that took place before that date" (Al-Adwan, 2013, p. 39).

Others define it as: "the illegitimacy of application of the administrative decision to the legal facts that took place before the date specified date of enforcement. The effect of the decision is limited to what occurs after its enforcement date" (Al-Momani, 2004, p. 6).

There are other definitions that revolve around the same context. These definitions indicate that the principle of non-retroactivity requires that administrative decisions, whether organizational or individual, do not affect the past and their effects are only limited to the future (Duminica, 2020).

### **The Position of Islamic Jurisprudence on the Principle of Non-retroactivity**

Islamic jurisprudence recognizes this principle as an implementation of the Quranic verse: "We never punish until we have sent a Messenger." (Al-Isra, 15). In the interpretation of this verse, jurists say that Allah takes a covenant upon Himself that a people would not perish until after He had warned them by sending them messengers as an evidence against them. The almighty Allah does not punish a servant until he warns him through messenger or that an evidence comes to him from Allah, and He does not punish a slave except for his sin (Tafsir al-Tabari).

It has not been proven that the Prophet of Allah, Muhammad, punished a person for a crime or a sin that occurred before the revelation of the appropriate provision to that sin. So, originally, Islam does not have a principle of non-retroactivity. It is worth pointing out that the wise legislator made exceptions to this principle, especially concerning felonies, this includes retroactive punishment for serious crimes that affect security and public order such as the crime of slander, haraba, and zihar (Al-Tamimi, 2013, p. 26).

### **The Position of UAE Law and Judiciary on the Principle of Non-retroactivity**

The UAE law and judiciary affirm the principle of non-retroactivity of administrative decisions, whether organizational or personal, as follows:

#### **First: the Position of UAE Law on the Principle of Non-retroactivity**

The Federal Constitution of 1971 stipulates in Article 112 that: "The provisions of laws shall take effect from the date of their enforcement and shall have no effect on what takes place before this date." The legislator emphasizes, under Article 27 of the same constitution, that "the law determines crimes and penalties, and there is no penalty for the actions that took place before the issuance of the law stipulating it." It is noted that the legislature approves the principle of non-retroactivity with regard to laws and does not address the principle of non-retroactivity with regard to administrative decisions. Regarding this, it can be said that laws transcend decisions and regulations in the legislative hierarchy. Therefore, administrative decisions are subject to the laws. This rule was implemented by the administrative judiciary in one of the decisions of the Federal Court, "It is decided in the judiciary of this court and comparative administrative jurisprudence that administrative decisions enter into force from the date of their issuance by the concerned authority and that they are not applied retroactively" (Federal Supreme Court, Appeal No. 127, for the year 20 Judicial, Session 11-4-1999).

#### **Second: The Position of the UAE Administrative Judiciary on the Principle of Non-Retroactivity**

UAE legislation has become comparable to the latest contemporary international legislations, this is directly reflected in the administrative judiciary and its performance (Farouk El arabi, 2013). Therefore, when discussing the developed countries' adoption of the principle of non-retroactivity of administrative decisions, it is obvious that this will be reflected in the judiciary in the United Arab Emirates, where the federal judiciary in the

Emirates tends to adopt this principle. However, it should be noted that the UAE Federal Judiciary was previously working on the principle of non-retroactivity of the law. This is explained as follows:

### **The Federal Supreme Court and its Implementation of the Principle of Retroactive Decisions**

The UAE implemented a unified judicial system, which created a judicial body to consider all disputes alike. Later, the UAE established special courts for administrative disputes. Due to the modernity of the UAE judicial system, the Federal Supreme Court in the UAE initially implemented the principle of retroactivity, this was clear in its decisions. Here, the researcher reviews the most important decisions in which the Federal Court applied the principle of retroactivity:

The court sentenced to cancel the administrative decision, return the employee to his work and pay his salaries for the period from the date of the issuance of the illegal decision “the dismissal decision” to the date of the sentence of cancellation (Federal Supreme Court, Appeal No. 434 of Judicial Year 29, session 4/11/2007). The sentence was: “since it is known that the interest in the lawsuit is the practical benefit that accrues to the plaintiff from the judgment in his favor. The cancellation of the administrative decision is because of its violation of the principle of legality and leads to the abolition of the decision retroactively from the date of its issuance, and the cancellation of all its consequence effects.” (Federal Supreme Court, Appeal No. 445, Judicial Year 29, Session 30/12/2007).

Among the judgments in which the court approved the principle of retroactivity: “It is established in the judiciary of this court and comparative law that the litigation in the annulment lawsuit entails the litigation of the administrative decision itself to monitor its legality. The judicial annulment of the administrative decision is a penalty because of its violation of the principle of legality, and it leads to the retroactive annulment of the decision from the date of its issuance and all the consequences thereof. Accordingly, the natural consequence of the issuance of the judgment of annulment of the dismissal decision is to return the situation to the way it was before the issuance of the dismissal decision. The implementation of this decision requires returning the employee to the same job he was occupying before the issuance of the dismissal decision as if this decision had never been issued, and considering the dismissal as a working period without any interruption, and that the functional bond exists and produces all its legal effects. (Federal Supreme Court, Appeal No. 160, for the year 2009, administrative, issued on 09/30/2009).

The Federal Supreme Court judged in one of the cases that, “...therefore, the administration may not oppose or attack this right because it contradicts the rule of non-retroactivity of administrative decisions...” (Federal Supreme Court, Appeal No. 286, Judicial Year 2012, session 11/7 2012).

In another judgment, it ruled that: “The judiciary has the right to supervise the administrative activities so that they would not deviate from the scope and limits of law. However, this supervision does not authorize the judiciary to replace the administration and its independent administrative activity purely under its administrative jurisdiction and is subject to its discretion. The promotion in the public office is controlled by laws and regulations that the administration abides by when promoting its employees. In the case when the administration abides by the annulment of the dismissal decision and returns the situation to what it was before the issuance of the dismissal decision, without addressing the request of promotion, then this is compliant with the law, and the obituary becomes

unfounded, which necessitates the rejection of the appeal (Judgment of the Federal Supreme Court in Appeals No. 245, 2047, 313, Judicial Year 2009, Administrative, issued on 21/4/2010).

Through the previous judgments, it is clear that the UAE federal judiciary has settled on applying the principle of non-retroactivity of administrative decisions. It shall be noted that the federal administrative judiciary in the UAE violated this principle in a series of cases brought before it and approved the principle of retroactivity in exceptional circumstances. In this context, the researcher points out that the most important reason for the federal judiciary's recantation of applying the principle of retroactivity is its implementation of comparative administrative law, which carefully studies the problems of these decisions to build a rule based on right and sound foundations. There are also many problems in the implementation of judicial rulings in which the administrative judge intervenes to compel the administration (Ghurab, 2014: 159). The researcher refers here to the most important decisions in which the federal judiciary in the Courts of First Instance and Appeal and even the Federal Supreme Court amended the principle of non-retroactivity of the law as follows:

The Federal Court of Appeal in the Emirate of Abu Dhabi decided the following: "While the dismissal decision violated the law and its legitimate cause, he included the above-mentioned requests in the case, the Court of First Instance judged on 29/02/2010 to annual the decision to terminate the service and its consequences. By returning the respondent to his work, The defendant appealed the judiciary of the aforementioned judgment by Appeal No. 14 of 2011, Abu Dhabi Federal Court of Appeal ruled on 4/26/2011 upholding the Decision of the Federal Court of Appeal in Abu Dhabi in Case No. 77 of 2010, Administrative, issued on 4/26/2011.

Among the decisions in which the Federal Supreme Court in the Emirates reinforced the principle of retroactivity against the will of its judiciary is: "...the employee's cessation of work during the legally specified period without permission or without an excuse is a legal presumption of his resignation by leaving and abandoning the job." The administrative body has the discretionary power to implement this legal presumption or not. If this legal presumption is implemented, a decision shall be issued to terminate the employee's service as soon as the conditions for the termination are met. If the administrative body does not consider the previous presumption despite the availability of its elements, and the cessation from work, the relationship between the employee and the employer will not be terminated. If the administrative body considers the employee to have resigned after despite taking a subsequent action after the cessation, it is considered a blatant violation of the law and has no legal effect in criminalizing the cessation or penalizing the employee because he is still one of the employees who continue to work and his service has not ended.

The administrative body shall not issue the dismissal decision by resignation under the law with the pretext of the employee's absence from work. Even if this decision is justified with a an evidence of papers and there is no violation of the law, and is sufficient to carry its judgment on an incorrect basis of the law" (Judgment of the Federal Supreme Court, in Appeal No. 441 of 2013, Administrative, issued on 13/ 11/2013). Based on the aforementioned discussion, one can conclude that the federal administrative judiciary in the UAE initially applied the principle of retroactivity, and then settled on implementing the principle of non-retroactivity of decisions, following in the footsteps of the administrative judiciary in countries with a dual judicial system, which restricts the power of the administrative judiciary in annulment laws without giving it the power of amendment and establishment. However, it is noticeable that the Federal Administrative Courts in the UAE changed some rulings from what the judiciary had settled on. Here, the researcher points out that the administrative

judiciary wanted to implement the principle of retroactivity of the law, despite abandoning it later on, to achieve a public interest or a purpose that would benefit the aggrieved person who has been harmed.

### **The Implementation of the Retroactivity principle by the Local Judiciary in the UAE**

The Court of Cassation in Dubai has adopted the principle of retroactivity and is still working with this principle, without implementing the principles and provisions of the comparative administrative law regarding the authority of the administrative judge. It only gives the judiciary the power of annulment of the illegitimate administrative decision. It does not reach a level of power to obligate the administration to do or refrain from doing something as settled by the judiciary of the Federal Supreme Court (Old Cheikh Sidya, 2017, p. 92).

Among the most prominent decisions of the enforcement of the principle of retroactivity in Dubai is the decision of the Central Grievance Committee for the employees of Dubai government departments, in which it judged a local department to return two employees to their work in the department and to withdraw the administrative decision, it stated: "It has been proven to the committee that the department deviated from the regulations and boundaries set by the law for it during its exercise of its administrative authority, both limited and absolute. It issued its decision to terminate the service of the complainants without a sound legal and realistic reason. (Decision of the Central Grievance Committee for Dubai Government Employees No. 25 of 2009).

Through the previous decision, the researcher concludes that the administrative judiciary in Dubai adopts the principle of retroactivity and has settled on the implementation of this principle, but it has amended some of its rulings regarding that the principle of retroactivity to the principle of non-retroactivity of decisions. This is apparent in the judiciary of the Court of Cassation in Dubai, in which it said "The provisions of the new law may be implemented except on facts prior to the date of its enforcement, even if the case was filed under this law in application of the rule that the law is not applied retroactively except to the new provisions" (Dubai Court of Cassation, Appeal No. 38, of 2001 Judicial, session 12/1/ 2002).

Accordingly, the researcher concludes that the local judiciary in the United Arab Emirates has settled on implementing the principle of retroactivity and has changed this principle in many of its rulings to follow in the footsteps of the Federal Supreme Court, which has settled on the principle of non-retroactivity of administrative decisions. Contemporarily, it also can be used neuromarketing tools to study the individuals' decision and better understand the individuals' behavior (see Alsharif et al., 2021a; 2021b, 2021c; 2021d; 2021e; 2022; 2022).

### **Exceptions to the Principle of Non-retroactivity of Administrative Decisions**

It was previously stated that the law or decision shall not normally be applied retroactively to the past. This is what is known as the principle of non-retroactivity to preserve the acquired rights of individuals to ensure the stability of transactions. Nevertheless, the legislature and the administrative judiciary in the United Arab Emirates have approved a set of exceptions to the principle of non-retroactivity in laws and administrative decisions, so that the new law or decision can be applied to the past, provided that this application or return does not affect the acquired rights. This is confirmed by the Federal Supreme Court: "It is also stipulated in the judiciary of this court and in comparative administrative law that administrative decisions are considered effective from the date of their issuance by the

concerned authority, and that they do not apply retroactively except in narrow exceptional cases. For example, when some decisions are issued to retroactively implement and apply a law, or in the case when the administrative decision is issued to amend some legal position retroactively in implementation of a ruling issued to cancel a previous administrative decision. The explanation of this decision is only to clarify what may have been ambiguous in the original decision, difficult to understand, and that the case requires the intervention of the decision source. It is not permissible to modify the content of the interpreted decision, otherwise it is considered a new decision that is implemented only from the date of its issuance and does not affect the legal positions that were established by the previous decision" (Federal Supreme Court, Appeal No. 124, for the 20 judicial year, session 4/4/1999).

In fact, it is clear from the decision of the Federal Supreme Court that the legislator, when he permitted retroactivity, intended to achieve a higher interest, which is the stability of transactions and the preservation of rights. In this part of the study, the researcher mentions those exceptions as follows:

#### **Permissibility of Retroactivity by the Provision of the Law**

The legal origin in this case is that the principle of non-retroactivity restricts the judiciary and does not restrict the legislator. This means that the legislator has the right to stipulate the retroactivity of the provisions of new legislation to the previous legislation, provided that it clearly stipulates the retroactivity of the law to the past. The researcher points out here that the tacit will of the legislator is not sufficient. The announcement and declaration of this will is a basic condition for the implementation of retroactivity. If the new legislation does not clearly state the retroactivity of the law, then the judge does not have the right to apply it to the past, and the reason for permitting reaction in the provisions of the law is that the legislator represents the public interest (Al-Muzain, 2016, p. 74).

The UAE legislator stipulates this exception in accordance with the provisions of Federal Decree No. 22 of 2008 amended in 2011 and 2016 regarding human resources in the federal government.

#### **Retroactivity in Implementation of the Judgment of the Judiciary**

This exception represents the second form of the permissibility of retroactivity. This occurs when the judiciary decides to restore the situation to what it was before the issuance of a law or decision that is contrary to the general rules of the constitution. It is known that judicial rulings have a revealing effect, as they do not establish legal centers, so they have a deterrent effect. Among the examples that confirm this exception is if the administrative judiciary issuance of a ruling to cancel a specific administrative decision of any kind, whether individual or organizational. In this case, the decision is subject to cancellation as if it had not been issued. This means that the period to which this decision was applied and the legal effects it entailed are considered as if they are nonexistent according to the judicial ruling. The situation shall hereby return to what it was before the issuance of this decision. This is what the administrations used to do so that they implement court rulings (Alodwan, p. 15).

By reviewing the total database of judgments issued by the Federal Supreme Court, the researcher finds that the UAE administrative judiciary adopts this exception, as it stated in one of its judgments: "since it is a taken for granted that the interest in the case is the practical benefit that accrues to the plaintiff when meeting his requests, and that the judicial annulment of the administrative decision is a penalty for violating the principle of legality, and leads to the retroactive cancellation of the decision from the date of its issuance, and the



cancellation of all the effects arising from it. Accordingly, the natural consequence of the issuance of the judgment canceling the employee's dismissal decision is to return the situation that was before the issuance of the dismissal decision, and the employee who was sentenced to cancel his dismissal decision shall return the same job from which he was dismissed, as if this decision had never been issued (Appeal No. 417, Judicial Year 29, Session 30/12/2007).

### **Permissibility of Retroactivity for the Benefit of Individuals**

The UAE legislator approved this exception to the principle of non-reactionary, and this is clearly evident in the Federal Penal Code, which stresses the retroactivity of the law that is best for the accused by saying: "If it is issued after the occurrence of the crime and before it is judged, there is a ruling that is more suitable for the accused, it is the one that is applied. If a law is issued after the issuance of the judgment, and it makes the act for which the accused was sentenced is not punishable, the execution of the judgment shall be suspended and its criminal effects shall end, unless the new law stipulates otherwise. If the new law only mitigates the penalty, then the court that issued the final judgment (at the request of the Public Prosecution or the accused person) may reconsider the sentence imposed in light of the provisions of the new law" (Federal Penal Code No. 3 of 1987, Article 13). It is worth noting that what applies to the law that is best for the accused in the criminal field, applies to administrative decisions that are best for individuals in the face of the abuse and exaggeration of the administration. Therefore, the researcher prefers the implementation of retroactivity in administrative decisions similar to legal rules when they are in the interest of individuals.

### **Permissibility of Retroactivity in laws and Decisions that are Retroactive in Nature**

Among the exceptions to the principle of non-retroactivity is the permissibility of retroactivity in laws and administrative decisions that are retroactive in nature. For example, this occurs when laws or decisions explain or confirm decisions and laws that precede them. The reason for approving retroactivity in this case is that such laws or decisions do not add new things. Rather, they provide detailed clarification of a previously issued law or decision (Al-Adwan, 2013, p. 115). The researcher points out here that the administrative judiciary in the UAE settled on the inability of the affirmative and explanatory decision to appeal before the administrative judiciary on the grounds of annulment case because this type of decision does not have an effect and does not add anything.

### **Permissibility of Retroactivity in the Case of Withdrawal of the Law or Decision**

The legislator's withdrawal of the law or the administration's withdrawal of the decision is considered a form of retroactivity that is an exception to the principle of non-retroactivity. The withdrawn law or decision is considered as if it had not been issued provided that it had not entailed effects in the past (Al-Wahidi, 2018, p. 74).

### **Constructive Retroactivity**

It is an inevitable result of the principle of retroactivity, so that the legislator or the administration, when annulling a law or decision, shall issue a law or take a positive decision to restore the situation to what it was before that. This is known as constructive reactionary. For example, in administrative decisions, it is not enough to cancel the decision to neglect the promotion of an employee, but rather an opposite decision shall be issued to promote the employee who was denied the promotion by the administration.

## Discussion and Conclusion

The study concludes that Islamic Sharia is a forerunner in adopting the principle of non-retroactivity of administrative decisions. The study also concludes that the UAE legislator, along the lines of Islamic Sharia, clearly stipulates this principle under Article (112) of the Federal Constitution of 1971, where it states: the provisions of the laws do not apply except to what occurs from the date of their implementation and have no effect on what occurs before this date. The study also concludes that the principle of non-retroactivity means that administrative decisions, whether organizational or individual, do not affect the past and their effects are only limited to the future. The study concludes that the rapid process of enactment of legislations had a significant impact on the occurrence of a legislative clash, especially that the source of legislation differs according to the concerned authority. It may be the legislative or executive authority, and sometimes it is issued by the president of state or the king in necessary cases.

The study also concludes that the federal and local administrative judiciary in the UAE eventually settled on the implementation of the principle of non-retroactivity of decisions. However, the researcher mentions a recantation in a set of rulings of the federal and local administrative judiciary in the UAE from the non-retroactivity of decisions settled by its judiciary to achieve a public interest or a purpose that benefits the complainant who was harmed.

The study concludes that the UAE legislator and the federal and local judiciary in the UAE have approved a number of cases that are exceptional to the implementation of the principle of non-reactionary. At the conclusion of this study, the researcher recommends:

1. The researcher recommends the adoption of the provisions of the noble Sharia in all fields, as it is the most capable of achieving justice and returning grievances.
2. The researcher recommends the total implementation of the principle of non-reactionary, and that there should be no exceptions except to fulfill the right and justice for the oppressed or in apply a legal provision.
3. The researcher recommends forming an incubator of specialized and qualified judges in administrative disputes and attracting expertise from abroad in order to validate the principles of administrative justice approved by the Federal Supreme Court, especially the principle of non-retroactivity of decisions.

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(The ruling of the Federal Court of Appeal in Abu Dhabi in Case No. 77 of 2010, Administrative, issued on 4/26/2011).

(The ruling of the Federal Court of Appeal in Abu Dhabi in Case No. 77 of 2010, Administrative, issued on 4/26/2011).

(Dubai Court of Cassation, Appeal No. 38, Judicial Year 2001, session 12/1/2002).

(Federal Supreme Court, Appeal No. 124, Judicial Year 20, Session 4/4/1999).