



# The Concept Of Transformation In Administrative Decisions

Khalid Ali Y. Alshahrani<sup>1\*</sup>, Abdulrahman Ahmad N. Alhathi<sup>2</sup>, Ali Muhammad Muhammad Al-Darwbi<sup>3</sup>

<sup>1</sup>Assistant Professor in Public Law, Department of Law, College of Business Administrative, Najran University, Najran, Kingdom of Saudi Arabia, [kaalshahrani@nu.edu.sa](mailto:kaalshahrani@nu.edu.sa), <https://orcid.org/0009-0004-5925-4141>

<sup>2</sup>Assistant Professor in Privet Law, Department of Law, College of Business Administrative, Najran University, Najran, Kingdom of Saudi Arabia. [aaalharthe@nu.edu.sa](mailto:aaalharthe@nu.edu.sa), <https://orcid.org/0009-0002-7180-3452>

<sup>3</sup>Ph.D. (Law) from the Islamic University of Medina Addarooobi27@gmail.com  
<https://orcid.org/0000-0002-2953-8846>

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## ARTICLE INFO

## ABSTRACT

This study explores the concept and application of transforming administrative decisions from a state of invalidity to a legitimate legal action. The topic addresses issues of significant importance due to their profound impact on the integrity and legality of administrative decisions, thereby affecting administrative justice and the soundness of administrative operations on a broad scale. The research aims to clarify the concept of the transformation of administrative decisions and its legal foundations, with a focus on studying the possibility of transforming void and null decisions based on these foundations.

The research employs an analytical methodology based on a detailed study of the concepts and principles related to the transformation of administrative decisions, providing practical examples and applications of this concept. The writing approach focuses on analyzing the main elements of the transformation of administrative decisions, such as the illegality of the initial decision, the concordance between the decisions, and the presumption of the administration's intention to comply with the transformation. The study addresses legal and jurisprudential opinions related to this topic, offering critical analyses of the concepts and practical applications presented.

**Keywords:** Administrative judiciary, Decision, Transformation, Invalidity.

## Introduction

The concept of transformation in action is not a novel idea; it originated within the context of Islamic jurisprudence before transitioning to the realm of civil law, and from there, it moved to public law. In Islamic jurisprudence, this idea was embodied in concepts such as "invalidation" and "substitution," where contracts and actions could be subject to modification or annulment under certain conditions.

As societies evolved and civil laws emerged, the idea of transformation transitioned into this domain, where it became associated with concepts like "modification" and "exchange" in civil and commercial contracts. For instance, in civil contract law, parties may modify contracts by mutual consent or annul them due to specific defects.

This idea then migrated to the field of public law, where many commentators and thinkers in administrative law attempted to apply it to irregular administrative decisions. They termed this "transformation of administrative decisions," a term that refers to the possibility of modifying or annulling administrative decisions that become ineffective or unlawful under new circumstances.

To understand how the concept of transformation is applied to unlawful and void administrative decisions, it requires an understanding of the legal foundation upon which this idea is based. Before that, it is necessary to clarify the fundamental concept of transformation, to fully and correctly comprehend its essence and nature.

### **Research Methodology:**

The research methodology on the concept of transformation in administrative decisions relies on using the analytical method to precisely analyze the Islamic jurisprudence and legal texts to understand the concepts and rulings related to the topic. It also involves analyzing judicial rulings to comprehend how laws and legal principles are applied in similar cases, and the possibility of applying the concept of transforming administrative decisions from void to legitimate within the Saudi administrative judiciary.

#### **The Basis and Elements Underlying the Concept of Transformation:**

The transformation of an administrative decision refers to the conversion of a void decision, which does not produce effects, into a valid decision that generates its intended effects. However, this requires the subsequent decision to match the initial one in form and content, assuming the administration intended to convert the original decision into the new one upon realizing the former's invalidity. (Fath El-Bab, 2017; Al-Deilami, 2001).

#### **The foundation and elements underlying the concept of transformation include:**

**The First Element: The Original Decision Being Unlawful:** This element implies that the administrative decision intended for transformation is unlawful because if it were lawful, there would be no need for transformation. Thus, under no circumstances can a legal decision be transformed. (Al-Shaer, 2000; Fath El-Bab, 2017) For the transformation of void administrative decisions, the entire administrative decision must be unlawful. If only a part of it is void and the administrative action is divisible, then the decision cannot be transformed; instead, we may be looking at partial termination. (Sorour, 1959). The judge reviewing the case can annul the part of the decision affected by any flaw of administrative decisions and keep the lawful part if the decision is divisible. In such cases, the judge cannot apply the concept of transformation because the administrative decision retains its original character after excluding the flaws. (Al-Shaer, 2000)

**The Second Element: Compatibility:** Compatibility here means that the void decision matches the elements of the other correct decision, both in content and form, if the decision is formal. (Fath El-Bab, 2017) For compatibility to be achieved, the effects of the new action must differ from those of the original decision due to their different content. Additionally, the unlawful decision must include some elements of the new action, building upon the old and new actions to avoid the judge having to add new elements in the new action, which would then prevent the transformation of the void decision, adhering to the principle that the lesser cannot be transformed into the greater. For example, a non-formal decision cannot be transformed into another decision that requires formality, such as a written mandate. (Al-Shaer, 2000; Desouki, 2011)

**The Third Element: The Administrative Direction Assumed Towards the Correct Action:** This element refers to the administration's intention when issuing the decision to adopt this new action had it known about the invalidity of the old decision. (Fath El-Bab, 2017) When the administration issued the original decision, it was targeting a specific goal, choosing a certain path to achieve this goal. If the legality of this decision is disproved, and there is another action through which the administration's intended goal can be achieved, and it is proven to the judge that the administration would have issued this new decision because it is the lawful path to achieve the desired goal, then the judge will directly apply this transformation. (Al-Deilami, 2001)

The judge must verify these elements before applying the concept of transformation. For example, if an administrative entity employed a person qualified for a specific position in a competent department, but it was later discovered that the position did not exist in the intended ministry's budget, the administrative entity had no choice but to cancel the decision as it then lacked a basis. If this case reached administrative judiciary, the court would need to apply the three elements above. The decision is considered null due to the non-existence of the position within the concerned administration. The second element, compatibility, is fulfilled when the administration is obligated to appoint the individual to a similar position; thus, we are presented with a new decision different in content but similar in elements. Both decisions fall under the same jurisdiction, the new decision does not require more stringent procedures than the previous one since the requirements for the new position are the same as for the old one, their cause is the same, which is the appointment request, and finally, the purpose and objective of the new decision do not differ from the old one, aiming to secure a suitable job for the applicant's qualifications, thereby ensuring monetary compensation. With the administrative intent to issue this decision had it known about the unavailability of the appointed position, in line with the applicant's willingness and consent to the new job instead of being completely deprived of employment, the court rescued the administrative entity's intent from cancellation and saved the applicant's desire to obtain employment without it being lost.

#### **Extent of Envisioning the Transformation of Void and Null Administrative Decisions:**

From the foregoing, it's evident that there is an action different from the original decision in terms of type or the same type with different content, yet they partially resemble each other. To judge the validity of the transformation, the new action must at least partially achieve the purpose of the void decision. Then, it falls upon the judge to ascertain the incorporation of the elements of the old decision into the new action, thus creating a new action that replaces the unlawful decision, with its effects applying from the date the void decision was issued, not from the date of judgment. (Fath El-Bab, 2017; Al-Shaer, 2000).

However, the more significant question remains: does the concept of transformation apply to null decisions as it does to void decisions?

**A disagreement exists among legal scholars on this matter, leading to two opinions:**

**The First Opinion:** Believes that a null decision cannot be transformed into a correct decision or action, regardless of the time elapsed, because they consider the concept of nullity confined to treating the null decision as merely a physical occurrence, incapable of generating effects like a correct administrative decision or at least one that can be annulled. (Al-Tamawy, 2016).

**The Second Opinion:** Held by most legal scholars, posits that the transformation of administrative decisions applies to null decisions just as it does to void decisions completely. (Al-Shaer, 2000; Al-Dessouky, 2011; Fath El-Bab, 2017; Al-Deilami, 2001)

Their justification for this view is that a null decision exists in reality, and its issuance may have led to serious matters that cannot be ignored or left unaddressed. Thus, it is proper to transform these null decisions into correct ones if they contain the elements of administrative decision transformation. (Al-Deilami, 2001; Dessouky, 2011)

**Preferred Opinion: In reality, I lean towards the second opinion for several reasons:**

- 1- The argument presented by the proponents of the first opinion is incorrect; there's a difference between physical nonexistence and actual nonexistence. Physical nonexistence is merely a plan or preparation for a decision that has not yet been executed and has not come into existence, whereas the nonexistence relevant to our discussion concerns a decision that has appeared but is marred by a serious flaw preventing its effects.
- 2- This is supported by Islamic jurisprudence. Since I found no judicial applications for this idea and the primary reference in Saudi Arabia for judicial rulings is the definitive Islamic jurisprudence, I could apply this idea - the concept of administrative decision transformation - based on the jurisprudential rule: "Activating speech is better than neglecting it whenever possible." (Al-Suyuti, 1990; Ibn Nujaym, 1999)

This rule suggests that a rational person should protect their speech from cancellation as much as possible by considering the implications of their words and interpreting them literally, as that is the basis. If it is not possible to take their words literally, then metaphorically if the goal is the same; otherwise, it is to be disregarded: "If not possible, it is neglected." (Al-Suyuti, 1990; Ibn Nujaym, 1999)

All actions from a rational person, if they cannot be taken literally due to a legal or natural hindrance, must be interpreted to serve a useful purpose for a new ruling, as the opposite would be neglecting the actions of rational individuals. In interpreting the action of a rational person as correct, it is obligatory to avoid neglecting it as long as that is possible and appropriate. (Hermush, 1987)

Among the jurisprudential applications cited by scholars for this rule is: "Whoever endows a house to his children, and has only the children of his children, then it is directed to them, lest his words be neglected." (Al-Rahaili, 2006)

Similarly, some researchers mentioned that the modifications some Shariah committees in banks make to certain contracts, especially financing contracts, to convert these contracts from prohibited to Shariah-compliant ones, fall under this rule; as it realizes the banks' desire to grow and utilize their funds, as well as fulfilling the contractee's desire to obtain the loans they need. (Al-Sayyid, 2021)

Scholars have mentioned a subsidiary rule to this rule: "Establishing is preferable to confirming." (Al-Suyuti, 1990; Ibn Nujaym, 1999)

Scholars explained this subsidiary rule to mean: In cases where the expression is between a meaning for previous speech that only serves to confirm the prior speech and another new meaning it can be interpreted as, it is preferable to interpret it with the new meaning; for it provides a new meaning, which is preferable to neglecting the speech, and this is the reality of activating speech. (Al-Owaid, 2017)

Thus, the essence of this idea exists in Islamic jurisprudence, and there's no prohibition against applying it in administrative judiciary. When scholars established this rule, they did not set levels for the old expression and the new action; what matters is the possibility of applying another potential interpretation to the speech, leading to the same intended goal as the first speech, leading us to another conclusion that as this rule can be applied to a void administrative decision, applying it to a null decision is even more fitting.

- 3- Since the goal of the concept of transforming an administrative decision is to rescue the administration's action from nullity by creating a new and correct action based on the elements of the unlawful decision, transforming null decisions into lawful ones is more fitting and justified for application; because the judiciary here would be amending a blatant violation of the order. Thus, the goal of applying the concept of transformation from a void decision to a correct and lawful action exists in null decisions just as it does in void decisions, with no difference between them except that the administrative decision does not become protected no matter how much time passes, allowing the administrative judiciary to transform it at any time and date, unlike the void decision which becomes protected by the legal duration and cannot be transformed at all once it becomes protected.

### Results:

The research findings on the concept of transformation in administrative decisions highlight the following points:

1. The research shows that despite differences between the original decision and the new action, they partially resemble each other. For the transformation to be considered valid, the new action must fulfill the purpose of the void decision, even if partially.
2. Regarding null decisions, a disagreement exists among legal scholars; some believe they cannot be transformed into correct decisions, while others argue they can be transformed just like void decisions, based on the principle that the transformation of administrative decisions applies equally to null decisions.
3. The study leans towards the second opinion, demonstrating that a null decision exists in reality and may have led to serious matters, hence preferring its transformation into a correct decision whenever legal transformation elements are present.
4. Since the goal of the concept of administrative decision transformation is to save the administration's action from nullity, transforming null decisions into lawful ones is preferred based on it being an amendment to a blatant violation of the order.

### Recommendations:

Based on the results derived from the study of the concept of transformation in administrative decisions, the following recommendations can be proposed:

1. Enhance Specialized Studies: Conduct specialized studies to analyze the similarities and differences between the original decision and the new action in different contexts, aiding in a better understanding of the nature and integrity of transformation.
2. Develop Legal Framework: Study and develop the legal framework for transforming null decisions into correct ones, focusing on establishing mechanisms and procedures that ensure the fulfillment of the void decision's purpose through transformation.
3. Legal Community Awareness: Raise awareness within the legal community about the legal concepts related to transforming administrative decisions and legal actions, ensuring a correct and directed understanding of the rules and principles involved.
4. Strengthen Legislation and Practices: Enhance legal legislation and practices supporting the transformation of null decisions into correct ones, focusing on developing tools and mechanisms that facilitate this process and ensure its integrity.

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