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Legal Procedures for Shaving an Administrative Lawsuit before the Administrative Bench in Iraq

Raed Ayad Maarij
University of Religions and Denominations

Abstract: Once this body has been given jurisdiction and members who are distinguished by their independence, impartiality, experience, and sufficient knowledge to decide on these administrative disputes have been appointed, it is necessary to decide these procedures that the administrative courts will follow. According to the administrative judiciary, an administrative matter must always be brought before the clerk's office of the competent court along with a signed petition from an attorney on the court's list of approved attorneys. According to Egyptian legal regulations, attorneys registered with the courts of first instance must be allowed before administrative courts; attorneys registered with the courts of appeal must be admitted before appeals courts; and attorneys registered with the Court of Cassation must be admitted before appeals courts. by the Administrative Supreme Court.

Keywords: Administrative Supreme Court, the Court of Cassation and administrative judiciary.

An introduction

Administrative dispute litigation is encircled by a set of rules and regulations at every turn, from the legislatively mandated conditions and its establishment to the judge's approach when considering cases before him, to the issuing of the ruling and the ensuing deliberation over how to implement and contest it. It is necessary to determine these procedures to be followed by the administrative courts after assigning jurisdiction to this body and appointing members who are distinguished by their impartiality, independence, experience and sufficient knowledge to decide on these disputes of an administrative nature (), and then give them the freedom to rule after following certain procedures by the law so that the rulers and the ruled are subject to these matters. The rules when resorting to the judiciary prevent as much as possible from making a mistake.

Litigation procedures in administrative disputes are characterized by several characteristics, the most important of which is the written nature that allows the case to be studied seriously in detail and in-depth, which has made accounting books and written documents, for example, the main means of proof. These procedures are also characterized by speed insofar as they relate to administrative situations that require rapid stability. It cannot tolerate postponement, let alone

secrecy given its claims to preserve the secrets of those in charge to prevent harm to them. Therefore, we will divide this chapter into the following topics:

2.1 Procedures for opening an administrative case file

Administrative legislation has taken into consideration the regulations controlling the litigation process in administrative cases. It has established some unique procedures that litigants must adhere to while submitting their cases, as well as the appropriate authority's examination and determination of the issues raised.

There are conditions for filing an administrative lawsuit related to the litigants and others related to the lawsuit itself and the dates for filing it. Whenever they are available, the competent authority must accept them after verifying their validity and the validity of the information, data, and evidence presented by the plaintiff, as well as the proof in these lawsuits and how to distribute its burden to the parties to the lawsuit and the means of proof that The judge uses it in the case he is hearing, and this is what we will discuss as explained below:

2.1.1. Assigning individuals to submit papers

The individual, whether an employee or an ordinary person, must meet the conditions to submit the papers considered in the lawsuit, and this is what we find in the text of Article 13 of Law No. 9 of 2008: “Any person may sue unless he has a capacity and has an existing or potential interest recognized by the law.” ". Therefore, before examining the merits of the case, the competent administrative judge must examine the availability of the conditions for the cancellation request for the public employee:

It is now established in jurisprudence and judiciary that there is no lawsuit without benefit and that the focus of the lawsuit is interest, which is defined as the legitimate practical benefit that the plaintiff receives from using the court system. Interest is required for the case to be accepted, regardless of whether it is before the administrative or regular justice. Accepting the case also means agreeing to any payment or request made in it, which can involve defending the plaintiff's rights or, if there is a legal justification, seeking material or moral recompense.

There are two aspects to the interest in an administrative lawsuit, which is a negative aspect that requires excluding those who do not need or benefit from the protection of the law from resorting to the judiciary. The other positive side is a condition for accepting the claim of everyone who has an interest in ruling on it.

Therefore, the interest, just as it is a condition for accepting an administrative lawsuit, is also a restriction on it, as the ruling is excluded if it is not available to the plaintiff personally, and therefore it is a restriction on the defendant’s entry into the lawsuit.

Interest as a condition for accepting a lawsuit is stipulated in the legislation through the text of the Egyptian State Council Law in Article (12) of not accepting applications submitted by persons who do not have a personal interest in them, as the Lebanese legislator did and emphasized the condition of interest in the lawsuit stipulated in Article 96 of the Council State Shura. Council Law: A request for cancellation due to exceeding the limit of authority is not accepted, except for those who prove that they have a direct and legitimate personal interest in nullifying the contested decision.

The second modification of State Shura Council Law No. 65 of 1979, Paragraph (D) of Article (7), states that the Administrative Judicial Court has jurisdiction "... based on an appeal from those with a known, current, and possible interest."

In France, the legislator there did not stipulate in the French Council of State law that the admissibility of the case be suspended based on the availability of an interest, but the Council of State stipulated the existence of an interest in the appellant. If this diligence is met with severe criticism on the pretext that it is an innovation, it is rejected due to a condition not stipulated by the law.

Article 13, Law No. 8 of 2008, including the Civil and Administrative Procedures Law, Official Gazette, Issue No. 21, April 23, 2008, p. 4.

Al-Aboudi, previous source, p. 207; Obaid, Important Practical Problems in Criminal Procedure: p. 66.

Badawi, Khalil, previous source, p. 89.

Khamis, Al-Sayyid Ismail, previous source, p. 178.

Helmy, previous source, p. 409.

Al-Khatib, previous source, p. 92.

See: p. of this study.

In conclusion, we state that the plaintiff's interest must be available at the time the action is filed for it to be accepted; otherwise, the lawsuit may be declared inadmissible. The condition of interest is a type of defence that can be used in any situation and does not influence the submission deadline that is set after the lawsuit is filed. Because the case is decided independently of its subject topic, it is independent of the case's subject matter.

Secondly) the condition of the adjective

Standing in the lawsuit means that the plaintiff is the holder of the right or legal position that was attacked, but this does not mean that standing is a condition for filing the lawsuit that the plaintiff must have, but that the defendant must also have standing in the lawsuit. The capacity of an individual in an administrative case is that he or she is an agent, agent, legal representative or guardian.

The status of the administrative body is that it is competent to represent the defendant’s public body or legal person.

Accordingly, Professor Mahmoud Helmy defined capacity as the legal ability to file a lawsuit with the court or appear before it to receive it.

When the plaintiff is not the right holder and it is required to ascertain the plaintiff's status and whether or not he is authorized to represent the right holder in court, the eligibility requirement becomes crucial in administrative matters. In his capacity as the person who grants permission to anyone to initiate or receive administrative litigation, his representation by agreement or his representative by law must be one of the following:

-_____

Al-Khatib, previous source, p. 93.

Helmy, previous source, p. 413; It has previously been said about the difference in the interest required by the appellant in the annulment lawsuit from the similar interest required by the appellant in the full jurisdiction lawsuits. See: p. 49 of this study.

Al-Aboudi, previous source, p. 204.

Helmy, previous source, p. 414.

Khalil and Saad, previous source, p. 272.

Helmy, previous source, p. 414.

1. The original owner of the personal interest in filing the lawsuit.
2. The guardian, custodian, custodian, or his legal representative, if the predecessor, in one of the circumstances in which the law resides, is a person or another, shall receive compensation on his behalf.
3. The legal representative of the stakeholder, whether he represents a person or a body composed of several natural or ordinary persons.
4. The agent in the dispute over the principal or one of them.

This eligibility requirement has sparked intense controversy, especially in the field of administrative lawsuits, as part of public law jurisprudence in Egypt believes that capacity is a necessary condition regardless of the condition of interest and that interest differs from capacity, as it differs according to the type of lawsuit, so interest must be In ordinary lawsuits, they are based on a right that must be protected, since the lawsuit is one of the consequences of the right. It is also not permissible for the plaintiff to be the owner of the right, while personal interest is sufficient in cancellation cases, because it conflicts with the administrative decision, and this is what was confirmed by the administrative judiciary rulings, while adjective means One meaning. This does not change from one case to another.

Conversely, the adversary might possess an interest, even though he cannot pursue it; additionally, the opponent might represent another party in the legal dispute, such as a representative of the right holder. Furthermore, quality is a formal matter governed by formal processes, and it becomes evident before taking on the case after accepting her newspaper. Regarding the interest, it is objective and cannot be understood unless one studies the case's subject matter. That is, whether analyzing the matter or issuing a verdict therein, the question of quality always takes precedence over the interest.

The other side considers that the characteristic is a condition of interest and a description of it, and therefore it is integrated into the interest, and it is the only condition for accepting the case. One of the supporters of this opinion is Dr Abdul Aziz Khalil Badawi, who says, "What is noted in this regard is that the law of the State Council, as well as the law of procedures, neither of them stipulates According to this condition, it was sufficient to stipulate that the interest be personal, that is, specific to the person filing the lawsuit or his representative, by the rules of legal delegation or agency. Therefore, this condition has no place on the person filing the lawsuit, even if this condition is clear in administrative disputes regarding the defendant. This opinion is based on the statement that interest is the characteristic acquired by the concerned party as a result of prejudice to his legal status as a result of an administrative decision issued by a public authority, and enabling him to resort to the court to exercise its jurisdiction. To reach the case.

Bassiouni, previous source, p. 98.

Al-Aboudi, previous source, p. 200.

Heikal, previous source, pp. 310-311.

Helmy, previous source, p. 413.

Khamis, previous source, p. 184.

Al-Jarf, previous source, p. 157.

Asfour and Khalil, previous source, p. 372.

Finally: We say that the capacity of either the plaintiff or the defendant is one of the conditions for the absence of judicial litigation. If the capacity is not present in the plaintiff, the court will rule that the lawsuit is inadmissible, and if it is not present in the defendant, it will rule to remove him from the lawsuit so that there is no other person to file the lawsuit with. Even if the capacity is integrated with the interest in invalidation claims, it must be present in the plaintiff. It is the administration, and this confirms that capacity is an independent condition for accepting the case.

Third) eligibility condition

The Supreme Administrative Court of Egypt mandated that "although the principle is that it is not sufficient for the case to be accepted that the person who initiates it must have a right, interest, or have the capacity to litigate, rather he must have the capacity to litigate," litigation status must be available in the administrative case file before the judiciary. It is a broad premise that applies to both administrative litigation and other types of cases before the judiciary.

Article Three of the Iraqi Code of Procedure also stipulates: “It is a condition that both parties to the lawsuit have the necessary capacity to exercise the rights to which the lawsuit relates. Otherwise, someone who legally takes his place must represent him in these rights.”

The defence related to eligibility if it is not available is a defence of inadmissibility according to Civil Law, which requires that the lawsuit be accepted that the plaintiff be qualified to initiate it, and that the lawsuit not be inadmissible. In examining eligibility, reference is made to the provisions of this law. It is noted about eligibility in terms of the conditions for accepting an administrative lawsuit. The French Council of State shows a tendency to be lenient in proving legal capacity, especially about legal persons, including its acceptance of annulment requests. The lawsuit was filed by an unlicensed association by the 1901 law, as well as its acceptance of the annulment lawsuit against the decision to dissolve the Franco-Russian Association, which strips it of legal personality. In any case, the eligibility requirement, especially in the field of administrative litigation, does not raise great difficulty, because the legislator in each country The issue of eligibility is supposed to be regulated by mandatory and general provisions.

Badawi, previous source, p. 92.

Al-Shoubaki, previous source, p. 210.

Helmy, previous source, p. 415.

The ruling of the Supreme Administrative Court in Judicial Case No. 1119, session of December 14, 1966, and Collection of Principles, Year 12, Rule No. 45, p. 467.

Iraqi Civil Code Articles (93-111).

Heikal, previous source, p. 301.

2.1.2. Assigning the administration to submit the papers

It is common knowledge that there are two parties to any lawsuit: the plaintiff and the defendant. It is also well known that it is characterized by the equality of the legal positions of its two parties, regardless of the plaintiff's or defendant's position, since the outcome of the case is determined by the quality of the evidentiary evidence that each party presents and how strong it is.

However, this is not the case with administrative lawsuits. As we saw when comparing them with civil lawsuits, one of the parties to the administrative lawsuit is always and forever an

administrative party. In most cases, it stands in the position of the defendant, armed with its huge privileges, which are as great as its responsibilities. It is known that the position of the defendant is easier and lighter than that of the other party.

As for the ordinary, natural person, he stands in the position of the plaintiff, devoid of all privileges, seeking to achieve self-interest or private benefit. As a result, he had to begin litigation procedures against the administration before the administrative judiciary, as the administration is not an ordinary litigant due to its privileges. It is not obliged to resort to the judiciary, but rather it has the right to impose its will on individuals due to its many privileges that facilitate the performance of its responsibility and its constitutional function in managing and organizing the functioning of public facilities and maintaining public order in the service of society and the group.

Heikal, previous source, p. 301.

Asfour and Khalil, previous source, p. 372; There is a jurisprudential opinion that tends to indicate that the eligibility condition is not considered a condition for accepting the lawsuit, but rather it is a condition for the validity of litigation procedures. This is because a lawsuit filed on behalf of an incapacitated or incomplete person is accepted if there is an interest in filing it and he has the capacity; the lack of capacity does not result from his inability to initiate the lawsuit himself; rather, it must be handled on his behalf by his guardian or guardian. Al-Aboudi, the earlier reference, p. 203.

Although the legal texts regulating the jurisdiction of the administrative judiciary or judicial procedures in France, Egypt or Iraq are devoid of an explicit text stipulating that the individual is usually a plaintiff and that the administration is a defendant, this can be discovered by delving deeper into these texts. For example, the text of Article 32 The order of July 31, 1945, regarding the jurisdiction of the French Council of State included its competence to decide on requests for an annulment due to abuse of authority submitted against the decisions of various administrative bodies.

This is also the case with the Egyptian Council of State when it stipulated in Article 10 of its law that it specializes in two types of administrative disputes. The first relates to the annulment of administrative decisions in which the individual is always a defendant. The second type relates to the full judiciary, and the principle is that the individual is a plaintiff except in some rare exceptional cases. In which the administration stands claiming either by choice or because the judicial path is the only way to recover its rights. The administration's enjoyment of being a defendant comes as a result of the practical nature of the administration's function. It works, by its executive function, to respect the most important principle of the state's legal principles, which is the principle of legality.

Rather, it must first adhere to this principle, and any administrative action or action, whether physical or legal, must fall within the scope of this principle, otherwise its action will be invalid and valid by cancellation.

As the principle of legality is the basis for the annulment and full judiciary, the legal reason for cancelling the administrative decision, as previously mentioned, is its illegality, while the legal reason for resorting to the full judiciary is the damage resulting from the administration's error, which in turn is based on illegality.

On the other hand, we notice in the cancellation lawsuit in particular that the cancellation of the administrative decision is a dispute directed at that decision because it is a real lawsuit, and

therefore the administration was obliged to defend its decision, and here it became in the position of the defendant, even if indirectly.

Finally, the possession of papers and documents containing everything related to the administration's work and the decisions it takes, whether they refute or prove the plaintiff's claim, was the reason for the administration to take the aforementioned position. This is what we will try to explain in this demand, with the restrictions on the administration being a defendant.

The Iraqi legislator validated the particular form of the invalidation litigation in multiple places by restricting the cassation lawsuit to administrative decisions in the second amendment to the State Shura Council Law. He outlined the following in his justification of the Administrative Judicial Court's jurisdiction:

In some rare exceptional cases, the administration takes the stand, claiming either by choice or because the judicial path is the only way to recover its rights.

The law of the State Shura Council also did so in its clarification of the powers of the Administrative Judicial Court, which is that it is competent to consider the validity of administrative orders and decisions, thus placing the administration in the position of the defendant in a way that cannot be doubted. See The aforementioned laws and Musa, The Theory of Evidence in Administrative Law: p. 92.

Khalil, previous source, p. 437.

"The Administrative Court has jurisdiction to consider the validity of administrative orders and decisions..." He also explained in his statement of the reasons for appeal that "the order or decision must include" and "the order and decision must be" and "it is considered to be in the same category as orders and decisions." Thus, the administrative decision is the opponent himself in the case. Nullification suit.

Therefore, an annulment lawsuit is a specific lawsuit in which litigation is directed against an illegal administrative decision, demanding that the judiciary determine its illegality and rule to cancel it for violating the law.

This is due to one of the defects of legality (aspects of cancellation) mentioned above. Therefore, it does not represent competition and does not give rise to a dispute between two persons or parties, a creditor and a debtor. Rather, it is a discussion of a legal issue represented by the legitimacy of the administrative decision, and its procedures are not determined between the parties. Rather, it is a lawsuit against a decision that violates the law in its broad sense. It is sufficient to examine the legitimacy of the administrative decision without taking into account the personal rights of the plaintiff.

But if the annulment lawsuit is a reinstatement lawsuit, and the administrative decision is the litigant in it, does this mean that the lawsuit has no defendant?

The administration that made the decision must be the defendant if the individual objecting to it is similar to the plaintiff. The administration may be named as a defendant not because it is seen as an adversary in the lawsuit, but rather because it is the one with the ability to defend its choice, provide justification for it, and attempt to establish its legal conformity. It is the one that, according to the verdict of the Egyptian Administrative Court of July 1, 1950, has the authority to revoke it, modify it, or carry out the court's decision therein.

Article (7), Clause Two, Paragraph (d) of the Second Amendment to State Council Law No. 65 of 1979.

Article (7), Clause Two, F-E, of the same law.

While acknowledging the concrete nature of the cancellation lawsuit, there are personal elements mixed with it. For example, the individual's request to the administration to respect legality includes a personal interest for him, and results from the cancellation of the administrative decision, such as an employee who demands the cancellation of an administrative decision to refuse to grant him a bonus that he claims to be entitled to, but he seeks through this to obtain it.

Abd al-Wahhab and Sharaf al-Din, previous source, p. 402. Also: Sadiq, previous source, p. 10.

Al Yassin, previous source, p. 287.

Al-Helou, previous source, p. 256.

Al-Ghuwairi, previous source, p. 237.

"It is directing the dispute to the administrative body that issued the decision or its representative to receive the objections thereto and defend it, then to take what the court decides in its regard. Therefore, disputing a party other than that body is filing a lawsuit against someone other than someone in a position and directing it against someone other than an opponent."

Accordingly, an annulment action must contain a defendant to decide the procedures necessary to file it, the conditions for its acceptance, a description of who is filing it and their interests, or to submit documents to defend the decision, or to withdraw. Amending it and implementing the cancellation ruling.

As a result, the administrative body whose source is the flawed decision must receive the annulment application. In cases of annulment, the administration is always and forever held accountable. The French and Egyptian Councils of State have declared that bringing a lawsuit against someone other than the decision-maker is grounds for dismissal because the target of the litigation is unfit.

If we reach the rule that the individual is the plaintiff and the point of the tool stands in the position of the defendant in the annulment lawsuit as the party that issued the contested administrative decision, then we must here determine the administrative defendant against whom the lawsuit may be filed. As for Iraq, the lawsuit is usually directed and Submitted before the Administrative Court to the person who issued the decision in addition to his position, whether he is a minister or president of a university.

Different administrative laws have established time frames within which an administrative lawsuit can be brought. For example, a time frame may pass before the party challenging the administration's actions appears in court and files a lawsuit or claims cancellation. Because the administration's actions are not subject to appeal, the entire judiciary forfeits its ability to bring a lawsuit. As a result, the administration's ability to participate in administrative litigation as a defendant is limited by the passage of time.

Given what has been discussed regarding the deadline for filing an administrative lawsuit, whether the deadline is related to the cancellation lawsuit or the deadline for filing a full judicial lawsuit.

Quoted from: Al-Tamawi, a previous source, p. 976; Also: Al-Helou, previous source, p. 348.

Al-Ghuwairi, previous source, p. 237.

Al-Fayyad, previous source, p. 75; Also see: the previously mentioned ruling of the Egyptian Administrative Court.

Al-Fayyad, previous source, p. 75.

2.2. Procedures for verifying the authenticity of administrative case papers

Evidence is particularly important in the context of litigation as a whole. If the evidence on which the right is based is not proven, the right - the subject of the lawsuit - loses all its validity. It is the basis of truth and the compound of its benefits. Because the truth is devoid of its evidence and becomes void when there is disagreement about it, and emptiness is itself.

Evidence is defined as presenting evidence to the judiciary through the methods stipulated in the law that there is a legal fact - whether it is legal conduct or a material act - that has an effect.

There are two points to be established here:

1. The objective aspect: It defines the different methods of proof, determines when they are acceptable, decides the value of each method, and who bears the burden of proof and what to prove. Objective rules of evidence are this element.
2. The formal aspect: which determines the rules that must be followed in the conduct of pleadings, including how to prove evidence, how to listen to it, and verify its availability and conformity to the case. This aspect is known as evidentiary procedures.

Most laws specify the means of proof, which may include official and ordinary documents, confessions, interrogation, testimony, hypotheses, inspection, trial, and oath, as well as the number of procedures and rules of evidence relating to public order. Evidence procedures, like all other litigation procedures, are considered a matter of public order. In terms of evidentiary evidence, it is determined by law, and judges in France and Egypt are free to approve or disapprove of it, especially when it comes to written proof. Furthermore, Article 60 of the Egyptian Evidence Law allows the agreement to explicitly ignore the previous requirements. On the basis that agreeing to violate it may provide guarantees to opponents and make their lives easier.

Finally, we can conclude that the theory of proof comes at the forefront of the legal theories that are used daily, as it is used by courts of all types in all matters that come before them, whether civil, criminal, or administrative.

Abu Al-Wafa, Commentary on the Texts of the Evidence Law: p. 8.

Al-Lami, Dictionary of Legal Terms: p. 6; For more on jurisprudential definitions of proof, see: Musa, previous source, p. 1.

Previous source, same page.

See Iraqi Evidence Law No. 107 of 1979.

Abu Alofa, previous source, p. 32.

Musa, previous source, p. 35.

2.2.1. Appealing the forgery of documents

It should be highlighted that to contest the falsification of documents, the burden bearer—the party tasked with establishing the disputed fact—would have a more difficult time winning the case because they will have to provide evidence of the truth. contested, whilst his opponent will accept a losing stance. It is imperative to ascertain who has the evidence. Since it frequently determines the outcome of a litigation, a plaintiff may lose their case for no other reason than that they have insufficient evidence to support their claims.

Several rules govern proof and, as a result, determine who is the plaintiff and who is the defendant. A claimant who is committed to the contrary, for example, has the rule that the original or apparent matter does not need to be proven.

The administration is a defendant based on the above because the basis for administrative decisions is legality, the principle or appearance that the administrative contract is real, etc. So, the individual is the one who clings to seemingly contradictory managerial choices. each other, and then he must remove the assumption of security that these provisions have based on the data he possesses.

The rule of proof on who claims is also an important rule of proof.

In all cases—administrative, civil, commercial, or criminal—the burden of proof rests with the plaintiff because the administrative court follows the same standard as a regular judge. This is because it makes sense for the burden of evidence to rest with the person making the assertion, but if this principle can be completely implemented in routine court proof, then it should be. However, because it shifts the burden of proof to the private party who is the administrative procedure plaintiff, it cannot be used as a public asset before administrative tribunals. Her privileges and possession of administrative papers and documents, which are used as the basis for administrative evidence, imply that she already has evidentiary evidence for herself and others, even though others do not have it, and it is difficult for him to explain the concept of it correctly. As a result, one of the rules in force in the administrative sector is that the administration must submit all papers and documents related to the subject of the case and submit them as evidence whenever requested, to help the individual prove his or her existence.

Abu Al-Wafa, previous source, p. 41.

See this rule, along with others, Article (6) (7) of the Civil Evidence Law No. 107 of 1979, where the Iraqi legislator established several rules to regulate the burden of proof. There is the principle of innocence in a person, Article (6), the rule of proof on the one who claims, and the oath on the one who denies (F (1) Article 7), and the rule (The claimant is the one who adheres to what is contrary to what is apparent, and the denier is the one who adheres to maintaining the principle) Article 2 of Article (7).

Musa, previous source, p. 583.

Fahmy, previous source, p. 639.

"It is an established principle in the administrative field that the administrative authority is obligated to submit all papers and documents related to the subject of the dispute and produced in proving it, whether positive or negative," the Egyptian Administrative Court declared on April 15, 1970.

Likewise, the assignment took place before the Administrative Court in Iraq, which requests all documents related to the subject matter of the dispute from the party whose ruling is being challenged, and when its representative is there, he usually presents all the documents in support of it. Pleadings. Likewise, the work took place before the General Disciplinary Council, where the administration submitted the personal file and all documents related to the matter, and here the positive role of the administrative judge appears, as he does not stand in a passive position waiting for the evidence that reaches him from the opponents. The plaintiff is only required to present the facts that accompanied the issuance of the case. The decision in these cases, as well as the place of the plaintiff if the judge believes it is necessary, explains why she did what she did.

On May 22, 1983, the Supreme Administrative Court of Egypt (Case No. 943 S23) decided that the administration bears the burden of proof in cases where it fails to submit relevant documents or causes them to be misplaced. This presumption is in favour of the plaintiff. The following text: "The failure of the opponent to submit the required data and documents, or his causing them to be lost, leads to the establishment of a presumption in favour of the other party, such that it places the burden of proof on the party who failed to submit what is required, and makes the court free from taking into account the papers and data presented and considering the documents he presented." The opponent and the facts on which he relied are correct."

As a result, the administrative judge has complete freedom to follow any path that leads to conviction, and his faith in deciding the administrative case will depend on what is relevant in civil cases where the plaintiff is required to prove his claims.

Khamis, previous source, p. 344; And Heikal, previous source, p. 455.

Al-Mashhadani, previous source, p. 27; Likewise, the ruling of the Supreme Administrative Court in Egypt and its ruling on November 11, 1967, is referred to in Badawi, previous source, p. 172.

Al-Mashhadani, previous source, p. 25.

Fahmy, previous source, p. 64.

Heikal, previous source, p. 456.

Khamis, previous source, p. 344.

Heikal, previous source, p. 455.

Al-Tamawi, previous source, p. 655.

2.2.2. Verifying the authenticity of the regular paper (in case it is denied)

The purpose of determining the importance and seriousness of any lawsuit that may be filed against the administration is to verify the legitimacy of the statutory document. There is no need to accept these lawsuits and occupy the administrative judiciary department with them, which harms the work and function of the administration if they are not important or dangerous.

As a result, instead of proceeding to more advanced levels of evaluating managerial concerns, such cases cease at the boundaries of these constraints, causing management to avoid potentially harmful or insignificant situations. Even though these barriers serve to streamline the administrative judiciary's responsibilities and divert it from numerous issues that could consume it but are neither critical nor grave.

We will attempt to show the most important agencies and systems specialized in assessing the seriousness and seriousness of administrative appeals submitted to the administrative judiciary, which examines and resolves these matters before they reach the courts. The appeals committees, the administrative prosecution, and the prosecution are the relevant bodies. Finally, we will discuss the conditions for accepting appeals against administrative court rulings, as they are a procedural requirement for such appeals to be considered by the courts.

First) Appeals examination committees

Appeals examination committees restrict the administration's ability to name a defendant in cassation appeals against administrative court rulings. As a result of these committees filtering out many non-serious appeals that do not meet formal requirements, the task of the administrative judiciary is to consider appeals in principle. As is the case in the appeals examination system, the

appeal must be submitted to a special committee before it is investigated and decided upon, which has led to the exclusion of many non-serious appeals that may occupy the judicial arena.

As a result, appeals examination committees are considered one of the procedural boundaries aimed at keeping the administration away from non-serious matters that may threaten its ability to perform its function and complete its obligations quickly.

Forming appeal examination committees requires the following steps:

The Appeals Examination Commission was established in France by Decree No. 905 of September 2, 1988, as part of the second reform of the administrative judiciary in France, represented by Law No. 31 of December 1987.

Al-Tamawi, previous source, p. 655.

Abdel Latif, The Second Reform in the Administrative Judiciary in France: p. 32.

Abdul Latif, previous source, p. 11, p. 33.

"This decree entrusted the task of examining appeals to a new formation, which is the Cassation Appeals Examination Committee, to which all cassation appeals are presented after they are registered and before the Council of State considers them. The committee decides on accepting the appeal in a judicial formation body consisting of a president and two members," by presenting the file. related to the case before the Chairman of the Committee, after registering the cassation appeal statement, who has the right to:

- In the case of an appeal to the head of the judicial department, if the appeal is acceptable and includes serious reasons.
- "Or the appeal may be referred to the committee itself, which, after hearing the verbal comments of the lawyers and the opinion of the government commissioner, may either accept the appeal or reject it. In this latter case, the decision must meet the conditions of judicial rulings, especially justification."

The committee consists of a chairman and several members chosen from among the State Council's advisors, representatives and delegates who act as rapporteurs in the committee.

Since the decision or rule has the authority of the thing resolved, the Commission's or the Chamber's rejection of the appeal cannot be appealed in any manner. A succinct explanation of the (court's) perspective is all that is needed in this regard; the committee does not need to defend its choice.

The rejection of the appeal by the Commission or the Chamber as it is known may not be appealed in any way because the decision or ruling has the authority of the thing decided. There is no need for the committee to justify its decision, and in this regard what is required is a brief statement of the (court's) point of view.

In three cases, the committee rejected the appeal:

1. There is a defect in the form related to the appeal procedures, such as submitting it late.
2. The appeal is considered invalid because it does not relate to one of the legal reasons for submitting the appeal to the court.
3. The appeal is not worthy of being presented to the court, as if it violates one of the standards set by the court's judiciary, ensuring that the result, which is rejection, is known in advance.

Gustave peiser، Op. Cit.، P.196.

Abdul Latif, previous source, p. 33.

Abdul Latif, previous source, p. 24.

Al-Tamawi, Administrative Judiciary: p. 759.

Fahmy, previous source, p. 593.

Secondly) the necessity of appointing a lawyer

An administrative case must always be presented to the competent court's clerk's office together with a petition signed by an attorney on the court's list of approved attorneys, according to the administrative judiciary. According to Egyptian legal regulations, attorneys registered with the courts of first instance must be allowed before administrative courts; attorneys registered with the courts of appeal must be admitted before appeals courts; and attorneys registered with the Court of Cassation must be admitted before appeals courts. by the Administrative Supreme Court.

Because the petition is the basis of the administrative dispute in which the action is brought, the failure to appoint counsel is one of the essential actions, the omission of which invalidates the petition and, as a result, all subsequent actions.

It is sufficient for the lawyer who signed it to be a representative of one of the lawyers accepted before the administrative courts, and the appointment of the lawyer is not limited to cases filed by individuals before the administration but also includes cases filed by the administration against individuals as an exception. However, it is sufficient if it is signed by the delegate who graduated within the last two years, because the members of the administration act on behalf of the head of the administration, the legal representative of the administration in all legal representations made on behalf of the government.

The French legislator intervened by decree of November 2, 1864, exempting the owner of this case from this restriction to allow room for individuals and simplify their appeal to the court, given the significance of the annulment lawsuit in the face of improper administrative judgments. If the State Shura Council contests the validity of the administrative decision, it may file an appeal against the cancellation (abuse of authority appeal).

Finally, we assert that our administrative judiciary has failed to take this limitation into account. The petition does not need to be filed by an attorney; Alternatively, it can be brought by the plaintiff directly.

Fahmy, previous source, p. 593.

Bassiouni, previous source, p. 309.

Badawi, previous source, p. 131.

Mahmoud Helmy, previous source, p. 380, footnote.

Al-Khatib, previous source, p. 67; Article 74 of the 1975 decree of the Lebanese State Shura Council exempted the administrative authority from stamp duties, fines, and from appointing a lawyer. Khalil, Lebanese Administrative Judiciary: p. 390.

Saad and Khalil, previous source, p. 364. Al-Helou, Administrative Judiciary, previous source, p. 253.

Although restricting the appointment of a lawyer imposes a burden on individuals that varies in weight depending on their ability and the level of the courts before which pleading requires a certain level of competence, which becomes more expensive as their level increases, which makes

matters difficult for litigants due to their inability to bear the financial burden of appointing a lawyer. Which may prompt them to refrain from filing an appeal.

We argue that if this is permissible, it should be allowed in nations where the administrative judiciary has been in place for a considerable amount of time and where the person has a strong enough cultural background in this area. However, we reject it for two reasons:

1. Weak legal culture among litigants, because our administrative judiciary is new, and there is fear that individuals will abuse the right to use it.
2. A continuation of the previous reason. When looking at the defects in the administrative decision allowing the appeal, it is clear that the judicial defect is the only defect that relates to public order. Other defects are not of this type because the administrative judge cannot raise and investigate them on his own until he says so. The administrative decision from time to time prevents evasion, even though it suffers from the above-mentioned defects as a result of the appellant's ignorance because he did not point out the defect in the litigation petition, which is a result that is not acceptable to logic.

Third) Conditions for appealing administrative court rulings

The ruling issued by an administrative court in annulment or the full lawsuit may be flawed, and it will be in the plaintiff's interest to appeal it again and re-evaluate it, within a specific period, by submitting it to the same court that issued it or to a higher court than the one that issued the ruling. Appellant. This is to demand its cancellation or change because it violates the law in every sense of the word.

As is the case with any lawsuit, several conditions must be met for the appeal to be considered before the competent court, and these conditions, when compared to the general conditions for accepting the lawsuit that we mentioned, represent restrictions on the administration entering the administrative lawsuit. If at least one of them is not present or unable to participate, the administration is neither a defendant nor a plaintiff in the case. If a judgment is rendered against it, it may be in the interest of the administration or, conversely, in the interest of the plaintiff.

Al-Khatib, previous source, p. 64; Al-Metioti, previous source, p. 244.

Helmy, previous source, p. 433.

Al-Helou, previous source, p. 610.

Mubarak, and

We can come up with some general conditions for accepting appeals in administrative court rulings, which must be verified so that we can include the administration again in the case, by extrapolating the methods of appeal whether in France, Egypt, or Iraq and we summarize these conditions as follows:

First: "The contested ruling.

Second: "The appellant."

Third: "The deadline for appeal."

A - The contested ruling:

"The ruling is defined as the decision issued by the court in the dispute submitted to it by the law," and it is the final decision by which the court settles the dispute of the two parties and ends the case.

As a result, rulings that can be appealed and made in the interest of management must include:

1. It must be issued by a judicial authority, which in this case is one of the competent administrative courts.
2. Settlement of an administrative dispute submitted to the Administrative Court.
3. If it has been issued in legal form.

The court before which the appeal is filed will refrain from considering it if these three elements are not met in the judicial ruling, which prevents the administration from reconsidering the case.

An appeal must be made to a judicial decision rendered by an administrative court with jurisdiction over an administrative dispute that is final, or conclusive, to get past this restriction.

Except for temporary and urgent rulings issued to stop the lawsuit and rulings that are obligatorily subject to implementation, administrative decisions issued by the court may not be appealed during the lawsuit, and litigation therein shall not be interrupted.

Mubarak, and Al-Nadawi, previous source, p. 151.

Al-Mahmoud, Code of Civil Procedure: p. 12.

Helmy, previous source, p. 512.

B - Appellant:

In terms of the terms of appeal, we begin by saying that the appellant has an interest in appealing according to the court's ruling. Stakeholders who have the right to appeal include the original parties to the lawsuit (the plaintiff or the defendant), in addition to others participating in the case and those outside the dispute whose legitimate interest was affected by the ruling issued in the original lawsuit, and who was not in a position that allowed him to anticipate or learn about the lawsuit. He has no other legal recourse.

In Egypt - in addition to those mentioned above - "the Egyptian legislator holds that the rulings issued by the Administrative Judicial Court in the appeals filed before it regarding the rulings of the administrative courts may not be appealed before the Supreme Administrative Court, except by the head of the State Commissioners Authority."

In general, for the appeal to be accepted by the concerned parties, the same conditions are required for the suit to be accepted in terms of interest, capacity, and character.

"The interest in the appeal is one of the conditions for accepting the lawsuit. If the appellant is a plaintiff in the lawsuit, and all his requests are granted, then his appeal against the ruling will not be accepted. Likewise, the appeal will not be accepted from those who were not convicted of anything in the appealed ruling."

The appellant must also be able to litigate at the time the appeal is filed; Otherwise, it must be submitted by the guardian, conservator or conservator, as applicable.

In standing, as previously explained in a prerequisite for research, the appeal must be filed by the person with standing in the case.

C- Deadline for appeal:

If the legislator gave one of the parties to the case the opportunity to appeal a ruling that did not respond to his wishes, he did not do so for an unlimited period. Instead, the right to appeal the court's decision must be exercised within a certain period, after which the appeal will be

dismissed. If there are overlapping periods in the Civil Procedure Code regarding appeal methods, whether appeal periods, cassation periods, or others, then the time limit for accepting appeals in administrative court rulings is the same time limit for accepting administrative procedures. Cases: In Egypt, it takes 60 days to cancel the case and two months in France for general administrative cases.

In Iraqi law, it is called third-person intervention. Al-Fayad, Procedures and Drafting of Judgments: p. 91.

Al-Fayyad, previous source, p. 87.

Helmy, previous source, p. 515.

Al-Mahmoud, previous source, p. 48.

Al-Nadawi, previous source, p. 171; And Musa, Methods of Appealing Administrative Judicial Rulings: p. 80.

Helmy, previous source, p. 516, p. 517.

It does, however, start on the day of the verdict rather than the announcement of the decision and ends on the last day of the term. This also holds for the note on missing a deadline and the outcome of filing an annulment case.

The right to appeal is forfeited if the deadlines for appealing decisions are not adhered to. Because the date is related to public order, the court will decide this on its own.

In addition to the period specified for filing an annulment lawsuit, which is limited to (60) days from the end of the period specified for the grievance, the period specified for appealing the cassation before the Administrative Court rulings and public disciplinary decisions.