

# WAIVER OF JUDICIAL PROCEDURE IN ADMINISTRATIVE CASE

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## ABSTRACT

*The waiver of the judicial procedure in the administrative case is the waiver made by the plaintiff with his unilateral and free will announcing the abandonment of a specific procedure of the administrative litigation procedures while preserving his right to claim this procedure if he had a requirement before the case was settled. The justifications for this waiver are the litigants' desire to resolve the dispute. Outside the walls of the court, or by arbitration, or resolving the matter amicably, or conciliation between them, or the unwillingness to prolong the judicial procedures, or the inability to complete some judicial procedures, or the fear of losing interest in adhering to all the procedures established in favor of the litigants, as it became clear to us that the legal conditions for waiver of the procedure The judicial waiver of the trial is an explicit or implicit waiver, in addition to the defendant's approval of the plaintiff's waiver of the space procedure. The state they were in prior to the existence of the waived procedure.*

**Keywords:** waiver, Procedures, Litigation, Administrative Case.

## INTRODUCTION

The legal regulation of the procedures for waiving the judicial procedure in the civil and administrative lawsuit is one of the important procedural means that the legislator must organize in integrated legal texts that simplify those procedures that the litigants can use when initiating the lawsuit, just as the voluntary application of the law is the best and natural way for the functioning of the legal system. The legislator clings to this application and does not prevent individuals from resorting to it and ending the disputes that arise between them based on their own will and waiving some judicial procedures is one of the forms of the voluntary or voluntary application of the law.

### The Importance of the Topic

The importance of the subject lies in the formation of an integrated general theory that deals with this issue. Waiving the judicial procedure means considering it as if it did not exist and therefore it cannot be used as evidence in the case, as it is a license given to the plaintiff to waive any of his substantive rights in issues that occur during the trial and affect the course of the trial. In the case in terms of proof or denial, waiver of the procedure means abandoning the procedure, which is represented in the plaintiff's desire to declare his free will to waive one of his rights, although the plaintiff is the one who submitted his lawsuit to the court and then set up the dispute in it and bears its expenses, as he is the holder of the first interest in its survival and control over it.

## **The Problem with the Topic**

Several questions arise in this regard, as follows:

1. What is the definition of waiver of judicial action in an administrative case? What is the legal basis for it?
2. What are the features and justifications for waiving the judicial procedure in the administrative case? And what distinguishes it from what is suspected?
3. What are the conditions for waiving a judicial procedure and what are the effects of waiving a judicial procedure?

## **RESEARCH METHODOLOGY**

We will discuss the issue of waiving the judicial procedure in the administrative case according to the analytical approach to the texts of the civil pleadings laws that are applied in administrative litigation procedures, as well as the laws of administrative procedures.

## **The Research Plan**

We will divide this research into two sections as follows:

### **The meaning of waiver of the judicial procedure:**

1. The first requirement: is the concept of waiver of the judicial procedure.
2. Section one: Definition of waiver of judicial action.
3. Subsection Two: The legal basis for waiving the judicial procedure.
4. The second requirement: is the subjective waiver of the judicial procedure.
5. Section one: Features and justifications for waiving the judicial procedure.
6. Subsection Two: Distinguishing the Waiver of the Judicial Procedure on Suspitions.

### **The provisions and effects of the waiver of the judicial procedure:**

1. The first requirement: Are the provisions of the waiver of the judicial procedure.
2. Section One: Conditions for Waiver of Judicial Procedure.
3. Subsection Two: Procedures for Waiver of Judicial Procedure.
4. The second requirement: are the effects of waiving the judicial procedure.
5. Subsection One: Impact on the outcome of the lawsuit) litigation).
6. The second section is about the impact of the associated procedures.

## **Meaning of waiver of legal action**

The judicial procedure in the administrative case is one of the important procedural means that the legislator must organize in integrated legal texts that simplify those procedures that the litigants can use when initiating the case. Waiver of Judicial Procedure As for the second requirement, we will address the subjectivity of waiver of judicial procedure.

## **The Concept of Waiver of Legal Action**

We will divide this requirement into two sections. In the first section, we will deal with the definition of waiver of the judicial procedure. In the second section, we will address the distinction between waivers of the judicial procedure from what is suspected.

### **Definition of waiver of legal action**

The procedural legislation did not specify in the laws a specific definition of the waiver of the judicial procedure. Rather, these legislations were content to include some legal texts that punish waiver in general (Adam Waheeb Al-Nadawi, 2011). This is what was stipulated in Article (89) of the Iraqi Civil Procedure Code, which states: (If the litigant waived, during the lawsuit, a procedure or a paper from the pleading papers explicitly, the procedure or paper was considered as if it were not).

It is clear to us through this text that the Iraqi legislator made the opponent waive a procedure or paper from the pleading papers while the case remains in place, so this procedure or paper that the opponent has given up is considered as if it were not, and also the opponent can waive any payment after its submission provided that it is not This defense is related to public order, so legally waiver means forfeit. For example, if the opponent requests the waiver of a procedure decided by the court in his favor, and it responds to his request, then this procedure is considered as it would not have been (Yasser & Muhammad, 2015).

It would have been more appropriate for the Iraqi legislator to allow the litigants to waive all the trial procedures in the civil lawsuit, that is, whenever the plaintiff submits a request to the court before the issuance of the ruling that settles the dispute that he requests waiver of the judicial procedure, the court must respond to his request while preserving the opponent's right to this procedure (Ajjad, 2010).

As for the Iraqi jurisprudence, it did not put a specific definition showing the meaning of the waiver of the judicial procedure in the case. Rather, it defined the waiver of a paper or procedure only, that the opponent waives the request to assign his opponent to prove what he claims in written evidence as required by the law, as well as waiver of a paper or procedure. That the litigant dismisses a specific document he had presented in the lawsuit as evidence to prove the claim or the payment (Abbas Al-Aboudi, 2000).

As for the Lebanese legislator, it was stipulated in Article (518) of the Lebanese Code of Civil and Commercial Procedure No. (44) Of 2002 that the plaintiff may waive the trial in any case.

It becomes clear to us from this text that the Lebanese legislator has given the plaintiff the right to waive the trial or any of its procedures if he has an interest in this waiver and is afraid of losing it. Claim it after completing its evidence (Marwan).

The Lebanese State Consultative Council Law of 1975, referred to the decision in administrative procedures that decides on administrative cases, which in some cases is the judge.

As for the Lebanese jurisprudence, the waiver of the judicial procedure in the case is defined as a procedure by which the plaintiff announces his will to leave one of the lawsuit procedures, including summoning before a final judgment is issued in it while preserving the original right that he claimed (Nabil & Dr. Ahmed, 2004).

From the foregoing, we can know the waiver of the judicial procedure in the administrative case as the waiver that the plaintiff submits of his unilateral and free will, declaring the abandonment of a certain procedure of the administrative litigation procedures while retaining his right to demand this procedure if it is required before the case is settled.

It appears from the legal texts that were presented that the Iraqi legislator in the Iraqi State Council Law No. (65) Of 1979 did not put a specific definition and decree in a specific legal text that shows the meaning of waiver of the judicial procedure in the administrative case but left that definition to jurisprudence and the use of the text of Article (89) of the Iraqi Civil Procedure Law No. (83) Of 1969.

### **Legal basis for a waiver of legal action**

Since the Civil Procedures Law is the law applicable to administrative cases because it is the general law of procedural and formal rules and the case cannot be settled without it, likewise the judge cannot rule with his knowledge and he cannot judge except after reaching certainty and he does not reach certainty except after following a group of procedures, and thus it is unreasonable to refrain from realizing the right.

Therefore, we find that the legal basis for waiving the judicial procedure in an administrative lawsuit in Iraq is represented in Article (89) of the Iraqi Civil Procedure Law No. 83 of 1969, which states (If the opponent during the lawsuit waived a procedure or a paper from the pleading papers explicitly, the procedure or paper was considered It was not).

And it becomes clear to us through this text that the Iraqi legislator made the opponent waive the procedure of his papers from the pleading papers while the case remains in place, so this procedure or the paper that the opponent relinquished was deemed not to have been, and also the opponent can waive any payment after its submission provided that this is not The payment is related to public order, so legally waiving means relinquishment. For example, if the opponent requests the waiver of a procedure that the court ruled in his favor, and it responds to students, then this procedure would not have happened (Yasser & Muhammad, 2015).

As for the amended Iraqi State Council Law No. 65 of 1979, there is no text referring to the waiver of the judicial procedure, as well as in the laws of the Lebanese and Egyptian State Council.

### **Self-Waiver of Judicial Procedure**

The subjectivity of waiver of the judicial procedure in the administrative case is represented by the features that characterize the waiver and the justifications that led to this waiver, in addition to distinguishing the waiver of suspected provisions and this is what we deal with in two branches with it.

#### **Features and justifications for waiver of judicial procedure**

In this section, we will discuss the features and justifications for waiving the judicial procedure in the administrative case, in two points, respectively:

The features of the waiver of the judicial procedure in the administrative case are as follows:

1. Waiver of the judicial procedure in the administrative case is considered a legal act that is carried out by the unilateral will of one of the litigants in whose favor the judicial procedure is decided, as it does not depend on the will or approval of the other litigant.
2. Waiver of the judicial procedure in the administrative case is a waiver of a right established in the interest of the litigant and not the creation of an obligation on the part of the litigant who waived that procedure.

The justifications for waiving the judicial procedure in the administrative case are as follows:

1. The litigants' desire to resolve the dispute outside the court's walls, by arbitration, to resolve the issue amicably, or to reconcile between them
2. Unwillingness to prolong the judicial procedures or the inability to complete some judicial procedures.
3. Fear of losing the interest and causing some kind of damage to this interest in the event of adherence to all the procedures established for the benefit of the litigants, so they are waived.

## **Distinguishing the waiver of the judicial procedure for the suspected**

In this section, we will talk about the distinction between waiver of the judicial procedure and the legal systems that are mixed with it, as follows:

### **Waiver of judicial procedure and litigation waiver**

Waiver of the judicial procedure is the waiver that the plaintiff submits of his unilateral and free will, declaring the abandonment of a specific procedure of the administrative litigation procedures while retaining his right to demand this procedure if it is necessary before the case is settled.

The waiver of administrative litigation is if the plaintiff relinquishes his claim, as it is not accepted from him after that to raise the subject of the lawsuit again, and if the plaintiff waives part of his lawsuit that he limited to the second part, there is no dispute between the parties to the litigation about the part that was waived and which loses The elements of its existence and becomes irrelevant, as the dispute must be considered terminated (Abdel & Moneim).

The implicit waiver of pursuing the administrative case, which is benefited from the amendment of the requests, aims the plaintiff behind it until the court achieves for him the effect of this procedural waiver by ruling the litigation's end, as is every litigation whose survival depends on the insistence of the plaintiff to pursue it. It is decisive for it despite the person concerned renouncing it, so the ruling is the end of the litigation and the case is also the reason for it.

Thus, the similarities between the waiver of the judicial procedure and the waiver of litigation are that both the waiver of the judicial procedure and the waiver of litigation are made by the unilateral will of the litigants, so the plaintiff can waive the judicial procedure or litigation by his own will, and it is similar to the waiver of the judicial procedure and waiver of litigation, that both of them must have the capacity to act in waiver of the judicial procedure or the litigation.

The waiver of the judicial procedure differs from the waiver of the litigation in that the waiver of the judicial procedure is by leaving a procedure of the administrative lawsuit, while the waiver of the litigation is by waiving the entire litigation or part of it, and they differ in that in the case of waiver For full litigation, the administrative lawsuit ends, while the waiver of one of the administrative lawsuit procedures does not end the litigation.

### **Waiver of judicial procedure and waiver of judgment**

We have previously defined the waiver of the judicial procedure as the waiver that the plaintiff submits of his unilateral and free will, declaring the abandonment of a certain procedure of the administrative litigation procedures while retaining his right to demand this procedure if it is required before the case is settled.

The definition of waiver of judgment in a civil case, where is defined as a waiver of the decision issued by the court following the rules of the Code of Procedure, according to which the dispute before the court is resolved within the scope of The litigation presented to it with the intent of an incident that was disputed and in which the ownership of the right claimed by one party and denied by the other party was not known (Sadiq Haider, 2011).

Despite the aforementioned difference in terms of meaning in the words, there is a similarity between the waiver of the judicial procedure and the waiver of the judgment, so both the waiver of the judicial procedure and the waiver of the judgment are made by the unilateral will of the litigants. Referring to the other party i.e., the defendant (Abbas Al-

Aboudi, 2000), it is similar to the waiver of a judicial procedure and waiver of judgment, that both of them must have the capacity to act in waiver of the judicial procedure or judgment, and the waiver of the judicial procedure and waiver of judgment is similar in that both of them do not need a specific form to complete the waiver, so it is permissible to be express or implied (Al-Ansari, 2009).

As for the difference between the waiver of the judicial procedure and the waiver of the judgment, it is that the waiver of the judicial procedure takes place before the issuance of the judgment. Article (90) of the Iraqi Civil Procedure Code, states that (the waiver of the judgment entails the waiver of the right established in it), and the waiver of the judicial procedure differs from the waiver of the judgment, the latter may not waive the authority of the judgment because the authority is from the public order, However, the convicted person can waive the very right for which the ruling is decided (Yasser & Muhammad, 2015).

### **Provisions and Effects of Waiver of Judicial Procedure**

In this topic, we discuss the provisions for waiving the judicial procedure in the administrative case and the legal consequences arising from it in two demands:

#### **Judicial waiver provisions**

We will divide this requirement into two sections. In the first section, we will deal with the conditions for waiving the judicial procedure. In the second section, we will deal with the procedures for waiving the judicial procedure.

#### **Conditions for waiver of legal action**

The legal conditions for waiving a judicial proceeding are as follows:

#### **The waiver must be express**

Article (89) of the Iraqi Civil Procedures Law stipulates that (if the litigant, during the lawsuit, expressly waived a procedure or a paper from the pleading papers, the procedure or paper shall be considered as if it were not). Thus, the waiver of the judicial procedure in the administrative lawsuit must be expressive to express the will of the plaintiff in the administrative lawsuit, and the Iraqi Civil Procedure Code did not take the implicit waiver (Ahmed, 1989).

As for the Lebanese legislator, it did not stipulate the conditions for waiving the judicial procedure in the administrative case in the Lebanese State Council Law of 1975 but rather stipulated that in the Lebanese Code of Civil Procedure, in Article (521) of it, which stated that (the waiver shall be explicit or implicit). And it seems to us from this text that the Lebanese legislator has made the waiver of the judicial procedure in the civil lawsuit a consensual act that often occurs on the part of the plaintiff and the defendant agrees to it before the court hearing the case. Judgment is by a contract or letter, so this waiver can be verbally on the minutes of the trial record during the session (Ahmed, 1989).

As for the implicit waiver, it can be proven by all means of proof, as it is extracted from every action or situation that the plaintiff comes in that contradicts the idea of pursuing the case or indicates his waiver of the existing litigation (Marwan).

Through the foregoing, we find that the Iraqi legislator did not specify the legal form that the litigants can take when waiving the judicial procedure in the civil lawsuit. As for the

Lebanese legislator, he drew that form by legal methods that explain to the litigants their behavior regarding waiving the trial procedures in the civil lawsuit.

### **The defendant's consent to the plaintiff's waiver of the judicial procedure**

The Iraqi legislator did not stipulate that the defendant must agree to the plaintiff's waiver of the trial in the case, and thus the litigation procedures have ended. It is necessary, especially if the defendant has sufficient documents to dismiss the case in full. If the defendant has a complete conviction that the plaintiff is not entitled to the subject matter claimed, then resolving this issue for him is better than keeping it in the hands of the plaintiff (Adam Waheeb Al-Nadawi, 2011).

Here the interest of the defendant is to decide the case finally until he finds the right himself and secures himself from every future dispute regarding it (Ajjad, 2010).

However, the Lebanese legislator has stipulated in the Lebanese Code of Civil Procedure in Article (219/1) provided that (the waiver is not completed without the consent of the defendant), and this is an explicit reference to the condition of the defendant's consent and making it a reason that after the litigation between the two parties is concluded, it is not right for the plaintiff to put an end to it unilaterally, as the defendant may have an interest in Pursuing the case to put an end to the disputes between him and the plaintiff, especially if he believed that the right was on his side, as the plaintiff could not reverse the waiver as long as the defendant did not accept (Ahmed, 1989).

### **Procedures for waiver of judicial action in administrative cases**

Our study in this section will focus on the time at which the judicial procedure is waived in the administrative lawsuit and the procedural form in which the judicial procedure is waived in the administrative lawsuit.

### **The time at which the judicial procedure is waived in the administrative case**

The laws of the Iraqi, Lebanese and Egyptian state councils are devoid of specifying the time at which the judicial procedure is to be waived in the administrative case, and thus we are obligated to refer to the civil procedures laws. The Lebanese legislator stipulated in Article (518) of the Lebanese Code of Civil Procedure: The plaintiff may waive the trial in any case, and there is no legal text dealing with this issue in the Iraqi Civil Procedure Code, and this is a clear legislative deficiency in the Iraqi Civil Procedure Code.

The Lebanese legislator grants the plaintiff the right to waive the judicial procedure at any time and in any state of the case. The plaintiff can waive the judicial proceedings before the Court of First Instance in any condition the trial was in, and accept the waiver of the judicial procedure as long as the court president has not sealed the pleading and set a specific date for issuing the judgment. Rather, the claimant litigant can waive the judicial procedure during the date on which the court allowed the litigants to submit written memoranda in the lawsuit (Amina Al-Nimr, 1988).

It should also be noted that if a court of first instance issued a judgment and one of the litigants objected to this judgment before the Court of Appeal, the objection or the appeal could be waived, and it would not require the approval of the appellee unless this waiver was accompanied by reservations, which means that the appellant submits a list that does not include only his defense and his answer to the appeal does not prevent the appellant from waiving the appeal (Marwan).

Accordingly, it is taken into account that the waiver of the judicial procedure takes place concerning some of the defendants without others, even if the defendants have obligated the plaintiff himself with the guarantee as long as the plaintiff demands this guarantee in full from any of the defendants, and on the other hand, if there are several plaintiffs in one litigation, some of them can waive. For some of its procedures, it expires concerning some of the defendants without others. The procedures concerning assignment accept division when their subject matter is divisible by nature. It is assumed that upon assignment, the capacity to litigation with the judiciary is not required, therefore, the capacity to dispose of the right, because the assignment here is the assignment of the judicial procedure and not the right (Fathi Wali, 2009)

### **The procedural form in which the judicial procedure is waived in the administrative case**

The Iraqi legislator did not specify in the Iraqi Civil Procedure Code a legal text in which he clarified the procedural form for waiving the waiver of the judicial procedure, although the Iraqi legislator has specified in a legal text for the litigants how to invalidate the civil lawsuit petition, and this indicates that the Iraqi legislator has neglected to legislate a legal text in which a simple and quick way for the litigants to terminate some procedures by waiving them before entering into their basis (Ajjad, 2010).

As for the Lebanese legislator, the Lebanese State Council Law of 1975 did not specify the procedural form for waiving the judicial procedure in the administrative case. Rather, it relied on the Lebanese Code of Civil Procedure, which stipulated in Article (520) of it that the defendant's objection is not taken into account. If it is not based on a legitimate reason." It appears to us from this text that the Lebanese legislator has determined the procedural form for waiving the waiver of the judicial procedure, so it is in two procedural ways that the plaintiff uses, declaring his unilateral will to waive the trial procedures, as the first of them is by submitting an oral request during the pleading and without the plaintiff's acknowledgment in which he announced his renunciation in the minutes of the pleading session of the trial procedures while retaining his right to re-establish it (Amina Al-Nimr, 1988).

### **Consequences of Waiver of the Judicial Procedure in the Administrative Case**

Article (89) of the Iraqi Civil Procedures Law stipulates that (if the litigant, during the lawsuit, expressly waived a procedure or a paper from the pleading papers, the procedure or paper shall be considered as if it were not).

Through the text of the above article, we find that the waiver of the judicial procedure has consequences that have an impact on the outcome of the case (the litigation) and the procedures related to the case, and this is what we will discuss in two branches:

#### **The effect of the outcome of the lawsuit (litigation)**

The effects of waiving the judicial procedure on the outcome of the case are as follows:

#### **The continuation of the claimed right**

Where the plaintiff has the right to continue the lawsuit and proceed with the rest of the procedures prescribed in the administrative lawsuit, but only one procedure or a group of

procedures is waived and not all procedures, and the defendant is not discharged from the right claimed by the plaintiff and depends on the outcome of the lawsuit.

### **The continuation of all waived procedures**

The waiver of the judicial procedure in the administrative lawsuit does not result in the fall of the rest of the procedures decided in the administrative lawsuit, but they remain continuous and are relied upon, such as the litigants' statements and the testimonies of witnesses, and the procedure that is not relied upon is only the procedure waived in the administrative lawsuit.

### **The waived procedure is not considered evidence in the administrative case**

The waived procedure is not considered evidence in the administrative lawsuit and therefore will not have a role in weighing the judgment in the administrative lawsuit in favor of the plaintiff or favor of the defendant, and reliance on the rest of the administrative litigation procedures to reach the decision decided in the administrative lawsuit by proceeding with the procedures.

### **Impact on associated actions**

#### **Failure to adopt the waived procedure as evidence**

Article (89) of the Iraqi Civil Procedures Law No. 83 of 1960 indicated that if a specific procedure of the lawsuit procedures is waived, this waived procedure is considered as if it was not considered as not being considered as a non-existent part of the administrative lawsuit procedures and therefore it cannot be used as evidence for proof In an administrative or civil lawsuit.

#### **Remove all consequences of the waived action**

If a particular procedure of the lawsuit procedures is waived, this waived procedure shall remove all the effects that could result from it if it was taken as evidence in the administrative or civil lawsuit against it.

#### **The return of the litigants to the state they were in before the waived procedure existed**

Article (89) of the Iraqi Civil Procedures Law No. 83 of 1996 indicated that if a specific procedure of the lawsuit procedures is waived, this waived procedure is considered as if it had not been considered non-existent. The important effect of waiving the judicial procedure is the return of the litigants to the case in which they were before the existence of the waived procedure.

Through the foregoing, we find that the Iraqi legislator did not provide a statement of what are the legal consequences of the litigants' waiver of some judicial procedures in the civil or administrative lawsuit.

## **CONCLUSION**

### **Results**

Article (89) of the Iraqi Civil Procedure Code defines the waiver of the judicial procedure, that if the litigant during the lawsuit waived a procedure or one of the pleading papers explicitly, the procedure or the paper was considered as if it were not.

The waiver of the judicial procedure in the administrative case is defined as the waiver submitted by the plaintiff of his unilateral and free will, declaring the abandonment of a specific procedure of the administrative litigation procedures, while retaining his right to demand this procedure if it is necessary before the case is settled.

Waiver of the judicial procedure and waiver of litigation is similar in that each of them is done by the unilateral will of the litigants, so the plaintiff can waive the judicial procedure or litigation by his own will, and the capacity to dispose of the waiver of each of them must be available.

The waiver of the judicial procedure differs from the waiver of the litigation in that the waiver of the judicial procedure is by leaving a procedure of the administrative case, while the waiver of the litigation is by waiver of the entire litigation or part of it, and they differ in that in In the case of a complete waiver of the litigation, the administrative lawsuit ends, while the waiver of one of the administrative lawsuit procedures does not end the litigation.

The legal conditions for waiver of a judicial proceeding are that the plaintiff's waiver of the trial is express or implied, in addition to the defendant's consent to the plaintiff's waiver of the proceeding.

The legal effects of waiving the procedure are represented by not adopting the waived procedure as evidence and removing all the consequences of the waived procedure, in addition to returning the litigants to the state they were in before the waived procedure existed.

## Recommendations

1. We call on the Iraqi legislator to legislate a law for administrative pleadings that regulates everything related to the procedures of the administrative case.
2. We call on the Iraqi legislator to legislate a legal text regulating the provisions for waiving the judicial procedure and the legal conditions that govern it in administrative cases.
3. We call on the Iraqi legislator to legislate legal texts regulating the legal consequences of waiving the judicial procedure in the administrative case.

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