

# NON-ACQUIESCENCE TO THE ADMINISTRATIVE DECISION AS A CONDITION FOR ACCEPTING ANNULMENT LAWSUIT BEFORE JORDANIAN ADMINISTRATIVE JUDICIARY. (A COMPARATIVE ANALYTICAL STUDY)

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## ABSTRACT

*This research paper seeks to study the condition of non-acquiescence with the administrative decision for accepting annulment lawsuit before Jordanian Administrative Judiciary. Both the legislature and the Jordanian administrative judiciary make it inevitable for the annulment lawsuit to be admissible that the administrative decision should be issued by an administrative body and it should be also final having a legal impact. The appellant should enjoy eligibility in terms of litigation, capacity and interest. The annulment action should be also filed within the given period of time specified by the law. The Jordanian Administrative Judiciary has also added another condition for accepting the annulment lawsuit which is non-acquiescence to the administrative decision. Therefore, this condition has been addressed and researched, through highlighting its essence along with the conditions to be met to ensure its validity, the stance held by the Jordanian legislature and administrative judiciary in addition to its impact upon upholding the principle of legality. The study concluded that non acquiescence of the concerned party to the administrative decision as a condition for annulment lawsuit constitute a violation to the rule of law and the principle of legality, and wasting the principle of judicial control over the decisions of administrative bodies, especially since it is fortification of the administrative decision from the control of the administrative judiciary, and therefore no difference does exist in terms of the subsequence legal impact and the impact resulted from the legislative immunization of the administrative decision against judicial review.*

**Key Words:** Acquiescence, Annulment Lawsuit, Administrative Court, Administrative Decision

## INTRODUCTION

Annulment lawsuit constitutes one of the judicial means granted by the legislature for the concerned party to appeal against the administrative decisions, which violated the principle of legality, issued by an administrative body. The aim is to scrutinize them and estimate their degree of compliance with the principle of legality. Such lawsuits are filed before the Administrative Court in Jordan, by the concerned person whose rights have been violated due to a final administrative decision against him that has also affected their legal status. He therefore, aims to challenge this decision and request a ruling to annul it due to its breach of the principle of legality. In order for the concerned person to file a lawsuit before the Administrative Judiciary against the decision, the procedures stipulated by the Jordanian Administrative Judiciary Law No. 27 of 2014 must be adopted. This law regulates the procedures for filing lawsuits in addition to recording, examining and adjudicating them. For the annulment lawsuit to admissible, a set of

conditions specified by the Jordanian legislature and settled by the administrative judiciary must be met.

### **Theme of the Study**

Under the Administrative Judiciary Law No. 27 of 2014, the Jordanian Legislature regulates the procedures for filing an annulment lawsuit and the terms for filing it before the Administrative Court. Also, the law added another condition in addition to the ones stipulated. This condition is the non-acquiescence of the appellant to the administrative decision as a condition for accepting the annulment lawsuit. Accordingly the law stipulates that the acquiescence of the concerned person to the administrative decision against whom a final decision is issued results in dismissing the case on procedural grounds and this condition is the core theme of this research.

### **Study Questions**

The study questions revolve around the following main question: is the annulment lawsuit that is filed before the Administrative Court accepted once the acquiescence to the administrative decision is secured? From this key question, the following sub-questions are formulated:

- 1) What is the nature of annulment lawsuit?
- 2) What is the acquiescence to the administrative decision and its types?
- 3) What are the conditions of non-acquiescence?
- 4) What is the stance held by the Jordanian legislature towards acquiescence to the administrative decision?
- 5) What is the stance held by the Jordanian judiciary towards acquiescence to the administrative decision?
- 6) What are the decisions which do not fall under acquiescence to the administrative decision?
- 7) What are the consequences of accepting the appeal of acquiescence to the administrative decision?

### **Study Problem**

The study problem stems from illustrating the extent of the legality of the condition of non-acquiescence to the administrative decision as a condition for accepting the annulment lawsuit especially since the appellant's acceptance of the illegal administrative decision is tantamount to acquiescence that prevents the case from being accepted. In most of its provisions with regard to reject annulment lawsuit, the Jordanian administrative judiciary stressed that in case the appellant has accepted the decision under question whether implicitly or explicitly, wholly or partially, which is considered to be an immunization to the administrative decision from being challenged.

### **Significance of the Study**

The significance of this study stems from addressing some provisions of acquiescence to the administrative decision and its legality and validity in administrative lawsuits, with the aim of rejecting a lot of lawsuits filed before the Jordanian Administrative Judiciary under the pretext that the concerned person has complied to the administrative decision since the appellant could not reject the execution of the administrative decision in fear of the penalties that might be incurred upon him. This, in turn, violates his rights. The study also draws the attention towards the need to highlight this condition, its provisions and effect in depriving the administrative

judiciary for exercising its control over illegal decisions, particularly, since matter can be considered as fortification of the administrative decision against appeal.

## Study Objectives

The study aims to achieve a number of objectives:

- 1) Get familiar with the essence, provisions and types of acquiescence to the administrative decision.
- 2) Clarifying the conditions for the implementation of acquiescence to the administrative decision.
- 3) Demonstrating the legality of the condition of non- acquiescence to the administrative decision.
- 4) Clarifying the stance held by the Jordanian and comparative legislature with regard to acquiescence to the administrative decision.
- 5) Explaining the impact of implementing this condition before the Jordanian administrative judiciary.

### Study Methodology

In this study, the researcher utilized the descriptive and analytical approach due to appropriateness for research purposes, by conducting an analytical study of the judicial rulings issued by the Jordanian Administrative Courts. This is in addition to addressing the perspectives of jurisprudence and the rulings of the comparative administrative judiciary in France and Egypt as much as possible in some subjects, in order to extract the provisions of this condition, its nature and the extent of its legitimacy.

Accordingly, this scientific study falls into four main topics:

- 1) What is annulment lawsuit.
- 2) General provisions for acquiescence to the administrative decision.
- 3) The stance held by the legislature and the comparative administrative judiciary towards acquiescence to the administrative decision.
- 4) Administrative decisions where acquiescence is not applicable.

## Essence of Annulment Lawsuit

Annulment Lawsuit is a lawsuit in kind that protects the principle of legality and is intended to subordinate the administration in all its actions to the law and its rules in the country, whether written or unwritten, and its applicability to all authorities and bodies in the country in pursuance with the Jordanian Constitution of 1952 and its amendments, where the principle of the rule of law is enshrined. The Jordanian legislature has granted the concerned persons the right to challenge the administrative decisions that violate the principle of legality. According to the administrative law, it means subordinating the administration in all its actions to the law (Al-Thunabat, 2005:7), with the aim of preserving the rights and freedoms of individuals and employees. Furthermore, it seeks to annul administrative decisions, which deviate from the principle of legality and violate the law, issued by national administrative authorities so as to controlling and verifying their compliance with the law in its broadest sense.

Therefore, the concept of annulment lawsuit, its characteristics and conditions for its acceptance are addressed under this theme.

Accordingly, in this section we will deal with the concept of the cancellation lawsuit, its characteristics and the conditions for its acceptance.

## The Concept of Annulment Lawsuit

The term "annulment lawsuit" or annulment action or "excess of power" or lawsuit for annulment is an expression of one concept that bears the same meaning and purpose or objective of annulling the administrative decision that violates the principle of legality. This term is called in France as "excess of power", (Janin, 1994:231); however, in Egypt (Arslan, 2008:344) and

Jordan (Al-Shobaki, 1988) is called annulment lawsuit as stipulated in the Jordanian Administrative Judicial Law No. (27) Of 2014 AD, which is an objective case filed against a specific administrative decision in itself in order to decide on its legality and annulling it in case of its illegality.

Accordingly, two results emerge, namely: the lawsuit cannot be excluded without a clear legislative text, and the second is that it cannot be waived in advance. In Jordan, hearing of annulment lawsuits is done two levels: the first is before the administrative courts and the second is before the Supreme Administrative Court being the Court of Appeal.

### **Characteristics of the Annulment Lawsuit**

It is subject matter-based which means that the subject matter of the administrative decision is defective and thus it is illegal. It falls under the subject-matter judiciary and it is not considered to be one of the personal appeals that require the existence of a right that has been violated, rather it is sufficient for the person who filed it to have a personal and direct interest.

However, the nature of this kind of lawsuit has been criticized by jurisprudence as it is considered to be a mixed lawsuit including objective elements represented in protecting the principle of legality and personal elements due to the protection it provides to those concerned in terms of protection for self-legal statuses and acquired personal rights(Al-Jarf, 1984:29).

It is judicial in nature as it is considered one of the public law cases where the conditions for lawsuits must be met, namely the date, interest and appeals. It is filed before the competent authority to appeal the administrative decision to be annulled.

It was established by the French administrative judiciary. In the Jordanian administrative judiciary, its presence is derived from the successive constitutional texts, which previously stipulated the establishment of the Supreme Court of Justice and its law that clarified its functions. It was repealed in 2014 AD, and replaced by the Administrative Court and the Supreme Administrative Court, creating two-level litigation. (Jordanian Administrative Judiciary Law No. 27, 2014) However, the Jordanian High Court of Justice and before it the Jordanian Court of Cassation in its capacity as the Supreme Court of Justice is considered a reference in determining the general provisions that regulate the annulment lawsuits; it also has applied the theories to what has not been explicitly stipulated in the legal texts. It is a judicial lawsuit by virtue of the provisions of the Jordanian Constitution of 1952 and the other successive regulatory laws. It is legitimate as it is considered part of the public order and may be filed against any illegal administrative decision even in cases in which the law stipulates that the decision may not be challenged, and that is within the period specified for appealing against administrative decisions. The annulment lawsuit aims to protect the principle of legality and the rule of law, through annulling any administrative decision that violates the principle of legality and deviates from it. This is because its objective is to annul an administrative decision and eliminate its effects for violating the law and its deviating away from the limits of the principle of legality, whether the decision is positive or negative.

In this regard, the Jordanian Administrative Court ruled that: "The annulment lawsuit as a general principle is a legitimate case whose subject matter is the determination of the extent to which the contested decision conforms to the set of legal rules; and since legality requires the rule of law and not to violate its provisions, that the actions of the administration or the party issuing the decision should be within the boundaries of the law (Ruling of the Administrative Court No. 10, 2018).

Finally, we address the *res judicata* of the ruling issued about the annulment lawsuit stating that: "The ruling issued for annulling the administrative decision due to its illegality is absolute *vis-à-vis* everyone else (Guyomar, 2012:61), whether it is a total or partial annulment

(Strin, 2008:131); this shall result in annulling the contested administrative and eliminating its effects for everyone (Al-Zahir, 2009:184).

In the same context, the Egyptian Supreme Administrative Court ruled that: "If a ruling is issued for the annulment in whole or in part, then this ruling shall serve as evidence for all in the matter and the extent specified by the ruling." (Egyptian Supreme Administrative Court, Appeal No (495) of 31 Public Sector, 1986).

As for the stance of the Jordanian administrative judiciary, the Jordanian Supreme Court of Justice realized the relative (*res judicata*) of the ruling of dismissing the annulment lawsuit after it violated the general rule in many of its rulings (Al-Ghwairi, 1989:451) as it reaffirmed in its ruling issued on 6/15/1976 on the original rule of case dismissal rulings and meanwhile its accepted the challenge against the same decision after it dismissed the first lawsuit due to the difference of litigants in both the previous lawsuit and the current one (Al-Abadi, 2006:83).

### **Conditions for Accepting Annulment Lawsuit**

Annulment lawsuit is considered to be a common law case in which the plaintiff requests the judiciary to monitor the legality of the administrative decision and decide to annul it in whole or in part if it is found to be illegal. Therefore, several conditions must be met to accept the lawsuit to annul the administrative decision before going into the merits of the lawsuit.

These conditions fall into general conditions for accepting the lawsuit, namely eligibility, capacity, interest (Al-Tamawi, 2014:336), and conditions related to the date of filing the lawsuit (which is the specified period of time during which the defective administrative decision must be appealed, and it is set to 60 days from the day following the date of notification of the administrative decision either by publication or announcement as a general rule) (Al-Khatib, 1986:122). Thus, the plaintiff must abide by the judicial deadlines for filing a lawsuit before the administrative judiciary as contained within the law.

The French Council of State considered that the deadline for the appeal falls under the public order, so that it can be raised in any manner in which the case is, and the administrative judge shall have the power to raise this defect on their own. This is what both the Egyptian State Council and the Jordanian Administrative Judiciary (Al-Abadi, 2004:233-234) have endorsed. In addition to what has just been mentioned, there are conditions relating to the contested administrative decision that must be met in order for it to be valid for the case. That is, the decision should be issued by an administrative authority, and it is final and it has a legal effect. In some cases, the legislature shall require the plaintiff pursue procedures prior to filing the annulment lawsuit, by resorting to administrative grievance methods before proceeding with the filing of his case before the administrative judiciary, and if he exhausts these methods and does not obtain from them his right that the administration has violated, then in this case he is entitled to filing annulment lawsuit.

The Jordanian administrative judiciary has added another condition - the subject of our study - which is non-acquiescence to the administrative decision as a condition for accepting annulment lawsuit. Therefore, the right to challenge the administrative decision before the expiration of the legally specified period may be forfeited in the case of acquiescence to the administrative decision by the plaintiff.

### **Second theme: General Provisions for Acquiescence to the Administrative Decision**

The authority of the annulment judge is based on ensuring the integrity of the contested administrative decision, and verifying the extent of its legality in term of being defective for either persons or organizations and therefore it is deemed illegal or invalid for violating the law.

Accordingly, in this part we will address the essence and types of acquiescence to the administrative decision along with its conditions, as follows:

### **The Essence of Acquiescence to the Administrative Decision**

#### **First: The concept of acquiescence to the administrative decision**

Linguistically, acquiescence is defined as: “obedience, submission, submissiveness and acknowledgment. It is derived from the verb acquiesce which means full obedience. It is said: "He acquiesces to me." This means he becomes obedient to what I seek from him and he is willing to take." (Al-Fayoumi, 2000:17).

Acquiescence, which is the subject matter of this study, is related to acquiescence to the administrative decision that affects the interest of the plaintiff, and which is a means of dismissing the plaintiff's case - in form - given his approval of the administrative decision. Administrative jurisprudence defines acquiescence to the administrative decision as: “The consent and approval of the concerned person of the defective administrative decision that affects his interest, whether this approval is explicit or implicit.” (Abuel-Atham, 2005:279).

Hence, acquiescence to the administrative decision means that: “The person concerned performs a set of actions that express their free will and firm opinion towards accepting and endorsing this decision and his acquiescence to its provisions during the legal appeal period despite its defects and the material and moral damages affecting his interest, so that this acceptance will result in forfeiting the right to appeal before the expiry of its legal deadline, and he has no right to revoke it at all, starting from the date of its issuance” (Al-Bayanouni, 1985:153).

As for the administrative judiciary, the French state council went to the point that prior approval of the draft administrative decision prepared by the administration does not lead to depriving the appellant of his right to contest the legality of the decision that harmed him. Acquiescence is divided into: acquiescence prior to the issuance of the administrative decision, and acquiescence following its issuance. It is established according to the jurisprudence and the administrative judiciary that acquiescence prior to the issuance of the administrative decision does not lead to the waiver of the person's right to challenge the legality of the decision issued against him. Such acquiescence bears no effect and may not be revoked (Batarseh, 2016:26).

With regard to the acquiescence following the issuance of the administrative decision - the subject of our study - in the Jordanian administrative judiciary, the Supreme Court of Justice defined acquiescence in the merits of its rulings as: “The consent of the stakeholder, whether explicit or implicit, to an administrative decision that harms his interest,” or it is "an act issued by a unilateral will on the part of the defendant to indicate his acquiescence to the decision. (Journal of Jordan Bar Association, 1999:3284).

Based on what has been presented earlier, we can conclude that acquiescence that entails the dismissal of the annulment lawsuit is the acceptance of the person concerned or the stakeholders of the contested decision in a manner that clearly indicates his acceptance of the contested decision and his acquiescence to it before the expiry of the deadline for the appeal of the contested decision.

If the concerned person wants to withdraw his acceptance of the administrative decision and file a lawsuit to annul this decision, then the court refuses to accept the case even if the case is filed during the appeal period on the basis that he has already agreed to this decision.

#### **Second: Types of acquiescence to the administrative decision**

Acquiescence to the administrative decision falls into two types, the first is explicit or implicit whereas the second is either in whole or in part (Shatnawi, 2011:307).

### **Explicit Acquiescence and Implicit Acquiescence**

The Supreme Court of Justice ruled that: “Acquiescence to the administrative decision means acceptance of it and forfeiting the right to challenge it, whether this acceptance is explicit or implicit.” (Supreme Justice Resolution No. 442/2001, 2002).

In the merits of its ruling, the same court ruled: “The acceptance by the concerned person of the contested administrative decision shall forfeit his right to file an annulment lawsuit, whether this acceptance is explicit or implicit.” (Supreme Justice Resolution No. 20/1986 & Resolution No. 97, 1984).

In this regard, the administrative judiciary stipulates that, in the explicit acceptance that results in the forfeiture of the right to appeal the annulment, it must fulfill the necessary conditions for the integrity of legal procedures as well as the integrity of proper consent, and it does not require a specific form (Supreme Justice Resolution No. 98, 2014).

As for the implicit acceptance, it is represented in performing actions by the concerned person confirming and demonstrating their acceptance of the administrative decision (Al-Khatib, 1986:143-144).

In fact, this realistic matter is assessed by the court in each case separately. The common case is implementing the implementing the defective decision willingly without any restrictions that may accompany this implementation, except for the cases in which implementation is executed in order to avoid penalty.

In the merits of its ruling, the Supreme Administrative Court ruled: “Since the plaintiff had not issued what could be viewed as evidence of her acquiescence to the contested decision, and the defendant party could not provide any evidence in this regard; therefore, non-acquiescence can be inferred from filing this appeal before the court. With regard to her job to which she has been transferred it is not considered acquiescence to the contested decision since her abstention from work constitutes a behavioral violation that incurs disciplinary penalty. Therefore, her appeal based on this aspect cannot be admissible”. (Ruling of the Supreme Administrative Court No. 49, 2016).

Additionally, neither a specific form of acceptance nor a specific method for its demonstration is required. The Jordanian Administrative Judiciary has indicated that acquiescence that is recognized for not accepting the annulment lawsuit is the acceptance of the concerned person explicitly. As for the implicit acceptance of the contested decision, it can be evidenced through performing some actions that illustrate clear and explicit acceptance of the decision. Accordingly, in the merits of its ruling, the Jordanian Supreme Court of Justice ruled: “Acquiescence is for the plaintiff to perform actions through which a clear and explicit acceptance can be inferred as he is doing so willingly and voluntarily.” (Supreme Justice Resolution No. 514, 2006).

As for the implicit acquiescence, it is not necessarily considered an expression of the will itself, except that the circumstances surrounding the person could be interpretative or suggestive of their will, such as disbursing the pension salary (Shatnawi, 1989:57).

### **Acquiescence in Whole and Acquiescence in Part**

The Jordanian administrative judiciary has considered both acquiescence in whole and acquiescence in part. Acquiescence in whole is when all aspects related to the contested decision are included. In other words, the plaintiff accepts the contested decision as a whole. In this

regard, the Jordanian Supreme Court of Justice ruled: “Disbursing the reward decided by the Military Retirement Committee for his pension rights and its discussion of the subject of his injury is considered acquiescence in whole to the committee’s decision; and the request to allocate a disability pension to him due to his injury after more than fifteen years has passed shall be deemed inadmissible (Journal of Jordan Bar Association, 1993:1819).

Acquiescence can be in part when it only focuses on part of the contested administrative decision and not on all of its aspects. For this type of acquiescence to be admissible, the contested administrative decision should be dividable.

### **Conditions of acquiescence to the administrative decision preventing the acceptance of the annulment lawsuit**

Should the established principle entail that acquiescence to the final administrative decision is considered an obstacle to hearing the annulment lawsuit, and considering acceptance of the administrative decision as forfeiting the right to challenge that decision, then through a review of the entire jurisprudence of the Jordanian administrative judiciary, and what was stated in the terms of the Administrative Court’s resolution No. (72) Of 2016 issued on 27 3/3/2016 which stipulated that the Jordanian administrative jurisprudence developed a set of controls and conditions for acquiescence to the final administrative decision, as follows:

First: That the concerned person (the appellant) should voice or act voluntarily implying a clear-cut indication, not an assumption, and in a manner that makes obvious that it indicates his acceptance of the administrative decision.

In this regard, the Jordanian administrative jurisprudence has set a condition for the acceptance of acquiescence to the administrative decision that acquiescence should be explicit or implicit, not hypothetical, as the explicit acceptance is represented in the explicit consent of the concerned person in a manner that leaves no room for doubt and ambiguity in expressing the decisive and assertive will of the concerned person towards this decision. Acceptance of it can be in the form of issuing a written request (summons), or by telegram, or by mail notification; it can be also orally as acceptance is voiced before the department's employees and is recorded in the special records, unless the law requires a specific form, method, or procedures for expressing acceptance. For instance: if it becomes evident that the concerned person has known with certainty and has been informed in writing of the decision, he shall hasten to execute it with his consent or submit a written request expressly declaring his acceptance of its contents (Al-Bayanouni, 1985:163).

In this regard, the Supreme Administrative Court ruled: “Whereas the appellant filed an appeal against the contested decision that made it incumbent upon him to pay a financial bail of fifty thousand dinars after it was replaced from being a legal guarantee to a financial guarantee, and that he paid the required bail, and therefore he has complied with the contested decision. Had the appellant not complied with this decision, he would have filed an appeal against it before the Administrative Court. Had he not appealed the decision issued by the respondent (the Governor of the Capital), then he would have accepted it and may not appeal it after his acceptance of it, since he thus forfeited his right to appeal” (Supreme Administrative Court Ruling No. 25, 2019).

Regarding the implicit acquiescence, it is deduced from the actions of the concerned person that express as an indication of his free will regarding the administrative decision, and indicate his acceptance of its provisions, for example: the applicants who received their pension salaries that were allocated to them by the Civil Retirement Committee after they were informed of these decisions and were informed of their content and reasons, this is considered to be their



acquiescence to these decisions and extinguishes their right to appeal, and it is not accepted from them after this acquiescence, which is considered a forfeiture of their rights, to challenge these decisions before the court.

In the same note, in the merits of its Decision No. 72 of 2016, the Administrative Court ruled that: "... by referring to the evidence provided to prove that acquiescence, that the plaintiff signed the minutes of the request for the return of the trusts in his custody that was executed on 1/4/2015, as well as obtaining a certificate from the university president that he was an employee at the University of Islamic Sciences and the positions he held during his service with the university, upon his request on 4/17/2015, it cannot be inferred that the appellant showed acquiescence to the contested decision, since his failure to hand over these trusts constitutes a crime in case he concealed or refrained from returning them. Also, acquiescence under which the lawsuit is not admissible is when a statement or an action is committed by the plaintiff indicating definitive evidence of his acceptance of the decision. Such thing was not available in these two previous cases (see in the same regard: Supreme Justice No. 136/2006, May 11, 2006, in which it concluded that the appellant's request to obtain a certificate that he was an employee of the party against which he filed an appeal does not constitute acquiescence to the contested decision).

Second: That this acquiescence should be expressed by the person affected by the decision only For acquiescence to be valid, it must be expressed by the concerned person, or whoever is affected by the contested decision (Kashkish, 2006:670).

Any acceptance issued by others shall not be taken into consideration. The Jordanian Supreme Court of Justice clarified this as follows: "acquiescence to the administrative decision against which the annulment lawsuit is not admissible is that entails all actions committed by those who are affected by the decision against the authority that issues the decision indicating their approval". (Supreme Justice Resolution No. 12, 2004) It also ruled: "If the appeal submitted to the Ministry of Higher Education is issued In the name of a person called Abdullah, and not in the name of the appellant, this does not constitute acquiescence to the decision on the part of the appellant." (Supreme Justice Resolution No.461, 2013).

That Acquiescence Enjoy Satisfaction and other Conditions Necessary for the Integrity of Legal Acts in terms of the Requirement of the Ultimate Consent of the one Who Expresses Acquiescence (Supreme Justice Resolution No.98, 2014).

Acquiescence to and acceptance of the administrative decision must be resulted by a free will that is not tainted by coercion or duress. As we mentioned previously, acquiescence is the explicit or implicit consent of the concerned person of an administrative decision that violates his interest, and that this acquiescence is the result of a free will that is not tainted by coercion or duress. That is, it is implemented (willingly and voluntarily). in elaboration of the foregoing part, not considering the implementation of the decision for fear of losing the job is a sign of acquiescence to the administrative decision does not make it the result of a free will and an ultimate consent to the administrative decision, because will in this case is tainted by fearing of losing this position in the event of refusing to implement the decision.

In this regard, the acceptance of the administrative decision must be issued out of free will. Otherwise, acquiescence to it does not constitute a condition prohibiting the acceptance of the annulment lawsuit and become admissible by the administrative judiciary. In this regard, the Jordanian Supreme Court of Justice ruled: "If the free will of the plaintiff is not directed to accept the contested decision and restrict to the new title of the position to which he was transferred under the threat of taking legal measures against the violator, which is contained in the letter of the chief of municipality, this does not constitute acquiescence to the transfer decision" (Supreme Justice Resolution No. 479, 2005). The same court ruled that: "The good conduct certificate of the appellant does not count as acquiescence to the decision as long as that was executed in implementation of the decision of the commanding authority in exchange for

releasing the summoned person from custody, and this presentation was not the result of free will and consent and thus it cannot be considered acquiescence to the appeal.” (Journal of Bar Association 19819:425).

### **Acceptance should not be Conditional or Bound by any Restrictions**

To clarify this, if the acceptance is conditional and this condition has not been fulfilled, this condition shall not be taken into account. The concerned person may appeal the administrative decision issued against him (Abuel-Atham, 2006:301), implying that this acquiescence is issued by his free will and bound by no conditions. In this regard, the Jordanian High Court of Justice ruled: “Accepting the contested decision as conditional acceptance does not constitute acquiescence to this decision precluding the right to appeal it, because for the validity of the acceptance it must meet the necessary conditions for the integrity of legal acts in terms of its ultimate contest and not to be bound by any restrictions” (Journal of Bar Association, 1969: 69).

That Acceptance of this should be preceded by the Appellant’s Full and not Hypothetical Acknowledgement of the Contested Decision, whether that is by Informing Him of it, or by any other Method that Causes Certain Acknowledgement of it.

In this regard, the Jordanian Supreme Administrative Court ruled that: “Since the appellant had been notified of the decision of the retirement committee subject to the administrative appeal on March 20 2016 and it was signed by him, and the notification contained the following note (if the person to whom the due belongs and who has been notified does not desire to appeal against the decision, he is required to sign again below; otherwise, he is considered to be objecting.....etc). As the appellant has signed under this note, then he has expressed his unwillingness to challenge this decision issued by the Retirement Committee and showed acquiescence to it, forfeiting his right to appeal, this entails that his lawsuit is inadmissible and it shall be rejected” (Supreme Administrative Court Ruling No 336, 2016).

In this regard, the Jordanian High Court of Justice ruled: “If it is proven that the plaintiff, when being notified of the contested retirement committee’s decision, did not know the content of the report issued by the Higher Military Medical Committee, which determined that he had sustained a permanent illness as a result of his injury resulting from the job, then what he mentioned on the instrument stating that he has no objection on his part does not affect his right to claim a disability pension, because such acquiescence is only for the pension salary and not for the disability pension, because he was not aware of the illness when he expressed his acquiescence to the decision.

That the Statement or the Act Committed that can be Regarded as Acquiescence to the Administrative Decision is Directed at the Administrative Authority Issuing the Individual Decision only.

In this regard, the Supreme Court of Justice ruled: “That the appellant's receiving of the reward specified for him by the Retirement Committee is considered acquiescence to the decision that does not specify a retirement pension to him, which makes his appeal to the aforementioned decision inadmissible.” (Supreme Justice Resolution No 187, 1982), But if it is not directed to the administrative authority issuing the individual decision, it cannot be considered as acquiescence to the administrative decision. In that case, the Supreme Court of Justice ruled: “The resignation of the plaintiff from his position in the Ministry of Justice is not considered acquiescence to the acceptance of the decision that dismissed him from the Judicial Institute, as the resignation cannot be regarded as evidence of acquiescence, because the decision issuer is the Board of Directors of the Judicial Institute” (Supreme Justice Resolution No 215/1993).

## **That the contested decision is an individual, not an organizational one**

Acquiescence to the individual contested decision is admissible because it leads to an influence on private or self-legal statuses that arise through the application of legal or regulatory rules such as the decision of referral to retirement or transfer ... etc., while acquiescence to administrative and organizational decisions is inadmissible because they are abstract by virtue of general rules, and because they lead to create objective legal statuses.

That the lawsuit filed by the appellant is an annulment lawsuit, and does not fall under any other lawsuits which are tried by the administrative judiciary, as is the case of full jurisdiction, such as claims for salaries, bonuses and pension rights.

The contested individual decision should not have been moved from invalidity to nullity to the point of nullity, since the null decision does not result in acquiescence.

Tenth: That acquiescence was limited to the contested decision itself and not on another decision. In this regard, the Supreme Court of Justice ruled: "The plaintiff's submission to of an application for registration of a trainee lawyer and the acceptance of his application and his registration on this basis does not constitute acquiescence to the decision challenged which includes the rejection of the plaintiff's request to be registered as one of the practicing lawyers." (Supreme Justice Resolution No. 104/2014).

The third topic: the stance held by the legislature and the comparative administrative judiciary on acquiescence to the administrative decision

1. The stance held by the comparative administrative legislature on acquiescence to the administrative decision

The administrative legislature in the comparative countries, France and Egypt, did not mention acquiescence to the administrative decision as a reason preventing the acceptance of the administrative case. On the contrary, the condition of non-acquiescence to the administrative decision is not one of the conditions stipulated by the legislature to accept the annulment or excess of power lawsuit.

2. The stance held by the comparative administrative judiciary on acquiescence to the administrative decision

Acquiescence to the administrative decision falls into two types: acquiescence prior to the issuance of the administrative decision and acquiescence following it, whereby the French administrative judiciary in the State Council's jurisdiction stated: Prior approval of the draft administrative decision prepared by the administration does not deprive the individual from the right to appeal to challenge the legality of the decision that violated his interest. According to the jurisprudence and the administrative judiciary, it is well established that acquiescence prior to the issuance of the administrative decision does forfeit the person's right to appeal to the judiciary to challenge the legality of the decision issued against him, as such acquiescence has no effect and may not be invoked (Batarseh, 2016:26).

The French administrative jurisprudence and judiciary regarding the issue of acquiescence to the administrative decision believes that the administrative judge rarely addresses it when considering the lawsuit of excess of power (annulment), which increases the chances of accepting administrative cases before the judiciary. Accordingly, we find that the French administrative judiciary allows for appealing administrative decisions aiming to achieving more justice and fairness. As for Egypt, the administrative judiciary has not decided its stance plainly in its rulings, as the issue has not been referred to the Egyptian State Council. Also, its rulings do not mention the idea of acquiescence to the administrative decision and considering non- acquiescence a condition of excess of power lawsuit (annulment). However, the Egyptian Supreme Administrative Court explained in some of its jurisprudence that acceptance of the administrative decision is not considered acquiescence that forfeits the right to appeal. According to its jurisprudence, it stated: Waiving a right is not presumed and cannot be deduced

from an administrative decision that includes settling the employee's situation in a manner contrary to the decision of the Judicial Committee, even with being signed by the employee that shows his full acknowledgement of it (Abd al-Latif, 1990:126).

3. The stance held by the Jordanian administrative judiciary on acquiescence to the administrative decision

Based on what has been mentioned above, it is crystal clear that the Jordanian administrative judiciary has adopted the condition of non-acquiescence to the administrative decision as a condition for accepting the annulment lawsuit, and has established in many of its rulings that the acceptance of the concerned person of the final contested administrative decision, whether explicitly or implicitly, results in non-acquiescence of his annulment case and thus it is deemed inadmissible.

In this regard, the Administrative Court ruled: "As for the defense associated with acquiescence, the court finds that it is established by both jurisprudence and judiciary that acquiescence prior to the issuance of the administrative decision does not forfeit the person's right to file an appeal to the judiciary to challenge the legality of the decision issued against him, as such acquiescence has no effect and may not be invoked. And, since the plaintiff did not commit any action that indicates her acquiescence to the contested decision and since the defendant did not issue any evidence on that, and since her non-acquiescence can be inferred from her appeal before our court, therefore the case is inadmissible" (Administrative Court Ruling No 49 of 2016 dated 20/6/2016). In a nutshell, the Jordanian administrative judiciary established that in accordance with the person's acquiescence to the decision issued against him does not allow for filing an appeal against this decision, and thus immunizing the administrative decision from being appealed. The Jordanian jurisprudence had previously stated: "Since acquiescence is a realistic and legal case, the Court of Justice considers it a reason preventing the acceptance of the administrative lawsuit; and this case inadmissible" (Supreme Administrative Court Ruling No 185 dated 22/10/2012).

The fourth topic: Administrative decisions that do not fall under acquiescence in the Jordanian administrative judiciary

According to the provisions of the Jordanian administrative judiciary, we find that the judiciary has addressed several exceptions to this general principle that some administrative decisions do not fall under acquiescence as follows:

### **Null Administrative Decisions**

The Jordanian Supreme Administrative Court defines the null decision as follows: "The null decision in which the appeal is not bound by a deadline, as the jurisprudence of the Supreme Court of Justice has decided, is a decision that has a serious flaw that makes it lost its characteristics as an administrative decision, causing it to be null whether it is issued by an ordinary individual or a body not authorized to issue it in the first place, or it is issued by an authority in matters that lie within the jurisdiction of another authority or by an employee that is not within his competence or one of his job duties the right to issue it. But if it is found to be defective, it is subject to revocation or annulment if presented within the legal period." The same court also went on to explain the extent of the criterion of gravity that characterizes the null administrative decision by saying: "The jurisprudence and the administrative judiciary have established that the null decision is the decision in which there is a grave violation of the law, which makes it lose its components of existence and excludes it from the application of general provisions for administrative decisions as if it was issued by a person who has no capacity in its issuance or is not a public official, or it was issued by the administration in a matter that does not

fall within its competence, then the decision shall be null and will have no effect, and the appeal is thus not bound by a deadline.

### **Organizational Administrative Decisions**

Acquiescence to organizational administrative decisions is not invoked because they constitute abstract general rule that lead to create objective legal statuses, such as the decision of the Pharmacists Syndicate to define working hours in pharmacies. Such a decision is regulatory. In this regard, the Supreme Court of Justice ruled: "Plea based on acquiescence to the administrative decision on the part of the plaintiff is inadmissible since non-appealing against the administrative decision resulting in the appellant's acquiescence to it does not include general administrative decisions. This is because the organizational decision does not turn into an individual decision once it is communicated to a person in his capacity not as an individual.

1. No acquiescence to the procedures established for the interest of the law, such as decisions to form committees and councils

Acquiescence to the procedures established in the interest of the law is not applicable in such cases as the validity of the decisions to form councils and committees. In this regard, the Jordanian Supreme Court of Justice ruled: "That a person's participation in the auction process before a committee that has not been legally formed without objecting to the legality of its formation does not affect his right to challenge the validity of its formation. This is because its formation falls under the interest of the law and not the interest of individuals. The Supreme Administrative Court and the Administrative Court ruled: "The proper formation of committees and councils falls under the public order, and the administration must issue its decisions in accordance with the procedures specified by the legislature and in the form decreed for them." That is, it is established that the principle in the rules of form and procedures in issuing administrative actions is that they are decided for both the public interest and the interest of individuals alike.

### **RESULTS**

This study dealt with the nature and characteristics of the annulment lawsuit, along with addressing the concept of non-acquiescence to the contested administrative decision, which is set as a condition for accepting the annulment lawsuit. Also, types of acquiescence, which include explicit acquiescence to the administrative decision, implicit acquiescence, and acquiescence in whole and acquiescence in part, were also highlighted. The conditions for implementing this condition were also discussed. Moreover, the stance held by the comparative and Jordanian judiciary and legislature were investigated. The study concluded with a set of findings and recommendations, which can be summarized as follows:

1. We hope that the Jordanian legislature and administrative judiciary to uphold the principle of legality and rule of law, not to immunize any administrative action or decision from judicial review.
2. We hope that the Jordanian legislature will speedily make and issue a law on litigation procedures before administrative courts, because this law is important in regulating litigation procedures, stating the conditions for accepting administrative cases, and stipulating that acquiescence to the administrative decision is not considered a condition for accepting administrative cases.
3. We hope that the Jordanian judiciary abstain from the condition of non- acquiescence to the administrative decision as making it one of the conditions for accepting the annulment lawsuit because this condition poses a restriction on the annulment lawsuit, which is related to upholding the principle of legality and protecting the rights and freedoms of individuals.

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