

# THE EXTENT TO WHICH THE STATUS OF THE PLAINTIFF APPLIES TO THE INDIVIDUAL AND THE ADMINISTRATION CLAIMING THE ANNULMENT "A COMPARATIVE STUDY"

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## ABSTRACT

*The administration enjoys privileges, it is natural that these privileges affect in one way or another conduct of the administrative litigation, especially the evidentiary procedures. Because the administration, by excluding these privileges, is considered the strongest party in the lawsuit and is usually dominant over the evidence. In most cases, this makes her take the position of the defendant, which is the easiest and easiest position, while the person who is defenseless from any privileges and mostly devoid of evidence, stands the plaintiff in the administrative case, which is the most difficult position. Consequently, these privileges affected the positions of the two parties in the administrative lawsuit and created the phenomenon of imbalance between them, given that the administration of the strong party is the holder of the left position, but this does not prevent the administration from standing in the position of the plaintiff in some cases. So we will try to centralize the two parties in an annulment lawsuit.*

**Keywords:** Annulment Lawsuit, Plaintiff, Defendant, Direct Execution Privilege

## INTRODUCTION

The formulation of the theory of proof in the administrative law on the basis of the conditions of this law and the nature of the administrative case, relates to administrative ties to which the administration is a party. It is dominated by the principle of legality, which means that the administration in all its actions is subject to the provisions of the law, in a manner that suits this distinctive nature of administrative lawsuits, and is compatible with it in order to achieve administrative justice; This is because the administration cannot be considered a normal party in any dispute in which it is involved. This is due to the vital role played by the administration, and the lofty goal that it seeks to achieve, so it enjoys certain privileges, with which a fair balance between the two parties is negated (Ahmed, 1995).

The individual stands as a plaintiff in the administrative lawsuit on a permanent basis, which does not prevent the administration from being a plaintiff in certain cases dictated by the nature of its position, and its desire to obtain its rights towards individuals without resorting to the privilege of direct execution. This is in order to avoid the responsibility incurred by it, and from these lawsuits; Disciplinary cases, criminal cases, and some purely administrative cases (Badawi, 1969).

### Objectives of the Study

The study aims to clarify to whom the plaintiff description of an annulment claim applies, the realization of its elements, the exchange of the claimant's character, when the administration is a plaintiff, and what is the claim through which it can be a plaintiff (Nada, 1972).

### The Problem of the Study

The problem of the study lies in clarifying the difference between the plaintiff individual and the plaintiff administration, and showing the effect of the privileges enjoyed by the administration on the character of the plaintiff for each of them (Fouda, 2011).

### **Questions of the Study**

- 1) Defining a plaintiff as annulment, interchangeability and fulfillment of the elements of an annulment?
- 2) What are the types of lawsuits that the administration resorts to in order to obtain its rights without resorting to the privilege of direct execution?

### **The Study Method**

As for the method of the study, the researcher will follow the comparative approach of the legislation and judicial trends regulating this issue and indicate its shortcomings, if any (Rashwan, 2005).

### **Division of the Study**

The applicability of the plaintiff adjective to the annulment case will be dealt with in two independent sections: the first topic: the individual claimant, and the second topic: the claimant administration, as follows (Al-Shaer, 2008):

### **The First Topic**

#### **Plaintiff Individual**

#### **Booting and Partitioning**

It is clear from the follow-up to the annulment lawsuit that there is a clear phenomenon before the administrative court, to the effect that the individual who is not provided with evidence in advance stands in the annulment lawsuit usually in the position of the plaintiff. Whereas the administration occupies the position of the defendant stands as an advocate in the case, knowing that the individual is originally the plaintiff<sup>1</sup>. Therefore, we try in this topic to refer to the definition of the plaintiff in the first requirement, and exchange the attribute of the claim with the second requirement, the effects of achieving the attribute of the plaintiff in the third topic, as follows (Al-Tamawi, 1965):

### **The First Requirement**

#### **Definition of Plaintiff**

Plaintiff is that person who applies to the judiciary seeking judicial protection; That is, he is the one who initiates the lawsuit and has to prove what he claims<sup>2</sup>.

And it is expressed - the plaintiff - sometimes: "the litigants as an expression given to the parties to the litigation, and they are the parties to the lawsuit who initiate legal procedures with the judiciary, such as submitting requests, defenses and pleadings"<sup>3</sup>.

A plaintiff may be one person or more than one person, or natural persons such as individuals and employees, or foreigners<sup>4</sup>. For example, in the case of an administrative decision that affects more than one person, all of these persons may jointly file a lawsuit against the administrative decision issued against them, litigating the administrative authority that issued the challenged decision, in which case there are multiple plaintiffs in the lawsuit. The defendant is one person, and when there are multiple lawsuits, all of which are the subject of a single

administrative decision, in this case the court may combine these lawsuits and thus there are multiple plaintiffs in the lawsuit as well<sup>5</sup>. Plaintiff must also be clearly defined<sup>6</sup>; and to ensure that the condition of interest is met<sup>7</sup>. If it is a public legal person, then the representative of this legal person must be identified, and if the plaintiff has an attorney in the case, this proxy must be proven under the power of attorney in the minutes of the session, the name and address of the plaintiff must be mentioned, and the name of the lawyer, the professor, as the law stipulated that the summons be signed From a lawyer who has practiced the legal profession in this capacity for a period of no less than five years, or worked in a judicial position for a similar period before practicing law, the plaintiff delegates him to file the case, and to represent him before the court in all trial rounds and procedures, and until the issuance of the final judgment, provided that the attorney's agency is If the agency is invalid for any reason, the case is returned in form 8 (Al-Tamawi, 1966).

Some believe: The legislator, in developing this article, and stipulating the term condition, only emphasizes the importance of litigation before the administrative judiciary, which needs a certain experience and competence that is available only in the group of lawyers to whom Article (9/a/1) referred to in the Judicial Law. This is so that the administrative decisions and government actions are not subject to unjustified accusation and sin if the matter is left unchecked. Therefore the lawyer's signature is an essential procedure that omission results in the invalidity of the regulation<sup>9</sup>.

In the event that the lawsuit is filed by the plaintiff against one of the ministries, departments, public bodies, or public or private legal persons, it is sufficient to fulfill the capacity condition that the name of that entity appears in the lawsuit statement<sup>10</sup>. Accordingly, the appearance of the State Litigation Authority in the case before a court of first instance, and its deposit of documents related to the case after obtaining them from the concerned administrative authority, makes the plea that the case is not accepted for filing a non-qualification without a legal basis. That is because the authority represented the owner of the correct capacity, obtained from him the lawsuit papers, and was informed of them, which makes no point in saying that his knowledge of the dispute was neglected<sup>11</sup>.

## The Second Requirement

### Claim Exchange

The plaintiff may take the position of the defendant in the action if an interlocutory request is made by the original defendant in the action, in which case the plaintiff is in the defense position; Any defendant in this interlocutory request. This does not mean changing his capacity as a plaintiff in the case; this is because this characteristic remains attached to him from the beginning of the case until its end. But in the event that an interlocutory request is submitted by the defendant, the plaintiff's position is identical to that of the defendant only, but without there being a change in his overall capacity in the lawsuit. The plaintiff remains a plaintiff, and the defendant remains as the defendant until the end of the litigation<sup>12</sup>.

Based on the foregoing, the presence of the individual as a plaintiff in an annulment lawsuit face to face with the administration as a defendant is what is benefited from the legal texts and basic principles that apply before the administrative judiciary, and the related litigation circumstances, and the competencies entrusted to the administrative judiciary in France, Egypt and Jordan<sup>13</sup>.

Referring to the various laws regulating administrative judicial bodies, whether in France, Egypt or Jordan, we see that they did not indicate or mention any text that defines the position of the individual as a plaintiff in an annulment lawsuit, and the administration as a defendant. This is because the existing texts show how to file and file a lawsuit, and how to submit documents and related procedures that regulate the progress of the lawsuit and the exchange of roles between the litigants in the lawsuit, either from an ordinary person, an

individual or a private entity as a company or an association, or from the administration alike Facing various hypotheses and situations <sup>14</sup>.

It does not mean that the absence of the texts regulating the administrative judiciary in France, Egypt and Jordan from any explicit text - that the individual or the ordinary person is usually the plaintiff in the administrative case - prevents it from saying that the insightful of these texts finds that they implicitly acknowledge the general principle that the individual or entity The private is usually the plaintiff of the lawsuit, and that the administration accordingly stands the defendant's position. Likewise, the absence of these texts leads us to take into account the provisions of the articles of the special law that are specified in this matter in order to find a solution, which was confirmed by the Jordanian administrative judiciary by saying: "The Law of the High Court of Justice included procedural rules that organized the conduct of the trial before the High Court of Justice. In the event that these rules are not sufficient, the General Procedures Law, which is the Code of Civil Procedures, shall be applied <sup>15</sup>.

This clarifies what was stipulated in Article 32 of the decree issued on July 31, 1945, regarding the French Council of State, stating the jurisdiction of the Council, as it included its jurisdiction to adjudicate requests for annulment due to the excess of the authority submitted against the decisions of the various administrative bodies <sup>16</sup>.

Referring to the texts of the Egyptian State Council law regarding the powers entrusted to it, we find that they implicitly clarify the aforementioned general origin, and reveal that the individual usually stands in a plaintiff position facing the administration. And by looking at these competencies contained in the core of the law, he finds that they included an image that clearly expresses the individual's standing claiming, The administration is a defendant, and this is confirmed by Article (10) of the Egyptian State Council Law <sup>17</sup>. It is also confirmed by Article (24) of the Egyptian State Council Law by setting the date for filing an annulment lawsuit, which is originally only submitted by the concerned individuals, and Article (25) of the same law stipulates that: "The petition and its attachments shall be announced to the competent administrative authority and to The concerned parties should be within a period not exceeding seven days from the date of their submission, and the notification shall be made by mail by registered letter with acknowledgment of receipt." Also, Article (26) of the same law stipulates that: "The competent administrative authority shall deposit the court clerk's office within thirty days from the date of its submission. The date of its announcement is a memorandum of data and notes related to the case, accompanied by the relevant documents and papers (El-Shamy, 2008).

There have been texts in the Jordanian Administrative Judiciary Law that took this direction with regard to the competencies entrusted to the court, including the text of Article (5/a) which states: "The Administrative Court is exclusively competent to consider appeals submitted by stakeholders related to the following <sup>18</sup>: Including item (2), which relates to "the appeals submitted by those concerned with the final administrative decisions issued for appointment to public jobs, or related to the annual increase, transfer, promotion, delegation, or secondment (Khalifa, 2017)."

As well as Clause (6) related to: "The appeals submitted by any aggrieved party requesting the annulment of any system, instructions or decision based on the system's violation of the law issued pursuant to it, the violation of the instructions to the law or the system issued pursuant to it, or the decision's violation of the law, regulation, or instructions based on it." And clause (7) related to: "Claims submitted by individuals and bodies for the annulment of final administrative decisions (Al-Attar, 1972)."

The text of Article (7/a) of the Jordanian Administrative Judiciary Law states: "The lawsuits are filed against the person who issued the contested decision, and it is stipulated that the lawsuit be based on one or more of the following reasons (Al-Helou, 2006):

- 1) Lack of jurisdiction
- 2) Violation of the Constitution, laws and regulations, or error in their application or interpretation

- 3) The association of the decision, or the procedures for issuing it, with a defect in form
- 4) Abuse of power
- 5) Defective reason

As for Article (8/a) of the same law, it states: “The summons shall be submitted to the Administrative Court (Masoud, 2009).”

It is understood from the presentation of the previous texts, whether in Egyptian or Jordanian legislation, that the judiciary is primarily concerned with two types of administrative disputes; The first type relates to the annulment of administrative decisions and compensation for them. The individual here is always in the center of the plaintiff in the lawsuit, and the second type relates to the full judiciary regarding settlement disputes for employees, and administrative contract disputes. The principle in it is that the individual is usually the plaintiff, except in some rare exceptional cases in which the administration takes the position of the plaintiff, whether by choice and of its own free will, or because the judicial path is the only way to entail its rights<sup>19</sup>.

## The Third Requirement

### Plaintiffs Attribute Realization Effects

It is evident from the specification deduced from the legal texts that the individual is the plaintiff in the administrative case. And the administration is the defendant, as this is due to the basic principles of administrative law, some of which are considered factors influencing to varying degrees in the formulation of the theory of evidence in administrative law<sup>20</sup>.

It can be said that the previous general origin combines and combines in order to achieve it, several influences are represented by the following: First: the principle of legality, second: the texts of laws regulating the jurisdiction of the administrative judiciary, third: the privileges enjoyed by the administration (Al-Kilani, 2017).

The principle of legality<sup>21</sup> upon which modern states are based means, in the field of public law, the administration's subordination to the law in its broadest sense<sup>22</sup>. This is because in the case of the application of the principle of legality in the circles of public law, it entails the organization of the administrative judiciary to exercise judicial control over the work of the working administration<sup>23</sup>.

On this natural basis, the individual has become a plaintiff before the administrative judiciary, as he is the specialist in this field of lawsuits arising between individuals and the administration on a legal basis based on the principle of legality, while what comes out of the jurisdiction of the administrative judiciary is left to be considered by the ordinary judiciary. This assures us that the individual is often the plaintiff in the administrative case, at a time when the administration is a plaintiff, a position that gives it an advantage in enjoying its privileges, the most important of which is keeping the administrative papers and possessing them, at the same time the individual remains in the plaintiff position bearing his burdens (Ahmed, 1994).

The individual often finds himself, as a consequence of the administration's prerogatives, in a situation in which he has to establish the evidence that the administration acted unlawfully, and if the plaintiff cannot give evidence of the unlawfulness of the decision -- for the unlawfulness lies in the ulterior motives of the decision. Especially since the administration is not considered obligated to show its motives, the judge can ask the administration, not only to express its motives, but to submit the entirety of the documents on the basis of which the decision was taken, and which may expressly or implicitly reveal its motives. If it refuses to provide information and documents, or is satisfied with unconvincing justifications The appellant's appeal will be valid, and the judge will issue his judgment on this basis.”<sup>24</sup>.

The plaintiff does not require the administrative judge to prove the inevitability of all the facts he invokes, but only to provide elements that would cause him to believe that the

administration's decision may not be based on his cause. These elements which the plaintiff puts forward must give rise to doubt in the judge's mind, and the burden of proof rests on him only within these limits<sup>25</sup>.

Based on what was previously mentioned in the statement of the administrative judge's positive role in the administrative lawsuit, and the extent of the judge's response in that matter to find a balance between the individual parties to the lawsuit as a plaintiff and the administration as a defendant, it is no secret that the difficult position of the plaintiff - in the face of the administration that owns documents and data crucial to the settlement of the lawsuit and enjoying the privileges of public authority - led to an imbalance between the two parties to the case. This requires the judge to remain keen on finding a true balance in the field of evidence through his positive role in the consideration of the administrative case.

## **The Second Topic**

### **The Plaintiff's Administration**

#### **Booting and Partitioning**

Emphasizing the general origin, which is the individual standing as a plaintiff in the administrative lawsuit, but there is an exception to it that is given to the administration to be in the position of the plaintiff, and the individual is the defendant. That is, the administration is on the side charged with the burden of proof and confirming it. These cases are few and insignificant, and they are considered an exception to the general principle. The administration does not file the case initially as a plaintiff; Because it can issue whatever decisions it wants to preserve its rights and which it deems to achieve the public interest<sup>26</sup>.

This does not prevent the administration from resorting to the administrative judiciary as a plaintiff; where there is no legal impediment to that. The administration here must verify the physical presence of the defendant; So that if it turns out that the defendant does not exist because his legal personality is removed from him at the time of filing the lawsuit, the litigation does not take place at that time, and the court may rule not to accept the lawsuit<sup>27</sup>.

Thus, the administration is free to take the judicial path in exceptional cases. So that it is at the center of the prosecution in three main cases, which collectively represent the usual administration cases before the administrative judiciary. These cases are not limited to, but are the most common basic cases of management lawsuits<sup>28</sup>, which are disciplinary lawsuits with the first requirement, criminal lawsuits with the second requirement, and purely administrative lawsuits with the third requirement, which can be highlighted as follows:

## **The First Requirement**

### **Disciplinary Suits**

Disciplinary cases are: "that are filed against a worker or employee who violated the duties of his job, or who did an act forbidden to him"<sup>29</sup>.

This is when the administration resorts to the disciplinary judiciary, which is a distinct part of the administrative judiciary, requesting the imposition of a disciplinary penalty on state employees in accordance with the rules of disciplinary responsibility. The administration under the disciplinary judiciary is always the plaintiff, and this entails proving that a disciplinary offense, or a job error, or a disciplinary offense that occurs as a result of breaching the duties of the job, positively or negatively<sup>30</sup>.

Every employee who violates the duties stipulated by the laws - such as deviating from the requirements of the duty in the work of his job that he must perform himself, or failing to perform them with the required caution, accuracy and honesty - commits an administrative sin

that requires discipline<sup>31</sup>. And that is based on the relationship which the employee is associated with the state and is an organizational relationship governed by the laws, regulations and instructions in force.<sup>32</sup>

The disciplinary case is brought against the employee before the competent disciplinary court by the administrative prosecution of its own accord when it sees, in light of the investigations it has conducted, that the employee's disciplinary sin is not commensurate with the penalty that the management authority has the right to impose. The Administrative Prosecution may also initiate and initiate a disciplinary case at the request of the administrative authority to which the employee belongs for administrative violations, or at the request of the head of the Central Auditing Organization for financial violations, which are those that result in the loss of the right of the Central Auditing Organization in financial violations, and thus the loss of the right of state finances<sup>33</sup>.

An employee's disciplinary liability differs substantially from his civil as well as his criminal liability; this is because disciplinary responsibility is a legal responsibility resulting from a violation of a legal duty, while moral responsibility is based on a violation of a moral or administrative duty, such as the duty not to be hypocritical<sup>34</sup>.

This case of management lawsuits does not appear, of course, except for employees within the scope of the public office, in addition to the disciplinary systems for those who belong to professional unions in accordance with the laws issued in this regard<sup>35</sup>.

The basis for placing the burden of proof in disciplinary cases on the administration is that the investigation papers and the decision issued for the penalty are in its possession, and then the administration is actually and legally obligated to submit the documents<sup>36</sup>.

## The Second Requirement

### Criminal Cases

The criminal judiciary is one of the branches of the administrative judiciary of a special nature that is independent of the annulment or the full judiciary, although it is related to the judiciary of legality, as is the case with the disciplinary judiciary<sup>37</sup>.

Within the scope of the penal judiciary, the administration takes the initiative to resort to the competent judge to impose criminal penalties for some violations committed by individuals, whether they are employees or other members of society as a result of their violation of the laws and regulations that protect public funds, and ensure their performance of what was allocated for them. Here, the criminal case is completely different from the ordinary administrative case represented in the annulment case and the full court case; where the criminal case aims to impose a penalty on a specific act. Thus, it is originally an administrative lawsuit of a special nature<sup>38</sup>.

"In these cases, the administration's obligation to resort first to the judiciary, with the consequent standing of the plaintiff position in the case, and bearing the difficulties and burdens of proof, appears in this regard, as well as disciplinary cases, in that the administrative body proves the violation, and then its obligation to resort to the judge. The specialists - the disciplinary or penal judge - bear papers and documents to impose the appropriate penalty. This division of jurisdiction and the separation between the powers of accusation and penalty, that is, the separation between the body that is responsible for proving and presenting violations, and the body that is competent to impose the penalty, is a general principle that prevails in administrative law in such cases. Cases, as is the case in the criminal law, where the judge is competent by virtue of his position to impose the penalty in the violations or crimes presented to him by the accusing authority in accordance with judicial procedures and guarantees. Whatever the privileges recognized by the administration, it does not entitle it to impose criminal penalties as penalties originally entrusted to the ordinary criminal judge an exception to this is the administrative penal judiciary, as is the case for major road violations in France, which the

administrative courts are concerned with. It is not permissible to impose some penalties similar to criminal penalties<sup>39</sup>.

It is noted that disciplinary cases differ from criminal cases in terms of the persons subject to them; Disciplinary action applies to employees only. As for the criminal case, it can be filed against all residents of the state, and the act may constitute a disciplinary offense, and another criminal at the same time, and thus the disciplinary courts impose the penalties stipulated in the laws regulating the affairs of those being tried<sup>40</sup>.

These criminal cases, which are familiar in France, do not exist before the Egyptian State Council or before the administrative courts in Jordan.

## The Third Requirement

### Purely Administrative Lawsuits

The administration stands the plaintiff position in the administrative proceeding in certain cases in which it does not have the privilege of direct execution. In these cases, she prefers not to exercise this privilege, although she enjoys it, for fear of being liable. Therefore it resorts first to the judiciary.

In this way, the cases in which the administration initially resorts to the administrative judiciary regarding purely administrative disputes can be divided into two types: The first type: Cases in which the administration does not enjoy the privilege of direct execution:

Here, the administration is obliged to take the position of the prosecution as the only way to obtain its rights or to impose the prescribed penalty<sup>41</sup>, since it is not permissible to invalidate the conduct or dissolution of an institution except by virtue of a court ruling<sup>42</sup>.

- The second type: cases in which the selected administration prefers to resort to the judge in the first place, even though it enjoys the privilege of direct execution:

Here, her position is optional as a plaintiff, and not as the only means of obtaining her dues and protecting her legal position<sup>43</sup>. A doctrinal dispute arose over the administration's resort to the administrative judiciary as a plaintiff, among several justifications, including<sup>44</sup>:

An opinion that says: "The administration should not be a plaintiff, and it is not permissible for it to file a lawsuit against an individual before the administrative court, because this conceals a deviation in the means"<sup>45</sup>. This opinion is based on the fact that the administration must be a party to the administrative lawsuit and it is a defendant; This is for the reason for which the administrative judiciary was established, which is the non-interference of the ordinary judiciary in its work, and because it has a special privilege in which individuals take the initiative to issue effective administrative decisions, so this exempts her from resorting to the judiciary as a plaintiff, and she has the status of the defendant with its advantages.

There are those who believe and rightly: "The previous trend is an exaggeration due to the sincere desire to prevent deviation on the part of the administration, and it is not in line with the legal trends on which jurisprudence and the judiciary have settled, because just saying that there is a deviation in the means is justification based on a personal feeling, And because the administrative pleadings and the impartiality of the judiciary in a way that serves justice will protect the stakeholders, and the principle of confrontation or confrontation in the procedures as one of the principles of litigation provides a real guarantee for both parties, especially the weak party. It may also be the only way for the administration to obtain its dues, or to determine the legal position; Direct implementation is under the responsibility of the administration. Therefore, issuing an executable judgment instead of direct execution leads to avoiding the possibility of being liable in some cases, which is a trend worthy of adoption and encouragement"<sup>46</sup>.

We believe that the lengthening of preventing the administration from deviation does not depend on preventing it from being a plaintiff; Because the existence of deviation does not mean



that the individual has become incapable of fulfilling his rights. Resorting to the judiciary is an easy matter for individuals to confront the administration in case of deviation. Also, in the event that the administration fulfills its rights through the judiciary, this leads to the consolidation of tranquility between individuals and the administration, and consequently, the administration moves away from the consequences of resorting to direct implementation of its responsibility, which leads to the administration incurring large amounts of money as a result of compensation for what it In the face of individuals resorting to the means of direct implementation.

## RESULT

- 1) Plaintiff is that person who applies to the court for judicial protection; That is, he is the one who initiates the filing of the lawsuit and is required to prove what he claims, so he is one of the natural or legal persons.
- 2) The plaintiff takes the position of the defendant in the action if an interlocutory request is made by the original defendant in the action, which does not mean that his status as plaintiff in the action has changed; this is because this characteristic remains attached to him from the beginning of the case until its end.
- 3) The influences that lead to the realization of a plaintiff are represented by the principle of legality, the texts of laws regulating the jurisdiction of the administrative judiciary, and the privileges enjoyed by the administration.
- 4) The administration shall be free to take the judicial path in exceptional cases; They are not limited to disciplinary cases, criminal cases, and purely administrative cases.
- 5) The administration in disciplinary cases does not appear, of course, except for employees within the scope of the public office, in addition to the disciplinary systems for those who belong to professional syndicates in accordance with the laws issued in this regard.
- 6) Criminal cases are common in France. They do not exist before the Egyptian State Council or before the administrative courts in Jordan.
- 7) Cases in which the administration initially resorts to the administrative judiciary regarding purely administrative disputes can be divided into cases in which the administration does not enjoy the privilege of direct execution, and cases that choose to resort to the judge initially despite it enjoying the privilege of direct execution.

## RECOMMENDATIONS

- 1) Taking criminal cases before the administrative courts in Jordan is similar to what is applied before the French judiciary.
- 2) The administration's resort to the judiciary in purely administrative cases without resorting to the privilege of direct execution to assure the reassurance of those dealing with it that they are the weakest party due to the privileges enjoyed by the administration.
- 3) Emphasis on throwing the burden of proof in disciplinary cases on the administration's shoulders because the investigation papers and the decision issued for the penalty are in its possession, and then the administration is actually and legally obligated to submit the documents.

## FOOTNOTES

(1) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, Ph.D. Thesis, Faculty of Law, Cairo University 1976, p. 91; In the same sense: Counselor/Hossam Abdel Azim Abdullah, the role of the State Cases Authority in the field of human rights, international standards for human rights and public freedoms in the Egyptian judicial application, training lectures organized by the project to support capacities in the field of human rights (building) for members of judicial bodies, I 1, 2007-2008, pp. 200-201.

(2) Dr. Mustafa Mahmoud El-Sherbiny, Invalidity of Litigation Procedures before the Administrative Court, "A Comparative Study", Ph.D. thesis, Faculty of Law, Assiut University 2003, p. 34.

(3) Dr. Mahmoud Muhammad Al-Kilani, Encyclopedia of Civil Judiciary, Principles of Civil Trials and Pleadings, Volume One, 1st Edition, House of Culture for Publishing and Distribution, Amman 2012, p. 132.

Judicial litigation is a legal situation arising from the initiation of cases, and the law has determined the procedures that must be adhered to, and consequent to its convening. Judiciary on the other hand, and therefore it is not held except between living persons who are alive, and if it is directed to a dead opponent, it is non-existent." Egyptian Supreme Administrative Court, Appeal No. 12407, Q.48 Q.P., Session 27/2/2007, Group, No. 52, Technical Office,

pg. 461; Appeal No. 3370, Q. 48 Q.A., session 20/12/2005, Group, S. 51/1, Technical Office, p. 172; And Appeals No. 3034, 3566, 7429, Q. 48, session 24/12/2005, group, S. 51/1, Technical Office, p. 191.

(4) Jordanian Administrative Court: No. 257/2014, "Triple Panel", dated February 16, 2015, Adalah Publications.

(5) "Combining multiple plaintiffs, even if their requests are multiple in one sheet, is justifiable if their requests are based on a specific issue in which all plaintiffs participate, and their interests are all focused on one matter and stems from a common legal center. In the Law of Pleadings When Intervention in the Case Permitted", the Egyptian Supreme Administrative Court, Appeal No. 8670, Q. 46 Q.P., Session 15/3/2008, Group, No. 53/1, Technical Office, p. 782; and Appeal No. 19826, Q. 53 Q.P. Session 22/6/2008, Group, C53/2, Technical Office, p. 1443.

- "Article (70) of the Jordanian Civil Procedure Code permits more than one person to unite in one lawsuit as a plaintiff if the right they claim is related to a single act or group of acts or arising from a single transaction." Distinguishing Jordanian Rights: No. 4278/2011, Bar Association Journal, Q60, No. 1-2-3, 2012, p. 318.

- In another ruling of the Egyptian Court of Cassation regarding the multiplicity of defendants, it said: "It is permissible to file a lawsuit against multiple defendants, regardless of their different legal positions, before the court in whose circuit the residence of one of them is located." Civil Cassation, Appeal No. 1135, Q77, Session 2/1/2012; State Cases Authority Journal, No. 56, No. 4, October-December 2012, pp. 106-107.

(6) "A litigation. Only a person who was a real litigant in the dispute may be litigated in the dispute, if requests were directed from him or to him, or something was decided for him or against him, but if he is adjudicated for judgment in his confrontation only, he may not be contested in the appeal"; Egyptian Court of Cassation, Civil Cassation, Appeal No. 1558, Q80, Session 5/9/2011; State Cases Authority Journal, No. 56, No. 1, January-March 2012, p. 123.

(7) "Interest is a condition for admissibility of the litigation before the Court of Cassation"; Egyptian Court of Cassation, Civil Cassation, Appeal No. 4399, Q72, Session 8/10/2011; State Cases Authority Journal, No. 56, No. 2, April-June 2012, p. 174.

- In a ruling of the Egyptian Administrative Court: "The condition of interest, as it must be fulfilled from the outset, must be continued in the appeals against the judgments issued in these cases until a final judgment is issued in them, and that Article (12) of the State Council Law promulgated by Law No. 47 of 1972 when it stipulated in Paragraph (a) of it states that applications submitted by persons who do not have a personal interest in them are not accepted, for its ruling - as it includes cases - also includes appeals against the judgments issued in those cases, because the appeal is nothing but a continuation of the litigation procedures between the concerned parties, and it He resubmits the entire dispute to the Supreme Administrative Court for the correct rule of law to be passed. Supreme Administrative Court, Appeals Nos. 5244, 5148, 5147, 5146, 5145, S58, session 10/3/2012; State Cases Authority Journal, C56, No. 2, April-June 2012, p. 212.

In a ruling by the Egyptian Supreme Constitutional Court regarding the interest, it said: "The direct personal interest, which is a condition for accepting the constitutional lawsuit, requires that there be a link between it and the existing interest in the substantive lawsuit, and that the judgment issued in constitutional issues is necessary to decide on substantive requests submitted before the trial court. "; Case No. 172, Q29, Constitutional Court, session 7/8/2011, Official Gazette, No. 33 bis (a), 12/8/2011; State Cases Authority Journal, C56, No. 2, April-June 2012, p. 172; and Case No. 197, Q30, Constitutional, Session 25/9/2011, Official Gazette, No. 40, continued (A), 10/8/2011; State Cases Authority Journal, No. 56, No. 3, July-September 2012, p. 117; And in another ruling of the Egyptian Constitutional Court, it said: "The concept of direct personal interest, which is a condition for accepting the constitutional lawsuit, is determined in the light of two elements, the first of which is that the plaintiff and within the character of the contested legislative text should establish the evidence that a realistic economic or other harm has been inflicted. And this harm must be direct, independent of its elements, that can be perceived and confronted with judicial satisfaction, and not an imaginary, theoretical or ignorant harm. The second: that the reason for this harm is that the contested legislative text, if this text was not originally applied to the plaintiff or was without to those who are addressed by its provisions, or if he has benefited from his advantages and the violation of the rights he claims does not return to him, then the direct personal interest is absent." Case No. 55, S28 BC, Constitutional Court, session 9/25/2011, Official Gazette, No. 40, continued (A), 10/8/2011; State Cases Authority Journal, No. 56, No. 3, July-September 2012, p. 110.

(8) Where Article (9/a/1): of the Administrative Judiciary Law states: "The summons must be signed by a lawyer who has practiced law in this capacity for a period of no less than five years, or worked in a judicial position for a similar period before his practice of law.

- The Egyptian Court of Cassation: "It is decided that the litigation of the administrative body in charge of organizational affairs represented by the district chief, to represent the appeal against the decisions issued in the Committee for Dilapidated Facilities, Restoration and Maintenance in accordance with the provisions of Law No. 41 of 1977, is an order that the law requires for considerations of public interest, Otherwise, the judgment issued in the litigation of the appeal against these decisions shall be considered null and void." Civil Cassation, Appeal No. 7776, Q64, Session 26/12/2010; State Cases Authority Journal, No. 55, No. 2, April-June 2011, p. 156.

- "In order for the elements of the judicial litigation to be present in a serious manner, a lawyer must prepare its newspaper, and if a lawyer does not do so, the statement of claim is declared invalid." Supreme Administrative Court, Appeal No. 2190, S. 47 Q.P., session 2/1/2010; indicated at ; Wajdi Shafiq, Diamond Encyclopedia, previous reference, p. 271.

The Jordanian Judicial Court of Cassation ruled that: “An agency is a contract whereby the agent joins another person in place of himself in a permissible and known act, and it is stipulated that the entrusted with it be known and that the agency in the litigation is specific to its subject, persons and the powers of the authorized agent to arrange its effects.” Discrimination of Jordanian Rights: No. 2108/2011, Bar Association Journal, Q. 60, No. 1-2-3, 2012, p. 210; Judgment No. 3827/2011, Bar Association Journal, Q. 60, No. 1-2-3, 2012, p. 249.

(9) Dr. Khaled Al-Zoubi, Annulment Judicial Procedures before the Jordanian Supreme Court of Justice, research published in Mutah Journal for Research and Studies, Mutah University, Volume 11, Issue 1, February 1996, pp. 76-77.

- “If the agency is devoid of authorizing the agent to leave the litigation, his powers are not wide enough to decide on it.” Egyptian Court of Cassation, Civil Cassation, Appeal No. 8962, S. 66 BC, session 1/12/2011; State Cases Authority Journal, C56, No. 2, April-June 2012, p. 181.

- The Jordanian Court of Cassation: “Article (6) of the Law of the Bar Association enumerated the main paid legal professions into three types: assigning a third party to claim and defend rights before courts, arbitrators, public prosecution departments, administrative bodies, public and private institutions, organizing contracts and carrying out the procedures that it requires, providing legal advice”; Discrimination of Rights No. 3409/2011, Bar Association Journal, S. 60, No. 1-2-3, 2012, p. 255; Judgment No. 3377/2011, Bar Association Journal, Q. 60, No. 1-2-3, 2012, p. 281.

- Egyptian Supreme Administrative Court, Appeal No. 3319, Q.48 Q.P., session 21/11/2007, Group, S. 53/1, Technical Office, p. 189; And Appeal No. 8006, Q. 50 Q.P., session 15/3/2008, group, Q. 53/1, Technical Office, p. 794.

(10) Egyptian Supreme Administrative Court, Appeal No. 4412, Q. 50 Q.P., Session 2/7/2008, Group, S. 53/2, Technical Office, p. 1488.

(11) The Egyptian Supreme Administrative Court, Appeal No. 6749, Q.49 Q.P., session 24/11/2007, Group, No. 53/1, Technical Office, p. 212.

(12) Dr. Ahmed Hindi, Civil and Commercial Procedures Law, Part 1, New University Publishing House, Alexandria, 1995, p. 44.

- “Litigants in the case: it is stipulated that the appellant and the respondent must be parties to the case in which the appealed judgment was issued, and that they dispute the same capacity they had prior to the issuance of the judgment.” Egyptian Supreme Administrative Court, Appeal No. 32244, S54 BC, session 3/12/2011; State Cases Authority Journal, No. 56, No. 1, January-March 2012, p. 169.

- “Whereas the defense related to the litigant attributes is one of the defenses related to the public order that the court, by virtue of its legal control, has the right to decide without stopping on its presentation by one of the litigants... and since it is established in the judiciary of this court that the litigants’ capacity in the appeal is the branch of their capacity in the lawsuit issued Regarding them, the contested judgment means that there must be a litigation that has been held in their regard before the Court of First Instance, and their positions were determined by the judgment issued by it as a judgment against them or against them.” Egyptian Supreme Administrative Court, Appeal No. 14377, S 55 BC, session 12/4/2012; State Cases Authority Journal, C56, Issue 3, July-September 2012, p. 202.

The interlocutory request is the request that complements the original request, or resulting from it, or connected to it in an indivisible manner, or the request that is in addition to the original request, with the subject of the original request remaining the same, and the incidental request must be submitted to the court in the usual procedures for filing a lawsuit and to present it orally at the hearing in the presence of the litigants, and this is proven by its minutes. Egyptian Supreme Administrative Court, Appeal No. 26610, S52 Q.P., Session 25/5/2008, Group, S53/2, Technical Office, p. 1286.

(13) Dr. Ahmed Kamal El-Din Moussa, Administration lawsuits before the administrative judiciary, research published in the Journal of Administrative Sciences, year 19, second issue, December 1977, p. 8.

(14) In France: In this regard, review what was stated in Decree No. 1115-2000 issued on November 22, 2000, Article Two, Official Gazette of November 23, 2000, valid on January 1, 2001; Decree No. 15-2009 issued on January 7, 2009, Article 1 effective on February 1, 2009.

- In Egypt: Egyptian State Council Law No. 47 of 1972; Its articles set out the council’s composition, arrangement, composition, terms of reference, and procedures, and did not address any text that defines the individual’s status as a plaintiff, and the administration as a defendant.

- In Jordan: Regarding the Administrative Judiciary Law No. 27 of 2014, where its articles dealt with the establishment of courts, their formation, their affiliated bodies, their competencies, the procedures to be followed in the case of proceeding with the case, and the distribution of roles between the litigants. This law did not indicate the individual’s position as a plaintiff. And management, as a defendant in his texts.

(15) Jordan's High Court of Justice: No. 11/2010, Bar Association Journal, No. 4-5-6, Year 59, 2011, pg. 494.

(16) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 92.

(17) For details in the field of competence of the Egyptian State Council, see: Dr. Mustafa Kamal Wasfi, State Council, General Judge of Administrative Disputes, research published in the Journal of Administrative Sciences, Year 14, Issue Three, 1972, pp. 69-87.

And since the material and executive work that the administration is obliged to do in implementation of the will of the legislator or the will of the administrative body itself, it cannot be said that it was launched by entering or not entering into the category of administrative disputes that the Council of State is competent to decide on an administrative judiciary body in accordance with the explicit text of Clause 14 of Article 10 of the State Council Act, as it depends on the extent to which the action relates to a matter of public law or relates to a matter of private law..."; Egyptian Supreme Administrative Court, Appeal No. 27886, S 55 BC, session 17/3/2012; State Cases Authority Journal, C56, No. 2, April-June 2012, p. 213; And its ruling, Appeal No. 23686, S. 51 Q.P., Session 14/7/2008, Group, S. 53/2, Technical Office, p. 1390; Egyptian Court of Cassation, Civil Cassation, Appeal No. 3468, S70 BC, session 7/12/2011; State Cases Authority Journal, C56, No. 2, April-June 2012, p. 184.

(18) While the jurisprudence of the Jordanian High Court of Justice previously settled by saying: "It is understood from Article (9) of the High Court of Justice Law No. 12 of 1992 that the legislator mentioned exclusively the competencies of the High Court of Justice; Alia No. 31/2009, Journal of the Bar Association, No. 7-8-9, P. 58, 2010, p. 961.

(19) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 93; In the same sense:

Dr. Abdel Aziz Abdel Moneim Khalifa, Litigation and Evidence Procedures in Administrative Cases, Mansha'at Al Maaref, Alexandria 2007, p. 337.

(20) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 95.

(21) There is more than one meaning that law commentators have created for the term legality principle. Some of them define it by saying: "The necessity of respecting the existing legal rules, that all the actions of the public authorities in the state are in accordance with the provisions of the law with its general meaning, so that its provisions and rules are above all will, Whether it is the will of the ruler or the will of the ruled. Dr. Ramzy Taha Al-Shaer, Compensation Judiciary, "The State's Responsibility for its Non-Contractual Acts", Dar Al-Nahda Al-Arabiya, Cairo 2008, pp. 17-18; Another defines it by saying: "The actions of the administration are within the scope and basis of the provisions of the law. In other words, the administration is subject to the existing law, and the principle of legality is not limited to administration, as it is a general principle of application that applies to all authorities in the legislative and judicial state." Dr. Raafat Fouada, The Origins and Philosophy of the Annulment Judiciary, Dar Al-Nahda Al-Arabiya, Cairo 2011, p. 31; Some describe it as: "It is the principle that in its broadest sense leads to respect for the law by all, administration and citizens, with the aim of establishing a state of law." Dr. Bu Hamida Atallah, Jurisdiction of Administrative Judicial Authorities: Continuous Change, research published in the Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law, University of Algiers, No. 3, 2008, p. 241; There are those who address it under the term legality by saying: "It is the rule of law or is the conformity of any legal act or act to the law, whether that act or act is in the field of public law or in the field of private law"; Dr. Muhammad Abdel-Aal Al-Sinari, The Principle of Legality and Control over Management's Work, "A Comparative Study", without a publisher and publication date, p. 6; Dr. Tharwat Badawy, Lists Administrative Decisions and the Principle of Legitimacy, Dar Al-Nahda Al-Arabiya, Cairo, 1968-1969, p. 12 and beyond; Another defines it as "the subjection of the ruler and the ruled to the rule of law"; Dr. Hanna Ibrahim Nada, Administrative Judiciary in Jordan, without publisher, 1972, p. 7; In the same sense: Dr. Kamal Abu El-Eid, The Principle of Legitimacy in Socialist Countries, PhD Thesis, Faculty of Law, Cairo University, 1975, p. 112.

(22) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 96.

(23) This was confirmed by the Jordanian Supreme Court of Justice, saying: "The right to litigation is one of the general and absolute constitutional rights, and it is an inevitable result of the principle of legitimacy and the rule of law, and this requires that the state's authorities are subject to the law and adhere to its limits, and this principle cannot have any value." a process unless the judiciary establishes and confirms its oversight, and judicial oversight is the effective practical aspect of protecting the principle of legality." Alia No. 524/98, Journal of the Bar Association, No. 7-8, P. 47, 1999, p. 2968.

The Egyptian Supreme Constitutional Court confirmed this by saying: "And since the constitution did not stop - in the text of its 68th article - when deciding the right of litigation for all people as an authentic constitutional principle, but rather went beyond that to establishing the principle of prohibiting the provision in laws of immunizing any action or decision. Administrative from the oversight of the judiciary, and made this right a final goal that it seeks, represented by the damage they have suffered as a result of the aggression on the rights they request. If the legislator burdens them with restrictions that are difficult to obtain or prevent them, this is a violation of the protection guaranteed by the Constitution for this right, and a denial of the facts of justice in the essence its features"; Case No. 77, Q22, Constitutional Court, session 6/7/2008; State Cases Authority Journal, C53, April-June 2009, p. 106.

(24) Mahio Ahmed, Administrative Disputes, translated by Fayez Anjaq and Bayoud Khaled, Diwan of University Publications, Algeria 1994, p. 73.

(25) Dr. Mohamed Abdel Hamid Masoud, Problems of Litigation Procedures Before the Administrative Court, Mansha'at Al Maaref, Alexandria 2009, p. 523; In the same sense: Dr. Refaat Rashwan, The Criminal Judge's Oversight of the Legality of the Administrative Decision, Dar Al-Nahda Al-Arabiya, Cairo 2005, p. 166;

Jean- Claude Ricci, Droit administratif général, Hachette superior, 2005, p. 67.

- (26) Dr. Mustafa Mahmoud El-Sherbiny, Invalidity of Litigation Procedures before the Administrative Court, previous reference, p. 35.
- (27) Egyptian Supreme Administrative Court, Session 15/3/1986, Appeal No. 921 of 26 BC, Modern Encyclopedia, Part 33, p. 59; And its judgment, session 28/1/1986, Appeal No. 941 of 29 BC, previous encyclopedia, p. 60.
- (28) Dr. Ahmed Kamal El-Din Moussa, Administration Cases before the Administrative Court, previous reference, pg. 9; In the same sense: Dr. Maged Ragheb Al-Helou, Administrative Judiciary, University Press, Alexandria 2006, p. 553.
- (29) The General Assembly of the Fatwa and Legislation Departments of the Egyptian State Council, session 11/3/1970, Judgments of the Year 24, p. 72.
- (30) Dr. Mustafa Mahmoud El-Sherbiny, Invalidity of litigation procedures before the administrative court, previous reference, p. 36; In the same sense: Dr. Ahmed Kamal El-Din, Administration Cases before the Administrative Court, previous reference, p. 9.
- (31) Egyptian Supreme Administrative Court, Appeal No. 1723/722, Session 25/2/1958, p. 635.
- (32) The Jordanian High Court of Justice: No. 201/2010, Journal of the Bar Association, No. 1-2-3, P.59, 2011, p. 38.
- (33) Dr. Abdel Aziz Abdel Moneim Khalifa, Litigation and Evidence Procedures in Administrative Cases, previous reference, p. 339.
- (34) Dr. Muhammad Asfour, Echoes of Criminal Crime within the Scope of Discipline, research published in the Journal of Administrative Sciences, Year 12, Issue 3 December 1970, p. 19; And the year 13, No. 1, April 1971, p. 77.
- (35) Dr. Ahmed Kamal El-Din Moussa, Administrative Claims before the Administrative Court, previous reference, p. 10.
- With reference to what is related to unions: "It is understood from Article 48 of the Journalists Syndicate Law No. 15 of 1998 that hearing witnesses' statements before the Disciplinary Council, as they are before any regular court, must be under the influence of the legal oath, as the witness's swearing of the legal oath is a guarantee of the right of Defense"; Jordan High Court of Justice: No. 128/2010, Bar Association Journal, No. 10-11-12, P. 58, 2010, p. 1307.
- The same applies to the Bar Association: "The jurisprudence has been established that the court does not have the authority to comment on the evidence from which the Bar Council formed its conviction when issuing the decision complained of, but it has the right to investigate that if the result is a plausible and acceptable conclusion from firm assets." Jordan High Court of Justice: No. 295/2010, Bar Association Journal, No. 1-2-3, p. 59, 2011, p. 100.
- (36) Egyptian Supreme Administrative Court, Appeal No. 571, S. 28 BC, Session 11/2/1986, p. 1651.
- (37) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 103.
- (38) Dr. Ahmed Kamal El-Din Moussa, The idea of proof before the administrative judiciary, research published in the Journal of the State Council, Technical Office, Year 27, Egyptian General Book Authority, Cairo 1980, p. 242.
- (39) Dr. Ahmed Kamal El-Din Moussa, Theory of Evidence in Administrative Law, previous reference, p. 103.
- (40) Dr. Majed Ragheb Al-Helou, Administrative Judiciary, previous reference, pg. 567 and beyond; In the same sense: Aida Al-Shami, The Privacy of Evidence in Administrative Litigation, Modern University Office, Alexandria 2008, pp. 100-101.
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<p><b>Received:</b> 07-Dec-2021, Manuscript No. JLERI-21-10296; <b>Editor assigned:</b> 09-Dec-2021, PreQC No. JLERI-21-10296 (PQ); <b>Reviewed:</b> 18-Dec-2021, QC No. JLERI-21-10296; <b>Revised:</b> 31-Dec-2021, Manuscript No. JLERI-21-10296 (R); <b>Published:</b> 07-Jan-2022</p>
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