

How to Cite:

Thunibat, I. A. M. (2022). Appeal against administrative rulings in Jordan: A comparative study. *International Journal of Health Sciences*, 6(S9), 1785–1802.
<https://doi.org/10.53730/ijhs.v6nS9.12809>

Appeal against administrative rulings in Jordan: A comparative study

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Abstract---The Jordanian legislator adopted the principle of double judiciary and permitted the appeal against judgments issued by the Administrative Court. The Supreme Administrative Court has the authority to control the law and fact. Whenever the judgment marred with one of the reasons for nullity stipulated in the law, the court has the power to annul or amend the judgment. When the Supreme Administrative Court considers the appeal, it takes the position of the Administrative Court. It adheres to the scope of the litigants and does not accept any new request that the litigants did not raise before the Court of First Instance. Also, it has the authority to stay the execution of the judgment appealed judgment as an exception.

Keywords---Jordanian legislator, judgments, Administrative Court.

Introduction

The administrative judiciary in Jordan passed through several stages, the most important of which was the 1952 Constitution, which stipulated the establishment of a Supreme Court of Justice. At first, the Court of Cassation carried out the work of the Supreme Court of Justice, and then after the issuance of the first Law of the Supreme Court of Justice No. 11 of 1989, through which the Supreme Court of Justice became an independent court for the Administrative Judiciary, then Law No. 12 of 1992 was issued. Finally the Administrative Judiciary Law No. 27 of 2014 ⁽¹⁾.

The constitutional amendments issued in 2011 stipulated in Article (100) that: (All types of courts, their levels, their departments, their competencies and how they are managed by a private law. This law provides for the establishment of a two-level administrative court, instead of what was previously applied when litigation was of one level through the Supreme Court of Justice. In implementation of this, the Jordanian legislator issued Law No. 27 of 2014 and stipulated in Article (3) of it the establishment of the administrative judiciary, which consists of the

⁽¹⁾Jordanian Administrative Judiciary Law No. 27 of 2014, published in the Official Gazette No. 5297 on 8/17/2014, p. 4866.

Administrative Court as a court of first instance and the Supreme Administrative Court as a court of second instance.

According to the text of Article (6) of the aforementioned law, the Administrative Court has jurisdiction to consider all appeals related to administrative decisions when they have final status. These decisions of the Administrative Court are subject to appeal before the Supreme Administrative Court ⁽²⁾.

Likewise, the Supreme Administrative Court, in accordance with the text of Article (25) of the Administrative Judiciary Law, has jurisdiction to consider appeals submitted to it in all final judgments issued by the Administrative Court, both substantive and legal. The persons of the public administration shall be represented before the administrative judiciary in all administrative lawsuit procedures, an administrative public prosecution that is composed of a chief and his assistants. Based on the foregoing, the appeal against the administrative judgments shall go to the Supreme Administrative Court ⁽³⁾.

Research problem

The study raises a practical problem represented in the extent of the permissibility of appealing the judgments issued by the Administrative Court after the legislative development that Jordan witnessed in the field of administrative justice.

Legal systems have endorsed the principle of dual judiciary and considered it one of the most important aspects of human rights. The Administrative Court in Jordan considers administrative disputes as a court of first instance. It is a court of fact, whose ruling may not coincide with the correct law. Thus, the parties need to review this judgment. The study of appeal against administrative judgments is not a form of legal luxury, but rather rules, concepts and content. One of the most important of these contents is the extent to which the judgment of the Administrative Court may be reviewed.

Study questions

The researcher will answer several questions:

- 1- What are the foundations of the procedural system for appealing against administrative rulings?
- 2- What are the effects resulting from the appeal against administrative judgments?

Research aims

The study aims to highlight several points, the most important of which are:

- Deciding on the nature of the appeal in the judgments of the administrative courts and its reasons.

⁽²⁾ Article No. (6) of the Jordanian Administrative Judiciary Law No. 27 of 2014.

⁽³⁾ Article No. (25) of the Jordanian Administrative Judiciary Law No. 27 of 2014.

- Determining the procedural system for appealing administrative rulings in the comparison countries and comparing them with the Jordanian administrative judiciary.
- Inspecting the implications of the appeal against judgments issued by the administrative courts.

Research methodology

The researcher relies on the analytical and comparative methods:

Analytical Approach

We discuss the analysis of the texts of the Jordanian Administrative Judiciary Law and all the rules that regulate the process of appealing administrative rulings and expressing the appropriate opinion on them.

Comparative approach

We will discuss here comparing the Jordanian legal system with what came in the Egyptian law and French law. These two laws were chosen as they represent the most widespread image of the Latin legal school based on the principle of dual judiciary. So, we present the tendencies of the law and the judiciary in those systems from the aspect of the permissibility of appealing the judgment issued by the Administrative Court as a court of first instance.

Research Plan

The issue of appealing administrative rulings in Jordan as a comparative study will be dealt with in two topics.

First topic: The procedural system for appealing against administrative rulings

Second topic: The effects of appealing against administrative rulings.

First topic

The procedural system for appealing against administrative rulings

The Supreme Administrative Court is the competent authority to appeal rulings issued by the Administrative Court in Jordan. This situation is different from the French administrative judiciary, which considers appeals to be looked into by competent administrative courts of appeal. The jurisdiction of the French Council of State has become after the establishment of these administrative courts of appeal limited, small, and specific to jurisdiction in certain cases. As for the situation in the Egyptian Council of State, we find that appeal may sometimes be within the jurisdiction of the Administrative Court in specific cases that will be clarified later. At other times, the Supreme Administrative Court looks into the appeal of the case if the litigation has been in the Administrative Court First Instance ⁽⁴⁾.

⁽⁴⁾ Reem, Al-Thneibat, Litigation of Two Degrees in Administrative Disputes before the Jordanian Administrative Court, Ph.D. Thesis, University of Jordan, 2017, pp. 136-144.

The Supreme Administrative Court in Jordan was established under Administrative Judiciary Law No. 27 of 2014. It is competent to hear appeals against judgments issued by the Administrative Court. It is a court of appeal in the Jordanian administrative judiciary and its headquarters are in the city of Amman. It consists of a number of judges whose president is appointed by a decision of the Judicial Council, and the decision is accompanied by a royal will⁽⁵⁾.

After the issuance of the Administrative Judiciary Law No. 27 of 2014, all the judgments issued by the Jordanian Administrative Court are subject to appeal before the Supreme Administrative Court. In light of the foregoing, we decided to divide this study into two themes, as follows:

First theme: The concept of the appeal in the judgments of the administrative courts

Second theme: The reasons for appealing against judgments of administrative courts

First theme

The concept of the appeal in the judgments of the administrative courts

First: Defining the appeal of the judgments of the administrative courts

The appeal is defined as an ordinary way of challenging rulings issued from the administrative courts to the Council of State with the aim of amending or rescinding the ruling. The plaintiff is called the appellant, and the respondent is called the appellee.

Appeal is considered the practical means by which the legislator applies the principle of litigation at two levels by providing the opportunity for litigants to obtain a more just judgment. It is only permissible once in order to avoid the lengthy period of litigation and put an end to the disputes, as judgments of appeal are final⁽⁶⁾.

Appeal is also defined as the way by which the convicted party is brought to a higher court than the court that issued the judgment⁽⁷⁾. Another definition is that: It is the technical means by which an appeal is made against a ruling that is the subject of a complaint by the appellant with the intention of amending the judiciary contained in this ruling⁽⁸⁾. Moreover, the appeal was generally defined as an ordinary way of reviewing the judgments, according to which the same dispute is considered by a judge of a higher level than the one who decided it for the first time. In doing so, the dispute is reviewed in terms of fact and law⁽⁹⁾.

⁽⁵⁾ See Article No. 22 of the Jordanian Administrative Judiciary Law No. 27 of 2014.

⁽⁶⁾ Nabil Saqr, Mediator in Explanation of the Civil and Administrative Procedures Law, Dar Al-Huda, Ain Melilla, Algeria, 2009, p. 357.

⁽⁷⁾ Muhammad Salih Al-Adly, Appealing and Appealing Dissenting Judgments, Dar Al-Fikr Al-Jami'i, Alexandria, 2005, p. 134.

⁽⁸⁾ Nabil Ismail Omar, The Origins of Civil and Administrative Procedures, 1st ed., Dar Al-Maani, Alexandria, without a year of publication, p. 129.

⁽⁹⁾ Nabil Ismail Omar, Scope of Appeal in the Egyptian and French Code of Pleadings, 1st ed., New University House, Alexandria, 1999, p. 7.

Second: Conditions for accepting the appeal in administrative court rulings

In order for the appeal to be accepted before the Supreme Administrative Court, several conditions are required:

1- The appealed judgment must be judicial

The Supreme Administrative Court is a competent authority to adjudicate in the appeal of the rulings issued by the administrative courts referred to it. There is no doubt that these rulings are judicial rulings. It is known that judicial bodies can also carry out acts of an administrative nature such decisions issued by the Administrative Court, which have a predominantly administrative character. This is known as the work of the judicial administration, which may not be challenged by appeal⁽¹⁰⁾. Examples of such decisions are the court's decision to expel a person from the hearing room, accept evidence, or adjourn the hearing.

2- The court ruling should be preliminary

The appeal is directed only to the judicial decisions of the first instance⁽¹¹⁾ and the primary judgment is the judgment issued by the Court of First Instance and which is subject to.

The judicial ruling takes several forms, namely: The preliminary ruling and the preparatory ruling:

- Preliminary judgment: It refers to the judgment in which the court expressed its opinion on the subject matter of the dispute before issuing the judgment, such as the judgment appointing an expert to assess the victim's disability. The rule stipulates that every preliminary judgment may be appealed before the final judgment in the case.
- Preparatory judgment: It is meant the judgment that does not look into the subject, as the court does not express its opinion on the dispute, such as the judgment to conduct an investigation. The rule stipulates that the preparatory judgment is not subject to appeal.
- Peremptory judgment: It is meant the judgment that decides the origin of the right, as it decides that this right belongs to one of the parties to the case. However, the peremptory character does not mean that there is no possibility of appeal.

3- The appealed primary judicial ruling must be issued by the Administrative Court

The Supreme Administrative Court, whether in France, Egypt or Jordan, decides on appeals to the decisions issued in the first instance by the administrative courts in all cases, unless the law provides otherwise. Accordingly, the Supreme Administrative Court has the jurisdiction to adjudicate on appeals of the judgments and orders issued by the administrative judicial authorities⁽¹²⁾.

Third: The period for appealing against judgments of administrative courts

Article (26) of the Jordanian Administrative Judiciary Law stipulates that the period for appealing judgments issued by the Administrative Court is (30) days

⁽¹⁰⁾ Ahmed Meligy, Determining the Scope of Jurisdiction and Jurisdiction, Without a Publisher, Cairo, 2005, p. 355.

B . Asseot F . Monera, contentieux administrative, studyrama, 2006, p. 181.

⁽¹¹⁾ Hussein Taheri, A Brief Explanation of the Procedures Followed in Administrative Materials, Dar Al-Khaldouniyah, Algeria, 2008, p. 105.

⁽¹²⁾ Muhammad Al-Saghir Baali, Administrative Judiciary (Revocation), Dar Al-Uloom, Algeria, 2007, p. 236.

from the day following the date of the judgment issuance when the judgment was issued in facing, and from the day following the date of notification of the judgment.

The Jordanian legislator in the Administrative Judiciary Law guarantees cases of suspending the deadline for appeal, such as force majeure, appeal before a non-competent court, or submitting a request to postpone the fees. Other cases include the appellant had submitted the appeal to the Disciplinary Council or to the disciplinary courts and not to the Supreme Administrative Court, or an appeal was filed against a ruling issued by the Administrative Court directly before the Supreme Administrative Court by the concerned parties, and this is not permissible ⁽¹³⁾. Also, if the last day of that period coincides with an official holiday, it extends to the first working day ⁽¹⁴⁾.

It follows that the person concerned must resort to the competent court after he has established its jurisdiction, whether during the interruption of the time limit or during its recurrence, as long as it has not yet expired. Submitting the request for exemption entails suspending the time, even if the plaintiff had previously submitted a grievance with which the time was interrupted. This is because there is nothing in the law that prevents the deadline for filing a lawsuit from being interrupted more than once, when the justification for the interruption is realized. Also, submitting a request for judicial assistance would interrupt the deadline for filing a lawsuit and this effect will remain until the decision is issued. This means that the lawsuit must be filed within the appeal period – which is (30) days in Jordan and (60) days in Egypt – from the date of the issuance of the decision to accept or reject the request for judicial assistance ⁽¹⁵⁾.

In Egypt, the period for appealing judgments issued by the Administrative Court is (60) days as stated in Law No. 47 of 1972 regarding the Council of State ⁽¹⁶⁾. It is (30) days in Jordan. Thus, the Egyptian legislator has given the parties a longer opportunity to prepare the appeal report and the process the case file, which is filed by the parties, who have the right to resort directly to the Supreme Administrative Court. Unlike the position of the Jordanian legislator, the appeal file is submitted through the Administrative Court and not through the appellant.

⁽¹³⁾ See the decision of the Supreme Administrative Court No. 82/2015 “a tripartite body” dated 6/16/2015. Adalah Publications.

⁽¹⁴⁾ See also the decision of the Supreme Administrative Court No. 42/2015 “Ordinary Panel” dated 31/3/2015, Adalah publications. The judgment stated: “If the judgment was issued against the appellant on 10/12/2014 and the appeal was submitted by him on 12/1/2015 corresponding to 12/1/2015 from Monday, and that the deadline for submitting an appeal under Article 26 of Administrative Judiciary Law No. 27 of 2014 ends on 1/1/2015, and since (7-11/1/2015) coincided with an official holiday due to snowfall, the deadline for filing an appeal extends to the first working day, which corresponded to Monday 12/1/2015, so the lawsuit in this case is submitted within the legal period.

⁽¹⁵⁾ Raafat Fouda, The legal system of the appointment in the annulment lawsuit, “a comparative study”, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 166.

⁽¹⁶⁾ See Article 44 of Law No. 47 of 1972 regarding the Council of State, which states, “The time limit for submitting an appeal to the Supreme Administrative Court is sixty days from the date of the appealed ruling being issued.”

Fourth: Procedural rules for appealing against judgments of administrative courts

Article (30) of the Administrative Judiciary Law in Jordan stipulates the method of filing an appeal against judgments issued by the Administrative Court. It stipulates:

- A- The list of appeal shall be submitted to the Administrative Court to be submitted with the case papers to the Supreme Administrative Court after the notifications are made, and the list of appeal shall be attached with sufficient copies for the notification.
- B- The Supreme Administrative Court applies the same conditions and procedures stipulated in this law and applied to the Administrative Court.

Thus, we find that the appellant has to submit the list of appeal to the Administrative Court and not to the Supreme Administrative Court directly. In doing so, the Jordanian legislator aims to give the Administrative Court a sufficient period to conduct notifications.

The Jordanian legislator referred to the conditions and procedures stipulated in the Administrative Judiciary Law, which are followed before the Administrative Court. He did not single out the Supreme Administrative Court with specific procedures.

The Egyptian Council of State Law clarified the method for submitting the appeal against the rulings issued by the Administrative Court. It stipulates that the appeal shall be submitted by the concerned parties with a report to be deposited with the clerk of the court signed by a lawyer who is accepted before it. The report must include, in addition to the general data related to the litigants' names, their capacities and the domicile of each of them, a statement of the contested judgment and its date, and a statement of the reasons on which the appeal is based and the requests of the appellant. If the appeal does not take place in this manner, a ruling may be passed to nullify it.

When submitting the report, the concerned persons must deposit in the court treasury a bond of ten pounds, which the Appeals Examination Department shall confiscate in the event of a ruling rejecting the appeal. This ruling does not apply to the appeals submitted by the competent minister, the State Commissioners Authority, the head of the Central Auditing Organization and the director of the administrative prosecution ⁽¹⁷⁾.

Second theme

Reasons for appealing against judgments of administrative courts

Article (27) of the Administrative Judiciary Law has dealt with the reasons for challenging the judgments issued by the Administrative Court. The appeal against the judgments of the Administrative Court is for a person who has lost his case

⁽¹⁷⁾ See Article 44 of Egyptian Council of State Law No. 47 of 1972.

wholly or partially before it, whether he is a party to the case or is involved in it in the following cases:

- A- If the contested judgment was based on a violation of the law or an error in its application or interpretation.
- B- If an invalidity of the judgment or invalidity of the procedures occurred that affected the judgment.
- C- If the judgment was issued in contravention of a previous judgment that had the force of the adjudicated case, whether or not this plea was made.

Article (23) of the Egyptian Council of State Law stipulates the cases of appeal before the Supreme Administrative Court: The judgments issued by the Administrative Court or disciplinary courts may be appealed to the Supreme Administrative Court in the following cases:

- 1- If the contested judgment was based on a violation of the law or an error in its application or interpretation.
- 2- If a nullity occurred in the judgment or invalidity in the procedures had an effect on the judgment.
- 3- If the judgment is issued contrary to a previous judgment, it has the force of the *res judicata*, whether or not this plea was made.

Thus, we find that there is no difference in the legislation of the countries under comparison with regard to the reasons for appealing the judgments issued by the administrative courts, as they are a court of first instance for litigation.

First: Violation of the law or an error in its application or interpretation

The French Code of Procedure, as well as the French Administrative Justice Law considered that the violation of the law or the error in its application is one of the reasons for appealing the judicial ruling, whether it was issued by the ordinary or administrative judiciary⁽¹⁸⁾.

Also, one of the reasons for appealing the ruling issued by the Administrative Court is that the court abandons the work of a legal text that is not likely to be interpreted and there is no dispute that it should be taken into account in the case⁽¹⁹⁾. Another reason is that the court makes a mistake in applying the law in the event that a legal rule is applied to facts that do not apply to or its application to achieve legal consequences contrary to those intended by the law. A third reason is an attempt to refuse to apply a legal rule to facts to which it applies, or an error in interpreting the law, when the court interprets a legal text and gives it other than its true meaning⁽²⁰⁾.

Therefore, the Supreme Administrative Court is not allowed to verify the defects related to reality. It cannot delve into the occurrence of a specific incident or its miscalculation. Rather, it must accept the fact as confirmed by the judicial ruling. Its consideration is limited to the extent of the existence of the law that has been applied to fact and whether or not the Administrative Judicial Court applied it correctly. Therefore, the appeal submitted to the Supreme Administrative Court based on the error in the law or its application is an appeal related to the legal

⁽¹⁸⁾ Jean Vincent et Serge Guincharad- *procedure civile* - Dalloz- 27 ed. - 2003. p.521.

⁽¹⁹⁾ Abbas Al-Aboudi, *Explanation of the Provisions of the Civil Procedure Code*, Mosul University Press, 2000, pg. 422.

⁽²⁰⁾ Adam Wahib Al-Nadi *Civil Pleadings* - Baghdad University Press, 1988, p. 382.

aspect only and not the entire dispute. Thus, it differs from the case that was before the Administrative Court itself.

Some jurists⁽²¹⁾ that all the reasons or aspects that can build or establish on before the Supreme Administrative Court can all be ascribed to the violation of the law. Therefore, the consideration of the Supreme Administrative Court of the appeals submitted to it does not deal with understanding the facts and assessing them to derive the judgment because this is the task of the jurisdiction of the trial courts, not controlled by the Supreme Administrative Court because it is no more than a mere physical verification of the facts of the case. This issue is handled by the judge according to logical and linguistic criteria that are not subject to legal rules in which the error can be imagined⁽²²⁾. Also, it is not permissible to plead before the court of the second instance because for a factual or legal reason mixed with reality, which was not previously presented before the trial court. The Supreme Administrative Court also does not have the ability to compare and weight what the litigants have presented to the trial court of evidence, statements and presumptions within the limits of proving or denying the case. The trial judge has the absolute authority in assessing the evidence ⁽²³⁾.

Based on the foregoing, the appeal before the Supreme Administrative Court does not return the original case to be considered again. Rather, the jurisdiction of the court is related to the issue of the ruling's violation of the law without delving into issues of reality.

Second: A nullity in the judgment or in the procedures that affected the judgment

A- Nullity of judgment

There are several forms of invalidity in the ruling, including:

Misunderstanding of the facts

Understanding and estimating the fact depends on the trial judge, but the error in understanding the fact is a mistake in the law and the error applies to the adaptation of the facts and to the judgment as a whole. In this image, the appeal before the Supreme Administrative Court is related to the administrative court's error in understanding and adapting the facts. It is a matter of law by which the appeal is determined, and the entire case is not presented for consideration by the Court of Appeal ⁽²⁴⁾.

⁽²¹⁾ Nabil Ismail Omar, mediator in the appeal in cassation, New University Publishing House, Alexandria, 2004, p. 180 d. Eid Muhammad Al-Qassas, Mediator in the Civil and Commercial Procedures Law, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 1166 d. Ahmed El-Sayed El-Sawy, Mediator in Explanation of the Civil and Commercial Procedures Law, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 800.

⁽²²⁾ Ahmed Awad Hindi, Law of Pleadings, New University Publishing House, Alexandria, 2003, p. 1052 d. Mohamed El-Ashmawy and Dr. Abd al-Wahhab al-Ashmawi, Rules of Pleadings, without a publisher, 2006, pg. 993.

⁽²³⁾ Abdel Moneim Hosni, Diamond Encyclopedia, Volume 14, Hosni Center for Studies, Cairo, without publication year, p. 337.

⁽²⁴⁾ Muhammad Mahmoud Ibrahim, The General Theory of the Legal Adaptation of the Claim, Dar al-Fikr al-Arabi, Cairo, 1982, p. 404.

Omitting the adjudication of one of the parties to the case

The law obligated the court to mention in its judgment the reasons that led it to accept or reject the allegations and defenses made by the litigants and the legal materials on which it relied while it was in the process of justifying the judgment. Therefore, the omission of a ruling in one of the parties to the case is considered a violation of the law. In this case the appeal relates to the invalidity of the judgment itself, it is not related to the subject matter of the case, neither from the point of view of fact nor the law.

Deciding on something that the litigants did not claim, or ruling more than what they requested

The law requires opening the case by a statement of claim, which must include the subject matter of the case and the requests specified therein. The court and the litigants must adhere to what was stated in the statement of claim. If the judgment was issued by the Administrative Court of Justice and the court decided something that the litigants did not claim, or the judgment was more than what they requested, then this judgment, if it is appealed, is subject to cassation for violating the law. The Supreme Administrative Court does not consider the entire subject matter of the case, but rather considers the defect of the decision that exceeded the limits of the requests established in the petition of the case.

Judgment contrary to what is established in the case record or evidence

Whenever the judgment is issued by the Administrative Court contrary to what is established in the case record or contrary to the evidence of the papers and documents submitted by the litigants, it is subject to appeal before the Supreme Administrative Court. The law obligated the court to mention in the judgment a summary of the case and an abstract of the litigants' claims and defenses, the facts and legal arguments they relied on, the decisions that were previously issued in them, the judgment's pronouncement, and the reasons, grounds, and legal articles on which it was based ⁽²⁵⁾.

The parts of ruling pronouncement are contradictory

The appeal based on that situation is not related to the subject matter of the case, neither its legal aspect nor its factual aspect. Rather it relates to the decision that is contradictory in its parts, which makes it not enforceable ⁽²⁶⁾. This contradiction is required to occur in the pronouncement itself, but the contradiction between the reasons and the pronouncement or between the reasons and is not valid before appeal to the Supreme Administrative Court⁽²⁷⁾.

⁽²⁵⁾ G-Bolard et .G.Flecheux, L'avocat, Lejuge et Le Droit, D.1995.chron.p221.

⁽²⁶⁾ Abbas Al-Aboudi, previous reference, pg. 425.

⁽²⁷⁾ Ezzedine El-Danasori and Hamed Okaz, Commentary on the Procedure Code, Modern University Office, Alexandria, Volume 3, ed. 12, 2005, pp. 600.

The ruling does not meet its legal requirements

Violation of the rules that necessitated its adoption results in the nullity of the judgment issued by the Administrative Court. Among these issues is the formation and composition of courts, the recusal of judge. Other rules are contained in the Code of Procedure related to the pleading system and how to issue the judgment. The discriminatory appeal based on this image is not related to the subject matter of the case from in terms of fact and law ⁽²⁸⁾.

B- Invalidity of the proceedings

An error in the procedure leads to the invalidity of the procedures, and the appeal before the Supreme Administrative Court is the only way to correct this ruling. The only way to correct the error from the Administrative Court or from the Disciplinary Courts is by appealing to the Supreme Administrative Court ⁽²⁹⁾. It is clear that the case before the Supreme Administrative Court, based on the nullity that occurred in the procedures, is not related to the subject matter of the case, not even to its legal aspect. Rather, it is related to a procedural issue represented in the jurisdiction or lack of jurisdiction of the court that examined the case and issued the decision. Therefore, it is not conceivable that the case will be re-examined by the Court of Appeal, but the consideration is limited to the limits of the violation of jurisdiction as a procedural aspect of the case ⁽³⁰⁾.

This reason is essentially related to the violation of the fundamental procedures, which are the actions that the law directly leads to the establishment, development, modification, or termination of the pleading as a legal precedent. If the fundamental procedures that preceded the judgment or that were contemporaneous with its issuance were marred by a defect affecting its validity, then this constitutes a reason to challenge the judgment ⁽³¹⁾. Therefore, the preceding matter is related to a fundamental procedural issue on which the law has a direct effect. Thus, it is not conceivable to return the entire case before the Supreme Administrative Court, but it considers the issue of violating the fundamental procedures only – a thing that is not related to the subject matter of the case, not even to its legal aspect.

Third: Issuance of the judgment contrary to a previous judgment that had the force of the res judicata

This reason relates to the contradiction of judgments not to the subject matter of the case in terms of fact and law, but rather a defect in the judgment itself. Therefore, the Supreme Administrative Court is bound by the reason for the appeal only ⁽³²⁾. It is noted that this case relates to public order as the legislator, whether in Egypt or Jordan, did not require that this is argued before the Supreme Administrative Court. It follows that if the court discovers, when

⁽²⁸⁾ Abdul Rahman Al-Alam, Explanation of the Civil Procedure Code, Part 1, Al-Zahraa Press, Baghdad, 1990, p. 44, d. Abd al-Razzaq Abd al-Wahhab, Appealing Judgments by Discrimination, Dar al-Hikma, Baghdad, 1991, p. 213 and beyond.

⁽²⁹⁾ Rajab Mahmoud Tajen, Appeal by petition for a review of administrative court rulings, 1st ed. 1, Dar Al-Nahda Al-Arabiya, 2012, p. 151.

⁽³⁰⁾ Abdul Razzaq Abdul Wahab, *op cit.*, p. 178 d. Abdul Rahman Al-Alam, previous reference, p. 29.

⁽³¹⁾ Abdul Rahman Allam, *op cit.*, p. 33.

⁽³²⁾ Abbas Al-Aboudi, *op cit.*, p. 423.

examining the case documents, that there is a judgment issued in the same case and has the force of the *res judicata*, it may rule to reject the case. We find that the French legislator, in the Code of Procedure, as a general statute for procedural laws, gave the judge the right to challenge the judgment if it was issued in contravention of another judgment⁽³³⁾.

Second topic

Effects of appealing against administrative rulings

After the Jordanian Supreme Administrative Court was established under the Jordanian Administrative Judiciary Law, it has become the exclusive jurisdiction to consider the appeals submitted to it in all final judgments issued by the Administrative Court from the substantive and legal aspects⁽³⁴⁾.

Based on the foregoing, when the appeal reaches the possession of the Supreme Administrative Court, it has two important effects. First, there is non-suspending effect of the judgment issued by the Administrative Court. This is what was stated in Article (28) of the Administrative Judiciary Law, which states that (the appeal before the Supreme Administrative Court does not result in a stay of execution of the contested judgment, unless the court orders otherwise). The second effect is devolutive. That is, it transmits the subject matter of the dispute within the limits of the appellant's requests and re-submits it with everything it included of evidence and defenses for adjudication by the Supreme Administrative Court, whether legally or substantively, as we mentioned earlier. In light of the foregoing, this topic will be divided into two themes as follows:

First theme: The non-suspending effect of appealing administrative judgments

Second theme: The devolutive effect of appealing administrative judgments

First theme

The non-suspending effect of appealing administrative judgments

First: Defining the non-suspending effect

The origin of the appeal is characterized by its non-suspending nature. This origin is due to the system of appealing administrative decisions before the French Council of State, which does not suspend the implementation of an administrative decision once it has been appealed⁽³⁵⁾. The Jordanian legislator stipulated the non-suspending effect in Article (28) of the Administrative Judiciary Law, where it stipulated that "the appeal before the Supreme Administrative Court does not result in the suspension of the implementation of the contested judgment unless the court orders otherwise". The judgments issued by the administrative courts have the power of execution. Therefore, the appeal does not suspend the executive power that the administrative judgment enjoys⁽³⁶⁾. The accepted rule is that as soon as a judicial ruling is issued by the Administrative Court, it accepts

⁽³³⁾ Julien – *contrariete des decisions de justice* – mélanges Hebraud, 1981. p. 493.

⁽³⁴⁾ Article (25) of Administrative Judiciary Law No. 27 of 2014.

⁽³⁵⁾ Ahmed Mahmoud Gomaa, *Appeals before the Council of State Courts*, Muntaha Al-Maaref, Alexandria, 1986, p. 15

⁽³⁶⁾ Yves GAUDEMET, *droit administratif*, 18^{ém} edi, LGDJ, Paris, 2005, N° 208.

implementation. The result is that filing a lawsuit before the Supreme Administrative Court does not suspend the validity of the decision and the administration's implementation of it so as not to result in the suspension of the administration's activity.

However, this rule receives an exception. When an administrative court ruling is appealed to cancel an administrative decision on the ground of the misuse of authority, the Council of State may, upon the appellant's request, order a stay of implementation of this ruling whenever the appeals appear to be a serious investigation that would lead to, in addition to canceling the contested ruling, amending it, or rejecting the requests aimed at annulment in order to misuse the authority that the judgment ruled.

It is the right of the Supreme Administrative Court to issue a decision to stay the execution, provided that the contested administrative decision that its implementation is required to be suspended is not related to public order. Accordingly, the lawsuit filed before the Supreme Administrative Court does not suspend the implementation of the disputed administrative decision, unless the law provides otherwise.

The non-suspending effect of appeal in the administrative judgments finds its origin in the litigation system before the French Council of State. The rule applicable to appeals against the administrative decisions and stating not to stay execution is the same that applies to judgments issued by the administrative judiciary bodies of the Council of State, whether by appeal or cassation⁽³⁷⁾.

Second: Consequences of the non-suspending effect

It follows that as soon as the administrative judgment is issued in favor of the litigant, he can proceed with the execution even before the end of the appeal deadlines. The authority to stay the execution of the appealed judgment does not belong to the administrative court judge, but rather it is an authority owned by the judge of the Supreme Administrative Court. His authority is wide, as he has wide discretionary authority when deciding on the requests to stay the execution of judgments appealed to him.

In addition, the execution of the judgment of the administrative court by the convict is not considered acceptance of the judgment, nor is the waiver on his part of his right to appeal. The reason for that is that he is obliged to implement this judgment⁽³⁸⁾. What is meant by the cancellation of the ruling by the Supreme Administrative Court is the ruling that the administrative court's judiciary is invalid, whether in part or in whole. This requires its amendment or replacement with another new ruling. In both cases, this process has an impact on the implementation process, because the Administrative Court of First Instance issued the ruling in favor of the opponent, and winning the case before it accordingly. Thus, as a general rule, he has begun to implement it. Therefore, accepting the appeal from the Supreme Administrative Court and supporting it in

⁽³⁷⁾ Yves GAUDEMET, Appel, op. cit, N° 208.

⁽³⁸⁾ Bashir Mohamed, Appeal against the rulings of the administrative courts in Algeria, Diwan of University Publications, Ben Aknoun, Algeria, 1991, p. 107.

part or in whole will necessarily lead to a modification of the method of implementing the judgment subject of the appeal or staying its implementation⁽³⁹⁾.

If the ruling of the Supreme Administrative Court ended up supporting the appealed ruling, that is, it rejected the appeal brought before it, then this process does not affect the implementation of this ruling as long as the latter has started implementing it as soon as it is issued at the level of the Administrative Court. With its confirmation by the Supreme Administrative Court, the execution process shall remain in effect and continuous, as if the appeal had never occurred⁽⁴⁰⁾.

Second theme

The devolutive effect of appealing administrative judgments

First: Defining the devolutive effect

The devolutive effect of the appeal means the process that transfers the entire dispute to the Supreme Administrative Court, with the intention of deciding it in terms of facts and law as a second degree of litigation. The filing of the appeal results in resubmitting the dispute to the court of the second instance to decide it again as a court of fact and law in Jordan and as a court of law in Egypt and France. It also re-evaluates the facts of the case, that is, the Supreme Administrative Court re-submits all documents, pleadings and statements that were previously submitted to the Administrative Court, based on the application of the legal rule that it deems correct to the facts of the case.

The judge in the Supreme Administrative Court does not have the right to return the case to the state in which the parties were before the issuance of the ruling, nor can he refer the case to another judge for adjudication or to the Administrative Court to conduct an investigation, since the court has exhausted its authority as soon as the ruling is issued.

And the contemplator finds that the authority of the Supreme Administrative Court is restricted when considering the appeal of the appeal. It is always restricted to the limits of the appellant's requests set out in the appeal petition. This is an application of the rule that the judge should not judge what is not required of him, but if privacy is linked to a matter of the public order such as jurisdiction cases, the Supreme Administrative Court can address it on its own, even if the litigants did not request this. The second restriction is that the appeal re-submits only the requests that were previously submitted before the Administrative Court⁽⁴¹⁾.

As a result, the Supreme Administrative Court in Egypt decides by virtue of the devolutive effect of the appeal in the applications and defenses that were previously submitted to the Administrative Court. It cannot consider new applications that were presented to it for the first time; otherwise this would result in a prejudice to the principle of litigation at two levels. In doing so, the first

⁽³⁹⁾ Bashir Mohamed, Appeal against the rulings of the administrative courts in Algeria, op. cit., p. 107.

⁽⁴⁰⁾ Administrative Courts Judgments, Al-Baht Journal for Academic Studies, No. 9, June, 2016, p. 528.

⁽⁴¹⁾ Nabil Ismail Omar, Mediator in the Appeal, Dar Al-Jamaa Publishing, Alexandria, 2004, pg. 589.

instance was lost to one of the parties to the dispute with regard to the request in which it was judged. Also, it cannot consider requests that were not the subject of an original or actual appeal, otherwise it shall be decided what the litigants did not request⁽⁴²⁾.

Second: The right of the Supreme Administrative Court to address the subject of the dispute

Legislation, whether in France, Egypt or Jordan, has touched upon the authority of the appellate judge to address the issue of the dispute. The contemplator finds that the judge of the Supreme Administrative Court in France and Egypt is a judge of law who cannot re-state the facts, unlike the appellate judge in the Supreme Administrative Court in Jordan as he is a judge of facts and law. This is stipulated in Article (25) of the Jordanian Administrative Judiciary Law that “the Supreme Administrative Court has the jurisdiction to consider appeals submitted to it in all final judgments issued by the Administrative Court and considers appeals from both substantive and legal aspects⁽⁴³⁾.”

Addressing the subject matter of the dispute always remains an optional authority for the appellate judge. Despite the availability of all the previous conditions for addressing, he is not obligated to use this authority. Rather, he can address the case to ensure a quick solution to the dispute. He can also refer the case to the Court of First Instance, pursuant to the principle of litigation at two levels⁽⁴⁴⁾. In doing so, he enjoys a wide discretionary authority, according to his conviction that this or that solution is what achieves justice.

Conclusion

The findings of this study shows that that the Jordanian legislator permitted the appeal against judgments issued by the Administrative Court, as it is a court of first degree. The Egyptian legislator also permitted the review of judgments issued by the administrative courts and the Administrative Court as courts of first degree. The French legislator also permitted the appeal of the judgments issued by the administrative courts. This study reached several results, the most important of which are:

1. The appeal of the judgment issued by the Administrative Court in Jordan is an application of the principle of double litigation. The Jordanian Supreme Administrative Court considers the appeal as a court of subject matter and law, unlike the Supreme Administrative Court in Egypt and France, which is a court of law only and does not deal with substantive aspects.
2. There is a consensus in the French, Egyptian and Jordanian legislation on the reasons for appealing. Whenever an invalidity occurred in the procedures that affected the judgment, a violation of the law occurred, the judge erred in its application, the judgment was issued in contrast to another judgment that had the force of the *res judicata*, the judgment was subject to appeal by appeal.

⁽⁴²⁾ Bassiouni Hussein El-Sayed, *The Role of the Judiciary in Administrative Disputes*, PhD Thesis, Faculty of Law, Cairo University, 1988, p. 278.

⁽⁴³⁾ See Article No. (25) of the Administrative Judiciary Law No. 27 of 2014.

⁽⁴⁴⁾ Ph. Blondel- *Le fait source de droit – Melanges Draï – Dalloz-1999*, p 213 .

3. The appeal has several effects, the most important of which is that the appeal of the disrupt appeal does not suspend the implementation of the ruling issued by the Administrative Court, so as not to the administration's activity. The appeal transfers the case, in its state as it was before the Administrative Court, to fall within the jurisdiction of the Supreme Administrative Court.
4. There is a consensus between the Jordanian, the Egyptian and the French legislators regarding the impermissibility of suspending the execution of the Administrative Court ruling when appealing against it, as well as the devolution effect of appealing the administrative rulings.

Recommendations

The study makes several recommendations:

1. We recommend that the Jordanian legislator expands the jurisdiction of the administrative judiciary to include all disputes, after it has adopted the principle of litigation at two levels.
2. We recommend that the Jordanian legislator extends the period for appealing administrative rulings for a period of (60) days, as is the case in the French and Egyptian administrative courts, so that the appellant appeal can have a longer period to the ruling, As well as giving the body entrusted with preparing the appeal report and preparing the case file for a longer period.
3. We recommend to the Jordanian legislator the necessity of amending the text of Article (28) of the Administrative Judiciary Law. As a result, the effect of appealing the rulings of the Administrative Court before the Supreme Administrative Court becomes a suspensive effect for the implementation of the decision, unless the court decides otherwise, in order to maintain the stability of the legal positions of the individuals and pursuant to the principle of litigation on two levels.
4. We recommend that the Jordanian legislator work to find an administrative appellate court competent to consider the appeals, provided that the jurisdiction of the Supreme Administrative Court remains to considers the appeals in cassation, as it is the case in the French administrative judiciary as well as the Egyptian administrative judiciary.
5. The study recommends the necessity of emphasizing the existence of more than one administrative court, as is the case in Egypt and France, while emphasizing the existence of one supreme administrative court in order to ensure the unity of judgments.

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