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# Principles of Administrative Judiciary the UAE Judicial System

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**Abstract**--The study aims to analyze the general principles of the administrative judiciary in the United Arab Emirates in comparison with Islamic law by examining the history of the administrative judiciary in Islamic law and Emirati legislation, identifying obstacles to the application and development of administrative judiciary in the United Arab Emirates, and evaluating the role of the administrative judiciary in monitoring the work of the official administration In the United Arab Emirates. The problem of the study is the modernity of the administrative judiciary and its limitation to annulment, compensation, and the disciplinary proceedings. The researcher uses the descriptive-analytical approach and the comparative approach to achieve the objectives of the study and to find solutions to the problem at hand. The study concludes with a set of results and recommendations, the most important of which is that Islam was the first religion to come up with the idea of establishing an office for adjudicating claims of injustice. The administrative judiciary is considered a real guarantee to control the decisions of the official administration and not to oppress individuals. Besides, the administrative judiciary in the UAE is newly established compared to the administrative judiciary in other countries.

**Keywords**---adjudicating claims, administrative cases, administrative judiciary, injustice, judiciary Islam.

## **Introduction**

The existence of the administrative judiciary in the Islamic civilization dates back to more than a thousand year ago as Islamic civilization preceded modern states and positive legislation at establishing an office for adjudicating claims of injustice. Justice is one of the most important purposes of Islam. Islam has underlined the issue of appointing judges. In Islam and to become a judge, a person must fulfill certain conditions, the most important of which are righteousness, knowledge of the provisions of the Qur'an, the Sunnah, and Ijma (consensus), as well as knowledge in the Arabic language, to elaborate rulings from the Qur'an and Sunnah. The administrative judiciary has been defined as an independent judicial body that provides fatwas, prepares and drafts legislation, and adjudicate administrative disputes according to distinct legal rules. The administrative judiciary is responsible for adjudicating all administrative disputes in which the state is a party in general.

The jurisdiction, structure, and provisions of the administrative judiciary differ from one legal system to another same as in Islamic law. The reign of Abu Bakr Al-Siddiq marks the beginning of the Rashidun era due to its close connection with the covenant of the Prophet Mohammed. Abu Bakr Al-Siddiq, the first Islamic caliph of this era, was able to govern the Islamic state and manage its affairs with the support of his companions who had great ability in religious, military, economic, and administrative affairs. During his reign, the judiciary system was a continuation of the judiciary system during the Prophet's era. He formally established the rules of the administrative justice system for adjudicating claims of the injustice of the general public against the officials and governors of the Islamic State during the era of Omar bin Al-Khattab, may God be pleased with him. Moreover, Ali bin Abi Talib followed in the footsteps of Abu Bakr Al-Siddiq.

The idea of state office for adjudicating claims of injustice fully evolved in the Umayyad era as Abdullah bin Marwan was the first to set a day for adjudicating claims of injustice against high-ranking state and administration officials. The judicial system in Islam is based on a set of principles, the most important of which are independent justice, free litigation, equality between litigants, and open justice. As for the judicial system in the United Arab Emirates, it enjoys complete independence, and the constitution does not allow any interference from any party whatsoever. The judicial system in the United Arab Emirates operates bilaterally, including the federal judiciary headed by the Federal Supreme Court on the one hand, and the local judiciary system at the level of local governments that are members of the federation on the other hand

The state's constitution stipulates the equality of all before the law and guarantees the right of everyone to a fair trial. The Ministry of Justice also oversees the work of courts and public prosecution departments throughout the United Arab Emirates. The Ministry of Justice also appoints judges and licenses lawyers, experts, and legal translators. The Federal Court of First Instance has

jurisdiction over administrative disputes between the federation and individuals, whether the federation is a plaintiff or a defendant. Islamic Sharia is considered one of the most important sources for the laws of the United Arab Emirates, as the country's constitution stipulates that Islam is the official religion of the country, and Islamic Sharia is the main source of legislation. In this study, the administrative judiciary system in Islamic Sharia and UAE law will be reviewed.

### **Literature review**

The most prominent literature review related to the subject of the study will be reviewed here:

- [Ben Salah \(2009\)](#), in his study entitled: *The Judicial Jurisdiction of Administrative Courts in the Saudi Board of Grievances* states that the problem of the study revolves around the definition of the judicial jurisdiction of the administrative courts in the Saudi Board of Grievances. The researcher uses the inductive analytical approach in his study. The study has reached a set of results, the most important of which is that the objective of the Board of Grievances in Islamic law is to establish justice among the Muslims. Another result of the study is that the position of the ombudsman did not become an independent position until late in the Islamic state specifically at the end of the Abbasid era. Also, the Administrative judiciary in the modern system has become a dual court system. The study concludes with a set of recommendations. First, and the most important of which is the publication of the rulings issued by the administrative courts for the benefit of the researcher, litigants, lawyers, and judges. The researcher recommends the teaching of judicial systems in specialized colleges such as the College of Sharia for students to graduate while being familiar with the legal systems and the ability to join the legal science with the regulations in force. He also recommends that students in Sharia colleges have to be taught by Judges with the ability to join theoretical and applied science.
- [Dhunaibat & Al-Ajami \(2016\)](#), present in their study: *Administrative Judiciary in the Kingdom of Saudi Arabia According to the New Pleading System*, a comprehensive analytical, statutory, jurisprudential, and judicial study of the Saudi Administrative Judiciary. The study touches on extremely important topics, starting with the principle of legality, its sources, and its relationship to the discretionary power of the official administration. Moreover, it touches upon the exceptional circumstances related to the judiciary system up to the judicial organization of the Saudi judiciary compared to the French and Egyptian system, and the annulment proceedings of in all countries understudy. Besides, the study touches on the rules of evidence before the Saudi Board of Grievances according to the system of the Board of Grievances established in 1428, and the system of pleadings before the Board of Grievances established in 1435, and its executive regulations established in 1436. The study reviews the pleading system from the jurisprudential point of view and based on the opinions of ancient and contemporary jurists. Finally, the study reviews the pleading system from the judicial point of view, under the provisions of the Saudi Board of Grievances, both ancient and modern.

- [Al-Saghiri \(2006\)](#), in his study in which he explains the role of federal and local courts in the United Arab Emirates, states that judicial control over official administrative decisions is one of the most important topics of administrative law in general and administrative justice in particular due to the association of justice with the judiciary. The researcher has set a set of objectives that he has sought to achieve through his study, the most important of which is the contribution to the development of the administrative judiciary in the United Arab Emirates, in addition to stating that the official administration and individuals are the same as no one is superior to the other. To achieve these objectives, the researcher uses two methods of scientific research, the first is the descriptive and analytical approach, and the second is the comparative approach. Through his study, he discusses the role of federal and local courts in the UAE in annulment proceedings of administrative decisions compared to France, England, and Egypt. The researcher touches on the emergence of the Administrative judiciary, its structure, and jurisdiction of the official administration in the countries understudy. The researcher explains that the Emirati legislator, in addition to granting official the administration enough authorities, has identified individuals' rights and necessitated their protection, and therefore the administration does not override the interests of individuals. However, and while the official administration aims to achieve the public interest, individuals seek their interests only.

### **The historical development of the administrative judiciary**

The evaluation in the concept of the contemporary state has kept pace with the bifurcation of human relations and has sought to control these complex relationships with rules that the state's official administrative authorities adhere to ([Zarayqa, 2014](#)). To satisfy the needs of society, the official administration carries out material and legal obligations. Material obligations are those that the state carries out voluntarily in the implementation of a legal act, or an administrative act, whether it is a decision or a contract. As for the legal obligations, they are divided into administrative unilateral obligations and bilateral Administrative obligations. Unilateral administrative obligations are those in which the official administration discloses its objective and indicates its intention to have a legal effect, whether by creating a new legal status, amending an existing one, or abolishing one. Bilateral Administrative obligations are those consensual, agreement, or contractual acts between two parties ([Khleifi, 2014](#)).

The official administration exercises its authority under the law, meaning that the behavior and actions of the official administration must be under the provisions of the law, and this guarantees the legitimacy of its actions ([Al-Hajri, 2011](#)). The aim of the official administration's obligation to observe the provisions of the law in all its actions is to protect the rights and freedoms of individuals, given that protecting these rights is one of the most important legal functions of the state. This is evident in all constitutions and declarations of national, regional, and universal rights ([Jamous, 2015](#)). Islamic law has paid great attention to the principle of legality, as it is considered a doctrine and a matter of worship, not just a normal matter. The Islamic Sharia used to preserve the rights of individuals in the face of officials in charge of public affairs in the Islamic State ([Al-Zahir,](#)

2010). In this part of the study, we review the history of the administrative judiciary in Islam. Then we will explain the stages of development of the administrative judiciary in the United Arab Emirates

### **Administrative judiciary in Islam**

Islam has been concerned with regulating the relationship between the ruler and the ruled. Islam obliges the ruler to administer justice, treat people fairly, and restore rights to their owners under the provisions of Sharia (Al-Shatli, 2000). There is no doubt that caring for people in the Islamic system is one of the greatest duties because there is no fulfillment of religion without it. Also, ensuring that everyone is subject to the rules of legislation and the system can contribute to protecting the general public from the excesses and deviations of the official governors and workers. Therefore, the Ombudsman System had to be established (Al-Zahir, 2010).

The elimination of oppression is one of the pillars on which Islam is based. The sanctity of injustice has been emphasized in many comprehensive Quranic texts and hadiths. The application of these Qur'anic texts and hadiths applies to the ruler's relationship with the public. Islam permits accountability of the ruler and the official if it is proven that they are failing in their duty. Board of Grievances has given Muslims or non-Muslims the right to file a complaint to look into an act of injustice against them by an official in the state. Based on the foregoing, we conclude a set of principles approved by Islamic law within the framework of the administrative judiciary. They are as follows:

- Achieve justice.
- Realizing the public and private interest.
- Restoring rights.
- The impartiality and independence of the one adjudicating disputes between litigants.
- Establishing and strengthening the principle of legality.

There are various authorities granted to the Ombudsman in Islamic Sharia, and these authorities include:

- Adjudicating of disputes which the judiciary is unable to resolve.
- He judges princes and officials in the state and subjecting them to the provisions of Sharia.
- He Considers the judgments that the litigants are not convinced of their fairness.
- He has the discretionary power to adjudicate and issue judgments based on the evidence, circumstances, and case evidence.
- He controls and follows-up employees' actions, even without a complainant, as a right of the state.
- He controls state funds and oversees all the accounting transactions (Al-Shatli, 2000).

### **Administrative judiciary in the UAE**

The administrative judiciary in the United Arab Emirates is considered relatively new. The emergence of this type of judiciary coincided with the establishment of the UAE on the second of December 1971, as Article 102 of the Constitution of the State of the UAE Federation stipulated that adjudicating administrative disputes between the federation and individuals was to be assigned to the federal judiciary. The administrative judiciary was practically practiced in 1973 concurrent with the establishment of the Federal Supreme Court. The administrative judiciary in the Emirates is practiced through the annulment proceedings, compensation proceedings, and the disciplinary proceedings. The UAE legislator applies the uniform system of the judiciary. There is no independent authority in the UAE legislation to adjudicate administrative disputes. Rather, adjudicating administrative disputes is the responsibility of administrative departments in federal courts.

Nevertheless, the Abu Dhabi Judicial Department deliberately introduced the principle of allocating litigation, so that the legislator decided in Article 8 of Law No. 23 of 2006 to form administrative departments specialized in adjudicate administrative disputes against the law and administrative officials (Fatah al-Bab, 2013). Cases and administrative disputes in the cities of the Emirates within the mandate of the federal judiciary are examined before the administrative departments of the Federal Courts of First Instance under the rules and principles of the Federal Civil Procedure Law. The rulings of those departments shall be executed according to the same law unless there is another provision in another law to the contrary. As for the administrative case in the cities of the Emirates that are not within the mandate of the federal judiciary, they shall be brought before the local courts of the first instance. The rulings of the federal courts of the first instance shall be appealed to the federal appellate courts under the jurisdiction rules. The rulings of the latter are appealed in cassation before the Administrative Department of the Federal Supreme Court (Abdoul, 2012).

### **The role of the administrative judiciary in reviewing the actions of the official administration**

The administrative judiciary has a major role in overseeing the work of the official administration through means of judicial control over the legality of the official administration's actions. In this section, we will review the administrative judiciary and its role in monitoring the work of the official administration in the Emirate as follows: Judicial review of the administration's actions in positive legislation. The main purpose of the administrative authority granted to any administration official is to make decisions that aim at achieving the public interest affected by time and place (Al-Qa'id, 2015). However, this administration official may deviate from the objective for which he has been granted the authority to issue binding decisions. Therefore, legislators have worked to create a comprehensive system to evaluate and hold the administration official accountable if it is proven that he violates the law.

### **What is a judicial review?**

The development of the principle of judicial review is closely linked to its historical evolution. As a result of this historical evolution, the principle of legality has emerged, according to which the administrative authority is subject to the law. However, the increasing activity of the official administration and its frequent interaction with individuals has led to the inevitability of its departure from the principle of legitimacy. Therefore, it has been necessary to impose judicial review over the work of the official administration to ensure that it does not deviate from the law. This type of reviewing aims to achieve a kind of compatibility and harmonization between the general interest of society and the interests of private individuals (Ibri, 2016).

A judicial review conducted by the administrative judiciary over the legality of the official administration's actions includes reviewing past relations related to the administrative decision-making which is considered a development in the field of judicial review over the work of the administration's actions (Al-Hajri, 2011). Judicial review has become the most important form of control over the administration's work, as the judiciary is the most capable authority to protect the principle of legality and guarantee individual rights and freedoms (Boukreit, 2007). Accordingly, judicial review can be defined as the supervision conducted by judicial courts of all kinds whether administrative, ordinary, civil, criminal, and commercial, and of different degrees of primary, appellate, or litigation, by initiating various appeals against the illegal actions of the administrative authorities. These lawsuits are either a lawsuit of annulment, a lawsuit for compensation, a lawsuit for administrative contracts (Awabdi, 1982).

### **Characteristics of judicial review over the actions and decisions of the official administration in positive law**

The existence of judicial review over the various acts of the administration, whether material or legal is a must to ensure the rule of law over every citizen. Judicial review is distinguished by a set of characteristics. They are as follows:

- The authority entrusted with reviewing administrative decisions is the courts, based on constitutional and legal texts.
- Judicial review does not act on its own, but rather when a person files a lawsuit.
- Judicial review is a review of legitimacy, meaning the authority of the administrative court is limited to ruling on the legality of the decision or nullity and compensation.
- The force of the rulings of the administrative judiciary is similar to the force of *res judicata* (Garouf, 2016).
- That judicial review is conducted by independent judges, and therefore there is no fear of deviation from those in charge of it, unlike other types of review (Dukhan, 2016).
- Judicial review has to ensure respect for the rules of law and justice and to prevent all manifestations of deviation and abuse since its members are already working in the judiciary and therefore their goal is to achieve justice.

- Judicial review is an independent entity unlike the administrative and parliamentary entities that are affected by political changes (Rizayqa, 2015).

### **The administrative judiciary guarantees for the implementation of the judicial review over the official administration actions**

Several guarantees must be available for the administrative judiciary to be an effective tool and to be able to achieve its mission. These guarantees are divided into objective and procedural:

- Objective guarantees: The existence of a real and effective administrative judiciary must be based on three objective guarantees:
  - The right to litigate: it is a basic guarantee for the establishment of the administrative judiciary because it is illogical to talk about judicial review without guaranteeing the right to litigate. The right to litigate means that everyone has to be allowed to bring cases to the courts so that every citizen who has been wronged can resort to justice (Al-Jallad (2013), working paper).
  - Judicial independence: if the right to litigation is a fundamental guarantee for the success of the administrative judicial system, then this right will lose its value if the judiciary is not independent and subject to influences and pressures. The right to litigate becomes useless if this judiciary does not rule with justice under the provisions of the law. The judiciary derives its independence from the principle of separation of powers adopted by the developed countries, and according to which each of the three authorities in the state should be independent (Justice Society, 2013).
  - The right to equality before the law and the judiciary: this is a guarantee that cannot be separated from the aforementioned guarantees, as its effects are reflected in all the objective and procedural rules in the judicial systems. Equality between members of society concerning the concept of democracy is like the soul of the body, and without it, democracy loses its value and essence (Dukhan (2013), working paper).
- Procedural guarantees: Most of the constitutions included a set of rules that are binding on the judicial authority when adjudicating disputes brought before it in the courts of various types and degrees. These are known as procedural guarantees, namely:
  - The principle of an open court: It is a principle related to the right of the judge, to achieve justice. The publicity of hearings reassures the litigants, and although the rule is the publicity of hearings, the judge may decide that the hearings be held in a closed court based on his discretion (Al-Sagheer, 2015).
  - Fair trial: It is one of the most important procedural guarantees in the judicial process. This guarantee includes the right of individuals to free litigation, their right to oral pleadings, their right to silence, their right to have a lawyer, and their right to defend themselves (executioner, working paper).
  - Judicial progression: It is an important guarantee as it enhances the effectiveness of judicial review of the administration's actions. This

principle requires achieving the quality of judgments by reviewing and correcting them by the highest judicial authorities, in addition to achieving the integrity of judgments and decisions ([Adalah Association, 2013](#)).

### **Limitations and exceptions on the administrative judicial jurisdiction**

Fundamentally, all state actions are subject to judicial review to protect the rights of individuals. However, various considerations may limit the work of the administrative judiciary. Here we refer to the most important of these limitations:

- Acts by right of dominion: It is a set of actions of the executive authority that does not fall under the authority of the ordinary and administrative judiciary. These acts of dominion cannot be appealed before any judicial authority, whether by annulment or compensation in normal circumstances or exceptional circumstances, on the bases that these acts have are distinct and enjoy certain qualities that make them immune and not to be subject to legal action, even though they have the same characteristics as other administrative decisions subject to judicial review
- Disputes related to legislative institutions: actions are legislative if they are taken by the legislative authority as defined by the constitution Legislative acts are issued in the form of laws and parliamentary actions issued by Parliament, its bodies or members while performing their duties.
- Disputes arising from the actions of the judicial authority are not within the jurisdiction of the administrative judiciary. The administrative judiciary does not have the power to annul or compensate the ordinary judiciary based on the independence of the ordinary judiciary from the administrative judiciary.
- Disputes arising from the actions of the administrative authority related to civil laws are the disputes related to civil contracts of the judiciary management. If, upon concluding its contracts, the administration deviates from the methods and privileges of the public authority and resorted to the methods of private law as is the case with ordinary individuals, then here we are dealing with a civil contract that the ordinary judiciary has jurisdiction over the disputes arising from the implementation of this contract because it did not include unfamiliar terms in addition to that it cannot be considered an administrative contract even if The administration was a party to it.
- Disputes excluded by legal texts: There is a group of disputes that are not within the jurisdiction of the administrative judiciary and are subject to the jurisdiction of the ordinary judiciary according to legal texts.
- Disputes arising from acts of infringement: when the administration undertakes an unlawful material act that includes an assault on an individual property or public freedoms, the disputes related to this abuse or infringement fall outside the jurisdiction of the administrative judiciary.
- Therefore, it is required that the action to be executive and tangible, in addition to that the illegality of the work action taken by the administration is serious and apparent so that the act loses its administrative character.
- E. Disputes arising from acts of seizure: These disputes arise when the administration takes possession of a property owned by others, in violation

of the law, temporarily or permanently. The administration, in this case, would have seized a property that does not belong to it, and the judge's authority, in this case, is limited to the seizure of the award for compensation.

- Exceptional circumstances: exceptional circumstances such as wars, strife, and economic crises may occur which the state cannot face with the laws and regulations established in normal circumstances, which forces the administration issue new decisions to face these exceptional circumstances (Nayef, Abd al-Latif: 2019).

Here, it is worth mentioning that the many restrictions and exceptions that are attached to the jurisdiction of the administrative judiciary harm the role it plays in protecting the principle of legality and in defending, protecting, and maintaining public rights and freedoms.

### **Conclusion**

After a detailed presentation of the general principles of the administrative judiciary in the Islamic system and the UAE law, in terms of the essence, means, guarantees, and limitations on the jurisdiction of the administrative judiciary, the study concludes with a set of findings and recommendations that we review as follows:

- Results:
  - The system of justice for grievances in Islamic jurisprudence is considered older than the modern administrative judiciary system, as it was introduced at the beginning of the Islamic state.
  - The Emirati legislator has intended to keep abreast of developments related to the development of the administrative judicial system by adopting a set of legislations that address the problem of deficiencies in this regard.
  - The supervision of the administrative judiciary over the work of the administration is the surest guarantee of the principle of legality, the effective guarantee of the safety of the administration's actions, and the compliance of the administration's actions with the limits of its provisions.
  - Some specialists in administrative law have neglected to address the system of justice for grievances.
  - When elaborating the legal principles, the administrative judge expresses the will of the group or the will of the legislator that the legislator did not disclose in legislative texts or explicit legislative texts. In this case, the judiciary will do what the legislator should have done if the legislator wanted to disclose his will by issuing a rule governing the subject in dispute.
  - The existence of several issues immune to the administrative judiciary, such as acts by the right of dominion.

## Recommendations

The study recommends several things that may be a basic factor in the way of upgrading and advancing UAE legislation related to organizing the work of the administrative judiciary. These recommendations focus on the following:

- The researcher urges the need to support the independence of the administrative judiciary and to give it full authority in the adjudication of all administrative disputes, not to limit its jurisdiction in a narrow scope, and not to diminish its competencies.
- The researcher urges the Emirati legislator to explicitly stipulate the prohibition of immunizing any action or administrative decision from judicial review and to file appeals against all official decisions before the judiciary court.
- The researcher urges the need to work on finding a specific mechanism for selecting and qualifying specialized judges to adjudicate administrative disputes, within a time frame determined by the law and which the government is committed to.
- The researcher urges the Emirati legislator to adopt a dual judicial structure, provided that some of its legislation and laws are based on some principles of grievance justice in Islam to fill this deficiency in its legislations, laws, and administrative systems.
- The researcher urges the Emirati legislator to issue a special law that regulates administrative cases from the beginning of their registration until their implementation and to work on establishing specialized administrative courts, with multiple levels of litigation, similar to the regular courts.
- The researcher recommends activating the role of the administrative judge by expanding his jurisdiction and determining his general jurisdiction over all appeals against decisions issued by the administration rather than singling it out to an individual or organizational one.
- The researcher recommends increasing the individuals' awareness of the legal relationship and informing them of the legal means placed at his disposal to force the administration to respect the legal rules and implement the decisions issued against them.

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