



The emergence and development of the administrative judiciary in Libya

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Abstract

All States exercise their function as the custodianship on their territory of several political, economic, administrative and social functions, through the activity of specialized units of governments, bodies, institutions and companies and the State derives its functions from the legislation and laws in force. In doing so, it has privileges and powers, the state does these jobs within the limits of legal legality, and individuals have no recourse to restore their rights except by resorting to the judiciary. As the nature of the activity is different in many forms such as physical, commercial works and administrative activity as well as collective or individual regulatory decisions and civil contracts. There was a need to have a specialized judiciary to resolve the various disputes between the State and others. The need for a judiciary was to hear the cases related to the administration's activities, which were in the form of decisions, activities and administrative contracts. And Libya, from the countries whose independence has been established, the Department of Administrative Justice within the Supreme Court until it develops by issuing a special law for the administrative judiciary which exercises its jurisdiction within the ordinary judiciary in special departments. We will ensure that this is the origin of the administrative judiciary and its development. DONC administrative law to the development of the administrative justice system by developing managerial independent judiciary from the normal judiciary and show the advantages and disadvantages of the administrative judiciary under one justice system, and then show the advantages of the introduction of an administrative independent judiciary and the need for Libya to.

Keyword: political, economic, administrative, social functions

Introduction

That the activity of the State represented in its public administrations and facilities enjoys powers, powers and privileges during the exercise of their material or legal acts and those privileges and powers may exceed the limits set for them and the attack on the freedoms of individuals or their rights, Although the consensus of jurists and legislators on the preference of public interests over individual interests, but the privileges of power limits must be taken into account and then it was necessary to monitor the actions of the administration, which claims individuals exceeded the limits prescribed and planned, through judicial control, which may be through ordinary civil courts that specialize And may be through a specialized and private judiciary separate from the ordinary judiciary, and may be the separation of administrative disputes through the ordinary judiciary and competent departments to consider those disputes under a unified judiciary.

The state of Libya did not know the system of administrative justice in its modern sense to break the period of Ottoman rule, which lasted from 1551 until 1911 and the days of the Italian occupation, which extended his rule until 1943 and the era of British-French administration, which lasted until the independence of Libya in 1951, and then assigned the Libyan legislator to the Supreme Court The task of adjudicating administrative disputes, whose establishment law of 1953 provided for that task, was entrusted to a court. The Libyan legislator quoted the powers granted by the Egyptian legislator to the Council of State under the 1946 law. The Supreme Court until Law No. 88 of 1971 adopted the Judicial Unit to establish special departments in the courts of appeal

to adjudicate administrative disputes and to challenge the rulings issued by the Supreme Court. Article 1 of the said law states that " Civil appeals, one or more administrative courts, and the Chamber shall be formed by a decision of the General Assembly of the Court of three Counselors, to be attended by a member of the Public Prosecution)

Thus, Libyan law adopted the system of administrative justice within the system of the same judiciary in the light of special departments, which apply the rules of public law to the disputes in which it broadcasts.

The powers and competences of the administrative judiciary

Article (3) of Law No (88) for the year 1971 defines the competences of the administrative judiciary departments without exception in the following matters:

- Salary, pension and remuneration disputes for public employees.
- Applications by stakeholders to challenge final administrative decisions issued by appointment to public office or by promotion or grant of bonuses.
- Requests by public officials to annul the final decisions of the disciplinary authorities.
- Applications submitted by public officials to annul the final decisions issued by referring them to retirement, retirement or dismissal without the disciplinary road.
- Applications submitted by individuals to cancel final administrative decisions.
- Claims of nationality.

(2, 3, 4, 5 and 6) of the preceding paragraph shall be deemed to be the reference to the challenge of lack of jurisdiction, a

defect in the cause, a violation of the laws and regulations, a mistake in their application, interpretation or abuse of authority.

In the case of administrative decisions, the administrative authorities shall refuse or refrain from taking any decision or action which they should have taken in accordance with the laws and regulations.

In the area of determining the competences of these departments, Article 3 added its jurisdiction to the requests for compensation, stating that "the administrative justice department shall determine the requests for compensation for the decisions provided for in the previous article if they were submitted to it in an original or subsidiary manner. May be brought before the ordinary courts and the filing of a claim for compensation before the ordinary courts may not be submitted to the Administrative Court.

The fifth article of the law also assigns the task of adjudicating the cases related to the administrative contracts of the Administrative Judicial Services where the text states (the Administrative Judicial Department disputes the contracts of obligation, public works and procurement). The latter is a joint jurisdiction between the civil judiciary and administrative justice departments, In this regard.

Finally, matters outside the jurisdiction of the administrative courts included in article 6 of Law No. 88 of 1971, which states that it is not competent to hear applications for the application of sovereignty and applications from persons without direct personal interest,

Article 5 of the Act provided an exception to the jurisdiction of the administrative judiciary in relation to decisions issued by conciliation and arbitration bodies.

The legislator also assigned the task of adjudicating administrative disputes related to the career affairs of the judiciary to the Supreme Council of the Judiciary, as stipulated in Article 6 of the Law of the Judicial System No. 6 of 2006

In addition, the legislator has drawn up a way to challenge the decisions of the committees to dismiss the objections to the realization of property to the Court of Real Estate Appeals, as stipulated in Article 18 of Law No. (12) Of 1988 on the Real Estate Registration Department.

Article 23 of Law No. (116) for the year 1972 on the organization of urban development has assigned the task of challenging the decisions of compensation committees for expropriated real estate to the ordinary courts

The cases dealt with by administrative courts can be classified as follows:

Cancellations and claims of functional settlement and claims relating to administrative contracts and requests for compensation relating to such claims.

- The claims of the abolition of substantive claims related to the examination of the legitimacy of administrative decisions, which are filed in defense of the status of public law in order to the principle of legality, where the dispute to an administrative decision issued by the management authority with the authority to issue decisions, and the administrative judge to examine the administrative decision, The time of its issuance, and its role is positive through the reasons for appeal by the litigants.

And other claims - as claims for functional adjustments and those related to administrative contracts.

The contract of works and supply and the obligation of public utilities, and requests for compensation, are human rights suits that protect personal and personal centers of the plaintiff, and therefore they fall within the jurisdiction of the administrative judiciary, and this type of lawsuits and the case of canceling administrative decisions differ in terms of conditions and dates. The administrative judge's authority in the annulment proceedings shall be at the limit of the ruling by revoking the administrative decision, unless accompanied by the request for compensation. The administrative judge's authority shall extend to the settlement claims, the provisions of the annulment proceedings shall be absolute as stated in Article 21 of the Administrative Judiciary Law, contrary to the rulings issued in the settlement and compensation claims. The validity of the judgment is relative to both parties.

References and reasons for the appeal

The last paragraph of Article (2) of Law No (88) for the year 1971 concerning Administrative Judiciary specifies the conditions of accepting applications for revocation of administrative decisions. The reference to the appeal shall be the lack of jurisdiction, defect of form, violation of laws and regulations or errors in their application or abuse of power.

Therefore, any defect that affects the administrative decision in one or the above mentioned pillars makes it a decision contrary to the principle of administrative legitimacy and can be revoked.

Lack of jurisdiction

It is the defect of the administrative decision when it is issued by a person who does not have the legal authority to issue the decision. And the rules of non-jurisdiction as a matter of public order may be dealt with by the Court without payment, 1 the oldest of which is the case in the jurisdiction of the French Council of State ^[1],

The defect of the lack of jurisdiction takes several forms, including the lack of simple jurisdiction, which was defined by the Supreme Court of Libya as a defect that takes three forms is the lack of substantive jurisdiction such as the issuance of a staff member or a decision of the jurisdiction of another employee or body, and the lack of jurisdiction, (B) outside the substantive territorial limits of the exercise of his competence and the defect of the lack of temporal jurisdiction, such as if one of the members of the administration exercises his competence after losing his position in the conduct of public works ^[2,3].

The serious picture of the lack of jurisdiction is the image of the usurpation of power, which is the defect that concerns the competence of the court and makes the decision or action not only a revocable decision, but the decision is null and void and null and void. It is a defect that affects the administrative decision to a great extent to the extent of his execution and lack of credibility. The lack of serious jurisdiction takes many pictures, including the issuance of the decision of a private person does not originally have the authority to issue this decision or issued by the authority of aggression against the jurisdiction of another authority, B to consider administrative decision vitiated defect lack of jurisdiction is

the particle that makes him and nothingness whether to appeal and that the date of cancellation it is open without restriction, but that the hand of the ordinary courts extends to remove the suspicion that the decision of zero.

Defect shape

The Libyan Supreme Court defined it as a failure to respect the procedural and formal rules for the issuance of administrative decisions in laws and regulations whether by neglecting them or partially violating them. When the law requires a specific form or procedure, in its form Cases of invalidity of administrative decisions can be summarized as follows:

The administrative decisions that the legislator must void in a specific form or form, such as the requirement to associate his signature with other signatures, including the Supreme Court ruling when the Royal Court decided to dissolve the Legislative Council of Tripoli, void of the signature of the Prime Minister as required by the Constitution.

(B) The administrative decisions that the legislator has enjoined for any mention of the reasons that led to them A guarantee of individual guarantees against illegality.

The administrative decisions that require the law to take preliminary action prior to issuing such as that the dispute must be presented to a specific party before the decision is issued.

(D) Administrative decisions, the issuance of which shall be subject to the receipt of an authorization or opinion in advance, in order for this condition to be fulfilled

The effect of which must be clearly required by the law. In general, the lack of formalism in the administrative decision when the procedure is decided solely for the benefit of the administration or if its omission does not affect the nature of the decision or the guarantees of the individuals. And may not be disregarded in any case, or the completion of formalities later only in exceptional circumstances and in the narrowest range^[4]

Defect of the violation of the law or a defect in the administrative decision:

The administrative decision must be in accordance with the legal rules, based on and derived from those rules and approved in accordance with the rule of legality, that is, the decisions of the administration are in accordance with the law in the broad sense. All the legal rules are a source of administrative legitimacy. The role of the administrative judge is limited when paying the decision. The contested decision of the legal rules in force, such as the failure of the administration to take a decision that it should have taken in accordance with the law^[5, 6].

Defect or lack of cause

The reason for the decision is that the administration can not intervene if there is in fact no reason to justify its intervention. The reason is that it is a restriction on the administration and guaranteeing the rights and freedoms of individuals. Its existence is a legal and legitimate element. Judicial control over the corner of the reason is one of the most fundamental guarantees of the administration's respect

for the principle of legality in its administrative decisions. Administrative decisions must be issued and based on correct and realistic reasons, without hypocrisy and control, without any insight or real reason.

The reason why the Council of State of France was one of the reasons for the appeal against abolition at the beginning of the present century^[4]

Although the ruling of the Egyptian State Council, as well as the Supreme Court of Libya and at an advanced time, found that the defect of the reason is not a reference independent of the four references to the appeal in the administrative decision, but later the Egyptian administrative judiciary to cancel the administrative decisions based on the lack of reasons or not^[5], and the right of the Libyan Supreme Court to consider this defect as an independent and sufficient reference to cancel the decision^[6]

The lack of reasons in the administrative decision can be attributed to two forms:

The first is the illegality of lack of legal grounds.

Second, the illegality of the legal adjustment for the reasons underlying the decision^[7]. The Supreme Court stated in its ruling of 8/3/1970 that "the court has the right to monitor and investigate the reasons for the administrative decision and its amount of health, it is true that the administration issued the decision and it knows that the reasons that I mentioned to justify it were incorrect. The decision was flawed by misrepresentation or abuse of authority.

Misuse of power (or deviation from power)

The reason for this is that the administration uses its powers for the purpose other than the purpose set by the legislator. The decision is considered correct if was intended to achieve the goals of the legislator, even if at the same time achieved other purposes^[8]

The French jurisprudence has developed the theory of the defect of deviation in the use of power after the enlargement of the administrative organs and complexity and the expansion of the terms of reference of the administration, and this defect several characteristics, including a substantive defect is intentional structure of the source of the decision here and take control of the judiciary form of investigation of the psychological aspects or intent envisaged by the management The French Council of State and its The Egyptian Council of State, on the other hand, considers the supervision of the purpose an auxiliary reference that the judiciary does not resort to until it has been investigated on the basis of other defects. The other characteristics of the defect of deviation are related to the discretion of the administration in issuing the decision. In discretion and disappears when management authority is restricted^[7]

The flaw in the abuse of power is the most difficult to prove because it is related to purposes and intentions. The Libyan Supreme Court affirmed that the defect of deviation is a hidden defect that is inherent in the appearance of legality. The original is that since the administrative decision presupposes its safety and legitimacy, the defect makes the task of the plaintiff to prove difficult, which necessitated a positive derivation of the administrative judge by maximizing

the role of evidence in proving ^[8]

The advantages and disadvantages of the administrative justice system in Libya

It is known that the judicial control over the work of the administration is the most important and effective form of censorship to ensure respect for the principle of legality, because of the unique, specialized and objective justice enjoyed by the judiciary, as well as the strength of the matter that is governed by it as a title for truth. The judiciary of the judiciary is competent in all disputes of any nature, including civil and administrative disputes; this is called the system of the judiciary unit, which is taken by the United Kingdom and the United States ^[9]

On the other hand, some countries have committed judicial control to a specialized judiciary in administrative disputes based on independence alongside the ordinary judiciary, which is known as the system of duplication of justice. France is the first model of this system established by the Council of State since 1872 and adopted by several Arab countries, Libya is involved in the organization of judicial supervision of the administration of public administration. It is a mixed system that combines the manifestations of the two former regimes, since it embraces the system of judicial unity. In the Libyan judicial system, there is only one judicial body, namely the civil courts, for civil or administrative disputes, was established

Within the framework of specialized chambers for the consideration of administrative cases in the courts of appeal. Law No. 88 of 1971 on administrative justice included this organization, which combines the two systems of the judiciary unit and its duplication.

Through studying the practical reality of this judicial organization, we can reveal an important aspect of this judiciary to know its advantages and reflect its shortcomings and reveal the need in Libya to create a special judiciary - administrative justice under the system of duplication or to develop what exists to create a specialized judiciary under the judiciary the one ^[10].

The advantages and disadvantages of the administrative judiciary in light of the judiciary unit:

The task of judicial supervision of the work of the Department was before the issuance of Law No. (88) For the year 1971 assigned to the Supreme Court and not only one degree and the issuance of that law have achieved the administrative judiciary gains and benefits of the most important:

The horizontal expansion of the administrative justice system, where the courts of administrative justice have more than one district in each of the courts of appeal, and this accommodates the significant and continuous increase in administrative cases resulting from the evolution of administrative life in the country.

The administrative proceedings are considered in more than one stage. The administrative courts are separated from the courts of appeal, and the verdicts are challenged by way of cassation before the Supreme Court, which allows for the review of administrative rulings ^[11].

That it allowed the building and creation of an independent administrative judiciary, when the conditions are ripe for the development of specialized jurisdiction.

The disadvantages of administrative justice under the unit of justice are:

Administrative disputes that have been entrusted to the administrative courts established by Law No. (88) For the year 1971 are limited.

That the courts of administrative justice are just circles derived from the courts of civil justice, since the formation of civil appeals courts is among the advisers working and mostly from the civil judiciary, which wastes the rule of specialization on which the administrative justice system ^[12]

Not to create judicial cadres specialized in administrative disputes, as well as the lack of development rules and provisions of Libyan administrative law, to keep pace with the latest administrative life

The possibilities of developing the administrative justice system under the unified judiciary:

After reviewing the Libyan administrative justice system based on the Judicial Unit, is this judiciary capable of developing and modernizing? With regard to the development of the administration, the increasing number of judges and the increasing number of administrative cases being considered by the Libyan courts, One of the practical and possible proposals for development in the light of the single judicial system is that the administrative judiciary has two levels of primary and civil appeal, and the establishment of administrative tribunals in the primary courts of first instance. This is a development that creates a kind of early specialization for prosecutors and judges. In the future, it allows us to establish an administrative judiciary completely independent of the civil judiciary. Therefore, we call on the Libyan legislator to issue a law Develop administrative justice and make it in two degrees ^[13].

Which is theoretically and practically possible, in order to avoid the disadvantages of the existing system and achieve the advantages of the specialized judiciary.

- A large part of the Libyan administrative jurisprudence goes to the conclusion that the system of duplication of justice is the next step that the legislator in Libya should take to develop the Libyan administrative justice system. In addition, the competent officials of the judiciary demanded that the administrative judiciary be developed and the system of the State Council be introduced. General of the law, one of the judicial bodies competent in the opinion and opinion in the legislation draft law establishing the Council of State during the Judicial Conference held in the city of Misrata February 2012, and repeated the claim during the numbers of draft Libyan Constitution, which was not published until today ^[14]

The need for an independent administrative judiciary

The establishment of a specialized and independent administrative judiciary is considered to belong to a well-known French school which has been taken by many Arab countries including Egypt, Tunisia, Algeria, Morocco, Lebanon and Syria. The most important aspect of this legal system is the allocation of administrative disputes. This council consists of a judicial section, a section for the drafting

of legislation and its review, and a section to express the legal opinion and interpretation of the laws. However, the previous situation in Libya prevented the introduction of this system and prevented the establishment of this council despite the multiple attempts because of what is known of the non- Z (Council) or the name of the State or the name of Fatwa and Legislation, which has blocked the development of administrative justice.

Since this is no longer the case, it is time to work on the development and reform of the judicial and legal affairs, including the establishment of a specialized and independent administrative judiciary and the development of the legal and legal industry in Libya and restricting it to one neutral hand that does not follow any administrative authority that may undermine the independence of legal opinion. As to what has been done in recent decades from the subordination of the work of legal advisers to the administrative authorities assigned or appointed or used by them and their subordination to those parties, and the opinion of the law to be consistent with the desire of officials in those quarters, as well as a major imbalance in the procedure Disciplinary trials that have been applied to disciplinary councils represented by the administrative and supervisory bodies. It goes without saying that the SAIs is not judicial and they are the ones who file the lawsuit and therefore they were both adversaries and arbitrators. They also reveal the violation and it is unacceptable to be represented in the councils Disciplinary As these councils are no less dangerous than the other courts, they may issue a judgment that the employee loses his job and source of income, or commits a financial penalty or reduces his degree. This requires that disciplinary trials be assigned to independent disciplinary action away from administrative bodies, including supervision.

This comes in line with the findings of the Council of Arab Ministers of Justice in its resolution No. 766 of 27/11/2008 on the adoption of the draft unified Arab law (guidance) for the administrative judiciary, which stipulates that the administrative judiciary is independent or specialized according to the system Each state has multiple degrees of litigation from the first instance, appeal and veto with the presence of a commissioner of the state commissioner and a higher council of its own that organizes all its affairs and enjoys all the guarantees prescribed for the judges of ordinary courts and is competent in all administrative disputes except those entrusted by law to other courts, And the fatwa, and follow him Specific procedures consistent with the nature of administrative disputes (1) Dr.. Khalifa Al-Jahmi - op. Cit. P. 44, Dr... Khalifa Al-Jahmi - op. Cit. P. 44

The extent of the capacity of the Libyan judicial system to establish an independent administrative judiciary:

To the extent that the independent administrative judiciary achieves advantages and benefits by ensuring that administrative claims are heard from a specialized judicial system that issues judicial rulings that preserve legality and guarantee individual guarantees in the face of arbitrary management. However, some of the Libyan administrative jurisprudence considers that the establishment of this judiciary is still not possible for the present the most

important of which is the adequacy of the current system and the inability of the judicial institution to establish a parallel judicial body.

The number of administrative cases is still modest, as the number of cases restricted in the five years does not exceed thousands of cases per year in all departments of the administrative judiciary, in addition to the number of judges and cadres working in the administrative judiciary may not be able to enter into this system, which requires the establishment of the State Council and For the commissioners, administrative courts and supreme administrative court, it is preferable to go to the stage of complete independence of the administrative judiciary through the establishment of administrative courts under the primary judicial system, i.e., the administrative judiciary like the ordinary judiciary goes through two stages of primary prosecution and then appeal and then appeal before the court This is a development that leads to building the advantages of the independent administrative judiciary so that the Libyan judicial system is ready to establish an independent administrative judiciary. Therefore, I call on the Libyan legislator to take this step to achieve more guarantees of litigation before a more specialized administrative judge, Administrative, independent of the ordinary judiciary.

Conclusion

In this regard, we have learned that the administrative justice system in Libya is based on an administrative judicial system under the ordinary common law, as established by Law No. (88) Of 1971 by assigning the jurisdiction of administrative proceedings to specialized departments in the courts of appeal. The judge in these departments applies the rules of public law to the cases in which he is broadcasting. The Libyan administrative judiciary, under the unity of the judiciary, is a double standard of law. Behind us is that this type of judiciary has been suspended by many flaws. The jurisprudents have stressed the necessity of developing the administrative justice system by making it On This is a very important issue that is called for by the evolution of the administration and the needs of individuals to further the guarantees of litigation and by a specialized judge, and we have been increasingly encouraged in recent times to include in the constitution being prepared the inclusion of the independent administrative judiciary within the judicial system. We referred to the advantages and disadvantages of the administrative judicial system in Libya, and called for the need to develop this system to make it a two-tier litigation to achieve further guarantees. We concluded that the Libyan judicial system may not be able at this time to make the administrative judiciary completely independent, Taiwir the judiciary within a single judiciary system.

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