

# Perspectives for Developing the Jurisdictions and Procedures of the Jordanian Administrative Judiciary: A Critical & Comparative Study

Bassam Abuirmilah<sup>1</sup>, Khalid Al Zubaidi<sup>2</sup>, Suhaib Ahmad El-Manaseer<sup>3</sup>

## Abstract

*This study's objective is to reorganise the rules of jurisdiction of the Jordanian administrative judiciary and the procedures related to it by following the critical and analytical approach to the provisions of the effective Jordanian Administrative Judiciary Law No. 27 of 2014. This research is based on collecting information from two primary sources. The first source is the collection of information and observations of Jordanian Jurists and others related to the (AJL), which came in the form of criticisms directed at this law through websites. The second source of information gathering – which is no less important than the first – is the amended Law of the Egyptian Council of State No. 47 of 1972, through which we were able to believe in the basic points that must be amended in the (AJL) in question to ensure the achievement of the public interest and the protection of individual rights. The study reached some conclusions and suggested recommendations, the most important of which is: The fact that achieving the advantage of litigation on two levels in the Jordanian Administrative Judiciary Law does not achieve social justice and protect the rights of individuals as it should unless it requires the specialisation of judges in the administrative field.*

**Keywords:** *Administrative judiciary; administrative litigation; administrative procedures; administrative judges; annulment lawsuit; compensation lawsuit; Jordan; Egypt.*

## Introduction

Prior to 1989, most people in Jordan avoided resorting to administrative courts due to the failure to establish an independent administrative judiciary. The Jordanian Court of Cassation has been exercising its function as a civil and administrative judiciary at the same time for a period of four decades. Most of the people in that era chose to accept or acquiesce to the decision, either for financial reasons related to the cost of filing the lawsuit or the fees of the administrative lawsuit, which amounted to more than 300 Jordanian dinars, in addition to the cost of hiring a lawyer, which may reach 75 dinars, which is large sums in that period. Or for realistic reasons represented in the failure to establish an independent administrative judiciary by itself. Few of them resorted to submitting their grievances and complaints via text messages addressed to ministers or Parliament Members (Schaaf, 2022). But after the establishment of the first independent administrative court in 1989, the idea of litigating or prosecuting government agencies gradually began to emerge in the minds of individuals. Most of the individuals began to choose to resolve their disputes with government agencies through litigation. But the administrative judiciary in that period and until 2014 was composed of only one court, the Supreme Court of Justice, and its decisions were final and not subject to appeal (Al-Shibli & Alkhatib, 2021).

Following the constitutional amendments that Jordan witnessed in 2011, law draft of the Jordanian Administrative Judiciary (JAJ) has been already issued by the Ministerial Legal Committee on 18 March 2014. The constitutional legislator stipulated in Article 100 'the establishment of an administrative judiciary with two levels. Accordingly, the previous Jordanian High Court of Justice Law was abolished and replaced by the current Jordanian Administrative Judiciary Law (AJL) No. 27 of 2014. Article 3 of such Law stipulates that the administrative judiciary shall consist of two courts: The Primary Administrative Court and the High Administrative Court. This two-tiered composition has been recently innovated. That is to say, before the 2014 Law of the Administrative Judiciary there was only one administrative court: The High Court of Justice. This law included positive aspects, most notably the establishment of the principle of litigation on two levels instead of one. However, it included, on the other hand, some negative aspects, which were criticised by part of the Jordanian Jurists. Departing from the importance of an Administrative Judiciary existence in any nations protecting the rights and freedom of individuals, those Jurists have recently started to criticise some legislative provisions stated in the (AJL). As they believe that such a law

<sup>1</sup> Professor at Jadara University/ Faculty of Law, Irbid, Jordan. brmkl@yahoo.com ORCID: 0000-0002-5188-9474.

<sup>2</sup> Professor at Al-Zarqa University, Faculty of Law, Zarqa, Jordan. kalzubaidi@zu.edu.jo ORCID: 0000-0003-4405-3764

<sup>3</sup> Assistant Professor at Al-Zarqa University, Faculty of Law/ Zarqa University. Salmnaseer@zu.edu.jo ORCID 0000-0002-0634-2226

needs to be modified and developed, especially in issues related to the jurisdiction and to the litigation procedures before Administrative Courts. Based on that, we became interested in this topic, where we critically examine the most prominent notes discussed in (JAJL), adding some considerable perspectives we believe in (Al-Qadi, 2020).

Given that the Jordanian system is new to the administrative judiciary, compared to the Egyptian system. It was obvious that this study raised some problems related to the organisation of the rules of jurisdiction of administrative courts in Jordan. And the most important:

- (1) Not granting administrative courts comprehensive jurisdiction over administrative disputes. And the consequent removal of some important administrative disputes from the jurisdiction of the administrative judiciary in Jordan, such as disputes related to administrative contracts, tax and fees disputes, and lawsuits related to local council elections.
- (2) Not establishing administrative courts at the local level and limiting their presence in the capital only. This contradicts the principle of the judge's proximity to the litigants, which is applicable in France and Egypt.
- (3) Not adopting the principle of specialisation of administrative court judges, and the resulting absence of the constructive and creative role of the (JAJ) and its limitation to the applied role in general.

The study also raises some problems in the field of administrative litigation procedures in Jordan, the most important of which are: (1) Indeterminateness of the defendant's capacity in the annulment lawsuit, (2) Non-Distinguish between the reasons for interrupting the appeal period and the reasons for suspending such a period. (3) Failure to distinguish between the procedural and substantive finality of the administrative decision subject to appeal (Rybak & Dzhura, 2023).

## Methodology

This research is based on collecting information from two primary sources. The first source is the collection of information and observations of Jordanian Jurists and others related to the (JAJL), which came in the form of criticisms directed at this law through websites. In addition to the observations of researchers. This article discusses these critical observations of Jurists and researchers to develop two fundamental aspects. The first concerns the rules of jurisdiction of the administrative judiciary in Jordan and the second concerns some of the procedures of litigation before this judiciary. Which we believed should be amended legislatively before we looked at the observations of the Jurists.

The second source of information gathering – which is no less important than the first – is the amended Law of the Egyptian Council of State No. 47 of 1972, through which we were able to be a belief in the basic points that must be amended in the (JAJL) in question to ensure the achievement of the public interest and the protection of individual rights. We could not have reached the best results except by using the comparative method with Egyptian law, considering that this latter law has a pioneering Arab experience in this field that spanned more than 70 years.

We also used, secondarily, the method of comparing the current (JAJL) with the previous law, the law of the Supreme Court of Justice, which is currently repealed, especially with regard to some administrative litigation procedures that we believe were better than the procedures of the current law. Thus, this study applies qualitative research methods that combine a critical and comparative method, focusing on the experiences and expertise of the Egyptian administrative legislator within the framework of the study and also uses secondarily the expertise of the French administrative legislator when needed.

The questions included in this study were as follows: 'Does Jordan's current Administrative Judiciary Law No. 27 of 2014 really need to amend some of its provisions related to matters of jurisdiction and litigation procedures before administrative courts?' 'Does the current situation negatively affect the rights of litigating individuals? If so, what are the ways to address the flaws contained in this law to ensure that the principle of a 'fair trial' for litigants with government agencies is realised?

Because judges generally rejected the policy or idea of legislative criticism, we were unable to interview them. Emphasis was therefore placed on the views and comments of Jurists, who appeared to be bolder

than judges to raise legal problems at the legislative and judicial levels. Some of the legislative flaws attributed to the researchers were also discovered during the analysis of the texts of the Administrative Judiciary Law under study in order to address all the weaknesses of this law.

Therefore, this study will try to shed light on all the previous and other problems, with the aim of finding some proposed solutions to them. This is for the purpose of developing the (JAJL) in force, by comparing it with some legislative and judicial trends in France and Egypt.

## **Analysis and Discussion**

An analysis will be conducted of the provisions of the (JAJL) relating only to the limits of the legislative competences of the administrative courts in Jordan in the consideration of administrative disputes and to the mechanism of litigation procedures followed before these courts. It will be compared to the observations and discussions of Jordanian Jurists on the one hand and to the position of administrative law in Egypt and in France when needed. The results were then based on the need to make a comprehensive development of the (JAJ) by making some radical amendments to the competencies of this judiciary and the litigation procedures before it. Two main axes of this study were identified: jurisdiction and administrative litigation procedures and these two axes were divided into precise sub-topics.

### **Developing the Rules of Jurisdictions of the Jordanian Administrative Judiciary**

Despite the amendment made to Article 100 of the Jordanian Constitution, which made litigation before the administrative judiciary in Jordan two degrees instead of one. Jordanian Jurists almost unanimously agree that this situation remains below expectations for the development of the administrative judiciary in Jordan, as it is the protector of the rights and freedoms of individuals in the face of the administrative authority.

By reading and analysing the texts of the effective (JAJL) No. 27 of 2014 on the one hand, and the opinions of Jordanian Jurists on the other hand, we can point out the most important shortcomings related to issues of jurisdiction in this law. And submit proposals to develop it in comparison with the legal situation in Egypt, in line with the current legal situation in Jordan (Al-Khalayleh, 2014).

#### *The Subject Matter Jurisdictions*

The Jordanian legislator has stipulated in the current Administrative Judiciary Law in Article 5/a of it the following: 'The Primary Administrative Court shall have the exclusive jurisdiction to consider all appeals related to final administrative decisions. It is clearly deduced from this that the aforementioned law has authorised the Primary administrative court under Article 5 the power to consider jurisdiction all appeals related to final administrative decisions without specifying except as an example (Aboelazm & Ramadan, 2023). Despite this, we find that this law did not grant the (JAJ) common law jurisdiction to consider all administrative litigations. So far, some important administrative legal disputes, which are at the core of the administrative judiciary's jurisdiction, are still outside the jurisdiction of this judiciary in Jordan. The most prominent of these are administrative contract disputes and a large part of disputes related to administrative responsibility, in addition to disputes related to the electoral process and disputes regarding taxes and fees (Al-Abadi, 2008).

We find that the Egyptian legislator and other countries that adopt the dual judicial system have granted the administrative judiciary general jurisdiction to consider all administrative disputes. This is because he is a common law judge or a 'natural judge', and has comprehensive jurisdiction to settle these disputes, given their administrative nature. On the grounds that the administrative judge is the most knowledgeable of the nature of the rules of administrative law, as well as the disputes arising from them (Khalifa, 2007). With regard to tax and fee disputes, the Jordanian legislator, pursuant to Article 5/g of the Administrative Judiciary Law, removed these disputes from its jurisdiction, and included them among the methods of appeal set forth in special laws. Referring to the effective Income Tax Law No. 34 of 2014, we find that the contract of jurisdiction regarding these disputes is to the Tax Court of First Instance, whose rulings are subject to appeal before the Income Tax Appeal Court. This contradicts the legislative approach in Egypt, where the Egyptian legislator included disputes related to taxes and fees to the jurisdiction of the administrative judiciary in both countries (Khalifa, 2012).

The same applies to administrative contracts litigations. The Jordanian legislator has kept these disputes within the jurisdiction of the civil judiciary. This is what was stated in the explanatory decision issued by the Jordanian Constitutional Court, in which it did not consider the administrative judiciary an independent body from the civil judiciary (Shoucair, 2014). This is what was stated in the explanatory decision issued by the Jordanian Constitutional Court, in which it did not consider the administrative judiciary an independent body from the civil judiciary. However, the constitutional provision in Article 100 has stated the phrase establishing an administrative judiciary at two levels (Al-Tamawi, 2013). The orientation of the Constitutional Court, thus, goes against what Article 100 has already stated in 1952 meaning that the constitutional legislator has structurally granted the independence feature to the administrative courts rather than the civil court. This Constitutional Court considered that the administrative courts are civil courts specialised in hearing and adjudicating cases related to administrative disputes and requests for compensation. It thus became part of the civil judiciary. This means that the formation of administrative courts will be from the Jordanian Judicial Council and that the administrative judge does not have to specialise in this field (Al-Tamawi, 2006).

The inevitable result indicated by the previous Constitutional Court decision is that the judicial system in Jordan is not, in fact, a dual judiciary, as it belongs to the civil judiciary in organisational and administrative terms and considered it part of the civil judiciary system. This contradicts the conceptual essence of the dual judiciary system, which is based on the existence of two judicial bodies that are truly independent from each other. It is certainly recognised—in the countries that adopt the dual justice system such as, France, Egypt, and other countries—that the original field for adjudicating administrative contracts is the full judiciary or the administrative contract judge. It is an integral part of the administrative justice system in Egypt (Al-Momani, 2020; Cheema et al., 2023; Chepkemoi, 2023).

As for administrative compensation claims, the (JAJL) has restricted condition, pursuant to Article 5/b, the jurisdiction of the Primary Administrative Court in adjudicating administrative compensation claims if it is related to an administrative decision annulment lawsuit. We have several comments on this text:

- (1) The link between the annulment lawsuit and the request for compensation is a new restriction that was not mentioned in the repealed Law of the Supreme Court of Justice, and whose conduct—in our estimation—was the best. As the plaintiff often postpones the request for compensation until obtaining a ruling to cancel the decision, which makes him in a stronger position vis-à-vis the administration. This is with acknowledgment of the established judicial principle, which is that ‘the ruling for compensation is not one of the requirements for the ruling to cancel’, which contradicts the position of the Egyptian legislator, who did not require the association link of the compensation request with the request for cancellation (Shatnawi, 2008).
- (2) Provision of Article 5/b defines compensation requests with the decisions and procedures stipulated in Paragraph (A) of the same article. This means that the Primary Administrative Court does not have jurisdiction to consider requests for compensation for management actions outside this text, as it may not be challenged by cancellation. Hence, it is not permissible to appeal against them for compensation, such as administrative contracts and material works, as the jurisdiction in this case falls to the civil judiciary. Such restrictive perspective has stripped the Administrative Courts in Jordan of jurisdiction adjudicating all administrative disputes (Qabilat, 2011).
- (3) In order to accept the annulment lawsuit, a final administrative decision must be appealed. Undoubtedly, the procedures that are taken prior to the issuance of the decision or accompanying its issuance do not rise to this capacity, and it is not permissible to appeal against them by cancellation. Hence, it may not be challenged for compensation before the Primary Administrative Court. Hence, the inclusion of the word ‘procedures’ in the text had no legal value (Art. 5/b).

On the other hand, the Jordanian legislator has made acts of sovereignty not appealable to any higher judicial body. In other words, acts of sovereignty have immunity from appeal and are not subject to appeal (Al-Khalayleh, 2020). The departure of these acts from the judicial oversight department—with its two

aspects (cancellation and compensation)—constitutes a flagrant violation of the principle of legality, especially, the Jordanian legislator did not specify the range of acts of sovereignty leaving it to the discretion of the administrative judiciary rather (Al-Khalayleh, 2018). It would have been better for the Jordanian legislator to subject acts of sovereignty, even if gradually, to judicial oversight out of respect for the principle of legality and in order to ensure the protection of the rights and freedoms of individuals, which may be harmed as a result of such actions (Hanim, 2015).

#### *Territorial Jurisdiction*

The (JAJL) did not establish administrative courts in the governorates or even in the regions, nor did it take into account the possibility of the future need to establish administrative courts in them. And he mentioned a strict text. He had stipulated, indicated, or mentioned in article 4/a of the aforementioned law establishing an administrative court in Amman, and if the need arises, the court can hold its sessions outside the capital with the approval of its president (Shatnawi, 2008). That is, it was not permissible to establish any court other than the one specified in the text. It is an incorrect (incorrect) trend because it did not take into account what future economic and social developments may require of the need to establish other courts outside the capital, especially with the recent legislative trends in Jordan by approving (issuing) the law on administrative decentralisation.

This was confirmed by part of the Jordanian Jurists of the necessity of stipulating the establishment of administrative courts in the three main regions (central, north and south). It was also suggested when work began on preparing a draft law on administrative justice (Al-Khalayleh, 2020). The constitutional right to resort to the judiciary stipulated in Article 101 of the Jordanian Constitution includes not only the right of the litigant to have his complaint heard in more than one degree, but also his right to be close to the judge. The presence of administrative courts in the regions makes it possible to talk about the jurisdiction of the administrative judiciary to consider appeals related to the results of the municipal elections, which are outside the jurisdiction of the administrative judiciary, as previously stated (Qabilat, 2011).

#### *The Specialisation of Judges in the Administrative Law*

The Jordanian legislator did not stipulate in the (JAJL) that the judges of the administrative courts be qualified and specialised in administrative disputes. Although the appointment of judges specialised in the administrative field is the cornerstone for the development of the administrative judiciary. It must be stipulated in the legislation itself to ensure its implementation and compliance. It is not important to have an administrative judiciary of two degrees unless, even after a period of time, there are administrative judges who are aware of the specificity and nature of administrative disputes and how to deal with them, as is the case in Egypt, France and many developed countries of the world. The administrative judge always has a different nature from the civil judge, to the extent that he is described as the 'leader of the case' (Al-Khalayleh, 2018). Because he does not only deal with legal texts, but invents solutions that suit the specific circumstances of each case separately. This is done by establishing general principles of law and judicial rules. At the same time, it takes into account the political, economic and social conditions that the country is going through.

While we find that the judges of the two administrative courts in Jordan are not specialised in the field of administrative law and are unstable in their work as administrative judges, they are already civilian judges. Because they have spent more than two decades as civil judges applying the rules of private law to the disputes they hear, they view people and management as equals. Contrary to the specialised administrative judge, who sees, by virtue of his composition and philosophy, that the positions of the litigants are unequal. The administration that appears as a public authority and represents the public interest is not legally and realistically equal to individuals. The theory of proof in administrative law differs from the theory of proof in civil law (Abdel-Wahab, 2002).

Although the Jordanian administrative judge has authority over the conflict and is the dominant over its course, it does not play a creative role in the absence of a legislative text except rarely. In general, the Jordanian administrative judge does not initiate the establishment of legal principles and rules as judicial solutions, especially that administrative law is a judicial law in origin. It arose from the jurisprudence of the administrative judiciary with the aim of protecting the general rights and freedoms of individuals as the primary protector of these individual rights and freedoms. It is known that the provisions of the



administrative judiciary are the main source of this law. In contrast, the general theory of administrative law consists of the rules and principles established by the administrative judiciary in its rulings (Al-Ajarmah, 2011).

It is worth noting, in this context, that the Jordanian legislator has recognised this creative role for the administrative judge in Article 24/g of the (JAJL) which stipulated the following:

‘If one of the bodies of the High Administrative Court decided to retract a legal principle that it or another body had decided, or found to it that in the case presented to it there is a new or important legal principle, then the High Administrative Court shall convene with all its members, with the exception of the absent of any of them, one of the reasons, to consider the case and issue a judgment in it, at the request of its president’ (Shatnawi, 2002).

This indicates that the Jordanian legislator is aware of the reality of the role played by the administrative judiciary. It is not just an applied judiciary like the civil judiciary. Instead, it is mostly a constructive judiciary. He invents appropriate solutions for the legal links that arise between the administrations in its management of public utilities on the one hand, and individuals on the other (Al-Abadi, 2008).

### **Developing Litigation Procedures before the Jordanian Administrative Judiciary**

With regard to the mechanism litigation procedures before the Administrative Courts in Jordan, we argue that such procedures need to be amended in terms of four major aspects. These aspects go as follows: (1) determining the decision-maker accurately, (2) determining the reasons of interrupting the appeal period as well as characterising it from suspending that period, (3) associating urgent cases within timely procedures, (4) banning presenting any new facts during adjudicating the case. Consequently, our concern with putting forward these four procedures lies in serious consequences represented as a case loss and sometimes before adjudicating it. These consequences influence on the right of litigation guaranteed by the constitution itself (Ghoneim, 2006).

#### *The Decision-Maker*

In general, the identification of the person issuing the decision under appeal is one of the formal conditions for the accepting the annulment lawsuit. It is one of the conditions related to the parties to the dispute. In an action for annulment, the plaintiff must direct the dispute against the person or body responsible for issuing the decision, i.e. the body that made the disputed decision. If the case is directed to another person or entity, the administrative judge shall dismiss the case for lack of judicial litigation (Batarsah, 2006). On the legislative level, the Jordanian legislator in Article 7/a of the (JAJL) has expressed the term, the Decision-Maker by ‘the person who has the power to make a decision’ or the person who issued it on his behalf. Whereas, the previous law of the Supreme Court of Justice — currently repealed — specified in Article 10 that an administrative dispute in an annulment proceeding is brought exclusively against the person or body that issued the contested decision (Khalifa, 2008).

The question arises here, which of the two texts is more legally correct and more accurate in the determining the defendant? Is it the legislative text contained in the current Administrative Judiciary Law or the text contained in the previous law of High Court of Justice?

A few of Jordanian jurists pointed out that, in the current law, the Jordanian legislator considered the phrase of the ‘person who has the power to make a decision,’ rather than the phrase of ‘the person or body issuing the contested decision’ in the previous law, aiming to reduce as much as possible the rate of rejection of annulment cases for formal reasons. However, the phrase ‘person who has the power to make a decision’ means, in the legal sense, the person legally qualified to issue the decision, that is, the person legally competent to make the decision. On the contrary, the case may be instituted against a person other than the authorised person, in case of the contested decision was defective due to the lack of jurisdiction, namely due to its issuance by an authority or person not legally competent to issue it. In this case, there is no doubt that the administrative judiciary would announce on its own that the case is dismissed in form due to the absence of litigation, because it is considered a public order in the annulment lawsuit according to what has been settled by judicial jurisprudence in Jordan. This is in addition to the fact that the violation of the rules of jurisdiction per se is related to the public order of the case. The judge raises it on his own at any stage of the case, even if the litigants have not raised it (Abul-Enein, 2007).

For the aforementioned reasons, we suggest amending the aforementioned Article 7/a to become as follows: ‘Claims shall be brought against the decision-maker or whoever issued it on his behalf. On the other hand, the aforementioned law did not provide for the possibility of rectifying the litigation in the event of a lawsuit being filed against a non-qualified person. It would have been preferable to include an explicit text permitting this correction during the deadline for appealing the cancellation, in order to limit the formal response to the cases of cancellation. This is what the Jordanian High Court of Justice has previously adopted when it ruled that it is permissible in the event that a lawsuit is brought against a non-qualified person to correct the litigation, provided that this is done within the time limit for the appeal.

However, the Primary administrative court did not allow this. And this is what it went to in a relatively recent ruling that stated, ‘Since the lawsuit was initially instituted in contravention of the law, the summoned party has no right to submit the request for the purposes of correcting the litigation’ (Al-Khalayleh, 2020).

#### *The Period for Appeal*

The Jordanian legislator, in Article 8/a of the (JAJL), specified the period of appeal to annulment the administrative decision at sixty days, starting from the day following the date on which the plaintiff became aware of the decision complained of. And he also specified the cases in which the period for appealing the annulment is temporarily suspended. Three cases are: (1) The case of force majeure. (2) The case of filing a lawsuit before a non-competent court. (3) The status of a request for postponement of fees (Art. 8/g).

It is noted that the Jordanian legislator did not stipulate in this law the state of the administrative grievance as a conclusive reason for the deadline. Despite its legal and practical importance, many individuals resort to it before filing a lawsuit. This is in contrast to the position of the Egyptian legislator, who explicitly stipulated in the amended Egyptian State Council Law No. 47 of 1972 on the administrative grievance as a conclusive reason for the deadline for appealing the cancellation. And that is in accordance with Article 24 of it, by saying: the validity of this date is interrupted by a complaint to the administrative body that issued the decision or the governing bodies. This applies to both voluntary and compulsory grievances (Fouda, 2011).

It is the same position adopted by the current (JA). In one of its decisions, the Primary Administrative Court ruled that:

‘Article 8/g of the (JAJL) stipulates that if the legislation provides for the permissibility of grievance against the administrative decision, this decision may be appealed within the periods stipulated in Paragraph (A) of this article. The decision issued as a result of the grievance may be appealed, if the grievance was submitted in accordance with the dates and procedures specified in that legislation. It is concluded from this text that in the event the employee exercises his right to appeal, submitting the grievance within the period mentioned in the Civil Service Bylaw (which is an optional grievance) cuts the appeal period, and the period is calculated from the day following the issuance of the appeal Decision on the outcome of the grievance’.

However, the current (JA)—represented by the Primary Administrative Court and the High Administrative Court—has taken a completely different path with the Egyptian State Council judiciary regarding the legal adaptation of the appeal against the voluntary decision or the so-called original decision. This last decision was not considered subject to appeal as it is not final. And that the final decision is the decision issued as a result of the grievance, which is subject to appeal. This is what the Primary Administrative Court and the High Administrative Court have settled on in many rulings, including, *e.g.*, what the two courts ruled as follows:

[...] the court finds that what is based on the appeal of the original decision in the light of the existence of a grievance Compulsory is the rejection of the appeal because the case is premature. Therefore, the plaintiff must compulsorily wait for the outcome of the grievance, regardless of the period. While what is based on the appeal against the original decision, in the event of a grievance against it voluntarily, is the rejection of the appeal for its receipt of a decision that is not subject to appeal because it is not subject to appeal not final.

Two of the judges violated the previous ruling, and they issued an official decision in violation stating the following:

[...] and from this text that it differentiated between a permissible grievance and an obligatory grievance. Appeal against the original decision that was grieved after submitting the grievance, provided that the periods and procedures stipulated in (JAJL) No. 27 of 2014. The decision resulting from the grievance can also be appealed if a written or implicit decision was issued. The optional is left to the choice of the one who has the right to object and is not obligatory. It is not required to accept the appeal against the decision before the Primary Administrative Court. The objection has already been submitted with the higher administrative authority. Also, the decision issued as a result of the objection is considered final, this is for the purposes of an administrative grievance and not for the purposes of an appeal before the Primary Administrative Court. Accordingly, the decision issued by the Minister of Labour that is complained of is a final administrative decision that can be appealed before this court. This does not mean that this decision is not final because there is a parallel appeal pathway, the fact that this path is my passport and not obligatory. And that mere refusal of the appeal is not considered a new decision and independent of the decision appealed against'.

In addition, researchers believe that the position of the previous (JAJ) mixed the meaning of the procedural final and the substantive finality of the decision under appeal and did not distinguish between them. It is established in the jurisprudence of the administrative judiciary in Egypt that the final meaning of the administrative decision is the executive or enforceable decision as soon as it is issued, because of its impact on the legal positions of the individuals to whom it is addressed and vice versa. A decision that does not have a new legal effect in these centres is not considered a final decision, and therefore it may not be subject to appeal (Al-Tamawi, 2013).

Accordingly, if the decision issued as a result of the grievance is in agreement and in conformity with what was stated in the original decision appealed against, then this is in fact an affirmation of the latter, and accordingly the decision issued as a result of the grievance in this case is legally considered a confirmatory decision that may not be appealed. The sign of this is the permissibility of appealing such decisions directly and without going through the administrative grievance path if it is not obligatory (Rouquette, 2018).

On the other hand, we find that the Jordanian legislator did not distinguish under Article 8/g of the (JAJL) between the reasons for suspension and the reasons for interrupting the deadline for appealing the annulment and made all of them grounds for suspension. At the beginning of this article it was stated: 'The deadline for appeal stipulated in this article shall be suspended in any of the following cases: (1) Force majeure (2) Submitting the case to a non-competent court (3) Submitting a request for postponement of fees. While filing the case to a non-competent court and submitting a request for exemption from judicial fees are among the reasons for cutting the deadline, not stopping it, according to what the Egyptian and French administrative courts have settled, due to the different impact of each of them on the date of the appeal (Rivero, 2011). As it is recognised that interruption of the time is different from stopping it, as interruption leads to the expiry of the appeal period and the start of calculating a new appeal period, while stopping—on the contrary—in which the previous period is calculated after the end of the period Reason for suspension (Al-Zahir, 1999).

It is worth noting that the Jordanian legislator did not take, according to the previous article, the principle of exemption from judicial fees, whether in whole or in part, and the matter was limited to postponing these fees only, and counting them among the cases of stopping the deadline for appealing the administrative decision, especially since litigation is a right for individuals, and it is obligatory to pay Fee for filing a lawsuit Some may lose this right (Al-Abadi, 2013).

The Jordanian legislator also did not specify in (JAJL) a specific period for postponing the fees, as it is a case that results in stopping the date for appealing the administrative decision until fees are paid? Especially since the financial circumstances of the appellant may continue for a long time, during which he may lose his interest in the appeal (Al-Shobaki, 1996).

Therefore, some believe—and rightly—the necessity of amending the text on the postponement of judicial fees by making the request for exemption from paying fees in whole and not a postponement, in order to consider the case to protect the principle of legality and stability of legal centres as a general principle (Al-Helou, 2010).



### *Urgent Applications*

The Jordanian legislator, in the (JAJL) in Article 6 of it, empowered the Primary Administrative Court to consider requests related to urgent matters, including temporarily the stay of execution of the contested decision. Explicitly, and for the court to see that the results of its implementation may not be remedied, and finally to oblige the stay requester to provide a financial guarantee, the amount and terms of which the court decides in the interest of the other party or in the interest of whom it deems to be a failure and damage that may be inflicted on him if it appears that the requester for the stay of execution was not right in his claim (Kashak-ish, 2006).

It is noted from the text of the previous Article 6 that the Jordanian legislator has specified the conditions of stay, while not specifying a period of time before the court to decide requests to stop the implementation of administrative decisions, even though it is one of the urgent requests. And that the time factor is reliable in such requests. The absence of a time limit for deciding on such urgent requests may lead to a delay by the court in deciding on these requests, which gives the administration the opportunity to complete the implementation of its decisions, which makes the ruling for a stay of execution useless in some cases (Abu Al-Atham, 2005).

Whereas, we find that the French legislator has set time restrictions for the system of suspending the implementation of administrative decisions, ranging from 15 days to a month to consider and decide on requests for suspension and adjudication.

Rather, the President of the Court was allowed to reduce the period mentioned in the previous article to a period ranging from 48 hours to 15 days if there was an urgent situation that required it (Al-Jazi & Al-Mar'i, 2014).

### *The Introduction of New Grounds*

By extrapolating the text of Paragraph a of Article 13 of the (JAJL) in force, we find that it does not allow the plaintiff or the defendant to submit or mention during the consideration of the case before the Primary Administrative Court any facts or reasons that were not mentioned in the summons or in the regulations answer or in response to it. This procedural restriction violates the established rule in the French Administrative Judiciary Law that the appellant may support his claim with new grounds before the Council of State, but he may not submit new requests (Al-Abadi, 2017).

We believe that the behaviour of the French legislator by permitting the appellant to support new grounds in the stage of appeal before the State Council is the best course, because the appellant may not be able to obtain those evidences or evidence that support his requests at the stage of appeal before the Primary Administrative Court and then obtain them later. It is better to fulfil the right and to activate the right of litigation to allow him to present this evidence and evidence, especially since it is difficult for the appellant to obtain documents and evidence because most of them are in the possession of the administration, which is recognised by Jurists and judicial jurisprudence (Al-Mongi, 2013). Giving the two parties to the case the opportunity to present these documents or evidence is consistent—in our estimation—with the nature of the appeal before the Jordanian High Administrative Court, which considers the judgment under appeal in terms of fact and law.

## **Conclusion**

The specialisation of judges in the administrative field makes the administrative judiciary in Jordan a structural judiciary that invents appropriate solutions to the cases it considers by establishing legal principles and judicial rules. Nor did the current (JAJL) achieve the full independence of the administrative courts in Jordan, nor did it grant them the general jurisdiction to consider all administrative disputes. The Jordanian legislator has given this law a precautionary capacity conditional on the absence of provisions in other laws that give jurisdiction over some issues to another court, such as administrative contract disputes, electoral disputes, and tax and fee disputes.

The Jordanian legislator, under the (JAJL), did not take the principle of regional or local jurisdiction for administrative courts and made their centre only in the capital, despite the presence of three main regions in Jordan, the north, the centre and the south. This violates the principle of the right of litigants to have a

judge close to them. In addition, the presence of administrative courts in the regions makes it possible to talk about the jurisdiction of the administrative judiciary to consider appeals related to municipal elections, which are currently outside the jurisdiction of the (JAJ).

In the (JAJL), the Jordanian legislator has mixed cases of suspension and interruption of the deadline for appealing the annulment and made them all cases of stopping the deadline. While the Jurists and judicial jurisprudence in France and Egypt have settled on the distinction between reasons for suspension and reasons for suspension, so that the case of force majeure is one of the reasons for stopping the deadline, while the case of submitting the appeal to a non-competent court and the case of submitting a request for exemption from judicial fees are among the reasons for cutting the deadline for appeal. Likewise, the Jordanian legislator did not adopt in the (JAJL) the principle of exemption from judicial fees, similar to the Egyptian systems. Rather, the matter was limited to a request to postpone judicial fees without being exempted from them.

In light of the foregoing, we suggest the following:

*First:* We suggest that the Jordanian legislator reformulate the text of Article 7/a relating to the capacity of the source of the decision, so that it becomes as follows: 'Claims are filed against the source of the decision or whoever issues it on his behalf, because it is more accurate in indicating the capacity of the defendant in the manner shown in the study.

*Second:* We hope that the Jordanian legislator will grant the administrative courts the general jurisdiction to consider all administrative disputes, whether or not there is a provision in another law to give the dispute to the jurisdiction of another court. Accordingly, we suggest that the Jordanian legislator add the following text: 'The administrative courts are competent to consider all administrative disputes, even if there is a provision in another law to give a specific dispute to the jurisdiction of a particular court'.

*Third:* The necessity of distinguishing in the (JAJL) between the reasons suspending the period of the appeal and those interrupting it, given the different effect that each of them has in the time of appeal, by amending the text of Article 8/g related to suspending the time of appeal to become as follows: The stipulated appeal deadline shall be suspended In Paragraph (A) of this Article in the event of force majeure, the deadline is interrupted in the following cases: (1) Administrative grievance (2) Submitting the lawsuit to a non-competent court, provided that this lawsuit is filed within the deadline for appeal (3) Submitting a request for exemption from fees provided that this request is submitted during the time of appeal.

*Fourth:* In order to consolidate the principle of legality and the rule of law, we appeal to the Jordanian legislator of the necessity of subjecting the acts of sovereignty to the control of the administrative judiciary gradually, so that the legislature begins to subject it to the control of compensation and then the control of revocation gradually until it reaches its complete abolition.

*Fifth:* We recommend to the Jordanian legislator the necessity of providing for the establishment of administrative courts in the regions (central, north and south), i.e. in Amman, Irbid and Ma'an.

*Sixth:* To consecrate the right to litigation and to protect the rights and freedoms of individuals, we appeal to the administrative judiciary in Jordan to follow the policy of the Egypt and French State Council in mitigating and facilitating the conditions for accepting the annulment lawsuit, especially the condition of interest.

*Seventh:* Believing in the originality and independence of administrative litigation procedures, we recommend issuing a special law on administrative procedures to be a comprehensive and integrated law covering all administrative litigation procedures in line with the nature of the administrative lawsuit and the specificity of administrative disputes.

At last, from our personal viewpoint, the most apparent limitations of this research lie on the dual critical lawful comparison between only two nations, that of Jordan and Egypt. Moreover, the study examined such a comparison concerning only two major points, the rules of jurisdiction and the procedures of litigation. Such limitations, actually, drove us to further broaden our investigation considering a group of questions. For example, is it possible to thoroughly inspect the rules of jurisdiction and the procedures of litigation in more than two nations? Can that be comparable between not only two Middle Eastern countries, but also Westerns? What is more, could we have similar results in Western societies? If so, do

such results require restructuring an Administrative Judiciary? As an effort to transcend those limitations, a further research would be of great interest to us to examine whether Administrative Courts still seem marginalised and partially stripped of its authorities.

## References

- Abdel-Wahab, M. (2002). *Administrative Judiciary, part 2*, Beirut: Al-Halabi Publications.
- Aboelazm, K. S., & Ramadan, S. A. (2023). Transformation to E-Public Procurement in the United Arab Emirates in the Light of Uncitral Model Law. *Journal of Law and Sustainable Development*, 11(8), e1499-e1499.
- Abu Al-Atham, F. (2005). *Administrative Judiciary between Theory and Practice*, Amman: Culture House for Publishing and Distribution.
- Abul-Enein, M. (2007). *The Comprehensive Encyclopedia of Administrative Judiciary, Vol. 1*, (Cairo: Islamic Sharia Committee of the Bar Association).
- Al-Abadi, M. (2008). *Administrative Encyclopedia: Administrative Judiciary*, (Amman: Al-Warraq for Publishing and Distribution).
- Al-Abadi, M. (2013). *Principles of Administrative Law*, (Amman: Dar Jalis Al-Zaman).
- Al-Abadi, M. (2017). *Litigation Procedures and Evidence in Administrative Cases*, Ph.D. Thesis, The World Islamic Science University, Amman.
- Al-Ajarmah, N. (2011). The Administrative Judiciary is the protector of Rights and Freedoms isn't it time to develop it.
- Al-Helou, M. (2010). *Administrative Judiciary*, Alexandria: New University Publishing House.
- Al-Jazi, J. & Al-Mar'i, J. (2014). Looks at the New Provisions in the Jordanian Administrative Judiciary Law, *Dirasat Journal of Sharia and Law Sciences*, 44 (2).
- Al-Khalayleh, M. (2014). *Notes on the Draft Administrative Judiciary Law*.
- Al-Khalayleh, M. (2018). *Administrative Law*, Amman: Center of Culture for Publishing and Distribution.
- Al-Khalayleh, M. (2020). *Administrative Judiciary, a comparative analytical study in Jordan, France, United Kingdom and Egypt*, Amman: House of Culture for Publishing and Distribution.
- Al-Momani, S. (2020). Acts of Sovereignty as a Restriction on Judicial Control', *Journal of Politics and Law* 13 (1).
- Al-Mongi, I. (2013). *Administrative Pleadings*, Cairo: Legal Books House.
- Al-Qadi, W. (2020). The Impact of Legislative Development on the Organisation and Jurisdiction of the Jordanian administrative Judiciary', *Dirasat Journal, Sharia Sciences and Law*, 47 (4).
- Al-Shibli, F. & Alkhatib, N. (2021). The Development of an Administrative Judiciary in Jordan: Anticipation and Outlook', *Journal of Legal, Ethical and Regulatory Issues*, 24 (1).
- Al-Shobaki, O. (1996). *Administrative Judiciary*, (Amman: Culture House for Publishing and Distribution).
- Al-Tamawi, M. (2006). *The General Theory of Administrative Decisions, a comparative study*, Cairo: Dar Al-Fikr Al-Arabi, Amman: Jordan University Press.
- Al-Tamawi, S. (2013). *Administrative Judiciary, Annulment Judiciary*, Cairo: Dar Al-Fikr Al-Arabi.
- Al-Tamawi, S. (2013). *Administrative Judiciary, Compensation Judiciary*, Cairo: Dar Al-Fikr Al-Arabi.
- Al-Zahir, K. (1999). *Administrative Judiciary*, Amman.
- Batarsah, S. (2006). General principles of Law and their Applications in France and Jordan', *Dirasat Journal, Sharia Sciences and Law*, 33 (1).
- Cheema, A. R., Ghaffar, S., Ul-Haq, J., & Hye, Q. M. A. (2023). Does educational inequality lead to income inequality? Evidence from Pakistan. *Edelweiss Applied Science and Technology*, 7(2), 154–163. <https://doi.org/10.55214/25768484.v7i2.404>
- Chepkemoi, J. (2023). Employee retention strategies and organizational citizenship behaviour: Does career development practices matters? Evidence from environmental agencies in Kenya. *International Journal of Economics, Business and Management Studies*, 10(1), 20–36. <https://doi.org/10.55284/ijebms.v10i1.895>
- Fouda, R. (2011). *The Origins and Philosophy of the Judiciary of Annulment*, Cairo: Dar Al-Nahda Al-Arabiya.
- Gamal El-Din, S. (2004). *The Origins of Administrative Law*, Alexandria: Manshayat Al-Maaref.
- Ghoneim, I. (2006). *The Guide in the Administrative Case*, Alexandria: Mansha'at al-Maaref.
- Hanim, S. (2015). *Towards a Law of Administrative procedures*, (Cairo: Arab Renaissance House).
- Kashak-ish, K. (2006). The date of the annulment lawsuit in the judiciary of the Jordanian Supreme Court of Justice', *Yarmouk Research Journal, Human and Social Sciences Series*, 22 (1).
- Khalifa, A. (2007). *Administrative Pleadings: Jurisdiction - Litigation - Defences - Judgments in the Light of the State Council Judiciary*, Alexandria: Dar Al Fikr Al Jamia.
- Khalifa, A. (2008). *The Comprehensive Administrative Encyclopedia in Cancellation of Administrative Decision and Disciplinary of Public Employees, part 1*, Alexandria: Mansha'at Al Maaref.
- Khalifa, A. (2012). *The Comprehensive Administrative Encyclopedia in Administrative Cases and Pleadings, part 2, The Origins of Litigation and Evidence Procedures in Administrative Cases*, Alexandria: Knowledge Foundation.
- Moskalenko, O. V., Yakovlev, O. A., Marchenko, Y. I., Rybak, N. V., & Dzhura, K. Y. (2023). Legal Status and Social Protection of Persons with Disabilities as a Result of Hybrid War. *Revista de Gestão Social e Ambiental*, 17(8), e03188-e03188.
- Qabilat, H. (2011). *The Brief in the Administrative Judiciary*, Amman: Al-Warraq for Publishing and Distribution.
- Rivero, J. (2011). *Summary of Administrative Judiciary*, (Paris: Dalloz).
- Rouquette, R. (2018). *Administrative Judiciary, Public and Private Judiciary*, Paris: Dalloz.
- Schaaf, S. (2022). *The Administrative Judiciary in Jordan*.
- Shatnawi, A. (2002). The Role of the Judiciary in Inventing Legal Rules', *Dirasat Journal, Sharia Sciences and Law*, 19 (1).
- Shatnawi, A. (2008). *Encyclopedia of Administrative Judiciary, Vol. 1*, Amman: Center of Culture for Publishing and Distribution.
- Shoucair, I. (2014). A comparative study of the articles of the Administrative Judiciary Law of 2014 with the articles of the High Court of Justice Law of 1992.