



Extraordinary Appeal Methods in Administrative Matter in Light of the Provisions of the Civil and Administrative Procedures Law 08-09, Amended and Supplemented

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Abstract:

This study addressed unusual methods of appeal in administrative matter in light of the provisions of the amended and supplemented Civil and Administrative Procedures Law 08-09, especially with the completion of administrative judicial structures in 2022 with the establishment of administrative courts of appeal. After exhausting the ordinary methods of appeal, represented by opposition and appeal, extraordinary methods of appeal are resorted to, which are: appeal by cassation - petition for reconsideration - objection by a third party outside the dispute - lawsuit to correct material errors, and lawsuit for interpretation.

Keywords: methods of appeal, administrative article, request for reconsideration, cassation appeal.

Introduction:

Methods of appealing judgments aim to uncover errors in the contested judgment, whether these errors are related to substantive or procedural law, facts, or other reasons. Appeal methods also aim to correct these errors, or monitor the judges who issued the appealed ruling.

The Algerian legislator sometimes combines different methods of appeal, taking from this method some elements to combine them in another method to

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produce certain legal effects, which it is not in the nature of a particular system to produce. The legislator has regulated extraordinary methods of appeal, through the Civil and Administrative Procedures Code, and allocated them to Chapter Two of Chapter Four of Book Four. In fact, going through this route of appeal requires first going through the normal route, under penalty of not accepting the appeal.

This is what the Supreme Court reached through File No. 124721 in the decision issued on April 30, 1995 regarding its decision in the case (K.A.S.) against (Director of the Pedagogical Health Center in Muhammadia) in the matter of a conflict of jurisdiction between two judicial bodies, and it decided The following principle: "It is legally established that every conflict of jurisdiction between two judicial bodies is presented before the joint judicial body above them, and if this procedure is an extraordinary appeal, it will not be accepted until the normal appeal procedures have been exhausted, otherwise it becomes impermissible like the current case". As stated in the merits of the decision: "... since the request to resolve the conflict of jurisdiction between the judges is an extraordinary method of appeal, which is not acceptable except after exhausting the ordinary methods of appeal, and since the plaintiff has not exhausted these legal methods, there is no conflict of jurisdiction, and therefore her petition must be rejected"¹. According to Algerian law, the extraordinary methods of appeal in administrative matter are: cassation appeal - petition for reconsideration - objection by third parties outside the dispute - suit to correct material errors and suit for interpretation.

Through this chapter, we will attempt to control the legal system for each type of these appeals, which is characterized by the fact that the individual's authority to use them is limited because the legislator limited their causes, and this also narrows the authority of the judge deciding these appeals. We can divide these appeals into two categories: The first relates to appeals that do not affect the parties to the dispute, which are represented by the objection of third parties outside the dispute, the lawsuit to correct material errors, and the lawsuit for interpretation, while the second relates to appeals affecting the parties to the dispute, which are represented by the appeal by requesting reconsideration, and the cassation appeal.

¹-Judicial Journal 1996, First Issue, pp. 179-180.



The Importance Of Studying :

- Contributing to identifying extraordinary methods of appeal related to administrative matters, between legal texts and judicial work.
- Emphasizing the importance of two-level litigation in administrative matter.

Approach followed:

We followed the descriptive approach, by collecting scientific material and data related to: “Extraordinary methods of appeal in administrative matter in light of the provisions of the Civil and Administrative Procedures Law 08-09 amended and supplemented,” from various sources, then analyzing them appropriately and drawing conclusions from them.

The problematic of the study:

The problematic of the study can be summarized in the following central question: What are the extraordinary methods of appeal in administrative matters in light of the provisions of the Civil and Administrative Procedures Law 08-09, amended and supplemented?

To answer this problematic, we followed the following plan:

- introduction
- The first section: Appeals that do not affect the parties to the dispute
- The second section: Appeals that affect the parties to the dispute
- conclusion

The first topic: Appeals that do not affect the parties to the dispute:

These appeals, as a general rule, have no effect on the contested ruling, as they do not bring about fundamental changes that affect the interests of the parties to the dispute. It is represented in two ways: the objection of a third party outside the dispute, the claim to correct material errors, and the claim of interpretation.



The first requirement: the objection of third parties outside the dispute

The Algerian legislator regulated the objection of third parties outside the dispute in Articles 960-962, and Article 961 referred us to applying Articles 381-389, while Article 961 referred us to applying the forms related to the petition stipulated in Article 815 and the following, and the French legislator considered it a method of special appeal, as it is an appeal that may be brought in France by force of law, before all courts, unless there is a provision requiring otherwise².

Section One: The purpose of this appeal and the conditions for exercising it

The Algerian legislator has made it clear that the goal of the objection of a third party outside the dispute is to review or cancel the ruling or decision that decided the origin of the dispute, as this appeal shares with the opposition and appeal in terms of deciding the case again in terms of facts and law³, while it is distinguished from them in terms of The concerned parties, as the one who raises the objection or appeal is usually an opponent in the contested decision or ruling, while the objection is initiated by someone who is not an opponent in the case, rather, he has an interest in reconsidering the lawsuit⁴.

Referring to the text of Article 380, which stipulates this method of appeal within the framework of the ordinary judiciary, we find it identical with the text of Article 960, except that the difference emerges in the fact that Article 380 adds an urgent matter and gives the right to a third party outside the dispute to appeal it in this way. The Supreme Court had previously established the following legal principle: "It is legally established that every interested party may appeal a ruling

²- Chadia Ibrahim Al-Mahrouki, Procedures in Administrative Judicial Cases, a comparative study, New University Publishing House, Egypt, 2005, p.410.

³-See: Article 960 of Law No. 22-13, dated Dhul-Hijjah 13, 1443 AH, corresponding to: June 12, 2022, amending and supplementing Law No. 08-09, dated Safar 18, 1429 AH, corresponding to: February 25, 2008 - containing the Civil and Administrative Procedures Law, issued in Official Journal No. 48 of 2022, dated: June 17, 2022

⁴- Barbara Abd Arrahman, Explanation of the Civil and Administrative Procedures Law, Baghdad Publications, Algeria 2009.

- Decision issued on 02-09-1999, in File No. 198357, Judicial Journal of 1999, First Issue, p. 145.

- Decision issued on March 19, 1995 in File No. 121954, Judicial Journal of 1996, Issue Two, p. 132.



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to which he was not a party, by way of objection by a third party outside the dispute...” Therefore, when the subject judges gave an incorrect interpretation of Article 191 of the Civil Procedure Code based on the fact that it does not mention urgent orders among the rulings and decisions subject to objection by third parties outside the dispute, they exposed their decision to veto⁵.

Pursuant to Article 691, the objection of a third party outside the dispute is subject to the same controls and provisions applicable within the framework of ordinary judiciary, as by referring to Articles 381-382-383 in this appeal, we find that they give the right to exercise this method to everyone who has an interest, even if he is not a party. Nor is he represented in the judgment, decision, or order being appealed. That is, even if he did not participate in the case, whether as a plaintiff, defendant, or intervener, and the legislator stipulated that all parties be summoned in the event that the ruling subject to objection was issued on an indivisible subject, and the penalty for not respecting this procedure is not accepting the appeal. Perhaps the Algerian legislator has granted the right to others to appeal a ruling to which they are not a party, which is considered a balancing act between two sides, to avoid interference by third parties that is arbitrary and harmful to the interests of the parties, especially those in whose favor the ruling was, because the principle of judicial rulings is that their effects are relative, as the law allows one of the opponents to exercise this appeal, even if they are represented in the lawsuit, but on the condition that this is The ruling has harmed their interests due to fraud.

It was stated in the decision of the Supreme Court in the case (the heirs of Mr. A), against (Mr. B and those with him), in the objection of third parties outside the dispute, the condition of interest independent of the interests of the parties must be met, and the Administrative Chamber of the Supreme Court decided the following principle: “It is legally established that the Administrative Chamber may decide on the objection of third parties outside the dispute, and that intervention is only permissible for those who have an interest independent of the interests of the parties to the dispute... And when it is proven that the heirs of (A.S.) have an

⁵- Decision issued on 02-09-1999, in File No. 198357, Judicial Journal of 1999, First Issue, p. 145.



interest in the appeal, the aforementioned decision came It is in violation of the law and requires cancellation⁶...”

Section Two: Procedures for objection by third parties outside the dispute:

Deadlines:

Articles 384-385 of the Civil and Administrative Procedures Law set the deadline for this appeal to 15 years from the date of issuance of the ruling unless the law stipulates otherwise, and it is reduced to two months in the event that the ruling, decision or order is officially notified to others, and It is effective from the date of official notification. This notification must indicate this deadline and the right of the person (third party) to exercise this appeal, while there was no specific deadline under the old law, as it was perpetual. Therefore, under the amendment, the legislator has filled the previous legal vacuum, which threatened the interests of the parties in terms of the possibility of others, who have an interest in objecting whenever they want⁷.

Raising the objection of third parties outside the dispute:

The objection of a third party outside the dispute shall be raised in accordance with what is prescribed for filing a lawsuit, and it shall be presented before the judicial authority that issued the contested ruling, decision, or order, and it may be decided upon by the same judges. To be accepted, it must be accompanied by a receipt proving the deposit of an amount with the police department equal to the maximum fine stipulated in Article 388, estimated at twenty thousand dinars⁸(20,000). Despite the fact that the objection of a third party outside the dispute is an extraordinary form of appeal, meaning that its exercise has no stopping effect, the legislator decided to grant the urgent judge the authority to

⁶ - Decision issued on March 19, 1995 in File No. 121954, Judicial Journal of 1996, Issue Two, p. 132.

⁷ - See Articles 191-193: Law No. 08-09, dated 02/25/2008, containing the amended and supplemented Civil and Administrative Procedures Law issued in the Official Gazette, No. 21 of 2008 dated 04/23/2008.

⁸ - See: Articles 358 and 388, *ibid*.



order a stay of implementation of the contested judgment, order, or decision, in accordance with what is stipulated in the urgency article⁹.

Determination of the objection:

The judge can decide on the objection by accepting or not rejecting it. If he accepts it, this acceptance must be limited to canceling or amending the provisions of the ruling that others objected to and that are harmful to him, and the contested ruling retains all its effects vis-à-vis the original litigants, even with regard to its invalidated provisions, except in the case of the indivisibility of the subject (matter)¹⁰.

Article 389 indicates that it is permissible to appeal a ruling or decision issued over the objection of a third party outside the dispute using the same methods of appeal prescribed for rulings, that is, it is permissible to appeal and cassation, and if it is rejected, the judge may sentence the objector to a fine of 10,000-20,000 DZD, in addition to the civil compensation claimed by the opponents, and it stipulates that the bail amount will not be recovered, which is a logical result.

The second requirement: a lawsuit to correct material errors, and a lawsuit for interpretation

The Algerian legislator stipulated it by saying: "The judicial authority that issued the ruling may, even after this ruling possesses the force of *res judicata*, correct the material error or omission that taints it..."

We will decide the lawsuit to correct the material errors, and the lawsuit for interpretation, as follows¹¹:

The first section: What is meant by the lawsuit to correct material errors, and the lawsuit for interpretation?

Article 287 defines a material error as an incorrect presentation of a material fact or ignoring its existence, however, correcting the material error or omission

⁹ - Barbara Abdel Rahman, op. cit., p. 286

¹⁰ - See: Article 387, of Law No. 08-09 containing the Code of Civil and Administrative Procedures, amended and supplemented, op. cit.

¹¹ - See Article 963 of Law No. 22-13, *ibid*.



does not lead to amending the rights and obligations of the parties stipulated in the ruling. Professor Barbara Abd Arrahman believes that the lawsuit to correct material errors and the lawsuit for interpretation do not constitute an extraordinary method of appeal, for several reasons, including the goal of this lawsuit is to correct an error or correct a situation, while the goal of extraordinary methods of appeal is to review what was decided in terms of the law and facts or in terms of the law only, and the content of Article 294 does not match the content of Article 287 of the Civil and Administrative Procedures Law , whereas Article 294 did not classify it as one of the extraordinary methods of appeal, but rather set a precedent for appeal by requesting reconsideration under one title: “In permissible cases against the rulings of the Supreme Court,” and the word appeal means in the article a request aimed at correcting this error and not review. Article 313 of the Civil and Administrative Procedures Law did not mention this appeal among the methods of appeal that it specified, and Article 963 of the Civil and Administrative Procedures Law did not include any justification for this classification, especially since it adopted the method of referring to the provisions of Articles 285-287, which are Materials mentioned under the title “On Issuing Judgments”, it is not logically possible for the same materials to carry two legal descriptions or for us to exploit them in two different places¹².

Section Two: How to file a lawsuit:

Article 285 of the Civil and Administrative Procedures Law indicates that the interpretation of a judicial ruling is for the purpose of clarifying its meaning or determining its content, and this is done before the judicial authority that issued it, as the request is submitted with a petition from one of the opponents or with a joint petition, and the judicial authority decides after hearing the opponents or after The validity of their assignment to attend, while Article 286 indicates the possibility of correcting the material error or omission that mars the ruling, even after that ruling takes possession of the force of the res judicata, whether that is before the authority that decided it or the authority before which the ruling is being appealed, and it is filed according to what is prescribed for the judicial lawsuit for interpretation.

¹²-Barbara Abd Arrahman , op. cit., p. 510.



The Public Prosecution may submit this request, especially if it becomes clear that the material error is due to the justice facility, so that the correction ruling is marked on the original of the corrected ruling and on copies extracted from it, and the concerned parties are then notified of the correction ruling, and when the corrected ruling becomes legally binding, it cannot be appealed except through a cassation appeal. It should be noted that the lawsuit to correct material errors is filed in the same forms and procedures prescribed for the petition to open the lawsuit.

Section Three:

Deadlines:

Article 964 stipulates in its second paragraph that a lawsuit to correct material errors shall be filed within two months from the date of official notification of the judicial ruling or erroneous decision.

The second section: Appeals that affect the parties to the dispute

These appeals affect the outcome of the judicial ruling issued in the case, as they can overturn the appealed ruling in its entirety. It is represented in two ways: appeal by requesting reconsideration, and appeal by cassation.

The first requirement: requesting reconsideration:

The Algerian legislator has stipulated a case for requesting reconsideration of Articles 966-969 of the Code of Civil and Administrative Procedure, and what draws attention in this case is that the articles regulating it did not include a referral to the Code of Civil Procedure.

Section One: Judgments in which it is permissible to appeal by requesting reconsideration

The Algerian legislator has specified the nature of the rulings that can be appealed by requesting reconsideration, which are the final rulings issued by the administrative courts, and the decisions issued by the administrative courts of



appeal or by the Council of State as a body of appeal¹³, however, by referring to comparative legislation, especially Egyptian legislation, we find some differences, as the State Council law permitted appeals by seeking reconsideration of the rulings of all the Council's courts except the Supreme Administrative Court, not because cases of seeking reconsideration cannot be available with regard to the rulings of this court, rather, it is likely that the Egyptian legislator wanted to reduce the cases of this court, which represents the highest level of administrative litigation, and the cases do not reach it except after examination by another court or two, a short period after filing the lawsuit, which reduces the possibility of one of these cases being available. A request for reconsideration may be submitted, however, this justification, if true, is insufficient, and it would have been better to allow the appeal by seeking reconsideration if one of its cases was available before all the courts of the State Council. In French law, the request for reconsideration is the only example of private appeals that cannot be initiated except based on the presence of a text in the French Administrative Procedure Code that allows this, and the French legislator has permitted its practice in the following provisions:

- Judicial rulings issued by the French Council of State.
- Judicial rulings issued by some courts and bodies with administrative jurisdiction.
- Judicial rulings issued by the Court of Accounts.
- Judicial rulings issued by regional accounting courts.

Section Two: Special cases for requesting reconsideration

The Algerian legislator specified two cases for requesting reconsideration¹⁴:

The first case: If it is discovered that the decision was issued based on forged documents submitted for the first time before the judicial authority.

The second case: If an adversary is sentenced due to failure to present a conclusive document that was withheld by the adversary.

¹³-See Article 966 of Law No. 22-13, op. cit.

¹⁴-See Article 967 of Law No. 22-13, op. cit.



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Regarding the first case related to forgery, the matter here is not related to the existence of fraud resulting from the use of a forged document, but rather to the nature of the document itself, and for this reason it does not matter whether the forgery was committed by the opponents or a party foreign to the conflict, and the forgery relates to the documents of any party, but jurisprudence It is considered that the false testimony given before the courts falls within this category because the testimony is recorded in a report, and the latter becomes tinged with forgery, and for the case of a petition to take place, it must be¹⁵:

-The forgery must be proven by the judiciary, by judicial confirmation, by a civil ruling, or by a criminal ruling.

-The forgery should be discovered after the ruling sought is issued.

- That the forged document had a decisive influence on the ruling, and that it was the sole and conclusive reason for it.

As for the second case related to detention, the text means detention carried out by the opponent intentionally and in bad faith, and if the detention was done by a party foreign to the lawsuit, it will not be taken into account except in the case of collusion, and silence about the existence of the document alone is not sufficient for the detention to take place, especially if the document can be requested for a copy, such as a civil status document, judgment, or notarial contract, this document must be conclusive in the lawsuit, and it will influence the outcome of the dispute and change the outcome of the ruling, and estimating this nature of the document is subject to the authority of the subject judges, on the condition that they sufficiently justify what they have stated. The document invoked must also be discovered after the ruling is issued, and finally the document must be with the person who invoked it, and it is not enough for him to declare that it is in the possession of the opponent¹⁶.

Regarding the issue of forgery, the Egyptian Court of Cassation ruled: "There must be a causal relationship between the ruling and the forged paper, such that the latter has an impact on the ruling in the manner in which it was issued." This

¹⁵-See: Judicial Journal for the year 1999, second issue, pp. 34-35.

¹⁶- Ibid., p. 34.



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means that the evidence on which the ruling was based must be investigated. If it is based on more than one piece of evidence and the forged paper is one of these pieces of evidence, and the judicial ruling can be based on evidence other than it, then the petition will not be accepted due to the absence of a causal link between the issued ruling and the forged paper¹⁷.

Forgery may be mixed with cheating, in cases where the opponent holds on to a forged paper and is aware of it, as this behavior on his part is tantamount to cheating, and is not considered a basis for appeal by seeking reconsideration, because the judicial ruling itself is forged, and if it is imposed and the judicial ruling was so, then it must be appealed through the established methods of appeal in order to remove all its effects, and the petitioner must confront the petition with conclusive evidence of the availability of its reason¹⁸.

This judicial ruling is not attributed to any error in applying the law, because when the judge issued this judicial ruling, he did not make a mistake, as previously stated, but rather the defect of unfairness is attributed to this judicial ruling¹⁹.

Section Three: Procedures for appealing a request for reconsideration

First: Deadlines:

Article 968 of the Civil and Administrative Procedures Law stipulates that the deadline for this appeal is estimated at two months, and its validity is determined from the date of official notification of the decision, or the date of discovery of the forgery, or from the date of recovery of the document unlawfully withheld by the opposing party.

Second: The authority competent to decide on the request for reconsideration

¹⁷ - Sunia Ahmed Youssef, Opponents' Deception as a Reason for Appealing a Reconsideration Petition, New University Publishing House, Egypt, p. 30.

¹⁸ - Nabil Ismail Omar, mediator in the appeal seeking reconsideration of civil and commercial matters, New University Publishing House, Egypt, 2004, pp. 170-172.

¹⁹ - Ibid., p. 255



The general rule is that upon the issuance of a judicial ruling, the court exhausts its jurisdiction, and is not permitted to reconsider what it ruled again, however, the legislator departed from this rule in the appeal seeking reconsideration, and permitted filing it before the court that issued the judicial ruling, which can It must be composed of the same judges who issued the judicial ruling based on the fact that the request for reconsideration does not face an error in the law, but rather in the assessment of the facts²⁰. There is nothing wrong with the judges who issued it reconsidering in light of new facts that were not presented before the court when it issued the contested judicial ruling, and there is a side that believes that the request for reconsideration is not intended to bring the dispute again before the court, as is the case in the case of appealing through normal means, but with the intention of presenting the defects on which the appellant relied in his appeal²¹.

Third: How to raise and decide it:

Article 394 of the Civil and Administrative Procedures Law stipulates that the petition is filed before the party that issued the judicial ruling in accordance with the prescribed forms for filing a lawsuit after summoning all litigants legally. Article 395 of the same law stipulates that the review of the petition is limited to the requirements of the judicial ruling or the decision or order that justifies its review, unless there are other requirements related to it, and the loser of the petition may be fined in addition to paying the compensation claimed. These procedures relate to the petition in civil matters, and within the framework of the administrative matter, the legislator did not stipulate the method of filing it and deciding on it, and at the same time did not adopt the method of referral to civil procedures, which raises the issue of not adopting the procedures followed in the ordinary judiciary on the basis of the absence of a text that allows Thus; However, in our opinion, civil procedures are the basis of administrative procedures, so there is no objection to adopting them, and the legislator may not have adopted the referral method out of oversight and not due to a specific legal necessity.

²⁰- Sunia Ahmed Youssef, previous reference, p. 65.

²¹- Chadia Ibrahim Al-Mahrouqi, previous reference, p. 412



The petition shall be filed in Egypt through a statement deposited following the procedures prescribed for filing a lawsuit, and to avoid the invalidation of the petition, it must include a statement and the date of the judicial ruling sought, in addition to the reasons for the petition, along with the deposit of the prescribed guarantee as a condition for accepting the appeal. The decision on the appeal by requesting reconsideration, according to what was decided by the Supreme Administrative Court, passes through two stages: The first is in which the court considers accepting the petition in terms of the deadline and the availability of its reasons. This stage ends either with a judicial ruling not to accept the petition with a judicial ruling on the petitioner imposing a fine and compensation, or it may decide to accept it and return the dispute to the state it was in before the contested judicial ruling was issued. The second stage is the stage of the judicial ruling on the merits of the lawsuit, in which the court determines the pleading session and the judicial ruling therein without the need for a new announcement, and this stage ends with a ruling on the merits of the lawsuit that replaces the judicial ruling that was annulled by accepting the petition²².

Section Four: Effects of an appeal by requesting reconsideration:

- It is not permissible to appeal by requesting reconsideration twice:

Article 969 of the Code of Civil and Administrative Procedure stipulates that: "It is not permissible to submit a petition to reconsider the decisive decision in the petition case." Article 247 of the Egyptian Code of Procedures also stipulates that: "The judicial **ruling that** is issued rejecting the petition or the judicial ruling that is issued on the subject of the lawsuit, after accepting it, neither of them may be appealed by petition." However, with regard to the administrative judiciary, the judicial ruling issued in the petition may be appealed before the Supreme Administrative Court²³. Which shows us the difference in the legal rules governing this appeal in Egypt, between the ordinary judiciary and the administrative judiciary, while the Algerian legislator has unified the legal effects of this appeal, whether before the administrative or ordinary courts, the evidence for this is

²²- Abd Elaaziz Abdel Moneim Khalifa, Administrative Proceedings (Jurisdiction - Litigation - Defenses - Rulings) in Light of the Judgment of the State Council, Dar Al-Fikr Al-Jami'i, 2004, pp. 333-334.

²³- Majid Ragheb Al-Helu, op. cit., p. 592



stipulated in Article 396 of the Code of Civil and Administrative Procedures that it is not possible to appeal the judicial ruling deciding the petition in this way for the second time, and this is an embodiment of what It was stated in Article 969 mentioned above.

-It is not permissible to appeal again the judicial ruling deciding the petition:

The Supreme Administrative Court in Egypt decided this effect by saying: “It concludes that the appeal by requesting reconsideration, as an exceptional method of appeal against the rulings issued in a final manner, results in the impermissibility of appealing again the judicial ruling issued not to accept the petition or in the matter not to accept the petition” because the principle of appeal by petition as an extraordinary method of appeal is that it be filed after resuming the ordinary methods of appeal, or after they become final after the deadlines for appealing them have passed. To avoid taking appeal procedures by requesting reconsideration as a means of opening the door to appeal again according to the normal methods of appealing judgments, which is what the legislator does not intend by authorizing this exceptional appeal in the circumstances stipulated in the law²⁴.

-The non-stopping effect of the appeal:

This appeal does not result in stopping the implementation of the judicial ruling, and this effect is a feature of extraordinary methods of appeal. There is no doubt that this effect seems logical, because the petition is an appeal directed to the final judicial ruling that has the force of *res judicata*, and because this appeal may be malicious or arbitrary on the part of one of the opponents simply for procrastination in implementation. Therefore, the various legislations that stipulate this effect seek to avoid prolonging the implementation of the final rulings, and out of a desire to stabilize the situation in society. This effect seems to be in line with the position of the Algerian legislator in the text of Article 348 of the Code of Civil and Administrative Procedure, which states: “The extraordinary methods of appeal nor the deadlines for exercising it have no stopping effect, unless the law stipulates otherwise.” Referring to the articles related to the appeal seeking reconsideration

²⁴ - Chadia Ibrahim Al-Mahrouqi, op. cit., pp. 412-413.



of the administrative matters, we find that they did not include a ruling contrary to that, and therefore it must be considered that this appeal has no effect of stopping the implementation of the judicial ruling in the administrative matter.

The second requirement: appeal in cassation

The Algerian legislator regulated cassation appeals in Articles 956-959 of the Civil and Administrative Procedures Code, and Article 959 of it referred us to Articles 349-360 and Articles 362-379 of the same law related to aspects of cassation appeals in civil matters.

The cassation appeal is not an extension of the first dispute, nor is it a level of litigation, which justifies the inability of the opponents to submit new requests or defenses that have not been presented before the two levels of litigation²⁵.

The first section: rulings that are subject to appeal

It is permissible to appeal by cassation in Egypt against the rulings issued by the courts of appeal, whether they were issued on the subject or before deciding on it, and whether they were temporary or urgent rulings²⁶. In France, the order issued in 1837 specified in its first article that cassation appeal is permissible against the rulings issued finally, as In France, it is permissible to appeal a judicial ruling in absentia by cassation, from the moment the specified period for appeal by opposition expires, on the other hand, the rulings issued by the arbitrators may not be appealed in cassation²⁷.

It is not permissible to invoke before the Court of Cassation - for the first time - a defect attributed to a first-instance ruling. The solution for that is to appeal this judicial ruling before the Court of Appeal²⁸. Article 349 of the Civil and Administrative Procedures Law confirms that the decisive rulings on the subject of the dispute are subject to cassation appeal, while Article 351 indicates that rulings issued before the matter is decided are not subject to cassation appeal except with

²⁵-Barbara Abdel Rahman, previous reference, p. 261.

²⁶-Nabil Ismail Omar, Ahmed Khalil Ahmed Hindi, Civil and Commercial Procedure Law, New University House, Egypt, 2004, p. 711.

²⁷-Nabil Ismail Omar, Mediator in Cassation Appeal, New University Publishing House, Egypt, 2004, pp. 55-56.

²⁸-Ibid., p. 60



the decisive rulings and decisions in the matter, and this applies to the cassation appeal in ordinary judiciary. As for the cassation appeal within the framework of the administrative article, Article 09 of Organic Law No. 22-11, despite the issuance of the Civil and Administrative Procedures Law, remains the reference in determining the nature of the rulings subject to cassation appeal, as Article 9 stipulates the following: "The State Council is competent to decide on cassation appeals against rulings and decisions issued finally by administrative authorities, and it is also competent to decide on cassation appeals authorized to it under special texts"²⁹.

From the text of the article, it becomes clear that the State Council has jurisdiction to appeal rulings and decisions issued by administrative courts and the recently created administrative courts of appeal, in addition to cassation appeals against the decisions of the Accounting Council.

It should be noted that the Council of State remains temporarily adjudicating appeals of rulings issued by administrative courts, annulment lawsuits, and interpreting and assessing the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations, pending the installation of appellate administrative courts³⁰.

Accordingly, the decisions issued by the State Council itself cannot be appealed by cassation, which is what was decided by the Algerian administrative jurisprudence, as it was decided to adopt the following legal principle: "It is not permissible to file a cassation appeal before the State Council except against the decisions of the Accounting Council, or decisions issued finally by administrative judicial authorities, and the decisions of the State Council itself may not be appealed by cassation"³¹.

²⁹-Article 9, Organic Law No. 22-11 dated Dhul-Qi'dah 9, 1443 AH corresponding to: June 9, 2022, issued in the Official Gazette No. 41 of 2022 dated: June 16, 2022; It amends and supplements Organic Law No. 98/01, relating to the powers, organization and work of the State Council.

³⁰-See Article 4, *ibid*.

³¹- Decision issued on January 20, 2004, File No. 011052, Journal of the State Council for the year 2006, Issue 08, p. 175.



Section Two: Grounds for appeal in cassation:

According to the text of Article 40 of Organic Law 98-01, the Civil Procedure Code applies to appeals before the Council of State, including cassation appeals. What is notable about the content of the new text, which includes aspects of cassation appeal, is that their number in Article 358 has tripled compared to the number stipulated in Article 233 of the old law, and the legislator has retained one aspect related to the lack of a legal basis, as stated in the aforementioned article. It divided other aspects with the introduction of some minor amendments, while the legislator merged three aspects included in Article 194 of the old law (the repealed Civil Procedure Code) related to seeking reconsideration, and added new aspects in Article 358 of the Civil and Administrative Procedures Law.

- The preserved aspect as stated in Article 233 of the Civil Procedure Code - Lack of legal basis:

What is meant is when the judicial ruling is based on a text that does not apply to the facts of the lawsuit. Is it possible to say that there is an event that is not legally described? If it can be said that there are unjustified facts, here we can determine the role of a trial judge, and thus determine the role of the Court of Cassation, which only monitors the integrity of the application of the law to the facts of the dispute³².

-Retained faces:

- Violation of a fundamental rule in procedures:

The violation is proven when the judge does not adhere to an established legal rule under penalty of invalidity, that is, there is a defect in the procedures, and there is a close connection between this defect and the judicial ruling issued in the dispute. It is based on this connection that the invalidity of the procedure also invalidates the judicial ruling issued in the lawsuit³³.

- Ignoring a fundamental rule in the procedures:

³² - Omar Nabil, the cause of the legal claim, Thesis of the University of Bordeaux, France, 1977, p14.

³³ - Chadia Ibrahim Al-Mahrouqi, previous reference, p. 230.



Ignoring of a fundamental rule in the procedures includes failure to implement what is stipulated in the law as fundamental procedures, including issuing the decision without mentioning the names of the judges who constitute the session. This aspect is distinguished from the violation in that it is a contrary application of a fundamental procedural rule³⁴.

- Lack of jurisdiction: It may be absolute or due to the type of lawsuit, and it is an issue that is raised, even for the first time, before the Supreme Court, because it violates public order, which was previously confirmed by Article 93 of the old law. In all cases, the defense of lack of jurisdiction must be presented before any defense in the matter, and Article 360 of the Civil and Administrative Procedures Law is identical to the text of Article 93 mentioned above. Article 360 of the Civil and Administrative Procedures Law stipulates that the Supreme Court may, on its own initiative, raise one or more aspects of cassation.

- Exceeding authority: a subject of jurisprudential and judicial controversy between those who believe that the concept of exceeding authority means the judge's interference in the work of the executive and legislative authorities³⁵, and those who see that the judge grants himself powers that are not stipulated in the law. Exceeding authority means that a judge exceeds his jurisdiction or the authority granted to him by law, such as ruling against a person who is not a party to the lawsuit, or amending the operative part of a judicial ruling under the guise of correcting a material error. This aspect also includes the negative attitude of the trial judge through his refusal to use his powers and his refusal to decide the dispute, which is known as denial of justice. In all of these cases, exceeding authority is considered a form of violating the law.

The Algerian legislator has included this aspect among the other aspects of the appeal, and it is raised by all those concerned with the appeal, as this aspect differs from the idea of exceeding authority in administrative law, which means the method of appealing by cancellation against administrative decisions that are issued in violation of the law. It was stated in one of the decisions of the Supreme Court the following: "When the administrative authority issues an individual

³⁴ - Barbara Abd Arrahman, op. cit., p. 268.

³⁵ - Ibid., p. 269.



decision that grants the person concerned rights by simply signing it, withdrawing this decision is not permissible unless it is tainted by the defect of illegality, hence, the administrative decision that invalidated the correct individual decision that gained rights is considered tainted by the defect of exceeding authority"³⁶.

- Violation of internal law:

Meaning national law, including laws and regulatory decrees, and a bad or incorrect interpretation of the law is considered a violation of it³⁷.

-Violating a foreign law related to family law:

This aspect is subject to what is stipulated in the rules of private international law, especially the application of laws to persons contained in the Civil Code, starting from Article 10.

-Lack of causation:

It occurs when the judge does not consider all the evidence presented, the defenses, the defenses, or the requests, whether by acceptance or rejection.

-Deficiency in causation:

When the reasons relied upon is not sufficient to justify the operative part of the judicial ruling.

- The three combined dials:

- Judicial ruling on what was not requested or more than what was requested: This aspect aims to establish the impartiality of the judge.

-Omission to decide on one of the original requests: in the sense of violation, as the legislator excluded subsidiary and corresponding requests. The Egyptian Court of Cassation stated the following: "If the court has overlooked the judicial ruling in a request submitted to it for the first time and has not presented it in its reasons, then this request remains pending before it. The remedy for this omission,

³⁶ - Decision issued on May 16, 1987, file No. 51535, Judicial Journal, third issue of 1990, p. 156.

³⁷ - Barbara Abd Arrahman, op. cit, p. 269.



according to Article 367, is to return to the same court for correction, If it has a basis, then it is not a valid reason for cassation appeal,” meaning that judicial jurisprudence in Egypt has excluded this aspect from the reasons for cassation appeal³⁸.

-If he does not defend those lacking legal capacity: failure to defend those lacking legal capacity takes away the ineligible from being more deserving of protection.

The new aspects are:

Violating international agreements: This aspect is consistent with the provisions of the Constitution stipulating the supremacy of international agreements.

- The reasoning contradicts the pronouncement of the ruling: Its necessity is derived from Article 277, which prohibits the pronouncement of a judicial ruling before giving reason for it.

- Distortion of the clear and precise content: This is not intended for forgery, but rather to divert the content from what it was formulated for.

- The contradiction according to the two aspects stipulated in Article 358, paragraphs 13 and 14:

As for aspect 13, it relates to the contradiction between rulings or decisions issued at the last instance, and the appeal is directed against the last ruling in which the judge did not take into account raising the validity of the matter decided. If the contradiction is confirmed, it will be decided by confirming the judicial ruling or the first decision.

Regarding aspect 14, the contradiction relates to rulings that are not subject to ordinary appeal. In this case, the cassation appeal is acceptable, even if one of the previous rulings was previously appealed and ended in rejection. Here, the cassation appeal is filed even after the deadlines stipulated by law have passed, and

³⁸- Said Ahmed Choala, Cassation Judiciary in Pleadings, Judicial Ruling, Part Four, Manshat Al-Ma'arif, Egypt, 1998, p. 424.



it is directed against the two judicial rulings, if the contradiction is confirmed, the Supreme Court can annul both or one of them.

- The presence of contradictory requirements within the operative part of the judicial ruling or decision: This means issuing a ruling against a person without relying on any evidence or right³⁹.

The Algerian legislator stipulated in Article 359 that no new grounds for cassation appeal are accepted, except for purely legal grounds, or those that resulted from the contested judicial ruling or decision. Article 360 stipulates that the Supreme Court may - within the framework of the ordinary judiciary - raise any or more aspects of the cassation appeal on its own initiative, meaning that it is related to public order, and since there is a referral, the same rule applies in the context of the administrative cassation appeal.

Section Three: Procedures for Cassation Appeal

First: Deadlines:

Article 956 of the Civil and Administrative Procedures Law sets the time limit at two months, effective from the date of official notification of the decision being appealed in cassation unless the law stipulates otherwise, and the word “decision” stipulated in this article indicates that the cassation appeal includes rulings issued by administrative courts. The cassation appeal before the Council of State differs from what it is before the Supreme Court, as the President of the State Council distributes the cassation appeals to the judicial chambers, as the appeal is submitted to him as a judicial body, unlike the Supreme Court, and the appellant must determine the direction of his case in the direction of the competent chamber, and It remains for the president of the court to distribute the files according to the internal organization⁴⁰.

It is worth noting that Article 958 stipulates an exceptional case in which the State Council addresses the issue, which is when it overturns the decision of the Accounting Council, and does not return the file to the body that issued the

³⁹ - Barbara Abd Arrahman, op. cit, p. 271.

⁴⁰ - Ibid., p. 511.



decision, but rather decides on the matter in terms of the facts and the law. It is noted that the judiciary of the French Council of State accepts cassation appeals against decisions issued by administrative judicial bodies, even if the legal texts stipulate that they are not subject to any appeal⁴¹.

Previously, under the old law, the question was raised as to whether Articles 233-255 of the Civil Procedure Code were the complementary framework for procedures related to administrative appeal? In this regard, Professor Khaloufi Rachid believes that the novelty of the State Council's jurisdiction as a cassation judge does not allow him to know the latter's position on the issue. However, we can assume that the articles of the previous law were excluded for several reasons, the most important of which is that these rules were established by the legislator for the benefit of the chambers of the Supreme Court other than the Administrative Chamber, which was not competent for any cassation appeal, and that the administrative dispute in general, and the cassation appeal in particular, are subject to provisions distinct from what is This is the case within the framework of the ordinary judiciary, The legislator also allocated a set of articles under the previous law to the Administrative Chamber of the Supreme Court, and we did not find any reference in them to articles related to ordinary cassation, which means excluding their application. Thus, the frame of reference for appealing administrative cassation before the Council of State remains limited to the provisions of Article 11 of Organic Law 98-01 relating to the Council of State. Despite the issuance of the Civil and Administrative Procedures Law, it did not organize the cassation appeal in the administrative matter in a good way, especially since it adopted the method of referral to civil procedures. Therefore, it is up to judicial jurisprudence to fill this void and establish the rules for this vital challenge to administrative judicial work.

Second: Cassation appeal papers and procedures for filing:

Article 904 of the Code of Civil and Administrative Procedure refers to the application of the provisions of Articles 815-825 related to the petition to open a lawsuit before the Council of State. Referring to these articles, we note that the

⁴¹- Mohamed Sghir Baali, The summary in Administrative Disputes, Al-Ulum house for Publishing and Distribution, Algeria, 2005, p. 279.



petition must be filed and signed by a lawyer, and this procedure, as we previously indicated, has become obligatory on the pain of not accepting the petition. It must also be filed on penalty of not accepting the contested administrative decision unless there is a justifiable impediment, and the petition shall be deposited with the police department in exchange for payment of the judicial fee.

Article 905 reaffirms the necessity of submitting petitions, appeals, and response notes by a lawyer accredited to the State Council, otherwise, they are inadmissible, except the exemptions stipulated under Article 827 mentioned above.

Referring to the text of Article 358, we find that the cassation appeal must be based on one or several aspects stipulated under this article. In the law regulating the State Council in Egypt, the legislator did not specify the nature of the appeal before the Administrative Court, only specifying the cases in which it is possible to appeal, that is, the reasons for the appeal, which are: similar to the cases of cassation appeal in the ordinary judiciary, as a group believes that the appeal before it is only in the interest of the law; While another team believes that this appeal has a special, dual nature in which it combines the characteristics of the cassation appeal and the appeal as well⁴².

Third: Effects of cassation appeal:

Article 909 of the Civil and Administrative Procedures Law stipulates: “An appeal in cassation before the Council of State has no stopping effect,” meaning that the judicial ruling appealed in cassation is implemented despite the appeal. This principle, which was decided by the Algerian legislator, is consistent with the general rules that stipulate that extraordinary methods of appeal have no stopping effect, and the principle of cassation appeal is that it is not intended to re-submit the dispute before the Court of Cassation to decide it again, with regard to reality and the law, as This is the case in the appeals system, but the authority of the Court of Cassation is limited to determining the sound legal principles in the dispute before it, without itself applying these principles to this dispute, and without deciding on its subject, because it is a court of oversight over the correct application of the law and the proper implementation of the law. Interpretation

⁴²- SamiDjamal Eddine, The Mediator in the lawsuit to cancel administrative decisions, Manashet Al-Maaref, Egypt, first edition, 2004, p. 166.



only, therefore, it either rules to reject the appeal, or accept it and overturn the contested judicial ruling, and in the event that the judicial ruling is overturned, the party concerned will pursue the dispute again before the court that issued the contested judicial ruling⁴³. The scope of the cassation appeal is determined by the dispute that was before the Court of Appeal and the contested judicial ruling, as specified in the cassation notice, and by the reasons on which the appeal was based and the persons who are parties to the appeal⁴⁴. The effect of the cassation appeal does not extend to the appealed judicial ruling, even if the overturned judicial ruling supports it for its reasons, as the opponents remain linked to this judicial ruling and the procedures that took place before it until the appeal against it is decided. The justification for this is that overturning the contested judicial ruling results in the demise of the latter, and the return of the dispute in which the overturned judicial ruling was issued to activity again, and the opponents are returned to the positions they were in before the issuance of the overturned judicial ruling⁴⁵.

Conclusion:

We have completed this article titled: “Extraordinary methods of appeal in administrative matters in light of the provisions of the Civil and Administrative Procedures Law 08-09, amended and supplemented”, and the following is a statement of the most important results and recommendations of this study:

1. The results:

- Extraordinary methods of appeal represent the exceptional method that litigants can resort to in certain cases, stipulated in the new Civil and Administrative Procedures Law.

- The Algerian legislator is criticized in this context for not regulating this type of appeals sufficiently, despite the issuance of a regulating law, as most of its articles are referred to civil procedures, in the absence of the privacy of administrative disputes.

⁴³ - Nabil Ismail Omar, Ahmed Khalil, Ahmed Hindi, op. cit., p. 115..

⁴⁴ - Nabil Ismail Omar, op. cit., p. 359.

⁴⁵ - Ibid., p. 450.



- The legislator required that cassation petitions be submitted by a lawyer accredited to the State Council, and stipulated an exceptional case in which the State Council would address the issue, which is when the decision of the Accounting Council is overturned.

- The Algerian legislator obligated the appellant to base his appeal on one or more legal aspects, as he opened the way for the appellant to base his appeal on whatever reasons he wanted; However, on the other hand, he restricted it to the legal text, and this is considered logical, and it embodies two important principles: the principle of stability of the dispute before the Court of Cassation, and the principle of the sovereignty of the opponents.

- The objection of a third party outside the dispute is considered an exception to the general rule that requires the relative effects of the judicial ruling. However, the legislator, under the Civil and Administrative Procedures Law, did not make it permanent, but rather set its deadlines at 15 years from the date of issuance of the judicial ruling, or reduced to two months in the case of Official notification of the ruling or decision has been made.

- The impact of extraordinary methods of appeal emerges at a fundamental point, which is the extent of their impact or not on the parties to the dispute, because a cassation appeal may result in the complete reversal of the contested judicial ruling, which affects the rights and positions of the parties, especially the beneficiaries of the judicial ruling. Thus, the legislator's restriction of the appellant from practicing this type of appeal is positive and consistent with the general rules established by jurisprudence, while the objection of a third party outside the dispute does not affect the implementation of the judicial ruling between the original parties to the dispute, in application of the principle of relativity of the effects of rulings, and the effect of this appeal extends to third parties, and does not extend to the original parties to the dispute.

2. The recommendations:

- We propose to the legislative authority to issue a law on administrative procedures separate from civil procedures, especially with the completion of



administrative judicial structures (administrative courts, administrative courts of appeal, the Council of State).

- We also propose generalizing the administrative courts of appeal to 58 states, to relieve pressure on the six administrative courts of appeal (Al Jazeera, Oran, Constantine, Bashar, Ouargla, and Tamanghast), and accelerating the installation of the latter, to relieve pressure on the Council of State on the one hand, and even He devotes himself to unifying judicial jurisprudence in administrative matters and to his advisory powers.

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