

” Mechanism for confronting civil disputes: correcting a mistake or violation of a principle”

Mechanism for confronting civil disputes: correcting a mistake or violation of a principle

آلية التصدي في الخصومة المدنية: تصحيح لخطأ أم خرق لمبدأ

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Abstract:

In the context of embodying the positive role of judges in a civil dispute brought before them, the legislator has enacted objective and procedural rules to embody the principles governing the judicial facility. However, it has come up with rules that are not familiar with the logic of systematic judicial work in accordance with the Civil and Administrative Procedures Law, and has given ordinary judicial bodies an exceptional supervisory function in addition to their original role expressed in the confrontation system as a supervisory mechanism within the procedural engineering adopted for each body.

Key words : Judicial Council , Evocation , Affectation , Principle of litigation at two levels.

Introduction:

It goes without saying that the principle of two-level litigation is one of the most important principles guiding civil procedures, as it embodies the justice of the judicial ruling for the litigant¹, as it is considered the most important guarantee for achieving a fair trial. The Algerian legislator adopted it in its recent amendment to the Constitution as a constitutional principle, as it allows it to re-present its dispute before a higher judicial authority than the lower judicial authority that previously decided the case. The reason for this is that the judge examining the dispute is a human being who is subject to error by his human nature, whether that is in terms of the facts presented to him or an error in the adaptation process while projecting the appropriate legal rule onto the merits of the case.

What made the Algerian legislator emphasize this principle in the amended and supplemented Code of Civil and Administrative Procedure, where it stipulated in Article Six (06) of it: **"The principle is that litigation is based on two levels unless the law stipulates otherwise."**² This provided the law with the opportunity for opponents to re-present their dispute to a higher, more experienced judicial body through a regular means of appeal, which is the appeal, which is one of the components of judicial security on the one hand. On the other hand, a practical translation of the principle.

The principle of litigation is linked in two degrees to another principle known as the principle of stability of the dispute, which means that **"the scope of the dispute, the features of which were determined by the judicial claim with its elements, the subject, the cause, and the parties, remains fixed without any modification until the end of the dispute, and this stability applies to both the judge and the opponents"**³ However, this principle may be marred by an imbalance, as the appellate judicial authorities in many judicial practices resort to confronting and monopolizing it as a right and not as a license from the procedural legislator.

The importance of the subject emerges from it, as it relates to a fundamental issue related to the court's exhaustion, as a first instance of litigation, of its jurisdiction in the dispute when the Council implements the response system. The subject is also related to many complex

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procedural systems, which makes it pose several problems, in terms of knowing the date on which the Judicial Council addresses the subject of the case, as well as the date on which it decides to refer the case before the court or to decide it for invalidity. These matters only become clear through judicial applications.

The scope of the investigation will also extend to the Supreme Court in the event that it transforms from a court of law into a court of subject matter, as both the mechanisms for referring and addressing the subject matter are not clarified in the Code of Civil and Administrative Procedure.

Accordingly, the following problem arises :

Are the legislative texts regulating the response mechanism sufficient to achieve a fair trial within the civil dispute?

This results in addressing the issue through inference, analysis and induction of all relevant texts and judicial rulings as follows :

Through two main axes, we address the procedural dimensions of the idea of addressing, in terms of the scope of its implementation, in accordance with the text of Article 346 of the amended and supplemented Civil and Administrative Procedures Law, before the Judicial Council as the second level of litigation (**First Section**). We then move on to a procedural reading of the text of Article 374 of the same law and the repercussions of the supervisory function of the highest body in the hierarchy of the ordinary judiciary –the Supreme Court – as a court of law before addressing the issue (**Second Section**).

1- The procedural dimension of the response before the Judicial Council:

In some exceptional cases, the appeal grants the right to raise new requests in a narrow manner, which violates the principle of litigation at two levels. This principle is also known as another violation when the legislator limits the resolution of the subject of the dispute to one level through the advantage of confrontation. For this reason, this issue is addressed through two requests, the first of which is devoted to determining the essence of confrontation, and the second to the controls for implementing this license.

1.1- Defining the meaning of response as a procedural mechanism:

By confrontation, évocation means **"enabling the Judicial Council to address the subject of the dispute before it, which has not yet been decided by the court of first instance, on the occasion of its consideration of the appeal submitted to it regarding a final ruling on a non-substantive plea".**⁴

French jurisprudence professors also defined it as: **"A license granted to the judge of appeal regarding some judicial rulings, enabling him to decide on points that he did not decide in the first instance, and then put an end to the dispute, that is, to decide on the appeal and on the subject of the dispute with one ruling".** Therefore, it remains merely an authority and not an obligation that falls on the appellate authority.⁵

The definition adopted by French jurisprudence is inconsistent with the development of Article 346 of the Code of Civil and Administrative Procedure, as well as Article 568 of the French Code of Civil Procedure, whereby judges of second instance are not obligated to decide on appeal under a single ruling, and it has become possible to resort to investigative procedures.⁶

The Council's handling of the dispute before it violates the rule of the transfer effect resulting from the appeal. Therefore⁷, it is important to define the concept of handling by distinguishing it from the transfer effect. In principle, the transfer effect finds its place when the appellate body considers the dispute again, which was previously presented before the first instance judiciary in terms of facts and law. As for handling, its place is the Council's consideration of the court judges' ruling issued without deciding on the matter. It decides on unresolved issues instead of referral. As for the obligation of the transmitting effect⁸, it is a binding force for the Judicial Council, as it is

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obligated to adjudicate the dispute before it. As for the response, it is a permissible matter in which the second degree of litigation has the discretionary authority to use it. Also,⁹ when the Judicial Council exercises its authority on the basis of the transmitting effect, the dispute is limited to the appeal petition and the opponents' request, as it is a specific and exclusive field. While when he exercises his authority to address a matter that has not been decided by the court, the door is open for new requests.¹⁰

Despite the significant differences that appear between the transfer effect system and the counter-rule system, we find that some jurisprudence does not separate or distinguish between them on the basis of establishing the link between counter-rule and cancellation of the contested ruling, regardless of whether the court decides on the origin of the right or not, as the Judicial Council may cancel the ruling and not counter-rule, and here comes the transfer effect despite the cancellation of the appealed ruling.

Therefore, researcher Ahmed Wasmin believes that if the appeals court cancels the contested ruling, it must decide on the matter, if the case is prepared for decision and the court has jurisdiction to hear the case initially. In the event of lack of jurisdiction, the decision is not necessary.¹¹

In the same vein, there are those who go so far as to say that the Judicial Council's decision in the matter of appeal does not deviate from the usual options. It may uphold the appealed ruling or cancel and refer the file to the court, or cancel and confront the ruling on the dispute. Here, the Judicial Council must cancel the ruling received from the court and address the subject of the case with a single decision in the event that it becomes clear that the procedures that took place before the first instance judiciary have a defect that may change the effect resulting from the ruling or if the ruling is in violation of the law. It is noted that the condition for canceling the ruling is for the possibility of addressing it. However,¹² the general rules require this because the Council cannot implement the mechanism except in the case of cancellation, but in the case of support, there is no room for implementing the response, and it cannot be said when we interpret the legal rule to extend its scope to include this case.

From the above, it is clear that the response system has unique features, as it is a machine granted to the Judicial Council without any binding reason, as an exception to the rule of effect transferring appeal and the principle of two-tier litigation, aiming to save expenses and resolve the case once and for all, putting an end to the length of the procedures.

What confirms the exceptional nature of the withdrawal effect – response – is the legislator's intervention to establish controls exclusively, as there is no place for its application, unless these controls are available.

1.2- Second-class operating controls for the response machine:

Article 346 of the Code of Civil and Administrative Procedure stipulates that: **"When deciding on an appeal against a final ruling in a formal defense that decided to end the dispute, the Judicial Council may address unresolved issues if it becomes clear to it, in the proper course of justice, to give a final solution to the dispute, after ordering an investigation when necessary".**

By extrapolating the text of the above article, it becomes clear to us that the scope of the Judicial Council's application of the challenge advantage is narrow, ranging from respecting the principle of two-tier litigation to the principle of the effect of transferring the appeal. Therefore, it is a limited and narrow scope that is evident in the case in which the Judicial Council considers an appeal of a court ruling that decided on a formal plea ending the dispute, for example, any ruling issued in a plea of lack of jurisdiction, both its regional and qualitative aspects, the dismissal of the dispute, its expiration, Waiving it, the provisions related to the invalidity of the opening petition, and all defenses related to the litigation procedures that terminate it before the court of first instance in general.¹³

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What must be clarified in this regard is that the legislator limited the issue of confrontation and limited it only to the decisive provisions in formal defenses without the decisive provisions in defenses of inadmissibility in the sense of the text of Article 67 of the amended and supplemented Code of Civil and Administrative Procedure, which is directed at denying the opponent's right to litigation, which may end the dispute without deciding on its subject, such as not accepting the lawsuit due to the absence of conditions for its acceptance, for example, especially since the same article ended with the phrase "...This is without considering the subject of the dispute", Which necessarily means that the first instance of litigation as a public asset has not exhausted its jurisdiction over the subject matter, so why is this distinction in terms of rulings whether it is an omission on its part or absolute intent on its part or a misinterpretation and translation of the imported article, despite the fact that the legislator announced his explicit intention in the text of Article 346 of the same law that the appellate body is only authorized to consider decisive rulings in formal defenses that end the dispute, What is worth saying is that the Supreme Court stated in one of its decisions that the nature of the provisions that can be addressed is not limited to the decisive provisions in formal defenses only, but also extends to the decisive provisions in defenses of inadmissibility ¹⁴, The fact is that different readings of different situations, whether legislative or judicial, related to the subject prompt us to pay a great deal of attention to the response system in the event of Appealing judicial rulings of the same nature as an officer to implement this mechanism and lift the restrictions imposed on it by the procedural legislator.

In this regard, we point out that the Egyptian Court of Cassation distinguishes between two types of inadmissibility defenses,¹⁵ where it grants the term substantive inadmissibility defenses to the first part, which it includes for substantive defenses and thus arranges most of the effects resulting from the decisive rulings on the subject, and grants the second part of it a description of procedural inadmissibility defenses because they are close to the formal defenses due to the relativity of their prejudice to the subject of the dispute, and as a result they are treated as formal defenses that end the dispute.

It is also worth noting that Dr. Nabil Ismail Omar, in his book, The Code of Civil Procedure, comments on French law on the issue, saying, "The funny thing is that French law does not allow the Court of Appeal to take action when appealing rulings issued in inadmissibility, while it allows it to do so when the appeal relates to a ruling issued in a procedural plea that ended the dispute without deciding on the matter."¹⁶

We should also not fail to mention an important officer that governs judicial activity, which is that to implement the response; the Judicial Council must cancel the appealed ruling. However, the basic principle, contrary to the practical reality currently being implemented by the appellate judicial authorities, is that the Council does not address the subject of the case and return the case to the court, as the matter here is related to a decisive ruling in a formal plea in which the court of first instance ruled, but without exhausting its jurisdiction in the subject of the dispute But this proposal does not mean at all that there is no justification for provoking a confrontation.¹⁷

Article 346 of the Code of Civil and Administrative Procedure has suspended the use of the Council to confront two officers,¹⁸ the first of which relates to the proper administration of justice, as this officer is flexible and expands and narrows according to the conditions required by the procedural rules, which makes it difficult to embody, ¹⁹as the Judicial Council may find itself, under this officer, faced with the inevitability of not missing a degree of litigation for one of the parties to the case, It was necessary for him to correct the mistake made by the first-degree judge and thus implement the referral mechanism. It may be good for justice to have the Judicial Council address the issue. If we take, for example, the case of recourse after an experience related to compensation for bodily harm resulting from a traffic accident, then if the case ends with a ruling on a formal payment ending the dispute and it is appealed before the Judicial Council, then the

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scope is broad to employ the response machine The reason is that the matter is related to the proper administration of justice and compensation specified by law. The judge is satisfied with what is stated in the expertise file.

What we must draw attention to regarding the issue of handling and ensuring the proper administration of justice is that under the repealed law²⁰, the legislator relied on an officer to ensure that the case was prepared for adjudication according to the text of Article 109 of the Civil Procedure Code,²¹ which causes the dispute to be prolonged, and thus this matter may be a bad manifestation of the administration of justice.

Achieving justice has become a reason to go beyond the principle of two-tier litigation, and this requires, when necessary, the order to conduct an investigation, to remedy any infringement that may result from confronting the litigant's right to two-tier litigation, as the investigation is considered a means of investigating facts and reaching justice Whereas the investigation, in the sense of Article 346 of the Code of Civil and Administrative Procedure, is a permissible matter, and this embodies the legislator's desire to re-investigate the case after he has decided on the formal aspect, which is in fact the subject of the appeal, The reason for this matter is to remedy what may result from the response mechanism taken by the Council and what it may cause in terms of infringement on the right of the litigant or his legal status to be protected, for which the judicial facility was resorted to. As a result, it can be said that conducting the investigation is tantamount to compensation for the litigation losing its right to a degree of litigation. On the other hand, the Council may address without conducting an investigation, provided that this is a requirement for the proper administration of justice However, it is not permissible for him to address the issue by conducting an investigation,²² without the aforementioned officer verifying it. What is meant by investigation is all the means stipulated by the legislator in the means of proof from Articles 75 to 193 of the Code of Civil and Administrative Procedure.

2- The oversight dimension of the Supreme Court as a legal body before the response mechanism:

The legislator has been keen to determine the substantive and procedural rules for taking the initiative to initiate a lawsuit within the judiciary, until it ends naturally with the issuance of a ruling on its subject matter. In return, he also stipulated the rules and systems required to appeal that ruling, which assumes relative justice, and the latter may be likely to include defects, whether in terms of interpreting the facts or applying the law.

This is what made most of the legislation, when organizing the judicial pyramid within the framework of embodying the system of judicial duality, make the top of the pyramid of the ordinary judiciary sit on it the highest judicial body called the Supreme Court,²³ which the legislator extended during the procedural reform that included the procedural law, a set of powers and authorities, where its judicial work was linked within the judicial facility as a court of law through a procedural mechanism called the term appeal Which was regulated in the amended and supplemented Code of Civil and Administrative Procedure within the unusual appeal methods²⁴ represented by cassation appeal.

Through the principle of the effect of transferring the dispute, the Supreme Court embraces the file submitted to it to consider it in terms of the law as a supervisory body over the work of the judges of the subject and the extent of their application of the correct law or not. As a result, the Supreme Court rules on the powers and authorities granted to it using two procedural mechanisms, the first of which is referral and the second of response, and this will be addressed through two basic requirements.

2.1- Referral is an original oversight mechanism in the hands of the Supreme Court:

The unity of the judiciary and the law is the primary function of the Supreme Court, and obliges judges of both levels of litigation to respect the law in its broad sense, which we find

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embodied in the legitimacy of judicial rulings. Among these, the way to achieve a fair trial is the correct legal adaptation made by the trial judge to the facts presented to him, which the Supreme Court extends its oversight over.

By extrapolating the text of Articles **349** and **350** of the Code of Civil and Administrative Procedure, we revealed the type and nature of the rulings that are subject to appeal in cassation, represented by the decisive rulings and decisions on the subject of the dispute that were issued at the last level, as well as the rulings and decisions that have ended the dispute by adjudicating one of the formal defenses, defenses of inadmissibility, or any other defense.

Thus, the Supreme Court extends its original oversight over these rulings in order to correct the legal defects that the judges of the subject matter have fallen into, if any. However, what caught our attention at first glance is the reason for including the decisive rulings in the non-substantive defenses that end the dispute within the group of rulings that can be appealed in cassation, especially if we look at the volume of cases and files accumulated by the Supreme Court in addition to the long duration of the dispute in order to decide this matter on the one hand. On the other hand, it is noted that the legislator did not exclude the decisive provisions in the defenses of inadmissibility that end the dispute from their susceptibility to appeal in cassation, as he did in the face of the response stipulated under Article **346** of the Code of Civil and Administrative Procedure for the same provision. So why this distinction, even though the second instance may consider the dispute under the transfer effect in terms of reality and law within reasonable deadlines compared to the Supreme Court. In addition to the issue or idea of the benefit and advantage desired from practicing cassation appeal in such rulings instead of repeating the dispute and correcting the defects that marred the first dispute before the first degree.

What can be said in the context of the situation is that in all cases the Supreme Court will use its supervisory authority to examine these rulings to reach one of two results: either rejecting or accepting them. In the second case, the referral mechanism will be used, and here the appeal will either be complete or partial according to the file presented in accordance with the text of Article **363** of the Code of Civil and Administrative Procedure.

The term referral was used by the legislator while organizing formal defenses related to the unity of the subject and the connection to the text of Articles **53** to **58** of the same law. Although the term is the same in terms of pronunciation and wording used when talking about cassation appeals, it does not carry the same function.

As previously mentioned, the Supreme Court ultimately reaches, after it has established its oversight, the cassation of the contested ruling or decision and refers the file to the issuing authority, as the case may be. However, it may be faced with other cassation cases, but this time without referral, and its oversight stops there.

As for the files that the Supreme Court deemed necessary to refer, it will overturn and invalidate them, referring the case to the same council with a different composition or to a different party of the same type and degree, in accordance with the text of Article **364** of the Code of Civil and Administrative Procedure, from which the parties to the dispute will be returned to the state they were in before the overturned ruling or decision.

As for the files that were overturned but without referral²⁵ here we stand on several aspects, where can it be learned from the text of Article **365** of the Code of Civil and Administrative Procedure that the legislator granted the Supreme Court the authority to overturn the ruling or decision without referral²⁶, if the referred party has nothing left to decide on. Meaning that all legal points have been addressed by it and there is no vacant place that can be decided again, whether for the court or the council alike, because the legal problem has been resolved. Perhaps the jurists attribute this to several elements, including:

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-When we are facing an appeal in favor of the law, where the legislator has granted, under the text of Article **353** of the same law, the authority to appeal to the Attorney General at the Supreme Court in the event that the appeal deadline is missed for the opponents, and in the event that this ruling or decision is overturned, the parties to the file cannot benefit in any way from the decision that will be issued by the Supreme Court.

- When we are faced with a conflict of rulings or decisions, as Article **358** of the same law stipulates this in its thirteenth and fourteenth paragraphs, and this comes when there is a contradiction between the rulings and decisions that are subject to cassation appeal, and the issue of validity was raised for it but remained without any treatment, then here the appeal is practiced against the last ruling or decision issued in view of its date and the Supreme Court must decide on it without referral. On the one hand, and on the other hand, there is a contradiction between rulings that do not accept ordinary appeal, and one of the two rulings had previously ended in rejection, so the Supreme Court may overturn one of the two rulings and maintain the correct ruling without referral.

- When we are faced with the absence and non-convening of the dispute, the Supreme Court here searches for the reasons for the absence and non-convening and decides on them without referral, as it is unreasonable to refer a file whose dispute does not exist.

As a result, it can be said that the original oversight was embodied by extending expanded oversight and adjudicating most of the issues that could be raised from a legal standpoint, whether that cassation was by referral or without referral.

2.2- The Supreme Court has an exceptional oversight mechanism to address:

The jurist "**Rubiser**" says: "**The Court of Cassation is not a judge for citizens, but it protects the laws and follows up and monitors the judges.**"²⁷ From this standpoint, the traditional function of the Supreme Court made it interested in sifting through the work of the courts and councils and the extent to which they applied the correct law or not. The issue of ending the dispute before the judiciary was a very relative idea, given its original work, such that this established doctrine began to fade with the emergence of a modern function of the Supreme Court that complements its original function. Thus, the idea of confronting was considered an exception to the original principle, and the reason for that was to put an end to the existing conflict under the guise of the proper administration of justice.

Anyone who examines the text of Article **374**, paragraphs one and two of the Civil and Administrative Procedures Code will see the first role of the Supreme Court when first appealing the referral of a dispute again to the competent referral authority with a different formation in order to consider it in terms of reality and law, committed to the related legal issues reached by the Supreme Court, and this is its traditional and fundamental role.

By examining the rest of the paragraphs of the previous article, the exceptional role added to the powers of the Supreme Court becomes clear, so that its oversight function in terms of law turns into objective oversight in terms of facts, thus becoming a subject court.

Hence, the Civil and Administrative Procedures Law has defined the procedural framework for establishing the Supreme Court as a subject court, but the question is whether the legislator has actually separated the procedures for confronting the various litigation bodies in its narrow sense, or do we find a legislative vacuum that must be filled.

It is noted that the substantive response comes if the referring party does not comply with the decision issued by the Supreme Court deciding on legal issues. The latter party may, on the occasion of considering the second cassation appeal, decide on the matter, which is expressed in Article **374, Paragraph 03** of the same law, with the permissibility of deciding on the matter, meaning that the Supreme Court may address the file submitted to it pursuant to a second appeal.

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However, if it is decided not to use its exceptional right, it may return the file to the referring authority in order to reconsider it in terms of reality and law with a formation contrary to the first and second formations, but it is obligated and compelled to decide on the subject of the dispute on the occasion of the third appeal in cassation, and this is what was confirmed by the fourth paragraph of Article 374 of the Civil and Administrative Procedures Law.

This position of the legislator is very close to that of the Egyptian legislator, who authorized the Egyptian Court of Cassation to address the issue whenever it was able to do so. However, on the other hand, we find that the French legislator strongly rejects the rule of addressing the issue, even if the Court of Cassation is facing several cassation appeals.²⁸

It is worth noting in this context that the response taken by the Supreme Court does not at all reflect the concept of response for the Judicial Council, as the latter's core function is to study the case file within the framework of the appeal and to embody the effect that conveys it in terms of reality and law, and even to consider the defense and defense submitted by the opponents and even to order an investigation procedure if necessary to end the dispute.

All of the above is prohibited by the Supreme Court. If Article 374 of the Civil and Administrative Procedures Code allows it to address and decide on the matter on the occasion of the first and second appeals, it may not examine the evidence and proofs presented by the opponents or even hear them or conduct civil investigations into the subject of their dispute. Rather, it adheres to what is stated in the appeal file, and we think that the reason for that is that the aforementioned procedures do not suit the nature of the function of the Supreme Court, as it is a court of law in the first place, so it is inconceivable that it would investigate and interrogate opponents, appoint experts, conduct inspections, or even issue orders before deciding on the matter. Hence, we see that the issue of confrontation stipulated under the text of Article 374 of the Code of Civil and Administrative Procedure is the best thing the Algerian legislator has done by restricting and restricting the court's authority to take the mechanism of confrontation.

In line with what was mentioned above, it is necessary to shed light on the practical aspect of the Supreme Court in this regard, as we find that it reduces the use of the standoff system compared to the referrals it takes while the opponents are using their right to appeal in cassation, and perhaps this is due, on the one hand, to giving the judges of the matter room to correct their mistakes. On the other hand, we see that this referral is a legal lesson on a specific point that they must learn and unify all decisive decisions on the same issue at hand.²⁹

Conclusion:

Through our study, we have reviewed the response system adopted by the Algerian legislator through one and only article that addressed it, which is Article 346 of the Code of Civil and Administrative Procedure. As we analyze this legal text, several points have drawn our attention, making our mini-research more interesting to study and scrutinize its aspects across the various judicial bodies within the regular judicial pyramid.

Our emphasis is renewed once again that the litigant still hopes that the judicial authorities will raise the quality of their facility service to the aspirations of citizens, and this will only be done by seeking to establish realistic quality justice, by ensuring the activation of the principles included in national legislation governing the operation of the judicial facility. Among them is the principle of two-degree litigation recently enshrined in the constitutional amendment of 2020, which was previously confirmed by the procedural legislator in the amended and supplemented Civil and Administrative Procedures Law. This principle is not sufficient to activate the mechanism for expanding the scope of appealable rulings, which is at the heart of the legislator's work, but rather the necessity of ensuring the consecration of realistic enforcement of the first degree of litigation, which is a task entrusted to the judicial councils, Which will also be called upon to establish the principle, not only to open its doors to considering the dispute as a second

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degree, but also to monitor what was issued by a first-degree party, whose judiciary may not always necessarily constitute the exhaustion of its jurisdiction over the dispute, in the sense intended by the principle, especially with regard to formal defenses or defenses of inadmissibility, and this is by restricting its right to confront, which may clash in its technical meaning with the principle of litigation at two degrees. Which will be emptied of its content if the appellate body continues to exercise its right to confront by making it the origin for which there is no exception, as is clear from the judicial applications for which we hardly see any precedent with regard to the mechanism for returning the case to the court in order to exhaust its jurisdiction over the file.

We also noticed the legislator's silence on regulating the conduct of the dispute before the Supreme Court and the Judicial Council alike. As a result of this legislative vacuum, it is necessary to reformulate the texts regulating the dispute system without prejudice to the principle of two-tier litigation, which has made the legislator prevail over another principle, which is the speed of litigation, prompt justice, and economy of procedures. This is on the one hand, and on the other hand, sifting through rulings in their broad sense, which are suitable for consideration by the Supreme Court, especially procedural rulings, so what is the benefit of raising them to the highest level without obtaining the desired and expected ruling by the opponents.

In addition to expanding the scope of the Supreme Court's exceptional oversight in the context of its handling of the issue, clarifying the process of readjusting, if I may say so, established facts, dropping the correct legal article on them, and issuing a legitimate decision that ends the dispute.

We also stress the need for ordinary judicial appellate bodies, including administrative and criminal ones, to establish a horizontal dialogue between them in a way that reflects the desired quality of justice, to be followed by a vertical dialogue between the two levels of litigation by creating a procedural bridge that allows the case to be returned to the first level to complete the exhaustion of its realistic and legal jurisdiction over the dispute, all of this in order to preserve the right of the litigant to consume the first level, which would constitute an institutional procedural engineering for building qualitative justice in the sense Which the judge, the litigant, and society as a whole aspire to.

Citations:

1-The Algerian Constitution stipulates the principle of two-level litigation in accordance with Article 165 thereof and affirms that the law guarantees it, including its controls and conditions for its implementation (Constitution dated 11-28-1996, on 12/08/1996, No. 76, amended and supplemented by its latest amendment pursuant to Presidential Decree No. 20-442 dated 12/30/2020, No. 82).

2- Law 08-09 of Safar 18, 1429, corresponding to February 25, 2008, issued on April 23, 2008, No. 21, amended and supplemented by Law 22-13, corresponding to July 12, 2022, which includes the Code of Civil and Administrative Procedure.

3- Helmy Al-Hajjar, The Mediator in the Principles of Civil Trials, Part Two, Second Edition, Al-Halabi Human Rights Publications, 2002, p. 13.

4- Lazmi Asmaa, Appeal as a Guarantee for the Principle of Litigation for Two Degrees in Civil Subjects, Master's Memorandum, Faculty of Law, University of Algiers 1, 2013-2014, p. 134.

5- Serge Guinchard, Frédérique Ferrand, Cécile Chainais, civil procedure, Dalloz, 5th edition, compos é par IGS-CP à L'Isle-d'Espagnac, 2017,p 614.

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6- Jean-François Escourrou, The appellate body in the civil trial/ Jean-François Escourrou; under the supervision of Marc Nicod. Doctoral thesis: Law: Toulouse 1: 2017, P264.

7- Lazami Asmaa, op. cit., p. 135.

8- Helmy Al-Hajjar, previous reference, p. 381.

9- Ahmed Hindi, The Principle of Litigation in Two Degrees, New University House, Alexandria, unprinted, 2009, p. 168.

10- Nabil Ismail Omar, Appeal in the Egyptian and French Code of Procedure, New University House, 2008, p. 915.

11- Ahmed Wasmin, Appeal in Civil Matters, a thesis for an in-depth postgraduate degree, Faculty of Legal, Economic and Social Sciences, Cadi Ayyad University, academic year 2000-2001, pp. 81-82.

12- Fawzia Zihour, Sub-Appeal in Civil Procedure Law, Cadi Ayyad University, Academic Year, 2002-2003, pp. 103-104.

13- Abdel Halim Muhammad Abdel Halim Ananbeh, Litigation at One Degree before the Appeals Authority, PhD Thesis, Faculty of Law, Beirut Arab University, 2016, p. 138.

14- Supreme Court Journal, Issue 02, 2022, p. 144.

15- In this regard, see the collection of decisions issued by the Egyptian Court of Cassation in the book Treasures of Pleadings (Defense and Defenses), by Counselor Abdel Hamid El-Minshawy, New University House, Alexandria, Egypt, for the year 2010, pp. 773 to 789.

16- Siddiq Touati, Civil and Administrative Procedure Code, according to the latest amendments to Law No. 22-13 in light of jurisprudence and the Supreme Court, Methods of Appealing Judgments, Part Two, Dar Laima, El Kolea –Tipaza, Algeria, 2024, p. 134.

17- Lazami Asmaa, op. cit., p. 137.

18- Nabil Ismail Omar, previous reference, p. 921.

19- In one of its decisions, the Supreme Court went to a tone of emphasis in terms of the controls established for implementing the response mechanism, as it confirmed that the Council is obligated to apply the text of Article 346 of the Code of Civil and Administrative Procedure and adhere to the nature of the appealed ruling while addressing the issue. If this officer is absent, he is obligated to refer the file to the judge of first instance before the court because he has not yet exhausted his mandate. I gave an example of this, the order to postpone the decision on the case, and I considered it to be a ruling that did not end the dispute or decide on a formal plea, and that the judge of first instance did not abandon the dispute. As a result, the judges of the council are not permitted to confront it and decide on its subject. (See Resolution No. 1558249, Supreme Court Journal, No. 02, p. 144).

20- Order 66-154 dated Safar 18, 1386, corresponding to June 8, 1966.

21- In this regard, the Supreme Court ruled: "Whereas the procedural file, on the other hand, does not provide information regarding pending items, especially those related to salary, such that this information allows the judicial appellate body to decide on the subject of the dispute by way of confrontation, which makes the case not ready for final decision except by violating the principle of litigation at two levels." Journal of the Supreme Court, Social Chamber, Resolution No. 33848, Judicial Journal 1989, Issue One, p. 194.

22- Lazami Asmaa, op. cit., p. 139.

23- The Supreme Court is the body that evaluates the work of judicial councils and courts (see the text of Article 179 of the Constitution).

24- Article 313 of the Code of Civil and Administrative Procedure stipulates the normal methods of appeal, which are opposition and appeal. On the other hand, we find unusual methods of appeal, among which we find cassation appeal.

” Mechanism for confronting civil disputes: correcting a mistake or violation of a principle”

25- Ahmed Maher Zaghloul, The Effects of Cancelling Judgments After Their Implementation, Dar Al Nahda Al Arabiya, Cairo, 1992, p. 155.

26- Siddiq Touati, previous reference, p. 392.

27- Magdy El Gendy, Principles of Criminal Cassation and Reasoning for Judgments, Al-Mukhtar Printing and Publishing Company, Alexandria, 1st ed., 1993, p. 03.

28- Nabil Ismail Omar, Ahmed Khalil, Civil Procedure Code, Al-Halabi Human Rights Publications, Beirut, 2004, p. 267.

29- Egyptian jurisprudence, in parallel with Algerian jurisprudence, believes that the issue of confrontation has sparked a heated debate among jurists about the impact of the Court of Cassation's practice of confrontation on its traditional function, and thus we find two trends, the first opposing the confrontation system and citing some arguments in this regard, the most important of which are:

The Court of Cassation is gradually relinquishing its legal oversight role and assuming the role of the Court of Appeal, which originally needs a court of law to supervise its work.

- The confrontation violates the rights of the defense, so the facts may not be discussed by the opponents, so they are surprised by the confrontation procedure taken by the Court of Cassation, so they miss the opportunity and are deprived of defense.

As for the trend supporting the confrontation system, they refute what the opposing trend has reached, and their argument for that is that the Court of Cassation, when it uses the confrontation system, does not abandon its oversight function from being a court of law and does not turn into a substantive judge at all. Rather, it maintains its original role to the point that if it confronts the lawsuit, the cassation judge does not reconsider the facts, but rather establishes or drops the rule of law on the established facts in a sound manner, and this is what is called the process of readjustment (see in this, Ayman Ahmed Ibrahim Badawi, The Authority of the Court of Cassation in Confronting Civil and Commercial Cases, Middle East Research Journal, Middle East Research Center, Issue 108 For the year 2025, p. 22)

References:

Books:

1- Helmy El-Haggar, The Mediator in Civil Procedure, Part Two, Second Edition, Al-Halabi Human Rights Publications, 2002.

2 - Ahmed Hindi, The Principle of Litigation in Two Degrees, New University House, Alexandria, without edition, 2009.

3 - Nabil Ismail Omar, Appeal in the Egyptian and French Code of Procedure, New University House, 2008.

4 - Abdel Hamid El-Minshawy, Defense and Defenses, New University House, Alexandria, Egypt, 2010.

5 - Siddiq Touati, Code of Civil and Administrative Procedure, in accordance with the latest amendments to Law No. 22-13 in light of jurisprudence and the Supreme Court, Methods of Appealing Judgments, Part Two, Dar Laima, El Kolea –Tipaza, Algeria, 2024.

6- Ahmed Maher Zaghloul, The Effects of Cancelling Judgments After Their Implementation, Dar Al Nahda Al Arabiya, Cairo, 1992.

7 - Magdy El Gendy, Principles of Criminal Cassation and Reasoning for Judgments, Al-Mukhtar Printing and Publishing Company, Alexandria, 1993.

8 - Nabil Ismail Omar, Ahmed Khalil, Civil Procedure Code, Al-Halabi Human Rights Publications, Beirut, 2004.

University theses:

1- Abdel Halim Mohamed Abdel Halim Ananbeh, Single-Level Litigation before the Appeals Authority, PhD Thesis, Faculty of Law, Beirut Arab University, 2016.

” Mechanism for confronting civil disputes: correcting a mistake or violation of a principle”

2- Ahmed Wasmin, Appeal in Civil Matters, a thesis for an in-depth postgraduate degree, Faculty of Legal, Economic and Social Sciences, Cadi Ayyad University, academic year 2000-2001.

3- Lazmi Asmaa, Appeal as a Guarantee for the Principle of Litigation for Two Degrees in Civil Subjects, Master's Memorandum, Faculty of Law, University of Algiers 1, 2013-2014.

4- Fawzia Zihour, Sub-Appeal in Civil Procedure Law, Cadi Ayyad University, Academic Year, 2002-2003.

Articles:

1- Ayman Ahmed Ibrahim Badawi, The Authority of the Court of Cassation to Confront Civil and Commercial Cases, Middle East Research Journal, Middle East Research Center, Issue 108, 2025.

Judicial decisions:

1 - Resolution No. 1558249, Supreme Court Journal, Issue No. 02, 2022.

2 – Resolution No. 33848, Judicial Journal, No. 01, 1989.

References in French:

1 - Serge Guinchard, Frédérique Ferrand, Cécile Chainais, civil procedure, Dalloz, 5th edition, compos é par IGS-CP à L'Isle-d'Actionnac, 2017.

2- Jean-François Escourron, The appellate body in the civil trial/ Jean-François Escourrou; under the supervision of Marc Nicod. Doctoral thesis: Law: Toulouse 1: 2017.