

Role of the administrative djudge in innovating and emphasizing the rules of administrative law.

ATIG Habiba*

Aboubekr BELKAID – TLEMCEN ,ALGERIA,
habibaatig91@gmail.com

Send Article Date: 11/04/2024 Date of acceptance of the article: 28/04/2024

Abstract:

The administrative djudge has to create the legal rule, which becomes tried and applied rule. It will be significant rule, especially, if the legislator didn't mention it by clear text in order to settle dispute. We can say the judicial rule will do what the legislative rule does. Thus, the judicial way is the best and the most effective solution that will be imposed on the dispute and on the djudge in order not to reach to what is know as denial of justice. It is done by the administrative djudge to create, innovate, and make the legal rule.

key words: administrative djudge, jurisprudence, administrative dispute.

Introduction:

Contrary to the general rules of the civil law that find their source in the civil law, the general rules of administrative law derive their principles from the administrative judiciary decisions that were not placed at the hands of the legislator, but came at the hands of the administrative judiciary. Fear was focused and limited to the rules of administrative law by allocating an independent judiciary that governs the activity of the administration and disputes that it is fighting, and it was not the apparent task, especially in relation to the explanation of the lack of validity of the rules of private law to govern the various images and administrative activities. (Shaqaf, 2015/2016, page 02) As long as the ordinary

*ATIG habiba.

judge has distanced from resolving the conflict on the pretext of his lack of competence, it is worthy and most appropriate to establish a more specialized law, as it is known that the rules of civil law do not keep pace with the administration's activity and are not worthy of the nature of its work, which requires the necessity of thinking about finding the legal alternative, what is known as the rules of administrative law, It means consolidating the principle of duplication of the judiciary. It is worth noting that the administrative law is considered a judicial origin (Daudan, 2010, page 24), where the administrative judiciary plays a prominent role in setting its foundations and principles until it became independent, and whoever has been proven its rulings and features despite the modernity of its origins, it has become characterized by originality. Two do not differ in the important role played by the French administrative judiciary in pushing the administrative judicial jurisprudence to its highest levels, until it becomes a prominent position due to his great contribution to leaving the administrative judge freedom in creating appropriate solutions to the disputes presented to him, calling for the developments that occur in the activities Administrative.

It is clear from the foregoing that the law deficit does not necessarily mean the impotence of the administrative judge, as the latter's function exceeds the application of legal texts in case of their existence-an applied judge only-and their interpretation if it is marred by mystery to reach the point of creating the legal rule if they are not present. Hence, the administrative judge is supposed to be before one of the two cases: the first case: the case of an explicit and clear text in it, here is limited to the implementation of the existing law on the dispute offered to it. As for the second case: the state of the absence of the legal text-which is the subject of the study-is achieved: contrary to the civil judge that the absence of the legal text does not restrict the administrative judge and does not discourage his resolve in resolving the dispute before him and does not enrich him from performing his mission, but rather is an incentive for *ijtihad* as a manifestation of his creative and creative role In establishing the legal rule-the rules of administrative law-, and the justification for that special nature that administrative law has from its origins and historical circumstances, this is due to the lack of legalization of its rules and its description of the judicial law and others all of this makes the administrative judiciary a role in creating the rules of law Administrative in the absence of the legal text that is separated in the dispute. (Al -Sheikhly, 2014, page 172) Hence, the administrative judge has broader functions compared to the ordinary judge, jobs that help him to establish a fair legal rule that governs the ongoing conflict, especially since one of the parties to the conflict is a public authority with powers and privileges that cannot be overlooked at all. The diligence of the administrative judge confirms his effective, vital and renewed role, and all this encourages the laws of the law to discuss the depths of the administrative law and saturate its theories, which means that the administrative law in its own nature refused to be a rigid fixed and even gave confidence to its judges to enrich it through their

jurisprudence that amounts to to be legal rules Craving conflict resolution. (Sumaya, 2018/2019, pages 04-05) Accordingly, the function of creating legal rules in general and the rules of administrative law in particular is part of the function of the administrative judge who depends on reality and interacts with it quickly what the law is more dependent, and the evidence for this was that it were not for the judicial jurisprudence of the State Council, there would be no existence of the administrative law in the first place, because the administrative judiciary was behind Formulating and forming major theories and principles in public law in general and administrative law in particular. This preaching creates the opportunity to ask the following questions: How does the administrative law judge create and set the rules of administrative law? To what extent did the administrative judge contribute to his diligence in resolving administrative disputes that have no legal basis?, And what are the most important effects of the establishment of the administrative judge to the rules of administrative law? It is necessary to determine the truth of the role of the administrative judge in creating and consolidating the rules of administrative law through his judicial diligence to divide the study into two topics: A first topic: it relates to the curriculum followed by the administrative judge to create the rules of administrative law. A second topic: it relates to the legal effects of the role of the administrative judge in establishing the rules of administrative law.

SECTIONI :The curriculum followed by the administrative judge to create the rules of administrative law

The legal system includes many legal rules that cannot tolerate the same rank and are not equal in the legal value, but rather gradually forming the principle of "legal rules." The gradient of legal rules shall result in the fact that each rule must be subject to the form and subject of the rule that it transcends in the rank, as each rule in the legal pyramid adheres to the rule that is above it to be restricted to it is the next or lower rule of it. The administrative judge must dismiss the disputes presented to him according to the existing legal texts, and if there is a contradiction between the legal rules, this will not affect his jurisdiction, as long as the idea of graduating legal rules is imposed on it on the weight of the highest rule, and this assumes that the legal texts exist any existing (Philali , 2010, page 273), but the administrative judge may be presented with disputes that he does not find the text that he applies to, so he must be separated in the dispute and does not evade the ruling on the pretext of the absence of a text that can be applied and in this case he finds himself forced to diligence, and in both cases the judge must Administrative dismissal in the dispute according to the legal text or *ijtihad*, respecting a number of controls. The correct analysis of the reality of the role of the administrative judge is evident and it is separated in the disputes presented to him, and strives to search for the law that must be applied to it to issue his final ruling on the basis of the judge's multiple tasks that dictate to him the nature of

his work as a judgment of justice at the time of the outbreak of differences, and the matter is not without one of the assumptions, determined The nature of the administrative judge's work and differs in the first assumption of it in the second assumption. In the first hypothesis, there is a text that rules the dispute presented to the judge, which can be called the judicial function, while the second hypothesis in which the text is lagging behind, the dispute becomes without a rule of control. Here the judge exercises another job that can be called the function of *ijtihad* (Al -Jarfi, 1976, page 143) and it is our studies . Accordingly, the special nature of the rules of administrative law and the circumstances of its emergence historically, as well as the failure to legalize most of its rules, in addition to the multiplicity of administrative activity, all of this led to the administrative judiciary a distinguished judiciary in creating the rules of administrative law in the absence of a text that governs the dispute presented to it Through his jurisprudence (Shaqf, 2015/2016, page 04). It requires addressing the curriculum followed by the administrative judge when creating the rules of administrative law to search for the reasons and motives for the innovation of the administrative judge (the first requirement) as cases in which the latter resort to the rules of administrative jurisprudence, then search for how the administrative judge formulates the legal rule (the second requirement).

First Requirement: The motives and reasons for the innovation of the administrative judge

Granting the scattering of administrative legislation and the speed of its development, the administrative judge, a major role in creating and creating the provisions and principles of administrative law, as the role of the administrative judge, like the ordinary judge, is based on the application of the provisions of the law, except that in the absence of the text, its ambiguity, or its contradiction with other texts, it is inevitable from its establishment By creating the legal rule, i.e. creating the appropriate solution to the nature of the administrative conflict in order to achieve a balance between the public interest and the private interest, which is practiced in two cases of lack of legislative text for application to the dispute (the first branch) or the ambiguity of the legislative text to be applied (Hamoumi, 2017, page 05) (branch the second).

Paragraph1:Lack of the legislative text

The administrative judge often may face the lack of legislative texts that are commensurate with the dispute against him, which makes him play a positive role in the field of establishing the legal rule in the absence of the legislative text, and in this case its applied role for the law exceeds the legal rule in itself. There is no text explicitly indicating that the administrative judge may establish or set the legal rule, but the reality of the administrative law and its characteristics imposes and confirms the possibility of the administrative judge to set jurisprudence rules that apply to the dispute presented to it, and that it can exceed and generalize them to subsequent cases in a way that exceeds the limits of the validity of the issue

Role of the administrative judge in innovating and emphasizing the rules of administrative law.

The disputed. In the same regard, the principle of separating the authorities denies the construction role of the administrative judge, As the legislative authority is in charge of the enactment of laws as well as the executive authority in certain cases, the practical reality has proven the relativity of this principle, as the legal texts that the legislative authority, no matter how accurate and many, may be marred by the deficiency, so that they do not address or predict everything that occurs in society . (Badran , 2009, page 167) The French administrative judiciary- the French State Council in particular- is the primary source of administrative law and the pillar of its emergence, as it is credited with establishing many theories: such as the theory of administrative responsibility, administrative decision theory, administrative contract theory, public funds theory, and administrative disputes theory. In this regard, the jurist G. Vedel says: “Since the emergence of administrative law began, the State Council has set legal rules far from the texts, and it cannot be linked to them directly, the law of responsibility (general principles that govern it) and the administrative contracts law and others set by the administrative judge on Independence, it was not linked to any written source, because the administrative judge praises an independent law for the rule of administrative ties, excluded the number of provisions of the civil law, and he did not find in the administrative legislation scattered by what he helps in establishing the new construction and confronting existing disputes, as these legislations did not include general theoretical principles In the pattern of civil legalization, and in the face of this situation, the administrative judge found himself obliged to establish the required theory, by taking the establishment of the general principles on which he is based on solving the problems that are presented to him, as long as he creates these principles, he is the one who gives it the power of compulsion. Perhaps the general principles of the law are the best example of the fruit of the effort of administrative jurisprudence, as the administrative judiciary found itself obliged to place through its provisions, the general principles of administrative law, instead of the absent legalization (God, 1991, page 69), and many are those major principles that it adopted Administrative judicial jurisprudence, and the administrative judge sought from it as a basis for his diligence, these principles inspired by the spirit of partial administrative legislation, as inspired by the foundations of the general political organization and the conscience of society and its traditions, and gave the administrative judiciary to these general principles that were created by the value of the law, and then imposed on Administration and individuals respect (Wahhab, 2009, page 50). The Algerian administrative judiciary worked to establish the rules of administrative responsibility in its entirety, including administrative responsibility without error and administrative responsibility on the basis of error and gave the meaning of personal error, the elbow error and the difference between them, and also defined the basis of the responsibility of the hospital administration, police interests and other

responsibility applications, as it worked on Establishing the principles of the cancellation lawsuit, including protecting the rights of persons and their freedoms in the face of administrative arbitrariness, and determining the nature of the administrative decision that can be canceled, all of this was done in the absence of specific legal texts of the system of these cases, influenced by the position of French jurisprudence. An example of the decisions in which the administrative judge relied on the administrative jurisprudence is explicitly, we find the following: "As in any case, the prescribed judiciary has established the application of the general principle of the law, which is the inadmissibility of withdrawing the correct decision that the authority and the origin of the rights acquired" (Jamal, 2013, page, is not permissible 391). "It is stable that two compensation can be combined if the foundations of responsibility differ." (Jamal, 2013, page 144) The State Council also stated in another decision in the role of the direct administrative judiciary in bridging the legislative void by ensuring the principle of equality before the law, which came in its reasons for the following: "Whereas, and if the legal silence is considered inadvertently on the part of the legislator, it has brought about inequality between the litigants before the guarantees The legal established, and create an unfair legal status, the administrative judge must correct it by allowing the appellant to objected before the administrative room of the Judicial Council, and since this jurisdiction requires a stable diligence of the State Council, it cannot be attributed to the urgent judge as it is not permissible He may become an observer of the judiciary to which he belongs. " Based on the foregoing, this decision has explicitly recognized the role of the administrative judge in setting the rule that must be applied in the absence of the text, and this is a guarantee of the principle of equality of persons before the law. The special nature of the rules of administrative law- which has already been mentioned- and its flexibility made the administrative judiciary play a distinct role in creating the rules of administrative law in the absence of a legal text, as the administrative judge explicitly becomes "legislative" whose judgment is replaced by the law (Al-Hamoumi, 2017, page 05 He, hence the administrative law began- and rightly- that it is a judicial law. What is the solution if the legal text is found, but it is mysterious?

Paragraph 2: The mystery of the legislative text

The basic principle is that the legal text is clear, so that the judge does not search for what is meant in the text, but it happens and that the judge coincides with mysterious legal texts from what he must before applying them to remove mystery and wear them. The interpretation of legal texts is a jurisprudence act carried out by the administrative judge, as the latter deals with legal texts that can be vague, and it is obligated according to his mission to interpret the text and apply it to reality in a way that achieves the purpose of the legislator and its goal. The legislative authority, when exercising its powers in enacting the laws, discusses them widely and in general, and sets general and abstract rules that can sometimes

Role of the administrative judge in innovating and emphasizing the rules of administrative law.

be mysterious in its phrases and meaning. The legislator is trying to organize the largest possible amount of similar centers and converging in general and abstract texts, he cannot give specific concepts and definitions For all the general legal conditions, so that the judge's role is limited to mere direct conformity between the administrative decision and the legislative rule to determine with certainty the extent of its legitimacy or not. Accordingly, it can be said that the administrative judge has a construction role and his work does not fall under the term interpretation in the strict sense of the word, although it is possible to describe what he does as a constructive interpretation, especially in light of insufficient or lack of sufficient amount of written texts that can be used to clarify Discussing the text or determining its meaning. The administrative judge does not depend when it explains the mysterious legal text on the true intention of the legislator Or the supposed, where it is noticed in many cases that the ways to identify this intention are non-existent, and therefore it is not possible to talk about the interpretation in its normal and known meaning, because the meaning that the administrative judge gives to such mysterious texts, cannot be extracted from the text in itself or its surroundings, but rather The choice of this meaning depends on the introduction of a personal element on the text, which is the will of the judge itself, that is, the administrative judge is the one who gives this rule the meaning that he wants of his own free will and choice, which benefits the creation of the administrative judge with a specific meaning of the legal rule, and give it legal value and become this content Which the administrative judge gave her a binding base (Othman, 2009, page 229).

It is worth noting in this regard, in addition to the previous two cases- which have been studied above- that is, the legislative void that the administrative judge faces when performing his mission and the state of ambiguity, and the administrative judge may find himself before legislative texts present in the administrative law, but they are separate legal texts that do not collect In one law, this is another motive that pushes the administrative judge to the due care allowance in the absence of a unified legalization. As many provisions of the administrative law were included in independent legislation, and some of them in the basic law of the public job are included in the basic law of the judiciary, and some of them were mentioned in the constitution. The legalization is characterized by a basic advantage of facilitating the return to the legal rules and the application of the law and its implementation, which facilitates the work of the administrative judge in a large way, and makes it perform his profession to the fullest extent, as is the case in the civil law, as the codification of the general rules of the law and the stability and stability they give to the texts. Legislation facilitates the administrative judge to refer to its rulings. The scattering of the texts of the administrative law is a defect that disturbs it, as it sometimes leads to a conflict between its texts through which the administrative authority is trying to benefit from it, and therefore, in the

event of a dispute, the administrative judge's difficulty increases in the search for the legal text that governs this dispute, as it makes a double effort To explore texts that govern one topic (Hamoumi, 2017, page 10). Whatever the case, the administrative judge in both cases is obligated to separate the dispute. We are talking about the reasons and motives of the administrative judge's diligence to search for how he formulated the legal rule. That is the subject of the next second requirement.

Second Requirement: Formulating the administrative judge of the legal rule

The judge finds the same in front of a dispute that has no legal solution to the absence of the text on which it is based, and this is because the legislator does not practice his legislative function. In this case, the judge is required, but is obligated in an explicit way to establish the legal rule that governs the dispute presented to him, through his diligence (Shaqaf, 2015/2016, page 29). Here, the question arises: Where does the administrative judge draw the legal rule? In all cases, the administrative judge invented and creates the legal rule, as it may be the source from which the rule derives is present so that it falls within the statutory law (the first branch), and the judicial rule may be from the judge's diligence drawing it from the essence of the law (the second branch.)

Paragraph1 :Positive sources The administrative judge may draw the judicial base from the statutory sources

We mention, for example: covenants, rights advertisements, and constitutions. However, most of the judicial solutions that the administrative judge extracted from these sources were saturated with two basic principles, namely the principle of equality and the principle of freedom. For example: The French State Council in this field (Fouda, 2012, page 115) decided: freedom of movement, freedom of trade and industry, The principle of equality before the law, equality in front of the general burdens, equality before taxes, equality between the candidates in the competition. The source from which the administrative judge draws the judicial base is the legislation, and in this regard we distinguish between two methods followed by the administrative judge in the establishment of the judicial rule.

First: Establishing the judicial base by circular, starting with partial texts It is the method followed by the administrative judge in the establishment of the judicial rule and is to generalize one of the solutions or one of the partial rules decided by separate texts in special cases. The administrative judge sees the solution decided by these special texts just partial applications for a more general rule that exceeds those texts to apply outside it to cases Unlimited new. As if the judicial solution was hidden in the folds of legislative applications, so the administrative judge extracts it to live a new life independent of the texts and exceeds its framework. The French State Council used this method of establishing a "principle of respect for defense rights" based on the generalization of a solution included in partially scattered texts (Wahhab, 2009, page 84), whether it is legislative or regulations. Among these texts is the August 04 Law 1839 regarding

Role of the administrative judge in innovating and emphasizing the rules of administrative law.

the referral of the officers from the rank of general to the pension, as well as a decree on June 29, 1878 regarding the procedures of the investigation councils related to the officers who requests to confront the officer of what is assigned to him and allow him to submit his observations. There is also the important law issued on April 22, 1905, which guarantees a general text in the need to respect the rights of defense before taking any disciplinary penalty, for every employee or public user in any government administration. This general text was mentioned in Article 65 of that law, which required the empowerment of every employee or public user to view his service file and its reports and documents before any disciplinary procedure with the aim of providing his defense aspects. Based on these texts that apply the idea of defense rights regarding disciplinary sanctions against public officials, the State Council extracted a large -scale general legal principle that requires the need to respect the defense rights in every administrative decision that includes the idea of the penalty, or rather includes the idea of assessing personal behavior or A personal case as a result of a decision that affects a general employee as long as this decision includes a degree of risk or affects the material or moral interests of the stakeholder.

Second: The establishment of the judicial rule from a specific legal text or a set of texts This second method is approaching the creation of the judicial solution from the previous method, because in both cases the texts were primary material that helped the administrative judge to realize and extract the judicial solution. But there is a difference between the two methods. In the first style, the creation of the judicial solution may be achieved by adding the general general rule to a solution or partial judgment decided by texts scattered in this field or that. As for the second method, the creation of the judicial solution in it needs a greater intellectual effort in the interpretation of the text or texts in a creative way and to derive the judicial solution from its spirit and essence. . The French State Council used this particular method regarding the principles that the administrative judge reviewed from the provisions of the private law in order to be applied as general principles within the scope of public law "as the principle of non -retroactive decisions" (Al -Wahab, 2009, page 90), which the judge extracted from the spirit of the text of Article Two From the French Civil Code, which states that: "The law applies only to the future, and it cannot have a retroactive impact."

Paragraph 2 :The essence of the law as a source from which the administrative judge draws the judicial rule

The second branch: the essence of the law as a source from which the administrative judge draws the judicial rule The judicial solution that the administrative judge places from his absolute diligence may not be based on specific sources, but rather depends on its deduction on the general foundations on which the state and legal system of the state is based. In other words, it is derived from the essence of the law, which is the natural law or justice, because the first

article of the Algerian Civil Code is considered the rules of natural law, and the rules of justice from the sources of the law, because the natural law is the essence of the law. Here, the essence of the law and the source of law should not be confused. The natural law is the essence of the law that the legislator is inspired and is in the process of setting the legal rule, that is, the natural law, the essence of the law that the judge is inspired in general and is in the process of separating the disputes presented to it, which he did not find a text in the sources of the law to be applied to (Badran, 2009, page 196). The judicial solution here then, and if the administrative judge does not find a specific official source, it is based on the general legal conscience of the group, and the principles of natural law and the rules of justice and what the administrative judge deems appropriate to achieve a balance between the group's interests and individual interests. The study of the administrative judge's role in creating and consolidating the rules of administrative law does not stop at the point of searching for the curriculum followed by the administrative judge to create the legal rule, but rather extends to search for the most important legal repercussions resulting from the role of the administrative judge in establishing the rules of administrative law. That is the topic of the second following topic.

SECTIONII :The legal effects of the role of the administrative judge in establishing the rules of administrative law

The contribution of the administrative judge is no less important and wide than what the legislator himself offers, the more society develops and new needs and circumstances appear before, the more it becomes clear the importance of the prominent role that the judge plays, as the latter cannot stand idly hand towards these cases, or abstains About broadcasting on the pretext of the absence of the text because its duty is to achieve the right and resolve disputes between individuals. The administrative judge, with his diligence- as we have already mentioned- creates legal solutions. (Shaqaf, 2015/2016, page 75) Accordingly, if the administrative judge does not find the legal text that applies to the dispute presented to him, he must strive to find a legal solution to him. As all laws prevent the judge from claiming that he did not rule on the pretext of the absence of the text, and more than that, it criminalizes this claim and makes it rejecting the denial of justice and an exhibition of punishment. The evidence that he deduces by his diligence from the issue of the lawsuit and its circumstances when the case file is free of evidence and when it is impossible for the plaintiff - who is the individual often - to submit all documents in order to prove what he claims, we will be in front of the judicial evidence (the second requirement).

First Requirement: Initial administrative decision

The first requirement: the initial decision If the administrative judge does not find the legal text that applies to the dispute presented to it, it does not in all cases the legal basis that enables him to find a solution to that conflict. The judge may resort to searching for a solution through similar cases presented to other judges,

and the latter gives the ruling in the previous case. But in other cases, and in the absence of a legal text, the judge is obligated to separate the dispute explicitly by defining the rule that governs the dispute presented to him, because when he looks at the case, or in the developments of a previous case of it- its judicial ruling- and does not find it a text He will seek to find a solution to that. If the judge does not intend to adhere to this *ijtihad* in the future, then it is not possible to talk about his role in establishing the judicial rule, then it is merely an individual solution that he does not intend to adhere to in the future, but if the administrative judge intends to adhere to it in the future in similar cases presented to him, then we are facing an initial decision Knowing that the initial decision in Algeria is not limited to the judges of the State Council, as the first -class judge - an administrative court - can do so as well. The study of the initial decision requires the search for how to formulate the initial decision in the first branch, then search for its legal value in the second branch.

Paragraph1 :How to put an initial administrative decision

It occurs that the lawsuit presented to the judge be outside the legislator's expectations as a result of the development of administrative life, and therefore the judge's interest is focused on studying solutions to the case before him. Provided that the status of the administrative judge of the legal rule passes in many stages that we summarize as follows (the victim, 2011, page 07):

First: The stage of dual discovery Here only, the administrative judge notes that the dispute presented to him was not addressed by the official sources of the legal rule to discover the solution that blocks the deficit in the existing legal system, and this double discovery does not come until after a long thinking and the experience of the administrative judge and its awareness of all aspects The administrative judge discovered the danger that surrounds him as a result of his confrontation with such political actions and the confrontation of the government. This discovery was followed by finding a judicial solution by making it immune to the control of the judiciary.

Second: The experimentation stage In it, the administrative judge undertakes to express his intention to find a solution to the conflict that the legislator has not taken, and here the confidentiality that surrounded the work of the judge in the first stage, and the publication of the birth of the new rule that has not yet been called a "rule" is not called, but rather a "solution". At this stage, the judicial solution is presented and defined so that the administrative judge can take the opinion of the specialists in this solution, which would become a legal rule and achieve his safety, as the jurist "Bernard" says: "Providing a new direction or solution is always preceded by his experiment ".

Third: The integration stage After revealing the confidentiality and revealing the judicial rule, criticizing and commenting on it, especially the jurisprudence from it, exchanging comments and jurisprudential opinions, and the judge's awareness

of what the potential rule should be as a legal solution and treatment for the legislative emptiness, the judge takes the combination of the rule and introduces it within the framework of the existing legal system so that it becomes an element Among the elements of legitimacy, on the basis of which the legitimacy of the administration's actions is measured, which means that reaching this final stage is made through the administrative judge's suggestion of this legal solution in multiple provisions, and after a certain period comes a judgment that is explicitly and directly declared to its dependence on the new rule, and it is published and commented until it becomes An element of administrative legitimacy (Shaqaf, 2015/2016, page 113).

Paragraph 2 :

The second branch: the legal value of the initial decision Through the initial decision, the administrative judge has exceeded his traditional task assigned to him by the constitution, which is the separation of disputes to expand to include the establishment of most of the administrative legal rules, and in this regard he carried out a process similar to the legislation process. When making the initial decision, the administrative judge appears as a legislator who amends a new legal rule that was not present before, here the administrative judge exceeds his traditional role as a authority specialized in dismissing disputes, and his decision exceeds his traditional mission as a decisive factor in disputes and turns into a constructive source of legal rules (Ali, 1978), where the administrative judge becomes a clear phrase "legislative" whose ruling is resolved in the place of the law. As long as the administrative judge has exceeded his natural task by turning to a constructive source of legal rules, the initial decision as a judicial ruling will exceed the limits of the authority prescribed for the judicial rulings, to turn into a legal base of general dimensions and binding force that must be applied in the future to similar cases, and for the administrative judge when the initial decision is taken To adjust it and go out of it.

Accordingly, the initial decision has all the characteristics of the legal rule, it is social, meaning that it stems from the conditions of society, which is general and just because the initial decision will be applied in the future to unidentified persons, and it is binding even if the judge violates him in the future, because the legislator when he sets a written text it is It does not put it in its place to remain immortal for a long time (Fouda, 2012, page 120), the text is adjustable and the same for the initial decision is subject to modification, especially since the judicial rule in the administrative field is characterized by the feature of (the victim, 2011, page 05) flexibility, and that the administrative judge The rigid formulas that restrict it in the future are not preferred, and this is an intuitive matter as long as the administrative law is a non -codified law.

Second Requirement: Title

The second requirement: judicial evidence Judicial evidence is frequently used in the field of proof in administrative law, as it is based on a judicial law, and

therefore judicial evidence is the main and historical source of legal evidence in administrative law. The legislator decides the clues if he notes the stability of the administrative judiciary and its compulsion to take it (Shatnawi, 2008, page 669). Judicial clues are absorbed by definition in the first branch, then addressing their conditions in the second branch.

Paragraph1 : The first branch: the definition of judicial evidence Judicial evidence can be defined as: “those evidence that the judge deduces with his diligence and intelligence from the subject of the lawsuit and its circumstances” (Al -Shami, 2008, page 199).

There are those who know it as: “The evidence that leaves the matter of deduction to the administrative judge, which he deduces from the circumstances of the case and its circumstances” (Farah, 1982, page 207). The lawsuit and its context.

Paragraph 2 : The second branch: conditions of judicial evidence In the judicial context, conditions must be met, the most prominent of which are:

First: The first condition: the clarity of the context It is represented by the clarity of the context, and for the administrative judge to rely on it, it must be clear in a way that facilitates the litigants to determine its reality, and whoever has the administrative judge to rely on it to issue his ruling.

Second: The second condition: extracting the context It is represented in the safety of the presumption that the administrative judge concluded, and here the presumption of the context must be from the facts and events a reasonable result, that is, it actually leads to the result that it reaches in his rule. Third: The third condition: the existence of a relationship between the context and the incident The last condition is that there must be a link between the context and the proven truth, and the connection required here is a close and tight connection in order to accept the presumption as a means of proof (Tarawneh, 2011, page 55).

Conclusion:

One of the most prominent main results that we reached at the conclusion of this intervention is that the administrative judge separates the dispute presented to him in accordance with the existing legal texts, if the solution has been defined by the existing legal texts, he must be taken into account, and here his role does not exceed the pronouncement of the existing law in the privacy of the dispute presented on him. Then it is issued only an ordinary judgment, nothing more than merely applying the law, and therefore the legal rule that it is based on in such rulings does not increase at all to the judge himself, but rather back to its final source that the judge has resorted to and deduced from him. But if the solution that is applied to the dispute has been defined by mysterious or unclear texts, then the written law, whatever its entirety and clarity, often ransoms the differences regarding its meaning and purposes, the words in which the text of the text often do not express the true will of the legislator, so the administrative judge is doing

Kassar his effort, which benefits the correct analysis of the role of the administrative judge when he is separated in the disputes presented to him, and his diligence in the search for the legal rule that must be applied to it in order to issue his final ruling, which shows us the multiple administrative judge tasks dictated by the nature of his work as a judge, which seems to us Through the existence of a dispute before the administrative judge, and here the latter exercises a job other than separating the dispute, which is the function of diligence by setting a legal rule. And since the administrative judge has wider tasks from the ordinary judge, these tasks would help him to establish a fair rule that governs the conflict in his hands, especially since one of the parties to the conflict is a general authority, and the administrative judge goes beyond merely being an applied judge, so his task is clear and arrives To the point of establishing, creating and creating, it makes the legal rule if there is no legal text. Accordingly, the innovation of the administrative judge is a logical and intuitive matter imposed by the close relationship between the administrative law and the administrative judiciary, where the administrative law is the legal son of the administrative judiciary, and here only lies the importance of dealing with judicial jurisprudence in the administrative field and the main role played by the administrative judge and this is due to the lack of legalization Many provisions of administrative law. It is not permissible in any way to strip the administrative judge from his judicial authority, otherwise his work is disrupted and he will not be able to separate disputes, and the judicial jurisprudence in the field of administrative law is almost important than the role of legislation, as it gives the law a vital practical and determines its scope and dimensions, and from here comes The importance and necessity of the administrative judge's role in setting the necessary rules to resolve the administrative disputes presented to him. What can be extracted in conclusion, the jurisprudence of the administrative judge has worsened in producing administrative rules whose mission is to solve administrative disputes that have no legal text.

Bibliography List setting:

- Ibtisam Fatima Al -ZahraaShaqaf. (2015/2016). The role of the administrative judge in establishing the legal rule. Tlemcen: The Faculty of Law and Political Science, Abu Bakr Belkaid University.
- 2. Ahmed Medhat Ali. (1978). Exceptional circumstances. Egypt: The General Book Authority.
- 3. Tawfiq Hassan Farah. (1982). The rules of proof in commercial materials. Alexandria: University Culture Foundation.
- 4. Hussein Othman Muhammad Othman. (2009). Assets of administrative law. Egypt: University Publications House.
- 5. Khalifi Rashid- Sais Jamal. (2013). Algerian diligence in the administrative judiciary. Algeria: Click Publishing House.

Role of the administrative judge in innovating and emphasizing the rules of administrative law.

- 6. RaafatFouda. (2012). Sources of administrative legitimacy and its curves: a comparative study. Cairo: The Arab Renaissance House.
- 7. SnousawiSumaya. (2018/2019). Administrative jurisprudence. Algeria: Faculty of Law, University of Algeria.
- 8. The shelf of the shelf. (1976). The principle of legitimacy and controls for the general administration of the law. Egypt: Arab Renaissance House,.
- 9. Aida Al -Shami. (2008). The peculiarity of proof in the administrative litigation. Yemen: the new university office.
- 10. Abdul -Ghani Bassiouni Abdullah. (1991). Administrative Law. Egypt: the facility of knowledge.
- 11. Abdul Qadir Al -Sheikhly. (2014). Legal drafting. Amman, Jordan: House of Culture for Publishing and Distribution.
- 12. Ali KhattarShatnawi. (2008). Administrative Judicial Encyclopedia. Jordan: House of Culture for Publishing and Distribution.
- 13. Ali Filali. (2010). Introduction to law. Algeria: Mofm Publishing House.
- 14. Muhammad al -Mujni. (2011). The curricula of the administrative judge in creating the judicial base. Journal of Legal Sciences, Second Issue, p. 07.
- 15. Muhammad Refaat Abdel -Wahab. (2009). General theory of administrative law: the nature of administrative law. Egypt: The New University House.
- 16. Murad Badran,. (2009). The initial decision in the administrative field. The Algerian Journal of Legal, Economic and Political Sciences, 167.
- 17. Marwan Al -Hamoumi. (2017). The role of the administrative judge in producing the rules of administrative law. Studies and Research Magazine, 05.
- 18. Mustafa Abdel Aziz Al -Tarawneh. (2011). Judicial evidence to prove the illegitimacy of the contested decision: a comparative study. Jordan: House of Culture for Publishing and Distribution.
- 19. Worms. (2010). Administrative Law: Administrative Organization-Administrative Activity. Algeria: Dar Balqis.