



E-ISSN: 2706-8927
P-ISSN: 2706-8919
www.allstudyjournal.com
IJAAS 2020; 2(3): 416-419
Received: 05-06-2020
Accepted: 09-07-2020

Dr. Moamer Ibrahim Salem Almarimi
Department of General Law,
Collage of Law, Bani Walid
University, Libya

Mechanisms of independence of the administrative judiciary in Libya from the ordinary judiciary

Dr. Moamer Ibrahim Salem Almarimi

Abstract

The need for an organization of the administrative judiciary in Libya has become more urgent at this time than after the administrative judiciary has proved that it is no less than the ordinary judiciary in protecting the rights and freedoms of individuals against the arbitrariness of the administration, if not more powerful and strict in some cases.

Keywords: Libya, law, Administrative judiciary, establish, legal research

Introduction

The practical reality also proved that the rules of civil law did not adapt to the resolution of administrative disputes or the regulation of the functioning of public utilities, which led to the independence of administrative law. Which is separate from others, that it is not codified and at the beginning of its inception, and social relations and the links that govern them are not of one nature. It also occupies the practical status of the primary study in the present time, because it depends on the study of social reality, which hopes to establish the legal rules and content.

The pursuit of such independence was not aimed at granting special privileges to the administration governed by the law as individuals, but rather to monitor the exercise of those privileges. And because its rules are often unwritten and the judiciary is its primary source. It imposed restrictions on the administration that were unmatched in other laws through censorship. In canceling any decision contrary to the law and general principles, whatever the authority issued by it and whatever its kind. It is not merely an applied judiciary such as civil law. Rather, it is mostly a construction judiciary that creates the appropriate solutions to the legal ties that arise between the administration and individuals because of their different nature from the links of private law. The judge from his extrapolation to reality sets the basis for settling the dispute, based on general principles such as the principle of legality.

However, States differed in defining the system to be followed in their practice in two ways: some based on the unit of judicial organization, where there is one judicial body whose jurisdiction is inclusive of the various disputes without any distinction between the two types of lawsuits and is called the common system. And the United States and other countries associated with the establishment of the English system and its historical origin to the stability of the rule that "the King does not make mistakes," resulting in a general principle is the inability to direct cases against the administration directly, Because the administration is part of the state, and the state is mixed with the crown, and as long as the crown does not make mistakes, the state is not mistaken and some of them founded on the system of double justice, where there is a specialized administrative judiciary independent of the general judiciary, whose activity is often determined by all the conflicts to which the administration is a party. It was first established in France with the emergence of constitutional principles after the French Revolution in 1789, in accordance with the principle of separation of powers. The French Council of State, through its judgments and opinions, and the efforts of public jurists have also been able to lay down the principles of modern administrative law.

The limits of judicial control over the work of the administration in Libya

The situation has remained rigid since the promulgation of the Administrative Judgment Law No. 88 of 1971, which granted administrative courts in the courts of appeal the right to adjudicate in cases of cancellation without exception and jurisdiction by adjudicating

Corresponding Author:
Dr. Moamer Ibrahim Salem Almarimi
Department of General Law,
Collage of Law, Bani Walid
University, Libya

applications for compensation in conjunction with the civil judiciary, after transferring the jurisdiction from the Supreme Court, There are two degrees of litigation. Article 2 defines the competence of this department exclusively in matters related to public service in the entitlement to salaries, pensions, bonuses and appeals related to the functioning of the office such as appointment, promotion, decisions of the disciplinary authority and referral to retirement Or the dismissal or surrender without the disciplinary way and out of its jurisdiction in this aspect of the decisions of transfer, whether spatial or quantitative and decisions of scars and fixation, which is settled by the Supreme Court when the interpretation in this regard, saying that "stable in the jurisprudence and administrative justice that the decisions of the transfer of staff but the administrative authority shall be free to issue them because they have the right to assess their circumstances and to guide them according to what they deem to be considered in favor of the work and that the employee does not have the right to hold a job with the public interest. NH without the other "However, it distinguishes between spatial and qualitative transport. The administrative judiciary is considered not to be competent in the field of transportation because it is the authority of discretionary management when the interests of the public interest are required. The qualitative transfer is considered an appointment in the new job and leads to the jurisdiction of the administrative court. Staff confirmation decisions after the probationary period were considered an absolute right of the administration that has an assessment of the employee's eligibility for the job.

As for the disputes concerning administrative contracts, although the content of the text within the Administrative Justice Law suggests that it is a preventive jurisdiction to be held for the administrative judiciary, the Supreme Court settled in many of its provisions on the common jurisdiction between the civil and administrative courts. This interpretation is based on the general rule that the text of Article IV has been launched without limitation the decision "shall separate the Administrative Judicial Department in disputes concerning contracts of obligation and public works and supply," contrary to what is contained in the text of Article III in the case of administrative decisions by saying that the administrative justice department is solely competent to adjudicate them.

And the existence of the Department of Administrative Justice with the civil judiciary within a single court. It has been adhering to the old principles that the comparative judiciary has in many cases succeeded in creating general principles consistent with its competence in the control that extended to all administrative activity. And is no longer limited to the old principles that were starting from the limits of censorship, which is still in the orbit of the Supreme Court in Libya, in the case of the General Facility remained faithful to what the administrative judiciary said In the past who developed his views of his views and the conditions of evolution. Until he reached the adoption of the subject matter. The General Facility is defined as the activity directly undertaken by the State or other public persons, or committed to others, such as individuals or private persons. But under its supervision, monitoring and guidance in order to meet the needs of public benefit for the public good. Although these principles are compatible with the reality of the prevailing administrative situation of the state intervention in all aspects of administrative activity,

and has been adhering to the organic standard in this regard The dispute between the administrative contracts of the administrative justice department leads to the unity of the judiciary and the stability of the rules governing it. The civil judiciary looks at the balance of evidence without the administrative judiciary, which is linked to the legitimacy of the discretion and the general interest in assessing the element of error which is the basis for assessing the damage. In the absence of legislation that includes necessity and emergency circumstances, its control has been limited to the examination of emergency conditions by virtue of its composition without monitoring the activity of the administration in this regard And the existence of a situation that requires the administration's intervention and the purpose to which it is intended. While the Supreme Administrative Court of Egypt considers that "there are no decisions or administrative actions in the framework of legality and the rule of law which are based on absolute powers of any administrative authority, without the supervision of its legitimacy and not in violation of the Constitution or the law."

As well as the decision of the Supreme Constitutional Court that "judicial supervision is the effective practical expression of the protection of legality, which ensures that the public authorities comply with the rules of law, and ensure that these authorities return to the limits of legality if they exceed those limits."

The extent to which an independent administrative district should be used.

In fact, the majority of public jurists regard administrative law as a sure guarantee that prevents the administration from infringing upon the freedoms and rights of individuals and believes that the protection of individual freedoms and rights is the most important reason for the existence of administrative justice. Which alleviates the inequalities generated by these relations or disputes arising therefrom and achieves the following results:

1. Multiple degrees of litigation instead of the current system is limited to two degrees.
2. His jurisdiction in all cases related to management, which reduces the burden on the civil judiciary.
3. The administrative judiciary may set out from the principles what is compatible with the conduct of the administration and its organization, as it relates to the principle of legality, unlike the civil judiciary, which is interested in balancing the evidence.
4. Expanding the general structure of the judiciary, leading to easy litigation.
5. The presence of the specialized judge. The inevitable consequence is the speed of adjudication in the disputes before it.

They called for cancellation, for example, focused on the administrative decision issued by the management and may exceed the limits of his powers or abuse of use. It is a deterrent to him and the administration can not achieve any other penalty. When the management man sees that his decision has been canceled and its effects destroyed, his position will change, contrary to the fact that his decisions will continue to produce its effects, even if the victim decides to compensate for this decision.

The unified judicial system leads to the fact that all legal ties and relations in the State are subject to legal provisions and

rules as a general principle, which may be subject to certain exceptions. The administrative authority is subject to the same laws and principles that are subject to individuals in the state and on the other hand, the lack of interest in the study and development of administrative law as long as the point of separation is one and the responsibility of annexation and error. For example, the separation does not appear in this case.

The administrative judiciary in Libya and the causes of its inception. It accompanied the development of the state at the beginning, but after its direct intervention in all aspects of activity which led to the mixing of responsibility and the difficulty of determining them according to the standards of the special law. We see its existence and reorganization as independent. It is an important factor in achieving a balance between these unequal legal relations, because it is a middle system in its composition between the unified judiciary in its form and mixed in its jurisdiction. Is under the umbrella of the ordinary judiciary, which means, on the other hand, the lack of independence of opinion on the civil judiciary, It applies a special law governing its jurisdiction, which means that it is an independent administrative judiciary. However, its current position does not grant it independence to analyze the administrative responsibility of a special nature in Libya. Limiting its privileges and keeping them within the scope established by the legal principles of its sole jurisdiction by adjudicating administrative disputes. And has a role in drawing up the texts of the legislation through the fatwa, and its interpretation through censorship and the development of general principles of law and administrative responsibility, which can be defined in the following:

First: the lack of rules of civil law in understanding administrative responsibility. And identify them in many hypotheses. As it departs from the concept of the rules of civil law that rely on responsibility for the harmful act. While the jurists of public law see that administrative responsibility at present is based on the principle of equality in front of the public burdens in most cases, hence the adaptation to the reality of the situation and the assessment of error and damage. The principle of equality leads to the limitation of liability within the burden of the additional burden on the injured from the output of the management of the facility to satisfy the needs of citizens in contrast to the link between error and damage within the scope of liability. Second, administrative responsibility must be within the scope of the basic rules contained in constitutional legislation or as constitutional principles. In other words, administrative responsibility must be confined to the scope of the legislation governing the work of the administration, which can act outside the law in circumstances Which I found. Which leads to the restriction of the principle of legality and will not find the civil judiciary justification within the provisions of liability torturing this dimension will not effect if the evidence is a budget without distinction between the parties to the dispute.

Thirdly: The rules of tort liability almost became the legacy of a period ago. The intervention of the public authority and the expansion of its activity in all aspects of daily life led to the emergence of various kinds of actions that lead to the failure of the idea of error in the ranking of responsibility.

Fourthly, what happened in the rooting of the cases brought before the Libyan judiciary between what is required by reality and what is dictated by the legal principles within the provisions of the judiciary was justified only by the absence

of an independent administrative judiciary that can assess the conduct of the administration and give it the right appreciation to act and return it to the circle. The right to cancel their actions.

Fifth: The emergence of the administrative judiciary in France and then in Egypt was driven primarily by the need to achieve and strengthen the legitimacy of the work of the administrative authorities. Judicial control of the work of the administration by a specialized administrative district is the reason behind the introduction of the dual justice system, and did not stand by the administration unless its conduct is justified in accordance with the criterion of the public interest by verifying it effectively without considering the administration taking it as a reason to act.

Sixth: The administrative conduct does not deviate from describing it as administrative unless the administrative judiciary is separated, which means contrary to what is the case according to the current administrative system in Libya, which called for the abolition and called for the complete judiciary, which became part of all in the comparative judiciary. This is an achievement of the principle of multiple degrees of litigation to ensure good justice.

Reasons for the lack of the current organization of the administrative judiciary.

The judiciary in Libya was not decisive in adjudicating the cases brought before it during the period following the administrative change by defining the limits of the administration's work because of the lack of independence of the administrative judiciary, which can set these limits through its principles. The stages of change experienced by the administration in Libya have been preceded by similar stages in Egypt, and administrative justice departments have applied the Egyptian judiciary reached in many cases to reach appropriate solutions to the facts presented.

The civil judiciary followed the steps of the legislation without looking at the objectives to develop solutions appropriate to the texts that govern individual relations and apply them in the case of the relationship of the state to individuals, thus stopping unable to put an analysis of what is happening within the framework of adjudication even after the state declared in the legislation that there The State's vision was more appropriate, but it was assigned that jurisdiction to a court established to examine the deviation and was unable to set it specific, and the jurisdiction was returned to the ordinary judiciary without a corresponding legal adaptation

Its nature and whether it is a physical attack or a legitimate administrative activity even if it contravenes the general rules based on acts of sovereignty. The reasons for the deficiency may be identified within two reasons:

Reasons for legislation

From the very beginning, the State has come out of the idea that the principle of legality does not sacrifice the public interest and has used the means of legislation to reach its stated objectives in the constitutional declaration. The balance of appreciation of the facts which the law sees as principles that cannot be overcome by placing new foundations on the administrative, economic and social system has been reversed by laws that have changed all the concepts that existed in the past, although they revealed their will to use the rules of administrative law in all their activities. Change is a criminal offense for violating its

content. In addition to the general rule established by the Criminal Code, the law has not been lacking, and it has been validated to use the privilege of direct execution as a form of automatic access to the law to meet its legal, legitimate and local conditions. Either execution as envisaged by the administration or falling into the circle of criminal offense. Thus, the principle of legitimacy is no longer conceived under the liberal individual system, which is in the face of the new revolutionary impulse. The public interest is in any case overriding the interest of the individual. This has put pressure on the necessity of consistency of the principles of justice, The application of revolutionary statements in the form of material work to reformulate the private sector and production units in a way to crawl its departments, having applied the principle to the administration, and turned the authority to issue the administrative decision from the direct president to a popular committee, and became the nature of the collective mind instead of individual character, Thus, administrative responsibility became another description. All of this in our estimation has had its effects in the legalization of the principles of the judicial, which made the state go to another direction when it was found that the material implementation of these ideasIt may have fallen under the law of Law No. 7 of 1985 on May 15, 1985, issued by the General People's Congress to stop the consideration of cases brought about by the application of revolutionary statements and the suspension of the implementation of the judgments issued in these cases. From the scope of administrative work to the circle of acts of sovereignty. The judiciary did not wish to clash with the administration by virtue of its composition and the distinction between the acts of sovereignty and compensation. Even if the administration sees a suspension of execution, this does not mean expropriation of the right to litigation.

The position of the Administrative Court in this manner led to the intervention of the legislator who established the People's Court, which was subject to the Supreme Court's control for a period of time, and then its law was amended to stop this control and make it independent until it was abolished and returned to ordinary jurisdiction under Law No. 7 of 2005. That the administrative judiciary had been built independently, as the People's Court had found.

Operational reasons

The administrative judiciary is a construction district. The civil judiciary is an applied judiciary and a difference between the two in the opinion of the difference and the boundaries of difference, and its presence within the Chamber of the Court of Appeal is a matter of suitability to the court that may change the status of the judge from one district to another in every judicial year, Judging that the judge must remain within the administrative department, and that the personal composition of the judgeIs a kind of specialization that leads to creativity in the field of administrative action is obliged to create principles where there is no administrative law contrary to the case in the field of civil lawsuit, which depends on the means of proof is supported by the written law.

On the other hand, administrative disputes as a whole have their own independent jurisdiction, as in the case of the Egyptian Council of State Law,

The general law in its entirety is in the care of its natural judge, who may create for the administration the reasons for

using it by controlling the works presented to avoid their mistakes. The organization of the administrative judiciary leads to the existence of the Fatwa section, which is concerned with expressing legal opinion on matters of interest to the administration, the legislation section that deals with drafting and reviewing laws, and the presence of a general assembly for the Legislation sections.

Conclusion

We call on the Libyan legislator to resort to the organization of the administrative judiciary independent of what the Egyptian legislator did to protect the public freedoms and achieve justice by doing the follow.

Issuing a law that regulates the administrative judiciary so as to abolish the previous law and provide the administrative judiciary with the ordinary judiciary and the establishment of an independent council of the state that deals with adjudicating administrative disputes away from the civil judiciary.

References

1. Dr. Sabih Bashir ecumenical - the administrative judiciary - Benghazi University Press, 1974.
2. Dr. Mahmoud Mohamed Hafez-the administrative judiciary in Egypt and Comparative Law - Arab renaissance house, 1993, 14.
3. Dr. Mazen Lillo Radi-Summary of the administrative judiciary Libyan - Dar University Press, 2003, 7.
4. Dr. Adel Syed Fahim-the executive power of the administrative decision-Casablanca National Printing and Publishing - without years edition-103p.
5. Dr. Mahmoud Mohamed Hafez - Ibid - p. 14