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## Administrative complaint and its legal effects in Iraqi legislation: A comparative study with Egyptian law

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### Abstract

Administrative grievance is a request made by the concerned party to the decision-maker or higher authorities to withdraw a flawed decision due to legal defects, instead of filing a cancellation lawsuit. This grievance can be optional or mandatory, and the deadline is paused until the administration responds by rejecting it or sixty days pass from the date of submission, whichever is sooner.

Administrative grievance involves appealing to the administrative body that issued the decision or its superior authority to lift the decision that affected the individual. It is distinct from judicial grievance and has differences in terms of the authority to which it is submitted, the basis of the appeal, procedures, deadlines, and the authority's power to decide on the grievance. The goal of administrative grievance is to cancel the administrative decision and allow the concerned parties to present their reasons, enabling the administration to reconsider its decision.

Despite its importance, administrative grievance has not received significant attention from researchers, leading to individuals losing their rights due to a lack of awareness of deadlines and procedures. The Iraqi legislator does not require the concerned party to submit a grievance within a specific period before challenging the decision in administrative court, unlike the Egyptian legislator, who mandates grievance in certain cases related to civil service matters.

Therefore, it is essential for the aggrieved party to submit the grievance immediately without waiting for the specified deadline. The Iraqi legislator should extend the period for submitting administrative grievances and the period for filing lawsuits from thirty to sixty days, similar to Egyptian law. Additionally, courts should ensure the implementation of judgments regarding administrative grievances to restore rights to employees.

**Keywords:** Legal effects, Iraqi legislation, Egyptian law

### Introduction

Praise be to Allah, who taught by the pen, and taught man that which he knew not. Blessings and peace be upon our Prophet Muhammad (peace be upon him) and his family and companions. Administrative complaint is considered one of the most important topics in administrative law, whether in Iraq or in Egypt. Administrative complaint refers to the recourse of the concerned party to the administrative or presidential authority that issued the decision with the aim of canceling, amending, or withdrawing the decision within the legally prescribed deadlines. This leads to reducing and resolving disputes in their initial stages without resorting to the judiciary. Rather, it is one of the means through which administrative justice can be achieved. Administrative complaint is optional, so the concerned party has absolute freedom to resort to it or not. They can lodge a complaint with the competent administrative authority before filing a lawsuit.

The Iraqi legislator did not require the complainant to file a complaint within a specific period before challenging the validity of the decision before the administrative judiciary. Instead, they could choose the appropriate time to submit the complaint after being notified or informed of the administrative decision. The Iraqi legislator also did not make administrative appeal mandatory regarding lawsuits related to civil service rights before the General Discipline Council affiliated with the administrative judiciary. In contrast, the Egyptian legislator made administrative appeal mandatory in some cases specified by law, all of which are related to civil service affairs.

### Importance of the study

Administrative complaint holds great significance, despite the precision of the subject and the seriousness of the consequences resulting from not adhering to the prescribed deadlines. However, this topic has not received sufficient attention from researchers.

Many individuals have lost their rights and interests due to a lack of knowledge about the deadlines or procedures regarding administrative complaints. There is a mandatory complaint that results from neglecting it, leading to the dismissal of the lawsuit. Its importance becomes apparent in the modern era with the expansion of administrative activities.

### Study objectives

The study aims to clarify administrative complaints under Iraqi and Egyptian law, outlining their conditions, deadlines for filing complaints, deadlines for filing lawsuits before the administrative judiciary, and identifying the competent authority to hear the lawsuit.

### Research challenges

1. Limited availability of precise references that address the topic of administrative complaints, as most references focus on administrative judiciary.
2. The development of economic and social life, accompanied by administrative interventions and the emergence of transactions involving administrative overreach, necessitating complaints.

### Study methodology

The researcher utilized a comparative approach to highlight the similarities and differences between Iraqi and Egyptian law regarding administrative complaints.

### Research plan

The research consists of two sections. The first section discusses the definition of administrative grievance, its purpose, types (optional and mandatory), form, while the second section covers general conditions for each type of grievance, conditions related to deadlines, and procedural requirements for grievances. Finally, there will be a review of the legal implications of administrative grievances, followed by conclusions and recommendations. Here's the breakdown:

#### Section 1: Nature and Conditions of Administrative Grievances

1. Definition of administrative grievance and its purpose.
2. Types of administrative grievances.

#### Section 2: Conditions and Legal Implications of Administrative Grievances

1. Conditions for filing a grievance.
2. Legal implications of administrative grievances.

Conclusion (Findings and Recommendations)  
List of Sources and References.

### Section one: Nature and Conditions of Administrative Grievances

Administrative grievance is a request or complaint submitted by an involved party to the administrative authority that issued the administrative decision, with the aim of reconsidering or revoking it, especially if the administrative decision is unjust, unlawful, or harms the interests of the concerned party.

#### This section includes two requisites

1. Definition of Administrative Grievance and its Purpose:
2. Types of Administrative Grievances:

### The First Requisite: Definition of Administrative Grievance and its Purpose

#### First Subsection: Definition of Administrative Grievance

Administrative grievance is the request made by an involved party to the decision-maker or the presidential authorities to withdraw a flawed decision due to legal defects, instead of filing a cancellation lawsuit. This grievance may be optional or mandatory, and the deadline remains suspended until the administrative body responds to the grievance with either rejection or until sixty days pass from its submission, whichever comes first.

Administrative grievance is also defined as seeking recourse to the administrative entity that issued the decision or to the presidential authority of the issuing entity to request the withdrawal of the decision subject to grievance. This type of grievance is referred to as administrative grievance to distinguish it from the grievance submitted to the judiciary, known as judicial grievance. There are differences between these two types in terms of the authority to which the grievance is submitted, the basis of appeal, procedures, forms, deadlines, or the authority of the entity to which the grievance is submitted in adjudicating it. Finally, there is a distinction in terms of the validity of the decision issued regarding the grievance and the procedure for appealing it.

#### Second Subsection: The Purpose of Administrative Grievance

Complaint serves as an administrative avenue to resolve many disputes without involving the judiciary, thus saving considerable amounts of money, effort, and time that litigation procedures entail. Resultantly, the administrative entity that issued the decision either withdraws or amends it due to its inadequacy, a process that doesn't necessitate resorting to the judiciary, whose role is limited to the annulment and legality scrutiny. Complaint represents comprehensive and ongoing oversight in its content and application, facilitated by administrative superiors monitoring their subordinates' actions. It's not merely about examining the legality of the action but also about its administrative suitability.

The purpose of administrative complaint is to annul the administration's decision, enabling concerned parties to present their grievances and enlightening the administration about these grievances simultaneously. This is the primary objective of the complaint, whether it's optional or mandatory, to allow for a reconsideration of the decision based on its merits, thus rectifying any erroneous decisions. Finally, the rationale behind administrative complaint was elucidated in the explanatory memorandum of Law No. 165 of 1955 concerning the State Council, which introduced mandatory administrative complaints for the first time. It aims to reduce the influx of cases as much as possible and achieve administrative justice more conveniently by resolving disputes at their early stages. If the administration acknowledges the validity of the complaint, but fails to address it within the specified period, the complainant has the right to resort to litigation.

#### The second requirement

##### Types of administrative complaint

Types of administrative complaints are divided into several categories, based on the authority to which they are submitted. These include complaints submitted to administrative authorities, such as complaints to the

president, complaints to special administrative committees, and complaints to ombudsmen. In terms of their necessity, complaints are divided into discretionary complaints and mandatory complaints. We will discuss these further as follows:

### **The first category**

#### **Types of administrative complaints based on the authority to which they are submitted**

##### **1. Provincial Complaint**

This is an administrative complaint filed by the aggrieved party in the form of a petition, complaint, or objection to the authority that issued the decision. The aggrieved party approaches the decision-maker requesting a review of their action and the removal of any injustice caused by it. This aims to reconsider the decision by withdrawing, canceling, amending, or replacing it with another, based on the authority's powers to review such decisions.

##### **2. Presidential Complaint**

This is a request submitted directly to the presidential authority by the aggrieved party, demanding a review of the flawed decision. The request may seek the presidential authority's power to withdraw, cancel, or amend the decision.

The Iraqi legislator has adopted the provincial complaint before the same authority that issued the disciplinary penalty decision as a general rule. Additionally, recourse to the presidential authority of the administration and filing a complaint before it is possible. The minister is considered the highest administrative authority within their ministry. In a decision of the General Discipline Council in this regard, it was stated that "... The objection was submitted directly to the council on 12/10/1996, without appealing the penalty before the administrative authority that issued it and waiting for its decision. It is a prerequisite before submitting the appeal to the council that the complaint be filed and its duration be observed according to the law. Since this formality was not observed in the appeal, it was decided to reject it by this authority.

##### **3. Complaint to Special Administrative Committees**

Complaints may be submitted to specialized administrative committees tasked with reviewing complaints about decisions issued by specific administrative entities. For example, the committee established according to Article / of the Iraqi Law No. 24 of 2005 concerning the political dismissed individuals, to review appeals submitted by the mentioned dismissed individuals in Article 1 of this law against the decisions of the committee formed according to Article / 7 of it. Similarly, there is the Committee for Appeals against the decisions of the Contractors Classification Committee established under the Instructions for the Classification of Iraqi Contractors No. 1 of 2008. These committees usually consist of administrative staff of a certain level and category selected based on their ability and experience to adjudicate on the complaints submitted to them. This ensures individuals some guarantees that are not available through other means. Submitting a complaint to this type of specialized authority may achieve the purpose of the complaint requirement more effectively than other types, as these committees are formed according to specific criteria and expertise in the field they are adjudicating complaints

in, thus reducing the likelihood of the administrative authority sticking to its contested decision.

It should be noted that this type of complaint must be legislatively regulated, unlike provincial and presidential complaints, which are based on a general rule in complaints. Both are mandated by the law, but the law in this type of complaint specifies its procedures and mechanisms through specific provisions.

##### **4. Supervisory Complaint**

A complaint can be submitted to the supervisory authority of the administrative entity issuing the decision. This type of complaint is linked to the system of administrative decentralization, where the freedom to make decisions by decentralized bodies is the rule, and supervision over these decisions is the exception. Therefore, resorting to supervisory complaints cannot be done without a legal provision defining the supervisory authority, its methods of operation, and when this type of complaint is legally established, individuals' right to resort to it becomes a general rule. The designated supervisory authority specified by law cannot reject complaints submitted to it by individuals once this type of complaint is legally established.

After discussing the types of administrative complaints based on the authority to which they are submitted, it is evident that the Iraqi legislator did not specify any particular type of administrative complaint. Instead, it sufficed to state that complaints should be made to the competent administrative authority. Similarly, the legislation in the Kurdistan Region also stated that complainants should address the competent administrative authority.

Referring to comparative laws, we find that the Egyptian legislator granted complainants the choice between provincial and presidential complaints. This is evident in the provision stating that "... Before appealing to the administrative body that issued the decision or to the presidential bodies..." Thus, both Iraq and Kurdistan left it to jurisprudence and administrative judiciary to determine the competent administrative authority intended by the legislator. It can be interpreted that the competent administrative authority is the one issuing the decision, based on its exclusive jurisdiction to issue administrative decisions. This is the approach adopted by the administrative judiciary in Iraq, as stated in a decision: "...it is not permissible to direct the complaint to the Minister of Interior, in addition to his function for the purpose of revoking this order, but it should be directed to the one who issued this order.

### **The second category**

#### **Administrative complaints based on their necessity**

##### **First: Discretionary Complaint (Optional)**

Discretionary complaint refers to granting individuals the right to either address the administration to complain about its decision or directly resort to the judiciary to challenge the administrative decision. This means that a person's recourse to the administration does not prevent them from initiating a lawsuit without waiting for the outcome of their complaint by the administration.

The Iraqi legislator did not adopt discretionary complaints in the Law of Discipline of State Employees and the Public Sector No. (14) of 1991. However, the Egyptian judiciary has consistently upheld the necessity of lodging a complaint

as a fundamental requirement for accepting judicial appeals. This is evident in Article (12) of the Egyptian State Council Law No. (47) of 1972, which lists a set of administrative decisions that cannot be annulled unless a complaint has been filed beforehand. Thus, lodging a complaint becomes mandatory as a condition for accepting judicial appeals against such decisions.

It's worth noting that Article (84) of the Egyptian Public Sector Employees Law No. (48) of 1978 does not require filing a complaint with the administration. Therefore, discretionary complaint is adopted, allowing individuals to resort to judicial appeals even before the administration renders its decision within the sixty-day period, with no adverse effects as it is not a condition for accepting appeals against disciplinary penalty decisions.

The second paragraph of Article No. 24 of the Egyptian State Council Law (47) of 1972 stipulates that the time limit for lodging a complaint is interrupted by filing a complaint with the administrative authority that issued the decision or with the presidential bodies. The complaint must be adjudicated within sixty days from the date of submission, and if the decision is rejected, the rejection must be justified. Failure of the competent authorities to respond within sixty days from the submission of the complaint is considered a rejection.

There is no specific format required for a discretionary complaint; it is sufficient to prove it by obtaining the signature of the competent authority on the documents, indicating that the claimant has submitted a complaint to them on a specific date and subject. A complaint can be filed through a regular petition or notice served by a process server.

The deadline for filing a lawsuit challenging the administrative decision related to the complaint is sixty days from the expiration of the mentioned sixty-day period.

#### **Upon reviewing this article, its clauses, and its content, we can conclude the following**

1. Discretionary complaint is considered the general principle, as the decision to lodge a complaint is left to the discretion of the concerned parties without coercion or compulsion. However, the legislator may deem it necessary in certain circumstances to make lodging a complaint mandatory as an exception. In such cases, filing a complaint becomes a prerequisite before initiating legal action, thereby becoming an additional condition for accepting the lawsuit. The French State Council has affirmed this general principle in multiple rulings, making administrative complaints dependent on the interests of the parties involved. In one of its rulings, it stated, "Every administrative decision may be the subject of a legal action, administrative provincial complaint, or presidential complaint within the specified period. This administrative complaint interrupts the deadline for challenging the decision to exceed authority.

The administrative judiciary has settled on this principle, and in a ruling, the Supreme Administrative Court ruled that "resorting to the judiciary is optional - there is no obligation on citizens to resort to the judiciary - which does not prevent recourse to the competent authority through lodging a complaint. This is because lodging a complaint is the norm in the attempt by the concerned parties to access their rights and remedy injustices. It is the responsibility of the administration to grant rights to their owners without subjecting them to the hassle of litigation and its procedures.

The legislator emphasizes its keenness to alleviate the burden on individuals and spare them the burdens of litigation. In some cases, filing a cancellation lawsuit is conditional upon prior recourse to complaint, as the interested party may achieve their requests without resorting to litigation.

2. The concerned party may choose not to lodge a complaint against the decision and instead resort to the competent judiciary with a cancellation lawsuit against this decision.

3. Based on the foregoing, it is permissible for the concerned party to pursue both avenues simultaneously. After filing the complaint within the designated period, they may initiate a cancellation lawsuit within the original timeframe of their complaint submission, without waiting for a decision on the complaint or the expiration of the sixty-day period from the date of the complaint's submission to the administrative authority. This was ruled by the Administrative Judiciary, stating that "the pursuit of one avenue by the concerned party does not preclude their recourse to the other avenue, provided that the legal appeal deadlines are observed."

Here, the situation falls under one of the following assumptions: either the administrative authority rejects the complaint, which does not harm the concerned party because the cancellation lawsuit has already been filed and awaits adjudication within the designated timeframe, or the administration fully satisfies the demand, rendering the lawsuit futile. In this case, the judge dismisses it because the lawsuit has become irrelevant and the concerned party no longer has an interest in pursuing it. As we know, the requirement of interest must be met when filing a lawsuit and until a decision is made on it.

4. From point (3), we deduce the fundamental difference between optional and obligatory mandatory appeals. In addition to the element of compulsion in mandatory appeals, it is not permissible to file a lawsuit before initiating it, as it precedes the initiation of a cancellation lawsuit. In contrast, optional appeals can precede or follow the filing of a lawsuit, and their acceptance is possible if filed within the designated timeframe.

#### **Secondly: Mandatory Administrative Appeal**

In this case, the legislator imposes on the party concerned the obligation to appeal against the administrative decision before the authority that issued it before challenging it before the judiciary. Thus, mandatory administrative appeal becomes a condition for accepting the annulment lawsuit, and it is limited to employees. It does not apply to individuals in general. The Iraqi legislator has made all appeals mandatory in order to file an annulment lawsuit. This is stipulated in paragraph (w) of Article 7 as a mandatory condition before filing an appeal to the Administrative Court. The administrative authority must decide on the appeal within 30 days from the date of registration of the appeal with it. If the appeal is not decided upon or rejected within the specified period, the court registers the lawsuit, and the appellant must file the lawsuit with the court within 60 days from the expiration of the 30-day period specified in paragraph (w) of Article 7 of Iraqi State Council Law No. 65 of 1979, otherwise, the right to appeal is forfeited. The Egyptian legislator introduced mandatory appeals under Egyptian State Council Law No. 165 of 1955, and subsequent laws have adopted it, including Law No. 47 of 1972. The Supreme Administrative Court

states regarding mandatory appeals that it is generally accepted that an annulment lawsuit should challenge the final administrative decision directly, and the norm is to raise it immediately, even if it is not preceded by an appeal, whether to the authority that issued the decision, its presidential authority, or any other authority. However, there are cases where the legislator - whether in the State Council Law or otherwise - required appealing the decision before filing a lawsuit to annul it. The failure to comply with this procedure results in the non-acceptance of the lawsuit, and the text must clearly and unequivocally indicate the obligation to appeal against the decision before challenging it with an annulment lawsuit, as it represents a deviation from the general principle. One of the applications of this provision is Article 12 of State Council Law No. 47 of 1972, which does not accept requests (lawsuits) submitted directly by appealing against final administrative decisions specified by the administrative body that issued the decision or to the presidential bodies and waiting for the scheduled dates for decision on this appeal. Decision No. 27 of 1980 stipulates that appeals against enlistment decisions should not be submitted to a committee composed of senior military officers and a member of the State Council with the rank of deputy at least, and lawsuits to annul the aforementioned decisions cannot be filed before appealing against them to the relevant authority.

Referring to mandatory administrative appeal reduces confrontation between individuals and the administration. In case the administration accepts the appeal, it demonstrates its respect for the law and its commitment to executing judgments, even if it results in withdrawing the decision it issued. This enhances the administration's reputation among individuals, fostering cooperation between the administration and individuals, ultimately serving the public interest. Moreover, the administration's acceptance of the appeal spares it from bearing financial burdens in the event that the decision is judicially annulled, as it would then be obligated to compensate those harmed by the decision. Additionally, it avoids the embarrassment of being described as acting illegitimately.

In compliance with the ruling stated in the end of paragraph (b) of Article 12, the President of the Egyptian State Council issued Decision No. 72 of 1973 regarding the procedures for appeal and the method of adjudication, which includes the following provisions:

**Article 1:** Appeals against administrative decisions specified in clauses three, four, and nine of Article 10 of Law No. 47 of 1972 referred to shall be made to the administrative authority that issued the decision or to the presidential bodies by a request submitted to them or sent to them by a letter with a proof of receipt.

**Article 2:** The appeal must include the following information:

- a) The name of the appellant, their position, and address.
- b) The date of issuance of the decision being appealed against, and the date of its publication in the Official Gazette, Egyptian Gazette, or in the official publication, or the date of the appellant's announcement.
- c) The subject of the decision being appealed against, the grounds on which the appeal is based, and the documents that the appellant deems necessary to attach to the appeal.

As for employees' appeals, mandatory recourse is limited to specific decisions affecting their employment status. Mandatory recourse is an exception to the general principle of the freedom to appeal, and exceptions are not to be expanded or interpreted broadly. Apart from these decisions, employees retain the freedom to appeal against decisions subject to challenge or to initiate direct legal action. These decisions include:

1. Final decisions regarding appointments.
2. Final decisions regarding promotions.
3. Final decisions regarding disciplinary actions.
4. Final decisions regarding retirement, recall, or termination without disciplinary action. This means that decisions regarding disciplinary dismissal are not subject to mandatory recourse, as well as decisions related to resignation.
5. Final decisions of disciplinary authorities.

However, the Supreme Administrative Court has departed from this interpretation by overturning the judgment of the Administrative Court, which ruled to accept the lawsuit formally filed within the deadline against the administration's decision based on the implicit resignation concept, even though these decisions were not expressly included in the decisions enumerated in the fourth paragraph of the aforementioned Article 10.

Mandatory recourse entails the suspension of this deadline for another period, which may extend to sixty days, if the administration does not respond to the appellant, or for a shorter period if the administration explicitly rejects the appeal. In both cases, this results in the interruption of the deadline for filing the annulment lawsuit. The aggrieved party must file the lawsuit within sixty new days starting from the date of the administration's explicit or implicit rejection of the appeal.

Based on the foregoing, the failure to submit an appeal request within the prescribed deadline results in the rejection of the annulment lawsuit. However, whether the administration accepts or rejects the appeal, despite the expiration of the deadline for filing the annulment lawsuit, has no effect on whether the lawsuit is accepted or rejected, as the court rules on the inadmissibility of the lawsuit filed after the deadline.

### Form of Appeal

The Administrative Appeal does not have a specific and obligatory form in all cases. The appeal can be made through a petition submitted by the concerned party, or it can be initiated by a warning issued by an official clarifying its purpose clearly, and requesting the correction of the legal status resulting from the decision appealed against." However, if a specific law is enacted to regulate the procedures for appealing against a specific administrative decision, and consequences result from this system, compliance with this specific form is mandatory. There are certain details that every appeal must include in order to be considered valid, as ruled by the Egyptian Supreme Administrative Court: "Any request that does not entail an appeal in its restricted sense, which an employee submits to the administrative authority seeking exemption from signing the medical report, for example, does not constitute a mandatory appeal as long as it does not reflect its meaning or include its elements.

As for the Iraqi legislator, the Law on the Discipline of State Employees and the Public Sector, Law No. 14 of 1991 as amended, does not specify the form of administrative appeal. This indicates the absence of a specific formal requirement for appeals in Iraq, despite the mandatory nature of the appeal and its requirement for the possibility of challenging a decision of disciplinary punishment before the General Disciplinary Council and the acceptance of judicial appeal. Therefore, the appeal can be submitted verbally, in writing, by registered mail, or by telegram.

**In order for the appeal to achieve its intended purpose, it must include the following aspects**

1. The name of the appellant, their position, official address, and workplace details (department, section, division, unit).
2. The name of the decision or the person against whom the appeal is made.
3. The date of issuance of the decision being appealed and the date of notification.
4. The subject of the decision being appealed, the reasons for the appeal, and its legal justifications (to be attached to the appeal).
5. The desired outcome or requests of the appellant through the appeal.

The appellant is not required to base their appeal on the same grounds as those presented in the lawsuit for annulment. It is sufficient for them to rely on considerations of justice or suitability, and in this case, it will have an effect. The appeal must include the date and number of the decision being appealed, but it is sufficient for the appellant to refer to the decision to clarify its outlines, and the appellant's knowledge of its contents in a comprehensive and certain manner can affect the deadline for filing an appeal against it. The Supreme Administrative Court has ruled that a telegram containing the decision being appealed and the objections raised against it may have included all the elements of the mandatory appeal.

## Chapter Two

### Conditions and Legal Effects Related to Administrative Appeal

#### Firstly: General Conditions for Both Types of Appeals:

Administrative appeals have several general conditions, whether they are optional or mandatory, and these conditions are common and apply to both types of appeals without distinction between them:

1. The appeal must be submitted in the name of the specific appellant.
2. The subject of the administrative appeal must be an existing administrative decision at the time of the appeal.
3. The appeal must be submitted to the competent administrative authority.
4. The appeal must be subsequent to the final administrative decision.
5. The initial appeal is considered in calculating the time limit.
6. The appeal must be clear and specific.

#### Secondly: Conditions Related to the Time Limit

The Iraqi legislator stipulates that the appeal must be lodged with the competent administrative authority within thirty

(30) days from the date of being notified of the order or administrative decision being appealed, or from the date it is deemed notified, before filing an appeal with the Administrative Court. The administrative authority must decide on the appeal within thirty (30) days from the date of registering the appeal with them. In Egypt, the appeal must be decided upon within sixty (60) days from the date of publication of the decision in the Official Gazette, in bulletins issued by public authorities, or through a declaration by the concerned party. This period starts from the day the party concerned becomes aware of the incident they wish to challenge. The burden of proof lies with the administration to demonstrate this awareness through evidence or circumstances indicating it, without distinguishing between specific means of proof.

The concerned party is not legally obliged to appeal against the administrative decision they intend to challenge in court. They can file the lawsuit within sixty days from the date of announcement, publication, or actual knowledge, except in cases of mandatory appeal.

As for the Iraqi legislator, there is nothing preventing recourse to the presidential authority of the administration as a means to appeal disciplinary decisions. For an appeal to be valid before the General Discipline Council, the employee must appeal within a maximum period of thirty (30) days from the date of being notified of the disciplinary decision. The administration must decide on the employee's appeal within a maximum period of thirty (30) days. Otherwise, the appeal is considered rejected if the administration does not respond to the employee within the specified period. In that case, the employee is allowed to file the appeal before the judiciary.

In Egypt, it has been established by the rulings of the administrative judiciary that the first appeal is the one relied upon for determining the time limit and its interruption. The judiciary has ruled that the succession or repetition of appeals by the claimant does not contribute to the determination of the annulment lawsuit. The Supreme Court has ruled as follows:

The decision issued by the General Discipline Council stated: "... It was found that the objector acknowledged in the lawsuit petition that he was notified of the penalty but did not submit the appeal when he filed the lawsuit numbered (41/1996) on (8/10/1996), which ended with a response on (15/12/1996), and that he lodged a new appeal on (22/12/1996) according to his admission in the lawsuit petition, which means his appeal was outside the legal timeframe. He also filed the lawsuit again on (18/3/1997), which also falls outside the legal timeframe. Since the objector forfeited his right to appeal and challenge due to exceeding the legal timeframe stipulated by law, the lawsuit was rejected in form..."

According to Egyptian legislation, if sixty days elapse after submitting the appeal without a response from the competent authority, it is considered a rejection of the appeal. In this case, the lawsuit must be filed within the sixty days following the expiration of the initial sixty days. However, there is an exception if the administration has taken a clear positive approach to respond to the appellant's requests. In this case, the deadline extends until the competent authority reveals its reversal of its positive approach. The purpose of this is to avoid resorting to litigation as much as possible and to resolve disputes administratively in their early stages. The positive approach

does not entail investigating the appellant but rather responding to the appellant's requests. This means that the competent authority must have taken this positive approach to respond within the specified deadlines for appeal, meaning within a maximum period that ends at the end of the sixty days following the expiration of the initial sixty days.

The decision to reject the appeal must be justified. If the administrative authority issues a rejection without justification, the decision is flawed. However, despite this flaw, the decision is not considered void because the rejection of the appeal indicates the administrative authority's insistence on the same reasons upon which the appeal was based.

### **Thirdly: Conditions related to appeal procedures**

The French system grants the appellant the freedom to lodge their appeal in the manner they deem appropriate, which only poses a problem in cases where proof of submission of the appeal is required. As for mandatory appeals, reliance is placed on the text in each case individually. In Iraqi law, the appellant must submit their appeal to the court within sixty days from the date of rejection in cases of non-adjudication or rejection of the appeal by the competent administrative authority. Upon payment of the legal fees, the court must register the appeal, and the expiration of the right to appeal before it does not prevent recourse to ordinary judiciary to claim compensation for damages resulting from the violation or breach of the law. In the Egyptian system, mandatory appeals are submitted directly to the issuing authority or its presidential office by hand, and the submitter receives a receipt indicating the registration date, or it is sent by registered mail with acknowledgment of receipt. A decision was issued by the Council of Ministers on April 6, 1955, and the Republican Decree No. 55 of 1959 confirmed the validity of that decision at the republic level during unity. Appeal procedures were regulated as follows:

1. The appeal must be submitted after the issuance of the administrative decision so that the administration can reconsider it. It is not permissible to appeal a decision that has not yet been issued or has not completed its issuance stages.
2. The appeal must be submitted within the period during which a cancellation lawsuit can be filed. If the period expires, the right of the appellant to claim cancellation is forfeited, and the administrative decision remains valid despite its flaws.
3. The appeal is submitted to the competent minister with a request presented to him in a letter accompanied by an acknowledgment of receipt. The request must include necessary information for deciding on the appeal, such as the appellant's name, position, address, the date of issuance and publication of the decision being appealed, and the date of the appeal announcement. The request must also include the subject of the decision, its reasons, and any documents deemed relevant.
4. Ministries receive appeals addressed to them, gather relevant information, and document the received appeals with a receipt indicating the appeal number and date. The receipt is sent to the appellant by registered mail with acknowledgment of receipt. The appeals are then promptly forwarded to the issuing authority of the decision. The issuing authority must express its opinion on the appeal and provide relevant documents within a

period not exceeding fifteen days from the date of appeal submission.

5. The review process of the appeal begins after it is submitted to the minister. Either state commissioners within the ministry, appointed by the minister for this purpose, examine it and propose a decision to the minister, or the minister himself conducts the review. The result of this review is presented to the minister within a period not exceeding thirty days from the date of the request submission.
6. The appeal must be decided upon within the legal timeframe, and the concerned party must be notified of the outcome through a recommended letter. The minister's decision must be issued within the remaining thirty days of the sixty-day period.

Also, a decision was issued from Article 2 of the decision of the President of the State Council No. 73 of 1972 regarding the mandatory procedures for appealing administrative decisions. The appellant must submit the appeal request to the competent administrative authority to register it in the register of appeals. The appeal is registered with a serial number in this register, indicating the date, and the appellant is given a receipt with the appeal number and registration date. This request (appeal) is then sent in writing by registered mail with acknowledgment of receipt. It may also be handed over to the administration where the appellant works to be forwarded to the competent authority. The administration must record the date of receiving this request and the date of forwarding it to the competent authority. The appeal must be directed against a specific decision and must not be vague.

The aim of these procedures is to expedite the delivery of the appeal request to the competent authority, alleviate the injustice to the appellant, and settle the case.

### **The Second Demand: Legal Effects of Administrative Appeal**

#### **The First Branch: Direct Effects of Administrative Appeal**

**There are direct effects resulting from the submission of an administrative appeal to the administrative authority within the specified timeframe. These effects are embodied in two conditions**

1. Suspension of the legal deadline.
2. Fulfillment of the mandatory appeal requirement.

#### **Firstly, Suspension of the Legal Deadline**

A lawsuit for annulment is distinguished from other lawsuits by being time-bound. If the plaintiff files their lawsuit after the specified deadline, the lawsuit is rejected procedurally. The French legislator has set this deadline at two months. The purpose of this specification is to ensure the stability of legal situations and positions, preventing the appeal process from remaining open indefinitely. It also aims to secure legal protection for acquired rights arising from administrative decisions. Failure to specify the deadline would result in an inability to distinguish between decisions lacking due process and those flawed but protected by the passage of time. In Iraq, the legislator amended the Law of the State Consultative Council to require filing an appeal within sixty days of the expiration of the period for reviewing the appeal, as stipulated in paragraph (W) of this article. Similarly, in the fifth amendment to the Law of the

State Consultative Council, it stated: "In case of non-review or rejection of the appeal by the competent administrative authority, the appellant must file their appeal to the court within sixty days from the date of rejection of the appeal, whether actual or by judgment. The court shall record the appeal upon fulfilling the legal requirements." The Egyptian legislator stated in Article 24 of the State Council Law: "The deadline for filing an appeal against the decision of the appeal must be within sixty days from the date of submission, and if the decision is rejected, it must be justified. If sixty days pass without a response from the competent authorities, it is considered a rejection. The deadline for filing a lawsuit to challenge the decision of the appeal is sixty days from the expiration of the sixty days mentioned." This text includes the principle of the conclusive effect of administrative appeal on the deadline for annulment lawsuits.

It is evident from the foregoing that the deadline for administrative appeal in annulment lawsuits expires in one of the following ways:

1. Rendering a decision on the appeal within sixty days from the date of submission.
2. Passing (30) thirty days in Iraq, and sixty days in Egypt, from the date of submission of the appeal without a response from the competent authority, provided that the procedures of this authority do not suggest otherwise.

In Iraq, in case of no response from the administrative authority, the deadline starts after the expiration of the legally mandated (30) thirty-day period, according to the provisions of paragraph (A) of this clause, after (30) thirty days from the date of notification of the employee with the contested order or decision if he is inside Iraq, and (60) sixty days if he is outside it.

As for Egypt, the sixty-day period is subject only to routine factors. This deadline ends with judicial rejection even if the appellant later explicitly declares the rejection by the administrative authority.

The suspension of the deadline means that the period that has elapsed from the deadline for filing the annulment lawsuit before submitting the appeal is excluded, and a new deadline of sixty days is calculated from the date of submitting the appeal, which is after the appeal reaches the issuing authority of the decision or its presidential authority. Submitting the appeal results in the suspension of the sixty-day deadline for the annulment lawsuit, and the appellant must wait for the sixty-day period to elapse without a response from the administrative authority in case of implicit rejection. In that case, the appellant must then file the annulment lawsuit within sixty days following the date of rejection. In the case of explicit rejection of the appeal by the administration before the sixty-day period mentioned elapses, the appellant must file the annulment lawsuit upon being informed of the explicit rejection, within sixty days from the date of being informed of the rejection.

### **Secondly: Meeting the requirement of administrative appeal**

Meeting the mandatory administrative appeal requirement is one of the most significant consequences of submitting an appeal within the deadline. This is according to Article 12 of Law No. 47 of 1972 of the State Council, which states: "The following requests shall not be accepted: requests directly

appealing administrative decisions mentioned in paragraphs three, four, and nine of Article 10."

This occurs before appealing to the administrative body that issued the decision or its presidential authorities, and waiting for the scheduled dates to decide on this appeal. Paragraphs three, four, and nine addressed annulment requests filed by concerned parties appealing final administrative decisions.

Submitting the appeal confirms the rejection by the interested party of the administrative decision that harmed them. Thus, the administration is faced with two options: either reaching an amicable settlement to end the dispute, or resorting to the judicial process with all its difficulties and efforts.

The significance lies in the first appeal submitted within the deadline, as subsequent appeals are not considered.

### **The second branch**

#### **Indirect Effects of Administrative Appeal**

##### **Firstly: Proof of the Claimant's Awareness of the Administrative Decision**

The submission of an administrative appeal to the relevant administrative authority indicates the claimant's awareness of the administrative decision, whether through publication, announcement, or direct knowledge. If the claimant submits their appeal without clearly specifying the administrative decision and without specifying the date of their awareness of it, the submission of the appeal is considered the beginning of their awareness of the contested decision.

It has been ruled by the Administrative Judiciary Court that if the government insists on refusing payment due to the claimant's alleged failure to submit an appeal regarding the contested decision, yet despite this insistence on denial, the government fails to provide evidence that the registered letter submitted by the claimant pertained to another matter unrelated to the appeal claimed by the claimant, then the government has no choice but to rely on the receipt.

While the general rule in ordinary courts is to burden the claimant with proof, this rule is not absolute in administrative disputes because the administrative authority possesses the necessary documents and files, making it difficult for individuals to ascertain the facts therein and determine their legal positions.

##### **Secondly: Proof of the administration's intent and approach towards the appellant**

Undoubtedly, the submission of an administrative appeal to the administrative authority reveals its intent and approach towards this appeal, whether it is seriously considering it or not. Given that the administrative authority is the stronger party in the relationship with the appellant and possesses numerous resources and tools that the appellant does not have, it is incumbent upon the administrative authority, as a fair and neutral party, to mitigate the harm to the appellant as much as possible and to avoid the appellant resorting to the corridors of courts and litigation.

In Iraq, before filing an appeal with the Administrative Judiciary Court, it is required that the appellant first lodge a complaint with the competent administrative authority within thirty days from the date of notification of the order or administrative decision challenged, and this authority must decide on the appeal within thirty days from the date of registration of the appeal with it.



Similarly, Article 24 of the current Egyptian State Council Law states: "If the decision is to reject the appeal, it must be based on specific reasons contained in the decision itself. The rejection of the appeal by the administration indicates its insistence on the reasons underlying the decision challenged by the concerned appellant."

The administration's disregard for causation and violation of legal provisions may indicate its bad faith. This causation provides a guarantee for the appellant, as it enables the administrative judge to easily scrutinize the reason for the decision. Therefore, if a decision is issued by the administration in bad faith and in violation of the law, the administration should be compelled to compensate if the other conditions and elements are met.

## Results

1. Administrative appeal has been legislated in both Iraqi and Egyptian laws. It is a request submitted to the administrative authority issuing the contested decision or the presidential authority to withdraw the decision. This is to ensure that employees' rights are not lost after the administrative decision is issued, instead of immediately filing a request for its annulment, withdrawal, or amendment by the issuing authority before resorting to the judiciary. This appeal may be optional or mandatory.
2. Administrative appeal is the easiest and quickest way to resolve administrative disputes and settle them amicably at an early stage, before they escalate.
3. The Iraqi legislator stipulated that before appealing an administrative decision imposing a penalty, the appellant must submit a complaint to the competent administrative authority within thirty days from the date of notification of the decision to impose the penalty, and this authority must decide on the appeal within thirty days from its registration date. Failure to decide on the appeal constitutes rejection of the request, and an appeal can be lodged with the General Disciplinary Council within thirty days from the date of explicit or implicit rejection of the appeal. The Egyptian legislator made the appeal mandatory in some cases related to civil service affairs, as indicated in Articles 3, 4, and 5 of Law No. 47 of 1972.
4. The lawsuit for annulment is filed from the date of publication of the decision in the official gazette or official bulletins, or from the date of actual knowledge, and the deadline is thirty days in Iraq and sixty days in Egypt, with the possibility of extending the deadline.
5. After submitting the administrative appeal to the issuing authority or the presidential authority, it reveals the administration's intent regarding the appeal by accepting or rejecting it.
6. Achieving the administrative appeal means realizing the employee's rights, protecting them, and demonstrating goodwill from the issuing authority. It provides a sense of reassurance and psychological stability after the issuance of the penalty against the employee.
7. The administrative authority or the presidential bodies issuing the decision may violate the law with malicious intent. In this case, such entity is obliged to pay material and moral compensation to the affected employee after the judgment by the Administrative Judiciary Court.

## Recommendations

1. It is essential for the affected party to submit the administrative appeal to the issuing administrative authority or the presidential bodies immediately, without waiting for the specified deadline.
2. The Iraqi legislator should extend the period for submitting the administrative appeal and the deadline for filing the lawsuit in court from thirty days to sixty days, similar to the Egyptian law. This is because the thirty-day period is short and insufficient for the purpose.
3. The court should monitor the implementation of judgments issued in favor of administrative appeals to ensure the restoration of rights to employees.

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