

## The Effect Of Multiple Litigants On The Rules Of Annulment Of Litigation

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*Abstract:*

There may be multiple litigants in the civil lawsuit, whether their number is original (at the start of the lawsuit) or emergency (after proceeding with it) there is no doubt that this multiplicity has an impact on the rules of procedural annulment of the lawsuit in the voluntary and penal quality, the Iraqi legislator did not address the impact of multiple litigants on these rules, despite the complex procedural problems they raise, but rather left them to the general rules relating to the case of the individuality of the defendant and the defendant, an application for annulment of the petition may be filed by one of the multiple plaintiffs against one of the defendants, the final decision in approving this request depends on the subject of litigation and the extent of its divisibility or not, if its subject matter is divisible, the annulment application may be filed by one of the plaintiffs only and against some of the defendants and not by the others, while such an application is not accepted when the subject matter of the litigation is indivisible, whereas, such an application must be made by all plaintiffs and against all defendants in response to the unity of resolution required by the indivisible matter, as for the criminal annulment of the lawsuit when there are multiple litigants, it also did not receive the attention of the Iraqi legislator, while the Egyptian and French legislators dealt with this issue in the case of multiple plaintiffs only.

Keywords: Annulment of litigation, Penal annulment, Voluntary annulment, Multiple plaintiffs, Litigants.

### **First: The Concept of Voluntary Annulment of Litigation:**

Voluntary annulment of litigation means: "the plaintiff waives the litigation initiated by the judicial claim and declares his will to terminate its proceedings without a ruling on its merits in accordance with the conditions

established by law, while retaining the origin of the alleged right, so that he may renew his claim"<sup>1</sup>.

The request for annulment of the petition does not focus on litigation between the litigants (plaintiff, defendant and third persons) only, rather, it deals with all the proceedings that were the subject of litigation between the parties when they were annulled<sup>2</sup>.

The voluntary annulment of the litigation is one of the manifestations of the authority of the will and the sovereignty of the parties to the litigation over the civil lawsuit as a procedural legal act issued by the plaintiff under certain conditions (formal or substantive), the availability of which results in the cancellation of all litigation procedures and the judgment of the plaintiff on the fees and expenses of the lawsuit, and attorney's fees, without prejudice to the substantive right by which the lawsuit was instituted<sup>3</sup>, the request for annulment is limited to the petition without the signature required to be proved<sup>4</sup>, the Iraqi legislator has restricted the plaintiff's freedom to request annulment by stating that the case is not ready for resolution and whether or not the case is ready for adjudication, even if it is under the discretion of the court, but it is subject to the control of the Federal Court of Cassation or the Court of Appeal in its discriminatory capacity, as the case may be, in this assessment<sup>5</sup>, the defendant shall not object to the plaintiff's request to annul the petition, unless he has pleaded the suit with a plea that would lead to its dismissal, applying this, the Nineveh Federal Court of Appeal held that: "In order to accept the defendant's objection to the plaintiff's request to annul the petition, the defendant's plea must be sufficient in itself to dismiss the suit in the first instance"<sup>6</sup>.

The application for voluntary annulment is not limited to the initial petition, but the petition may be set aside at the interdictory and appellate stages<sup>7</sup>.

The waiver of the claim must not be confused with the waiver of the right<sup>8</sup> by making the request for annulment of the petition explicit, clear, unambiguous and unambiguous<sup>9</sup>, in application of this, the Nineveh Federal Court of Appeal ruled in its discriminatory capacity that: "The court shall verify the content of the plaintiff's attorney's request to dismiss a section of the defendants and assign him to clarify what his request is, was it focused on the request to annul the petition against the aforementioned defendants, which must be decided, the decision thereon shall be issued in the minutes of the hearing pursuant to the provisions of article 88 of the Code of Civil

Procedure, whether this is necessary or if it focuses on the waiver and revocation of the right subject of the allegation"<sup>10</sup>.

The question arises as to whether the litigation attorney may request the annulment of the petition, there are those<sup>11</sup> who believe that the agent may request the annulment of the petition without the need for authorization, others see<sup>12</sup> that the agent is not entitled to litigation except by a special authorization that the agency document expressly stipulates the right of the agent to annul, this is based on the text of Article (52) of the Civil Procedure, considering that annulment is not considered one of the acts that preserve the rights of the authorized litigant.

The researcher believes that the first opinion is worthy of support, because the request to annul the petition may involve preserving the rights of the principal, as if the litigation were not directed, or that the continuation of the litigation in some cases means the loss of time and expenses for the principal as a result of continuing a litigation that may be destined to be restituted for lack of documents, in addition to the fact that voluntary annulment is one of the litigation procedures, and just as the agency in litigation authorizes the agent to file the lawsuit, it has the right to annul it, in application of this, Baghdad/Rusafa Federal Court of Appeal ruled in its discriminatory capacity that: "Request the annulment of the petition from litigation proceedings and the litigation agent shall be deemed authorized without the need to authorize his client"<sup>13</sup>, it should also be noted that there is nothing to prevent the plaintiff from withdrawing from the request to annul the petition (expressly or implicitly) before the decision is issued<sup>14</sup>, however, the matter is different after the issuance of the court's decision to annul, and the plaintiff may not request the dismissal of this request, rather, he must pursue legal means of appeal in accordance <sup>15</sup>with Article 216 of the Code of Civil Procedure.

As for the application for annulment of the petition in question, a distinction must be made between adversarial and accession intervention as well as adjudication (litigation).

The third litigant may request the annulment of the petition by declaring his will to waive it without a ruling on its merits<sup>16</sup>, he is in the position of the plaintiff as a claimant for himself and thus has all the rights prescribed to the plaintiff<sup>17</sup>, as for the third person joining, he may not request the annulment of the petition, because he cannot dispose of the litigation, and can only dispose of his own procedural rights (subjective)<sup>18</sup>

because he is an incomplete ancillary opponent and does not have the same rights as the full opponent<sup>19</sup>.

As for the third person competent in the case, he may not dispose of the lawsuit and may not request the annulment of a petition or a request for joinder because he is not the one who submitted it<sup>20</sup> he has entered into the litigation against his will and that granting him the possibility of exiting it is incompatible with the cause of his litigation<sup>21</sup>.

It should be noted that the request of the third party litigant to annul the petition of the incident requires the acceptance of such annulment by the original litigants, if they accept this, the petition for the incident shall be invalidated, and if they object, the litigation shall continue to proceed<sup>22</sup>, the intervener joining the side of the defendant has no standing to accept the annulment of the petition, and before that such acceptance has no effect<sup>23</sup>.

#### **Second: The concept of penal annulment of litigation:**

Penal annulment means, in general, that: "A procedural sanction provided for in the Code of Procedure entails negligence by the litigant in the performance of a procedural duty at a specified time at the expiry of a certain period, negligence leading to the disappearance of the judicial claim and its consequences without affecting the substantive right and the right to action<sup>24</sup>."

As for the penal annulment of the negligence of the litigants with the duty to expedite the litigation, it means: "The disappearance of the litigation and all the consequences of its establishment, because the litigants neglect a procedural duty to proceed with it within the legally prescribed period"<sup>25</sup>.

The Iraqi legislator stipulates the penalty for invalidating the petition for failing to expedite the stay in article 83/2 of the Code of Civil Procedure, which states: "If the suspension of the action by the plaintiff or his omission continues for a period of six months, the petition shall be null and void by virtue of the law."

It also stipulates the annulment of the lawsuit petition for not accelerating the interruption in Article 87 of the same law, which states: "If the interruption of the proceedings continues without an acceptable excuse for a period of six months and the case does not resume within this period, the petition shall be null and void by virtue of the law."

It is inferred from the two texts mentioned that the Court of First Instance must verify the extent to which the lawsuit continues to be suspended by the plaintiff's action or omission before deciding to annul the petition as is the practice in the Iraqi courts, despite the fact that annulment is established by law, in application of this, the Nineveh Federal Court of Appeal ruled in its discriminatory capacity that: "The court shall examine the file of the case for which the pending case has been invoked and verify the date of its resolution or receipt by the appellant in order to determine the extent to which the lawsuit pending by the plaintiff's act or omission continues for a period of six months or more after the said date before the issuance of the decision to annul the petition<sup>26</sup>."

The Egyptian legislator ruled that the litigation shall be extinguished by not proceeding with it - by the plaintiff's action or omission for a period of six months from the date of the last valid action taken therein<sup>27</sup>, it follows from the Egyptian text that the sanction prescribed in this case is determined for the private interest and specifically for the benefit of the defendant, while the sanction under the Iraqi text is determined in the public interest and is enforced by law when the conditions for its implementation are met.

As for the position of the Egyptian Court of Cassation, it ruled in one of its decisions that: "The lapse of litigation in accordance with article 134 of the Code of Procedure, as amended by Law No. 18 of 1999, is a sanction imposed by the street on the plaintiff who causes the failure to proceed with the lawsuit by his act or omission for a period of six months, the object of the application of this sanction is negligence, laxity or refraining from engaging in litigation so as not to prevent it from proceeding in a way<sup>28</sup>."

It also ruled that: "The lapse of litigation for more than six months from another is a valid procedure, which may not be adjudicated unless the interested party insists on it, and may waive it expressly or implicitly by addressing the subject matter of the dispute<sup>29</sup>."

It should be noted that there is a disagreement in jurisprudence regarding the annulment of litigation in the case of agreement suspension, the opinion<sup>30</sup> argues that the lapse of the litigation does not apply to the case of the contractual stay because Article (128) of the Egyptian Civil and Commercial Procedures Law stipulates that "Failure to expedite the action within eight days following the end of the stay period means the plaintiff abandoning his claim, that is, the fall of the litigation has no place in the case of the stay, because the litigation is considered waived if it is not accelerated within the specified period of the end of the stay."

Another opinion<sup>31</sup>, which deserves support, is that litigation shall be extinguished regardless of the reason for the suspension and interruption and whatever the reason for the suspension in the cases of suspension and interruption provided for in Articles (128 to 133) of the Egyptian Code of Civil and Commercial Procedure, the reason for our support for the latter opinion is the explicit text of Article 134 of the same law, which came absolute without distinction between the reasons for the stay in each case, in addition to that, the plaintiff cannot invoke the lapse of the litigation, if he wants to get rid of the action, he must submit an application for annulment (waiver of the action)<sup>32</sup>.

As for the position of French legislation, the litigation falls as a result of not proceeding with it - If one of the litigants does not take the necessary measures - a period of two years from the date of the last valid action taken<sup>33</sup>. This means that the position of the French legislator is contrary to the position of the Iraqi and Egyptian legislators, as mentioned above, assuming that negligence in the conduct of the proceedings may be the act of the plaintiff or the defendant, it does not require that negligence be the act of the plaintiff and his omission, as is the case in the Iraqi and Egyptian legislation, rather, it may also be the act of the defendant and that the basis for the lapse of the litigation in French legislation is the failure of the parties to the litigation to proceed with the lawsuit for a period of two years, accordingly, the plaintiff may invoke the lapse of litigation, which is not exclusive to the defendant<sup>34</sup>.

The researcher believes that the penalty prescribed in the Iraqi legislation in Articles (83/2) and Article (87) may be invoked by the plaintiff as a sanction determined in the public interest, this shall be done if the defendant expedites the lawsuit after the lapse of the stay period.

### **Third: The effect of multiple litigants on the rules of voluntary annulment of litigation**

The main question in this regard, if there are multiple plaintiffs, is it permissible for one of them to annul the petition while the litigation remains for the others, if there are several defendants and some of them object to the annulment of the petition but not others, is the petition invalidated in respect of the non-objecting defendants while remaining in respect of the others?

The Iraqi legislator did not deal with the issue of invalidating the petition when there were multiple parties, but only dealt with this issue when the case was limited to two individual parties only, so some

jurisprudence goes - rightly -<sup>35</sup>that if there are multiple plaintiffs, the request for annulment of the petition may be made by some plaintiffs only and not by others, the annulment shall then have effect in respect of the plaintiffs and the litigation shall remain in respect of the others, if the subject matter of the litigation is severable and divisible, if there are several defendants and some of them accept the annulment of the petition and the rejection of others, the petition shall be annulled for the first and the litigation shall continue to exist for the others who refused to annul, if the litigation is severable in nature, however, if the litigation is indivisible and some plaintiffs request its annulment, in order for the annulment to be annulled, it must be obtained with the acceptance of all the defendants, similarly, if there are several defendants and some of them do not object to the annulment and others object, the consent of all the defendants is required in order for the petition to be invalidated.

As for the position of the Iraqi judiciary, it has been established that the petition may be annulled at the request of the plaintiff in respect of one of the defendants, in application of this, Baghdad/Rusafa Federal Court of Appeal ruled that: "Upon consideration of the cassation decision, it was found that the plaintiff had dismissed the first defendant and the court had to take a decision to annul the lawsuit against the first defendant before making the cassation decision, whereas the Court has omitted the foregoing, which prejudices the validity of its decision<sup>36</sup>."

As for the position of the Egyptian Code of Civil and Commercial Procedure, it is devoid of a text dealing with the aforementioned hypotheses, as for jurisprudence<sup>37</sup>, it is agreed that if the subject matter of the lawsuit is divisible, the request for annulment of the petition (abandonment of the lawsuit) is also divisible, if there are several plaintiffs in the lawsuit, some of them may request the annulment of its petition, and it shall expire for the person who filed the annulment request, and the lawsuit shall remain in place for the remaining plaintiffs, if there are several defendants in the lawsuit, the plaintiff may request the annulment of the lawsuit petition for some of them while continuing to proceed with it for others.

If the subject matter of the litigation is indivisible, the jurisprudence in this regard is divided into two directions, the first direction<sup>38</sup> is that the annulment of the petition of the lawsuit - in the indivisible litigation - is indivisible and divisible, that is, the application for annulment of the petition must be submitted by all plaintiffs and against all defendants, if this is not the case, it shall be inadmissible, the second trend<sup>39</sup> is that litigation with

respect to the annulment of the petition is severable even if its subject matter is indivisible, accordingly, when there are multiple plaintiffs in the lawsuit, one of them may annul the lawsuit petition while it continues for the rest of the plaintiffs, in the case of multiple defendants, the plaintiff may request the annulment of the petition for one of the defendants only and not for the others.

In the case of multiple defendants, there is a tendency<sup>40</sup> -rightly-believe that if there are multiple defendants and the plaintiff requests the annulment of the petition against all the defendants, some of them accept while the others refuse, the request for annulment of the petition is not accepted, if the plaintiff requests the annulment of the petition for one or some of the defendants, the lawsuit shall be annulled for them and shall continue to face others, if the litigation is divisible, however, this does not prevent the defendants against whom the lawsuit continued to be litigated by the defendants for whom the petition was invalidated, the Court of First Instance has the discretion to decide on the litigation of those who were a party to the lawsuit at an earlier stage if it deems that their litigation is necessary to reveal the truth or in the interest of justice, in addition to the fact that the annulment of the petition and at the request of the plaintiff does not mean that he waives the substantive right, he can renew his claim by bringing it against the defendants against whom the litigation has been annulled<sup>41</sup>, this provision also applies even if there is solidarity between the plaintiffs<sup>42</sup>.

In the event that there is a bond of solidarity and the litigation is before the courts of first instance, the plaintiff may request the annulment of the petition against some defendants, while continuing to proceed with it against the others, because the multiplicity of litigants in solidarity is optional and not compulsory, and therefore the lawsuit is divisible accordingly, the same is the case in the case of annulment of the petition before the courts of appeal, where the same provisions apply to the indivisible subject matter<sup>43</sup>.

As for the position of the Egyptian Court of Cassation, it allows the request to annul the petition of the lawsuit from some plaintiffs only and not the others if the subject matter of the litigation is severable or divisible, and then the annulment shall have its effects for the plaintiffs who expressed it, the rivalry remains for the rest, however, if the subject matter of the litigation is indivisible, the annulment shall have effect for all defendants, even if it is issued only by some of them, as the said court ruled in one of its decisions that: "Abandonment of litigation shall have effect only in respect



of the litigant who made the request for abandonment and the opponent to whom such request is addressed and not to the rest of the litigants, in the event of the indivisibility of the litigation, if the acknowledgment issued by the abandoner indicates that he has renounced the entire case without specifying a litigant who wishes to leave for him, acknowledgment necessarily entails the abandonment of the proceedings before all the defendants<sup>44</sup>."

As for the position of the French legislator, he also did not address the hypotheses mentioned, however, jurisprudence<sup>45</sup> agrees that if the litigation is divisible, its annulment is also divisible, if there are several plaintiffs in a divisible litigation, one of them may annul the litigation, it is invalidated for him and the litigation remains in respect of the other plaintiffs, in the case of multiple defendants, the plaintiff may also request the annulment of the litigation for some defendants, while the litigation remains in place for others<sup>46</sup>.

In the event that the subject matter of litigation is indivisible, jurisprudence in this regard is divided into two opinions: The first - to the indivisibility of the annulment of the litigation, that is, if the litigation is indivisible, its annulment is indivisible accordingly, the application for avoidance must be submitted by all plaintiffs and against all defendants, otherwise the application for avoidance shall be rejected. While the second<sup>47</sup> goes to the permissibility of dividing the annulment of the litigation, that, the litigation is severable even if its subject matter is indivisible, if there are several plaintiffs, one of them may request the annulment of the litigation on his own while the litigation continues for the other plaintiffs, if there are several defendants, the plaintiff may request the annulment of the litigation in respect of some of them and the litigation continues in respect of others.

As for the effect of annulment of the original civil suit petition by the plaintiff on the incident lawsuit, for the third person in litigation, the annulment of the original petition does not affect the offensive (adversarial)<sup>48</sup> intervention, whatever the method of his intervention, whether it is in the usual procedures for initiating a lawsuit<sup>49</sup> or was it by a petition communicated to the other litigant or orally at the hearing of the pleadings<sup>50</sup>, on the one hand, on the other hand, the waiver of the intervention litigation by the third party does not affect the conduct of the original action between the original plaintiff and the original defendant<sup>51</sup>.

This is in contrast to the third person who joined, as the adversarial intervention disappears in all cases, as the accession intervener follows in his

legal status the opponent who joined his side to support him or preserve his rights, that is, there is a subordinate bond between the legal status of the original litigant and the status of the third person on the basis that the dismissal of one legal center is decisive against the other, that the accession intervention is not the subject of an independent action, but rather that the action is considered a single action<sup>52</sup>.

As for the third person involved in the proceedings, we agree with the view<sup>53</sup> that the annulment or expiry of the action for any reason whatsoever, leads to the disappearance of all claims included in the lawsuit, including the incident lawsuit in all its forms, unless the application for admission to the lawsuit is self-contained and fulfills an independent lawsuit.

From the foregoing and in order to address the legislative deficiency in the issue of annulment of the petition when there are multiple litigants, we hope that the Iraqi legislator will add a paragraph to the text of article 88 of the Code of Civil Procedure so that it will be read as follows:

(If there are multiple plaintiffs, a request for annulment of the petition may be filed by one of them against some or all of the defendants if the subject matter of the litigation is divisible, if not, the annulment application must be filed by all plaintiffs against all defendants, the same shall be the case if some of the defendants object, provided that they have pleaded the suit with a plea leading to its dismissal in the first instance).

#### **Fourth: The impact of multiple litigants on the rules of penal annulment of litigation**

The adversarial when it involves only two individual parties, the enforcement of the penalty of annulment of the petition for negligence by the plaintiff of the duty to expedite the litigation of the stay or interruption does not raise any problem in the application of the provision governing this matter<sup>54</sup>, however, the problem arises when the litigation includes several litigants (plaintiffs or defendants) and the issuance of negligence that requires the annulment of the lawsuit petition for some of them without the remaining plaintiffs having a role in the occurrence of this negligence, is it possible to set aside the petition ipso jure for negligent plaintiffs while continuing to proceed for non-negligent claimants, or should a petition be set aside for all of them.

With regard to the position of the Iraqi legislator, it did not address the issue of multiple litigants and its impact with regard to penal annulment, while in fact it is recognized that negligence is likely to be attributable to one

plaintiff only, in order to develop the necessary treatment, we hope that the Iraqi legislator will add a provision to the Iraqi Code of Civil Procedure, as follows:

(In the event of multiple plaintiffs in the case, the petition against the plaintiff who continued to suspend or interrupt the pleading by his act or omission shall be null and void for a period not exceeding six months, if the subject matter of the litigation is divisible and the court continues to hear the case in respect of the rest of the litigants, if the subject matter of the lawsuit is indivisible, the petition shall be null and void in respect of the negligent plaintiff only while the action continues in respect of the others, the court and the litigants shall have the right to include the plaintiff whose claim has been annulled by a third person in the case to be judged against him or against him, provided that he shall bear the fees for such entry).

As for the Egyptian Code of Civil and Commercial Procedure, it distinguishes between two cases: the first - the case of multiple plaintiffs and the second - the case of multiple defendants. Article 136/3 stipulates that: "The submission of an application or plea shall be the termination of the litigation against all plaintiffs or appellants, otherwise it shall be inadmissible." This provision shall benefit from litigation being considered indivisible with respect to its lapse, even if its subject matter is severable and divisible, in the case of multiple plaintiffs only, this shall be the case when the defendant is unable to invoke the penalty against some plaintiffs because of the lack of conditions for them, as if the pleading was interrupted because the reason for the interruption was caused by one of the plaintiffs or because the defendant wishes to invoke the sanction against some plaintiffs but not others, or if one of the plaintiffs has accelerated the litigation on time, as the rest of the plaintiffs benefit from the acceleration of their colleague, in such cases, the defendant cannot invoke the sanction against the plaintiff for whom the pleading was interrupted or against the plaintiff who hastened the litigation, as a result, the defendant cannot invoke the sanction against all the plaintiffs<sup>55</sup>.

In the event that the lapse date is not interrupted for any of the plaintiffs and none of them has expedited it within six months, the litigation shall have lapsed for all plaintiffs, if the defendant wishes to invoke the penalty, he shall invoke it against all the plaintiffs, otherwise the request for forfeiture shall be inadmissible, also, if he wants to waive the penalty for some plaintiffs, he will not accept it, rather, it must waive the penalty against all plaintiffs, whether or not the subject matter of the lawsuit accepts division<sup>56</sup>.

As for the case of multiple defendants, the Egyptian legislator canceled what was stipulated in the previous law, by deliberately deleting the second part, the rule of indivisibility of forfeiture in the case of multiple defendants, and kept this rule in the case of multiple plaintiffs<sup>57</sup>, as Article (303/3) of the repealed Civil and Commercial Procedure Law No. (77) Of 1949 states: "If one of the defendants submits it, the rest benefit from it." According to the abolition of the rule of indivisibility of forfeiture in the case of multiple defendants from the new text (136/3) that corresponds to the text of Article (303) of the canceled law, the litigation in the case of multiple defendants has become divisible in relation to its nullification, unless its subject matter is indivisible<sup>58</sup>, therefore, it is enough for one of the defendants to hold on to the penalty to nullify the litigation with respect to the rest of the defendants<sup>59</sup> in application of this, the Egyptian Court of Cassation ruled that: "The litigation is indivisible, unless its subject matter is indivisible"<sup>60</sup>.

This means that if the litigation is divisible and one of the defendants insists on implementing the penalty with regard to him only, then the court must annul the litigation against him and continue to consider the case with respect to the rest of the defendants because the conditions for implementing the penalty are not met with regard to them, or because they have waived their right to uphold the penalty, however, if the court decided to annul the litigation for all the defendants, then it would have erred in applying the law and violated it.

If the litigation is indivisible and one of the defendants adheres to the penalty, then this entails nullifying the litigation with respect to the rest of the defendants, if all of the litigation conditions are met, as the other defendants benefit from their colleague's adherence to the penalty, and the litigation is invalidated for them even if one of them waived his right to implement the penalty or objected to its imposition on the pretext that he has a benefit or interest from continuing the litigation and adjudicating it<sup>61</sup>.

And if the plaintiff takes a procedure to expedite the litigation against one of the defendants and thus cuts off the period for the litigation to fall, the plaintiff's hastening of the litigation in this hypothesis protects it from falling out with respect to all the defendants, because the litigation's lapse is a procedural penalty established for the negligence of the plaintiff in conducting the litigation, and that expediting the litigation by the plaintiff, even if it was against one of the defendants, confirms his intention to pursue the litigation and denies his negligence, and despite that, the litigation is not considered expedited with respect to those of the defendants who were not

notified of expediting, therefore, the plaintiff must notify the rest of the defendants of the date of the new session, respecting the principle of confrontation and guaranteeing the right of defence, if the plaintiff does not do so, the judgment that will be issued in the case will be invalid, and the defendants may uphold its invalidity when challenging it, and any of the defendants may uphold the penalty if the plaintiff does not accelerate the litigation against any of them. Some of them for the penalty decided in his favor, as the predominance or preference of the defendant adhering to the penalty<sup>62</sup>.

As for the French Civil Procedure Code, it came devoid of a text dealing with the issue of annulment of litigation in the event of multiple parties, however, some<sup>63</sup> went, in their analysis of the text of Article (342) of the same law, that the litigation when implementing the procedural penalty is considered a single block that does not accept division and separation, and if its subject matter accepts division, and if one of the plaintiffs did not fulfill his duty in conducting the litigation and neglected it, then the annulment of the litigation would be in the face of all the plaintiffs, a departure from the principle that the penalty is relative in its effect, however, some proponents of this approach have argued that although the litigants are independent in the exercise of their procedural positions, the issue of the litigation must be considered, accordingly, if one or some of the plaintiffs did not carry out their duty in conducting the dispute, the penalty shall be applied against all the plaintiffs, even with regard to those who did not meet the conditions for its implementation, but if the subject matter of the litigation responds to the division and accepts it, then the penalty is likewise and is applied only to those who meet the conditions of its application, excluding the rest of the plaintiffs, for whom the case continues, in implementation of a relative rule of the effect of the procedural penalty.

As for the position of the French judiciary, it is stable that the litigation is still indivisible with regard to its annulment, even if its subject matter is subject to fragmentation and division<sup>64</sup>.

### **Conclusions:**

1. The Iraqi and Egyptian legislators, contrary to the position of the French legislator, did not address the issue of the application of the rules of procedural annulment of the lawsuit in the case of multiple litigants, despite the procedural problems it raises in the practical field, accordingly, if there are multiple plaintiffs, one of them may request the annulment of the lawsuit petition against one or some of the multiple

defendants, and the litigation shall remain in respect of the rest for the rest if its subject matter is divisible, if the subject matter of the litigation is indivisible, the unity of resolution requires that all plaintiffs file an application for avoidance against all defendants, otherwise this request will not be accepted.

2. The Iraqi legislator did not address the case of multiple litigants and its impact on the rules of criminal annulment of the civil lawsuit, although the positive negligence of the heroes may be attributed to one of the plaintiffs only, while the Egyptian legislator addressed this issue in the case of multiple plaintiffs only, where the litigation is considered indivisible in the event of a fall, even if its subject matter is indivisible, this means that the application for avoidance must be filed against all claimants or it will not be accepted, in the case of multiple defendants, the litigation has become severable with respect to its lapse, even if its subject matter is indivisible, as for the French Code of Civil Procedure, it is devoid of any provisions in this regard, however, jurisprudence and the judiciary in France are settled that the litigation is still indivisible, regardless of the indivisibility of its subject matter or not.

## References

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<sup>2</sup> See: Dr. Ejjad Thamer Nayef Al-Dulaimi, *The Theory of Invalidating the Civil Lawsuit Petition for Negligence of Procedural Duties - A Comparative Analytical Study*, 1st Edition, Dar Al-Hikma Press, Baghdad, 2012, p. 90.

<sup>3</sup> See: Dr. Abbas Zaboun Al-Aboudi, *Explanation of the provisions of the Code of Civil Procedure*, op. cit., p. 290 and Dr. Abdel Basset Jumai, *Explanation of the Civil Procedure Law*, Dar Al-Fikr Al-Arabi, Cairo, 1999, p. 394.

<sup>4</sup> Decision of the Babylon Federal Court of Appeal in its discriminatory capacity No. 147 / T / Miscellaneous / U / Invalidation / 2021 on 13/9/2021, quoted by: Obaid Sabri Jammal, op. cit., p. 119.

<sup>5</sup> Hamel Al-Ajili's gesture, *The substantive and procedural termination of the civil litigation - a comparative study*, Al-Sanhouri Library, Beirut - Lebanon, 2020, p. 215, Federal Court of Cassation decision No. 29947 / First Personal Status Authority / 2008, which states: "The plaintiff has the right to annul his petition as long as it is still in its early stages and is not ready for resolution", Quoted from: Duraid Al-Janabi and Bassem Al-Khafaji, *Legal Principles in the Judiciary of the Federal Court of Cassation*, Part 1, Civil Pleadings, Justice Group Press, Baghdad, 2012, p. 25.

<sup>6</sup> Decision of the Nineveh Federal Court of Appeal in its discriminatory capacity No. 29/T.Sh./2018 on 30/9/2018, Quoted in: Bashar Ahmed Al-Jubouri, selected from the Nineveh Federal Appeal District in its discriminatory capacity, op. cit., p. 119. It should be noted that there are cases in which the plaintiff may annul the petition without requiring the consent of the defendant, as if the pleading was in absentia or the plaintiff had filed a request for annulment before the defendant filed formal or substantive defenses, or that the plea was based on it relating to the lack of

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jurisdiction of the court to hear the case or that the litigation was not directed, for more details see: Daa Sheet Khattab, *op. cit.*, p. 203.

<sup>7</sup> Dr. Lafta Hamel Al-Ajili, *Studies in the Code of Civil Procedure*, vol. 2, *op. cit.*, p. 131-132.

<sup>8</sup> Dr. Abdul Hamid Al-Shawarbi, *Substantive Commentary on the Code of Procedure*, *op. cit.*, p. 248-249.

<sup>9</sup> Hamel Al-Ajili's gesture, *Explanation of the provisions of the Civil Procedure Code*, *op. cit.*, p. 242.

<sup>10</sup> Decision of the Nineveh Federal Court of Appeal in its discriminatory capacity No. 129/T.B./2019 on 17/12/2019, quoted by: Bashar Ahmed Al-Jubouri, Al-Mukhtas, *op. cit.*, p. 161.

<sup>11</sup> Hamel Al-Ajili's gesture, *Substantive and procedural termination of civil litigation*, *op. cit.*, p. 217.

<sup>12</sup> Abd Al-Rahman Allam, vol. 2, *op. cit.*, p. 404 and d. Esmat Abdul Majeed Bakr, Al-Wajeez in Civil Pleadings, *op. cit.*, p. 286.

<sup>13</sup> Decision of the Baghdad / Rusafa Federal Court of Appeal in its discriminatory capacity No. 1608 / agency in litigation / 2006 on 13/10/2006, quoting from: the website of the Supreme Judicial Council.

<sup>14</sup> Decision of the Court of Cassation No. 5738/Personal/1970 of 23/2/1971, which stipulates that: "1. A decision to annul is not a decisive provision in a dispute. 2. The defendant may disregard the request to annul the petition expressly or implicitly before the court issues the annulment decision. 3. The defendant's attendance at the sessions following the session in which he requested annulment and his agreement in one of them with the plaintiff or his representative to adjourn the lawsuit is evidence that he has dismissed the annulment request implicitly." Quoted in: Abbas Ziyad Al-Saadi, *op. cit.*, p. 441.

<sup>15</sup> Decision of the Babylon Federal Court of Appeal in its discriminatory capacity No. 41/T/Miscellaneous/B/2021 on 9/3/2021, which stipulates that: "Upon consideration of the distinguished decision, it was found that it was valid and in accordance with the law, since the defendant's agent requested the annulment of the petition against the second defendant and that the court answered his request and annulled the petition against him in accordance with the law. Obaid Sabri Jammal, *op. cit.*, p. 109.

<sup>16</sup> See: Dr. Hadi Hussein Al-Kaabi, *General Principles in the Code of Procedure, Civil Lawsuit Theory, Part 2*, Al-Sanhoury Library, Beirut, 2021, p. 190-191, and Salam Adnan Hayes, *The Intervention of Third Parties in the Civil Case - A Comparative Study*, New University House, Alexandria, 2019, pp. 193-194.

<sup>17</sup> See: Munir Al-Qadi, *Explanation of the Code of Civil and Commercial Procedure*, *op. cit.*, p. 50 and d. Wajdi Ragheb Fahmy, *Summary of the Principles of the Civil Judiciary*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1977, p. 491 and Dr. Ramzi Saif, *The mediator in explaining the Civil and Commercial Procedures Law*, *op. cit.*, p. 352.

<sup>18</sup> See: Dr. Wajdi Ragheb Fahmy, *Principles of Civil Justice*, *op. cit.*, p. 552.

<sup>19</sup> Dr. Ahmed Abu Al-Wafa, *The Theory of Defences in the Code of Procedure*, *op. cit.*, p. 83.

<sup>20</sup> Mustafa Ibrahim Al-Jabri, *Introducing others in the Civil Case - A Comparative Study*, New University House, Alexandria, 2020, p. 201.

<sup>21</sup> See: Dr. Hadi Hussein Al-Kaabi, *The General Theory of Interlocutory Claims, Incident Lawsuit*, *op. cit.*, p. 342.

<sup>22</sup> See: Dr. Salah Ahmed Abdel Sadiq, *op. cit.*, p. 363.

<sup>23</sup> See: Dr. Muhammad Saber Muhammad Mustafa, *op. cit.*, p. 458.

<sup>24</sup> Dr. Ejjad Thamer Nayef Al-Dulaimi, *The Theory of Invalidating the Civil Lawsuit Petition in the Civil Procedure Law*, *op. cit.*, p. 32. It should be noted that the term

annulment of the petition used by the Iraqi legislator in the Code of Civil Procedure No. 83 of 1969 to express this penalty corresponds to the term "lawsuit as if it were not" in the Egyptian Civil and Commercial Procedures Law No. 3 of 1968, which is a form of the fall of litigation and corresponds to the term (*educite de la citation*) in the French Code of Civil Procedure.

<sup>25</sup> Dr. Fathi Wali, *Mediator in the Civil Judiciary Law*, op. cit., p. 545.

<sup>26</sup> Decision of the Nineveh Federal Court of Appeal in its discriminatory capacity No. 28/T.Sh./2018 on 25/9/2018, quoted by: Bashar Ahmed Al-Jubouri, selected from the judiciary of the Nineveh Federal Court of Appeal in its discriminatory capacity, op. cit., p. 116.

<sup>27</sup> Article 134 of the Egyptian Code of Civil and Commercial Procedure stipulates that: "Any interested litigant may, in the event of failure to proceed with the case by the plaintiff's action or omission, request a ruling to extinguish the litigation when six months have elapsed from the last valid litigation procedure."

<sup>28</sup> Decision of the Egyptian Court of Cassation in Appeal No. 6590 of 72, session of 14/3/2004, quoted by: Yahya Ismail, *Rulings on the theory of defenses and litigation in the Code of Procedure*, op. cit., p. 704.

<sup>29</sup> Decision of the Egyptian Court of Cassation in appeal No. 3340 of 58, session of 21/12/1992, quoted by: Yahya Ismail, op. cit., p. 707.

<sup>30</sup> See: Muhammad Azmi Al-Bakri, *Defenses in the Code of Pleadings in the Light of Jurisprudence and the Judiciary*, Dar Mahmoud for Publishing and Distribution, 4th Edition, without destination, place and year of publication, p. 765.

<sup>31</sup> See: Yahya Ismail, op. cit., p. 703.

<sup>32</sup> See: Dr. Fathi Wali, *mediator in the Civil Judiciary Law*, op. cit., p. 439.

<sup>33</sup> Article 386 of the French Code of Civil Procedure stipulates that: "The litigation shall lapse if one of the litigants fails to proceed with it for a period of two years from the last valid procedure".

<sup>34</sup> Lobin, *J. Clas. Proc. Civ. Fas.* 681.

- Quoted from: Dr. Al-Ansari Hassan Al-Nidani, *The Principle of Litigation Unity and its Scope in the Code of Procedure*, op. cit., p. 274.

<sup>35</sup> See: Dr. Ejjad Thamer Nayef Al-Dulaimi, *Voluntary Annulment of Civil Litigation*, Alexandria, New University House, 2020, pp. 131-132.

<sup>36</sup> Decision of Baghdad / Rusafa Federal Court of Appeal No. 321/M/2005 on 5/4/2005, quoted by Abbas Ziad al-Saidi, op. cit., p. 443.

<sup>37</sup> See: Dr. Ibrahim Najib Saad, *Private Judicial Law*, op. cit., p. 183; Dr. Ahmed Abu Al-Wafa, *The Theory of Defences in the Code of Pleadings*, op. cit., p. 416 and Dr. Ahmad Al-Sayyid Sawi, *Al-Waseet fi Explanation of the Civil and Commercial Procedures Law*, op. cit., p. 546.

<sup>38</sup> See: Dr. Ahmed Abu Al-Wafa, *The Theory of Defences in the Code of Pleadings*, op. cit., p. 745 and Dr. Ahmed El-Sayed Sawi, *The mediator in explaining the Civil and Commercial Procedures Law*, op. cit., p. 546 and d. Ibrahim Najib Saad, *Private Judicial Law*, op. cit., p. 183.

<sup>39</sup> Muhammad al-Ashmawi and Abd al-Wahhab al-Ashmawy, *Rules of Pleadings in Egyptian and Comparative Legislation*, op. cit., p. 450.

<sup>40</sup> See: Ahmed El-Sayed Sawi, *The Mediator in Explaining the Civil and Commercial Procedure Law*, op. cit., p. 397.

<sup>41</sup> For more details, see: Dr. Al-Ansari Hassan Al-Nidani, *The Principle and Scope of the Unity of Litigation in the Code of Procedure*, op. cit., pp. 289-291.

<sup>42</sup> See: Article 219 of the Egyptian Code of Civil and Commercial Procedure.

<sup>43</sup> See: Article 218/2 of the Egyptian Code of Civil and Commercial Procedure.

<sup>44</sup> Decision of the Egyptian Court of Cassation in Appeal No. 1667 of 61, session of 12/12/1999, quoted by: Ahmed Al-Gharib Shibl Al-Banna, op. cit., p. 202.

<sup>45</sup> *Classon. Tissier et Morel.* 2. No 561.



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- <sup>46</sup> Desdevises (y) juri. Clas. Proc. Civ. From desis tement. Ed. 1990, p. 10 No 101.
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- <sup>47</sup> Raynaud (p.) et fricevo. Juric clas. Proc. Civ. Fas 682. p.p. 5. No 20.
- <sup>48</sup> Dr. Ahmed Awad Hindi, Civil and Commercial Procedure Law, op. cit., p. 246.
- <sup>49</sup> Dr. Ramzi Saif, mediator in explaining the Code of Civil and Commercial Procedure, op. cit., p. 397 and Dr. Ibrahim Najib Saad, Private Judicial Law, op. cit., p. 591.
- <sup>50</sup> Salam Adnan Hayes Al-Zaidi, op. cit., p. 175.
- <sup>51</sup> Dr. Muhammad Saber Muhammad Musa, op. cit., p. 377.
- <sup>52</sup> Dr. Mohamed Sabry Abdel Amir Al-Asadi, Dependency in the Civil Case - A Comparative Study, 1st Edition, Dar Misr, Cairo, 2022, p. 352.
- <sup>53</sup> Mustafa Ibrahim Al-Jabri, Introducing others in the civil lawsuit - a comparative study, New University House, Alexandria, 2020, p. 216. Footnote No. (1)
- <sup>54</sup> See articles 83 and 87 of the Iraqi Code of Civil Procedure.
- <sup>55</sup> See: Dr. Fathi Wali, mediator in the Civil Judiciary Law, op. cit., p. 569 and d. Ahmad Al-Sayid Sawi, The mediator in explaining the Civil and Commercial Procedure Law, op. cit., p. 540.
- <sup>56</sup> See article 136 of the Egyptian Code of Civil and Commercial Procedure.
- <sup>57</sup> See: Dr. Wajdi Ragheb Fahmy, Principles of the Civil Judiciary, op. cit., p. 569.
- <sup>58</sup> See: Explanatory memorandum to the new Egyptian Code of Civil and Commercial Procedure.
- <sup>59</sup> See: Dr. Abdul Basit Juma'i, op. cit., p. 443.
- <sup>60</sup> Decision of the Egyptian Court of Cassation in Appeal No. 78 of 44, session of 31/3/1979, quoted by: Dr. Abdel Hamid Al-Shawarbi, Substantive Commentary on the Code of Procedure, vol. 5, p. 185.
- <sup>61</sup> See: Muhammad Mahmoud Hashim, Civil Judiciary Law, op. cit., p. 354.
- <sup>62</sup> See: Dr. Al-Ansari Hassan Al-Nidani, The Principle and Scope of the Unity of the Litigation in the Code of Procedure, op. cit., pp. 284-285.
- <sup>63</sup> PERROT ROGER: au Revue Trimestrielle de Droit Civil, Edition Sirey, paris, 1981. p. 617.
- Quoted from: Karam Wathiq Mamdouh Al-Ghazanfari, op. cit., p. 131.
- <sup>64</sup> Civ. 3.1.1980. J. C. P. ed. G. 1980 IV. 103 : obs, perrot au, Rev. Trim. dr Civ., 1980. p. 607 no 7.
- Quoted in: Al-Ansari Hassan Al-Nidani, The Principle of Unity of Litigation and its Scope in the Code of Procedure, op. cit., pp. 278-279.