

Dismissing The Judicial Claim In The Administrative Lawsuit

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Abstract

A lawsuit must be filed with the appropriate administrative court once a party complains to the issuing authority about the relevant judgment in a judicial dispute in general and an administrative one in particular. This is in order to litigate for the purpose of removing the harms it caused after alerting it of its behavior that caused the harm through a complaint, so that an action can be reviewed without dispute. The judge detects the dispute and gives his judgment according to the evidence to establish the right and the dispute is between. However, there are cases that may cause the end of the dispute between the parties with their consent or because of mistakes issued by them. This may cause the dispute to be substantively or formally resolved, permanently or temporarily, without issuing a judgment on the matter. Some of its reasons are a final solution to the dispute between them, and others are a reason to re-file the lawsuit proceedings again.

Introduction

The administrative legislation, both substantive and procedural, organized the administrative dispute with all its proceedings in order to enable individuals to litigate the administration and claim their rights without only considering their legal positions and their weakness. It has become possible to litigate the administration over its unilateral actions, which are based on two matters: whenever issued unfairly or affecting a legal status. However, this does not mean that a person disputes with the administration could not be avoided, or that he held the reins. Rather, there are cases that the parties can resort to, or when they are not taken into account, it causes the dispute to end formally or substantively, regardless of the result. Thus, the dispute could be resolved temporarily, permanently, voluntarily or involuntarily.

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Resolving the judicial dispute

Resolving the dispute is a reverse case arising from the rejection of the administrative dispute, whether voluntarily or involuntarily, owing to the reasons that made the case abnormal, which the legislator planned for. The reason may also be due to the other party being able to respond to the prosecution against him in any way through using the legal means granted by law. Thus, instead of issuing a judgment to accept the administrative dispute brought before it, it issues its judgment to resolve the dispute that the litigant claimed. Resolving the dispute has received great attention in jurisprudence, as it is considered one of the cases in which the judicial dispute ends temporarily or permanently, according to the reasons on which the persons in the dispute relied upon when claiming the settlement and issuing a judgment. One of the jurisprudential definitions regarding the resolution, "by resolving the dispute means settling and ending the dispute by the force of the law as soon as the events that the law specified for this settlement exist. It takes place before the issuance of the judgment ruling of the dispute on the origin of the right" (Omar, 1986). In another definition, the resolution was defined as "resolving the dispute and the repealing its proceedings from the last valid action" (Fouda, 1999). It is also known as "resolving the dispute and its consideration as if it did not occur due to the litigants not carrying out their necessary activities" (Hafiza, 2015).

Through the previous definitions, it becomes clear that the jurisprudents differ in the definitions provided regarding resolving the dispute in terms of the reasons leading to the resolution, despite their agreement to the effects resulting. It is not possible to count on these definitions in explaining the concept of resolving the dispute in general. Accordingly, it can be defined as: the dispute is, formally or substantively, temporarily or permanently resolved because there is justification before issuing a judgment on the origin of the right in dispute. Of the following definition of resolving the dispute in general, resolving the dispute is of two types: either by formal resolution due to the presence of a defect in the form of the procedure, or substantive resolution due to the existence of a defect in the subject. Therefore, we will try to highlight the two types in the following lawsuits.

The substantive resolution of administrative dispute

The general rule lies in resolving the dispute substantively by issuing a judicial judgment on the right of case after both parties present what they have of evidence, proofs, documents, and supporting papers that prove the person's right to the claim or enable him to protect his right that was challenged before the court. However, every general rule has an exception. Therefore, it is possible for the judicial and administrative disputes to be settled substantively without issuing a

ruling on the dispute itself, with the availability of one of the reasons for settling the dispute substantively. (Al-Zhugby, 2019).

Before being aware of these reasons, we must first get acquainted with the concept of substantive dispute. We construe the reasons and the forms in which the dispute is resolved substantively, and we discuss later on the most important effects that result from it, according to the following:

First: The concept of substantive resolution: Substantive resolution is considered a type of resolution that is attached to the administrative dispute, leading to its substantive resolution, despite the fact that the ruling has not been issued in the dispute. This type has been given attention by jurisprudence to the appropriate extent through which it is possible to determine what it is and its legal concept. Of the definitions that were said about it, some of them defined it as "It is the one focusing on the substantive right." (Al-Zhugby, 2010)

Consequently, he has the right to claim it, and the dispute associated with him is definitively resolved if it occurs during its progression and its renewal is barred. It is also barred from filing a new lawsuit with the substantive right that was resolved, whether it was resolved during the course of this dispute or before filing. It was also defined as "the settlement that focuses on the substantive right, and the dispute related to it is finally settled and its renewal is prevented. It is also barred to file a new lawsuit with the substantive right that has been settled, regardless of whether it took place during the course of the dispute or before filing. Others have defined it as "the resolution that concentrates on the substantive right, which results in the resolution of the claim right and the ultimate resolution of the lawsuit connected to, preclude renewing if this omission happens throughout the dispute." It is also barred to file a new lawsuit against the subject matter resolved, whether the resolution occurred during the course of the lawsuit or before it was filed. (Al-Rawashida, and Al-Terwana, 2020)

Accordingly, it is clear through the previous definitions that the substantive resolution is attached to the right to dispute and does not focus on the actions taken by the litigating persons. It leads to ending the dispute over the right that is the subject of the lawsuit and the resolving of the dispute among the parties without issuing a substantive judgment about.

Second: Forms of substantive resolution in the administrative dispute: Substantive resolution takes various forms through which it is possible to rule to resolve the administrative dispute in order to resolve the case and the existing dispute between the administration and individuals. These forms lie in the following cases:

Nonsuiting the judgment of administrative dispute:

Nonsuiting is considered one of the grounds for substantive resolution of disputes that respond to the administrative dispute and make the case liable to end due to the absence of the cause on which the dispute is based. It is a legal means taken by the administration because it is one of its administrative actions after it was issued by. Later on, the action taken when issuing this judgment was defective or wrong. Therefore, it is resorted to this method to correct its course retroactively. Some jurists have defined this method as "executing the administrative decision retroactively from the date of its issuance, as if the judgment was never issued and did not hold any legal effects" (Radi, 1984).

According to these definitions, the nonsuiting is considered one of the legal tools and means that the administration rightfully takes as an act of its administrative actions to repeal its consequences in the past and the future. It makes the judgment as if it was not originally, when the required conditions are met. Therefore, if an individual appeals against an administrative judgment and before the court issues its judgment in the case, the administration advances towards nonsuiting its disputed judgment, and all its effects in the past and future disappear. Here, the administration conduct is considered a legitimate act, and the lawsuit becomes non-existent, and therefore the administrative dispute is resolved substantively. The reason is that there is no issue left that the contested party can dispute with the administration for settling it due to a behavior issued by the administration. (Al-Tamawi, 1984)

The administrative judiciary in Iraq, Egypt and France adopted this method. It was also ruled by the General Assembly of a former council (currently the Supreme Administrative Court in Iraq) in its judgment that "the administration has the right to withdraw the judgment, cancel or amend it" (Al-Zubaidy, 2015). In Egypt, the Administrative Court ruled that "the general rule is that the authority that has the power to withdraw the judgment is the authority that issued it or its presidential authority" (4). In France, it was mentioned in the ruling of the Council of State issued on 12/13/1981 that "the judgment to withdraw can only be taken by the party that issued the judgment referred to or by its presidential authorities" (Al-Zubaidy, 2015).

2: Waiver of the right: Waiver is considered another reason for substantive resolution of the administrative dispute if it is focused on the administrative case without a specific action or all its proceedings. It means that one of the parties of the dispute waives the original right in the dispute and resolve it as a waiver of his right that he demanded protection or that has been challenged. It is "a legal act on one or both

sides that includes waiving an established right in accordance with the law" (Abdul-Latif, 1989).

Accordingly, the waiver is considered one of the legal actions taken by one of the parties towards the other party or the two parties towards each other in order to resolve the dispute amicably and preserve the relations among them by waiving all the rights prescribed to him by law. This is considered one of the commonest types of waiver, as it leads to stripping the waived right of protection so that the person cannot claim its protection after waiving it. In Iraq and Egypt, the legislator regulated the waiver in the Civil Procedure Code, and took the formal and substantive waiver together, and applied its rules regarding the substantive waiver in the administrative dispute (Clause (89) of the Iraqi Procedure Law No. 83 of 1969; Article (145) of the Egyptian Civil and Commercial Proceedings Law No. 13 of 1986). In France, the legislator allows waiving in administrative matters and issues, as in the case of civil dispute (Al-Arabi, 1982). However, in order to accept the waiver, the right to waiver must not be one of the public rights and freedoms, because the waiver here is a collective waiver, not a personal one, and this is not permissible (Barakat, 2009).

Settlement: settlement is the other reason that ends the administrative dispute which leads to resolving it substantively. The right affects the dispute in such a way that it prevents the parties from renewing the dispute again. It is an agreement that is concluded between the two parties regarding the dispute that exists between them by mutual consent, without going into the dispute and continuing it with an amicable termination between the two parties. The Iraqi legislator has defined settlement in the civil law as "a contract that raises the dispute and ends the dispute by mutual consent" (Iraqi Civil Code 40/1951).

Therefore, settlement is considered a contract or agreement between the administration and the other party whose judgment was challenged, provided that each of them waives part of his claims in order to end the dispute amicably. Therefore, this settlement resolves the right of the litigants to continue looking into the dispute and ends it substantively by agreement. The French legislator and his judges have adopted settlement in administrative disputes, as well as the Egyptian, while we did not find a text or a judgment on issues that the parties to administrative disputes in Iraq can resort to the means of settlement because it is the administrative dispute that it is substantive (Badn, 2020).

In France, the legislator expressly stipulated in the civil law the possibility of resorting to settlement for all public law persons, and allowed settlement in common law disputes (Article 2054 of the amended French civil code/ 2017). The State Council implemented this

idea when a settlement was reached between a municipality and a contractor, provided that the contractor performs some corrective works in exchange for the latter's waiver of filing a lawsuit. Although the first breached the settlement, the judiciary ruled that the settlement is invoked in the municipality, which has nothing left after the settlement except to file a new lawsuit based on the violation of the terms of the settlement (Badn, 2020).

Avoidance: It is considered another reason for substantively resolving the administrative dispute and ending it permanently without the possibility of renewing the claim for the right of the dispute again. It is considered a procedural right that is taken by one of the litigants, and in particular the defendant, by unilateral will against the other litigant. Accordingly, he is subject to the requests of the other opponent in everything that is requested of him in connection with the lawsuit for whatever reason, which caused the administrative dispute resolved (Ali, 2022). Avoidance is a "legal act by the defendant to abide by the plaintiff's requests. It is also imagined that it would be on the part of the plaintiff in the event that he surrendered the defendant's requests and the dispute ends with it" (Basioni,).

Accordingly, arbitration is only one of the procedural rights taken by the defendant, regardless of whether his original capacity in the petition was plaintiff or defendant, in order to end the dispute for whatever reason. So, he obeys and prepares himself to implement the demands of his opponent who has surrendered to. Thus, the administrative dispute between them ends permanently without the possibility of renewing it. The Iraqi legislator and the comparative one did not regulate the means of resolution or settlement, but the latter is the opposite of resolving. Consequently, this is due to the rules of resolving the dispute in the pleadings law in both Iraq and Egypt. In France, the rules are referred to in Decree No. 209 of 1981 issued on January 16, 1981, amending the decree of July 30, 1963 regarding the organization of proceedings before the State Council (Al-Idawani, 2011).

Third: the implications of substantive resolution of disputes

The substantive resolution of the administrative dispute entails a set of certain legal effects regarding the right of the dispute and the case through which the right was raised. These effects lie in the following:

1: The termination of case: One of the legal effects that result from the substantive resolution is that it leads to the terminating the dispute between its parties and the case filed before the administrative court competent to review the waived right retroactively, as if the case had not been filed before. In addition, all the legal effects that resulted from the judicial claim will disappear with it. Thus, it leads to the

cancellation of all the proceedings of the case and the requests submitted in it, and the lapse of defenses and sub-questions in it, although it is a substantive resolution, because the resolution of the cause means that the form is resolved. Thus, if the case ceases, the latter no longer has any existence or any interest in taking action against the subject matter based on it (Al-Rawashda and Tarwana, 2015).

Waiving the right in the case and not to claim it again: One of the legal effects that result from the substantive resolution is that it leads to the waiving the substantive right of the case, even if a substantive judgment has not been issued regarding it. Consequently, it entails the resolution of the right of claim in the substantive resolution of dispute, and his right in the case ceases, regardless of whether the opponent wanted to arrange this effect or not. Thus, it is not possible for those who waived their right substantively to claim it again before the judiciary, because the one who waived does not return (Al-Zughbi, 2010).

The waiver of right in the case implicitly means resolving the dispute, and therefore the parties may not renew the dispute again because the substantive waiver ends the dispute between its parties permanently and not temporarily. Therefore, if the lawsuit is substantively resolved and then one of its parties proceeds to file it again, then the other party may argue that the lawsuit is resolved based on any of the aforementioned reasons at any stage of the lawsuit (Al-Tehiwey, 1984).

The formal resolution of administrative dispute

The dispute ends by issuing the substantive judgment in the dispute and the settling it by including one of them the ruling issued in the dispute. This is done after both of them presented the necessary evidence and arguments to recover the case in his favor, ending naturally and substantively, raising the forms based on the right in dispute. On the other hand, the dispute may also end with the issuance of the procedural judgment in the dispute without addressing the case. This leads to the dispute being completely or temporarily terminated before delving into its details or after that due to non-observance of what is necessary to consider the dispute by one of the litigating parties. One of the cases in which the dispute ends with the issuance of a procedural ruling is the formal resolution. It means the termination of consideration of the dispute and the formal dispute in a definitive or temporary manner until the disappearance of the reason for the omission. For more on this case, we will discuss its concept, and then the most important reasons or cases that fall under it and their implications, according to the following:

First: The concept of formal resolution: Formal resolution is considered one of the cases in which the judicial and administrative dispute ends abnormally, which takes its course before the courts and the judgment is rendered substantively. It is, as it were, terminating the existing administrative dispute, temporarily or permanently, for the reason that one of the parties to the dispute did not observe the necessary proceedings to take in order to maintain the formality required for the consideration of the dispute before the judiciary and to come out with a legally sound and substantive judgment. (Omar, 1986)

There have been many jurisprudential opinions that were said in connection with the formal resolution. Some of them defined it as “the resolution that focuses on the set of procedural actions that make up the judicial dispute without affecting the substantive right itself and the right to claim it” (Al-Zughbi). In another definition, it was meant as “resolving the dispute that goes to the dispute proceedings as a means by which the reality of the right to the lawsuit is verified as the legal means to protect the substantive right, without affecting the substantive right itself, nor the right to claim it” (Al-Musmani, 2017).

Accordingly, from the previous definitions, the formal resolution focuses on the total proceedings necessary to consider a dispute without affecting the substantive right at issue or the right to claim the substantive right, for whatever reason and for any judgment, whether by law, court judgment, or based on the request of the litigants. As a result, formal resolution can be defined as “the resolution that focuses on the total judicial proceedings taken by the persons in the dispute, from filing the dispute before the judiciary until before the judgment is issued, leads to the termination of the existing dispute without affecting the right that is the subject of resolving the lawsuit or the right to claim the right again.

Second: Forms of formal resolution in the administrative dispute

1: Nonsuiting and annulment of the case: Nonsuiting and annulment of the case are among the legal reasons that lead to resolving the administrative dispute formally without the court affecting the right in dispute. It means the plaintiff waives his lawsuit, which he filed before the Administrative Court, without intending to waive the origin of the claimed right.

As he started the case before the court, he finished what he did. Resolving the case is done through the plaintiff's failure to appear in the pleading sessions after he has filed his case in accordance with the rules. The defendant shall appear in the pleading session and argue that the lawsuit petition is invalidated or abandoned, or in the presence of the plaintiff in the pleading sessions. A request is submitted to nullify or abandon the lawsuit petition, and the dispute

in it is formally resolved without issuing a ruling on the disputed right. In the text of Articles (2/56) and (88) of the Procedure Law, the Iraqi legislator regulated the subject of waiving. The first article allowed the defendant to submit a plea in which he requests the invalidation of the lawsuit petition after the plaintiff was not present in that session. However, it is stipulated that the plea for annulment be made in the first session to consider the pleading and before entering into the dispute after the plaintiff was absent in that session. As for the second, the plaintiff can, at any stage of the dispute consideration, submit a request to the judge to invalidate the lawsuit petition or any of its proceedings after filing it in accordance with the rules, unless the lawsuit is prepared to judge it. In both cases, the plaintiff or the defendant in the administrative dispute can plead the nullification of the lawsuit petition in accordance with these rules and according to the required conditions (Agha, 2021).

In Egypt, the procedural legislator regulated the case of abandoning the petition and annulling it in the Civil and Commercial Proceedings Law in Article (141) and permitted applying within the field of appeals before the administrative court of the State Council. The Supreme Administrative Court confirmed this. In France, nonsuiting the petition or invalidating it is also one of the cases in which the administrative dispute ends, even if the appeal submitted is an appeal to settle it when its conditions are met, and therefore the ruling issued in it is a ruling to resolve the dispute formally (Agha, 2021).

2: Non-signing the lawsuit petition: When not signing the administrative lawsuit petition by the lawyer, then it will be considered one of the cases that cause the administrative dispute to be resolved formally. It is considered as one of the conditions for accepting a case in some laws, given that dispute on the administrative side requires experience and competence. The two characteristics are not present except with the lawyer who is registered in the list of lawyers accepted before the court. Therefore, if the submitted petition is devoid of the lawyer's signature, then the petition is subject to a formal response, and this is considered a formal omission of the administrative dispute (Abu Elia, 2017).

In Iraq and France, the legislator does not require that the administrative lawsuit petition be signed by a lawyer registered in the list of accepted lawyers. In other words, the procedure for signing is not mandatory for accepting the case. However, this does not mean that he refrained from signing, but the litigants can seek the assistance of a lawyer to consider the administrative case. However, this assistance is optional (Jankir, 2019). One of the necessary and significant steps in accepting a lawsuit in Egypt is the process. The opponent's claim petition will be denied in form if they are not

followed by the opponent. This acts as a formal dismissal of the issue by itself. As stated in the text of Article (25) of the Egyptian State Council Law, "The application shall be submitted to the clerk's office of the competent court with a petition signed by a lawyer registered in the list of lawyers accepted before that court..." (Fouda, 1999). (Egyptian State Code 47/ 1972)

3: Resolving the administrative dispute: terminating the administrative case is considered one of the reasons that lead to the end of the dispute and its formal resolution of dispute after it was filed without the judge issuing a ruling on the dispute. It is established through the failure of the litigants to deposit the required documents, papers, or documents when filing an administrative lawsuit, or his failure to take a specific action from the proceedings for filing the lawsuit. The judge decides to end the dispute for a certain period until the filing or fulfillment of the liabilities, and vice versa, the administrative dispute is resolved formally due to the necessity of a defect in the proceedings of the dispute proceedings (Basta Ki,).

The Iraqi and Egyptian legislators regulated the issue of resolving the dispute in the Civil Procedure Law, as the legislator stipulated in the two laws, that is, the Iraqi and Egyptian laws. Documents should be attached when filing a lawsuit. When there is something that is not possible, the court gives the opponent a certain period, which was determined by three months in Iraq (the Civil Procedure Law 83/ 1969), and before the date of hearing the case in the first session or at the time specified by the judge in Egypt (Egyptian civil and commercial law 13/1986).

In the event that the litigants fail to comply with what the judge required them to do within the specified period, the lawsuit petition shall be invalid by virtue of the law in Iraq, and the judge shall rule not to accept it or to pay a fine with the suspension of the lawsuit for a period of one month in Egypt (Bastaki,). However, if the reason for the stay is due to the litigants settlement taking any of the pleading proceedings by agreement, then the dispute is settled for a period of three months from the date of the court's judgment in both Egypt and Iraq. If the required period has passed and the parties did not resume the dispute within (15) days from the date of the expiration of the period in Iraq, and (8) days from the date of the expiration of the period in Egypt, the dispute shall be formally resolved and the court shall issue its procedural ruling thereon (Article (1/82) of the Iraqi Procedure Law No. 83 of 1969; Article (128) of the Egyptian Civil and Commercial Proceedings Law No. 13 of 1986).

In France, the legislator regulated the case of resolving the administrative dispute in Decree of July 3, 1963, amended by Decree No. 16 of 1981 and through the Administrative Proceedings Law.

Through Article (53/3) amended by Article (5) of the Decree and Article (611/27) of the Administrative Proceedings Law, the litigants are obligated to deposit the required documents within four months from the date of filing the case statement with the Secretariat of the Judicial Department. When failed, the dispute is resolved formally. In the case of settling the dispute due to the negligence of the litigants to take the proceedings to proceed with it, the dispute shall be resolved formally if the period specified by the judge for that has passed, unless the dispute is of public order (Al-Edawani).

Not hearing the lawsuit due to the passage of time: Nonsuiting the lawsuit due to the passage of time is considered one of the other cases that cause the administrative dispute to be resolved formally without prejudice to the origin of the right. This is the case in which he does not take into account the time required to file the lawsuit. Therefore, if the law required the opponent to file his lawsuit within a certain period, then failure to observe this period would be a reason for resolving the dispute formally and ending the dispute finally without the judge entering into the details of the case or issuing a substantive ruling on the right in dispute. (Abdalnabi, 2021)

In Iraq, the legislator required the plaintiff to file his claim within (30) days from the date of rejecting the complaint explicitly or declarously when the lawsuit was filed before the employees' courts (5) and (60) days before the Administrative Court from the date of rejecting the complaint expressly or constructively (Article (7/Ninth/B) of the amended Iraqi State Council Law No. 17 of 2013, Article (15) of the Iraqi State and Public Sector Disciplinary Law No. 14 of 1991, and Article (59) of the Iraqi Civil Service Law No. 24 of 1960). In Egypt, it is determined by (60) days from the date of publication of the contested administrative judgment in the Official Gazette or in bulletins issued by public departments or in the announcement of the person concerned (Article (7 / Seventh / B) of the Iraqi State Council Law No. 17 of 2013). In France, the legislator has specified a period of (60) days to file the annulment lawsuit before the competent authority from the date of publication or notification of the decision, and on the contrary, the right of the litigant in the dispute is settled formally (Article (24) of the Egyptian State Council Law No. 47 of 1972) (Article (49) of the French legislation of 1945.).

5: Resolving the lawsuit to complete the previous proceedings: The administrative lawsuit begins with the petition of the lawsuit and the judicial claim before the judiciary and ends with the issuance of the ruling on its subject matter, as in the case of the civil lawsuit. However, what distinguishes the former from the latter is that there are legal proceedings imposed by the legislator on the opponent before submitting his petition, and the dispute and the lawsuit are not

formally resolved. The court rejects the lawsuit except when the required proceedings are observed before filing. Among these proceedings is the complaint, as the opponent must, before filing his lawsuit, complaint with the administrative work before the same authority that issued it before filing his lawsuit. The right to file a lawsuit shall not be resolved until the completion of the proceedings or permanently if the period required for the complaint has passed (Ali, 2022).

The Iraqi legislator regulated the subject of the complaint and the period during which the complaint is supposed to be submitted in Article (7/Seventh) of the amended State Council Law, and Article (15/Second) of the Disciplinary Law of State and Public Sector Employees. The litigant must appeal the judgment before the authority that issued it within (30) days from the date of his notification of the administrative order or decision, or considering him notified of the contested decision. Otherwise, he does not hear the lawsuit filed after the aforementioned period has passed, and the judge decides to dismiss the administrative lawsuit, and thus the administrative dispute is resolved formally. (Al-Zubaidi, 2015).

In Egypt and France, the legislator took the administrative complaint and obligated the person to take his own way before filing his lawsuit before the courts. However, he did not obligate it in all cases, in other words, the Egyptian and French legislators take sometimes the obligatory complaint and sometimes the optional complaint. In an appeal for resolution, the legislator in Egypt must appeal to the stakeholder with the decision under appeal within the legal period, and his right to file a lawsuit and to submit a complaint shall not be resolved. If the period specified for the appeal has passed, which is (60) days from the date of publication of the judgment (Articles (12/B, 24) of the Egyptian State Council Law No. 47 of 1972), while in other appeals other than cancellation, the legislator does not require that the opponent complain about the decision under appeal (Articles 44 and 34 of the Egyptian state law 47 / 1972). In France, the complaint is optional, unless the appeal relates to an unlawful judgment, and in the event that the person requests compensation for the unlawful decision, provided that he submits it within (4) months. The complaint is decided during this period in accordance with Decree No. 49 of 1945 (Jankir, 2019).

6: Neglecting the writing action: Writing is considered one of the formal conditions required by the administrative legislator when filing a dispute before the administrative courts. When challenging an action of the administration, the opponent must submit an application for that. Therefore, there is no room for the request to be verbal except in exceptional cases, such as clarification or interpretation of some

facts and documents, or when proving defenses and amending requests. Thus, if the opponent violates the observance of this form, the judge orders the administrative dispute to be resolved formally and rules the dismissal of the case formally (Fouda, 2010).

In Iraq, the legislator stressed this condition starting when submitting a petition for the lawsuit and when submitting a complaint through Article (46) of the Iraqi Procedure Law with regard to the petition and Article (7 / Seventh) of the State Council Law with regard to the complaint. However, he did not obligate the litigants to writing during the consideration of the dispute (Al-Zubaidy). In Egypt, however, the matter is different, where the legislator emphasizes the condition of writing at the beginning and during the hearing of the case, through Article (25) of the State Council Law when it stipulated that "the application is submitted to the clerk's office of the court concerned with a petition...and the applicant may submit a note with the petition... (Egyptian State Council Law No. 47 of 1972).

It is also emphasized in Article (26) when it states that "the competent administrative authority must deposit a memorandum with the court's clerk's office." Through these articles, the Egyptian legislator assures of writing, when submitting the petition of the lawsuit, and during the consideration of the dispute when submitting defenses in the form of notes. (Egyptian State Council Law No. 47 of 1972).

In France, the French State Council's judgment also requires a written nature to raise the administrative dispute until the verdict is issued, and it does not allow the oral proceedings unless there is an explicit text to that effect, or the evidence is accompanied by written notes (Al-Edawani,).

7: Non-payment of judicial fees: Non-payment of judicial fees is considered one of the other forms that cause the dispute to be resolved formally without prejudice to the origin of the right. It is also considered one of the proceedings prior to examining the case based on the plaintiff paying the legal fees for examining the case or submitting a request for his exemption according to the rules regulating that. The judge sets a date to consider the case and accepts the case in form. The judge does not investigate the dispute and does not set a date for it. The periods for filing a lawsuit are not interrupted until after the lawsuit fees are paid. The Iraqi legislator and comparator organized this form in the State Council Law. In Iraq, the legislator regulated the case of non-payment of fees in the State Council Law and considered it one of the reasons for settling the lawsuit. This was stipulated in Article (6/7/b) "The court shall register the appeal with it after collecting the legal fee, and the waive of the right to appeal before it, does not prevent the review of the ordinary court..." (Iraqi State Council Law No. 17 of 2013).

In Egypt, the legislator provided for this case and considered it as a formal condition for accepting an administrative lawsuit, through Article (27) of the State Law by saying, "The commissioner shall decide on requests for exemption from fees" (Egyptian State Council Law No. 47 of 1972). In France, the legislator permitted the filing of a lawsuit without the need for a fee-paying machine to begin with (Jankir, 2019).

Third: The effects of the formal resolution

The formal resolution of dispute, as a procedural penalty, results in a set of certain legal effects, some of which are similar to the effects that result from the substantive resolution. In addition, there are other effects that are allocated to and not others, which lie in the following points or effects:

Terminating the Case:

The formal resolution in this effect is similar to the substantive one in that both lead to the end of the existing dispute, permanently or temporarily. The dispute ends with all its proceedings taken, starting with the judicial claim and taking advantage of the last measure taken, so that all legal effects resulting from filing are nullified. All preliminary, interim, or preparatory judgments previously issued shall be resolved. All requests and payments made by the parties shall be nullified. In the end, the court's mandate to consider the dispute ends temporarily or permanently, depending on the reason for the nonsuit and the extent to which it can be corrected (Ali, 2022).

2: Not to prejudice the origin of the right of dispute:

The formal settlement differs from the substantive one in that the former does not lead to resolving the right of the dispute, unlike the latter, which leads to resolving the right that is the subject of the dispute and prevents claiming it. The formal settlement focuses on the proceedings of the lawsuit and does not affect the origin of the right to dispute. Therefore, if there is a case that leads to resolve the dispute formally. The right of dispute remains valid. Thus, if the opponent with interest corrected the form leading to resolving the dispute, he could claim it again if it was possible to correct it (Al-Masoudi, 2022).

3: Not to prejudice the right to claim and to renew it:

Among the other effects that result from the formal settlement of the administrative dispute is that it does not affect the right of the person to claim the right again with a new lawsuit, because resolving the dispute does not affect the right. Therefore, when the reason leading to the settlement is still there, the litigant can file his case again and claim his right that is the subject of the dispute again, unless the formal

resolution is a permanent one. The defect that caused the dispute to be resolved formally cannot be corrected (Lamin, 2021).

Conclusion

The research has come up with the following conclusions:

1. Resolving the administrative dispute means terminating it temporarily or permanently, due to the occurrence of one of the matters specified by the law prior to the issuance of the judgment in its subject matter.
2. There are two types of resolving in administrative dispute: A type related to the form of the dispute leads to resolving it formally, and a type related to the subject on which the dispute is based leads to the dispute substantively ending without the judge issuing his substantive ruling in the case.
3. As for the provisions of resolving the administrative dispute, we refer to the rules of the Civil Procedure Code, except in some narrow cases. That applies in the reasons that concern the administrative side only, not the civil one. Here, we mean the reasons leading to resolving the dispute, because there are reasons leading to resolving the administrative dispute that differ from the civil dispute.
4. There are several reasons that cause the administrative dispute to be settled, which differ according to the type of settlement. Formally, it is possible to abrogate the case and invalidate it, or not to sign the petition of the case, or to resolve the administrative dispute, or not to hear the case due to the passage of time. This is done either by completing the proceedings prior to filing the lawsuit or by other reasons that lead to formal resolution of the dispute. Substantively, it is possible to withdraw the disputed judgment, waive the right, settle, or avoid would lead to end the dispute substantively without prejudice to the formal proceedings and cause the dispute to resolve completely.
5. The effects of resolving the administrative dispute differ according to their types. If the settlement is formal, then it often would cause the dispute to settle temporarily rather than the permanently, except in a narrow scope while preserving the right to re-file the dispute because it does not affect the dispute. Substantive dispute often causes the dispute to be resolved permanently. The individual's right to re-file the lawsuit is prescribed due to the disappearance of the legal protection granted to the right in dispute due to a reason that led to its settlement, and with it the jurisdiction of the court over the lawsuit is terminated.

Recommendations

1. We recommend the Iraqi legislator to organize the administrative dispute with all its proceedings in the State Council Law or to enact a special law related to judicial proceedings that is specific to administrative cases without the judge referring to the rules of the Procedure Law to apply its provisions thereon.
2. We recommend the Iraqi legislator to regulate all cases or reasons that lead to resolving the dispute formally and substantively. He must also put texts of his own without being content with existing rulings, decisions or judicial principles or relying on the authority of the broad positive judge.

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