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Legal nature of the challenge to admissibility of the action for the annulment of the administrative decision "A comparative study"

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Abstract

This study aims at defining the challenge to the admissibility of the action for the annulment of the administrative decision through reviewing the juristic opinions in this concern as well as the judgments of courts concerning the same. This study also shows the legal basis of this challenge and the legal nature thereof, upon which the juristic opinions have been diversified in order to identify the most accepted opinion. This study also aims to clarify the mechanism of the administrative control over this challenge by analyzing and clarifying the judgments said by the judiciary in the countries under comparison, without access to the rules of this challenge and the legal effects of the judgment therewith.

One of the most important recommendations of the study was the necessity of having a judgment related to the challenge to the admissibility of the action for annulment and considering it public order, and this challenge shall be initiated at any stage of the case, in addition to the court may also initiate it ex officio. The study also does recommend that the Jordanian legislator shall adopt a specific theory concerning challenges, which shall have a place in the Jordanian Code of Civil Procedure in a manner that is keen to indicate the nature and provisions and the differences between them.

Keywords: Challenges, action for annulment, pleas in abatement, pleas in bar
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1. Introduction

The Challenge to admissibility is one of the legal challenges in the action for the annulment of the administrative decision. Legal challenges before administrative courts are a technical force in order to establish a balance between the legal statuses in the action for the annulment of the administrative decision. Challenges before administrative courts are important as administrative cases and the challenges thereof are related to public order, as well as challenges have outstanding importance pendent lite and importance in how they are maintained and the effects thereof. It should be borne in mind that the theory of challenges in Administrative Law is different from the public principles established before the ordinary justice in many aspects, as Administrative Law is characterized by its independent theories. Administrative Law shall not take from the ordinary justice except for necessity, on conditioned that the imported principle does not cause any defamations against the entity of Administrative Law or the independence thereof, avoiding measuring between the provisions of Civil Procedure. However, the challenge to the admissibility of the action for the annulment of the administrative decision is similar to that of the Code of Civil Procedure in that it is considered one of the means used by one litigant to challenge the validity of the litigants' procedures, without challenging the merits of the right claimed by its opponent, thus avoid temporarily the judgment caused by the claims filed by the litigant. These are called pleas in abatement. The means of defense related to the merits are known as pleas in bar. The defense means through which the litigant denies the power of its litigant in the use of the case is known as challenges to admissibility, which will be the topic of our research.

1.1. Study problem and questions

The problem of the study is that the definition of this challenge has initiated, in addition to its position among other challenges, many problems because of the ambiguity of the idea of this challenge and the lack of clarity of the legal system that responds thereto, although all Procedural Laws and comparative legislation of the majority of countries have referred thereto. However, the nature of this challenge, as well as its provisions, is still unclear, which prevents any controversy or debate, whether before ordinary justice or Administrative Law concerning which we are studying the legal nature of this challenge if initiated before it in the action for the annulment of the administrative decision.

In conformity with the foregoing, the problem of the study is represented in answering the following questions:

Question 1: What is meant by the challenge to the admissibility of the action for the annulment of the administrative decision?

Question 2: What is the legal basis of the challenge to the admissibility of the action for annulment?

Question 3: What is the legal nature of the challenge to the admissibility of the action for annulment?

Question 4: How is judicial control exercised on the challenge to the admissibility of the action for annulment?

1.2. Objectives of the study:

The purpose of this study is to determine the legal nature of the challenge to the admissibility of the action for annulment due to the ambiguity surrounding this challenge and the various views of jurisprudence concerning this nature.

1.3. Importance of study:

The importance of this study lies in that it deals with the challenge to the admissibility of the action for the annulment of the administrative decision from a legal comparative perspective. It also shows the legal basis governing this challenge and the different jurisprudential and judicial trends regarding the legal nature thereof. It also highlights the importance of this study in judicial applications by analyzing the concepts of this topic and linking it with the judgments issued by the courts of Administrative Law in Jordan and comparative administrative laws, while not neglecting what was issued by ordinary judiciary.

1.4. Limitations of study:

The situation of Jordanian legislation and jurisprudence, as well as Administrative Law in Jordan, and comparing them in the countries of wide and profound experience such as the Arab Republic of Egypt.

1.5. Methodology of study:

The study is based on the descriptive, analytical and comparative methodology, which is based on describing the legal provisions and legislation, analyzing the jurisprudential trends of the theory of challenges and extrapolating the judgments of administrative and civil justice if necessary, taking into account scientific honesty and relying on the relevant references.

1.6. Terminology of study:

Challenges: The term “challenge” generally refers to all means of defense which a litigant may use to respond to the claim of its opponent, with a view to avoiding the judgment with what its opponent claims, whether such means are directed towards the case, towards the proceedings, towards the origin of the alleged right, or at the opponent's power in using the case to deny it.[1]

Action for annulment: This is a case filed by an individual before administrative courts requesting the annulment of an administrative decision contrary to law.[2]

Pleas in abatement: They are the procedures specified by the legislator and made as a means of adhering to the procedural penalty resulting from procedural irregularities.[3]

Pleas in bar: a plea in bar is that which is directed towards the alleged right, such as challenging this right, claiming extinction of the right of action or the challenge that such a right was time-barred.[4]

Answer to question 1: What is meant by the challenge to the admissibility of the action for the annulment of the administrative decision?

2. The concept of the challenge to the admissibility of the action for the annulment of the administrative decision

Jurisprudence defines the challenge to the admissibility of the administrative case as a means of defense aimed at denying the plaintiff's authority to use the case. It is therefore the means by which the right holder protects its right, whether it may be used or the condition of use is not permissible for lack of a general condition that shall be available in order to admit the case, or for lack of a private condition of those related to the filed case.[5]

Another also defines that it is simply intended to prevent the court from hearing the case over which it has jurisdiction, since the right of the plaintiff to seek judicial protection shall not be accepted as a condition of the admissibility of the case.[6]

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[1] Dr. Mohamed Maher Aboul Enein, Ad-Dufu' Fi Netaq Al-Qanun Al-Am (Challenges within the Scope of Common Law), Book I, Dar Al-Nahda Al-Arabiya, 2003, p. (N).

[2] Dr. Soliman Al-Tamawi, Al-Qada' Al-Idari (Administrative Law), Book I, Qada' Al-Ilgha' (Annulment Justice), Dar Al-Fikr Al-Arabi, 7th edition, 1996, p. 280.

[3] Dr. Nabil Ismail Omar, Al-Waseet Fi Qanun Al-Murafaat Al-Madaniyah Wa Al-Tujariyah (Al-Waseet in the Code of Civil and Commercial Procedure), Dar Al-Game'h Al-Gadida, Alexandria, Egypt, 2011, p.349.

[4] Dr. Abu Al-Wafa (Ahmed), Nazariat Ad-Dufu' Fi Qanun Al-Murafaat (Theory of Challenges in the Procedural Law), 6th edition, Munsha't Al-Maaref, Alexandria, 1980, Clause 201, p. 210.

[5] Dr. Abu Al-Wafa (Ahmed), Ibid, P.19 and P.843.

[6] Dr. Nabil Ismail Omar, Op. cit., P.613.

A third defines that it is directed towards the right to a case, which is adhesion to the lack of one of the case conditions, whether such conditions are general or private.[1]

Concerning this definition, the researcher sees that this challenge is directed towards the force of obtaining a verdict in the merits. If a right holder has the right to resort to Administrative Law requesting the protection of law, then Administrative Law shall not consider this request, whether by rejection or admissibility, unless certain conditions are met. This what jurisprudence names as the conditions of acceptance of the case, so that if all or part thereof are not met, the administrative judge shall judge with the inadmissibility of the case.

One researcher defined it as "the challenges related to the power of recourse to justice and the conditions necessary thereto, i.e. the challenges related to the right to use the case and considering it before the court, without considering the merits or the plaintiff's capacity to file the case."[2]

Another opinion in jurisprudence sees that it is a claim, challenge or appeal legally adapted and submitted to the court, which results in the court's refusal to be consider it. In this sense, it contributes to the achievement of an important function consistent with saving the efforts and money of the case. The refusal of the judge to consider what was submitted thereto contributes to saving time, efforts and expenses.[3]

Another defines it as a means of defense by which the litigant aims to deny the case. Therefore, it denies the right of its opponent to use such a case because of the lack of certain conditions of use.[4]

The researcher sees that although the definitions are different in this type of challenges, however the difference is in language wording rather than in content, as the general framework of this challenge is almost unanimous by the jurists that it is a purely negative means of defense in which the role of the defendant is represented in adhering to its right, that is, to be acquitted of what the plaintiff assigns thereto. Therefore, it differs from the means of defense related to the origin of right, which are called pleas in bar. It also differs from the pleas in abatement represented by the means used by the opponent to challenge the validity of the case procedures without challenging the origin of right claimed by its opponent, thus the litigant temporarily avoids being judged against in favor its opponent's claim.

Accordingly, the researcher believes that the challenge to the admissibility of the case is just a means of defense, which denies the opponent's power to use the case. Perhaps this definition is characterized by a kind of inclusiveness, as well as it carries with it the most important elements of this challenge. It is the closest to the all-inclusive and all-exclusive definition.

With regard to the situation of legislation regarding the definition of this challenge, the Egyptian legislator in the Code of Civil and Commercial Procedures did not define the challenge to the admissibility of the case solely in the stipulation of Article 115/ Procedures.[5]

As for Jordanian legislation, represented in the Code of Civil Procedure, Law No. 24 of 1988, as well as its amendments, and with extrapolating all the private provisions contained therein-- we find that it did not define this challenge, nor did it adopt a specific theory of challenges in general, because this challenge was initiated away from the trends of contemporary laws that have adopted the theory of the inclusion of challenges according to their nature and the provisions of each were determined, so that they vary according to the category to which they belong. Moreover, we did not find such boundaries between the different categories of challenges despite quoting many of the provisions of this challenge from the Egyptian Procedural Law.

The researcher believes that the Jordanian legislator did not hesitate to let multiple types of challenges subject to one rule, while ignoring the differences between them and the different legal systems governing the same. The researcher confirms that the Jordanian legislator in Administrative Law, Law No. 27 of 2014, as well as successive laws, have not referred at all to these challenges. However, Article 41 thereof provides for the administrative judge's use of the Code of Civil Procedure in the absence of a provision in administrative law governing the issue of administrative case without prejudice to the nature of the administrative case.

Answer to question 2: What is the legal basis of the challenge to the admissibility of the action for annulment?

3. The legal basis of the challenge to the admissibility of the action for annulment

[1] Counselor Abdel Tawab Mouawad, Ad-Dufu' Al-Idariyah (Administrative Challenges), 2nd edition, 1995, P.290. It was referred to by Attorney Ibrahim Al-Mongi, Ilgha' Al-Qarar Al-Idari (Annulment of the Administrative Decision), Munsha't Al-Maaref, Alexandria, first edition, 2004, P. 325.

[2] Dr. Faris Ali Omar Al-Jarjari, Ad-Defu' Bi-Adam Qabul Al-Da'wah (Challenges to Admissibility), his research published in the Journal of Rafidain Rights, Vol. 10, Issue (37), 2008, P.45.

[3] Dr. Ibrahim Harb Al-Muhaisen, Al-Nazariah Al-Ammah Lildufu' Al-Madaniyah (General Theory of Civil Challenges), Dar Al-Falah for Publishing and Distribution, Jordan, 2008, P.40.

[4] Attorney Fouda Abdel-Hakam, Al-Musu'ah Al-Shamelah Fi Ad-Dufu' Wa Ad-Defaat Al-Gawwahriah (Comprehensive Encyclopedia of Challenges and Core Defenses), Vol. 1, Technical Office of Legal Encyclopedias, Alexandria, Ps 24,25. It was referred thereto by Researchers Azouqen Lilia and Yemeni Ayadi, Al-Nezam Al-Qanuni Li-Addefu' Al-Qada'iyah (The Legal System of judicial Challenges in Civil Matters), a master thesis submitted to Abdel Rahman Mira University - Béjaïa, Algeria, 2018, P.58.

[5] Attorney Ibrahim Al-Mongi, Op. cit., Ps 325,326.

The legal basis of the challenge to the admissibility of the action for annulment is the provisions of the Egyptian Code of Civil and Commercial Procedure, law No. 13 of 1986, as amended and stipulated in Article 115 thereof, which stipulates that "the challenge to the admissibility of the case may be submitted at any case thereof. If the court considers that the challenge to the admissibility of the action, because of a defect in the defendant's capacity, is based on a legal basis, it shall postpone for noticing that which has the legal status. In this case, the court may sentence the plaintiff to a fine not less than fifty pounds and not exceeding two hundred pounds. If the matter is related to a ministry, public authority, body, or natural or legal person, it is sufficient to specify the name of the representative of this body in the statement of case.'

The legal basis thereof in Jordan is represented in the provision of Article 111 of the Code of Civil Procedure, law No. 24 of 1988, as well as its amendments, which states that:

1. The challenge to the Court's jurisdiction- because of the lack of territorial, case-matter and case-value jurisdiction, or that this case may not be examined because of the previous adjudication therein or because of any other challenge related to public order- may be submitted in any case where the case is decided by the court ex officio.
2. If a challenge is initiated, and such a challenge is related to public order or any other plea in abatement, the evidence thereof shall result in the inadmissibility of the case-- the court shall promptly adjudicate it ex officio or at the request of one of the litigants. The decision to refute such challenge shall be subject to appeal along with the merits of the case.

Here, the researcher confirms what has been mentioned in his opinion regarding the Jordanian Code of Civil Procedure, which did not keep up with the contemporary laws governing the theory of challenges in general.

Answer to question 3: What is the legal nature of the challenge to the admissibility of the action for annulment?

4. The legal nature of the challenge to the admissibility of the action for annulment

Juristic opinions vary in determining the legal nature of the challenge to the admissibility of the action for annulment, as this challenge is surrounded by ambiguity and hesitation, on which there may be many views and opinions. The divergence in the opinions thereof is due to its special nature which is different from the nature of pleas in bar and pleas in abatement, as pleas in bar are related to the merits of the case while pleas in abatement are directed to the case as a set of procedures.

In order to determine the legal nature of this challenge, we have to identify the position of this challenge and the distance that separates it from pleas in bar and pleas in abatement and whichever appears closer thereto. In addition, we have to know: Are the elements of this challenge the same as that of other challenges or it has its own independent trend? To answer these questions, we will review the most important opinions expressed in this regard, starting with the traditional trend, then discuss the issue in the modern trend and then indicate our opinion on this issue and what we think close to the truth.

4.1. First: Traditional trends (old trends)

The proponents of this trend argued that the challenge to admissibility is one of the pleas in abatement that exclude adjudication since the case was not initiated through the conditions to be provided in order to be procedurally accepted.

This trend was based on arguments, the most important of which is that the French Procedural Law of 1806 knew only pleas in bar and pleas in abatement. The second argument depends on the established practice, as the challenge to admissibility in this period has been incorporated into the category of pleas in abatement. This view was established even in the French Procedural Law repealed in 1935.[1]

This trend was criticized because its proponents view the annulment of a case shall be in a situation where the requirements and conditions of such a case do not exist. Such requirements have to be met in order for the case to be initiated and in order to refute any claim that leads to the inadmissibility of this case or the procedures, as the proponents of this opinion believe that the challenge to admissibility is not a plea in abatement.[2]

This trend was also criticized by another juristic opinion that sees that when the French legislator did not mention, in the Act issued in 1806, the challenge to the admissibility of the action for annulment; this does not mean that it does not exist at all. Legislation outlines the legal system, leaving the details and precise content to the judiciary to apply.[3]

The opinion of the researcher does not adopt this opinion because adopting it will inevitably distort the idea of the challenge to admissibility and the idea of plea in abatement at the same time and then fall into the failure to determine the legal system for both because of the ambiguity of the two ideas.

4.2. Second: New trends (contemporary trends)

One view of this trend was that the challenge to admissibility is one of the pleas in bar because it is mixed with

[1] This trend was referred thereto by Dr. Nabil Ismail Omar, Op. cit., Ps 140,141.
[2] Dr. Nabil Ismail Omar, Op. cit., P.142 and what after it.
[3] Dr. Faris Ali Omar Al-Jarjari, Op. cit., P.52.

the legal means of defense and addresses the conditions of the right to file the case or the conditions of the admission thereof, and these are matters related to the merits of the case, therefore the challenge to admissibility is a plea in bar.[1]

This view has been legally criticized as this criticism believes that the challenge to admissibility is not a plea in bar because the proponents of this opinion defines the lawsuit as one element of the right to be protected and therefore the case is characterized by the descriptions of the right it protects, in addition that the challenges directed towards this right shall be characterized by the descriptions of this right.2

In the opinion of the researcher, this criticism has been true. Therefore, we tend to this criticism, which does not see the challenge to admissibility as one of the pleas in bar.

Another view of the modern trend has divided challenges to admissibility into challenges to admissibility that are related to the merits, and challenges to admissibility that are related to the procedures. It let then this challenge to admissibility occupy a middle position between the two. In some cases, it is in conformity with pleas in bar and is in contrast with pleas in abatement. In other cases, it is in conformity with pleas in abatement and is in contrast with pleas in bar, as the proponents of this trend try to mitigate the seriousness of the philosophy of the old trend, which considered the challenge to admissibility to be within the category of pleas in abatement.[3]

This view was criticized for being based, in fact, on the foundations of the traditional and modern trends. It takes the arguments of the proponents of the challenge to admissibility as a plea in bar, which supports the first part of the challenge to admissibility. It also takes the arguments of those who view the challenge to admissibility as a plea in abatement, which supports the second part of the challenge to admissibility.[4]

Therefore, the researcher supports this criticism because the proponents of this opinion, represented in dividing the challenges to admissibility, did not change their arguments, but applied them for the purposes of creating a balance without paying attention to determining the legal system or the distinctive nature of the challenge to admissibility. Accordingly, the researcher asserts that the challenge to admissibility is not a plea in bar and does not take the provisions thereof nor a plea in abatement and does not take the provisions thereof. The researcher does not also support the idea of dividing the category of challenges to admissibility, since the challenge to admissibility directs the ultimate goal of judicial protection in order to deny such protection against its claimant.

Whatever the opinions on the inclusion of the challenge to admissibility, there is something similar to juristic consensus about this challenge. It says that says that such a challenge is a distinct challenge of a special nature that distinguishes it from pleas in bar and pleas in abatement, because it is not directed towards the same alleged right nor to case proceedings, but directed towards the means by which the right holder protects its right and whether it may be used or not, whether the condition of such use is not available because of the lack of one condition or the lack of conditions of the admissibility of case. The litigant in this challenge denies the case when his opponent's claim does not meet one of the conditions required by law to be accepted, whether these conditions are general conditions that shall be met before filing the case or private conditions after filing the case, disregarding what the law judges with for the validity of the case proceedings in a way independent of investigating the merits of the case. Therefore, the researcher supports this opinion and categorically agrees therewith.[5]

Question 4: How is judicial control exercised on the challenge to the admissibility of the action for annulment?

5. Judicial control exercised on the challenge to the admissibility of the action for annulment

In order to talk about the control of the judiciary, both civil and administrative, with regard to administrative law's control over the challenge to admissibility, we have to talk about the reasons for the challenge to admissibility (the cases thereof).

We have already stated in our definition of this challenge that it is achieved when there are no conditions required by law to admit the case, which means the limited scope of adherence to this challenge. A defendant cannot initiate such a challenge unless such conditions are not met-- which are either general conditions for the validity of the case, such as being based on a right and an interest and that the plaintiff has the capacity to file the case. However, these general conditions are disputed by jurisprudence and the judiciary and we will not go into the nature of this dispute because the course of our research revolves around the legal nature of this challenge, but we can state these conditions as follows: capacity, litigation and interest.

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[1] This opinion was referred to by Attorney Ibrahim Al-Mongi, Op. cit., p.326.

[2] This is the opinion of Dr. Nabil Ismail Omar, Op. cit., P.142 and what after it.

[3] This trend was referred to by Dr. Fathi Wali, Al-Waseet Fi Qanon Al-Qada' Al-Idari (Al-Waseet in Civil Justice Law), Dar Al-Nahda Al-Arabiya, Cairo, 1987, P. 548, and others among Egyptian jurists.

[4] Dr. Nabil Ismail Omar, Op. cit., P.145 and what after it.

[5] The opinions supporting this view are Dr. Nabil Ismail Omar, Op. cit., P.346 and what after it& Attorney Ibrahim Al-Mongi, Op. cit., p.328& Dr. Ibrahim Harb Al-Muhaisen, Op. cit., Ps 43,44, Dr. Faris Ali Omar Al-Jarjari, Op. cit., P.53& Researcher Amna Arshid Al-Oqaili, her research is entitled, Athar Al-Hukm Bi-adf' Fi Al-Fiqh Al-Islami Wa Al-Qanon (The Effects of Judgment with Challenges in Islamic Jurisprudence and Law- Comparative Study), published in the Journal of the University of Jordan, Studies of Sharia and Law, Volume 40, Issue 2, 2013, Ps 642,643, as well as the majority of contemporary jurists.

They may also be private conditions that are derived from the nature of the circumstances surrounding the case, which are often related to the dates established by law.

The reason for initiating this challenge may be the existence of obstacles that prevent the admissibility of the case and they are called by the majority of jurists as the negative conditions of the case, which prevent the court from admitting the case and then the court judges with inadmissibility without going into the details. One of the most important of such obstacles is the previous adjudication in the merits of the case, as this condition is an application of the principle of force of res judicata (force of adjudged matter).

Another form of the obstacles that prevent considering the case is the parties' agreement to have arbitration in the merits of the case. We also cannot fail to mention another form of such obstacles that prevent considering the case and therefore initiate the inadmissibility of the case, which is the parties' agreement to settle this dispute, and this is called in the Jordanian legal system as withdrawal of the decision of the case because of agreement between the litigants.

A juristic trend the researcher supports sees that whether the conditions required to admit the case varied or were limited to the interest condition, we believe that the cases of the challenge to admissibility shall not exceed the limits allowed by the basis of such a challenge. Using the force of the case and the extent of the plaintiff's capacity has to be restricted. If there are conditions that allow multiple forms of this challenge, this does not mean multiplying such challenges so that they do not stop at a certain limit. Controversies over the basis of this challenge may allow a narrow or wide variation of its images, but does not amount to say that such images are not limited, since the legislative trend, which was limited to addressing the interest condition, gave the challenge to admissibility a private provision that distinguishes it from pleas in abatement. This trend suggests that the cases of the challenge to admissibility are not absolute, but are contained exclusively. It also concludes that this challenge has multiple images but are limited to specific circumstances.[1]

5.1. Control of administrative law in Egypt

The legal basis of the challenge to the admissibility of the action for annulment is the provisions of the Egyptian Code of Civil and Commercial Procedure, law No. 13 of 1986, as amended and stipulated in Article 115 thereof, which stipulates that "the challenge to the admissibility of the case may be submitted at any case thereof. If the court considers that the challenge to the admissibility of the action, because of a defect in the defendant's capacity, is based on a legal basis, it shall postpone for noticing that which has the legal status. In this case, the court may sentence the plaintiff to a fine not less than fifty pounds and not exceeding two hundred pounds. If the matter is related to a ministry, public authority, body, or natural or legal person, it is sufficient to specify the name of the representative of this body in the statement of case.'

It is evident from the provision of the first paragraph of Article 115 of the Egyptian Code of Civil and Commercial Procedure that the challenge to the admissibility of the action may be made in any case of the case. It is clear from this provision that the legislator considered that the challenge to admissibility is not one of the pleas in abatement, but it is considered in this regard as a plea in bar. The legislator also permitted to initiate it in any case of the case in order to take into account the interests of the defendant so as not to deprive it of the defense that is often related to the merits of the case. This means that the challenge to the admissibility of the action may be made in any case of the case and may be initiated for the first time before a second instance court until the closure of court proceedings and the independent judgment for the challenge to admissibility .[2]

There is a ruling of the Egyptian Supreme Administrative Court, in which it ruled that challenges to territorial, case-matter and case-value jurisdiction precede all challenges, and the court may not reject such a challenge unless it confirms its jurisdiction to consider the case.[3]

It also ruled in another case that the personal and direct interest is a condition for admitting or challenging the case and that the court has the right to say its judgment ex officio, with regard to any request or challenge and in any case of the case.[4]

It also ruled in another case, upon the initiation of the litigation, that (a company litigation, at the time this company has been liquidated and its legal personality vanished through the judicial liquidation that has been decided according to some circumstances, the litigation thus has not been properly initiated from a legal perspective) and it ruled with the inadmissibility of the case.[5]

[1] Dr. Ibrahim Harb Al-Muhaisen, Op. cit., Ps 56,57.
[2] Attorney Ibrahim Al-Mongi, Op. cit., P. 328.
[3] Appeal No. 1745, Year of 31 Judicial, hearing of 13/5/1986, referred thereto by Attorney Ibrahim Al-Mongi, Op. cit., P. 328.
[4] Appeal No. 2302, Year of 67 Judicial, hearing of 17/2/1999, referred thereto by Dr. Mohamed Maher Aboul Enein, Op. cit., P. 325.
[5] Its Judgement in the Appeal No. 921, Year of 921 Judicial, hearing of 15/3/1986, Y31, P. 1344& the judgment for the legal status of the litigants, Appeal No. 883 Year of 36 Judicial, hearing of 12/12/1993, referred thereto by Dr. Mohamed Maher Aboul Enein, Op. cit., P. 417.

5.2. Control of administrative law in Jordan

Before talking about the control of administrative law, the researcher had to point out two very important issues as they form the basis of the control of administrative law in Jordan.

The first issue: The Jordanian legislator has addressed the theory of challenges in chapter 1 of section 5 of the Code of Civil Procedure issued in 1988 by Law No. 24 and adopted again the same provisions with some minor amendments in the amended version of this law issued by Law No. 14 of 2001 and Law No. 16 of 2006. The three Articles (109-111) thereof included some provisions on administrative challenges, while Article 170 has addressed the appeal to the judgments delivered during proceedings of the litigation, including the judgments delivered in the different challenges. The Jordanian legislator quoted most of its provisions from the Egyptian Procedural Law, some of which were in full conformity with the Egyptian provisions.

In sum, we find that the Jordanian legislator has not addresses the provisions of the challenge to admissibility in all the provisions related to challenges, nor did it give it any private provision, adhering to the traditional division of the challenges into two categories; pleas in abatement and pleas in bar, according to the new designation of Article 110 of the Jordanian Code of Civil Procedure. A juristic opinion sees that the legislative situation, which ignored the nature of the challenge to admissibility, did not prevent the Jordanian judiciary from addressing this challenge and the application of its provisions, taking the example of the jurisprudence of the Egyptian judiciary, but without being based on legislative basis.[1]

The legal basis thereof in Jordan is represented in the provision of Article 111 of the Code of Civil Procedure, law No. 24 of 1988, as well as its amendments, which states that:

1. The challenge to the Court's jurisdiction- because of the absence of territorial, case-matter and case-value jurisdiction, or that this case may not be examined because of the previous adjudication therein or because of any other challenge related to public order- may be initiated in any case of the case, where the court judges therewith ex officio.

2. If a challenge is initiated, and such a challenge is related to public order or any other plea in abatement, the evidence thereof shall result in the inadmissibility of the case-- the court shall promptly adjudicate it ex officio or at the request of one of the litigants. The decision to refute such challenge shall be subject to appeal, along with the merits of the case.

The second issue: administrative law in Jordan, law No. 27 of 2014 and the previous laws related to this judiciary did not address the theory of challenges and this law has only introduced the provision of Article (41), which states, "in cases other than those provided for in this law, the provisions of the Code of Civil Procedure shall apply in a manner consistent with the nature of Administrative Law."

With a careful reading of the provision of administrative law and in accordance with Article (41) above, this provision is, as we said, unprecedented in the law of the Supreme Court of Justice whose law was repealed, as well as its content, because the established rules and procedures followed by the administrative courts have a special nature in terms of subjectivity as they are established rules or procedures and are not an exception to civil procedures. An administrative judge is not obliged to refer to the civil rules and procedures. Rather, he has to derive the procedural rule from the nature of administrative issues without complication. His reference to civil rules and procedures is optional for consultation, as an application of the rules of justice. As a result, as administrative law has included this new provision, the judicial application through the administrative courts and the supreme administrative court will clarify and apply that which are compatible with the nature of administrative law, concerning the procedures stated in the civil procedures, which can be applied before administrative courts.[2]

Therefore, the issue of consideration by administrative courts of various degrees and names in Jordan refers the issue of consideration of challenges, in general, and the challenge to the admissibility of the action for annulment, in particular, to the provisions contained in the Code of Civil Procedure.

The ruling of the Supreme Court of Justice, whose law is repealed, confirms this. In its ruling, it ruled that "one of the established principles of the action for annulment is the availability of the interest condition for filing the case, therefore the heirs of the Defendant (who died during the proceedings of the appeal to the administrative decision related to imposing a disciplinary penalty against him) have nothing to do with this case because the penalty imposed is personal and is related to only the deceased person, thus the penalty shall not be bequeathed.[3]

It also ruled that, "In order for the Court to respond to the litigation requests in its proceedings, it shall have

[1] Dr. Ibrahim Harb Al-Muhaisen, Op. cit., Ps 91,92.

[2] Dr. Mohammed Jamal Al-Dhunaibat and Dr. Mohammed Najm Riyad Al-Rabdi, Mada Al-Tabayun Fi Shart Al-Maslah Bayna Al-Da'wah Al-Madaniyah Wa Da'wah Al-Ilgha' (Variation of the Interest Condition In Civil Action and the Action for Annulment, a comparative and analytical study), a research published in Al-Balqa Journal for Research and Studies, Al-Ahliyya Amman University, Volume 20, Issue 2, 2017, P. 114.

[3] Supreme Court of Justice, Appeal No. 120/87, P. 1610, 28/5/1989, Bar Association Journal, P. 251, Legal Principles of the Supreme Court of Justice 1988:1992.

jurisdiction to consider it.[1]

There have been many judgments of the Administrative Court, including the recent delivered judgments, as it ruled: The interest condition is one of the conditions of admitting the action for annulment in accordance with the provisions of Article (5) of administrative law and it shall exist until the final verdict of the case.[2]

6. Conclusion

This study came to show the need to define the challenge to the admissibility of the action for annulment because of the juristic controversies raised over it, which led to some ambiguity about it and consequently reflected on the legal nature of this challenge. Some juristic opinions considered it one of the pleas in bar and other opinions considered it one of the pleas in abatement until jurisprudence viewed it a private challenge of a special nature which is different from the legal nature of pleas in abatement and pleas in bar. This study also dealt with the juristic definitions that have addressed this challenge, which diverged in wording, but relatively agreed in content and meaning. This study also dealt with the legal basis of this challenge in Egyptian legislation through the Egyptian Procedural Law in Article 115 thereof, as well as in the current Jordanian Code of Civil Procedure through the provision of Articles (109-111), in addition to Article (170). The study applied this basis on the Jordanian Administrative Law, which is devoid of any provision addressing the theory of challenges, in general, and this challenge, in particular. The study also applied this legal and legislative basis on the nature of judicial control exercised by administrative law in Jordan, based on the provisions of the Code of Civil Procedure and in line with the provision of Article (41) of administrative law, which referred the matter of this issue to the provisions contained in the Code of Civil Procedure, without prejudice to the nature of the administrative case.

6.1. Results:

- All juristic, legislative and judicial definitions related to the definition of the challenge to admissibility only address the availability of the general, private and negative conditions for admitting the case.
- Despite the juristic controversy over the legal nature of the challenge to admissibility between traditional theorists and modern theorists, the predominant juristic opinion says that the challenge to admissibility is not a plea in abatement nor a plea in bar, rather it is of a special nature, especially unique to other challenges.
- The study concluded that there is a lack of a comprehensive opinion, as well as a lack of logical inclusion of the theory of challenges in Jordanian legislation because of letting all types of challenges subject to one rule and ignoring the differences between these challenges and the different legal systems governing the same.
- The study found a legislative chaos and a state of discipline in the general rules governing the theory of challenges in Jordanian legislation because of the lack of adoption of a specific theory as well as drafting the Code of Civil Procedure away from the trends of contemporary laws that took the theory of inclusion of challenges.
- The study concluded that Administration Law in Jordan has addressed the challenge to admissibility and applied its provisions taking the example of the jurisprudence of the Egyptian judiciary without being based on legislative basis, although the legislative situation in Jordan ignored, and still ignores, the nature of the challenge to admissibility.
- The study concluded that administrative law in Jordan has the option of taking from the rules of civil procedures in cases other than those stipulated in administrative law and in accordance with its nature.

6.2. Study recommendations

- The study recommends the need to separate the challenge to admissibility from pleas in abatement and pleas in bar, in line with theories of contemporary jurisprudence.
- The study recommends the Jordanian legislator to adopt a specific theory governing the challenges and drafting the provisions governing these challenges by looking at the trends of contemporary laws, which have adopted the theory of inclusion of challenges according to their nature and the difference of categorization to which they belong by setting the boundaries between the different groups of challenges.
- The study recommends the introduction of a special provision for the challenge to admissibility in the Jordanian Code of Civil Procedure, which allows it to be initiated at any stage of the case.

[1] Supreme Court of Justice, Appeal No. 92/4, P. 430, Year 1992, Bar Association Journal, , Op. cit., P. 257.

[2] Administrative Court of Jordan, Decision No. 471 of 2015, issued on 16/11/2015, Qistas publications& Administrative Court of Jordan, Decision No. 180 of 2015, issued on 13/10/2015, Qistas publications.

- The study recommends that the general, private and negative conditions related to the admissibility of a case shall be considered as public order so that the court could address them ex officio and the litigants shall initiate them at any stage of the case, and even initiate them for the first time before the second instance court in administrative law.
- The study recommends the necessity of enacting a law related to the procedures of litigation before the administrative court and the supreme administrative court because of the special and distinct nature of the administrative case.
- The study recommends that whether the conditions required to admit the case varied or were limited to the interest condition, we believe that the cases of the challenge to admissibility shall not exceed the limits allowed by the basis of such a challenge.

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