



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2020; 6(10): 210-215
www.allresearchjournal.com
Received: 24-07-2020
Accepted: 28-08-2020

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

The establishment of the administrative judiciary in France

Dr. Moamer Ibrahim Salem Almarimi

Abstract

France is the cradle of administrative justice, and it has spread to other countries. The emergence of this system was the result of the ideas of the French Revolution of 1789, which were essentially based on the principle of separation of powers. In order to confirm this trend, the men of the revolution issued a law of 16-24 August 1790 stipulating the abolition of the judicial courts called parliaments and the establishment of the so-called judicial administration or the magistrate as a first stage before the establishment of the French Council of State. At the stage of administrative management, individuals had to resort to the same administration to complain and complain. The administration was the adversary and the referee at the same time and this was somewhat acceptable at the time because of the bad reputation of the arbitrary "parliaments".

Keywords: France, Law, Administrative judiciary, Legal research

Introduction

When the Council of State was established on 12 December 1799 under the reign of Napoleon Bonaparte, the first brick of the French administrative judiciary was laid, although the Council's jurisdiction was first and foremost consultative, requiring the approval of the consul. Because of the confidence of the Council, it was not long before the granting of judicial jurisdiction without the need to comment on the other party, and that the law of May 24, 1872.

Although this law gave the Council the authority to decide the final disputes in the administration, it retained the jurisdiction of the judicial administration. Individuals do not have recourse to the Council of State except in the cases provided for by law. This situation continued until December 13, 1889, when the Council of State accepted a suit filed by an individual directly without passing the administration in the Cadott case. The court ruled that the Council of State became the general jurisdiction in administrative disputes.

Because of the accumulation of many cases before the State Council, the legislator defined the terms of reference of the Council of State exclusively. Administrative courts, which were called the provincial councils, became the general jurisdiction in administrative disputes.

This was followed by a number of decrees and decrees that included some of the reforms, including the four decrees issued on July 30, 1963, concerning the constitution of the employees of the Council, its internal organization and its judicial activity. This regulation was amended by three other decrees on 26 August 1975 and by decree on January 15, 1980 and January 16, 1981 and finally in 1987.

Organization of the French Council of State

The Council of State in France represents the administrative justice summit, which is superior to administrative courts, whether qualitative or specialized.

The Council is chaired by the Prime Minister or the Prime Minister. In his absence, the Minister of Justice is divided into the Council so that younger members can prepare cases and files while final decisions are made by older members.

In accordance with the decree of 31 July 1945, amended by decree on 30 September 1953, the Council shall consist of the following members:

Delegates Les auditors

They occupy the lowest administrative level in the Board and are appointed from among the

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

graduates of the National School of Administration who spend two years on probation and are transferred to another job in the event that their competence is not proven at work. The basic idea is based on limiting the work of the delegates to the exercise and training on the work of the Council, but now they actively participate in the study and preparation of case files.

Deputies Les maître de referees

Three-quarters of them are selected from first-class delegates and the last quarter is appointed by the Government from outside the Council provided that they have two things:

First: At least 30 years of age.

The service shall not be less than ten years in the public administration.

The deputies shall submit the reading on the subject of the dispute and choose among them the government commissioners appointed by decree. They shall study the cases before the Council in terms of facts and law and shall adapt them and draw the rule of law therein.

They do not represent the government as their name implies, they express the view of the law that they guarantee in what can be considered a draft judgment that has often played an important role in the establishment of many principles of public law.

Third: State consultants in the regular service:

Two-thirds of the deputies are elected by promotion and the remaining third are selected by the Government on the condition that they reach the age of forty-five.

These will discuss the issues before the Council and make the final decisions and currently number advisers.

Heads of departments

The Department of Labour is divided into five sections: four administrative divisions (Finance, Interior, Public Works and Social). The fifth section is the Judicial Section which deals with the adjudication of administrative disputes.

Vice president of the Council

He is the actual president of the council because the president of the council is the prime minister or the prime minister. In his absence, the minister of justice is limited to assuming the presidency of the general assembly of the council on official occasions to ensure the transition of the state council from the executive authority.

In addition to these permanent members, there are categories that contribute to the work of the Council in an indirect manner, including State consultants in the extraordinary service who participate in some of the administrative competencies without the judiciary. They are senior employees, pensioners or well-known persons appointed by the government for a renewable period of four years the Council.

The ministers also have the right to attend the council and participate in the discussions, except for the judicial branch. They have the right to ask the council to call any person to give his opinion on the cases presented.

It is noted that the members of the Council of State do not enjoy the principle of non-derivability in the legal sense that the actual reality and history of the Council in the face of the Government confirms the existence of such immunity because of the established status of the Council in the legal conscience does not deprive them, the guarantee that

enabled him to impose his independence from the government.

Jurisdiction of the French administrative judiciary

Functions of the council of state

The Council of State in France exercises two types of competence: Advisory and judicial powers:

Terms of reference

The basic function of the Council of State was advisory and the Council continues to exercise this function in the legislative and administrative fields. In the legislative sphere, the Council participated in the preparation of laws and the preparation of their projects. Article 39 of the French Constitution of 1958 stipulates that the draft laws proposed by the government must be prepared by the Council of State, but that the laws proposed by Parliament are not consulted by the Council.

In the administrative sphere, the Council exercises its advisory powers in three cases: compulsory, requiring the government to consult it when issuing organizational decisions, as well as issuing administrative decisions known as orders in accordance with Article 38 of the 1958 Constitution.

And optional in other cases at the request of the applicant.

The Council may also intervene by itself to express its opinion in order to raise the attention of the public authorities to the reforms to be observed in the legislative, regulatory and administrative areas that it considers compatible with the public interest. By 1963, the Council had to submit an annual report to the Government on reforms it deems necessary.

Jurisdictions attribute contentiousness

If the advisory opinion is the basic purpose for which the Council of State was established, the jurisdiction of the State Council becomes the important part of its role because the Council of State represents the highest administrative court in France as the first and last court and the Court.

Appeal or Court of Cassation

The State Council as the first and last court

Prior to 1954, the Council of State had wide jurisdiction as the first and last instance because it represents the general jurisdiction in the field of administrative justice. However, by the decree of September 30, 1953, which became effective in January 1954, Issues before the Council In order to expedite the settlement of disputes, the Council's competence has become the first and last of a specific degree in the following cases:

Claims relating to the annulment of the organizational and individual decisions issued in decrees, and the cancellation of the decisions of the Ministers due to the excess of authority. Disputes relating to staff appointed by decree in respect of their functions. Cases against administrative decisions whose scope extends beyond more than one administrative court. Administrative disputes occurring in areas not within the jurisdiction of administrative courts.

State council as court of appeal

The Council shall consider it as a second instance of litigation in judgments issued by the Administrative Courts of the Colonies and the Court of Accounts.

Sh. The State Council as a Court of Cassation:

The State Council shall exercise the jurisdiction of a court of appeal in respect of judgments rendered by administrative courts of law, the provisions of which may not be appealed to, unless otherwise provided by law.

Establishment of the administrative judiciary in France

The Administrative Judiciary in France and Egypt has ruled that filing a claim before a non-competent judicial body shall invalidate the validity of the appeal period before the Administrative Court this interruption will continue until the issuance of a jurisdiction of non-jurisprudence and its final status. This error does not affect jurisprudence only once. The wisdom of this interruption in time does not refer to the fact that the offender has disclosed his desire to attack the contested decision, but because the case in this case is a grievance submitted in time for the administration.

The lawsuit shall be submitted to a court of competent jurisdiction in order for it to be valid for the annulment of the period of the cancellation action. The case shall be filed within the normal time for filing the cancellation action, i.e., within sixty days from the date of publication of the decision or declaration thereof.

The applicant must also indicate that the administrative body that issued the decision or the administrative body of the court has the authority to request the cancellation or amendment of the decision. It is essential that the request of the defensive reaches the department, but it will not have a standard effect on grievances submitted to competent administrative bodies.

Application for legal assistance

A person may wish to appeal before the administrative court, but he does not have the costs of the case and in order that his rights do not go in vain, he shall apply for legal assistance for his exemption from the judicial fees. In such case, the date of filing of the case shall be determined.

The administrative judiciary compared the effect between the request for exemption from judicial fees and grievance. The validity of the appointment is valid as long as the competent judicial authority is considering the request for exemption, but if the decision is issued, the case must be filed within 60 days following its issuance.

Effect of expiration of the date of appeal

If the appeal is taken, the right to file the failure is informed and the administrative decision becomes immune. If the relevant party raises the case after this time, the administration may refuse to accept the claim. However, this principle is not absolute.

Individual decisions

If the administrative decision is an individual, individuals will not appeal against it after the deadline for the appeal, and the administration can not withdraw it or cancel it if it arranges acquired rights in order to preserve the public interest that requires stability of the administrative situation, Even if the decision is illegal.

However, the administrative jurisdiction in France and Egypt has decided to exclude certain decisions and to authorize their withdrawal or cancellation, including the expiration of the appropriate period, including If a person is arrested without the decision of his arrest being legitimate, he may appeal against this decision without limiting the period of legal challenge as long as the person is owed.

The decision is absent

Exemption from compliance with the date of appeal to cancel the appeal of bad decisions, if the administrative decision is a major defect that would deprive the decision of its status as a legal action to fall to the level of material Work, then the relevant parties may appeal this decision without meeting the deadlines and procedures prescribed To file a cancellation claim.

Such as a decision that is not made by a private individual or by a body that is not competent to issue it in the first place or to issue authority in matters that is the competency of another authority.

Negative decisions

The negative decision is not issued in the form of explicit disclosure of the will to establish, modify or terminate the legal centre, but the administration is a negative conciliator from the disposal of an order in which the administration should take action In accordance with the law and regulations, the explicit disclosure of their will is an ongoing administrative decision that does not comply with a specific period of appeal.

Administrative decisions based on a restricted authority

Administrative decisions issued under a restricted authority so that the legislator does not leave the administration free to assess them. The management may refer to these decisions if they fail to enforce the law without a period of time. Decisions without limiting the period of appeal against cancellation.

Organizational decisions

The provisions of the French Council of State have long been rejected for rejecting appeals in regulatory decisions on the basis that they are based on origin, establishment, modification and termination of general non-personal legal centres and therefore are not suitable for the subject of appeals for annulment.

Since 1907, however, the Council's position has changed, and it has consistently determined that, despite the legislative nature of the Regulations, it is still the result of administrative acts that stand alone in order to challenge the abolition.

A general rule of thumb for regulatory decisions is that the administration has the right to amend and repeal them at any time and without limitation, as they generate general objective legal centres and do not create in themselves acquired rights that can be invoked against management.

As for the individuals, the administrative judiciary in France and Egypt has determined that the expiry date of the appeal does not preclude the possibility of submitting the request to the administration to reconsider the disciplinary decision and then challenge the administration's rejection of this request in certain cases, such as the following: The reasons on which the Regulation was issued have changed.

Individuals also have the right to challenge the regulation indirectly and without complying with the cancellation deadline when applying it to individual cases i.e. to cancel individual decisions issued in application of the defective regulation.

The impossibility of completing formalities

The administrative judiciary in France and Egypt has pointed out that if it is impossible to complete forms and

procedures in terms of material, these forms can be bypassed.

The impossibility of the administration to dispose of the formality imposed by the law is the long material impossibility, because temporary impossibility is not sufficient to justify the administration's neglect of the required forms.

An example of the impossibility of materiality preventing completion of formalities is that the defence of the accused employee is not heard if it is due to the material impossibility of not leaving it to his address, the impossibility of invoking that address and the refusal of a member of the Committee to attend despite his notification with a view to delaying the decision.

In this case, the Supreme Administrative Court of Egypt ruled: "The Company has taken the necessary legal measures in relation to presenting the matter to the Tripartite Commission before issuing the contested decision. The committee tried to hold a meeting more than once, but the third member is the" representative of workers" That he was personally notified of the dates of the meeting deliberately the failure to attend more than once, it does not tempt the company from the legal point of view that it issued its decision to dismiss.

The error in applying the legal rule

The error in applying the legal rule shall be in the case of the direct administration of the authority granted by law to them other than those provided for by law or without the conditions prescribed by law for their commencement .

If the law is issued without relying on the facts justified to take it or does not meet the conditions required by law, it is worth cancelling.

The mistake in applying the law is two forms: the first is in the case of the decision without relying on material facts that support it. For example, the administrative president will issue a disciplinary penalty to punish one of the employees without making a mistake to sanction that penalty. The second is if the facts do not justify the administrative decision, here there are certain facts, but they are not sufficient or have not met the legal requirements for the adoption of this decision.

The administrative judiciary's control over the reason for the administrative decision is an important aspect of the judicial control over the legality of the administrative decision, which requires that the judge examine the legitimacy of the objective motives that the administration called for to issue its decision.

Define the cause

The reason for the administrative decision is the factual or legal situation that precedes the decision and is paid for its issuance. In this sense, the defect of the cause is achieved in the absence of a reason to justify the issuance of the decision is worth the abolition of the administration may claim the existence of facts or material conditions paid by the lead and then prove the truth of its existence in reality.

If an administrative decision is issued without being based on a valid reason as if the administration had issued a decision to punish an employee because he insulted a president and then found the truth to be an insult, the decision is wrong with the illegality of the reason

The French State Council began its oversight of the defect of the cause since 1907 by virtue of Mono Mono's control

over the existence of the facts and the validity of the legal adaptation and then the rule of Decay in 1910.

A part of the jurisprudence denied the existence of the cause as an independent defect of the administrative decision. Brigadier-General Duck it went on to say that the reason or inspiration is not merely a pre-decision case that raises an idea in the mind of an exporter as the French Council of State replied to the lack of jurisdiction in cases of restricted jurisdiction and defect In other cases while Brigadier Horio Houriou went on to say that the defect of reason falls within the fault of violating the law.

However, the established opinion and the ruling that the defect of the reason is independent of other defects may provide that the defect of the violation of the law relates to the administrative decision is the legal effect of the decision or its substance or content, in other words, that change that the decision whether to create or modify or cancel a specific legal status The reason relates to the factual or legal situation that took place prior to the issuance of the resolution and prompted it to be issued.

In the absence of authority, the defect is related to the purpose or objective that the source of the decision seeks to achieve. This purpose is related to the psychological motivations of the person or entity that took the decision, while the defect is due to elements of an objective nature related to the law or facts and independent of the psychological state of the source of the decision.

The conditions of the reason for the administrative decision

The judicial has structured the need for two conditions in the reason of the administrative decision:

The reason for the administrative decision is

The administrative decision must be valid until the date of the decision. The first requirement is that the factual or legal situation exists and that the administrative decision is not defective, and the second must continue until the decision is issued. Still before the release, the decision is caused by defective in and issued in this case, as not a significant reason that did not exist before the decision not to check it later and that it may be a justification for a new resolution.

The reason is legitimate

The importance of this condition is shown in the case of the authority restricted to the administration when the legislature determines certain reasons for which the administration should be entrusted with issuing some of its decisions. If it is based on issuing its decision to reasons other than those specified by the law, its decision is entitled to cancellation for illegality. The General Disciplinary Council decided in its decision on 25/12/2003 (that the Council is interested in the field of this appeal to search for the legitimacy of the administrative order contested and fundamentalism causes and harmony with M. Public interest requests .. which Will be contested administrative order has been issued contrary to the legitimacy and the rules of jurisprudence and devoid of legal reasons.) However, the administrative court drawer that even in the area of discretionary power is not enough reason to be present, but it must be true and justification for the issue of an administrative decision.

In addition, the administrative body as a general rule is not obliged to cause its decision not if the legislature stipulated

that, but if it is disclosed for this reason on its own, it must be true and true, if not so that it was fictitious Egypt visual, the administrative decision was null and void.

In the case of multiple reasons on which the decision is based, and it turns out that some of the reasons are true and legitimate and the other reasons are illegal, the administrative judiciary has settled the distinction between the driving or the main reasons and the non-driving or secondary reasons and the decision to cancel the decision if the reasons are defective or incorrect. The decision is not ruled out if the reasons for the defect are non-driving or secondary reasons.

The administrative judicial control of the cause

Control over the cause of the administrative decision evolved from the control of the physical existence of the facts to the control of the legal description of the facts to be reached to the appropriate field or proportionality between the administrative decision and the facts that led to the release.

Control of the existence of facts

Control over the existence of material facts relied upon by the administration in the issue of its first judicial control degrees on the cause of the administrative decision, if found that the contested decision is based on not a justifiable reason, it would be worth of cancellation of the absence of the incident, which was based upon.

The Council of State of France began to control the existence of facts at the beginning of the twentieth century and the provisions in this area, the Trepont ruling, which abolished the administrative decision to refer the appellant to retire for not proven the incident on which the Administration relied on the issue of the decision is to submit a request for retirement.

The administrative judiciary in Egypt and Iraq went along with the French Council of State.

If the decision was based on the reason turned out to be incorrect, or placebo, and the back of the case papers that there are other valid reasons, it can induce the decision on those grounds.

Control of the adaptation of the facts

In this case, the administrative judge's supervision extends to include the legal description of the facts on which the administration based its decision. If it becomes clear to him that the administration has erred in the legal adaptation of these facts, it is ruled that the administrative decision is flawed due to a defect in its cause. If the judge investigates the facts, to examine whether those facts logically lead to the decision taken.

The most famous of the provisions of the French Council of State in the control of the legal adaptation of the facts wisdom in the case of Gomel in 1914 has eliminated the decision of the director of a region that refused to authorize Mr. Jomil building in an archaeological area on the grounds that this building will distort the beauty of the archaeological landscape and the Council considered the legal adaptation of the facts that On which this decision was based, which I consider to be incorrect and revoked the Director's decision.

The decision of the Administrative Court of Iraq in its decision of 18/11/1996 (decided to cancel the order containing the seizure and confiscation of the car for not

based on a bill of law and that the implementation of the decision of the Revolutionary Command Council was misplaced)

Customs control

It is clear that the administrative judiciary's oversight does not extend to the examination of the appropriateness of the facts with the decision made against them because the assessment of the importance and gravity of the facts is an issue within the scope of the discretionary authority of the administration. However, the provisions of the Council of State in Egypt and France are monitoring the appropriateness between the cause and the decision, the adequacy was one of the conditions of legality. This was evident in the case of decisions concerning public freedoms, and this control extended to the field of disciplinary decisions as well.

Thus, the judiciary has expanded its control over the real elements of the reason, even to the maximum extent, to include the appropriateness and certainly the control of proportionality and in particular the disciplinary decisions are the real area of the Discipline Council in Iraq, while acknowledging the freedom of administration in signing the part or non-signature on the employee, The legality of its decision remains subject to the absence of excessive or inappropriate fit between the guilt committed and the disciplinary penalty. In this respect, the General Disciplinary Board ruled in its ruling on 122/1979 on 9/5/1979 (the conditions of the penalty imposed on the employee should be appropriate with the intended objectives thereof). The Council continued this approach after the enactment of the Shura Council Amendment Law The State has issued several resolutions indicating a clear reference to the extension of the Council's control over proportionality, including its decision, which states: "Where the contestant has not been punished during the year and for her long service, the penalty of dismissal shall be severe and disproportionate to the act),

Conclusion

In the France judges are examine the civil servants exercising is one of the sovereign powers of the state and hence the only French citizens are eligible to the judgeship. From the executive branch the France's independent judiciary enjoys the special statutory protection. The process if appointment, promotion, and removal of judges is depends on the judicial, administrative and audit court stream. The appointments of Judicial is accepted by the special panel of high council of the judiciary and this is make judges from the receiving court. Once selected, judges serve forever and can't be expelled without particular disciplinary procedures led before the Council with due process. The Ministry of Justice handles the organization of courts and the legal, including paying pay rates or developing new courthouses. The Ministry additionally supports and oversees the jail framework. In conclusion, it gets and forms applications for presidential exculpates and proposes enactment managing matters of common or criminal equity. The Minister of Justice is likewise the head of open indictment, despite the fact that this is disputable since it supposedly represents an irreconcilable circumstance in cases for example, political defilement against lawmakers.

References

1. Dr. Sulaiman Mohammed al-Tamawi. Administrative Judgment - First Book - Elimination of the abolition - Arab Thought House – Cairo and beyond, 1996, 35.
2. Dr. Raafat Foda. Sources of Administrative Legitimacy and its Curves - Arab Renaissance House – Cairo, 1995, 9 et seq.
3. Dr. Abdul Ghani Bassiouni. Administrative Judiciary - Knowledge Establishment – Alexandria, 1996.
4. Dr. Majed Ragheb El Helou. Administrative Judiciary - University Publications House, Alexandria, 1995, 10 and beyond.
5. Jean Rivero. Droit administrative précis Dalloz, 1970, 14.
6. J. Rivero. Droit administrative, 1970, 178.
7. Majed Ragheb Al. Helou - previous source, 86.
8. Dr. Sami Jamal al-Din. The previous source, 240.
9. Dr. Sabeeh Bashir Ecumenical. Former source, 113.
10. Dr. Sulaiman Mohammed al-Tamawi. Administrative judiciary, the first book, the case of cancellation.
11. G Vedel ET Delvlov`e. Droit administrative, 1984, 642-647
12. Dr. Suleiman Mohammed al-Tamawi. Previous source, 80.
13. Dr. Mohamed Fouad Mhanna. Administrative Law of Egypt and Comparative, 1958, Part I.
14. Dr. Tharwat Badawi. Principles of Administrative Law – Egypt, 1973, 80.
15. Dr. Othman Khalil Othman. Theory of Public Utilities – Cairo, 1958, 245.
16. Dr. Maghoori Mohamed Shahin. Disciplinary decision and guarantees and judicial control of effectiveness and security - the Anglo - Egyptian Library, 1986, 205.
17. Dr. Mohamed Mokhtar Mohamed Osman. Disciplinary crime between administrative law and management science - 1 - Arab Thought House, 1973.