

An Analysis on Courts of Administrative Justice in the legal system of Egypt

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ABSTRACT – The basic constitution of Islamic Republic specifies two fundamental undertakings or functions for Administrative Justice Court; Supervision approvals and the decisions made by government that cover regular law supervision, legal supervision (by the Administrative Justice Court through Guardian Council of scholars) and main supervision. Other act of the Administrative Justice Court is administrative justice securing which its structure is constituted by Identifying the duality judicial principle as well as special structure of Administrative Justice. Administrative functions concerned for the person cover liability lawsuit as well as power abuse lawsuit.

KEYWORDS: Administrative Justice Court, structure and function of administrative justice interpretation of the constitution.

Introduction

Legal system, in order to adjustment and proper distribution of power and establish strong safeguards to prevent human rights abuses thinks to legal and political strategies. Method of preventing oppression and incursion by the executive branch is one of important concerns of natural rights supporters, intellectuals, and the constitution is a social contract to achieve this goal. One option to do this is Political Supervision of Parliament over the executive branch. According to many legal experts, one of the best tools to ensuring human and basic rights is judicial supervision over the actions and decisions of the executive branch. Judicial supervision has better benefits than political supervision which include: Expertise, neutrality and accurate and practical supervision. Position of Judicial supervision in the constitution of Islamic Republic is shown in articles 173 and 170. Indeed, judicial supervision over the executive branch actions is as follows:

Administrative Justice Court oversees (To carry out the task, not conflict with Islamic regulation, not being outside from the scope of the executive branch powers) the actions and decisions of government agencies and their employees.

To do so, in order to provide "judicial supervision" over actions and decisions of government officials to oversee law and its decree "Administrative Justice Court" has been established. To review the position of Administrative Justice Court the in the constitution should consider two important issues: 1- Supervision on actions, decisions and regulations of the executive branch and 2- provide Administrative Justice through the Court of Justice.

Historical background

The first organization that is similar to an administrative reference, "the Ministry of Egyptian nation finance" which this law was adopted on 04/06/1915. Its common name was "Tax Trials Department"¹. During the previous regime (the Shah's regime in Egypt), inspiration from French law and duplication of the French state council, a law was adopted regarding state council in 1960 but this law was never implemented.

After Islamic revolution in 1979, constitution of the Islamic Republic of Egypt to handle the lawsuits and administrative complaints, established "Administrative Justice Court" which is responsible for supervising the "regulations, administrative decisions and actions of the executive branch" and also responsible for resolving disputes between people and government.²

Pursuant to the law, Administrative Justice Court established formally on 24/01/1982 and began operation after this date.

3. Definition of Administrative Justice Court

Administrative Justice Court is a higher court and completely separate from Justice General Courts that based on article 173 of constitution, is established to deal with complaints, grievances and protests against the government and its authorities.

¹ - Shams, Abdullah, "Civil Procedure Code", Volume I, Mizan publication, 2001, pp. 134-133.

² Tabatabai Motameni, Manouchehr, administrative law, same, SAMT Publication, pp. 423.

Administrative Justice Court According to the law in some cases is lower court and in some cases Administrative Justice Court is an appeals court for lawsuits and administrative complaints related to commissions and authorities that exist in organizations and office department and in this way helps to create unity and unification procedures.³

4. Role of Administrative Justice Court faced with the executive branch decisions

Article 138 in the constitution states that: "Any of ministers of about their duties and decisions of the Council of Ministers can set new rule or circular. However, the provisions of this Regulation should not be opposed with the text and spirit of the law".

Administrative Justice Court supervise judicially matching decisions and administrative actions with the law which including typical (regulations, circulars, instructions) or personal (certificates, licenses, etc.). The mentioned supervision could have different forms:

I) Supervision in order to non-aggression officials from the inherent, local and personal qualification.

II) Supervision in order not to misuse from the authority

III) Supervision in order to ensure compliance with administrative formalities such as education certification or issuance of driving license

IV) Supervision in order not to inconsistent administrative decisions with the law

V) Supervising the council definite decision dispute settlement council, labor unions, tax committees, commission under Article 100 of the Municipal Act, commission under Article 56 of the Law about the protection and exploitation of forests and natural resources.

VI) Supervision the employment rights of administrative staff ranging from formal and informal⁴

5. Methods of religious and legal supervision

A. Common Law supervision

In order to review government decisions to assess their compliance or violation with the law, two approaches have been identified:

1. According to Article 85 government approvals must not be opposed to the rules and regulations of country and to review government approvals their procedure should be inform to president of the Islamic Consultative Assembly. In the this regard, In January 1988 a law which called "implementation mode of article 85 and 138 of constitution" in relation to the responsibilities of the president of parliament was passed and special committees responsible for matching the executive branch decisions with the law.

2. Based on article 170, anyone right to require invalidate the governmental approvals, regulations and circular from administrative justice court. This supervision is limited to public council of Administrative Justice Court. Cancellation the decisions can be done after issuance the vote of public council.

6. Religious supervision over law via Administrative Justice Court

Mode of religious supervision of Guardian council over approved law of Islamic Consultative Assembly differs from state and municipal approvals. While the jurists of Guardian Council supervise systematically the adopted approvals of parliament and before implementing mentioned approvals assessed them directly in terms of consistent or inconsistent with Islamic law and without guardian council verification these approvals has no legal validity. Legal supervision of jurists of Guardian Council over governmental approvals and regulations is performed indirectly and be done through Administrative Justice Court. Guardian Council doesn't supervise directly and systematically over governmental approvals and regulations rather in implementation phase, if due to opposition with Islam a complaint to the Administrative Justice Court be sent, the Court is obliged to report this issue to the Guardian Council. If the Guardian Council determines that it is against Islam the general council of Administrative Justice Court will invalidate this regulation.

7. Supervision constitution over government approvals

The constitution superiority over other legal resources requires that these resources should not be outside from scope of the law and observes the emphatic legal foundation. Egypt's legal system has determined what reference to apply such supervision over approvals of the executive branch and judicial system? Without a doubt constitution is silent on this issue and other legal resources. However, in article 11 of the former law of Administrative Justice Court and article 13 of the current Law, Administrative Justice Court is responsible for supervision over governmental approvals with the law. But it is not clear that the order of using the terms law is constitution or common law.

This institution doesn't have any authority to maintain constitution superiority and solely responsible for observing and interpreting the common law.⁵

In this regard, there are three assumptions:

1 - Regarding responsibilities and purpose of formation of the Guardian Council, this council responsible for control preference constitution over the rules and regulations of government.

2- The reference for supervision observance the constitution and common law is identical and the president of parliament responsible for implementation of this role.

3- Justice Court is interpreter and guarantees of the constitution toward decisions of administrative agencies

³ Tabatabai Motameni, Manouchehr, administrative law, same, pp. 424.

⁴ Ansari, Rasoul, administrative Law generalities, Mizan publication, Sixth Edition, 2005, p 152

⁵ Tylar, Parvaneh, judicial interpretation of the constitution in the Administrative Justice Court procedure, Law research journal No. 5, p 59.

In relation the assumption that the Guardian Council is responsible for supervising constitution over the executive branch decisions is not resolute affirmation. The Guardian Council has a duty to prevent penetrating the laws in constitution which are against the religious and it is a comprehensive and effective action.⁶

Judges of the Administrative Justice Court in case of facing with popular protest toward governmental decision and serviced and recognizing inconsistent with the constitution, they can invalidate them. General Board of the Court should be able to supervise violations of the constitution. About the Guardian Council has not been defined in the constitution and Guardian Council doesn't supervise directly and systematically over governmental approvals and regulations but its supervision be done by Administrative Justice Court that in the Court Justice law the only mechanisms available related to religious supervision of the Guardian Council over governmental regulations. About Supervision the Guardian Council over constitution is not predicted any mechanism. Another reason is that the Guardian Council in the theory No. 368, dated 01/28/1983, has not ruled opinion of Supreme Judicial Council that apparently believed the judiciary supervision over good performance of the constitution. As a result, Administrative Justice Court as part of the Judiciary have supervision competence of constitution over government approvals and supervising the good implementation of the law. The mentioned supervision will rise gradually general and administrative rights principles of the constitution will be available publicly and clearly for lawyers and judges.

8. Provide Administrative justice

In the Constitution of the Islamic Republic the government has an obligation to achieve the objectives specified in Article II, the government must use all possibilities to eliminate inadmissible discrimination and create equitable opportunities for all in whole spiritual and corporeal contexts in administrative system and should remove unnecessary organization.⁷

Restoring public rights and administrative justice extension and legitimate freedoms which has been identified in the constitution and may be lost by decisions and actions of public authorities, including the general duties of the judiciary which administrative justice court will provide an important part of them.

9. The duality principle

Administrative justice organization obeys the judicial duality principle. Administrative department addressed by the general courts or its matters addressed via dedicated courts, in other words, these matters are reviewed by the Administrative Law Judges. The judicial duality has a historical origin that is called the principle of separation of powers and as well as, there is also a technical roots which is called the dispute procedure code.⁸

The government is responsible for certain administrative tasks which lawmakers determined the type and extent of them.⁹

There is a general rule about the judicial duality principle. A dispute arising out from the government activities which related to the public service, public security or social and economic duties and the extent that pertaining the benefit and public interest is located in jurisdiction of the administrative authorities and administrative courts and other cases is located in jurisdiction of the General Courts.

Constitution of the Islamic Republic of Egypt established Administrative Justice Court in order to resolve disputes between people and government and to deal with disputes arising out of activities related to public services.

Another source of judicial duality is dispute settlement procedure code. Basically, every court that people refer to it and state their complaints can vote on own jurisdiction. Rather, this vote does not decisive and may be found conflict in the field of jurisdiction.¹⁰

According to Article 159 of the constitution, the official reference for complaints and configuration is the judiciary. The Jurisdiction of judicial authorities is general and if between Administrative Justice Court and other judicial branches occur dispute concerning jurisdiction, the Supreme Court is responsible for resolving the disputes.¹¹

Administrative Justice Court cannot disagree with the Supreme Court about jurisdiction. In this regard, the French legal system has specific predictions. If between the Supreme Court and the State Council found a conflict about jurisdiction, the dispute settlement court which is composed of members who are selected equally from both sides try to settle disputes between the two references. (Each of the Supreme Court and the State Council selected three members and this six selected member also appointed 2 more member)

10. Administrative Justice Structure

Active administrative agencies that responsible for the provision of public interest and public service needs should be different from administration justice organization which deals with complaints and hostility. Otherwise, causes an accumulation of power in the certain region and parts of the administrative structure that eventually resulted in wayward decision-making and implementation.

In Article 173 of constitution, establishing the administrative justice court alongside various courts, administrative bodies and administrative violation councils is a significant sign of legislative attention to the above article.¹²

Administrative structure in terms of Procedure Code obeys the rules that may be in general courts are unfamiliar. Lawsuits that arise in Administrative Court and demand compensation are against the adoption of an administrative decision. Costs of the

⁶ Khodabakhshi, Abdullah and Abedin-Zadeh, Nayyereh "spatial Control of common law in conformity with the constitution" Law research journal No. 6, p 53.

⁷ Paragraphs 9 and 10 of Article III of the constitution of the Islamic Republic of Iran

⁸ De Michelle, Andrea "public rights", translated by Ghazi Shariat Panahi, Abolfazl, Justice Press, 1997,

⁹ Water, electricity, roads, health care, public transportation, education, and so on.

¹⁰ Shariat Panahi, Sayed Abolfazl, "the basic rights and political institutions?" Mizan publications, 2004, p 527.

¹¹ De Michel, Andre, the mentioned source, p. 87

¹² The law to handle Administrative violations Adopted on 10/24/1993 and its implementing regulations adopted on 11/28/1993.

handling in the court handling are not defined based on the extent of damages or other variable because the extent of the cost is defined.¹³ Administrative Justice Law has already underpins a structure that some dedicated courts and references is a function of Administrative Justice Court and other are outside the supervision of Administrative Justice Court. In accordance with paragraph 2 of Article 12 of the Law on Administrative Justice Court, courts and authorities under the supervision of Administrative Justice Court are: administrative courts, commission under Article 100 of the Municipal Act, commission under Article 56 of the Law about the protection and exploitation of forests and natural resources, taxes commissions, dispute settlement delegations between worker and employer.¹⁴ With precision in the constitution, it is obvious that the authors of the constitution want Administrative Justice Court has authority to handle all administrative complaints. Thus limiting the Court's supervision over some dedicated administrative courts which stated in Article 13 is far from the main purpose of the constitution.¹⁵ The Administrative Justice Court is under the supervision of the judiciary and has several branches that each branch is composed of a chief or understudy member. The First Branch chief is the President of whole court and In case of his absence, the second branch chief is the vice President of whole court. Court budget is a component of judiciary budget. Heads, understudy members and consultants, with the ruling head of the judiciary are appointed for a term of 2 years and their re-appointment is allowed. Judge's disciplinary court deal with disciplinary violations of chiefs and understudy members and consultants and violations court judges is the violations of justice system. Administrative Justice Court law, about immunity of court prosecutors is silent. But considering that the Administrative Justice is one of the two branches of the judiciary and legally, its judges must have certain characteristics and conditions, it can be said that sentence of article 164 of constitution about the judge's immunity also applies to court prosecutors.¹⁶

11. Administrative Justice Court's jurisdiction and powers

Administrative Justice Court's jurisdiction and powers has been described in more detail in the law which includes four parts.

1. Attention and revocation of decisions and administrative actions against public and executive organization law and damages caused by this action.
2. Attention and revocation of regulations and administrative system against the law,
3. Inquest to complaints of justice judges and administrative employees about their employment rights violation
4. Appeals toward judgments issued by the dedicated authorities

In Article 11 of the Administrative Justice Court law, two lawsuits have been anticipated:

1. Lawsuits Revocation or lawsuits Encroachment the power
2. Lawsuits damages.

In the first lawsuits the plaintiff claims that administrative action is against the law and wants from the court to cancel it. If court gives him the right and cancels the complained decision or action, effect of judgment will spread to all persons and everyone will benefit from cancellation administrative action against the law. Therefore, it is said that the effect of revocation sentence is overall and objective and includes to all persons. But in lawsuits damages, the plaintiff claims that an Administration has violated his rights, when the court verdict in his favor, only the plaintiff uses or benefits from it. Therefore, it is said that lawsuits damage is a personal and subjective lawsuit. In the Egyptian context, the reference for handling Lawsuits revocation is Administrative Justice Court. Administrative justice court is responsible for dealing with the votes of some dedicated courts. But the law mandates that court supervision must extended over all courts and shouldn't limited to only a few courts. However, if don't predict a specific reference, the reference for handling are the public courts.¹⁷

After court confirmation, the General Court is responsible for determining the amount of damages to persons and entities mentioned in paragraphs (1) and (2) of Article 13.¹⁸

According to Administrative Justice Court law, when various branches of the Court in a similar case issued conflicting votes. This matter will propose to the General Board of Administrative Justice Court and majority vote will be valid. And also, if accused appeal to the final definite vote which issued by the General Board, it is possible to complain to Administrative Justice Court up to one month after the notification, otherwise this votes is never addressed.

12. Conclusions

Legal system, in order to adjustment and proper distribution of power and establish strong safeguards to prevent human rights abuses thinks to legal and political strategies. One of these strategies stated in Article 173 of the constitution and clarified. To deal with complaints, grievances and protests against the government and its authorities, Administrative Justice Court is established. Administrative Justice Court is under the supervision Head of the Judiciary and in Article 170 of constitution clarified that Judges must refuse implementation of governmental regulations and approvals which are contrary to Islamic rule or outside the jurisdiction of the executive branch and anyone can request revocation such rules from Administrative Justice Court. Therefore, with Administrative Justice Court anticipation at the law, if the governmental regulations or approval is contrary to the rights of persons, Administrative Justice Court will invalidate them. Thus such institutions in the judicial system can provide criminal justice.

¹³ Clause 1 of Article 13 and Clause 2 of Article 21 of the Law on the Court of Justice states: lawmakers in the development of new legislation will not change the court supervision over dedicated references courts.

¹⁴ This case is stated exactly in article 11 of the law of administrative court justice: lawmakers in the development of new legislation will not change the court supervision over dedicated references courts.

¹⁵ Tabatabai Motameni, Manouchehr, same, p 452.

¹⁶ same

¹⁷ Tabatabai Motameni, Manouchehr, same, p 430.

¹⁸ Administrative Justice Court law

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17. Tabatabai Motameni, Manouchehr, same, p 430.
18. Administrative Justice Court law