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The role of the annulment action in protecting the principle of legality in the Algerian legal system

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Abstract---The principle of legality constitutes one of the foundational pillars upon which the rule-of-law state is built. It requires that the administration, in all its acts and operations, be subject to the provisions of law, thereby ensuring the protection of individual rights and freedoms and preventing the abuse of public authority. This principle draws its strength from a range of written sources, including the constitution, legislation, and regulatory decrees, as well as unwritten sources represented by custom, the general principles of law, and judicial precedent, all of which contribute to entrenching respect for the law and achieving a balance between the public interest and individual rights. The annulment action emerges as the most important judicial mechanism safeguarding the principle of legality, as it is the action brought by individuals before the administrative courts to challenge unlawful administrative decisions and seek their annulment. This action is distinguished by being an objective, in rem judicial action directed against the administrative decision itself, aimed at protecting legality and the supremacy of law. It is also one of the actions falling within the jurisdiction of the administrative judiciary, through which the administrative judge exercises effective oversight over the administration's acts. To ensure its admissibility, the legislator requires the fulfillment of conditions relating to standing (capacity), interest, time limits, and the challenge of a final administrative decision.
Keywords---Principle of Legalit, Annulment Action, Administrative Judiciary, Administrative Decision, Rule of Law.

Introduction

The principle of legality constitutes the cornerstone upon which the rule-of-law state is erected. It imposes the subordination of the administration to the law in all its acts, as a guarantee for the protection of rights and freedoms and the achievement of equilibrium between administrative powers and the rights of individuals. However, the administration may deviate from this principle by issuing unlawful decisions, which necessitates subjecting its acts to effective judicial oversight. In this context, the annulment action is regarded as the most important judicial remedy enabling the administrative judge to review the legality of administrative decisions and annul them when they contravene the law, thereby reinforcing respect for the principle of legality and the protection of rights and freedoms. From this standpoint, we pose the following research question: To what extent does the judiciary, through the annulment action, contribute to the protection of this principle?

We have sought to answer the research problem through two axes: the first concerns the concept of the principle of legality and its sources, and the second addresses the annulment action as a mechanism for its protection. Accordingly, our research problem is formulated as follows: ***How does the judiciary, through the annulment action, contribute to the protection of the principle of legality?***

We shall attempt to answer this question through two principal sections. The first section will be devoted to elucidating the concept of the principle of legality and its various sources, while the second section will address the annulment action as a judicial remedy aimed at protecting rights and freedoms, and thereby establishing the rules of legality.

1. The Principle of Legality as a Guarantee for the Protection of Rights and Freedoms

It is well established that the principle of legality requires the subordination of both the ruler and the ruled to the law, which means that any act or legal transaction, whether by individuals or the state, must be grounded in and supported by a legal basis. This highlights the essential characteristic of the principle of legality, which consists fundamentally in the supremacy of the rule of law, so that no one may rise above the law, and consequently all parties are equal before it. Even though the state may, at times, occupy a somewhat higher position than individuals by virtue of the public authority it wields, which equips it with various organs and instruments to achieve public order and security in society.

1.1. The Meaning of the Principle of Legality

Several juristic schools have emerged in defining the principle of legality, which may be divided into two principal orientations in terms of their perspective on this principle. The first orientation regards it as the supremacy of the rule of law; the second considers the principle of legality to mean the subordination of the state to the law; while a third school defines the principle of legality as signifying the dominance of legal rules.

1.1.1. The Orientation Holding that Legality Constitutes the Supremacy of the Rule of Law

Proponents of this orientation regard the principle of legality as the supremacy of the rule of law, which means the obligatory respect for legal rules in the country by all authorities, so that the three powers—legislative, executive, and judicial—are equal in this respect, and no one may rise above the law. Therefore, all their acts must be governed within the framework of the law as previously defined.

The term "law" here is used in its broad sense, encompassing all general and abstract legal rules within the state, regardless of their source, whether constitutional, legislative, or regulatory, in addition to decrees and decisions, and extending to include unwritten rules such as custom and the general principles of law.[1]

[1] Mahmoud Ahmad Muhammad Ali Rashid, Guarantees for the Protection of Public Rights and Freedoms: An Analytical Comparative Study (Cairo: National Center for Legal Publications, 2024), 274.

1.1.2. The Orientation Holding that the Principle of Legality Means the Subordination of the State to the Law

Proponents of this orientation regard the principle of legality as meaning the subordination of the state to the law—that is, the subordination of both the ruler and the ruled to the provisions of the law—so that all rulers and ruled are required to abide by the law, respecting its rules and acting in accordance with its requirements. Here, a distinction must be drawn between the principle of the subordination of the state to the law and the principle of the supremacy of the law, as follows:

- ***First***—The principle of the subordination of the state to the law means the subordination of all authorities existing within the state to the law. This is considered a legal principle whose objective is to protect the interests of individuals and safeguard their rights from the domination and arbitrariness of authority. In this regard, the subordination of the executive power to the legislative power is not limited to administrative acts producing particular effects vis-à-vis individuals, but extends to all administrative procedures, including even those relating to the internal organization of administrative facilities whose effects do not extend beyond the governmental apparatus.[2]
- ***Second***—The principle of the subordination of the state to the law is narrower in scope than the principle of the supremacy of the law, since its application is limited to procedures affecting the interests of individuals, whereas the principle of the supremacy of the law extends to encompass all acts and transactions of the administration. The latter aims to render the legislative authority, as elected by the people and representing it, the highest organ in the state. Here, the principle of the supremacy of the law means the subordination of the administration to formal laws only, whereas the system of the subordination of the state to the law means, in the administration, not merely compliance with laws but extends even to administrative regulations.[3]
- ***Third***—The principle of the supremacy of the law is peculiar to democratic systems, where the legislative authority that enacts laws in the state is composed of deputies elected by the people, representing the supreme will of the state, whereas the principle of the subordination of the state to the law remains conceivable under various systems of government, whether democratic or dictatorial.

Another school has also emerged that tends to define the principle of legality as the dominance of legal rules.

1.2. Sources of Legality

The principle of legality is understood as the subordination of the administration to the law in all its acts. The term "law" here is used in its broad sense, which is not

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[2] Mona Muhammad al-Atris al-Dasouqi, Constitutional Protection of Public Rights and Freedoms Under Exceptional Circumstances (Cairo: National Center for Legal Publications, 2024), 131.

[3] Rashid, Guarantees for the Protection of Public Rights and Freedoms, 275.

limited to legislation alone, but encompasses the constitution, treaties, and regulatory decrees as written sources, in addition to custom and the general principles of law as unwritten sources.

1.2.1. Written Sources

Written sources refer to those texts and legal rules recorded in official documents issued by the competent legislative authority in the country in accordance with the procedures required therefor.

- ***First—Constitutional Legislation***

Constitutional legislation refers to those legal rules that define the nature of government in the state, determine the rights and public freedoms enjoyed by individuals, regulate the operation of public authorities in the country, define the scope of each authority's jurisdiction, and set out the economic, political, and social foundations and objectives of the state—all of which are typically contained in constitutions.

- **a. Declarations of Rights:** The Virginia Declaration of Rights of 1776 constituted the first declaration in this regard, followed by the Declaration of the Rights of Man and of the Citizen issued during the French Revolution of 1789. The constitutional texts themselves embodied the second part of the latter, and French juristic opinion was divided concerning the legal value of these declarations.[4]
  - The first opinion denied them any legal value, regarding them as having merely moral, non-binding significance.
  - The second opinion recognized their legal value.[5] Some scholars among them considered them to be merely philosophical principles and directives that should be taken into account when drafting ordinary legislative texts.[6]
- **b. Preambles to Constitutions:** These consist of the rules and various philosophical principles that preface constitutions, as distinct from the substantive provisions they contain. The preambles to the French Constitutions of 1946 and 1958 preceded certain important constitutional provisions and principles in this regard, containing philosophical principles and directives such as the right to defense, the principle of equality, and the protection of individual rights and freedoms.

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[4] Hasan Muhammad Ali Hasan al-Bannan, Administrative Judiciary: The Principle of Legality—Organization of the Administrative Judiciary—Jurisdiction of the Administrative Judiciary (Annulment Jurisdiction—Compensation Jurisdiction—Disciplinary Jurisdiction): A Comparative Study, 1st ed. (Cairo: National Center for Legal Publications, 2024), 16.

[5] Wisam Sbar al-Ani, Administrative Judiciary, 1st ed. (Baghdad: al-Sanhuri Library, 2015), 14.

[6] Hasan Muhammad Ali Hasan al-Bannan, Administrative Judiciary, 17.

- ***Second—Ordinary Legislation***

Ordinary legislation consists of legal rules issued by the legislative authority in accordance with constitutionally established procedures. It ranks second after constitutional legislation or the constitution in the hierarchy of legal rules, by virtue of its issuance by parliamentary assemblies representing the will of the peoples.

Ordinary legislation is defined from a substantive perspective as general and abstract legal rules, and from a formal perspective as legal rules issued by the authority to which the constitution has granted the power of legislation—that is, the legislative authority—in accordance with the procedures and forms required by the constitution.

- ***Third—Regulations or Systems (Subordinate Legislation)***

Regulations and systems consist of administrative regulatory decisions issued by the executive authority and binding in their application, as they represent general and abstract rules that apply to a specific category of individuals and are enforceable when necessary. Accordingly, the individuals concerned are bound by the provisions of such a system without their prior opinion or consent being sought.[7] Therefore, regulations issued by the executive authority must conform to legislation or the law; otherwise, they may be challenged and annulled before the administrative judiciary.[8]

- **a. Implementing Regulations:** These are regulations aimed at laying down the detailed rules necessary for the application of laws issued by the legislative authority represented by Parliament. Such regulations do not create new rules but rather determine how legislative texts are to be applied—that is, they set out the practical method of implementation. The authority to issue these regulations lies with the executive authority; in France, this task is undertaken by the Prime Minister or the head of government.
- **b. Independent Regulations or Systems:** These are the regulations or systems issued by the executive authority in matters not falling within the jurisdiction of Parliament—that is, they are regulations independent of any law, and they aim to establish and organize public facilities.[9]
- **c. Administrative Police Regulations:** These are regulations issued by the executive authority for the purpose of preserving public order in all its various elements. They are generally in the form of general rules imposing restrictions on individual activity or on certain freedoms, such as freedom of assembly and freedom of movement, whenever necessity so requires for the preservation and protection of public order.

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[7] Muhammad Walid al-Abadi, Administrative Judiciary in Comparative Systems, vol. 1, 1st ed. (Amman: al-Warraq Foundation, 2008), 56.

[8] Husni Dalila, Judicial Mechanisms for the Protection of Human Rights in Algeria, Master's thesis, Faculty of Law, University of Tlemcen, 2005/2006, 78.

[9] Hasan Muhammad Ali Hasan al-Bannan, Administrative Judiciary, 19.

- **d. Emergency Regulations:** Emergency regulations consist of regulatory decisions issued by the executive authority in the absence of the legislative authority (Parliament), and their purpose is to address urgent exceptional circumstances threatening the safety or security of the state. They constitute an exception to the principle of the separation of powers, deriving their legality from the nature of the circumstances in which they were issued or which led to their issuance. In return, most legislation requires that such regulations or regulatory decisions be submitted to the legislative authority or Parliament at the earliest opportunity; otherwise, they shall be deemed unlawful.[10]
- **e. Delegated Regulations:** These are regulations issued by the executive authority on the basis of a delegation from Parliament, or what is meant by the legislative authority, for the purpose of regulating certain matters falling within the scope of legislation, but within defined limits and for a specified period. The issuance of these regulations also requires a constitutional text authorizing the process, and the issuance of a law delegating the executive authority to legislate, with the subjects falling within the delegation process being defined. The draft law must also be submitted to Parliament for approval before the expiry of the period specified in the delegation law; otherwise, it shall be void.

1.2.2. Unwritten or Non-Codified Sources of the Principle of Legality

Unwritten sources of the principle of legality refer to those rules not recorded in any official code, yet jurists frequently resort to them. These sources may be summarized as administrative custom, the general principles of law, and some scholars add judicial precedent.

- ***First—Administrative Custom***

Administrative custom consists of the administration's habitual adherence to a certain conduct relating to administrative activity, accompanied by the belief that such conduct is obligatory.[11] In other words, administrative custom refers to the administration's habitual adherence to a particular conduct in a repeated and consistent manner, accompanied by the belief in its binding nature, until it becomes a rule governing its acts.[12]

- ***Second—The General Principles of Law***

The general principles of law refer to those unwritten principles derived by the judiciary, which emphasize the necessity of the administration's adherence to them.

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[10] Muhammad Ali Jawad Kazim, Administrative Judiciary (Baghdad: Maktab al-Ghufran—University of al-Mustansiriyah, 2010), 17.

[11] Bakr Qabbani, Custom as a Source of Administrative Law, 3rd ed. (Cairo: Dar al-Nahda al-Arabiya, 1976), 16.

[12] Abd al-Ghani Basyuni Abd Allah, General Theory of Administrative Law, 2nd ed. (Cairo: Dar al-Fikr al-Arabi, 1999), 147.

The judge discovers these principles through the legal conscience of the state and applies them to the cases and disputes brought before him.[13] Therefore, the general principles of law have become an effective instrument in developing the content of legality and ensuring the protection of rights and freedoms from administrative arbitrariness.[14] They differ from legislative principles of law contained in various constitutional and legislative texts in that the latter are written and derive their force from the legislator.[15]

- ***Third—Judicial Principles***

The judiciary in general, and the administrative judiciary in particular, plays an important role in the field of law. It contributes to innovation by creating, through its judgments and reasoning, general rules and principles; it interprets ambiguous legal texts; it reconciles conflicting texts; and it engages in analogy through its reasoning in the absence of an applicable legal text in the disputes or in one of their aspects brought before it. This matter is sometimes considered highly complex and serious due to the abundance and complexity of administrative texts, which vary in subject matter and instruments.[16]

When the judge exercises his oversight over the legality of administrative decisions, he also innovates general rules binding on the administration through his judgments.[17] Thus, the administrative judge becomes an official source of administrative law, and in some cases one of its most important sources when the role of legislation is exceeded.[18]

2. The Annulment Action as a Means of Protecting the Principle of Legality

The annulment action is regarded as the most important of administrative judicial actions and the one most closely connected to the principle of legality, inasmuch as it is the judicial remedy enabling the administrative judge to compel the administration's respect for the law and to limit its arbitrariness in the exercise of power, thereby consecrating the supremacy of law and reinforcing the pillars of the rule-of-law state. Accordingly, it is necessary to address its concept and characteristics, as well as the conditions for its admissibility.

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[13] Saad Dahman, "Introduction to the Principle of Legality," Afaq Journal of Sciences, no. 6 (Djelfa, 2017): 239.

[14] Said Bouchair, Algerian Administrative Law: The Administrative Judiciary, 3rd ed. (Algiers: Diwan al-Matbu'at al-Jami'iyah, 2008), 112.

[15] Abd Allah Abd al-Ghani Basyuni, Lebanese Administrative Judiciary, 1st ed. (Beirut: Manshurat al-Halabi al-Huquqiyah, 2000), 32.

[16] Abd Allah Talba, Principles of Administrative Law, vol. 1, 7th ed. (Damascus: Manshurat Jami'at Dimashq, n.d.), 38–39.

[17] Muhammad Sghir Baali, Administrative Law (Algiers: Dar al-Ulum li-l-Nashr wa-l-Tawzi', 2012), 95.

[18] Dahman, "Introduction to the Principle of Legality," 240.

2.1. The Concept of the Annulment Action

The annulment action, or annulment jurisdiction as some call it, is an objective jurisdiction directed at the administrative decision itself, or attacking the administrative decision and examining the extent of its legality, and consequently ruling for its annulment in the event of its contravention of the law. The judge's authority here does not extend to ruling beyond that; he cannot, of his own accord, arrange the effects that may arise from the annulment with respect to rights and obligations. In other words, the administrative judge examines the legality of the administrative decision, and if it appears to him that the decision has deviated from or contravened the law, he rules for its annulment.[19]

2.1.1. The Definition of the Annulment Action

Since various legislations have not addressed the definition of the annulment action, and it is believed that the reason for this lies in the nature of the latter as an objective action always confronting the administrative decision, the legislator may have preferred not to engage in the debate over definitions, leaving that to doctrine and the judiciary. We shall attempt to present the doctrinal and judicial definitions of the annulment action.

- ***First—The Doctrinal Definition***

Several definitions have been put forward by jurists regarding the annulment action. Some have defined it as an objective action directed against the administrative decision, aimed at assessing the extent of its legality by evaluating the degree of its conformity or agreement with the law in its broad sense.[20]

The French jurist André de Laubadère defined it as a judicial challenge aimed at having an unlawful administrative decision annulled by the administrative judge.[21] As for the jurist Debbasch, he defined it as the challenge through which the plaintiff requests the judiciary to annul an administrative decision that is unlawful or for lack of legality.[22]

Among Arab jurists, Professor al-Talmawy defined the annulment action as the action brought by an individual before the administrative judiciary to request the annulment or nullification of an administrative decision contrary to the law.[23]

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[19] Sulayman al-Talmawy, Annulment Jurisdiction (Cairo: Dar al-Fikr al-Arabi, 2003), 272.

[20] Ali Khattar Shatnawi, "The Dispute in the Annulment Action," Journal of the Egyptian State Council 44, no. 2 (2000): 9, cited in Abd al-Nasir Abd Allah Abu Samhadana, Annulment Jurisdiction (Cairo: National Center for Legal Publications, 2014), 13.

[21] André de Laubadère, Jean-Claude Venezia, and Yves Gaudemet, Treatise on Administrative Law (Paris: L.G.D.J., 1999), 536.

[22] Ammar Boudiaf, The Reference in Annulment Jurisdiction: A Comparative Study, 1st ed. (Algiers: Dar al-Thaqafa li-l-Nashr wa-l-Tawzi', 2011), 60.

[23] Sulayman Muhammad al-Talmawy, The Concise in Administrative Judiciary: A Comparative Study (Cairo: Dar al-Fikr al-Arabi, 1985), 151.

In Algeria, Dr. Ammar Awabdi defined the annulment action as that objective, in rem judicial administrative action initiated by a person possessing legal standing and interest before the competent judiciary in the state to claim the annulment of unlawful administrative decisions.

Dr. Mohamed Sghir Baali also defined it as the judicial action brought before one of the judicial bodies, aimed at annulling the administrative decision by reason of its illegality, in view of the defects affecting one or more of its constituent elements.[24]

What is noteworthy in the various foregoing definitions of the annulment action is that it is an action directed against the defective administrative decision and not against the administration; hence it is said that the annulment action is not between adversaries but rather an action against the decision, and the judge's role therein is to verify the extent of the legality of the challenged decision.[25]

- ***Second—The Judicial Definition***

The nature of the judge's role in deciding the disputes brought before him may have led him to refrain from providing general definitions, generally contenting himself with indicating the defects affecting administrative decisions in order to rule on their legality or lack thereof. Nevertheless, the judiciary has attempted to give several definitions of the annulment action, albeit indirectly, as evidenced by certain decisions of the French Council of State.

The Egyptian Administrative Court also defined the annulment action as an objective action whose subject is the challenge of an administrative decision, whether affirmative by taking a certain measure, or negative by abstaining from or refusing a measure that the law and regulations require a certain administrative body to take.

The same body also defined the annulment action on another occasion as an objective action directed at the legality of the administrative decision itself, aimed at restoring the situation to what it was before the issuance of the decision sought to be annulled. If a legal impediment prevents this, the action may not be continued, and the court must rule it inadmissible for lack of the condition of interest.[26]

2.1.2. Characteristics of the Annulment Action

The annulment action is distinguished by several characteristics that set it apart from other judicial actions:

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[24] Muhammad Sghir Baali, Administrative Judiciary: Annulment Action (Algiers: Dar al-Ulum li-l-Nashr wa-l-Tawzi', 2012), 29.

[25] Abd al-Nasir Abd Allah Abu Samhadana, Administrative Judiciary: Annulment Jurisdiction, 1st ed. (Cairo: National Center for Legal Publications, 2014), 13.

[26] Abu Samhadana, Administrative Judiciary: Annulment Jurisdiction, 14.

- ***First—The Annulment Action Originated with the French Council of State***

The French Council of State is considered the first body to have recognized the annulment action, tracing it back to an old text predating its establishment, namely the law of 7–14 October 1790.[27] The French legislator subsequently issued several laws regulating the annulment action, including the law of 1872, the ordinance of 1945, and the decree of 1953. Despite all this, the detailed rules of the annulment action remain left to the jurisprudence of the Council of State.[28]

- ***Second—The Annulment Action Is an Objective, In Rem Action***

The annulment action is an objective and in rem action, not a personal one. Judicial actions are divided into in rem, objective, and personal actions, and this classification is based on the nature of the legal position upon which the action is founded. An action whose objective is to attack the administrative decision that contravenes the law is an in rem action, and this is the case with the annulment action, which attacks the individual decision or the regulatory one, and therefore does not attack the person.

- ***Third—The Annulment Action Is an Action for Legality***

The annulment action aims to annul the administrative decision that was issued in contravention of the law, which means its illegality. Accordingly, the annulment action aims to return to the principle of legality and to consecrate the manifestations of legality that require the supremacy of the law.

- ***Fourth—The Judgment Rendered in an Annulment Action Enjoys Absolute Res Judicata***

The res judicata effect of the judgment is not limited to the parties to the annulment action but extends to everyone. Anyone with an interest, even if not a party to the action, may rely on the judgment declaring the administrative decision unlawful, for whenever an unlawful administrative decision contravening the law is annulled, it is deemed annulled with respect to all, as if it had never been issued. This is in contrast to the full jurisdiction action, in which the res judicata effect of the judgment is limited to the parties to the action and may not be relied upon by third parties.

- ***Fifth—The Annulment Action Is Governed by Specific Procedures and Formalities***

This is because the absence of those procedures and formalities specific to it will render it inadmissible, as the law requires the fulfillment of certain formal conditions necessary for its admissibility.

2.2. Conditions for the Admissibility of the Annulment Action

Since the annulment action is considered the most important administrative judicial action, as it aims to protect the principle of legality by annulling administrative

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[27] Georges Dupuis, Marie-José Guédon, and Paul Chrétien, Administrative Law (Paris: Armand Colin, 1996), 502.

[28] Sulayman al-Talmawy, Annulment Jurisdiction (Cairo: Dar al-Fikr al-Arabi, 2003), 281.

decisions contravening the law, certain conditions must be met for its admissibility. These include conditions relating to the decision challenged, conditions relating to the challenger, and other conditions relating to time limits or deadlines.

2.2.1. Conditions Relating to the Administrative Decision Challenged

From the standpoint that the administrative decision is defined as every legal and unilateral act issued by the will of a competent administrative body and producing legal effects by creating a new legal position, modifying it, or annulling an existing legal position,[29] the following conditions must be met in the administrative decision:

- ***First—The Administrative Decision Must Be a Legal Act***

That is, it must be grounded during its issuance in laws and regulations, and consequently be free from defects affecting its validity and exposing it to annulment.

- ***Second—The Administrative Decision Must Be Final and Possess Enforceability***

The administrative decision must be a final legal act possessing the enforceable formula enabling it to produce its legal effects. The final administrative decision is distinguished from non-final legal acts, which do not qualify as final administrative decisions. There are two criteria for distinguishing between final administrative decisions that may be challenged and legislative acts. The first criterion is a formal or organic one, which looks at the body or authority that issued or performed it: if issued by Parliament, it is a legislative act; if issued by other administrative bodies, it is an administrative act.[30]

As for the substantive criterion, it relies on distinguishing the administrative decision from legislative acts by examining the nature of the act itself and the extent of its connection with rights and freedoms, without regard to the body that issued it, since the nature of the act is not tied to the body that issued it or to the forms and procedures of its issuance.[31]

- ***Third—The Administrative Decision Must Be Issued by a National Administrative Authority***

In order for an act to be considered administrative, it must be issued by a public legal person or by an administrative body representing the state, whether a centralized or decentralized administration, such as local administrative bodies.

- ***Fourth—The Decision Must Be Issued by Unilateral Will***

That is, the administrative decision must be issued by the unilateral will of the administrative body issuing it, without the concurrence of the will of those addressed by it.

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[29] Ammar Awabdi, Lessons in Administrative Law, 2nd ed. (Algiers: Diwan al-Matbu'at al-Jami'iyah, 1985), 215.

[30] Khalid al-Zughbi, The Administrative Decision Between Theory and Practice: A Comparative Study (Amman: Dar al-Thaqafa li-l-Nashr wa-l-Tawzi', 1999), 23.

[31] Tharwat Badawi, Administrative Law (Cairo: Dar al-Nahda al-Arabiya, 1997), 17–18.

- ***Fifth—The Administrative Decision Must Produce Legal Effects***

That is, an administrative decision issued by the administrative authority that does not produce effects in legal positions falls outside the scope of the administrative decision, for the administrative decision must produce effects in legal positions; otherwise, it is not considered an administrative decision, such as preparatory and advisory acts or correspondence that does not produce any legal effect.[32]

2.2.2. Conditions Relating to the Challenger of the Administrative Decision

A set of conditions must be met by the challenger, the absence of which leads to the nullity of the annulment action procedures. These conditions are as follows:

- ***First—Standing (Capacity)***

Although the legislator has explicitly provided that standing is one of the fundamental conditions for the admissibility of the annulment action, and has even made it a matter of public policy that the judge may raise of his own motion the defense of lack of standing,[33] he has not defined it, neither through the old Code of Civil and Administrative Procedures nor through the new Law No. 08-09.

However, doctrine and the judiciary have undertaken this task. It may be said that standing is understood as the relationship linking the plaintiff, as the holder of the right or legal position, to judicial protection, in that the holder of the right asserts legal protection for himself or through his legal representative. Accordingly, the action must be attributed positively to the holder of the right, and negatively to the person against whom the right is asserted. Based on this premise underlying this condition, the action must be brought by the person with standing against the person with standing.[34]

Therefore, the violation of the condition of standing entails the dismissal of the action. As for the adversary's denial of the plaintiff's standing, this falls within the framework of the defense of inadmissibility, which constitutes an independent type in its own right.[35]

The defense of inadmissibility of the action due to the absence or lack of standing is a matter of public policy, whereby the court may rule of its own motion that the action is inadmissible. The adversaries may also raise this defense at any stage of the

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[32] Muhammad Sghir Baali, Administrative Judiciary: The Council of State (Annaba: Dar al-Ulum li-l-Nashr wa-l-Tawzi', 2004), 83.

[33] Yusuf Dalande, The Concise in Explaining the Common Provisions for All Judicial Bodies Under the New Code of Civil and Administrative Procedures: Judicial Actions, 2nd ed. (Bouzareah: Dar Houma, 2009), 20.

[34] Rashida Hadadi, Incidental Requests and Subsidiary Actions in the Algerian Code of Civil Procedure, 2nd ed. (Bouzareah: Dar Houma, 2006), 179.

[35] Muhammad Hamidani, Formal Defenses in Light of Algerian Judicial Reasoning, Master's thesis, Branch of Contracts and Liability, Faculty of Law, Ben Aknoun, Algeria, 2004/2005, 66.

proceedings,[36] even after submitting defenses on the merits, in accordance with Articles 68 and 69 of the Code of Civil and Administrative Procedures.[37]

- ***Second—Interest***

Interest is the benefit that the plaintiff hopes to achieve by resorting to the judiciary, or it may be said to be the advantage that accrues to the person bringing the action. Jurists have considered that the requirement of interest for the admissibility of the action has two aspects: one negative, consisting in preventing those who have no need for the protection of the law from resorting to the judiciary; the other positive, as a condition for the admissibility of the action for anyone who stands to benefit from the judgment in it.[38]

Accordingly, the person bringing the annulment action must have an interest in annulling the administrative decision, whereas the person bringing the compensation action must be the holder of the right who has suffered harm as a result of the administrative decision issued by the administrative body.[39]

- ***Third—Legal Capacity***

The person bringing the action must possess the necessary legal capacity enabling him to resort to the judiciary. The condition of capacity is considered a necessary and essential condition in all judicial actions, for one who lacks capacity is not able to bring a judicial action; rather, the action may be brought on behalf of a minor or a person lacking capacity by the guardian, curator, or tutor who represents him by operation of law.[40]

Capacity is understood, according to Article 13 of Law No. 08-09 on the Code of Civil and Administrative Procedures, as the person's eligibility to pursue a judicial action. In contrast, the law permits certain minors to resort to the judiciary, as is the case in family matters, where the Family Code provides in its Article 7, paragraph 7, that "the minor spouse acquires the capacity to litigate in matters relating to the effects of the contract, including rights and obligations."[41]

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[36] Walid Shareet, "Formal Conditions for the Admissibility of the Annulment Action Under the Code of Civil and Administrative Procedures 08/09," Journal of Political and Administrative Research, no. 5 (Algiers, n.d.): 49.

[37] Articles 68 and 69 of Law No. 08-09 of 18 Safar 1429 corresponding to 28 February 2008, containing the Code of Civil and Administrative Procedures, Official Journal of the People's Democratic Republic of Algeria, no. 21 (23 April 2008).

[38] Ammar Boudiaf, The Annulment Action in the Code of Civil and Administrative Procedures: A Legislative, Judicial, and Doctrinal Study (n.p.: Dar Jusur, 2009), 85.

[39] Muhammad Walid al-Abadi, Administrative Judiciary, vol. 2: Conditions for the Admissibility of the Annulment Action and the Effects of the Decision Therein, 1st ed. (n.p.: al-Warraq li-l-Nashr wa-l-Tawzi', 2008), 352.

[40] Abd al-Nasir Abd Allah Abu Samhadana, Administrative Judiciary: Annulment Jurisdiction, 73.

[41] Yusuf Dalande, The Concise in Explaining the Common Provisions for All Judicial Bodies Under the New Code of Civil and Administrative Procedures, 23.

Here, a distinction must be drawn between the capacity of natural persons and that of legal persons. In this regard, Article 40 of the Civil Code provides that no one is eligible to exercise his civil rights except one who has reached the age of majority, i.e., nineteen years, and is of sound mind and has not been placed under guardianship. On this basis, a lawyer must represent one who lacks capacity or whose capacity is deficient, in accordance with Articles 42, 43, and 44 of the Civil Code, as well as Articles 81 to 125 of the Family Code. From this standpoint, the annulment action is brought by the tutor or guardian on behalf of the minor, and by the curator on behalf of the person placed under guardianship.[42]

Accordingly, under Article 64 of the Code of Civil and Administrative Procedures, the lack of capacity does not lead to the inadmissibility of the action but rather to the nullity of the litigation procedures. This is expressed in its provision on the nullity of non-judicial contracts and procedures with respect to their subject matter, in specified cases such as the lack of capacity of the adversaries, whereby this defense is one that the judge may raise of his own motion, as clarified in Article 65 of the same law.[43]

2.2.3. Conditions Relating to Time Limits

The special nature of the annulment action and the consequences that may result from it, including the annulment of the decision and the effects it produces for individuals, led the legislator not to leave the annulment challenge open-ended but to limit it to a specific period within which the action must be brought. The time limit is the period within which the annulment challenge must be filed; in other words, it is the period prescribed by law for the annulment action to be brought.[44]

According to the provisions of Law No. 08-09 on the Code of Civil and Administrative Procedures, the time limit or deadline for bringing the annulment action is four (4) months from the date of notification of the individual decision, or from the date of publication of the regulatory decision before the administrative court. This applies in the absence of a prior administrative grievance. However, if the plaintiff or challenger has submitted a prior administrative grievance, the time limit is two (2) months from the date of the administration's response to the individual regarding the grievance, and the administration's response may be either explicit, by rejecting the grievance, or implicit.

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[42] Muhammad Sghir Baali, The Intermediary in Administrative Disputes (Annaba: Dar al-Ulum li-l-Nashr wa-l-Tawzi', 2009), 160.

[43] Yusuf Dalande, The Concise in Explaining the Common Provisions, 24.

[44] Muhammad Anas Ja'far, The Intermediary in Public Law: Administrative Judiciary (Cairo: Dar al-Nahda al-Arabiya, 1987), 342.

Conclusion

In conclusion, it is clear that the principle of legality constitutes the cornerstone in building the rule-of-law state, as it ensures the subordination of the administration to the law in all its acts, and forms an essential guarantee for the protection of individual rights and freedoms from any arbitrariness or deviation in the exercise of power. The study has shown that this principle draws its strength from multiple sources, written ones such as the constitution and legislation, and unwritten ones such as the general principles of law and judicial precedent, which reflects its comprehensiveness and flexibility in keeping pace with the evolution of the rule-of-law state.

The study has also demonstrated that the annulment action is regarded as the most important judicial instrument in consecrating the principle of legality, by enabling individuals to challenge unlawful administrative decisions before the administrative judiciary, and subjecting these decisions to effective legality oversight that leads to their annulment when their contravention of the law is established. Thus, the annulment action is not limited to the protection of individual legal positions alone, but extends beyond that to the protection of the legal system as a whole and the guarantee of the supremacy of law within the public administration.

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