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The legal basis for the right to litigation and dismissal of the case in form

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Abstract

This research relates to the subject of the legal basis of the right to litigation and dismissal of the lawsuit in form as the individual no longer has a way to defend his rights and freedoms, when exposed to any attack or prejudice except to resort to the state courts and take the path of the judiciary to redress and respond to that assault, so the state has become obligated to ensure the right to litigation for all individuals as the most important human right, to overcome the way of litigation for everyone who takes it, and to make the doors of its courts open and not closed for each of the right to litigation by resorting to the national judiciary is an urgent necessity imposed by justice, as the natural and usual way to settle disputes that arise between individuals if the right to litigation is in the various judicial systems in line with the desired goals of those judicial systems and aimed at achieving prompt justice. The judiciary is one of the most capable organs to protect legality and defend rights and freedoms, if it has the necessary guarantees to guarantee its independence in the performance of its functions and the invitation was returned.

Keywords: Litigation and dismissal, legal basis, rights and freedoms

Introduction

that each individual has the right to seek to claim his right and that in the interest of the total and the right to resort to the judiciary is to direct litigation procedures to achieve the purpose for which they were developed, which is to put an end to disputes and disputes and liquidate the legal positions of litigants and protect their rights, and litigation is a right instead of individual retribution that entitles the individual to fulfill his right from the other without any deterrent or will is the way to establish justice in society and achieve equality between citizens and is the guarantor of the sovereignty of the state to apply the law by One of its authorities, represented in the judiciary, the right to litigation takes the place of legally guaranteed freedoms and cannot be deprived of them, it is an optional right that can be exercised or not exercised, as the lawsuit, whether civil or administrative, but protects rights that can be left and waived, and this right has been decided and guaranteed in the heavenly religions, international conventions, constitutions and laws, in order to ensure this right for all people and protect it from attack, because the heavenly laws and their conclusion Islam and most man-made laws are the right to litigation Among the most important guarantees of the rights of individuals, The most important way to achieve stability, justice and fairness throughout society, but the right to litigation is restricted to dismiss the lawsuit in form outside the legal period or outside the specified time, and this is applied in most laws of countries, and the lawsuit is linked to a period of time determined by legislation before the judiciary during which the lawsuits filed before it and decide on them, and there are legal consequences of filing the lawsuit and rejecting it in formal terms. First: Research Objectives: This study aims to introduce the legal basis for the right to litigation and dismissal of the lawsuit in form through what is included in international conventions and declarations and Iraqi legislation. Our aim is to inform the person of his right to litigation and equality before the judiciary so that he can claim and defend his rights in the court and the reasons for dismissing the lawsuit from a formal point of view. Second: The importance of the research: The importance of our study lies in the fact that it falls within the framework of human rights issues, which is one of the important issues that concern the international community with its various institutions and organizations, so it comes to shed light on the extent of the legislator's interest in the subject of the right to litigation as one of the constitutional foundations and the reasons for dismissing the lawsuit in form.

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Third: Research Methodology: Based on the analytical method by analyzing constitutional texts, legislation, laws, jurisprudential opinions and the position of the Iraqi legislator. Fourth: Research Plan: We will study this research on two sections, dealing in the first section the concept of the right to litigation and the second section the concept of administrative lawsuit and conclusion.

The first topic the concept of the right to litigation the first requirement Definition of the right to litigation Definition of the right. The concept of the right in language means the source of the opposite of falsehood, and gathered on rights and facts, as the word right revolves in several gloss, including proof, existence, certainty, obligation, necessity, and the origin of the right conformity and approval. The right also means the correctness, truthfulness and proof of a certain matter, such as saying the truth of the matter, i.e. proven and correct, and so says the truth, i.e. says the truth, and also the meaning of obligation, such as (you are entitled) i.e. you must, or means permissibility and justification such as you are entitled, or it is meant by the meaning of justice, certainty or duty for the individual and the group. The Dictionary of Human Rights Terms also defined the right as: "The ability of a person to perform a certain act granted to him by law and protected in order to achieve his own endorsement, and that every right corresponds to a duty. While legal scholars have defined the right as: it is any legitimate position that would benefit its owner or others, and it was defined as: A legal association whereby the law authorizes a person to unilaterally and monopolize or require a certain performance by another person. The right to litigation is also one of the basic rights stipulated in the constitutions of various countries, including the Iraqi constitution, which stipulates in article 19 thereof: First: "The judiciary is independent and has no authority over it other than the law". Second: There shall be no crime or punishment except by a stipulation. There shall be no penalty except for the act prescribed by law at the time of its commission of an offence, and no penalty may be applied more severe than the penalty in force at the time of the commission of the offence. Third: (Litigation is a protected right guaranteed to all. (Fourth: The right of defense is sacred and guaranteed at all stages of investigation and trial. Fifth: The accused is innocent until proven guilty in a fair legal trial, and the accused shall not be tried for the same charge again after his release unless new evidence emerges. Sixth: Everyone has the right to be treated fairly in judicial and administrative proceedings. Seventh: Court hearings shall be public unless the court decides to make them secret. Eighth: The punishment is personal. Ninth: Laws shall not have retroactive effect unless otherwise specified, and this exception does not include tax and fee laws. Tenth: The Penal Code shall not apply retroactively unless it is more suitable for the accused. Eleventh: The court shall assign a lawyer to defend the accused of a felony or misdemeanor for those who do not have a lawyer to defend him at the expense of the State. Twelfth: A-Reservation is prohibited. (b) Detention or detention shall not be permitted in places other than those designated in accordance with the laws of prisons covered by health and social care and subject to the authorities of the State. Thirteenth: The preliminary investigation papers shall be presented to the competent judge within a period not exceeding twenty-four hours from the time of arrest of the accused and may not be extended except once and for the same period. International

conventions also stipulate the right of individuals to litigation and a fair trial, including the Universal Declaration of Human Rights, in article VIII: Everyone has the right to resort to national courts for redress for acts that infringe upon the fundamental rights granted to him by law.

All persons are equal before the courts. Everyone has the right, when any criminal charge against him or his or her rights and obligations in a legal case is heard, to a fair and public hearing by a competent, independent and impartial tribunal established on the basis of the law. The right to litigation is one of the natural rights attached to the human person and never ceases from him, as it derives from natural law, which precedes all man-made laws, and therefore these laws have no right to come today and undermine that right, by confiscating or derogating from it. The right to litigation means the right of individuals to resort to the judiciary whenever their rights and freedoms have been violated in order to repel and repel the infringement of those rights. The objective of the administrative judiciary is the following: First: that the judiciary should have something to ensure the proper functioning of public utilities, and if a private interest conflicts with the public interest, the public interest must prevail over private interests. That right cannot be considered democratic unless that system guarantees individuals this right so that individuals can be assured of their rights and the feeling of injustice dissipated. The objective of the administrative judiciary is the following: First: that the judiciary should have something to ensure the proper functioning of public utilities, and if a private interest conflicts with the public interest, the public interest must prevail over private interests. Second: that the judiciary be a relief to which individuals and groups are frightened, whenever one of them thinks that he is deprived of the right, if he is wronged or believes that he is oppressed, and his opponent is strong, such as the administration, he must have a refuge to resort to and submit his complaint to him, and nothing is more generous to the administration and I do not preserve its place than to go down with its opponent to the judiciary, to do justice to him or to do justice to him, that is inferior to the truth and justice and kept for prestige and respect. Litigation is one of the main pillars in legal countries, and an important pillar for every sound democratic rule, and therefore most constitutions provide for the protection of the right to litigation for individuals and the preservation of their freedoms and highlight the importance of the judiciary clearly when talking about administrative disputes, because of its privacy represented by the strength of the party of the administration over its opponents, as it has the authority to make administrative decisions that have the presumption of safety from defects until proven otherwise, and accordingly the right to administrative litigation came to strike a balance between the work of the administration and freedom and rights Individuals, and therefore one of the requirements of the right to litigation is the achievement of justice between the parties to the administrative case. The exploitation of the justice facility and recourse to the courts requires expenses to file the lawsuit and direct, its stages and so that there is no abuse of the right to litigation, which leads to a violation of the principle of equality before the judiciary, to achieve a balance between litigants, most countries have approved the principle of free for litigants, this in order to preserve the principle of equality between them, and as judges are employees like other state employees, they receive a

monthly salary and do not receive any wage from litigants for their work, and despite Therefore, the litigants pay a nominal fee to the public treasury for the services of the judicial facility for two purposes: The free judicial facility shall be a reason for encouraging the filing of retaliatory cases and such judicial expenses shall not be an obstacle to individuals resorting to the judiciary and claiming their rights. To that end, all legal systems have established free access to the judiciary in order to make the services of the judicial facility accessible to various social groups without exclusion. In order for the State to exercise through this annex one of its powers, the judiciary. In view of the importance of the principle of free judiciary in reducing the burden on the litigants, some jurists have argued that the judiciary should be made free of charge as one of the oldest functions of the State. One of its most important duties is to administer justice among its members. However, we do not support this view, because the abolition of fees and the introduction of the principle of free Absolute and free of charge, even in the form of a small fee that does not burden the litigant, is something that would result in very serious effects, perhaps on top of which is the spread of the phenomenon of litigation within society and the large number of disputes among its members. Some of them may be malicious, ultimately overwhelming the judiciary and distracting judges perhaps from more serious and important disputes.

The second requirement is the right to equality before the courts

Definition of equality: Equality is derived from the verb only, and whether (Sawa) language is justice, the Almighty said: (He renounced them both), and whether the thing is in the middle, the Almighty said: (So see his vision in both hell), and both is equality with others such as saying and they are in this matter (whether) or (whether) they are (worse) and (equal), and so on to say (not equal) any equivalent to it, and come in the sense of leveling from the warp such as saying this is a man except any level and leveled from the warp. Some have defined equality as "an attempt to give everyone as similar opportunities as possible to benefit from the possibilities they may have Equality before the judiciary means the exercise by all citizens of the State of the right to litigation on an equal basis before the same courts, without discrimination or distinction between them on grounds of origin, sex, color, language, belief or personal opinions". Therefore, equality occupies a prominent place within the human rights systems of contemporary countries, because it is a condition for freedom, so some jurists consider that equality is the first of rights, and it is an essential element for building the state of law, so equality has occupied a prominent place in comparative constitutional systems. The content of equality before judges requires that the judiciary before which all are litigated must be the same and that the courts should not differ according to the different persons before them, as well as that the litigation procedures of litigants be the same. This is in addition to the unity of law applicable to all, the treatment of all is equal without any discrimination, and this results, as we shall see, in the unity of penalties prescribed for the imposition of those convicted in the charges against them. However, it is not incompatible with the essence of equality before the courts to give freedom to the judge to impose the appropriate penalty according to the different

circumstances of each case, or the different circumstances of the accused, even if the crime is the same. Equality before the judiciary requires that the parties to the lawsuit during their appearance before the judiciary have equal rights, just as the victim has the right to claim compensation for the damages caused to him by the accused, the latter has the right to defend himself and deny and denounce the charges against him, as well as giving him the last word and his right to challenge the charges during his appearance before the court. Handcuffs are removed from his hands, in line with the principle of equality before the judiciary with all the rest of the parties to the lawsuit. Equality with others, and that the parties to the proceedings be treated without discrimination or discrimination, because equality before the courts is one of the essential elements of the protection of human rights as a procedural means of maintaining the rule of law. Equality before the law This type of equality is manifested in the obligation of the competent authority to enact the rule of law, so that it does not discriminate against and favorite those who address it, that all similar positions must be treated in an identical manner, and through the obligation of those who apply the legal norm not to commit discrimination between those subject to the legal norm that is not provided for by the latter. The principle of equality before the judiciary and ensuring the right to litigation has found great attention from the French Revolution, which was the most important reason for its establishment of the injustice suffered by the French people and the lack of equality between its members and sects under the old system, as the revolution undermined the pillars of the judicial system that existed in the monarchy and began to lay the foundations of a new judicial system to avoid the disadvantages and defects of the old system represented in the establishment of the French Council of State, which had an important role in the field of administrative disputes next to the ordinary judiciary in order to promote and affirm the principle of equality and to ensure the right to litigation in disputes arising between individuals and the administration. Indeed, the right to equality cannot be meaningful or effective without affirmative action, as it is an essential and integral component of the right to equality. Positive measures can be justified on the basis that they are the realization of substantive equality and that the right to equality is an individual right, preferential treatment concerns the rights of the community, and the right to be free from discrimination is hidden in front of the rights of the group to compensate for the discrimination it suffered in the past and its right to rectify the unjust situations in which it has lived.

The second topic the concept of the administrative lawsuit the first requirement is the definition of the lawsuit

The lawsuit in the language is a name for what the person claims, and it is taken from the verb (claimed) it is said: so-and-so claimed a claim, that is: he claimed that he had a right or a falsehood, and from that the Almighty says, "When they saw Zulfa, the faces of those who disbelieved were bad, and it was said that this is what you were calling". (The King: 27) Any interpretation for which you were claiming falsehoods and lies, and gathering on lawsuits to break the Wow and lawsuits to open it, and its meaning goes to raise a dispute case to the court to be decided by the judge and it is said: (Filing a lawsuit, filing a lawsuit. A lawsuit is

a claim of right in the council of the one who has salvation when it is established. The term "claim" in the definition includes a claim by word or in its place of writing and reference, as well as whether the claim is from the right holder or his deputy. A lawsuit is a claim by a person to another person of a right that he claims against him, and this right may be in kind, debt, option, pre-emption, filiation, marriage, felony, etc. Western jurisprudence defines suit as a legal means by which a person resorts to the courts to obtain recognition of his right and, if necessary, to protect him. As for the Iraqi Code of Civil Procedure No. (83) of 1969, it was defined The lawsuit in its second article as: The lawsuit is a person's request for his right from another before the judiciary, and this definition is taken from Islamic jurisprudence, as it was stated in Article 1613 of the Judicial Code, which was applied in Iraq before the entry into force of the Civil Law No. 40 of 1951. Where the lawsuit was defined as: one person asked another for his right in the presence of the ruler. Its pillars are three: The plaintiff, the defendant, and the defendant, i.e. the disputed incident, while its conditions are: the existence of the right, capacity, litigation, The interest where there is no lawsuit without interest and the interest must be known, case, possible and verified, however, the potential interest is sufficient if there is reason to fear harm to the concerned parties and may also claim a deferred right to take into account the term when adjudicating it and in this case the plaintiff bears the expenses of the lawsuit. The lawsuit is also defined as the right that belongs to each claimant to submit it to the judiciary to rule on its merits. In other words, the lawsuit is the legal authority by which the individual can lay the hands of the judicial authority on a particular dispute to decide on the validity of his right he claims, or it is the right of every person to go to the judiciary to obtain a judgment respecting his legitimate rights and interests, as it constitutes a point of convergence between the substantive right and the court proceedings, which is the means given by law to those who claim a right or a claim. To resort to the judicial authority for the establishment of this right or the approval of this claim, and on the part of the defendant represents the right to make defense reasons or defences aimed at refuting the plaintiff's claim or at rejecting the right he claims, as well as making counterclaims. The administrative lawsuit is defined as a legal means used by the individual in suing the administration before the administrative judiciary, asking him to intervene to protect the rights infringed, by deciding, or compensating the damages caused by the work of the administration contrary to the law, this and puts jurisprudence two divisions of administrative lawsuits, the first traditional division and the second modern division, the traditional division classifies lawsuits on the basis of the judge's ruling in the lawsuit into four types: 1-Cancellation judiciary: The administrative judiciary shall cancel administrative decisions contrary to the law, as the administrative decision is an opponent of the plaintiff, such as the cancellation lawsuit. 2-Full judiciary: The powers of the administrative judge are expanded, not limited to canceling the decision contrary to the law, but extends to amending it, replacing it and compensating for it, such as lawsuits for administrative contracts, compensation claims and electoral disputes. 3-Interpretation judiciary: The role of the judge is limited to interpreting administrative decisions after referring them from the ordinary judiciary without

deciding on the subject of the case. 4-Judgment of injunction and punishment: The administrative judiciary imposes penalties on private individuals if they commit acts that constitute an attack on public property, or on violating employees by trying them before their own courts. This division is taken to rely on the judge's judgment in classifying the case without identifying it in advance. As for the modern division, it is based on the nature of the dispute, as it classifies cases into two categories, the substantive judiciary and the second the personal judiciary. 1-It is called the substantive judiciary because the opponent in the lawsuit is an objective legal center, such as an administrative decision contrary to the law in the annulment lawsuit, or a disciplinary violation in the punishment judiciary. 2-Personal judiciary: It focuses on a personal legal status, as the lawsuit relates to the personal rights of the plaintiff, such as administrative contract lawsuits and compensation claims. The disadvantage of this division is that it excludes some cases outside the aforementioned division because of their oscillating nature between substantive and personal courts, such as interpretation, electoral appeals and tax appeals. The objective of the administrative judiciary is as follows: First: The judiciary must have something to ensure the proper functioning of public utilities, and if a private interest conflicts with the public interest, the public interest must prevail over private interests. Second: The judiciary should be a relief that individuals and groups are afraid of, whenever one of them thinks that he is deprived of the right, and if he is wronged or believes that he is oppressed, and his opponent is strong, such as the administration, he must have a refuge to resort to and submit his complaint to him, and not Something more honorable to the administration and I do not preserve its place than to go down with its opponent to the court arena, to do justice to him or to do justice to him, that is inferior to truth and justice and remains for prestige and respect.

Second requirement dismissal of the case

To accept the administrative lawsuit in form, many conditions and procedures are met, if it is a cancellation lawsuit, it is required that it relate to a final administrative decision issued by a national administrative authority and that this decision has a statutory legal effect, and the existence of the right and the place alleged, and that the plaintiff of the lawsuit has a personal interest, and a capacity through which he requests the protection of his right that was attacked, and this interest is required to be legitimate, real, or potential, and that the lawsuit be filed within the statutory period for its submission, and the right to submit it is forfeited if This period has elapsed without submitting it, but if the lawsuit is related to compensation, it is required that the plaintiff submit a written request, that the administration is a party to the contract, and that he has not exceeded the statutory periods stipulated in the law. If the essential conditions provided for in law are not observed, the administrative action shall not be accepted in form for the following reasons: First: The condition of the administrative decision: The contested decision before the administrative court is required to be a final and effective administrative decision issued by a national administrative authority after the law comes into force. Second: Capacity: The capacity in litigation means that the plaintiff is in a suitable position to initiate the lawsuit, that is, to be in a sound legal position that entitles him to go to the judiciary

and to be the one who exercises the right to the lawsuit, the capacity is available to the plaintiff whenever there is a direct personal interest for the plaintiff, as for the defendant, he must be the person who has the right to confront him, The capacity shall be established as soon as the right is proven and the infringement has occurred, so the owner of the infringed right shall have the capacity of Prosecution. The capacity is the relationship that binds the parties to the lawsuit with its subject matter, the lawsuit is not accepted unless the plaintiff claims a right or legal status for himself, it is only available to the right holder alone, the relationship of the parties to the lawsuit with its subject matter may be a direct relationship, so we are in front of the normal characteristic, which is the capacity that proves to the owner of the right to impose his health aggrieved in the face of infringement. Third: Promised: The deadline in the administrative action of public order shall be raised by the judge on his own initiative, at whatever stage the case may be, and the expiry of the deadline shall result in the forfeiture of the right to the lawsuit, and the decision to be canceled shall be fortified and cannot be canceled, and any lawsuit confronted with inadmissibility shall be in form of lapse of time. Whereas the Iraqi legislator set the date for filing the annulment lawsuit in Law No. 17 of 2013, the Fifth Amendment Law to the State Shura Council Law No. 65 of 1979, as amended, where Article VII / VII-a) The complainant must submit his appeal to the court within 60 (sixty) days from the date of the end of the thirty-day period for submitting the grievance to the competent administrative authority, otherwise his right to appeal will be forfeited. Fourth: The condition of the absence of the parallel road to the appeal: If the legislator organizes a parallel lawsuit to the annulment lawsuit, the judge should dismiss the lawsuit for lack of jurisdiction based on the aforementioned condition and on this basis, the administrative judge returns the lawsuit filed before him when two complementary conditions are met, the first is that the parallel lawsuit is a lawsuit, and therefore the aforementioned condition does not work if the grievance is filed to the administration or to a non-judicial body, and the second is the similarity of the results And the effects between the cancellation lawsuit and the parallel lawsuit. Fifth: Premature Filing of the Lawsuit: Premature filing of a lawsuit shall be considered one of the reasons for dismissing the lawsuit. This shall be due to the failure to file it with the competent court in the subject matter of the lawsuit or because there is a lack of data for the parties to the lawsuit or because of the lack of evidence and evidence confirming the eligibility of the request to file the lawsuit by the plaintiff, in the following cases: 1-When the lawsuit is within the jurisdiction of a court other than the applicant. 2-When the lawsuit is filed by a person who does not have the capacity of plaintiff or litigant in the case. 3-Lack of data provided to the parties to the lawsuit. 4-The wording of the case is inaccurate or illegal. Sixth: Interest Condition: The interest is the need for judicial protection, as it determines the rights of individuals to resort to the judiciary, and at the same time controls the function of the judiciary and draws its scope, so that the latter plays its role, there must be a dispute, assault or denial of rights, there is no way to disrupt it by filing a useless lawsuit for lack of interest, which is called a malicious lawsuit. This condition is equal to being before the ordinary or administrative judicial authorities, as it is a condition for the admissibility of any action before the court, but its descriptions, the

assessment of its time and the nature of the plea raised in respect of it differ in the ordinary and administrative proceedings. Seventh: Eligibility Condition: In addition to the interest condition, the appellant is required to be eligible for litigation, and if he is not eligible to initiate the lawsuit himself due to lack of capacity, the judge shall dismiss the lawsuit in form, as the holder of the capacity to establish it in this case is his deputy or guardian, and the latter must produce the legal documents proving that he is acting on behalf of the incapacitated or deficient interested party before commencing the lawsuit. The Iraqi legislator has determined the age of majority by completing eighteen Gregorian years, and Article 46 of the Iraqi Civil Code has clarified that every person who has reached the age of majority enjoying his mental faculties is not interdicted shall be fully competent to exercise his civil rights.

Conclusion

This study has examined an important topic in the practical life of the administration, which is closely related to the public office, is the legal basis for the right to litigation and dismissal of the lawsuit in form, and reached a set of conclusions and suggestions, the most important of which are. First: Conclusions: 1-The right to litigation is one of the natural human rights, as everyone has the right to resort to the judiciary whenever an attack is committed against him. 2-The principle of equality before the judiciary is enshrined in Islam and advocated by international conventions and declarations of human rights, which led to its provision in the constitutions of States, and this is evidence that the principle of equality is the basis for the establishment of the rule of law. 3-The formal conditions due to the plaintiff and the deadlines to be respected that would dismiss the lawsuit in form must be respected. 4-We found that the judge in the administrative case does not replace the administration, but is independent in his work in accordance with the law. Second: Suggestions: 1-We propose the enactment of a special law on administrative procedures in order to regulate the work of administrative courts. 2-We propose to grant the administrative judge broad powers over all administrative decisions issued by the administration, whether organizational or individual decisions.

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