ISSN 2664-3995 (Print) & ISSN 2664-6757 (Online)
South Asian Research Journal of Business and Management
Abbreviated Key Title: South Asian Res J Bus Manag

| Volume-7 | Issue-2 | Mar-Apr- 2025 | **DOI: https://doi.org/10.36346/sarjbm.2025.v07i02.007**

Original Research Article

The Administrative Judiciary Adopts the Theory of Separate Actions

Rafie Alwan Saleh[1*], Prof. Dr. Mohamed Hani Farhat[2]

[1]Assistant Legal Advisor, Salah Al-Din Governorate Office – Legal Affairs Department
[2]University Professor, Head of the Department at the Faculty of Law at the Islamic University of Lebanon

***Corresponding Author:** Rafie Alwan Saleh
Assistant Legal Advisor, Salah Al-Din Governorate Office – Legal Affairs Department

Article History
Received: 03.03.2025
Accepted: 12.04.2025
Published: 22.04.2025

Abstract: This research examines the development and application of the theory of separate administrative acts within the framework of administrative judiciary. It highlights how the administrative judiciary, particularly in France, Lebanon, and Iraq, has expanded its oversight by distinguishing between sovereign (governmental) acts and separable administrative actions. Originally introduced to protect administrative authority from judicial interference, the theory has evolved into a critical judicial tool to ensure the rule of law and protect individual rights against arbitrary administrative decisions. The study elaborates on the theoretical foundations of judicial oversight, its implications for the legitimacy principle, and its practical applications across various legal domains such as electoral, tax, war-related, and international administrative acts. Through a comparative legal analysis, the research reveals how courts have narrowed the scope of sovereign acts, recognizing that many administrative actions though rooted in government authority are subject to judicial review when they affect citizens' rights. The work concludes with recommendations for strengthening administrative judicial systems in Iraq to ensure legal clarity, safeguard constitutional rights, and refine the balance between state sovereignty and individual protection.

Keywords: Administrative Judiciary, Separate Administrative Acts, Judicial Oversight, Sovereign Acts, Rule of Law.

INTRODUCTION

Administrative law has adopted the theory of separate acts with the expansion of administrative judicial oversight over administrative acts. In the Martin decision, a lawsuit filed by a third party challenging an act separate from the contract constituted the "theory of separate acts." It subsequently continued to develop until it extended to the fields of electoral and tax disputes, and appeared in governmental and other acts. This theory is a judicial theory that cannot be limited to a specific definition, as the administrative judge has given himself the right to intervene in several areas, in which he has no authority to conduct parallel review. This theory constitutes an exception to this principle, and this theory has its positives. Without it, the administrative judge would not have been able to invalidate administrative actions that violate the principle of legality.

Since the legal system of government actions shows serious harm at the expense of citizens, as they cannot direct reviews to exceed the limits of authority, nor reviews of the comprehensive judiciary against actions related to relations between the executive authority and the legislative authority or with a foreign authority, in exchange for this judicial immunity that government actions benefit from, the administrative judge has resorted to the concept of separate action to expand his oversight over areas subject to him, and it is unjustified to include it in the circle of non-oversight called separate, which can be researched in the law or facts. In itself. The concept of separate work is an ijtihad construct not limited to governmental work, but rather extends to various areas of public law. This concept, while initially occurring in the field of administrative contracts, gradually expanded to other areas, known as the administrative process. This theory has been applied in areas such as: governmental work, taxes, elections, the judicial system, expropriation, and personal status. We will discuss them as follows:

The First Requirement

Judicial Oversight of Sovereign Acts as a Guarantee to Protect the Principle of Legitimacy

Sovereign acts, also called government acts, represent a group of actions and decisions of the executive authority that are not subject to judicial oversight, whether administrative or constitutional. Therefore, despite their issuance by administrative authorities, the administrative judiciary refrains from assessing their legality, or making them subject to suspension of execution, annulment, or compensation, under all circumstances, whether normal or extraordinary. Exceptional. Since governmental work is "a category of administrative decisions that are prohibited from being challenged judicially, and what contributes to strengthening this view is the failure of jurisprudence and ijtihad to adopt a standard or definition for governmental work, as the trend was to put a list of works called governmental works, therefore there is nothing to prevent the decisions taken within the scope of this list from being among the classifications of administrative decisions".

The comprehensiveness of this subjection becomes clear when the type of activities that can be subject to the law is sought. Administrative actions have degrees, and even if the administration is initially subject to the law, it benefits from the immunity of some of its actions, as is the case with what is known as government actions, or sovereign actions previously referred to. These actions include administrative actions that the administrative judge cannot monitor, meaning that he cannot subject them to the law in order for the principle of legitimacy to be applied to them. Jurisprudence and the judiciary differ in defining sovereign actions, which are in reality administrative decisions issued by the executive authority. It is distinguished by its non-subjection to judicial oversight, whether by cancellation or compensation. In this way, it differs from the theories of discretionary power and exceptional circumstances, which only work to expand the authority of the administration and the acts of sovereignty. It is considered, as some jurisprudence goes, to be a clear departure from the principle of legitimacy. The acts of sovereignty arose in France, when the French State Council tried to maintain its existence in the era of the restoration of the monarchy to France when it relinquished oversight of some acts of the executive authority.

The majority of jurists in France criticized the theory of governmental actions, and some denied its existence. French jurisprudence has noted the extent to which the theory of sovereign acts has, since its inception, explicitly violated the principle of legitimacy, and the extent to which it clearly infringes on the rights and freedoms of individuals, because it prevents judicial oversight of the actions of the executive authority. This is in contrast to some other theories, such as the theory of necessity or the theory of exceptional circumstances, which stop at expanding the scope of the circle of legitimacy so as to make its scope wider, its borders more distant, and its horizons more expansive, without reaching the point of freeing the executive authority from all restrictions and withholding judicial oversight. In all its forms and shapes, it is responsible for a group of its actions, as is the case with the actions of sovereignty, which leads to the violation of the rule of law and the violation of the rights and freedoms of individuals, without them being able to resort to the judiciary to defend their usurped rights and negative freedoms.

Therefore, jurisprudence exerted persistent efforts and tireless attempts to combat this theory. These efforts and attempts had an echo in the judiciary of the Council of State. This echo was represented in the emergence of many trends, the most prominent of which is the trend that narrows the circle of sovereign acts by its supporters. This resulted in the French Council of State following this narrowing, as it excluded many of the acts that it had considered for a long time as acts of sovereignty, extending its control over them by canceling and compensating until it became possible to say that sovereign acts are currently almost confined to two areas: the acts of the executive authority in its relationship with Parliament, and the acts related to relations. International, giving priority to the supreme national interest in both, and seeking in this regard not to affect the government's relations with parliament from its own collision with parliament on the other hand, and at the same time avoiding raising international problems, Therefore, judicial oversight is considered one of the most important and effective types of oversight, due to the judiciary's independence and its characterization of neutrality and objectivity. Judicial oversight is one of the methods available to citizens to monitor the actions of the administration. It differs from other forms of oversight in that it cannot move automatically, meaning that the judiciary cannot exercise its jurisdiction except based on the filing of a lawsuit called an administrative lawsuit, and that the goal of this oversight is to evaluate the work of the administration and force it to respect the principle of legitimacy, as well as the rights of Individuals and their freedoms, and in accordance with the above, we will discuss the following:

Section One

The Effectiveness of Judicial Oversight in Protecting the Principle of Legitimacy

Judicial oversight would not have prevailed over administrative and political oversight had the judicial system been unworthy of this trust. Both administrative jurisprudence and practical application agree that the judiciary is the last resort for those who are in need of support and who lack someone to help them secure their rights, especially if their opponent is one of the authorities. Accordingly, judicial oversight has taken a leap forward after political and administrative oversight failed to achieve all the desired aspirations and hopes. It emerges as a specialized tool in achieving justice to

protect individuals from the administration's oppression and arbitrariness, and sometimes to reject unconstitutional laws and render them nonexistent.

First: Judicial Oversight of Administrative Decisions: Judicial oversight undertaken by the courts is considered one of the most effective and reliable forms of oversight in obligating the administration to respect the principle of legality and protecting the rights and freedoms of individuals. This is because the judiciary is independent in issuing its rulings, and those responsible for this type of oversight are judges specialized in administrative disputes, particularly in countries that adopt an administrative judicial system.

The judiciary is one of the state agencies that has the most ability to subject the actions and behaviors of administrative control bodies to oversight. This is due to the fact that it is an authority independent of the public administration and neutral. It aims to reform the activity of administrative control bodies in a manner that is consistent with the principle of the rule of law. It also aims to achieve the public interest, as there is no doubt about resorting to the judiciary by filing an administrative lawsuit by or on behalf of those with an interest or capacity. This is one of the strongest real guarantees of freedom in confronting or confronting the arbitrariness and abuse of administrative control bodies. In the use of its powers.

Many jurists have defined this (judicial) oversight, as it is defined as "the actual guarantee for individuals in the face of the administrative body exceeding the limits of its function, its abuse of its authority, and its departure from the limits of the principle of legitimacy".

Judicial oversight is also considered a legal act carried out through a judicial body characterized by extensive experience, legal competence, and scientific qualifications that make them able to confront or confront any judicial action they face. Judicial oversight is carried out on the actions of the administrative body and the constitutionality of the laws, and this indicates the emphasis Based on the principle of cooperation between the three powers: legislative, executive, and judicial, despite the fact that some have opposed such oversight. The reason for this is that, in their view, it constitutes a violation of the principle of separation of powers until the objectives for which it was established are achieved. Based on the above, the concept of judicial oversight means that it is "oversight exercised by a competent judicial body to monitor the legitimacy of the actions and decisions of the administrative body." Judicial oversight is also defined as: "those powers and authorities granted to ordinary or administrative courts, based on the provisions of the law, by virtue of which these courts have the authority to adjudicate and issue rulings on matters in which the administrative body is a party, in a manner that guarantees the rights and freedoms of the opponents.

This oversight is also defined as: "judicial oversight of the actions of the administration is: legal oversight in its basis, procedures, objectives and means," and as: "legal oversight exercised by various types of bodies." Judicial oversight, at its various levels, aims to ensure respect for the principle of legality and the administration's compliance with the law through various legal claims and defenses filed by interested individuals.

Based on the above, it can be said that judicial oversight is the oversight exercised by the courts over the actions of the administration. It is considered the true and effective guarantee of the principle of legality and the protection of the rights and freedoms of individuals, due to the independence and impartiality of the judiciary, its integrity, and its legal and judicial knowledge. It is established in the systems of judicial oversight of administrative actions that there are two main systems: the Anglo-Saxon system, which is based on the unity of the judiciary, and the Latin system. France is considered the cradle of administrative justice, as there are two types of judiciary: the first is administrative, specializing in administrative disputes and oversight of administrative actions, in addition to the ordinary judiciary, which adjudicates private disputes.

Accordingly, the judicial oversight exercised by the administrative judge, in order to be considered an important and effective guarantee for the protection of rights and freedoms, must have, in reality, specific conditions and controls represented in achieving the essence of the principle of legitimacy, including what this principle includes of the philosophy of everyone's submission to the law, so that the judiciary can contribute seriously and truly to protecting the rights of individuals, whether from the arbitrariness of the administration or the departure of the legislator or public authorities from the principle of legitimacy.

Accordingly, judicial oversight is considered one of the most important forms of oversight in the state, as the judiciary is the body responsible for protecting the principle of legitimacy, especially if it has the necessary guarantees that ensure its independence in performing its duties. Therefore, judicial oversight is defined as: "The oversight undertaken by the courts over the actions of the administration. It is considered the most effective type of oversight in guaranteeing the rights and freedoms of individuals, due to the judiciary's impartiality, integrity, independence from disputing parties, and knowledge of legal affairs and disputed matters." It is also defined as "the assignment of the function of oversight over

administrative actions is entrusted to the judiciary, and the courts then undertake these actions in their various forms. As for the primary purpose of this oversight, it is the legal protection of individuals by annulling administrative decisions that violate the law and cause harm to individuals, or by ruling on compensation for the harm caused to individuals, due to the circumstances in which they operate. Therefore, the judiciary is one of the bodies capable of legitimate protection and defending the rights and freedoms of individuals, provided it has the necessary guarantees that ensure independence while performing its duties.

For oversight to be considered judicial, the entity exercising it must be subordinate to the judicial authority. The following conditions must also be met:

1. There must be a legal provision granting this entity judicial oversight in accordance with the procedures stipulated in the Code of Civil Procedure, pursuant to a duly filed lawsuit.
2. The rulings issued by these entities must have the force of res judicata (final judgment). For example, judicial oversight of tenders in Iraq is practiced on a narrow scale and does not have a long history, compared to the countries that have adopted it.

This type of oversight is practiced by the State Shura Council in a single step, meaning that it takes the form of delayed oversight, meaning that it is practiced when the procedures and decisions taken by the administration are final, while prior judicial oversight does not exist at all.

There is no doubt that the point is not in the existence of a law, but rather in its application, and legal application does not produce its fruits without this application being monitored by a judicial body independent of the executive authority, which is - as a general rule - obligated to submit to the law when it exercises its activities, and in view of what the legislator has enacted in the Financial Control Law in Iraq , as for the Kurdistan Region, we find that the Iraqi legislator has included in the aforementioned law legal provisions and rules that represent a fertile legal ground, but this law is forced to be applied by Before a judicial body, in order to be effective and influential, and to hinder any legal violations and deter financial and administrative corruption in general, and financial oversight in general, it is of two types. The first type is called pre-financial oversight, which is carried out by oversight bodies auditing or monitoring the accuracy and validity of economic and financial activities before their implementation. The second type, which is called post-financial oversight, focuses on documentary auditing to verify the validity of the implementation of economic and financial plans.

The Financial Control Bureau seeks to preserve public funds from waste, extravagance, or mismanagement and to ensure their efficient use. This goal is achieved by the Bureau's oversight and auditing of public funds wherever they are found. The Bureau exercises oversight over the entities specified by the legislator, based on Article 8, and includes institutions and state departments or any entity that disposes of public funds according to the aforementioned article, which has multiple forms, some of which are in the form of an agreement, planning, or financing, while others are in the form of trade or production.

Since administrative contracts concluded by the administration through tenders require the disbursement of funds, which represents a burden on the state's public treasury, therefore, it is not surprising that these contracts are one of the units subject to financial oversight, as administrative contracts consist of a complex process, in which several administrative procedures and decisions are taken. In this regard, Article 10 of the aforementioned Bureau Law stipulates the following: "The Bureau's oversight includes examining and auditing transactions and dispositions of public revenues and expenditures, all financial obligations, planning, collection or spending, and assets of all kinds to verify the correctness of their evaluation and registration in the regular records, and to ensure their existence, return, and soundness of circulation, their continuity and preservation, and documents." Contracts, records, accounting books, budgets, financial statements, decisions, documents and administrative matters related to the tasks of oversight, as the Bureau has all powers with regard to reviewing all documents, records, workers, orders and decisions related to the tasks of oversight and auditing, and it has the right to conduct the initial inventory, or supervise it and obtain all clarifications, information and answers from the relevant administrative and technical levels within the limits of what is necessary to perform its tasks.

It is noted from this article that the legislator did not distinguish between contracts concluded by the administration in accordance with the private law system or those concluded in accordance with public law regarding their subjection to the Court's oversight, despite the fact that the contracts in which the administration is a party of both types have their disputes considered by the ordinary judiciary.

With regard to the results of the oversight exercised by the Bureau, it is obligated to inform the Public Prosecution, the Integrity Commission, or the competent investigative authorities, each according to its jurisdiction, of any financial violation it uncovers if it constitutes a crime. After explaining the legal and administrative basis for the exercise of financial oversight by the Bureau, it was necessary to present the forms of judicial oversight of tenders in Iraq. The ordinary judiciary in Iraq is competent to adjudicate disputes arising from administrative contracts. However, judicial oversight of disputes

arising from procedures and decisions leading up to the conclusion of contracts is unclear. Furthermore, there is a contradiction between the practices of the members of the Kurdistan Regional Government's Shura Council and the practices of the Iraqi State Council.

Second: Judicial oversight is a characteristic of a state of law.

A state of law is based on the state's submission to the law, with the aim of protecting the rights and freedoms of individuals, which constitute a constraint on the state's public authorities. To ensure the continuity of this balance between public authorities and individual rights, some kind of oversight must be found to correct the situation whenever an authority deviates or violates the law. Oversight in itself is an element of the state of law, whether it is political, administrative or judicial oversight. Judicial oversight is the most effective form of oversight, because it is far removed from partisan whims, as in political oversight, whether parliamentary or public opinion oversight. It achieves separation between the parties to the oversight process, unlike administrative oversight, which makes the administration both a judge and an opponent in that One.

Add to that the special scientific formation of the judiciary, and the achievement of complete neutrality in them when practicing their work, which is reflected in the oversight process itself, and makes it effective and impartial, and thus the protection of individual rights is achieved, and the balance between public authorities and the weakness of individuals and their desires is achieved, which made us specifically mention judicial oversight as an element of the state of law. Therefore, it is not sufficient to rely only on political oversight, or administrative oversight, without judicial oversight, but rather some jurists consider judicial oversight alone insufficient, but rather that it should be carried out by the administrative judge even if he was an element of the legal state, the existence of the administrative judiciary is nothing but a product and a component at the same time of the legal state.

Judicial oversight of various administrative activities is an urgent requirement to ensure the protection of these rights and freedoms from the risks of potential administrative arbitrariness and intransigence. This oversight is characterized by many features and is distinguished by many characteristics that make it the most effective type of oversight in affirming the principle of legitimacy and its impact on protecting the rights of individuals and preserving their freedoms. Perhaps the most important of these features is that this oversight is undertaken by the judiciary, which is an authority of the state and not one of its functions. The description of authority on the judiciary entails that it be neutral and not tinged with any color. Politically, and to be a specialist who alone and without a partner carries the scales of justice, and speaks the truth and the law, and to be independent, so that all people rush to his spacious place seeking justice and fairness and they are equal before him.

It is not enough to stipulate that the government should be legal by organizing the basic authorities of the state, defining the relationship between them, and specifying the rights and freedoms of individuals. Rather, there must also be guarantees that ensure respect for these authorities and the powers that it has transferred to these tasks. This is done by monitoring its actions, and what this entails in terms of imposing a penalty that would invalidate the specific action, and it takes various forms. The government may be obligated to follow a specific behavior, or refrain from it, for fear of provoking public opinion, such as political oversight. The penalty may be the invalidation of the action by withdrawing or canceling it, or by compensating for it in administrative and judicial oversight.

Respecting the principle of legitimacy and establishing a state of law requires the existence of guarantees and practical means to stop any attack on the law when it occurs by the administration, such that these guarantees and means vary in their content and results from one state to another, as they are governed by the degree of democracy of the system and the extent of its respect for human rights, which is not only reflected in legal texts, but also in its implementation on the ground .

In order for the legal system of the state to be complete, there must be oversight of the actions of the administration. The rule of law cannot be achieved without including both the rulers and the ruled, such that individuals can request the cancellation or suspension of the implementation of administrative decisions, or request compensation for them through lawsuits before the courts. It is not necessary for the courts competent to consider administrative disputes to be administrative courts, but rather they are exercised by ordinary courts. What is important is achieving the purpose of the existence of judicial oversight, which is to cancel administrative decisions that violate the law or request Compensation for it. The important guarantee is represented in imposing control over the legitimacy of the actions of the three authorities. Accordingly, it is not possible to achieve respect for the principle of legitimacy in a complete manner and impose it, unless the legislator places at the disposal of individuals the legal means sufficient to compel the public authorities to respect it. Therefore, the legislator must clarify the legal means that individuals can use to compel the three authorities to respect the principle of legitimacy if they deviate from it or deviate from following its provisions and conditions, whether this is in good faith or in bad faith.

Section Two

Principles Governing Judicial Oversight of the Principle of Legitimacy

This refers to the rules that determine the legitimacy of administrative action in terms of its content and purpose. It is not related to its external form or the employee's specialized capabilities, but rather focuses on the substance of the action, after it has been issued by a specialist and in the form required by law. Hence, it is called internal legitimacy ( ).

The administrative judiciary's oversight of the legality of administrative actions is not confined to their external legitimacy alone, otherwise it would be a purely superficial and formal oversight. Rather, this oversight extends to the substance of administrative action and its apparent and hidden objectives. The decisions of the executive administration cannot restrict the scope of application of general rules in time or place, or in terms of the persons and things originally subject to the rule of these general rules. The latter draws and defines the external system and the circular environment of executive decisions, and the latter must fill this environment without deficiency or excess. Internal legitimacy is also called objective legitimacy, as it focuses on the subject of administrative work without its appearance. The rules of internal and objective legitimacy include two interconnected types of obligations that fall on the shoulders of administrative authorities, and they must respect them when making administrative decisions ( ), and they are:

First: Commitment to Literally Respecting General Rules

The principle of legality, in its material aspect, stipulates that every decision taken by the administration, regardless of its subject matter, must be in accordance with legal rules—that is, with the basic practices at the time of its issuance. A university cannot refuse admission to a student who meets all the conditions required by the written rules and universal customary rules. The basis of this obligation is based on a logical idea and practical necessity. The logical idea stems from the fact that legal rules are a source of legitimacy and are, by their very nature, binding. This means that their ruling must be enforceable. To suggest that they can be violated in practice is to eliminate any binding value. Practical necessity, however, is evident in the rules. Legality is general and abstract, and this means that its application will bring peace of mind to everyone, as it will prevent favoritism and provide justice and equality. If we prevent its application in work, chaos will prevail, favoritism will spread, and the matter will worsen.

This principle in fact creates two types of obligations, the first of which requires the administration not to contradict the texts contained in the law, whether by ignoring or amending it. To clarify this obligation, we cite a ruling issued by the French State Council in this regard. In its ruling issued on December 3, 1948 in the Madame Louise case, the State Council annulled a decision issued to prevent a woman from taking an exam after which she would join the judiciary, because the law did not specify the gender of the participants, and did not limit them to males only, and such a decision is considered to contradict the general texts. The second of these obligations is that an administrative body cannot add to its decisions The executive regulations impose conditions other than those stipulated in the previous general rules. Therefore, the ministerial decision that requires the opinion of the professional chamber and is not stipulated in the decree in addition to the opinion of the Chamber of Commerce is illegitimate.

Second: Commitment to Respecting the Spirit of General Texts

This commitment places a greater burden on administrative authorities than simply respecting the letter of general rules. Administrative bodies can hide behind the words of general texts, believing that their individual actions fall under the apparent meaning of these words, while in reality, they intend other objectives that conflict with the spirit of the general texts. Therefore, internal legal principles require administrative bodies to consider both the words and spirit of general texts in their actions. This effectively guarantees the rights and freedoms of those dealing with the administration. The importance of this commitment is clearly evident in the case where the words of the general text are flexible and elastic, so that they accept interpretation and explanation in multiple aspects. In this case, the discretionary authority of the administration is broader in scope, and it can deviate in interpreting these words to reach goals other than those intended by the legislator. Therefore, the commitment to respecting the spirit of the general texts is the guarantee and safety against this slip and deviation from the goal on the part of the administration or the response to its unlawful intention, forcing it to achieve the legitimate goals that the legislator seemed to seek when he took the text as a starting point.

Therefore, in order for the administration to be able to carry out its duties under harsh conditions, it is granted the authority required by the circumstances, provided that this is done under the oversight and supervision of the Council of State. Thus, the principle of the rule of law remains in effect under both normal and exceptional circumstances. The administration is not unable to perform its duties, and individuals are not restricted except to the extent permitted by the circumstances. The greatest and most assured gain is the continuation of the principle of legitimacy and the continuation of judicial oversight without exception, as the continuation of both aspects offers tremendous benefits to both the ruler and the ruled.

The Second Requirement

Separate administrative actions within the governance process subject to the oversight of the administrative judiciary.

There is no doubt that the administration has many of its own privileges as a public authority, and one of the most important aspects of these privileges is the administration's ability to use its authority to impose its sole will in order to decide a set of decisions that give it rights and obligations in the face of others, without the administration's need to obtain the consent of others. Therefore, the administrative decision is considered one of the decisions issued by a sole will as an aspect of the administration's general authority.

Therefore, the administrative decisions issued by the administrative authority are considered one of the most important legal means by which the administration carries out its administrative activity with the aim of achieving the interest. The public, through the administrative decision, can express its binding will so that it can achieve all its goals or carry out the duties assigned to it in an optimal manner.

We consider administrative decisions to be one of the most important aspects of direct communication between the administration and individuals in general. Because the course of life does not stop and the requirements of individuals are constantly changing, every administrative decision has an end that may be a natural and acceptable end, a final judicial end, or an administrative end through the administration itself. One of the most important innovations of French administrative judiciary is the theory of separable decisions. The judiciary has tried to apply it in various fields, the most prominent and important of which are administrative contracts and electoral processes. The administrative judiciary has also been able to introduce it even into the field of sovereign acts. In addition, it finds applications in tax disputes and other complex administrative processes.

The legal actions carried out by the administration and intended to create legal effects are either issued by one party and by the sole will and are represented by administrative decisions and orders, or they are issued with another will represented by the legal actions issued by the administration such that the two wills are compatible and are directed towards creating a specific legal effect and the administration resorts to following this method to achieve its goal of satisfying public needs according to what can be called administrative contracts , and thus the administrative decision is considered a legal act from the sole will of the administration and thus the decision differs completely from the contract, as the contract Administrative requires the union of two wills that represent the administrative body . It was divided into the following branches:

Section One

Separate Works in the Internal Field

Governmental actions were not initially subject to judicial oversight, whether by reviewing the excess of authority or comprehensive judicial review, or by requesting interpretation, examining legality, or suspending implementation. The judiciary, in its judicial and administrative aspects, was not permitted to examine the legality of government actions as a group of executive authority actions outside the limits of legality.

It is necessary to point out that the decision of the French State Council dated October 21, 1988is an application of the theory of separate action within the scope of relations between the government and parliament, as the Council considered that the decision taken by the Prime Minister to publish a report prepared by a member of parliament based on his assignment does not constitute a government act. The facts of the case are that the Prime Minister had assigned a member of Parliament with an administrative task, which was to conduct a study related to the religious groups known as the Eglise de Paris de scientology and to prepare a detailed report on it. The report was submitted to the Prime Minister, who decided to publish the report. As a result of the appeal of the decision, he considered that this decision did not constitute a governmental act, as it did not establish (political) relations between the government and Parliament. Rather, he considered it an effective and harmful administrative decision.

As a useful research, it is possible to point out the decision of the Lebanese State Shura Council issued in the review submitted by Minister George Frem challenging the decree issued by the President of the Republic ordering the replacement of his ministerial portfolio. It seems that the Lebanese State Shura Council took the same direction in the decision issued by the French State Council mentioned above. Thus, it can be concluded from this decision that the Lebanese State Shura Council considered this decision an internal aggravation if it could be considered an effective and harmful administrative decision that constitutes a governmental act. It cannot be considered an act separate from the relations between the government and parliament, as it directly establishes the (political) relations between the constitutional authorities.

The French State Council also considered that the decree assigning a representative to a mission in one of the administrations is a decision separate from the relationship between the legislative and executive authorities, because it

does not affect the course of parliamentary work, and this trend of jurisprudence appeared to be towards reducing the scope of governmental work to be limited to the scope of the constitutional relationship.

It is possible to refer to the decision of the Lebanese State Shura Council issued in response to the review submitted by Minister George Frem challenging the decree issued by the President of the Republic ordering the replacement of his ministerial portfolio, and it seems that the Lebanese State Shura Council has taken the same direction in the decision issued by the French State Council.

Thus, it can be concluded from this decision that the Lebanese State Shura Council considered this decision an internal measure, regardless of whether it could be considered an effective and harmful administrative decision that constitutes a governmental act, because it cannot be considered an act separate from the relations between the government and parliament, as it directly establishes the (political) relations between the constitutional authorities. The French State Council also considered that the decree assigning a representative a task to one of the administrations is a decision separate from the relationship between the legislative and executive authorities, because it does not affect the course of parliamentary work, and this judicial jurisprudence appeared to be heading towards reducing the scope of governmental work to be limited to the scope of the constitutional relationship.

Section Two
Actions separate from acts of war

Acts of war are a type of sovereign act derived from the rulings of administrative judiciary; therefore, the French State Council does not have the authority to consider cases involving murder, looting, explosions, seizure of goods, seizure and detention of ships, confiscation of their cargo or prevention of their unloading, when these acts occurred during military operations; Therefore, it was logical to exempt the state from responsibility for the warlike actions it carries out, regardless of the extent of the harm caused to individuals. In reality, it is not logical for individuals to be allowed, in order to protect their rights and private interests, or to compensate them for the harm they suffer, to present evidence before the judiciary that the state, by declaring war, committed a mistake, or that its continuation in it was negligent, or that its military leaders committed a specific military error. Therefore, its declaration of war must be exempt from all types of judicial oversight, since acts related to war are considered to be within the core jurisdiction of the sovereign state.

French judiciary has settled on giving the character of acts of sovereignty to decisions to declare war and decisions related to military operations and military campaigns and has refused to examine the legitimacy of wars in which the state enters or the legitimacy of military operations resulting from its declaration of war, whether from the perspective of international law or constitutional law. The Council of State does not limit its lack of jurisdiction in this matter to decisions related to what is considered war in the legal sense with regard to all military operations carried out by the state's army in a foreign land or against a foreign government and the results and effects that result from that, such as occupation, colonization and invasion. It also refuses to consider requests for compensation arising from all of that.

As for Iraq, the government has made clear, through sending a request to the American government requesting that these forces remain in Iraq , that Iraqi judicial jurisdiction at this stage is limited to confronting some persons in the territory of the Iraqi state, based on Order No. (2003/17) of 3/27/2003, and Order (2004/17) of 6/27/2004 issued by the Director of the Coalition Provisional Authority, which he issued based on the powers transferred to him by Security Council Resolution (2003/1483), and the persons who enjoy judicial immunity are:

1. The Multinational Forces, their personnel, property, and funds.
2. International advisors.
3. Contractors with the Coalition Provisional Authority or any other entity, if the purpose is to provide services or goods to the Multinational Force, or for humanitarian assistance, reconstruction, or development purposes, or to establish diplomatic and consular missions, if the provision of security services to diplomatic and consular missions, their personnel, the Multinational Forces, international experts, or the contractors themselves.

In accordance with the above, the multinational forces, most of which are from the United States of America, with all their personnel, those working with them or serving them, whether civilians or military, and their property and funds, as well as those contracted with them or with other countries for the aforementioned purposes, are not subject to the civil and criminal jurisdiction of Iraq. The immunity granted by the aforementioned order to these persons was granted without exception or legal text, as these forces, even if they were performing commercial or civil work, and did not need to be combat or warlike, they enjoyed judicial immunity , as these two orders remained in effect even after the formation of the interim Iraqi government, since the Law of Administration of the State for the Transitional Period in its Article Twenty-Six, Paragraph (c), made all orders of the temporary destruction authority effective until they were cancelled or amended by legislation having the force of law .

The Permanent Iraqi Constitution of 2005 did the same when it legitimized these two matters, when it stipulated in Article (130) that the existing legislation shall remain in effect unless it is repealed or amended in accordance with the provisions of the Constitution. The Iraqi legislative authorities did not issue any law repealing or amending these two matters, or suspending their implementation, neither during the interim government phase nor in other phases before the agreement came into effect.

In 2005, the Iraqi Prime Minister submitted a request to the American government requesting a second extension of the troop presence. In 2006, the Prime Minister submitted The Iraqi ministers requested the American government, as the Iraqi government requested the Security Council in this letter to extend the mandate of the multinational force for another twelve months, in accordance with Security Council resolutions (2004/1546) and (2005/1636) and the letters attached to them. The Security Council issued its resolution numbered (2006/1723), which stipulated the extension of the mandate of these forces for a period of twelve months.

Also on December 7, 2007, the Iraqi Prime Minister sent a letter to the American government, requesting the extension of the mandate of the multinational forces Nationalities for a period of twelve months and for one time, and the decision has been issued approving the application .As for the judicial authority, it is the same as it was in the previous government, due to the lack of issuance of any law that cancels or amends the two orders (17) of 2002-2003 issued by the coalition authority that were referred to above, which leads to saying that there are still remnants of sovereign acts in Iraq before and after the Constitution of the Republic of Iraq of 2005, as it becomes clear through reading the constitutional texts that the Iraqi constitutional legislator has established the theory of sovereign acts constitutionally through the text of Article (130) above, and on the one hand Another point is that it has opened the door for the executive authority to take such measures with foreign countries such as the American forces and their remaining in Iraq. Although Iraq at this stage has a permanent constitution that has been clarified and approved in accordance with the highest standards of democracy, and has completed the construction of political, constitutional and legal institutions, its sovereignty remained undermined under the transitional government, and remained so until 1/1/2009, which is the date of the entry into force of the international agreement concluded between it and the United States of America regarding the withdrawal of forces. As for the territorial jurisdiction of criminal law, Iraq has proceeded to exempt some people from the territorial jurisdiction of criminal law therein, as there are people who are not subject to it. to Iraqi criminal law and the jurisdiction of the Iraqi judiciary, despite their presence in the territory of Iraq, and these persons may be exempted under domestic legislation or international customs and agreements between countries.

As for the Iraqi-American agreement, Article (12) took over the process of organizing the judicial jurisdiction, and the extent to which the American forces and those working with them are subject to the Iraqi judiciary. According to this article, the jurisdiction of the United States is over members of its forces and members of the civilian component in cases that occur in facilities, during duty outside these facilities, and which are not considered serious crimes.

In Lebanon, in this case, a shift in jurisprudence occurred in the decision of retired Colonel Akef Haidar and his wife, the state. According to the facts of the Lebanese army, the plaintiffs' house and office in the Mazraa neighborhood, near the military court, were occupied during the 1975 civil war in Lebanon. The couple, Haidar, filed a complaint before the State Shura Council seeking compensation for the damages they suffered and attributed to members of the Lebanese army. The judge considered that governmental actions are decisions that jurisprudence has protected against litigation and are not material actions like the complained-of actions, and that there are no governmental actions in the context of military or war operations, except when there is a decision taken and connected to operations that are officially characterized by the nature of war. The damage suffered by the appellants resulted from the actions of army personnel in the course of carrying out their security duties, not from shelling by warring foreign or local armed forces, and therefore not from acts of war. Compensation was awarded to the appellants on the basis that liability in this case rested on personal errors committed by members of the Lebanese army in the course of and on the occasion of their service, and that it did not appear to have resulted from artillery shelling or an exchange of fire with other armed groups. The significance of this decision lies in the fact that it classified acts of war among governmental acts in a single instance, when a decision was taken and related to operations that officially have the character of war.

Section Three

Actions Separate from International Relations

The definition of acts detached from international relations is those that have no relationship with international activity except in an incidental or indirect manner. Some jurists have considered that some acts, although related to international relations, are sufficiently detached to appear to be internal administrative decisions, which can be the subject of judicial review, as there is a separate act and not a governmental act.

The Lebanese Consultative Council distinguished between acts that can be separated from the international agreement and international relationship and acts that cannot be separated from international obligations, through internal

measures in which the governing authority has the freedom to act, direct and manage, and this limitation is one of the disadvantages of the theory of The Lebanese State Consultative Council accepted the review based on the theory of separate acts from international relations, which makes it independent in the means used by it in order to fulfill the obligation to which it has committed itself, and the Lebanese State Consultative Council accepted the review based on the theory of separate acts in its decision, reasoning that the Lebanese state ,If it is bound by an international treaty, it has a discretionary right to accept or reject the granting of citizenship. Consequently, the jurisprudence found that these complex governmental acts as a whole cannot be subject to any judicial oversight unless it is possible to separate from them the acts that necessitate them without being integrated into them and the acts that are applied based on them, so that these acts are considered as separate acts that may be challenged by way of annulment for exceeding the limit of authority.

On this basis, the jurisprudence considered that it is necessary to distinguish between two categories of acts when applying international treaties, and considered that if this application deals only with international relations, it does not constitute a separate act, but a governmental act, and therefore cannot be challenged by way of annulment for exceeding the limit of the authority. If this application does not deal with international relations, but is limited to determining the rights of individuals exclusively in accordance with the provisions of domestic law, we are faced with a separate act that can be challenged by way of annulment for ultra vires. The Lebanese Court of Appeals stated that a governmental act is an act taken by an administrative authority and enjoys immunity that makes it unreviewable before administrative and judicial courts. .... While acts related to the government's foreign policy have traditionally formed part of governmental acts that are outside of any judicial control, jurisprudence has distinguished between acts that can be separated from international conventions and those that concern internal measures under which the governing authority enjoys the freedom of action and direction that makes it autonomous in choosing the methods of implementing its obligations, and acts that cannot be separated from international obligations. In this decision, the Lebanese judge considered that the agreement concluded between the Lebanese state and the United States of America for the protection of the Lebanese state by US forces cannot be the subject of any review because it aims to protect the state's security and its own interests, while the internal measures taken to implement this international agreement, in this case the occupation of real estate by the US military, which harms the interests of individuals, is independent of the agreement and separate from it, and cannot be considered as governmental acts because they do not enjoy judicial immunity and are subject to review.

For its part, the Lebanese State Consultative Council distinguished between acts in which the judge would interfere in the external affairs of the state and those that have an external background, but remain governmental affairs just like internal affairs, and considered that decisions to extradite criminals taken in accordance with the procedures set forth in an international treaty when they are left to the authority free to take them without automatically applying the provisions of the treaty are subject to its oversight, but these decisions are limited to the extradition of criminals. in accordance with procedures set forth in an international treaty when the authority is left free to take them without automatically applying the provisions of the treaty are subject to its control, but this control is limited to verifying that the administration has respected the legal conditions for extradition without considering the validity of the charges against the person whose extradition is sought. In another review.

The plaintiff claimed compensation for the damage he suffered as a result of the death of his daughter as a result of being hit by shells fired by the Lebanese army. The State Consultative Council ruled that the act under review does not fall within the category of governmental acts as stated in the decision: Since foreign relations are, in principle, outside the control of the judiciary, acts of implementing international agreements of a domestic nature are subject to judicial control if they can be separated from the treaties and agreements themselves, and since the censorship of the action complained of related to the maintenance of Lebanese security would not constitute an exposure of the relations themselves in terms of the assessment or interpretation of these relations and agreements. Inasmuch as the action complained of is carried out by Lebanese authorities in carrying out the task of maintaining internal and external security within Lebanese borders without creating any ordinary or extraordinary relationship between the Lebanese state and another Western state, or between it and an institution of public international law".

It therefore dismissed the defense of incompetence. The Council defined the concept of a separate act in the decision of Ali Rashid Assir, considering that the State - Ministry of Foreign Affairs, considering that "non-separate acts take into account the relationship between the government and the international party." The Lebanese judge characterized the act at issue as separate from diplomatic relations because the executive authority's action is not linked to an international agreement or an international relationship, and it results from an individual act between two Lebanese parties and not between two states. Another case that was the subject of a dispute before the State Consultative Council was an agreement signed between the Lebanese government and the UAE government on 18/1/1964 regulating the compensation of Lebanese nationals after the nationalization laws that constituted an attack on their property. The Lebanese state did not compensate Mr. Charles "Katana" in accordance with the provisions of the treaty, while his name appeared on the official list of Lebanese nationals who benefited from this agreement.

The Iraqi Constitution of 2005 gave the power to negotiate international treaties and agreements to the Council of Ministers or those authorized by it, while the Law on the Conclusion of International Treaties No. 111 of 1979 gave this power to the President of the Republic, the Vice President of the Revolutionary Command Council and the Minister of Foreign Affairs or those authorized by the President of the Republic, which is a clear contradiction. Paragraph (II) of Article 13 of the Iraqi Constitution resolved this issue by stipulating that no law may be enacted that conflicts with the Constitution, and any legal text that conflicts with it shall be considered null and void, while Article 130 of the Iraqi Constitution stipulates that the legislation in force shall remain in force unless repealed or amended in accordance with the provisions of the Constitution.

From the aforementioned articles of the Iraqi Constitution, it is clear that Law No. (111) of 1979 is in force, except for some articles that conflict with the Iraqi Constitution, including the text of Article 5 of the 2005 Constitution. This is because, as we have shown, the Constitution gives the power to negotiate and sign treaties and agreements to the Council of Ministers or those authorized by it. In 2015, Law No. (35) of 2015 was issued, and in 2015, with the issuance of this law, Law No. (111) of 1979 was repealed. This negotiation violates the constitutional provisions of the Constitution of the Republic of Iraq of 2005, as the order to transfer the negotiating committee was supposed to be issued by the Council of Ministers as the body authorized by this constitution to negotiate international agreements and treaties, but the transfer of the negotiating committee came by a circular order issued by the Prime Minister. As for the interpretation of the treaty in Iraq, the Iraqi Shura Council required the Iraqi state to refer to the Ministry of Foreign Affairs for the purpose of interpretation.

CONCLUSION

The research concluded with a set of results and recommendations, including the following:

First - Results:

1. Jurisprudential opinions and trends have varied regarding the basis of the state's obligation to provide compensation to those affected by natural disasters, fatal diseases such as the coronavirus, or terrorist attacks. Some believe that the basis of this compensation is a legal basis that obligates the state to provide this compensation to those affected, and that it is a right for those affected that they demand from the state on a legal basis. Another view holds that the basis of this compensation stems from the state's social obligation towards its citizens.
2. The theory of acts of government did not arise as a requirement of administrative law, which keeps pace with the development of the state. Rather, it emerged as a result of political necessity dictated by the circumstances surrounding the establishment of the French Council of State, which forced the Council to devise the concept of acts of sovereignty to favor the new authority and protect its existence from abolition.
3. The expansion of the concept of acts of sovereignty represents a flaw in the construction of legitimacy and a stain on the brow of administrative law. Therefore, it faced a fierce campaign by jurists to narrow its scope and exclude certain acts from its list. Despite this, it continues to thrive.
4. Designating an administrative action as an act of sovereignty grants it immunity from judicial oversight.
5. The theory of balancing the benefits and harms of an administrative decision is a flexible and effective theory, but it requires the judge or administrator to have great skill in assessing the benefits and harms of an administrative decision.

Second - Recommendations:

1. We recommend reviewing the organizational structure of the administrative judiciary by expanding its bodies into a hierarchical structure, so that it serves as the sole authority for reviewing all forms of administrative disputes and all stages of litigation. This is because the hierarchical organization provides the higher judiciary with numerous opportunities to review the various jurisprudences of the various administrative courts. This is in order to complete the necessary elements for the organizational structure of the administrative judiciary in Iraq, as an independent judiciary specialized in the field of administrative activity and effective in establishing judicial rules and principles that will help interpret and unify legal texts and enforce them on public authorities.
2. The administration should have a role far from the oversight of the judiciary. Adopting the idea that budget oversight is appropriate oversight and not legitimate oversight may lead the administrative judiciary to interfere in delicate matters that are considered within the core jurisdiction of the administration. Therefore, this may be considered a violation of the principle of separation of powers by limiting the discretionary power of the administration in areas. To answer this problem, it can be said that the administrative judiciary, as is known, is a constructive judiciary that creates the legal rule and applies it. It does not create these rules from nothing, but rather extracts them from a set of rules that in a given country, the community controls the budget. Administrative judiciary has relied on the principles of logic and rationality as a justification for this oversight.
3. We propose that the reasons for declaring a state of emergency be clearly and precisely defined in the new law to be issued in Iraq regulating the state of emergency, ensuring the rights and freedoms of individuals. This law should encompass all threats to the state and its public order.

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