



OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION IN ADMINISTRATIVE JUDICIAL JUDGMENTS IN THE JORDANIAN AND FRENCH LEGISLATION

TAREQ AL-BILLEH

Assistant Professor, Faculty of Law, Applied Science Private University, Jordan. Email: t_billeh@asu.edu.jo; <https://orcid.org/0000-0001-7171-6004>

MOHAMMAD ASHRAF AL-QHEIWI

Associate Professor, Faculty of law, Al-Isra University, Jordan. Email: dr.mohqheiji@yahoo.com

ABSTRACT

Filing the objection of third parties outside the litigation in administrative judicial judgments aims to protect the acquired rights and the stability of the legal positions of individuals in the face of the administration. In fact, the annulment ruling may sometimes lead to harm to others which requires the existence of legal provisions that give third parties the right to object to the administrative judicial judgment in which he/it was not a party. Yet, the problem of the research is that the Jordanian administrative legislator, in the Administrative Judiciary Law, did not give others the possibility to object to the administrative judicial judgment in which he/it was not represented, neither in person nor by an attorney. Actually, several findings and recommendations were arrived at in this research, the most important of which is the possibility of resorting to the Jordanian Civil Procedures Law in the absence of a legal provision regulating some procedural matters and being in line with the nature of the administrative judiciary, so that this method of appealing civil judicial judgments was regulated in articles 206-212 of the Civil Procedures Law. In addition, the administrative legislator in France regulated the objection of a third party and considered it as being one of the extraordinary methods of appeal for which it established special legal provisions for it that were compatible with the nature of the administrative judiciary.

Keywords: the objection of a third party, outside the litigation, administrative judicial judgments, administrative judiciary

1 INTRODUCTION

The objection of a third party outside the litigation is considered a guarantee for the protection of the rights of others and the stability of their legal position in the face of a judicial judgment, whether it is a judgment issued in a civil lawsuit, an annulment lawsuit or a lawsuit aimed at protecting personal rights. In fact, article (24) of the Jordanian Constitution of 1952 provides that: "1- The nation is the source of authority. 2- The nation





exercises its powers in the manner set forth in this Constitution” (Article 24, The Jordanian Constitution, 1952).

In fact, the importance of the research lies in stating at the mechanism for protecting the guarantees of individuals in the face of the authority of the administrative judiciary in the event that the administrative decision is annulled retroactively to the moment of its issuance and the consequences of the annulment ruling of absolute authority which constitutes a threat to the rights of others while adhering to the principle of the authority of the res judicata for the ruling of annulment constitutes contrasting with the principle of legality for which the objection of third parties outside the litigation does not prejudice the absolute authority of the administrative judicial ruling. Hence, the researcher will pay attention to all aspects of the subject, whether theoretical or practical, and address the deficiency in these provisions through the use of other comparative laws such as laws and administrative regulations followed in France, the judicial judgments represented by rulings of administrative courts and administrative courts of appeal in France and the rulings of the French Council of State as well as stating at the position of jurisprudence in them in addition to showing the rulings of the Constitutional Court and those of the Court of Cassation (civil), the Administrative Court, the Supreme Administrative Court and the (formerly) High Court of Justice in Jordan. Yet, the researcher hopes to be successful in addressing this deficiency, ambiguity and weakness in the legal provisions and judicial rulings related to this research.

Hence, this research aims to highlight how to protect the legal status of others and their acquired rights. In fact, and after the issuance of the Jordanian Administrative Judiciary Law No. (27) of 2014 and making litigation on two stages, this law did not regulate all the procedures followed in filing the objection of third parties outside the litigation. Accordingly, and in case that the provision on the regulation of a particular issue is not laid down, then the Civil Procedures Law is referred to in a manner that is consistent with the nature of the administrative judiciary. To the contrary, the French Administrative Legislator regulated the methods of appealing by the objection of third parties outside the litigation in articles from (R.832-1) to (R.832-5) of the French Administrative Judiciary Law (R.832-1/R.832-5, French Administrative Justice Code, 2021) where the third party who was not a party or represented in the case was granted the right to challenge the judgment





issued by the administrative courts so that it would not be considered an argument against him/it while the law gave the State Council the authority to determine the cases in which it is permissible to resort to this method of appeal.

Therefore, the administrative legislator in Jordan did not regulate the means of appealing the objection of third parties outside the litigation as a way to appeal the judgments issued by the administrative courts which appeal term has expired and become definite, or the judgments issued by the Supreme Administrative Court as the administrative courts are competent to entertain two types of cases, the first of which are the personal cases which aim to protect personal rights so that the court issues a judgment of relative authoritativeness which authority is limited to the parties to the case while the second type is set for the annulment cases that stand to be cases in kind or subjective cases in which the opponent is the administrative decision while the judgment issued therein acquires an absolute authority against all whether being parties to the case or not.

In fact, a judgment may be issued in an annulment case in which an administrative decision is annulled retroactively to the date of its issuance, which poses a threat to the acquired rights of others and prejudices their legal positions for which the administrative decisions are divided into two types in terms of their content, i.e. the individual decisions and regulatory decision while the consequences of annulling any of these decisions extend the effects of the judgment to third parties who did not appear in the case, neither in originality nor by attorney in addition to having not presented his/its defenses, especially if the decision was a regulatory one, Yet, and as a result of its abolition, the individual decisions issued in implementation of it will be void.

Therefore, we will try, through this research, to answer the questions that represent the research problem represented in the following questions:

What is the objection of third parties outside the litigation? Is it possible to implement a judgment to annul an administrative decision that would affect an acquired right or a legal position for a person whose defense was not heard in the administrative case in which the judgment was issued?

Does permitting the objection of third parties outside the litigation constitute a waste of the absolute authority of the annulment judgments?





Does the implementation of the annulment judgment conflict with the acquired rights of others and stable positions? Hence, and in order to answer these questions, we must address the legal provisions regulating the objection of third parties outside the litigation stipulated in the Jordanian Civil Procedures Law and their suitability as well as their fitness to the nature of the administrative judiciary.

2 METHODS

In fact, and in this research, the descriptive approach and the comparative approach will be followed due to the diversity of legislations that differed in the objection of third parties outside the litigation in administrative judicial judgments and the differences between them as well as arriving at the strengths and weaknesses of these various trends and the extent of their adoption as this research requires to come to the analytical approach to analyze all the provisions of the Jordanian and French legislations related to the objection of third parties outside the litigation in order to identify the contents of these legal provisions and their meanings and goals as well and to criticize and comment on them in addition to demonstrating the critical aspect of the researcher as the subject of the research required the use of several research methods due to its complex nature among the provisions of legislations in Jordan and France, the jurisprudential opinions and trends as well as the judicial judgments in Jordan and France (Malkawi, 2008).

3 THE CONCEPT OF THE OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

In order for a person to be considered a third party outside the litigation, he/it must not have appeared in it, that is, he/it did not interfere or be involved in it at the request of the court or one of the litigants, i.e. he/it did not benefit from the legal guarantees enjoyed by the parties to the case. Hence, the objection of a third party outside the litigation shall





be submitted to the court that issued the judgment, or the objection shall be made to a previous judgment presented by one of the litigants during the hearing of an existing lawsuit in order to prove his/its claim while the other litigant objected to this judgment in which he/it was neither a party to nor represented before the court that hears the case with an interlocutory request (Al- Hussein, 2015).

3.1 THE DEFINITION OF THE OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

The Jordanian Civil Procedures Law laid down ways to challenge judicial rulings among which is the objection of a third party outside the litigation. In fact, a judgment may be issued against a person but the same is not restricted to the loser party but extending too others and in case the latter learns about the said ruling, then he/it has the right to refer to the court that issued it by submitting a statement of objection from third parties outside the litigation requesting the court to annul or amend this ruling that affected him/it, so as to ensure that his/its legal status and personal interest are not prejudiced (Batarseh, 2006).

Yet, the Jordanian administrative legislator did not allow the third party the possibility to object to the judicial ruling in which he/it was not represented neither in originality nor by attorney while the contrary, the administrative legislator in France laid down the way of objection by third parties and considered it one of the unusual methods of appeal (Wahdan, 2012).

In fact, the objection in the language means: “It comes from the origin of the verb, object, objected, objection, the thing has become contingent, and the thing is due to it: he prevented it and denied his saying or doing”, while the word other than (third party) in the language: “It comes with the meaning: other than, and the plural is others, as other than them came, i.e. other than them, and changed the thing: i.e. around it and replaced it with something else, making it other than what it was, and it is said: He who disbelieves in God meets others, i.e. changing the situation and its transition from righteousness to corruption” (Al-Jawhari, 2005).





Further, by others (third parties), legally means: “Whoever is not a party or represented in a contract, judgment or lawsuit, and the term ‘third party’ is used in the following formula: the objector from the third party, meaning that the objector is not a party to the procedure” (Murad, 2003).

As for what is meant by a third party’s objection by law, then it means: “One of the extraordinary ways of appealing a judgment in which the objector is not a party or represented therein but has been prejudiced in terms of his/its rights. Hence, and if the objection is submitted while hearing the case regarding a ruling adhered to by one of the parties but the third party was not a party to the same or represented therein, then it stands to be a subsidiary objection, but if the objection is the subject of an original lawsuit, it is the original objection from third parties” (Murad, 2003).

Accordingly, to appeal by the objection of third parties means as: “Exceptional review available to third parties, i.e. the third persons who were harmed or threatened with harm from the effect of the judgment from which they remained strangers and were not represented in the trials that led to its issuance and not being a party to the ruling in addition to not being represented in trials and lawsuits” (Nakhla, et al. 2005).

Yet, others defined it as being: “an extraordinary means of appeal established by the legislator to preserve the interests of people who were not represented in person or through their representatives in a dispute that ended with a ruling whose implementation would cause them harm, provided that this appeal is submitted before the judicial authority that issued the ruling” (Bassiouni, 1981).

In fact, and by referring to the judicial definitions, the Jordanian Court of Cassation, and in its judgment No. 361/1979, defined the objection of third parties outside the litigation as: “An extraordinary way by which a third person reaches an objection to a judgment that violates his/its rights issued in his/its absence because he/it was not summoned to the court that issued that judgment on this basis” (Jordanian Court of Cassation- Civil, 1980).

And based on the denoting of the previous definitions, whether from the side of jurisprudence or the judiciary, it can be said that the objection of a third party outside the litigation, and from our personal point of view, is one of the extraordinary methods of appeal submitted by a person who was not a party or represented in the case in which the





judgment was issued, so that the acceptance of this objection submitted by the third party requires that the judicial judgment caused damage to him/it.

And by returning to the position of the administrative legislator in Jordan, it is noted that it did not regulate the means of appeal by the objection of third parties outside the litigation as a way to appeal the rulings issued by the administrative courts in which the appeal term have expired and become final or the rulings issued by the Supreme Administrative Court. Yet, the Jordanian Supreme Administrative Court ruled in a recent judgment bearing the number 269/2017 issued on 31 October 2017 as follows: "Whereas the appellant based the third party's objection request on the provisions of article (206/1) of the Civil Procedures Law, and since the third party's objection request stipulated in the aforementioned article is an exceptional method of appeal established for judgments issued by the regular courts in civil matters within their jurisdiction, and since the judgments issued by the Supreme Administrative Court are subject to the procedures stipulated in the Administrative Judiciary Law No. (27 of 2014) and in the Civil Procedures Law in a manner that is consistent with the nature of the administrative judiciary and must be implemented if issued and that these judgments are final and cannot be challenged by any means of appealing for cancellation and that they are an argument against all, as stipulated by article (34) of the Administrative Judiciary Law, and hence, the case for a third party objection to the judgment issued by Administrative Court No. 437/2015 dated 27 April 2016, which was upheld by the Supreme Administrative Court's ruling No. 269/2016 dated 4 October 2016 is not capable to heard and must be dismissed in form because the judgment has become final and cannot be appealed by any means of appeal" (Jordan's Supreme Administrative Court, 2017).

Further, and in the same context, the Jordanian Supreme Administrative Court ruled in its judgment No. 250/2015 issued on December 23, 2015 that: "In response to the argument raised by the Administrative Public Prosecution regarding the non-acceptance of this request as a form of lack of jurisdiction: - then article (34/A) of the Administrative Judiciary Law No. (27) of 2014 states that: - (The judgments issued by the Supreme Administrative Court are final and cannot be appealed by any means of appeal) Hence, and by this provision, the legislator closed the door to appeal judgments issued by the Supreme Administrative Court adopting the principle of stability of judgments and





principles issued by it while this text was closed to include ordinary and extraordinary methods of appeal” (Jordan’s Supreme Administrative Court, 2015).

In addition to these judicial rulings, the Jordanian Administrative Court ruled in its judgment No. 126/2017 issued on 21 June 2017 that: “Where the court finds that the legislator, under article (15) of the Administrative Judiciary Law, specified the method by which any person who has a relationship in an existing administrative case and is affected by the outcome of the judgment to request that he/it be entered into the case by a third person, consequently, the legislator stipulated that the applicant for admission that he/it submit his/its request in an existing case, i.e., that is being heard before the court. Yet, and suppose that the legislator wished to allow the third party to object to the ruling after the conclusion of the case, then it would provide to that effect, particularly that the objection of third parties is an exceptional way according to the Civil Procedures Law, and therefore the plaintiff’s claim is not based on a legal basis, as it is not possible to object to the final ruling issued by the Supreme Administrative Court No. 269/2016 to appeal before our court. In addition, the court finds that, according to article (34) of the Administrative Judiciary Law referred to, the rulings issued by the Supreme Administrative Court are final and cannot be challenged by any means of appeal, and they are an argument against all in accordance with the provision of the mentioned article (34/C). Yet, and as the court finds that the objected to judgment according to this case is outside its jurisdiction for the foregoing and according to the provision of article (5) of the aforementioned Administrative Judiciary Law. Yet, and as for what was raised by the objector’s attorney, that article (41) of the Administrative Judiciary Law did refer, in terms of the matters not being provided for in the Administrative Law, to the applying of the Civil Procedures Law, and that the administrative judiciary is a creative judiciary and creates solutions for what is not stipulated in the Administrative Judiciary Law” (Jordanian Administrative Court, 2017).

On the other hand, the Jordanian Court of Cassation ruled in its judgment No. 839/2017 issued on 19 June 2017 that: “In this regard, we find that a person who was neither an opponent, nor represented, nor was involved in a case in which a judgment was issued is considered an argument against him in terms of having the right to object to this ruling by the objection of third parties and what is stipulated in article (206/1) of the Civil Procedures Law, and since the appellant was not represented in the lawsuit filed by





the plaintiff against the defendant, he has the right to object to this ruling in the part of it related to his rights prejudiced by the judgment issued in the aforementioned lawsuit, and since he submitted his objection and that the trial court proceeded with this objection and rejected it as a subject matter, the appellant's statement that he missed the opportunity to defend himself is not acceptable as long as the legislator guaranteed to him, in article 206 above, the right to object, and in this we find that article (206/2) of the Civil Procedures Law has given the right to the objector to the objection of third parties to prove that the objected to judgment is based on fraud or deception by all means of proof" (Jordan Court of Cassation-Civil, 2017).

In France, some French jurists have argued that allowing a third party to object to the State Council's ruling to cancel is an attack on the final effect of the first annulment ruling but the objection of third parties is not more than a natural result for the absolute impact that confirms the established rule concerned with the absolute authority of the annulment ruling. Yet, and in cases where the judgment issued in the lawsuit has a relative effect, the objection submitted by a third party is useless and without importance, because it is sufficient for the aggrieved to invoke this relative effect to prevent the extension of the effect of the judgment to him/it and protect himself against this judgment. Hence, the French Council of State rejects the objection to the non-adversarial party to its ruling rejecting the annulment because the latter has relative authority and is not absolute (Al-Husseini, 2015; Poulos, 1997; Auvert, 1985).

Article (R.832-1) of the French Administrative Judiciary Law stipulates that: "Every person who was not been an opponent, represented or intervening in a case in which a judgment was issued that is considered as an argument against him/it and affects his/its rights may object to this judgment by the objection of third parties" (R.832 -1, French Administrative Justice Code, 2021).

In fact, this method aroused a jurisprudential controversy in France, especially in the cases of annulment, until the French Council of State issued its ruling in the case of (Boussugue Guepin and others) issued on November 29, 1912 by accepting the objection of third parties outside the litigation in cases of abuse of authority (annulment cases). Actually, the facts of this case are summarized in the fact that the administration issued a regulatory decision according to which certain sects of the French retained the right to sell





in limited markets, so one of the farmers filed a lawsuit requesting the cancellation of the regulation for violating a law that gives farmers only the right to sell in these markets, and the other group of traders benefiting from the regulation did not know the annulment of the lawsuit did not intervene in it to defend its interests while the inevitable result of implementing the judgment of annulment issued is to deprive it of practicing its work in those markets for which one of them appealed as being outside the litigation, did not announce, was not represented and did not intervene in it to defend his interests that were harmed by the judgment of annulment, so the Council changed its position and accepted the objection of third parties outside the litigation in the judgments issued to stay the execution (Al-Tamawi, 1972; Al-Helou, 2004; Hadi, 2017; Council of State, 1912).

Further, the French Council of State ruled in a recent judgment No. (N° 438220) issued on November 13, 2020 that: “Under the provisions of Article R. 832-1 of the Administrative Judiciary Law, any person who has not been summoned or represented in the proceedings may file an objection of third party to a decision of the Council of State in this matter, and this right includes those who benefit from a right in which the decision may affect them. In fact, and by a decision dated December 2, 2019, the Council of State annulled the decision of the Administrative Court of Appeal in Nantes on 6 July 2018, which approved the conclusions of (Valeurs Culinaires) application for loss of profits for more than twelve months, and settled the case on the merits in applying the provisions of article L 821-2 of the Administrative Judiciary Law and raised the amount to 66666.66 Euros after which the Health Cooperation Group in North West (Tourane) was obligated to pay the said company. On the other hand, (Valeurs Culinaires), which was a plaintiff in the appeal and whose compensation was reduced by a decision of the State Council of December 2, 2019, was affected by this decision. On the other hand, the health cooperation group's appeal was sent against the judgment of the Administrative Court of Appeal of Nantes of July 6, 2018, by registered letter with acknowledgment of receipt to (Rue Breconet in Tours 23), which was the address of the former headquarters of (Valeurs Culinaires) and this resulted from the instruction that under a letter dated August 9, 2018, it was added to the proceeding file, (Valeurs Culinaires) informed the bureau of the Registry of the Administrative Court of Appeal in Nantes of the transfer of its registered office to rue Mansart in Joué-lès-Tours²⁷ and, accordingly, (Valeurs Culinaires was not





summoned) which was not represented in the proceedings, on a regular basis, and under these circumstances their third objection is admissible” (Council of State, 2020).

Therefore, it is noted from the foregoing, that the Jordanian civil judiciary allowed the submission of the objection of third parties outside the litigation to the civil judicial rulings, as it granted the third party the right to object to the civil judicial rulings in a case in which he/it is not represented neither by originality nor by attorney, unlike the Jordanian administrative judiciary, which considered the objection of the third party outside the litigation as an exceptional way of appeal, and that the administrative judicial ruling is a definitive ruling that cannot be appealed in any way of appeal, so that it paid attention to the absolute authority of administrative judicial rulings at the expense of the principle of legality, which constitutes a violation of the principle of equality before the civil and administrative judiciary.

Hence, and based on the foregoing, it can be said, by examining the unconstitutionality, that many of the provisions of the Jordanian Constitutional Court have established that “the right to litigation is an authentic constitutional principle where it is left to the ordinary legislator to regulate this right, provided that the means that ensure its protection and enjoyment and not detract from it is taken into account, rather, enabling citizens to exercise their freedoms and rights, including the right to litigation at two levels, otherwise it would be in violation of the limits of the mandate and in violation of the spirit of the Constitution which guarantees enabling the citizen to exhaust all the ways and means that fully guarantee his/her rights, including the right to litigation at two levels”. Further, the Jordanian Constitutional Court’s rulings also established “the necessity of equality between litigants with regard to their right to access their natural judge, and that the scope of equality between them should extend to include all procedural and substantive provisions and rules related to judicial litigation, and defense guarantees guaranteed by both the constitutional and legal legislature for the rights they claim and they defend for its determination with regard to ways of proving and defending it, and to challenge judicial rulings related to it to higher judicial authorities in order to impose its control over all actions and decisions issued by lower judicial authorities with the aim of achieving justice between the litigants. (Rulings of the Jordanian Constitutional Court Numbers 3/2018, 2018: 1/2015, 2015; 2/2015, 2015; 2/2013, 2013; 4/2013, 2013).





3.2 THE LEGAL NATURE OF THE OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

The administrative legal jurisprudence differed about the nature of the objection of third parties outside the litigation in administrative judicial rulings (Ismail, 2016). Some considered it an extraordinary method of appeal while others considered it as being one of the issues of implementing the administrative judicial ruling (Bounaas, 2015)

3.2.1 The objection of third parties outside the litigation as being one of the extraordinary methods of appeal

Extraordinary appeal procedures mean that they are: “The procedures intended to amend, rescind, annul or revoke the judgment, such as a petition for reconsideration, an appeal by way of cassation or the objection of a third party while it is not permissible to resort to an appeal by extraordinary means except after exhausting the ordinary appeal methods” (Murad, 2003).

Undoubtedly, it is not permissible to resort to this extraordinary method of appeal except in the cases stipulated by law exclusively and for specific reasons, and after exhausting the ordinary methods of appeal while the objector must establish evidence of his/its right to object, so that this method aims to rectify the judgment objected to (Bounaas, 2015).

In fact, the administrative judiciary in Jordan, in addition to the French judiciary, has adopted the principle of multiple stages of litigation in order to correct any error that may occur in the judgment (Aljazy et al., 2017), given that the court may err in its assessment of the facts when adjudicating the dispute or misapply the law for which litigation has been devoted to two stages in Article (100) of the Jordanian Constitution, considering that the entertainment of the dispute more than once is one of the most important guarantees for achieving justice and is a guarantee of the rights of the litigants in order to reach a fair judicial ruling (Abaoub, 2014; Article 100, The Jordanian Constitution, 1952).

Hence, appealing by the objection of third parties outside the litigation to administrative judicial rulings constitutes a legal means regulated by some administrative





legislation (Barbara, 2013), such as French legislation in order to protect the legal position of others and preserve their rights in addition to standing as a legal means to express dissatisfaction of others concerning an administrative judicial ruling and aims at providing sufficient guarantees for the same (Bounaas, 2015). However, the Jordanian administrative legislature did not regulate this method of appeal and the administrative judicial rulings have established that it is not permissible to resort to this extraordinary method of appeal, as was previously explained in this research (Dalia, 2008).

In fact, the Jordanian civil legislator considered the objection of third parties outside the litigation as one of the extraordinary methods of appeal against civil judicial judgments and regulated it in articles (206-213) of the Civil Procedures Law and that this method of appeal can be adhered to every judgment issued by the two-level courts, First and Second (Al-Kilani, 2002; Articles 206-213, The Civil Procedures Law, 1988).

Hence, the Jordanian Court of Cassation, in its judgment No. 2667/2016 issued on 3 November 2016, ruled that: “By extrapolating the provision of article 206/1 of the Civil Procedures Law, it becomes clear that every person who was neither an opponent, not represented, nor a participant in a case in which he was prosecuted in which a judgment was issued that is considered an argument if objected to this judgment by the objection of others. And in the case presented, the objector (the respondent) was neither a litigant, represented, nor intervening in the case, the subject of the objection in which the objected to decision issued that banned the defendant to claim the plaintiff (the objected against party) for the value of the two letters of guarantee and that the judgment objected to affected the rights of the objector, given that it was the objector who issued these two letters in exchange for the latter’s issuance of two performance bonds of contracting works and that the said decision is considered an argument against it while it has the right to object to it and that it has an interest in that” (Jordanian Court of Cassation- Civil, 2016).

However, the Jordanian Administrative Court, in its recent ruling No. 31/2020 issued on 15 June 2020, ruled that: “... and since, regarding the petitioner’s case (the petition as called by the petitioner), our court finds that the petitioner has relied in the request to repeat the trial to the provisions of article (213) of the Civil Procedures La, and since the request for a retrial provided for in the aforementioned article is an exceptional method of appeal for judgments issued by the regular courts in civil matters within their





jurisdiction, and since the judgments issued by the Supreme Administrative Court are subject to the procedures stipulated in the Administrative Judiciary Law No. (27 of 2014) and in the Civil Procedures Law in a manner that is consistent with the nature of the administrative judiciary and must be implemented if issued, and that these judgments are final and cannot be appealed by any of the methods of appeal for annulment which is an argument against all as also provided in article 34 of the Administrative Judiciary Law resulting in that the case for a retrial in the judgment issued by the Administrative Court No. (23/2019) dated September 18, 2019 which was supported by the Supreme Administrative Court in its ruling No. (267/2019) dated 18 December 2019 in this case must be dismissed in form, because the ruling has become final and is not appealable by any means of appeal, based on article 34/A of the Administrative Judiciary Law, given that the rulings issued by the Supreme Administrative Court are final and cannot be appealed by any means of appeal" (Jordanian Administrative Court, 2020).

On the other hand, the French administrative legislator regulated the objection of third parties outside the litigation and considered it one of the extraordinary methods of appeal against administrative judicial rulings in articles R.832-1- R.832-5 of the French Administrative Judiciary Law (R.832-1-5, French administrative justice code, 2021).

Hence, and in application of the foregoing, the French State Consultative Council ruled in its ruling issued on 10 April 1964 that: "... and where the Administrative Court of the region (Greenbel) did on 18/04/1956 issue a ruling rescinding the decision issued on 6/6/1955 licensing the opening of an outpatient clinic at (Evian) Hospital for violating the licensing of the provisions contained in article 25 of the Decree of 17/4/1943 and that it was on 28 June 1955 a decree was issued to the effect of amending the provisions of the previous decree 17/4 according to which the management was granted a license to open an out-patient clinic while when the stakeholders requested compensation for this decision for violating the previous judicial ruling, then the Court of (Greenbel) ruled to reject the case, and this ruling was appealed before the State Council, and the Council decided to dismiss the appeal on the grounds that the decision for which the compensation was requested had been issued in accordance with the amendment to the decree of 17 April 1943" (CE, Clinique du Chablais Sect, April 10, 1964,).





Further, the French Administrative Court of Appeal in (LYON) ruled in its ruling issued on 4 December 2020 that: “Any person may request to be entered in a claim in view of the nature and subject matter of the dispute and to submit an intervention before the subject judge at the Administrative Court, and to intervene regularly to defend a case of abuse of authority, and in the absence of a request for entry on his/its part, he/it can file the objection of the third party with the Court of Appeal under the provisions of article R.832-1 of the Administrative Judiciary Law which states that: “Any person may file the objection of the third party to a judicial decision that prejudices his/its rights, provided that neither he/it nor his/its attorney are regularly present or summoned to the body that made this decision” (CAA de LYON, 2020).

In fact, and in our personal estimation, it can be said that the Jordanian administrative legislator should consider the objection of others outside the litigation as a way of extraordinary appeal and expressly stipulate it in the core of the administrative judiciary law as the Jordanian civil legislator and the French administrative legislator did and the development of legal texts that grant others the right to object to judicial administrative rulings in which his/its legal position and acquired rights are prejudiced similar to the French administrative legislation.

3.2.2 The objection of a third party outside the litigation as one of the issues of the implementation of the administrative judicial ruling

Execution issues mean that they are: “temporary disputes that the person to be enforced against or third parties are bound by to prevent execution or prevent its completion, or the person in whose favor the execution is being done, and who is harmed by his/its inability to implement for any reason and asks for his assistance in that” (Ratib et al. 2000).

As for the issue in the implementation of the administrative judicial ruling, it means: The legal dispute raised by anyone with an interest in the implementation of a ruling issued by one of the judicial courts whose implementation has not yet begun or begun and has not taken place which is submitted to the same court that issued the ruling intended to be implemented in order to obtain temporary protection represented in: suspension or





continuation of execution temporarily until the adjudication in the subject of the dispute on which the issue in implementation is based (Shatanawi, 2016; Mahmoud, 2005).

In fact, the administrative legal jurisprudence differed on the issue of the objection a third party outside the litigation and its dispute in the implementation of the judicial ruling related to the provisions of annulment or the provisions related to personal rights to which he/it was not a party. Actually, the basis of the said difference is attributed to the authority while some jurists considered that the authority is being a definite legal proof being a legal presumption that assumes that the procedures that ended with it are legally valid and that this judgment is a title of the truth, and that the judgment must be respected by everyone, whether the judge, individuals or the administration, regardless of whether the authority of the judgment is absolute or relative, which is called it is imposed by the binding force of the ruling (Ismail, 2016) while some other jurists went to the effect that respecting the ruling is one thing and implementing it is another, so that the objection submitted by a third party in the implementation is not addressed to the authority of the ruling because the third party was not a party to it in the first place, but rather is addressed to its executive power when it extends to prejudice his/its acquired rights and legal position which form part of the legal basis in society, and respecting them is considered part of the legality. In fact, it is a condition for considering the objection of third parties outside the litigation as being of the issues of the administrative judicial ruling's implementation that the issue of the third party is real and that there is seriousness in the issue presented by third parties and that the continued implementation of the judgment conflicts with the rights of third parties (Otoum, 2015).

However, article (34/B) of the Administrative Judiciary Law provided that: "The rulings of the Supreme Administrative Court and the final rulings of the Administrative Court must be implemented in the manner in which they are issued. Yet, and in case the ruling includes the annulment of the administrative decision, the subject matter of the case, then all the legal and administrative measures and acts effected based on the said decision shall stand canceled from the date of issuance of the judgment" (Article 34/b, The Jordanian Administrative Judiciary Law, 2014).

Yet, the Jordanian Supreme Administrative Court ruled in its judgment No. 13/P/2019 issued on 2 October 2019 that: "With regard to the first appeal: and by referring





to the decision in question, we find that it included a temporary stay of the implementation of the decision to announce the open strike until a decision is taken in the matter of the case because the consequences of its implementation are difficult to redress, and since article (28) of the Administrative Judiciary Law No. (27) of 2014 provided that: the appeal before the Supreme Administrative Court does not result in stopping the implementation of the contested judgment unless the court orders otherwise). This is because the decision to stop the implementation of (the decision to announce the strike temporarily open until the case is adjudicated) issued by the Administrative Court does not need to include the statement that the decision is immediately enforceable because it is considered legally enforceable by law from the date of the decision being issued and notified to the parties and because it is an urgent temporary decision pending the merits case and bears the status of (legally expedited enforcement) according to what is established by the jurisprudence and the judiciary (Jordan's Supreme Administrative Court, 2019).

In fact, and in the same context, the Jordanian Supreme Administrative Court ruled, in its judgment No. 8/2014 issued on December 8, 2014 that: it is the judgments of the peremptory administrative court that must be implemented only, and since the petitioner appealed the judgment, whose implementation is required to be suspended, that judgment is not final and becomes unenforceable” (Jordan’s Supreme Administrative Court, 2014).

On the other hand, the Jordanian Court of Cassation ruled, in its Judgment No. 3139/2011 issued on October 25, 2011 that: “We find that the applicants had previously submitted a request to stay the execution of the judgment subject to the objection of third parties submitted by them, and when it became clear to the summary judge that the judgment had been implemented, he decided to reject the request, so they submitted another request (which is the subject of this appeal) to stop any action or act on the plots of land. In fact, we find that the first request was submitted based on article (207/civil procedures) and it was rejected because the judgment was completely implemented, so the justified urgency has ceased to be within the jurisdiction of the urgent judge. As for the current request, then it is to stop any procedures or actions on the plots of land that resulted from the repeating the transaction of the transfer in implementation of the judgment objected to. Yet, this request, and in this description falls under the general rule of the urgent requests feared to lose time as provided for in article (32/1) of the Civil





Procedures Law as the disposition or action that may occur on the plots of land resulting from the repeating of the transaction of the transfer in implementation of the judgment objected to may result in damage that cannot be remedied later or until the issuance of the judgment in the substantive case while it is a third party's objection lawsuit, and therefore this issue is considered one of the issues that it is feared of running out of time, and therefore there is no contradiction between the rejection of the first request to stop the implementation of the objected judgment and this request to stop any action or disposal on the plots of land referred to" (Jordanian Court of Cassation- Civil, 2011).

In France, and by referring to the legal principles established on the procedures for the implementation of administrative judicial rulings, article (R.751-1) of the French Administrative Judiciary Law clarified the executive formula for administrative articles (R.751-1, French Administrative Justice Code, 2021).

Accordingly, the French State Council ruled, in its ruling issued on May 11, 2004, to the effect that: "The annulment of the administrative decision is considered in principle that this decision was as if it had not been. However, the results emanated from the retroactivity of the annulment should not be exaggerated since the effects resulted from the annulled decision and the positions that have resulted since its entry into force, the public interest can adhere to the temporary retention of these effects. On the other hand, it takes into account the defects that violate the principle of legality and the right of individuals to an effective remedy by limiting in time the effects of the cancellation, as an exception to the principle of the retroactive effect of the judgment of cancellation, which required returning the effect of the cancellation to a date prior to its issuance. In this case, the annulment does not have its effect until a date later than its issuance, determined by the judge" (French State Council, Association AC, 2004; Al-Sentrissi, 2011).

In the same context, the French State Council also ruled, in its ruling issued on 12 December 2007, to the effect that: "Canceling the appointment of a judge results in, according to the retroactive effect of the annulment ruling, the invalidity of the rulings and procedures in which he contributed, which leads to excessive damage to the judicial facility. It is necessary in the circumstances of this case not to announce the annulment of the decision to appoint this judge until after the expiration of a month from the date of the decision to set aside" (Council of State N° 296072, 2007).





Based on the foregoing, adhering to the principle of the authority of the res judicata of the annulment judgment constitutes a conflict with the principle of legality, so that the objection of a third party outside the litigation does not constitute a prejudice to the absolute authority of the administrative judicial ruling, as the objection submitted by a third party is not addressed to the authority of the judgment since the third party was not a party in it originally, but rather addressed to its executive power when it extends to infringe on its acquired rights and its legal position, which form part of the legal basis in society and its respect is considered part of legality. Therefore, through this research, we demand the abolition of article (34/A) of the Administrative Judiciary Law for its violation of articles (24 and 100) of the Jordanian Constitution, where the Jordanian constitutional legislator adopted the principle of litigation at two levels, and the principle of the legal position that aims to achieve the principle of legality, i.e. respect for the law and the supremacy of its provisions over all, the rulers and those ruled, so that the state is represented by its three legislative, executive and judicial powers, subject to the rule of law, the principle of legality, the provisions of law and the principles of justice, by not infringing on the rights of other individuals and the legal positions arising legitimately for these individuals, and in order to protect the inclusion of individuals in the face of the administrative judiciary's authority to cancel the administrative decision retroactively to the moment of its issuance and the absolute authority of the annulment ruling, which constitutes a threat to the rights of others.

4 TYPES OF THE OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

The Jordanian civil legislator distinguishes between two types of objections from third parties outside the litigation, namely the original objection and the contingent objection (Al-Zoubi, 2006), as the wording of article (207) of the mentioned Jordanian Civil Procedures Law provided that: "The objection of third parties is divided to two types, original and contingent" (Article 207, Civil Procedures Law, 1988). As for the administrative legislator in France, and by referring to the legal texts, we find that it did not mention or refer to the types of third party's objections.





4.1 THE ORIGINAL OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

The original third party objection means: “In which a third party takes the initiative to object to the judgment and submits to the same court that issued the judgment according to the usual conditions for filing the case, as it is initially presented to a judgment before the same court that issued it, not in a lawsuit filed with it on the basis of it by one of the litigants, for which it was considered an original objection, because the right to object accordingly did not occur contingently during the entertainment of the case” (Al-Zoubi, 2006; Wahdan, 2012).

In fact, the wording of article (207) of the aforementioned Jordanian Civil Procedures Law provided that: “...the original objection shall be submitted to the court that issued the contested judgment with a statement of claim in accordance with the normal procedures of the lawsuit...” (Article 207, Jordanian Civil Procedures Law, 1988).

In application of this, the Jordanian Court of Cassation ruled, in its judgment No. 6372/2021, issued on 16 May 2021 to the effect that: “...we find that although the appellants have an interest in challenging the judgment issued by the Court of First Instance to declare the insolvency of the appellant, the appeal is by way of the original objection of the third parties to their consideration that they were not litigants or represented or intervening in the case, and they may not appeal in an appeal against that judgment because the appeal against judgments can only be from the parties to the case. The Court of Appeal is determined by its framework in which it is formed before the Court of First Instance and is transferred to the Court of Appeal in the manner in which the Court whose judgment is contested is decided, and that what is based on it in the rules of appeal is the effect that carries the appeal, meaning that litigation before the Court of First Instance is transferred to the Court of Appeal with its persons or subject matter unless their arises an contingent litigation, and since the appellants were not a party to the insolvency declaration request, the appeals submitted by them must be dismissed in form (Jordan Court of Cassation- Civil, 2021).

The French Council of State, in its judgment No. (N° 441681) dated 12 November 2020, ruled to the effect that: “...on the other hand, and under the provisions of article R. 832-1 of the Administrative Judiciary Law: “Any person can form a third party, to oppose





a judicial judgment affecting his/its rights, because neither he/it nor his/its attorney was present, or that he/it was regularly summoned in the procedures that led to this judgment. In fact, and when the administrative judge annuls a rejection to approve a classified entity for the protection of environment, then the method of the objection of third parties will be opened against this judgment while the appeal against the objection of the third party to a judicial decision shall be submitted before the court that made the decision to be challenged” (Council of State, N° 441681, 2020).

Accordingly, the fact that the administrative legislator in Jordan did not regulate the way of appeal with the objection of third parties outside the litigation, and since litigation before the administrative courts in Jordan has become at two levels instead of one, it can be said that in the event that the judgment is issued by the Administrative Court of First Instance, the original objection of the third party is submitted to that court and also if the ruling was issued by the Supreme Administrative Court, the original objection shall be submitted to this latter court.

4.2 THE CONTINGENT OBJECTION OF THIRD PARTIES OUTSIDE THE LITIGATION

The third party’s contingent objection means: “An objection to a previous judgment submitted by one of the litigants during the consideration of the existing case in order to prove his/its claim, and the other opponent objects to this judgment, which he/it was neither a party to nor represented in before the court that is entertaining the case with an interlocutory request” (Al-Zoubi, 2006).

Hence, the wording of article (207) of the said Civil Procedures Law provided that: “...The contingent objection shall be submitted by means of a statement or plea to the court entertaining the case if it is equal or higher than the court that issued the objected against judgment and the dispute in which the judgment was issued falls within its jurisdiction. Yet, if one of the two conditions referred to in the previous paragraph is lost, then the objector must submit an original objection” (Article 207, Civil Procedures Law, 1988).

Accordingly, the Jordanian Court of Cassation ruled, in its judgment No. 1583/2009 issued on 9 November 2009 that: “As it is understood from the text of article (207) of the





Civil Procedures Law, that the objection of third parties is of two types: original and contingent while the original objection is submitted to the court that issued the contested judgment with a statement of claim in accordance with the normal lawsuit procedures. As for the contingent objection, it is submitted with a statement or plea to the court hearing the case if it is equal or higher than the court that issued the judgment objected to and the dispute in which the judgment was issued is within its jurisdiction. Hence, and since the objection submitted by the appellant (the objector) is an contingent objection as indicated in the objection statement and that the dispute in which the contested judgment was issued falls within the jurisdiction of the Court of Appeal entertaining into the case, then the conditions of article (207) above are satisfied in the contingent objection and the submitted objection by the challenger (the objector) is legally acceptable and that the Court of Appeal has the jurisdiction to entertain it as long as the objected judgment was subject to an appeal (Jordan Court of Cassation- Civil, 2009).

Accordingly, and as the administrative legislator in Jordan did not regulate the way of appealing the objection of third parties outside the litigation, and since litigation before the administrative courts in Jordan has become at two levels instead of one, it can be said that the contingent objection is submitted by a statement or plea to the court examining the case if it is equal or of the highest degree than the court that issued the objected judgment, that is, to submit a third party's contingent objection to the Administrative Court or the Supreme Administrative Court if the objected judgment was submitted before the Administrative Court or the Supreme Administrative Court, and to submit the third party's contingent objection to the Supreme Administrative Court if the judgment objected to is presented before this court.

5 CONCLUSION

The Jordanian civil legislator permitted the submission of the objection of third parties outside the litigation to the civil judicial rulings as it granted the third party the right to object to the civil judicial rulings in a case in which he was not represented either by originality or through attorney unlike the Jordanian administrative judiciary, which





considered the objection of third parties outside the litigation as an extraordinary way of the methods of appeal, and that the administrative judicial ruling is a definitive ruling that is not subject to appeal by any means of appeal whereby it paid attention to the absolute authority of administrative judicial rulings at the expense of the principle of legality, which constitutes a breach of the principle of equality and a breach of the guarantees of justice in administrative litigation.

In fact, adhering to the principle of the authority of the judgment *res judicata* for the annulment judgment constitutes a conflict with the principle of legality, as the objection of a third party outside the litigation does not affect the absolute authority of the administrative judicial judgment, as the objection submitted by a third party is not addressed to the authority of the judgment since the third party was not a party to it in the first place, but rather it is addressed to its executive power when extending to his acquired rights and legal position which form part of the legal basis in society, and respecting them is considered part of legitimacy.

Therefore, the Jordanian Supreme Administrative Court must retract its ruling No. (269/2017) dated 31/10/2017, which refuses to accept the objection of third parties who are outside the litigation in form and substance, as the objection of a third party does not constitute a prejudice to the absolute authority of the judgment objected to, but rather aims to the stability of the legal positions of others and the preservation of their acquired rights, so that the objection of a third party does not constitute a prejudice to the absolute authority of the judgment objected to, but rather constitutes a breach of the executive power of the administrative judicial judgment against others.

In addition to amending the Jordanian Administrative Judiciary Law by explicitly stipulating that the administrative legislator considers the objection of others outside the litigation as being a way of challenging administrative rulings and expressly stipulating it in the core of the Administrative Judiciary Law as done by the Jordanian and French civil legislators as well as the French administrative legislator and to develop legal texts by granting third parties the right to object to administrative judicial rulings that prejudice their legal position and their acquired rights, similar to the French administrative legislation, or that the Administrative Judiciary Law provides for an explicit and direct referral regulating the objection of third parties outside the litigation in the Jordanian Civil Procedures Law.





The necessity of repealing the text of article (34/A) of the Administrative Judiciary Law for violating articles (24, 100 and 128/A) of the Jordanian Constitution, as the Jordanian constitutional legislator adopted the principle of litigation at two levels and the principle of the state of law that aims to achieve the principle of legality, i.e. respect for the law and the supremacy of its provisions over everyone, the rulers and those ruled, so the state is represented by its three legislative, executive and judicial authorities subject to the rule of law. Hence, the administration should respect the principle of legality, the provisions of the law and the principles of justice by not infringing the rights of others of individuals as well as the legal positions emanated legally for such individuals and in order to protect the guarantees of the individuals in face of the authority of the administrative judiciary by annulling the administrative decision retroactively to the moment of its issuance, and the absolute authority of the annulment ruling resulted from the same which poses a threat to the rights of others.

REFERENCES

- Abaoub, M. (2014). Litigation in two stages in the administrative judiciary: Master's Thesis, Kasdi Merbah University, p. 27. [in Algeria].
- Al- Husseini, A. (2015). Objection of other outside the rivalry on the cancellation rule a comparative study. *Al-Mohaqqiq Al-Hilli Journal for Legal and Political Sciences*, 7(4), P. 401-448. <https://www.iasj.net/iasj/download/db7fd71a44e0d518>
- Al-Helou, M. (2004). Administrative Cases: Munsha'at Al-Maaref, p. 376. [in Egypt].
- Al-Jawhari, E. (2005). Al-Sehah, introduced by Khalil Mamoun Shiha: Dar Al-Maarifa for Printing, p. 619. [in Lebanon].
- Aljazy, C., & Almarie, C. (2017). Reviews at the legal novelty in the Jordanian in administrative judiciary law no 27 of the year 2014. *Dirasat: Shari'a and Law Sciences*, 44(2), p. 1-12. <https://archives.ju.edu.jo/index.php/law/article/view/9867/7718>
- Al-Kilani, M. (2002). Explanation of the Civil Procedures Law: Wael Publishing House, p. 389. [in Jordan].
- Al-Sentrisi, A. (2011). The Retroactive Impact in the Administrative and Constitutional Courts a Comparative Study between Law and Islamic Law: Dar Al-Nahda Al-Arabiya, p. 634-792. [in Egypt].





Al-Tamawi, S. (1972). Al-Wajeez in the Administrative Judiciary: Dar Al-Fikr Al-Arabi, p. 785. [in Egypt].

Al-Zoubi, A. (2006). Civil Procedures La- A Comparative Study - Part Two – Litigation- Judgments and Methods of Appeal: Wael Publishing House, p. 950-964. [in Jordan].

Barbara, A. (2013). Explanation of the Civil and Administrative Procedures Law: Baghdadi Publications, p. 236. [in Algeria].

Bassiouni, H. (1981). The Role of the Judiciary in Administrative Dispute - A Comparative Applied Study of the Judicial Systems in Egypt, France and Algeria: World of Books, p. 289-290. [in Egypt].

Batarseh, S. (2006). General Principles of Law and Their Applications in France and Jordan. *Dirasat: Shari'a and Law Sciences*, 33(1), p. 116-138. <https://journals.ju.edu.jo/DirasatLaw/article/viewFile/1440/6329>

Bounaas, N. (2015). The specificity of administrative judicial procedures in Algeria - Tunisia – Egypt: PhD thesis, Hadj Lakhdar University, p. 278-309. [in Algeria].

Code of administrative justice Last modification: 1/1/2021, right. Org. French Institute of Legal Information.

Dalia. A. (2008). Dealing with the Administrative Judiciary: Baghdadi Publications, p. 18. [in Algeria].

Hadi, N. (2017). Urgent Administrative Judiciary: Arab Publishing Center, p. 221-222. [in Egypt].

Ismail, K. (2016). Problems of implementation before the administrative judiciary: Dar Mahmoud, p. 70. [in Egypt].

Jordanian Administrative Judiciary Law No. (27) of 2014.

Jordanian Civil Procedures Law No. (24) of 1988.

Mahmoud, M. (2005). Temporary Execution Issues Related to Executing Judgments of the State Council Courts: New University Publishing House, p. 8. [in Egypt].

Malkawi, B. (2008). The Scientific Fundamentals of Writing Legal Research PhD and Master's Theses, Bar Association Research, Judicial Institute Research and Student Research, Conferences and Seminars: Dar Wael for Publishing and Distribution, 17 p. [in Jordan].

Murad, A. (2003). Quadruple French-English-Italian-Arabic-Shari'a Legal Dictionary Explanation of Legal Terms Used in Comparative Positive Law and Islamic Law and Their Uses in French, English, Italian and Arabic: Legal Books House, p. 532-576. [in Egypt].





Nakhla, M., & Baalbaki, T., & Matar, P. (2005). The Triple Legal Dictionary a comprehensive and detailed encyclopedic legal dictionary Arabic-French-English: Al-Halabi Human Rights Publications, p. 224-225. [in Lebanon].

Otoun, M. (2015). The Judge of Revocation Authority in Directing Orders for the Administration to Ensure the Implementation of His Judgment Analytical Comparative Study. *Dirasat: Shari'a and Law Sciences*, 42(1), p. 29-43. <https://journals.ju.edu.jo/DirasatLaw/article/view/4655/4444>

Ratib, A. (2000). Urgent matters, part 2: Modern Printing House, p. 851. [in Lebanon].

Shatanawi, F. (2016). Administrative and Judicial Verdicts Issued Against the Administration and Implementation Problems. *Dirasat: Shari'a and Law Sciences*, 43(1), p. 505-526. <https://journals.ju.edu.jo/DirasatLaw/article/viewFile/8398/5553>

The Jordanian Constitution of 1952.

Wahdan, H. (2012). Judicial Judgments and Methods of Appeal: Janadriyah Publishing, p. 133. [in Jordan].

