

# The Jurisdiction of a Claim for Compensation for Human Rights-Violating Deportation from the Country Orders and the Conditions for its Acceptance

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## Abstracts

The state's responsibility for the actions of the administration has become a well-established rule today, whereby the state is responsible for compensating for damages resulting from the actions and decisions of the administration. However, the jurisdiction of the judiciary to consider compensation claims arising from administrative control decisions, including deportation decisions, raises questions about the actions that administrative cases are assigned the authority to decide on compensation for. If there is no doubt that the actions of the administrative body are subject to the supervision of the administrative judiciary, there are actions that go beyond the limits of administrative work, such that they are described as anger and unlawful aggression. Likewise, the administrative judge is the one competent to adjudicate compensation claims filed against the administration. There are exceptional cases in which the ordinary judiciary is competent to adjudicate them. Among these exceptional cases that go beyond the jurisdiction of the judiciary are what are called acts of sovereignty, as it becomes clear that the deportation decision, as an individual administrative decision, no longer raises the issue of whether it is considered an act of sovereignty or not, as it has been settled that these decisions go beyond being acts of sovereignty. It was also noted that the competent authorities in adjudicating liability claims in Iraqi law. The Egyptian also noted the jurisdiction of the Administrative Judiciary Court in the case of a claim and compensation in two cases: the claim for compensation as an original and the claim for compensation as ancillary according to the claim for cancellation falls within the jurisdiction of the Administrative Judiciary Court. We note that the negative legislative judiciary jurisdiction to consider claims that are described as original and secondary with regard to the General Disciplinary Council and as an original with regard to the Administrative Judiciary Court has deprived a large group of individuals of an important means to compensate for the damages that have befallen them. This represents a major legislative deficiency that we hope the Iraqi legislator will meet in the future to grant both the General Disciplinary Council and the Administrative Judiciary Court jurisdiction to consider compensation claims as an original so that we can say that we have an administrative judiciary with general and comprehensive jurisdiction similar to the countries of dual judiciary, foremost of which are, of course, France and Egypt. The researcher has found out the basis of the state's responsibility in terms of the lack of judicial jurisdiction in the claim for

compensation for acts of sovereignty and the extent of their consideration of the Egyptian and Iraqi constitutions to prohibit the immunization of administrative decisions and acts from judicial oversight. It has become clear that The administration's responsibility and its claim for compensation are based either on the occurrence of a functional error or due to the idea of risks or the occurrence of an assumed error, and its administrative responsibility in Iraq is distinguished from that in Egypt in that the legislator has applied the rules of civil liability with regard to the administration's responsibility for the actions of its employees and its lack of responsibility and for the actions of others on the one hand, and that the idea of a functional error was not taken into account in determining the administration's responsibility, but rather the idea of an assumed error was taken into account on the other hand. The study also discussed the extent of the jurisdiction and competence of administrative cases to consider compensation claims in both Egypt and Iraq, and concluded that in Egyptian law, this jurisdiction is decided for the State Council, while in Iraq, the general rule in determining the jurisdiction of the administrative judiciary is its jurisdiction over compensation claims for damages caused by the administration's unlawful actions. Keywords: Compensation claim, the competent authority to adjudicate, conditions for accepting a compensation claim, capacity in the claim, interest in the claim, deadline for filing the claim.

## 1. Introduction

The state's obligation to uphold public order and morals is a constant and non-negotiable duty, irrespective of explicit legal provisions. This duty cannot be waived or delegated to other entities. Consequently, the state is responsible for addressing administrative actions and adjudicating compensation claims related to deportation decisions issued against foreigners, making it within its jurisdiction.

This topic is of particular importance in the field of administrative law specifically, and public law generally, especially in Islamic countries. The significance lies in the state's authority to maintain its security, integrity, and the interests of its citizens domestically and internationally. All states adopt special measures for deporting foreigners in cases of violations committed by non-citizens within their territories or breaches of public order. If there are serious reasons threatening the public interest, competent courts are obliged to adjudicate cases presented before them.

The problem of this research revolves around the extent to which Iraqi and Egyptian legislations achieve a balance between the state's right to sovereignty over its territory and the foreigner's right to reside within the state's territory. Addressing this issue necessitates exploring the extent of a foreigner's enjoyment of this right. If a foreigner has the right to reside in the territory of either country, how can they be protected from administrative abuse and compensated for damages resulting from unlawful decisions?

This study adopts a comparative approach between Iraqi and Egyptian law to address the topic.

This research examines the jurisdiction over compensation claims related to deportation decisions and the conditions for their acceptance through two main sections:

- Section One: The authority competent to adjudicate compensation claims for deportation decisions.

- Section Two: The conditions for accepting compensation claims for deportation decisions.

### Jurisdiction over Compensation Claims for Deportation Decisions and Their Acceptance Conditions

While the state's responsibility for administrative actions has become a firmly established principle, obliging the state to compensate for damages resulting from administrative actions and decisions, the jurisdiction of administrative courts to hear compensation claims arising from administrative control decisions, including deportation decisions, raises questions about which actions fall under the administrative courts' authority for adjudication.

Undoubtedly, administrative actions are subject to oversight by administrative courts. However, some actions deviate from being purely administrative and are classified as unlawful or arbitrary acts of encroachment.

In addressing this subject, it is also necessary to examine the conditions under which compensation claims against administrative decisions, for which administrative courts have jurisdiction, can be accepted. Based on this, the discussion will be divided into two main sections as follows:

1. Section One: The authority competent to adjudicate compensation claims for deportation decisions.

2. Section Two: The conditions for accepting compensation claims for deportation decisions.

### Section One: The Authority Competent to Adjudicate Compensation Claims for Deportation Decisions

The general rule in determining jurisdiction over compensation claims for administrative actions, including claims for damages caused by administrative decisions, is that administrative courts are competent to hear all compensation claims filed against the administration or public legal entities.

However, despite this general rule, which establishes that administrative courts are the competent authority for compensation claims against the administration, there are exceptional cases in which ordinary courts are granted jurisdiction. Among these exceptional cases are actions classified as "sovereign acts."

Accordingly, this section will address the extent to which deportation decisions are considered sovereign acts in the first subsection, followed by an examination of the rules governing the administrative judiciary's jurisdiction over compensation claims related to such decisions in the second subsection, as outlined below:

Subsection 1: The Extent to Which Deportation Decisions Are Considered Sovereign Acts

Subsection 2: Rules of Jurisdiction in Compensation Claims for Administrative Responsibility

Subsection one: The Extent to Which Deportation Decisions Are Considered Sovereign Acts

Sovereign acts can be defined as "a category of administrative decisions issued by the government that are shielded from judicial oversight." These acts cannot be annulled or subjected to compensation claims under normal or exceptional circumstances. The sole justification for exempting them from all judicial review is the need to safeguard the security and stability of the state.

As a result, it is deemed inappropriate for such decisions to be subject to judicial discretion or intervention, given their critical role in ensuring the state's safety and security. .

In France, the French Council of State considers administrative control decisions concerning foreigners under exceptional circumstances to be sovereign acts. As such, they are not subject to annulment or compensation claims.

For instance, in its ruling on the case of Mr. KEIL on July 13, 1923, the Council of State held that if a deportation order is issued against a foreign pharmacist and the individual contests the order, seeking annulment and compensation for the damages incurred from the revocation of their pharmacy license, the Council would refuse to exercise oversight over the deportation decision. This refusal is based on the principle that such decisions are not subject to judicial review.

However, compensation claims can only pertain to damages caused directly by the deportation order, not the revocation of the pharmacy license. Since the deportation decision itself is beyond the Council's jurisdiction, any related compensation claim is also excluded from consideration. However, the French Council of State later shifted from this stance by recognizing the French state's liability even in cases where administrative courts do not exercise oversight over government actions. The refusal of administrative judges to review or annul such actions does not preclude administrative liability.

The Council of State acknowledged the state's liability for implementing international treaties when these treaties cause significant and specific harm to individuals. This liability is based on the principle of risk-based responsibility, without requiring fault, in accordance with the principle of equality before public burdens.

To establish such liability, two conditions must be met:

1. The treaty or law being implemented must not explicitly exclude compensation for damages caused by administrative decisions enforcing the treaty.
2. The damage must be specific and of a significant magnitude to justify compensation.

This development marked a shift in French jurisprudence, particularly since 1966, as it diverged from the earlier Egyptian approach. The French judiciary reduced the scope of sovereign acts and expanded the domain of administrative decisions subject to judicial review by administrative courts, thereby enhancing the accountability of the state for sovereign acts. .

In Egypt, Law No. 112 of 1946 concerning the Egyptian Council of State stipulates that:

> “Requests concerning decisions related to acts that organize the government’s relationship with parliament, measures concerning the internal and external security of the state, political relations, military affairs, and all requests related to sovereign acts shall not be accepted.”

Additionally, Article 11 of Law No. 47 of 1972 on the Council of State states:

> “The courts of the Council of State are not competent to hear requests related to sovereign acts.”

Similarly, Article 7 of the Egyptian Judicial Authority Law No. 46 of 1972 provides:

> “Courts may not directly or indirectly adjudicate sovereign acts.”

From these provisions, it is evident that the Egyptian legislature has explicitly clarified the non-jurisdiction of the Council of State courts over matters involving sovereign acts of the executive authority.

Once it is established that the dispute before the Council of State courts pertains to a sovereign act, the courts must immediately rule themselves as lacking jurisdiction, whether the case involves a request for annulment or for compensation. The legislature has, therefore, explicitly excluded sovereign acts from the jurisdiction of the Council of State courts for both annulment and compensation claims.

In Iraq, Article 10 of the Law on Judicial Organization No. 160 of 1979 (amended) stipulates that:

> "The judiciary shall not consider any acts that are regarded as sovereign acts."

This is further detailed in Article 7, Fifth Paragraph, of the State Consultative Council Law No. 65 of 1979 (amended), which states:

> "The Administrative Court is not competent to hear appeals related to the following:

1. Sovereign acts, including decrees and decisions issued by the President of the Republic..."

Therefore, both laws exclude sovereign acts from judicial review, whether for annulment or compensation, meaning the judiciary cannot annul such acts or compensate for any damages resulting from them.

However, both legislatures have recently amended the theory of sovereign acts by stipulating that no administrative action or decision shall be exempt from judicial review.

Article 97 of the Egyptian Constitution of 2014 provides:

> "Litigation is a protected and guaranteed right for all. The state is committed to facilitating access to the judiciary and expediting the resolution of cases. No administrative act or decision shall be exempt from judicial review, and no person shall be tried except before their natural judge. Exceptional courts are prohibited."

Similarly, Article 100 of the Iraqi Constitution of 2005 states:

> "It is prohibited to stipulate in laws any immunity of administrative acts or decisions from appeal."

This means that any legislation that prevents the courts from exercising their oversight and reviewing administrative acts or decisions is unconstitutional.

Further, the Iraqi legislature took a more direct approach with the issuance of Law No. 17 of 2005, which annulled legal provisions that prevented the courts from hearing cases. Article 1 of the law reads:

> "The legal provisions in any laws and decisions issued by the dissolved Revolutionary Command Council, from July 17, 1968, until April 9, 2003, that prevent courts from hearing cases arising from the application of laws or decisions of the dissolved Revolutionary Command Council are hereby annulled."

Since the sovereign acts referred to in the Judicial Organization Law No. 160 of 1979 (amended) and the State Consultative Council Law No. 65 of 1979 (amended) were issued during this period, they are considered null and void under this law..

From the previous texts, it is evident that the legislator is keen on not preventing the judiciary from reviewing the legality of such decisions. This stance represents a glimmer of hope for safeguarding rights and freedoms that have long suffered from reduction and encroachment due to sovereign acts. The prior provisions posed obstacles to the protection of individuals' rights and freedoms by denying them the constitutional right to access the judiciary. This also contradicted the general jurisdiction of the judiciary over all disputes and contributed to circumventing the principle of legality, allowing numerous decisions and decrees that violated the law, wasted rights, and undermined freedoms to pass unchecked.

A question arises in this context: Are deportation decisions considered sovereign acts, given that they are issued primarily to maintain public security and order and serve the state's public interest?

In response to this, Egyptian administrative courts have considered deportation decisions as ordinary administrative decisions, not sovereign acts. As a result, the Egyptian administrative judiciary has exercised oversight over these decisions. Although the administration enjoys broad discretionary powers when making deportation decisions, it is still bound by considerations of the public interest. The administration is therefore prohibited from deporting a foreigner unless there are legitimate reasons that pose a serious threat to the public interest..

Based on this, administrative courts in Egypt exercise oversight over administrative decisions issued by the administration in general, including decisions regarding foreigners. These are considered ordinary administrative decisions taken by the government through the competent authority in the course of its administrative duties, not as acts of governance. This does not diminish the state's right to regulate the status of foreigners and deport those whose actions and conduct are deemed detrimental to its interests.

In this regard, the Supreme Administrative Court ruled that: "It goes without saying that in states based on the rule of law and the supremacy of law, there is no such thing as absolute authority for the administrative body. The constitution and laws regulate the three branches of the state, including the executive power, within the framework of legality and the rule of law. Therefore, every act or decision of the administration is subject to the constitution and the law, and no provision can shield any administrative act or decision from judicial review, in accordance with Article 68 of the Constitution. Every act or decision, in addition to being subject to legality, is subject to the oversight of the State Council courts. At the same time, acts of sovereignty and political decisions, despite being subject to legality and the rule of law, do not fall under the jurisdiction of the courts in terms of annulment or suspension, as these are considered political acts that do not fall within the jurisdiction of the State Council courts. Thus, the claim that the discretionary authority of the administration is unrestricted is unfounded and constitutes an assault by the administration on the supremacy of the law and legality."

The court also affirmed that: "It is a well-established principle, as upheld by the case law of this court, that the state, by virtue of its sovereignty over its territory and its right to take whatever measures it deems necessary to preserve its existence, security, and the interests of its citizens, enjoys the general and absolute authority to assess the appropriateness of allowing or not allowing a foreigner to remain on its land. It has the discretion to extend or refuse the foreigner's stay, unless its legislation grants them a right to remain under the conditions and terms it sets. Therefore, a foreigner is required to leave the country, regardless of any excuses they may present."

The Administrative Court in Egypt also confirmed this by stating: "The case law of this court has established that deportation orders, in general, are measures related to internal security and are not considered acts of sovereignty that fall outside its jurisdiction. Rather, they are ordinary administrative orders, which means the court has the authority to consider requests for their annulment and claims for compensation arising from them."

In light of the above, it is clear that the deportation decision, as an individual administrative decision, no longer raises the issue of whether it is considered an act of sovereignty or not. It has been established that these decisions are no longer considered to fall within the scope of acts of sovereignty.

#### Subsection Two: Rules of Jurisdiction in Administrative Liability Lawsuits

The rules governing the jurisdiction of administrative liability lawsuits in Egypt have gone through three phases. The first phase involved assigning the consideration of these lawsuits to ordinary courts. The second phase came after the establishment of the State Council, marking the phase of shared jurisdiction over liability lawsuits between the ordinary judiciary and the administrative judiciary. The final phase confirmed the exclusive jurisdiction of the administrative judiciary over such lawsuits, as it holds general authority over all administrative disputes.

However, in contrast, the situation in Iraqi law still assigns the jurisdiction to hear lawsuits related to administrative actions to the ordinary judiciary.

We will examine the rules of jurisdiction in administrative liability lawsuits in both Egypt and Iraq, by first identifying the competent authority to adjudicate administrative liability lawsuits in Egyptian law (first), followed by the competent authority in Iraqi law (second), as follows:

#### First: The Competent Authority to Adjudicate Administrative Liability Lawsuits in Egyptian Law

After the establishment of the Egyptian State Council in 1946 under Law No. 112 of 1946, the law stipulated that the council would monopolize the jurisdiction for annulment lawsuits and share the jurisdiction with the ordinary judiciary regarding compensation for the execution of defective administrative decisions. Thus, the responsibility is distributed between the administrative and ordinary courts. . However, this situation led to a conflict in judicial principles, prompting the legislature to relieve the State Council of this shared jurisdiction under Law No. 165 of 1955. The law granted exclusive jurisdiction over lawsuits concerning liability for administrative decisions to the administrative judiciary, thereby eliminating any shared jurisdiction between the administrative and ordinary courts. This measure ensured that each type of dispute would fall under the jurisdiction of a single authority, preventing any conflict in judicial principles that could result in significant breaches of the principle of equality before justice.

Based on the above, the courts of the State Council have become competent to handle cases involving the annulment of administrative decisions and compensation claims related to them. Meanwhile, ordinary courts retain jurisdiction over compensation claims arising from material acts that are unrelated to administrative activities.

This means that liability lawsuits concerning material acts within public facilities under general administration, governed by the principles of administrative law, fall under the jurisdiction of the State Council courts. Conversely, liability lawsuits involving material acts within public facilities under private administration fall under the jurisdiction of ordinary courts and are governed by the principles of civil law. In the first case, the matter pertains to administrative liability, while in the second case, it pertains to civil liability..

Subsequently, the permanent Egyptian Constitution of 1971, followed by the current Constitution of 2014, stipulated that: "The State Council is an independent judicial body and is competent to adjudicate administrative disputes, disciplinary lawsuits, and other matters as determined by law."

Thus, the constitutional legislator established the State Council judiciary as the general authority for administrative disputes. According to the provisions of Article 10 of State Council Law No. 47 of 1972, specifically Paragraph 10, the jurisdiction of the State Council was extended to include compensation claims for decisions mentioned in the preceding provisions, whether such claims are filed as primary or ancillary requests..

Accordingly, the general rule became that the State Council courts have jurisdiction over liability lawsuits related to both administrative decisions and material acts. Thus, ordinary courts are not competent to handle liability lawsuits concerning material acts carried out by administrative authorities. This principle applies to the scope of this study regarding compensation for material



acts committed by the administration in the course of executing deportation decisions, as well as compensation for the decisions themselves if they were issued in violation of the law and caused harm to the foreign individual.

The Supreme Administrative Court has ruled on jurisdiction, stating that "Article 10 of the State Council Law issued under Law No. 47 of 1972, and Article 25 of the Supreme Constitutional Court Law issued under Law No. 48 of 1979, establish the State Council as the general authority for administrative disputes and as the general judiciary for the disputes listed in Article 10 as examples. The Supreme Constitutional Court has jurisdiction over constitutional oversight of regulations, which are administrative regulatory decisions. However, the jurisdiction for compensation for regulations deemed unconstitutional remains vested in the State Council."

The phrase "violation of laws" mentioned in the penultimate paragraph of Article 10 of the State Council Law is broad enough to encompass violations of the Constitution, in addition to violations of ordinary laws enacted by the legislative authority. The Constitution itself is considered a form of law. Thus, the jurisdiction of the State Council courts over compensation for unconstitutional regulatory provisions is the same as their jurisdiction over regulatory provisions deemed unlawful."

It is worth noting that compensation lawsuits for unlawful material acts that constitute an infringement fall under the jurisdiction of ordinary courts. This includes cases where a legitimate administrative decision is executed using unlawful means or where a decision is issued to enforce a previously annulled administrative decision. In such instances, the administrative decision is considered null and is reduced to the level of unlawful material acts constituting aggression and violence, thereby falling outside the jurisdiction of the administrative judiciary.

Applying this to deportation decisions, if the administrative authority executes a deportation decision using means that infringe upon the physical safety of the foreign individual or humiliate them morally and ethically, the affected foreign individual has the right to resort to ordinary courts to seek compensation for these damages based on tort liability..

## Second: The Authority Competent to Adjudicate Liability Lawsuits in Iraq

The adjudication of claims and compensation for actions by administrative authorities in Iraq remains constrained by legislative shortcomings, as evidenced by the following points:

### 1. Lack of Jurisdiction for the Civil Service Court:

The legislature has not explicitly assigned the Civil Service Court jurisdiction to consider compensation lawsuits filed by employees as a result of unlawful administrative decisions, whether as a primary or ancillary claim. This is evident in the legislation outlining the court's competencies, such as the amended Civil Service Law No. 24 of 1960, the amended State and Public Sector Employees Discipline Law No. 14 of 1991, and the amended State Shura Council Law No. 65 of 1979. This omission represents a significant denial of one of the essential guarantees available to employees to counter administrative abuse and arbitrariness.

## 2. Jurisdiction of the Administrative Judiciary Regarding Compensation Lawsuits:

The jurisdiction of the Administrative Court in compensation lawsuits depends on the nature of the claim and can be divided into two scenarios:

### First Case:

When compensation is sought as the primary claim, it falls under the jurisdiction of ordinary courts. Article 7(Seventh/B) of the amended State Shura Council Law of 1979 states:

> "If no decision is made regarding the grievance or if it is rejected by the competent administrative authority, the complainant may file an appeal with the court within 60 days from the date of explicit or implicit rejection of the grievance. The court shall register the appeal after the legal fee has been paid, and failure to appeal before it does not prevent the complainant from seeking compensation for damages caused by the violation or breach of the law through ordinary courts."

### Second Case:

When compensation is sought as an ancillary claim to an annulment lawsuit, it falls under the jurisdiction of the Administrative Court. Article 7(Eighth/A) provides:

> "The court shall decide on the appeal submitted to it, and it may decide to dismiss the appeal, annul, or amend the contested order or decision, and award compensation if necessary, based on the plaintiff's request."

The researcher agrees with some legal scholars that the legislature's denial of jurisdiction to the judiciary for hearing compensation lawsuits as both primary and ancillary claims concerning the General Disciplinary Council, and as primary claims concerning the Administrative Court, has deprived a large segment of individuals of an essential means to redress the damages they have suffered. This represents a significant legislative gap that the Iraqi legislature should address in the future.

By granting both the General Disciplinary Council and the Administrative Court the authority to adjudicate compensation claims as primary claims, we could affirm the existence of an administrative judiciary with comprehensive and general jurisdiction, comparable to dual judiciary systems, particularly those in France and Egypt. .

### Section Two: Conditions for Admissibility of Compensation Claims for Deportation Decisions

The study of compensation claims for deportation decisions necessarily involves an examination of the conditions that must be met for such claims to be admissible. These conditions refer to the requirements a judge must verify before proceeding to assess whether the claimant is entitled to compensation. In other words, the administrative judge's consideration of these conditions lies in an intermediate stage between determining the court's jurisdiction and addressing the substantive issues raised by the claim.

The conditions for admissibility can be summarized as follows: standing, interest, and timeframe for filing the claim, while also taking into account the need to verify the claimant's legal capacity to litigate.

Based on this, the discussion is divided into three subsections as follows:

Subsection One: Standing in the Claim

Subsection Two: Interest in the Claim

Subsection Three: Timeframe for Filing the Claim

Subsection One: Standing in the Claim

In compensation claims for deportation decisions, the claimant must have legal standing. This requirement is satisfied if the claimant is the individual subject to the deportation decision, or if they are persons who have suffered harm due to the deportation of their predecessor, provided they have a vested interest in pursuing the claim. Individuals beyond these categories lack standing to file the claim.

Standing and interest are typically unified in the person of the deported foreigner whose right has been violated, or in a legal or contractual representative acting on their behalf. However, in cases involving heirs, standing is distinct from interest. In such instances, heirs must demonstrate not only standing but also a direct personal interest, which necessitates proving harm arising from the deportation of their predecessor that warrants compensation.

Additionally, the defendant's standing must also be established. This applies to both the President of the Republic and the Minister of Interior, as they are the parties responsible for the consequences of the decision and its implementation.

If the claimant lacks the required standing, the claim is considered to have been filed by a party without legal standing. In such cases, the court is obligated to dismiss the claim on its own initiative if it is found that the claimant lacks standing..

If the claim is filed against a party without standing, meaning the defendant does not have the legal capacity to be the proper defendant, the Supreme Administrative Court has decided to defer the case for the proper party to be notified. The court will instruct the claimant to notify the proper party within a specified time. If the claimant fails to do so within the prescribed timeframe, the court will rule that the claim is inadmissible..

In application of this, the Administrative Court, in its ruling on 17/3/1997, stated: "If the decision subject to the compensation request was issued for the deportation of the plaintiffs' predecessor alone, without personally affecting the plaintiffs, but following his death, the plaintiffs have standing to claim compensation for any material damages their predecessor suffered as a result of being deported from his original homeland. Therefore, the objection to the inadmissibility of the case on the grounds of it being filed by someone without standing is not valid and should be rejected."".

Regarding the condition of standing when filing a lawsuit to claim compensation for non-material damage, the Administrative Court, in another ruling, decided: "The contested decision, which was annulled, only concerned the deportation of the plaintiff's father. While the court accepted the case number (1498) of 39, filed by the plaintiff in a similar case, which falls under the category of civil lawsuits where standing and interest are not interdependent, the decision to

deport the plaintiff's father directly affected him personally. Therefore, the father is the one with standing to claim compensation for any material or non-material damages he suffered. The argument that the plaintiff suffered damages as a result of his father's deportation, if proven, would be indirect and not compensable. Furthermore, non-material damage is personal and is limited to the victim alone. According to the second paragraph of Article 22 of the Civil Code, compensation for non-material damage is only possible in cases of harmful acts that result in the death of the injured party, and the compensation is limited to spouses and relatives up to the second degree. It is clear that the basis for the administration's responsibility for compensation in the case of an unlawful administrative decision is thus established, and the lawsuit was filed by someone without standing. It cannot be argued that standing was established by the ruling in the annulment case, as that standing is restricted to the scope of the judgment in that case. Consequently, the compensation claim lawsuit retains its distinctiveness in terms of parties, subject, and cause."

The researcher agrees with some scholars who view this ruling as clarifying the difference between an annulment lawsuit and a compensation lawsuit, as explained below:

1. Annulment lawsuit: In this case, the individual can request the annulment of a decision to deport their father, as both standing and interest are present. In this scenario, standing and interest are intertwined because annulment suits aim to eliminate the unlawful administrative decision's effects by revoking it. Therefore, it is not required for the plaintiff to be the person against whom the deportation decision was made. Instead, it suffices for the plaintiff to be someone who has a direct, personal, and material or non-material interest in the annulment of the administrative decision, which leads to the establishment of standing.

2. Compensation lawsuit: In this case, the plaintiff must have both standing and interest. The plaintiff must have a personal and direct interest in the case, separate from standing. Applying the previous example, while the plaintiff may have an interest in seeking compensation for the damage caused by their father's deportation, they do not have standing because they are not the direct victim of the deportation.

In summary, any damages claimed by the family of the deported individual are considered indirect and are not compensable, even if the damages are non-material. This is because the right to seek compensation for non-material damage is personal and limited to the direct victim.

It is important to note that raising the issue of lack of standing in the lawsuit is a procedural matter related to public order, and it can be raised for the first time before the Supreme Administrative Court. The court must rule on it of its own accord, even if the parties have not raised the issue..

#### Subsection Two: The Interest in the Lawsuit

The acceptance of a claim for compensation regarding unlawful administrative decisions requires the presence of a legitimate and personal interest for the claimant, in accordance with the principle that a lawsuit cannot be filed without interest.

The condition of interest is essential for accepting a lawsuit in general and for compensation claims regarding administrative decisions in particular. It is a fundamental principle in

procedural law and litigation systems, and its application must be respected, whether explicitly stated in the law or not. However, procedural laws often explicitly mention this condition as part of the prerequisites for accepting a lawsuit.

The defense of lack of interest in the lawsuit is a substantive defense. Therefore, it is not affected by delays in raising it after addressing the merits of the case. It is a defense that does not lapse due to discussion of the merits, and it may be raised at any stage of the proceedings. This defense pertains to public order, and the court must address it on its own, even if the plaintiff has not raised it.

The presence of a personal and direct interest is a fundamental condition for accepting the lawsuit. The claimant has an interest when they possess a right that has been violated and when this violation causes them harm, entitling them to request compensation for the damage they have suffered..

The Egyptian legislator established the necessity of having a valid interest as a condition for accepting an administrative lawsuit for the first time in Law No. 77 of 1949 regarding the State Council, where it stipulated: "No request or defense shall be accepted unless the claimant has a legally recognized interest in it."

Similarly, the Iraqi legislator referred to the condition of interest in Article (7 / Fourth) of the Fifth Amendment to the State Consultative Council Law No. 65 of 1979, which states: "The Administrative Court is competent to examine the validity of orders... based on a request from a person with a known and tangible interest. However, a potential interest is sufficient if there is a reason to fear harm to the concerned parties."

However, the Iraqi legislator has extended the condition of interest to include motions as well. This is evident in Article 8/2 of the Civil Procedures Law, which states: "The provisions applicable to a lawsuit must also be observed in a motion, provided that it is directly related to the main lawsuit." Consequently, interest is not only a condition for accepting the lawsuit but also a condition for accepting any request, motion, or even an appeal of a judgment. This is because the right to resort to the judiciary is a legal right for protecting rights, and the lawsuit, request, motion, and appeal are merely means to protect the rights established by law..

There is no dispute that a foreigner who is harmed by a decision to expel them from the country satisfies the condition of having a direct personal interest, thus entitling them to file a compensation lawsuit for the administrative decision of expulsion. They also meet the condition of standing in the lawsuit. The only requirement is that they must file the lawsuit within the legally prescribed time frame.

Therefore, it is essential for anyone who seeks compensation for damage to have actually suffered harm. If no harm has occurred, there is no justification for seeking compensation. .

### Section 3: Deadline for Filing a Lawsuit

The legislator did not specify a particular time frame for filing a lawsuit to annul a deportation decision. As a result, the lawsuit must be filed within the legally prescribed period. In France, this period is two months, and in Egypt, it is 60 days, starting from the date the decision is

published or notified. No appeal is required unless specified by specific legal provisions. If the lawsuit is filed after the prescribed period, the court will dismiss it.

On the other hand, the Iraqi legislator requires that the person affected by the decision must first file a grievance against the decision within 30 days of its issuance. The annulment lawsuit can only be filed after the administrative authority has ruled on the grievance or after 30 days have passed since its submission. The annulment lawsuit should be filed after the deportation decision is made. If the administration apprehends a foreigner and a lawsuit is filed to annul the arrest decision, the subject of the lawsuit must be the arrest, not the deportation, as the deportation decision has not yet been issued. However, this does not prevent the administration from monitoring the individual's behavior and deciding to deport them later if justified.

It is important to note that one of the key differences between an annulment lawsuit and a compensation lawsuit is that the administration is subject to a specific time frame in the case of the former, while the latter does not have a set time limit for filing, as long as the right on which the injured party bases their claim has not been extinguished by prescription. Compensation lawsuits are subject to the general time limit for filing civil lawsuits, which is determined by the statute of limitations for the rights being claimed.

While the rules of prescription are detailed in the Egyptian Civil Code, and although the Egyptian Court of Cassation has ruled that the principle is that debts owed by the state to others, and debts owed by others to the state, are subject to the prescription rules outlined in the Civil Code," However, the administrative judiciary has expressed reservations regarding the application of the statute of limitations prescribed in the civil code to administrative lawsuits. Despite these reservations, the administrative judiciary applies those rules to claims for compensation filed against the administration. In this regard, the Supreme Administrative Court has ruled that "the case law of this court has established that while the civil code provisions were originally designed to govern private law relations and do not automatically apply to public law relations, the administrative judiciary may apply those provisions insofar as they are compatible with the principles of public law, and it may adapt them to ensure compatibility. Therefore, the civil code's statute of limitations provisions are not entirely disregarded, but are applied within the scope of public law relationships to the extent that they are consistent with the nature of these relationships."

Since the State Council Law does not specify time limits for filing lawsuits in administrative disputes under its jurisdiction, except for requests for annulment (which are subject to a 60-day time limit as specified), other types of claims can be filed as long as the right being claimed has not expired due to the statute of limitations under the civil code, provided that no specific provision in the State Council Law contradicts these rules. Although the civil code outlines various types of long-term or short-term statutes of limitations, this categorization does not override the general principle that the long-term statute of limitations is the basic rule governing the expiration of rights due to non-claim."

As for the time limit for filing a compensation claim under French law, according to the principle of respecting previous decisions, the injured party is required to request compensation from the administration for the damages resulting from the execution of the defective decision before

resorting to filing a compensation lawsuit. The judicial appeal period begins from the date the administration's refusal response is issued to the foreigner, with a two-month period. This means that the judicial appeal period starts when the administration issues a clear response. However, if the administration does not issue a clear decision, the silence of the administration for a period of four months is considered an implicit rejection decision.

In all cases, the foreigner must submit their compensation request to the administration within four years from the time the damage occurred or ended, with the calculation starting from the foreigner's return to France. As a result, the compensation claim is subject to a statute of limitations of four years. The foreigner cannot directly approach the court unless they first follow the administrative appeal process, where they must submit a request to the administrative authority for compensation. This appeal serves as a prelude to reconciliation between the foreigner and the administration. If the administration responds with a refusal, the foreigner has the right to file a judicial appeal within two months of being notified of the decision. It should be noted that the foreigner has the right to request compensation from the administration within four years from the time the damage occurred, in accordance with the law of 1831 as amended by the law of 1968..

## **2. Conclusion:**

### **First: Results**

1. Regarding the time limit for filing a lawsuit to cancel a deportation decision, under Egyptian legislation, a person who has been subject to an administrative decision can file a lawsuit for cancellation within 60 days from the date the decision is published or announced, without requiring a prior appeal, except in cases where the law provides for a specific provision. In contrast, the Iraqi legislator requires the individual to file an appeal against the decision within 30 days of its issuance. They cannot file a lawsuit for cancellation until the administration has reviewed the appeal or 30 days have passed since its submission.

2. The jurisdiction of the Iraqi Administrative Court to rule on the validity of orders and decisions related to deportation was established following the amendment of Law No. 17 of 2013 on the Iraqi State Council.

3. Both Egypt and Iraq practice judicial oversight over administrative decisions issued by the administration, including those concerning foreigners. These decisions are considered administrative acts taken by the government through the relevant authorities in the exercise of their administrative functions, not as acts of judgment. This does not diminish the state's right to regulate the status of foreigners and deport those whose actions and behaviors it deems to be contrary to its interests.

4. The issue of considering deportation decisions as acts of sovereignty has ceased to arise, as both the Egyptian and Iraqi constitutions no longer distinguish administrative acts or decisions as sovereign acts.

### 3. Recommendations:

1. A new provision should be enacted in both Egyptian and Iraqi laws to regulate human rights guarantees for those subject to deportation, similar to the French law.
2. We recommend that the Iraqi legislator grant the administrative judiciary the jurisdiction to hear compensation claims as a primary responsibility, establishing a strong shield for rights and freedoms against administrative control and authority.
3. The foreigner has the right to request compensation from the administration within four years of the time the damage occurred, according to the law of 1831 amended by the law of 1968.

### WORKS CITED

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The Holy Quran

#### Arabic Books:

1. Anwar, Ahmed. *\*Al-Waseet fi Al-Qada' Al-Idari\**, Dar Al-Nahda Al-Arabiya, Cairo, 2003.
2. Ibrahim Al-Munji, *\*Dawwa' Al-Ta'weez Al-Idari\**, Manshat Al-Ma'arif, Alexandria, 2006.
3. Al-Mahna, Karim. *\*Al-Raqabah Al-Qada'iyah 'Ala Qararat Al-Ibdah Wal-Tarhil Al-Khasa Bil-Ajanib\**, Dar Al-Fikr Wal-Qanun, Mansoura, 2016.
4. Hisham, Ali. *\*Al-Jinsiyya Wal-Mawatin Wa-Markaz Al-Ajanib\**, Volume 2, Center for Foreigners, Manshat Al-Ma'arif, Alexandria, 1977.
5. Hamad, Abdulhamid. *\*Al-Qada' Al-Idari: Dirasah Muqaranah\**, Dar Al-Thaqafa Al-Arabiya, Cairo, 1988.
6. Georgi, Shafiq. *\*Mas'uliyat Al-Dawla 'An A'mal Sultanatiha: Qada' Al-Ta'weez\**, Dar Al-Nahda Al-Arabiya, Cairo, 2002.
7. Ghazi Faisal, Wa'adnan 'Ajil. *\*Al-Qada' Al-Idari\**, 2nd Edition, Al-Nibras Printing, Publishing, and Distribution, Najaf, Iraq, 2013.

#### Theses and Dissertations:

1. Amal, Lotfi. *\*Al-Raqabah Al-Qada'iyah 'Ala Qararat Al-Dabt Al-Khasa Bil-Ajanib: Dirasah Muqaranah\**, PhD Dissertation, Faculty of Law, Helwan University, 2004.
2. Rafah, Karim. *\*Dawwa' Al-Ta'weez 'An Al-Qararat Al-Idariyah Ghair Al-Mashru'a: Dirasah Muqaranah\**, PhD Dissertation, Faculty of Law, University of Baghdad, 2007.