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Judicial oversight and the impact of laws to prevent liability

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Abstract. This research deals with a very important topic which is the effect of laws lifting "the prevention of liability on judicial supervision, especially that of Jordan. The comparison countries had issued these laws to prevent the accountability of their members who were exercising the extraordinary powers conferred upon them by the constitution or laws. These laws were a barrier to prevent the authorities' officials from being held accountable for any mistakes they made with or without intent. This research deals with the position of the judiciary in Jordan regarding these laws, as they are laws that prohibit from resorting to the judiciary to prove the damage suffered and compensated for it. It was, the position of the judiciary in Jordan at its beginning does not subject these actions to the supervision of the judiciary since the laws to prevent liability prevented that. The position of the judiciary in Jordan has evolved as these actions were subjected to its control, in order to protect the principle of legality, as the authorities took advantage of these laws on the pretext of defending the kingdom to justify their actions, and if there was a reservation to the jurisprudence of the Jordanian judiciary, which subjected these actions to its control, but in the event of defending the kingdom, it would remove it from its control. The importance of studying Judicial oversight of the administration's work is one of the most important guarantees of the principle of legality, whether in ordinary or exceptional circumstances. However, by looking at the administration's work in exceptional circumstances, it was noted that the authorities have issued legislation that works to protect it from judicial control, and this is dangerous. Its seriousness shows that, in the circumstances, the administrative authorities do not mean that the principle of legality is completely abolished, but rather that this principle expands to serve the protection of states from the dangers they face. Hence the importance of this study emerged to clarify the position of the judiciary in Jordan and the comparative countries regarding this legislation and how it affects the right of individuals to resort to the judiciary to protect their rights, especially if the administration misuses these authorities. As for the position of the French judiciary, we find that it has completely exhausted these actions, as they are not subject to judicial supervision. The position of the Egyptian Constitutional Court is clear, as it went to the unconstitutionality of fortified legislation for administrative capabilities, and this is the position of the Administrative Judicial Court in Egypt, which was violated by the Supreme Administrative Court in Egypt. A number of recommendations and results have been reached which we hope to adopt. The problematic of the study Determine the effectiveness of the judicial supervision of the administration's actions in light of the issuance of laws to prevent liability, and does the judiciary impose its control on all the administration's actions under these laws? How many criteria are the judiciary adopting to govern the administration's actions under the laws to prevent liability from its control?

Keywords. judicial oversight, laws, liability

Introduction

The authority based on martial law or the state of emergency is accustomed to issuing legislation that works to prevent the judiciary from considering its actions that are in implementation of the customary law, and that is either during the establishment of exceptional circumstances or after its expiry meaning that it prevents individuals from resorting to the judiciary to challenge their exceptional authority Authorized to it according to the texts governing the exceptional circumstances ().

The most dangerous thing that the legislative or executive authority usually does regarding a state of emergency is what it issues from laws or instructions called the laws of inclusive (laws of lifting responsibility) even though the correctness of its name in estimating some of them should be the laws of exemptions from implications ().

This is because this immunization according to these laws will inevitably lead to the inability of any victim to resort to the judiciary, in the event that those who implement martial law or the state of emergency exceed their competences entrusted to them under exceptional circumstances.

The Raising the Liability Law or the Implications Law is defined as legislation whose purpose is to legitimize actions that were at the time of their unlawful act, and to exempt the persons who are subject to them from the responsibility of assaulting the law, and this is what Jordan and other countries followed like France and Egypt, and that was in times of declaring martial law and a state Emergency.

The methods of immunization vary and its extent varies, it may be partially preventing the appeal of cancellation or requesting the suspension of the implementation of the administrative decision only, so individuals are permitted to even seek compensation for the damage caused by the immune decision, and it may be totally, thus giving the administrative decision total immunity, whether in terms of cancellation or suspension of execution or Compensation, and it may be an absolute immunization, as it stipulates that the decision may not be appealed in any way of appeal before any judicial or administrative authority, and the immunization may be proportional, that is, with regard to preventing the appeal of the decision before the judiciary with the assignment of jurisdiction in relation to it to an administrative authority or committee, In terms of the immunization tool, it may be either by a law issued by the legislative authority, and this is the overwhelming majority, and it may be inferior to the law, such as regular systems such as customary management instructions in Jordan .

In this paper, I will discuss the position of the judiciary in Jordan and the comparative judiciary regarding these legislations. To determine the impact of these laws on the right of individuals to seek legal redress when they are harmed through two topics:

The first topic

The position of the Jordanian judiciary regarding the law of removing liability

The Jordanian constitutional legislator dealt with the issue of laws of lifting responsibility in the Jordanian constitution, where he stipulated in the second paragraph of Article 125: “When declaring martial law, the king may issue, by virtue of a royal will, any instructions that may be necessary in order to defend the Kingdom regardless of the provisions of any applicable law. With it, all persons who implement these instructions remain subject to the legal responsibility of their actions vis-à-vis the provisions of the laws until they are exempted from that responsibility by a special law set for this purpose. ”

The text of Article 125/2 of the Jordanian constitution did not excuse at the beginning any person based on the implementation of the instructions of customary administration, but rather

assigned them a legal responsibility towards their actions, but in the same article, the Jordanian constitutional legislator allowed them to be exempted from this responsibility under a special law set for this purpose, which is what In Jordan, it is known as the law of lifting responsibility. This constitutional text is considered the basis for the exemption laws, in order to cover the actions or actions of everyone who was based on the application of martial law.

Laws to raise responsibility have been issued in Jordan, especially after the end of martial law or martyrdom twice, namely:

1. The Liability Lifting Law No. 42 of 1958.
2. The Liability Lifting Law No. 2 of 1992.

Article 3 of the Defense Law No. 2 of 1992 stipulates: "All civil and military employees, as well as all other persons who assumed the implementation of martial administration's instructions or were related to their implementation at any time during the period in which martial law was in effect were exempt from any legal liability." Arises or results from their actions in accordance with the provisions of the laws and regulations in force. This is also stated in Article 3 of the Law of Lifting Liability No. 42 of 1958.

The Jordanian jurisprudence criticized these legislations. The decisions issued by the martial administration are subject to the principle of legitimacy, and therefore it must be subject to the law that it was issued to achieve the goal for which martial law was announced for it, and therefore if the general military ruler or one of the local military rulers uses the powers conferred upon him by these legislation Exceptions, other than for the purposes of defending the country and maintaining its security and safety, its decisions were unlawful, even if there were legislation that would protect them from being challenged in any way.

The researchers believe that this immunization, which all people who have implemented martial law directives with it, deprives individuals of the right to resort to the judiciary, when they feel that their rights have been violated during the period of martial law, and the aim of these measures was not to protect the country, and as is known, the right Litigation is a constitutional right, and individuals may not be deprived of it. Preventing individuals from resorting to the judiciary leads to encouraging those in charge of the implementation of martial law instructions to violate individuals' rights and freedoms, since there is no judicial oversight of their actions according to laws that raise liability, so the administration's actions and actions should not be Safe from judicial control.

As for the position of the Jordanian High Court of Justice (the Administrative Court at present) regarding the immunization of the administration's actions according to the laws of lifting responsibility, it went through two stages, namely:

The first stage: The Jordanian Supreme Court of Justice took the "negative position" regarding the martial law instructions of 1957, and these instructions were not subject to its judicial control. Martial administration instructions were issued for the first time in Jordan in 1957, following the failed military coup, which was aimed at To overthrow the government.

The Supreme Court of Justice recognized the immunization contained in Article 20 of the Customary Administration Instructions Act of 1957 from Judicial Oversight, and this is clear from its ruling issued in 1959, where it ruled: "Customary Instruction Instructions No. 1/1957 have removed the jurisdiction of the Supreme Court of Justice from consideration of Appeals related to the administrative decisions stipulated in Article 10/3 of the Law on the Formation of Regular Courts, except for paragraphs A and B, so that they are prohibited from these appeals for the duration of the provisions of these instructions.

In another ruling of the Jordanian Supreme Court of Justice (currently administrative) in which its negative attitude towards judicial oversight of martial law directives confirms its rulings:

“Article 20 of Martial Administration Instructions No. 1/57 considered administrative decisions issued on matters outside the limits of Paragraphs A, B of Article 10/3 of the Law on the Formation of Regular Courts not subject to appeal before the Court of Justice during the entry into force of the aforementioned instructions, and the Court adds in this decision that the general rules stipulate that every new law does not have an impact on the past if its application affects the rights acquired according to The old law ... The administration with regard to administrative decisions issued during the application of martial law directives has an acquired right that is not subject to these decisions being canceled before any judicial authority in accordance with these instructions ”().

In another decision of the Jordanian High Court of Justice (the Administrative Court today) it affirms that even if a new law is issued that allows challenging the actions of the administration issued in implementation of the customary administration's instructions, this does not lead to its application to the decision that was not subject to the challenge at the time it was issued as it decided: " It is recognized that it is a jurisprudence and a judgment that if a decision was issued and was not subject to appeal according to the law in force at the time it was issued, then a law was passed authorizing the appeal, then this law does not apply

On this decision; Because the general rules stipulate that every law issued must not have an impact on the facts that took place before it was announced under the provisions of another law, and the new law should not have an impact on the past if its enforcement affects rights acquired under the old law, ... no dispute In that the administration, with regard to administrative decisions issued during the validity of the martial law’s instructions, has an acquired right that is not subject to these decisions being canceled before any judicial authority according to these instructions ”.

A part of the jurisprudence was surprised by the position of the Supreme Court of Justice (currently administrative) that in this exceptional and dangerous circumstance it was its duty to guard against such legislations that protect administrative decisions from being finally challenged in any way and with any reference, regardless of the purpose or purpose of this. The measures and decisions, and the extent of their compatibility with the constitutional text and the same customary instructions, which means giving the executive authority a free hand so that it overlooks the rights and freedoms of individuals on the one hand, and the hand of the judiciary over the control of such actions and behaviors on the other hand.

The second stage: It is the stage that was considered a development in the position of the Jordanian High Court of Justice (the current administrative court) in terms of subjecting the martial law to its control, and ruled that article 20 of the martial law instructions was unconstitutional in the event that those actions were not related to the defense of the Kingdom, and the concept of violation If the measures and measures taken by the administration in light of the martial law instructions relate to the defense of the Kingdom, then the Jordanian Supreme Court of Justice is not competent to consider any appeal submitted to it within this framework, as it deviates from its competence.

In a decision issued on 10/27/1991, it ruled, "... the Supreme Court of Justice decided that the text of Article Five of the martial law instructions, its application is limited to cases that are the subject of appeal against the decisions of the Economic Security Committee, as it is one of the pillars on which it depends." To defend the Kingdom, and unless the ordinary laws have dealt with it satisfactorily, and for decisions not related to these purposes, the court’s jurisdiction to consider requesting its abolition remains in place. ”()

In another decision, the Jordanian Supreme Court of Justice (currently administrative) ruled that: “The jurisprudence of the Supreme Court of Justice has established that the provision of Article 20 of the customary administration’s instructions for the year 1967 that deprived the

jurisdiction of the Court of Justice to consider requests to cancel administrative decisions, whether issued for defense purposes or otherwise is Unconstitutional and only operates in the case in which decisions are issued to achieve the purposes stipulated in the third paragraph of the constitution, which are the purposes of defending the kingdom ... It is learned from the provisions of the Defense Law of 1935 that actions that affect the defense of the Kingdom include any activity that violates the integrity of the state And its internal or external security, or damage to any of its public facilities, according to this

It is the idea of maintaining public authority and security that represents the true, true standard on which the exceptional measures stipulated in this law are based ... pursuant to Article 4 of Martial Administration Instructions No. 4 of 1970, the decision issued by the military governor to dismiss an employee if he is convinced that he has An activity that affects the internal or external security of the state is not subject to appeal before the Supreme Court of Justice in accordance with Article IV of Martial Administration Instructions No. 4 of 1970 ”.

Another of the decisions of the Jordanian High Court of Justice, which confirms the development of its position from the negative to the positive attitude, is its decision that eliminated the stability of ijthad, that the provision of Article 20 of the martial law's instructions is applicable in terms of depriving the jurisdiction of the High Court of Justice of considering the cancellation of administrative decisions, in the case that In these decisions are issued for the purposes of defending the Kingdom stipulated in Article 125 of the Constitution, to which martial law was issued based on it. If the grounds on which the contested decision is based relate to the purposes stipulated in Article 125/2 of the Constitution, the Supreme Court of Justice is not It is competent to hear the case, but if for reasons unrelated to this purpose, the court is competent to hear the case.

The Jordanian Supreme Court of Justice (currently administrative) has also confirmed that it is competent in the case brought before it as it does not relate to the defense of the Kingdom, and therefore does not apply to it the text of Article 20 of the customary administration's instructions where the ruling ruled: “The mere cracking of a paid building does not go into the concept of issues Relating to the defense of the Kingdom, but it is one of the cases that require the taking of the normal procedures stipulated in the Municipalities Law and the City and Village Organization Law No. 79 of 1961, and the system of building demolitions within the Capital District No. 2 of 1961, which are projects that allow evacuation of cracked buildings ..., a court High justice in the consideration of the case as long as the contested action taken according to the instructions of the martial administration is not related to the defense of the Kingdom.

Likewise, the Jordanian High Court of Justice affirmed that “the rule is that the cancellation action is one of the pillars of the administrative law, and an effective guarantee to protect employees and individuals from the administration's violation of the principle of legality, and that the scope of the said rule's actions is in a case where no text was found stealing the jurisdiction of the Supreme Court of Justice.” Pursuant to the provision of Article (100) of the constitution, which stipulates that the law determines the jurisdiction of the courts, and in application of the legal principle that (the judiciary adheres to time and space and excludes some deductions).

The High Court of Justice added by the same ruling that Article 20 of the customary administration's instructions stipulated the denial of the jurisdiction of the Supreme Court of Justice in examining the cases stipulated in the third paragraph of Article X of the Law on the Formation of Regular Courts except for those stipulated in items A and B of them.

She emphasized the stability of the jurisprudence of the Supreme Court of Justice in its public body, as is evident from Resolution No. 44 of 1967 and resolutions No. 76/1956, 26/1967, 4/1969, 81/1969 that the provision of Article 20 of the martial law instructions is applicable in terms of deprivation of jurisdiction. The Supreme Court of Justice examines requests to cancel administrative decisions in the case in which these decisions are issued for the purpose of defending the Kingdom stipulated in Article 125 of the Constitution to which customary management instructions have been issued based on it.

The High Court of Justice justifies the denial of jurisdiction by stipulating its ruling No. 41/1974 when he challenged the unconstitutionality of immunizing administrative decisions issued by the administration in implementation of the directives of customary administration, since this wastes an important constitutional right which is the right to resort to the judiciary, so deprivation of this right is not permissible, as it ruled: ". .. It is, although it is not permissible from the constitutional point of view to deprive all people of resorting to the judiciary for fairness, because that is the confiscation of the right to litigation, which is a right guaranteed by the constitution in its origin, but it is not permissible to confuse this matter with defining the jurisdiction of the judiciary by expanding or narrowing because the constitutional texts require That the law is the one that arranges the judicial authorities and assigns their competencies pursuant to Article 100 thereof, and on this constitutional basis, enlarged or restricted legislation has been issued for the jurisdiction of the judiciary, and there is no suspicion in the constitutionality of these legislations as long as this law is the instrument that by virtue of the constitution defines the jurisdiction of the judiciary and this principle has established the legal rule It says (The judiciary specializes in time and space and excludes some of the deductions) . The researchers see through a review of some of the rulings of the Supreme Court of Justice that dealt with the fortification of management decisions and actions according to the following customary management instructions:

1) The position of the Jordanian Supreme Court of Justice (the Administrative Court is currently) is contradictory, as it is in all the provisions that mentioned that the immunization laws are unconstitutional, but that it returns and recognizes its constitutionality when it comes to defending the kingdom, as the court exits these actions from its control and defends the kingdom is the argument that justifies it. The administration to justify its actions to be outside the scope of the judicial supervision of the Jordanian High Court of Justice (the Administrative Court is currently).

2) By reviewing these rulings, I did not find a clear standard on which the Jordanian High Court of Justice (the Administrative Court is currently based) in determining what is defending the kingdom's defense, and what is the opposite, because its decisions were general and limited to mentioning that the matter that affects defense On behalf of the Kingdom, it deviates from its jurisdiction, and the one who does not affect the defense of the Kingdom comes within its jurisdiction, so it was her duty to define the concept of prejudicing the defense of the Kingdom.

3) The Jordanian legislator, as well as the Egyptian, took a method of raising the responsibility, or what is called in the comparative legislation, "implications" from the English legislator. The English legislator issued such legislations after the end of the First World War with the intention of protecting the illegal administration's actions from challenging it, except that That was before England took the previous method of organizing the state of emergency, so it was natural for the English legislator to abandon this method.

After its issuance in the 1920 Emergency Law (), and the question arises, what is the reason for issuing such legislation in Jordan? Although Jordanian legislation covers all procedures and measures of customary administration, these laws that raise responsibility for people who

implement martial law or a state of emergency deny individuals access to justice, which protects individuals' rights and freedoms from being violated.

4) The martial administration's instructions are issued by the executive authority, and the administration puts in these instructions what fortifies its decisions, as it establishes itself as a legislator in place of the legislative authority, and this is extremely dangerous, as it attacks the jurisdiction of the legislative authority that has inherent jurisdiction over the legislation, which was repealed by issuing Law on Lifting Liability No. 2 of 1992. This law was, of course, at the request of the executive authority.

5) The researchers go with the opinion of one side of the jurisprudence (), which holds that estimating the responsibility of these people on the one hand and excusing them on the other hand is required by wisdom and logic. Thus, they deviate from the desired goal, and at the same time they must be relieved of responsibility as long as their procedures and procedures are sound and so as not to fail in the performance of their duties.

The second topic

The position of the judiciary in France and Egypt regarding laws

Disclaimers of liability "implications laws".

The first requirement: the position of the French judiciary:

The position of the French State Council regarding these legislations has developed (). The State Council has gone in its interpretation of the legislator's will for texts that make administration actions or actions in exceptional circumstances immune, that they cannot be excluded from the challenge of annulment, and this position indicates that the State Council in France played its important role, which is to protect the rights and freedoms of individuals from being violated under the pretext of the existence of laws to fortify the work of the administration. As for the French jurisprudence, it was strongly opposed to its danger to the rights and freedoms of individuals.

The position of the Council of State on these laws is explained by its provisions, "In its ruling in the (Lamotte) () case issued on February 17, 1950, where the facts of this ruling are that there is a law issued by the French government related to the privileges of abandoned lands. The law stipulated that The decision to grant the concession is not subject to appeal, whether an administrative appeal or a judicial challenge by any landlord.

As a result of that law, one of the women filed and called (Lamott) an appeal against the decision to grant the concession, so the administration submitted its payment, which included the fact that the judiciary does not have jurisdiction over this appeal, since it is not subject to the appeal under the Abandoned Land Concessions Law, but the French State Council rejected this payment by saying "The law The former did not exclude directly the appeal to transgress the authority before the Council of State ... It is an appeal available even without a text against any administrative action, to ensure respect for the principle of legality, and in accordance with the general principles of law.

Among the rulings issued by the French State Council that support the previous ruling is its ruling, which states that "in the absence of the explicit text in the law or the statement specified in the preparatory work, to deny every right to compensation that deserves the result of these provisions that the law corrected, the responsibility of the state can be decided On the basis of the principle of equality of citizens against public burdens"().

The researchers believe that the direction of the State Council puts an end to the illegal administration's actions, which it may undertake under the pretext that its actions are protected by law, and this leads - if these actions are outside the control of the judiciary - to disastrous

consequences that threaten the rights and freedoms of individuals, for the French State Council stood in the face of These laws are subject to his control, and he determines whether they are valid or not and deserve to be repealed.

The second requirement: the position of the Egyptian judiciary:

Egypt has known the laws of raising responsibility “the laws of inclusions” through the English system, and the first law of inclusions was issued in 1920 after the martial law assumed by the occupying power, and therefore this law came before the entry into force of the constitution (the constitution of 1923) and before the issuance of the martial law, since The commander-in-chief of the British forces in Egypt at the time needed a law of implications that protects him from full responsibility, as he was not based in his exercise of the authority of martial law to any legislation regulating it, and then all his actions were contrary to the general law, and from this the need arose to excuse him of responsibility by special legislation Familiar with the English implicit laws. ()

As for the position of the State Council in Egypt, regarding the laws of inclusions, the Administrative Judicial Court had a clear position towards these laws as unconstitutional laws, while the Supreme Administrative Court in Egypt considered them constitutional and that it defines the jurisdiction of the judiciary and does not abolish it, and the position of the Administrative Judicial Court appears through its ruling issued in The dispute regarding the laws of inclusions, and that was on the occasion of the decree of Law No. 64 of 1952 and its ruling ruled (): “In terms of the decree of the law on which the government relies to prevent hearing the case, this request requires that you not hear before any judicial authority any lawsuit, request or payment It is intended to challenge any declaration, behavior, order, measure or decision, and in general any action ordered or assumed by the authority responsible for making martial law or its delegates, whether this appeal is directly by calling for nullification, withdrawal, amendment, or cessation of the thing Or, the appeal was directly through a claim for compensation, set-off, acquittal, or the obligation to return money, or to recover it, recover it, or due it, or in any other way.

The court adds that prohibiting the hearing of any action or order or decisions issued by the authority responsible for making martial law - as required by Decree Law No. 64 of 1952 - is an exemption for this authority from any liability arising from its actions that violate the martial law itself, and exempting the public authority exempt Absolutely from every responsibility already fulfilled on its part, which would violate the rights of individuals to freedom, equality, costs and duties, so the decree of the aforementioned law will be in violation in this regard to the provisions of the Constitution.

The court adds that it was evident from all of this that the decree of the law on which the government relies on preventing hearing the case included provisions that contradict the constitution ... What breaks in that is that the constitution did not provide for martial law except for an exceptional system restricted by drawing the law has limits that it cannot exceed, and sets for it Restrictions that cannot be dissolved from them ... and placing restrictions on these powers are what are required to maintain public order and security.

The court also adds that the martial law, if it had unleashed the military ruler from every restriction and his powers to an extent, and allowed him any action that went against a law that is inconsistent with the constitution, which he contradicted very much, and for this purpose it would be invalid.

The court adds that in terms of the martial law in Egypt, it is a previous legislation to face these exceptional cases, so combining it with the laws of inclusions is surprising, and the martial law should replace the law of implications.

And the court adds ... in terms of saying otherwise, and that the law of inclusions exempt the military ruler from liability for actions in which he exceeded the limits of his jurisdiction, or committed it in bad faith that would destroy upside down what the constitution wanted to limit martial law to limits that cannot be violated, and when the legislator drew These limits imposed on the military ruler not to cross them directly, so it is not correct after that to allow him to cross them indirectly, by relieving him of the responsibility if he exceeds them.

The court concludes that the Implications Law does not exempt the military ruler except from compensation for work in which he did not exceed the limits of jurisdiction, and his mistake was an unintended mistake, and it is not permissible to say after that with the aforementioned explanatory note that the exemption of the military ruler from liability is a matter that saves the same nature And the requirements of martial law, it is not permissible to say so, otherwise there is no need to issue the law of inclusions after the end of martial law, which exempts the government from responsibility for actions of its nature, and from the requirements of its characteristics, actions that do not entail any responsibility.

The court concludes that: It is permissible if the law of inclusions exempts the military ruler from compensation for an action in which an unintended error is mistaken, then this work remains with that unlawful work, and all that the law of inclusions will exemplify is to exempt its owner from compensation for it, and in that it is By applying these rules to the legislation that the government relies on to prevent the lawsuit from being heard.

It turns out that this legislation on which the government relies to prevent hearing the case is nothing more than a copy of the laws of implications, preempting accidents and came prematurely before the demise of martial law, and entrusting the laws of implications to be subsequent to the disappearance of these provisions, to exempt the authority that was based on its conduct from Compensation for liability arising from its unlawful actions.

Finally, the court concludes that the previous legislation cannot have more value than the previous legislation, and then its effect is limited to the assumption that Parliament decided it, to exempt the military ruler from compensation for a decision made by an unintended error, and the decision remains an illegal act. It is not permissible for a military ruler to proceed with it or remain on it. If it is not amended, it may be challenged with cancellation and it may be requested to stop its implementation.

It follows from this decision:

1- That the Administrative Judicial Court in Egypt did not agree or endorse the laws of inclusions, especially in terms of exempting the public authority from all responsibility and considered that this wastes the rights and freedoms of individuals.

2- The court recognizes that the martial law system is an exceptional system, bound by the constitution and the law, and as such should not violate them, especially the constitution. If this happens, the law is considered unconstitutional and without any hesitation, and the court is surprised by the combination of martial law and the law of implications, which in the court's opinion are exceptional legislation.

3- Depriving individuals of the right to litigate is a clear constitutional violation, since the constitution guarantees individuals the right to resort to the judiciary, so how can lower-level legislation come from the constitution and violate it ?!

4- The Administrative Judicial Court concluded that the law of inclusions does not exempt the person in charge of martial law except from compensation, for any action in which he did not exceed his jurisdiction and with an unintended error.

As for the position of the Supreme Administrative Court in Egypt, which ruled the constitutionality of this law, although it deprives individuals of recourse to the judiciary and is

a right guaranteed by the constitution, the direction of the Supreme Administrative Court appeared in its ruling that was issued in the appeal submitted by the Commissioners Commission, in the ruling Issued by the Administrative Judicial Court, which was referred to previously, and the judgment was issued on 12/7/1958 and decided to cancel the ruling of the Administrative Judicial Court, and not to hear the lawsuit and the constitutional decision of the law of inclusions, which was included in Article III of Law No. 270 of 1956.

And its ruling stated: "The aforementioned text has narrowed the jurisdiction of the judiciary, preventing it from looking at the disputes referred to in this text in a direct way, and in indirect ways, that is, whether through cancellation or compensation."

The court adds that this court has been judged in such a case, as there is no face to the text of unconstitutionality, claiming the confiscation of the right to litigate, as a distinction must be made between the absolute confiscation of the right to litigation in general and the determination of the jurisdiction of the court ...

The Supreme Administrative Court decided its position on the nature of the law of implications, as it decided: "It is in the supreme interest of the country to issue legislation to bring the curtain down on an exceptional case that has passed, and this is similar to the law of implications that was applied in the English Parliament on its status to make it illegal actions when they were issued, Legitimate and punishable acts that are not dealt with by punishment, and all this is in the interest of the public interest.

The researchers believe that the position of the Supreme Administrative Court in Egypt is contrary to the Egyptian constitution, whether the 1971 constitution and the 2014 constitution, as they stipulated the prohibition of immunization of any work or administrative decision from the supervision of the judiciary, and no person will be tried.

Except in front of his natural judge and exceptional courts prohibited () and the position of the Supreme Administrative Court was subjected to severe criticism of jurisprudence and their argument that the judiciary is open to everyone to resort to and without any immunization, so how can a judicial authority deprive them of it ?!

The Supreme Constitutional Court in Egypt went to the unconstitutionality of the immunized legislation of administrative decisions from challenging it in many of its rulings, including its ruling issued on 3/7/1976 which stipulated "When the plaintiff challenged the constitutionality of the first article of the President's decision in Law 99 of 1963 not to Accepting challenges to actions and measures taken by the authority responsible for implementing all orders issued to impose custody of the property and property of some persons, on the basis that this text includes the confiscation of the right to litigate in contravention of the text of Article 68 of the Constitution (1971) an action that violates the principle of equal citizenship of rights and therefore Articles 7, 167 of the Constitution (1971) stipulate the jurisdiction of the judiciary to settle disputes, and it generally contradicts the principle of the rule of law. The government has ruled that this appeal was issued during the emergence of the state of emergency and that it has the effect of disrupting the provisions of the constitution if necessary.

The court ruled in response to the appeal:

- The emergency system, even if it is an exceptional system, it is not an absolute system, but rather a constitutional system, the constitution established its basis, and the law defines its limits and controls.
- That if the judicial control over the constitutionality of the legislation does not extend to the regulation issued, given that the appropriateness of the legislation is the most specific

manifestation of the discretionary authority of the street, this does not give the hand of this authority ... which should not be contrary to the constitution.

- The omission of the Egyptian constitutions from 1956 to allow the constitution to be suspended when the state of emergency was established indicates that it renounced this ruling and did not allow any provision of the provisions of the constitution to be dropped even in the event of an emergency.

The position of the Supreme Constitutional Court clarifies that administrative decisions may not be immunized from any appeal and affirms their unconstitutionality .

Results

1: The laws to prevent liability aim to legitimize the actions carried out by the administration during exceptional circumstances in order to facilitate the task of the individuals who carry out its work.

2: These laws deprived individuals of the right to resort to the judiciary in the event of harm to them due to the administration's actions in exceptional circumstances.

3: The position of the administrative judiciary in Jordan (the Administrative Court) has evolved previously, as the administration's actions in such circumstances are subject to its control and set certain conditions until responsibility is lifted for the people who carried out these actions.

4: The position of the Administrative Court in Egypt differs from the position of the Supreme Administrative Court, where the first subjected these actions to judicial control despite the laws of lifting responsibility (implications) while the Supreme Administrative Court went to otherwise and in France the actions covered by the laws of raising responsibility were subject to judicial control.

Recommendations

1: Not to exclude any act of administration that is excluded from judicial oversight under the laws to remove liability (the implications of implications) from judicial oversight.

2: Not stipulating in the legislation any type of immunization, whether laws of lifting responsibility or laws of inclusions, as this constitutes an attack on the principle of legality.

Conclusion

Laws for lifting responsibility have a major impact on effective judicial oversight, and as we noted that these laws limited the effective role of judicial oversight of the administration's actions under exceptional circumstances, and individuals who were representing the state were excluded from any responsibility that entailed them because the administration was aiming with such laws to protect itself has no responsibility or absolute authority to deal with such circumstances.

Now, however, such laws have not been immune from judicial oversight of the actions that take place through them. Certain conditions must be fulfilled by the judiciary, in order to lift or prevent responsibility for any person who undertook an action of the authorities during these exceptional circumstances, and this was clear through Changing the position of the administrative judiciary in Jordan, which was raising the responsibility in absolute terms according to the laws of lifting the responsibility, and developing its position to impose this control and within certain conditions that the judiciary itself can confirm.

References

[1] The provisions of the Jordanian Administrative Court (formerly the High Justice).

[2] The provisions of the Egyptian Supreme Administrative and Administrative Court.

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