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# Organization Of The Administrative Judiciary In Iraq

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## Abstract

Until 1989, Iraq was one of the countries that implemented the Anglo-Saxon system (the unified judiciary) (1), that is, the system based on granting the ordinary judiciary general jurisdiction over all judicial disputes, unless it was excluded from it by a special provision, and disputes that arise between individuals themselves or between individuals are considered on the one hand. And the administrative authorities on the other hand, or between the administrative authorities with each other, whether the administrative authorities have acted in the matter at issue in the dispute as a public authority or as an ordinary individual or as any person of private law. A refuge from the arbitrariness of the administration or its infringement of a right he has or one of his freedoms without an existing right. (2)

**Keywords:** Organization, administrative judiciary, Iraq.

## Introduction

With the issuance of Law No. 106 of 1989, the Second Amendment Law of the State Shura Council Law No. 65 of 1979, an independent administrative judiciary was established for the first time in Iraq alongside the ordinary judiciary, and Iraq became one of the countries of the dual judicial system. Before this date, Iraq was known under Law 140 of 1977. They are called administrative courts, and they are courts that were specialized in examining disputes that arise between ministries, state institutions, and the socialist (public) sector. Distribution of jurisdiction within the ordinary judiciary. (4) And Law No. 106 of 1989 specified the Second Amendment Law of the State Shura Council Law No. (65 of 1979) in Article 1 (b) that a council called the State Shura Council be established administratively linked to the Ministry of Justice and be based in Baghdad and consist of a president, two vice-presidents and a number of advisors not less Twelve, and the number of assistant advisors does not exceed half the number of advisors). As for the formation of the State Consultative Council, it was stipulated (Item 1 of Article 2) of Law No. 106 of 1989 that (the council consists of the General Assembly, the Presidency, the Expanded Authority, the General Discipline Council, the Court of Administrative Justice, and a number of specialized bodies as needed). The instructions for the formations of the State Shura Council and its tasks No. 1 of 2006 in the first article thereof added to the formations of the Council the office of the Council President and the Secretary General of the Council. The Council exercises, through its bodies, its competences in the field of

fatwas and the drafting of laws. However, its judicial powers are exercised through the Court of Administrative Judiciary and the General Discipline Council, as well as the General Assembly of the Council in its capacity as a court of cassation for the provisions of the Administrative Court and the provisions of the General Discipline Council. (6)

## **Literature review**

### **The first requirement: the general body**

It consists of the president, his two deputies, and advisors. It is held under the chairmanship of the council president and, in his absence, under the chairmanship of his oldest deputy (7). The assistant advisors attend the meetings of the general assembly and participate in the discussion without the right to vote. (8) The general assembly takes its decisions by the majority of the number of members present. (9)

The General Assembly, as the highest body in the Council, works to unify principles and provisions and stabilize them with regard to the Council's jurisdiction in the field of codification and expressing an opinion on legal issues through its final review of draft laws completed by specialized bodies and through what the President refers to it from cases completed by specialized bodies if they include In the field of administrative judiciary, the General Authority exercises the jurisdiction of the Court of Cassation stipulated in the Civil Procedure Law when considering appeals against decisions issued by the Administrative Court and the General Disciplinary Council with regard to appeals arising from service rights. Civil service contained in Civil Service Law No. 24 of 1960 (amended) (10) and also works to respond to appeals related to decisions issued by the General Disciplinary Council that relate to appeals against disciplinary penalties, as they are considered final and do not accept the appeal as discrimination. Therefore, if a decision issued by the Council is challenged General discipline is related to the imposition of a disciplinary penalty. The General Authority of the State Shura Council will work to dismiss the case in form (11).

However, with the issuance of the Federal Supreme Court Law No. 30 of 2005, the decisions of the Administrative Judiciary Court became subject to appeal before the Federal Supreme Court (12), and pursuant to the provisions of Law No. 30 of 2005 in Iraq, the Court of Cassation ruled that (when examining the judgment in question, it was found that it was issued by the Administrative Court The provisions of which were subject to appeal to the General Assembly of the State Shura Council under the provisions of Article (7 / second / i) of the State Shura Council Law No. 65 of 1979, then the consideration of these appeals became the jurisdiction of the Federal Supreme Court according to Law No. 30 of 2005, meaning that the Court of Cassation The Federal Court is not competent to consider these appeals...) (13) This matter is not consistent with the legal reality, as it added a new jurisdiction to the Federal Court and made appeals against the decisions of the Administrative Court by a judicial body outside the administrative justice system in Iraq (14) and we add to that that the Iraqi constitution For the year 2005, he referred to the competences of the Federal Supreme Court in Article (93) thereof, and it was not among those competencies to consider the cassation appeal against the decisions of the

Administrative Judicial Court. This was considered as the beginning of a convincing attempt to abolish the administrative judiciary in Iraq, and return it to the unified judicial system. (15))

### **The second requirement: the presidency**

It was established by virtue of Law No. 106 of 1989 and consists of the president, his two deputies, and heads of specialized bodies. This body submits a report every six months, and whenever it considers it to the Presidential Court, it includes what judgments or research have shown of deficiencies or ambiguities in existing legislation, or cases of abuse of power by any party, From the administration authorities or those authorities exceeding their powers. (16)

Some believe that the above text must be amended because the current constitution of 2005 has made the powers of the President of the Republic ceremonial, nominal and not actual, because he explicitly embraces the parliamentary system. Therefore, it would be better to stipulate that the report be submitted to the Prime Ministry, given that the Council of Ministers is the head of the executive authority. He is the executor of public policy, and he is politically responsible to Parliament. (17)

It also submits a recommendation to promote the assistant counselor to a counsellor if the conditions specified in Article (20) are met, to the Minister of Justice or the Office of the Presidency of the Republic directly to issue a presidential decree in this regard (18) It also proposes the formation of other courts for administrative justice in the centers of the appellate regions, to be submitted to the Minister of Justice to issue a statement to that effect..

### **The third requirement: the specialized body**

Each specialized commission consists of a president with the title of advisor and a number of advisors and assistant advisors, provided that their percentage does not exceed one-third of the number of advisors. Each commission has a secretary with a first-level university degree in law and is linked to the chairperson of the commission. The Council. This specialized body is considered the first basic unit for the Council to exercise its advisory competences (19). These bodies are concerned with looking into what the Council President refers to from draft laws and issues presented to the Council for study and opinion thereon.

What the commission achieves in the field of rationing is subject to final review by the general assembly. As for legal advice, its opinion is subject to the endorsement of the chairman of the council or the general assembly if the chairman finds a reason for that, if one of the bodies approved a new principle, or if the council had a previous opinion that contradicts the new opinion, or If the commission assigned to study the case recommends that, or if the council chairman considers that the issue is of importance or constitutes an important principle. (20) The council chairman may also object to the opinion of the specialized commission and refer the matter to the expanded commission.

### **The fourth requirement: the expanded body**

It consists of two specialized commissions appointed by the president and convened under his chairmanship or under the chairmanship of one of his two deputies. Assistant advisors attend its meeting and participate in the discussion without the right to vote. (21) This commission meets when the speaker of the council and the specialized commission do not agree on a single opinion on matters other than draft laws (i.e. in the field of advice and opinion). Then the specialized commission meets under the chairmanship of the council president to discuss the matter again. If the decision is issued by agreement, it becomes final. But if the agreement is not reached, the president may refer the matter to the general assembly or refer it to a body formed from the relevant specialized body and another body appointed by the president from among the other specialized bodies to become (the expanded body) and issue a final decision by agreement or by majority. But if the votes are equal, the side with which the president votes will prevail. (22)

### **The fifth requirement: the General Disciplinary Council**

In accordance with Article (7/First) of the Second Amendment Law of the State Shura Council Law for the year No (106) of 1989, the Council consists of the Chairman of the State Shura Council as Chairman and members of the Shura Council (natural members) in it. Members of the Shura Council, and the president may delegate one of his deputies or one of the members of the council (however, the instructions for the formations of the State Shura Council and its tasks No. 1 of 2006 indicated in Article (5) thereof that the General Discipline Council convenes under the chairmanship of one of the deputies of the head of the State Shura Council or one of its members, and two members from The members of the Council are named by a decision of the Chairman of the Council). The uncontested decision of the General Council of Discipline and the decision of the General Assembly in the State Consultative Council issued as a result of the appeal shall be final and binding, Fact or judgment against decisions imposing disciplinary sanctions on them. And his authority regarding the appeal according to Article (15/First) of the Discipline Law for State and Public Sector Employees is: (24)

- 1- Rejecting the appeal in form, and the appeal is rejected in form if the grievance against the decision to impose the penalty was not made before the appeal was submitted, or if the appeal was not submitted before the Disciplinary Council within (30) days from the date of notifying the employee of the rejection of the grievance in fact or de jure
- 2- Approval of the contested decision if it is in accordance with the law.
- 3- Reducing the penalty, when the Board finds that there is a clear discrepancy between the employee's violation and the penalty imposed on him, as if this penalty is not proportional in terms of its severity to the seriousness and importance of the violation.
- 4- Cancellation of the penalty, if the Board finds that the decision to impose it is defective in any of the defects of the administrative decision, and the cancellation has a retroactive effect, i.e. removing the effects of the decision retroactively and counting it as if it did not exist from the date of its issuance.

That is, the Council, with its authority to approve the contested decision or reduce or cancel the penalty, it exercises the judgment of annulment and is competent to consider the legality of the contested decisions before it (25)

As for the other jurisdiction of the General Disciplinary Council, it is its competence to consider cases filed by state employees that relate to the rights of the civil service, and that the legal basis for this competence is Civil Service Law No. The Council extended its jurisdiction to consider cases related to rights arising from the application of other civil service laws as long as they fall within the legal position of the employee. Accordingly, the Council considered cases related to some decisions of the dissolved Revolutionary Command Council related to civil service rights (27). This was stipulated by the Service Law In Article (3/59) of it, the employee must file a lawsuit within thirty days from the date of notification of the contested decision if the employee is inside Iraq and within sixty days if the employee is outside Iraq, meaning that the employee was not required to complain about the decision before the administrative authority that issued it and he shall have the right to file the lawsuit directly. The Council has jurisdiction over these lawsuits, or the authority of the full judiciary, which does not stop at merely canceling the administrative decision, but rather arranges all the legal effects on that, so the Council has the right to amend the decision and compensate for the damages incurred by the plaintiff. (28)

### **The sixth requirement: the administrative court**

The establishment of the Administrative Judiciary Court by Law No. 106 of 1989 - the Second Amendment Law of the State Shura Council Law No. 65 of 1979 - was an important shift that was considered as a basic building block in the establishment of an administrative judiciary in Iraq despite the modest competencies granted to it, so it was hoped that these competencies would be expanded in the future However, the case was the opposite of that. Rather, competencies were taken from them (29) and were given to the ordinary judiciary, such as administrative contract disputes, and others that were immune from appeal before the Administrative Court, such as acts of sovereignty (and considered among the acts of sovereignty are the administrative decrees and decisions issued by the President of the Republic and the administrative decisions that are taken In implementation of the directives of the President of the Republic in accordance with his constitutional powers. And administrative decisions that the law provides a way to complain about, object to, or challenge. (30)

And according to the text of M (6 / first / a, b) of the instructions for the formations of the State Shura Council and its tasks No. 1 of 2006, the court is composed of a judge of the first class or an advisor in the State Shura Council, and two members of the judges whose class is not less than the second class of judges or one of the Assistant counselors in the Council, and judges of the first or second category may be delegated to the Administrative Court from those who are not delegated to the membership of the State Shura Council.

And according to the text of M (7 / second / d) of Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979, the Administrative Judicial

Court is competent to consider the validity of orders and administrative decisions issued by employees and bodies in state departments and the public sector after their enforcement. This law, in which no reference is appointed to appeal, based on an appeal from a known interest and a possible situation, yet the potential interest is sufficient if there is reason to fear harm to those concerned (and thus the law did not explain what those orders and decisions are and their types)(31)

Some jurisprudence believes that what is meant by the word “reference” in this text is the judicial reference rather than the administrative one. Therefore, the decisions that the law has specified an administrative reference for appeal are subject to the jurisdiction of the Administrative Court (10), while another aspect of jurisprudence went that what is meant by it is the administrative and judicial reference together. (32)

And to the jurisdiction of the Administrative Judiciary Court, the Court of Cassation in Iraq indicated in its decision that it stated (and since the prosecution had focused on requesting the removal of the company’s name from the black list, and since the removal of the company’s name was considered an administrative decision issued by the authority that issued it, and since the Administrative Court was competent to consider The validity of administrative orders and decisions issued by employees and bodies in state departments and the public sector for which no reference is appointed to challenge them pursuant to the provisions of (Article 7 / Second / D) of the State Shura Council Law No. 65 of 1979, so the Administrative Judiciary Court, and not the Court of First Instance, is competent to consider the case...)(33)

Paragraph (e) of the above article stated the reasons for the appeal in particular, as follows:

- 1- That the order or decision includes a breach or violation of the law, regulations or instructions.
- 2- The Court of Administrative Judiciary canceled in its judgment the decision issued by the administration refusing to own the house, the subject matter of the case, against the person against whom the increase was awarded (the plaintiff) because it was issued in violation of what the law required, and then it was marred by the defect of violating the law (34)
- 3- That the order or decision was issued contrary to the rules of jurisdiction or defective in its form.
- 4- The Administrative Judicial Court canceled an administrative decision to refer the bid, because the decision was marred by a defect in the form (35).

If the order or decision includes an error in the application of laws, regulations, or instructions, or in their interpretation, or in the abuse or abuse of authority, and it is considered as the rule of decisions and orders that may be appealed, the refusal or abstention of the employee or the bodies in the departments of the state and the public sector to take a decision or order whatsoever. They must take it legally.

The Administrative Judicial Court canceled the decision banning some people from participating in a public auction for the defendant’s district, because the banning decision was marred by the defect of abuse of power (36)

It also annulled the administrative decision issued by the authority concerned with concluding the contract, which included the administration's refusal to ratify the awarding decision for the auction that took place for the purpose of selling one of the houses belonging to it, after the court found that the rejection decision was issued as a result of an error in the application of the law, which is one of the grounds for appeal before this court. (37) The court, upon submitting the appeal, has the powers stipulated in Article (7 / II / I) of the Second Amendment Law of the State Shura Council Law No. 106 of 1989, which are:

Rejection of the case, if it was not submitted within the legally specified period, or if the court did not find any defect in the decision or administrative order that necessitated its cancellation, or if the appellant had no interest in the appeal.

Cancellation of the contested decision or order, if the court considers that the decision or order was marred by one of the defects of legality, and the revocation may be partially focused on some paragraphs of the decision if it is possible to fragment it, and it may be entirely focused on the entire decision.

Amendment of the contested decision or order, and here the court exercises the jurisdiction of the full judiciary, so it has the right to partially amend the decision or replace it with another.

Judgment for compensation, based on the plaintiff's requests, and thus it exercises its mandate in the full court, after it decides to cancel the unlawful decision, it rules for compensation, if it is required, but the request for compensation is not accepted from the plaintiff unless it is submitted in a dependent manner to the request to cancel the administrative decision (38).

Note that the jurisdiction of the court in the case of annulment or full judicial is dependent on the requests of the plaintiff himself, and the nature of the case. ()

This did not stipulate in the Second Amendment Law of the State Consultative Council Law No. 106 of 1989 the jurisdiction of the Administrative Court in the field of disputes related to administrative contracts. State Shura, as it was stated in it (...and that the Administrative Judiciary Court does not consider issues of administrative contracts, because it is within the jurisdiction of the ordinary judiciary (39))

As for the administrative decisions related to administrative and separable contracts, they are within the competence of the Administrative Court, as it was stated in the decision of the General Authority of the State Shura Council (that the defendant (distinguished) requests to overturn the decision of the Administrative Judicial Court, which requires annulment of the decision of the defendant (distinguished) Tareq Public and Private Company To cancel the referral decision on the pretext of the need for the sold materials, based on Law No. 32 of 1986 for the year 1986 (amended) on the sale and lease of state property. Because the defendant (the discriminator) was not convinced, he initiated an appeal against it with the General Assembly in the State Shura Council, and upon scrutiny and deliberation, it was found that the distinguished decision had He ruled in the lawsuit in accordance with the law, decided to ratify it and dismissed the cassation appeals (40).

So, the Court of Administrative Justice in Iraq was the one competent to hear appeals related to awarding decisions in tenders, but this situation was before the issuance of the (dissolved) Coalition Provisional Authority Order No. 87 of 2004, but after the order was issued, this order was stipulated in section (2/1/b/second) from him to set and adopt rules for an independent administrative court that is competent with complaints and disputes resulting from or related to the awarding of public contracts by the government, and based on the provisions of Paragraph (1) of Section (14) of that order, instructions for the implementation of public government contracts No. (1) for the year 2008 were issued (Amended) to indicate in Article 10 thereof the mechanism for resolving pre-contractual disputes and the parties to which objections and complaints are submitted by bidders, and we will show them successively:

### **1- Objections Committee**

According to Article (10/First/A) of the Instructions for the Implementation of Government Contracts in Iraq No. (1) for the year 2008 (amended), it is formed in each ministry an entity that is not linked to a ministry and the regions and governorates that are not organized in a region a central committee consisting of a group of experts and specialists and a rapporteur for the committee His job title is not less than observer and is linked to the competent minister or the governor or whomever he authorizes and looks into the objections and contractual complaints and in accordance with paragraph (b) of the above article, the committee studies the objections and written complaints submitted by the objecting bidders or their official agents who did not request the withdrawal of the initial bonds (20) Which are received by the competent contracting authority within (7) working days from the date of issuance of the referral letter and notified of it, and the recommendation is submitted to the competent minister or the head of the authority not linked to a ministry or the head of the contracting authority in the region and the governorates that are not organized in a region within a period not exceeding (15) days from the date of filing the complaint The contracting authority and the competent minister or governor must decide on the recommendation within (7) days. Failure to decide on the matter is considered a rejection of the objection when this period has passed.

The contractual authorities in the ministries and agencies not linked to a ministry, the region and the governorates that are not organized in a region in accordance with paragraph (c) of Article (ten / first) must wait in signing the contracts until the matter is resolved by the competent minister or the governor, taking into account the legal periods for considering complaints and stipulated It is stipulated in Paragraph (B) (Article Ten / First), provided that the objector submits an official undertaking to pay the value of the damages resulting in the interest of the contracting party for the delay in signing the contract for malicious or unjustified reasons.

What is noted on its formation is that the term “experts and specialists” was absolute and did not specify the type of expertise or specialization. What is issued by the committee in accordance with Article (10 / first / b) are non-binding recommendations to be decided upon by the competent minister or the head of the agency not linked to a ministry or the



head of the contracting authority. In the regions and governorates that are not organized in a region, the objection submitted by the bidders or their official agents is almost similar to a grievance of two degrees. It is submitted at the beginning to a committee and then submitted, along with the committee's recommendation, to the minister or the head of the agency not linked to a ministry or the head of the contracting authority in the regions, And the governorate that is not organized in the region of any presidential grievance.

## **2- Administrative Court**

It was stipulated for the establishment of this court in section (12/1 / c / first) of the dissolved Coalition Authority Order No. 87 of 2004, and the instructions for implementing government contracts No. (1) of 2008 (amended) came to be indicated in Article (ten / second / a, b) that its formation shall be by a decision of the Minister of Planning, and it shall be formed under the chairmanship of a judge assigned by the Supreme Judicial Council\* and the membership of a representative of the Ministry of Planning whose position is not less than a general manager and a representative of both the Federation of Iraqi Contractors and the Federation of Chambers of Commerce with experience and competence and it has a rapporteur entitled Observer at least, and it has The aforementioned instructions limited the court's function and specific jurisdiction under Article (10) to consider the objections of the bidders, then Clause III of the same article above came to explain that the objection of the bidders to the administrative court formed in the Ministry of Planning focuses on award decisions issued by ministries and agencies not associated with the Ministry And the regions and governorates that are not organized in a region within (7) days (41) official work starting from the date of the decision of the competent minister or the head of the agency not linked to a ministry or the head of the contracting authority in the region and the governorate that is not organized in a region with the subject of the complaint, then item IV of Article (Tenth) by stipulating that the court issues its decision on the subject of the complaint or objection within a period not exceeding (120) days starting from the date of payment of the legal fee.

Then came the text of (Item Sixth of Article 10) reiterating the jurisdiction of the court and affirming that it is competent with complaints and disputes resulting from or related to the award of public contracts by the government (42). What is clear from it is as if the Public Contracts Department in the Ministry of Planning issues controls for the court, and we do not know what kind of these courts are restricted by controls issued by an administrative authority as if it were a supreme authority over it, striking the principle of separation of powers. Based on the decisions of the Administrative Court, and based on that, it is the mistake that the legislator made when he assigned the court to the Ministry of Planning and he had to attach it to the Supreme Judicial Council and made its formation by a decision of the Minister of Planning, and this is contrary to the Iraqi constitution of 2005, which stipulates in (96) of it that (the law regulates the formation of The courts, their types, degrees, and specializations,...) Also, the formation of the court of four members will create problems, especially in the case of voting two against two, so do you think the side in which the president of the court is preferred? This is what the

instructions did not address, which leads to confusion and inaccuracy in the work of the court, particularly when it takes the necessary decisions within its jurisdiction. Therefore, the number of members of the court must be reconsidered and that it consist, for example, of a president and four members. It has a president, and it is known that the courts consist of judicial elements, while the legislator sufficed with regard to the administrative court with one judge as president. As for the members, they are representatives of different parties that could have been represented by a lawyer who defends their interests, or he could name it an administrative body (committee) with judicial jurisdiction. And if we look at the legal periods that it takes to submit the objection and decide on it, we find that this impedes the speedy implementation of the projects. As for the court's decisions, they do not accept the most severe appeal by cassation before the Cassation Commission in the Baghdad / Rusafa Federal Court of Appeal (44), otherwise they are final when the decision is not appealed. Within 30 days from the date of notification of the decision.

It can be said that the submission of the objection before this court is subject to the same conditions as the filing of the lawsuit in accordance with the provisions contained in this regard in the Civil Procedure Law No. (83) of 1969, as amended based on the text of Item Six of Article Ten of Instructions No. (1) of 2008 that (The court is guided by the Civil Procedure Law No. (83) of 1969 in everything that is not stipulated in these instructions...)

In addition to the general conditions of any lawsuit, the lawsuit filed before this court must meet another type of conditions specific to it, as stipulated in Instructions No. (1) for the year 2008 (amended), which is that the objection should be focused on the award decision in public tenders, and that the lawsuit be filed with this court Within the time limit drawn by the instructions, that is, the case that is filed before this court is a private administrative case. Accordingly, the Administrative Court concerned with government contracts indicated in its decision No. 7 / Administrative Planning / 2011 on 30/3/2011, in which it stated (...that this case is characterized That it is a private administrative lawsuit and it has two types of conditions, the first of which is the general conditions for any lawsuit according to what was stated in the Civil Procedure Law No. (83) of 1969 as amended, and the second condition is specific to it and the decree of instructions No. (1) of 2008, which is that the objection is focused on the award decision in tenders and that the lawsuit be filed with this court within the time limit drawn by the instructions...).

It is worth noting that the court sometimes considers some errors related to the price of tender.

Among that was what came in its decision on 10/12/2011 (...the court found that the plaintiff, with his bid submitted to the defendant, included different prices for the bid paragraphs, meaning that the plaintiff set more than one price for one paragraph, and then the Bids Analysis Committee when it determined the award price The total amount is (483080000) million dinars and not (000 599000) million dinars, as it has taken into account the provisions of the General Government Contracts Law and its implementation instructions No. (1) for the year 2008... It must be what was recommended by the Objections Committee and endorsed by the defendant in addition to his job that the

referral to the plaintiff at a lower rate Prices, that is, according to the lowest price for each paragraph that has its support from the rule of law, so the court decided to dismiss the case...)(45)

Note that the Administrative Court concerned with public contracts, in some of its decisions, violated what was stated in the instructions for implementing government contracts No. 1 of 2008, and we will quote some incorrect decisions issued by the Administrative Court, which were a reason for their cassation by the Cassation Commission in the Court of Appeal, including:

In a decision of the Administrative Court issued in Case No. (6 / Administrative Planning / 2008), the court did not notice that the company (MM) represented by its authorized manager / in addition to his job had filed the case with the Administrative Court on 7/23/2008 although the Objections Review Committee and Contractual complaints formed under Paragraph (a) of Article (10/First) of the Government Contract Implementation Instructions No. (1) for the year 2008 recommended that the project be referred to the objecting company (A Company) and the recommendation was accompanied by the approval of the Governorate of Babylon on (17/4/2008) And since the third paragraph of the aforementioned article allowed the bidders to object to the award decisions within (7) official working days starting from the date of the decision of the competent minister or the head of the agency not linked to a ministry or the head of the contracting authority in the regions or governorates that are not organized in a region, according to which the objection case is made It was filed after the expiration of the aforementioned period, and since the court did not notice that, which violated the validity of its ruling. (Decision No. 326 / M / 2008 on 9/16/2008) issued by the Cassation Panel in the Court of Appeal.

In another decision, although the objection was submitted to the court within the legal period stipulated in (Article 10 / Third) of the instructions, the court decided to dismiss the case without considering the reasons for the objection, which violated the validity of its ruling and then overturned it (Decision No. 105 / M /2009 on 25/2/2009/ (the two plaintiffs (the managing director of (JS) company in addition to his position and the managing director of (NR) company in addition to his position with the administrative court concerned with government contracts claimed that they had previously submitted a tender for the housing complex project in Anbar and Al-Markamah) 7/2008) and announced by the General Authority for Housing, and when opening the tender on 1/9/2008, the bid opening committee found that the price submitted by them amounting to (588,894,07000) was the lowest price and with an implementation period of (29 months), which is less than the period specified in the advertisement Noting that the bid submitted by them was complete in all legal aspects when they submitted a letter of guarantee, initial deposits of 1% of the bid amount, and a clearance from the General Authority for Taxes and Similar Works, in addition to all the documents that the authority specified in the advertisement, and through their review, the Ministry was surprised that the tender The second bidder will be referred to the company (H), which follows them with the price and specifications. They asked to invite the defendant (Minister of Construction and Housing / in addition to her employee) to plead and return the right to

its people. The court issued a date (2/4/2009) and number 19 / Administrative Planning / 2008 A judgment in the presence of cassation requiring the dismissal of the plaintiff's case in form and charging him with the fees, expenses and attorney's fees. Because the plaintiff was not convinced of the aforementioned ruling, he appealed to a representative of discriminatory in his regulation dated 11/2/2009 requesting its repeal. The decision came as follows (upon scrutiny and deliberation, it was found that the discriminatory appeal was submitted within the period and legality, so he decided to accept it in form, and upon reviewing the distinguished ruling, it was found that it was incorrect and contrary to the law, because Clause (Third) of Article (10) of Instructions No. (1) for the year 2008 The implementation of government contracts has given the bidders the right to object to the administrative court formed in the Ministry of Planning stipulated in the second clause of the aforementioned article. In the objection and complaint of the company (JS) for the specific general contracting, and it submitted its recommendations to the Ministry of Construction and Housing on 10/28/2008, and that what the Ministry proved in its margin dated 10/29/2008 on the recommendations of the committee (to inform the company) is not considered a decision for the purposes of applying (item / Third) Above, and since the letter issued by the administrative and legal department in the ministry, number 25172 on 11/16/2008, included the disclosure of the company's objection, and that the discerning person filed the lawsuit on 11/12/2008 against him, the objection would have been submitted to the court within the legal period stipulated in Article (10/Third) of the instructions, so the court had to consider the subject of the reasons for the objection and tie it to a fair judgment in accordance with the law, and since the court had violated the advanced point of view, which violated the validity of its distinguished ruling, then the decision to overturn it and return the case file and its attachments to its court to follow the foregoing)

It is noted that Article (10 / Fifth) of the Instructions for the Implementation of Government Contracts No. (1) of 2008 (amended) has stipulated (that the decisions of the Administrative Court are final when not appealed by discrimination before the competent Court of Appeal within 30 days from the day following the date of notification of the decision and it was not These instructions refer to the right to appeal by correcting the discriminatory decision, and to that the decision issued by the Cassation Commission in the Rusafa Federal Court of Appeal No. 298 / m / 2011 on 2/13/2011 indicated that the request for correction submitted by the objector (Governor of Al-Muthanna) was answered in addition And the text of the decision is (... Whereas (Article 10 / Fifth) of the Instructions for the Implementation of Government Contracts No. 1 of 2008 stipulates that the decisions of the Administrative Court are final when not appealed by discrimination before the competent Court of Appeal within 30 days from the day following the date of notification of the decision and it was not These instructions indicate that there is a right to appeal by correcting the cassation decision against him, and since the cassation decision cannot be appealed by way of correcting the cassation decision, so he decided to reject the request for correction...)

However, in another decision of the Court of Cassation in Baghdad / Al-Rusafa Federal Court of Appeal No. 538 / M / 2011 on 4/28/2011, it considered the correction request

submitted to it, as it was stated in it (upon scrutiny and deliberation, it was found that the correction request was submitted within the legal period, it was decided to accept it in form, and upon consideration on The objections of the correction applicant show that they were the subject of consideration by this court when conducting the discriminatory audits...).

In another decision, the Administrative Court decided to reject the objection of the objectors, the objection of third parties (Decision No. 19 / Administrative Planning / Objection of Third Parties / 2011 on 5/29/2011), and it was approved by the Cassation Board in the Baghdad Rusafa Federal Court of Appeal No. 788 / m / 2011 on 6/15 / 2011 and the text of the decision is (during scrutiny and deliberation, it was found that the cassation appeal submitted by the discriminatory agent, the attorney (FH) and by the distinguished agent, the managing director of the (FP) Contracting Company, the lawyer (NAH), both submitted within the legal period and because they are related to one issue, he decided to unify them Considering them together and accepting them in form, and upon reviewing the distinguished decision, this commission finds that these provisions issued by the administrative court specialized in public government contracts and in accordance with the Government Contracts Law No. 87 of 2008 and its implementation instructions No. (1) of 2008 are subject to appeal through the objection of others in accordance with the provisions of Article 224 of the Law of Procedures. Also, these provisions are at the same time subject to appeal by the methods of appeal provided for in Article 168 of the above law, like all other judicial rulings. Therefore, the approach of the Administrative Court in accepting the appeal by the objection of third parties to the rulings it issues is consistent with the rule of law, Here, the reasons and justifications that this court relied on it, making its ruling to dismiss the case correct and in accordance with the law).

### **Margins**

1. Dr.. Muhammad Ali Al Yassin, Administrative Judiciary, Modern Library, Kuwait, 1973, p. 194. Also see Dr. Salih Mahsoub, Administrative Courts in Iraq, Reality and Prospects, Judiciary Magazine issued by the Iraqi Bar Association, Issues (1-4), 1982, p. 103.
2. Dr.. Muhammad Ali Jawad, previous source, pg.
3. Judge Jaafar Nasser Hussein, Administrative Courts in Iraq, Al-Jadaa Magazine, issued by the Iraqi Bar Association, Issue 4, Year 42 of 1987, p. 48.
4. Dr.. Farouk Ahmed Khammas, Administrative Court in the Light of Law No. 106 of 1989, previous source, pg. 226 et seq.
5. M (4) Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979.
6. Mazen Lilo Radi, previous source, pg. 96.
7. M (2 / second / a) of Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979.
8. M (2 / second / c) Law No. 106 of 1989 Law of the Second Amendment to the State Shura Council Law No. 65 of 1979

9. Article (17/Third) of the Second Amendment Law of the State Shura Council Law No. 65 of 1979.
10. Ali Saad Omran, previous source, pg.
11. Dr.. Saab Naji Aboud Al-Lemmy, previous source, p. 31. See also (Article 15 / Fourth) of the Law of Disciplines of State Employees and the Socialist Sector (Public) No. 14 of 1991 (amended).
12. Luqman Omar Hussein, The Principle of Participation in the Federal State (A Comparative Analytical Study), Al-Sanhouri Library, Baghdad, 1st Edition, 2011, pg. 306
13. Its decision No. 32 / Appeal in the interest of the law / 2011, unpublished
14. Ghassan Abu Tabikh, Immunizing the Administrative Decision from Appeal, an article published in the Journal of Law and Judiciary, No. 7, Baghdad, 2011, p. 127.
15. Dr.. Khaled Rashid Ali, previous source, p. 143
16. Article (4/fourth) of the law
17. Ali Saad Omran, previous source, p. 87.
18. Article (23) of Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979 (amended).
19. Dr. Essam Abdel-Wahhab Al-Barzanji: The State Shura Council and the birth of the Iraqi administrative judiciary, previous source, p. 123.  
(1) M (9) Law No. 106 of 1989 Law of the Second Amendment to the State Shura Council Law No. 65 of 1979
20. Article (2 / second / b) and (Article 2 / second / c) Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979.
21. Dr.. Mazen Lilo Radi, previous source, pg. 97, and also see M (7/First) of the Second Amendment Law of the State Shura Council Law No. 106 of 1989.
22. M (7 / First / A, B, C, D) of Law No. 106 of 1989 Law of the Second Amendment to the State Shura Council Law No. 65 of 1979.
23. (2) d. Ali Muhammad Badir and others, previous source, p. 369 and beyond.
24. Dr.. Maher Salih Allawi al-Jubouri, on some of the jurisprudence of the General Discipline Council under the Disciplinary Law of State Employees and the Socialist Sector No. 14 of 1991, Justice Journal, Ministry of Justice, first issue, Freedom House for Printing, Baghdad, 2000, p. 49
25. Hamid Mustafa, previous source, pg. 210.
26. looks d. Ghazi Faisal Mahdi, Commentaries and Articles in the Scope of Public Law, Baghdad, 1st edition, 2004. pg. Also see Dr: Ali Juma Muhareb, Iraqi Administrative Judiciary, Iraqi Annual Journal of Law, Issue (1), University of Baghdad, 2001. Pg. 183 and beyond.
27. Dr.. Essam Abdel Wahhab Al-Barzanji, State Consultative Council, previous source, p. 144.
28. Dr.. Khaled Rashid Ali, The mandate of the administrative judiciary in modern Iraqi legislation between reduction and deprivation, Al-Haqooq Journal, Al-Mustansiriya University, Volume 2, Sunnah (4), Issues 6 and 7, 2009, p. 139.

29. M (7 / second / a, b, c) of Law No. 106 of 1989, the second amendment law of the State Shura Council Law No. 65 of 1979.
30. (2) Muthanna Ahmed Jaber Al-Shafei, previous source, p. 8.
31. (3) d. Maher Salih Allawi, Administrative Decision, previous source, p. 185 and beyond.
32. (4) Dr. Ghazi Faisal Mahdi, the legal limits of the powers of the Administrative Court in Iraq, previous source, p. 88.
33. Its decision on 8/8/2011, Vol. 45 / Law Department, unpublished.
34. Judgment of the Administrative Court in Iraq in Case No. 64 / Administrative Judiciary on 4/7/1992, unpublished.
35. Its decision in Case No. 121 / Administrative Judiciary / on November 28, 1990 is not published.
36. Judgment of the Administrative Court in Iraq in Case No. 81 / Administrative Judiciary on 12/31/1991. Unpublished.
37. Judgment of the Administrative Court in Iraq in Case No. 73 / administrative judiciary on 6/8/1991, unpublished.
38. Dr. Essam Al-Barzanji, State Shore Council, previous source, pg. 172 et seq.
39. Dr.. Issam Al-Barzanji, same source, p. 176.
40. Decision of the General Assembly of the State Shura Council No. 325 / Administrative Discrimination 1995 / on 6/5/1996 and the Decision of the General Assembly of the State Shura Council No. 38 on 21/2/1995 referred to by Dr. Saab Naji Abboud Al-Dulaimi, previous source, pg. 44 et seq.
41. In accordance with Clause (Seventeenth) of Article (7) (the contracting parties may release the initial bonds at the request of the bidders who are not likely to be awarded the tender before the end of the bids' entry into force and after submitting the recommendations from the committee, provided that the approval of the head of the contracting authority is obtained and it is kept in In all cases, the insurances of the first three bidders nominated for assignment).
42. It was better to use the word assignment instead of the word placement
43. Administrative Court Decision No. 7 / Administrative Planning / 2011 on 30/3/2011, where the court decided to dismiss the case in form due to the failure of the plaintiff or the attorney to observe the dates of appearance in the specified pleading session, as well as because the appeal period was missed. M / 2011 on 26/5/2011.
44. The court does not have jurisdiction over requests for compensation, and this was confirmed by its decision in which it stated (As for the request for compensation, this court is not qualitatively competent to consider such requests, as its jurisdiction is limited to considering objections to referral decisions as described in the law and instructions...) (Decision No. 14 / Administrative Planning / 2011 on 4/5/2011).
45. Judge Luqman Thabet Abd al-Razzaq al-Samarrai, The Role of the Administrative Court in the Ministry of Planning and Development Cooperation in Monitoring Government Tenders, research published on the website <http://l1tqmag.net>

46. Lawyer Khalil Ibrahim Al-Mashhidi and Judge Shihab Ahmed Yassin, Judicial Application of Public Government Contracts Tenders, Al-Sabah Library, Baghdad 2012, p. 3
47. Its decision No. 24 / Administrative \_ Planning / 2011 on 10/12/2011 is unpublished.

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2. Ali Juma Muhareb, Iraqi Administrative Judiciary, Iraqi Annual Journal of Law, Issue (1), University of Baghdad, 2001
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4. Article (17/Third) of the Second Amendment Law of the State Shura Council Law No. 65 of 1979.
5. Article (2 / second / a) of Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979.
6. Article (2 / second / c) Law No. 106 of 1989, the second amendment to the State Shura Council Law No. 65 of 1979
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9. Article (7 / first / a, b, c, d) of Law No. 106 of 1989, the Second Amendment Law of the State Shura Council Law No. 65 of 1979.
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12. Article (9) Law No. 106 of 1989 Law of the Second Amendment to the State Shura Council Law No. 65 of 1979
13. Decision No. 24 / Administrative \_ Planning / 2011 on 10/12/2011 is unpublished.
14. Decision No. 32 / Appeal in the interest of the law / 2011, unpublished
15. Decision of the General Assembly of the State Shura Council No. 325 / administrative discrimination 1995 / on 6/5/1996 and the decision of the General Assembly of the State Shura Council No. 38 on 21/2/1995
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17. Farouk Ahmed Khamas, Administrative Court in the light of Law 106 of 1989
18. Ghassan Abu Tabikh, Immunizing the Administrative Decision from Appeal, an article published in the Journal of Law and Judiciary, Issue Seven, Baghdad, 2011



19. Ghazi Faisal Mahdi, Commentaries and Articles in the Scope of Public Law, Baghdad, 1st edition, 2004
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21. Jaafar Nasser Hussain, Administrative Courts in Iraq, Al-Jadaa Magazine published by the Iraqi Bar Association, Issue 4 of the year 42 of 1987
22. Judge Luqman Thabet Abd al-Razzaq al-Samarrai, The Role of the Administrative Court in the Ministry of Planning and Development Cooperation in Monitoring Government Tenders, research published on the website <http://lqtqmag.net>
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31. Medhat Al-Mahmoud, The Judiciary in Iraq, Baghdad, 1st edition, 2005
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33. Saab Naji Aboud Al-Lemmy, previous source, p. 31. See also (Article 15 / Fourth) of the Law of Disciplines of State Employees and the Socialist Sector (Public) No. 14 of 1991 (amended).
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