

## **The Original Nullity Lawsuit (A Comparative Study between the Sultanate of Oman and Egypt)**

Asad Rashid Nasser Al-Riyami, Prof. Madya Dato' Dr Mohd  
Izhar Ariff Bin Mohd Kashim

Associate Professor in The National University of Malaysia

To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v14-i1/18266>

DOI:10.6007/IJARBSS/v14-i1/18266

**Published Date:** 29 January 2024

### **Abstract**

The article raises several legal problems that the researcher seeks to answer, namely: what is the original claim of invalidity and its basis for administrative rulings that may be appealed against in this case, and the reasons for the appeal. The court competent to hear the original claim of invalidity and its procedures and judgment in it, given that this case is the creation of the Egyptian administrative judiciary, so the importance of research is highlighted in the need to identify the nature of this case and its rulings in the Egyptian administrative judiciary and the Sultanate of Oman, and the article has reached several results, the most important of which is that the case The original invalidity is an exceptional way of appeal, so it does not expand on it, so it stops in cases other than the invalidity stipulated in the Civil and Commercial Procedure Law, when the cases involve a serious fundamental defect that affects the ruling entity and causes it to lose its character as a judge, and it descends to the point of nonexistence, as nonexistence is the basis for accepting a claim The original invalidity, and the article recommended the need for the intervention of the Omani legislator to make the competence to hear the original invalidity case before the court that issued the ruling, and not to the court of first instance in order to prevent the judiciary of a lower court over the judiciary of a higher court.

**Keywords:** Lawsuit of Invalidity, Egyptian Legislation, Omani Legislation.

### **Introduction**

In Articles (13, 22, 23, and 51) of Law No. 47 of 1972 regarding the State Council, the Egyptian legislator organized three ways to challenge administrative rulings, which are appeal, cassation, and petition for reconsideration. As for the Omani legislator, he regulated in Law No. 20 of 1981 the establishment of an administrative department in the Court of First Instance to consider administrative disputes by appealing against the provisions of this department, and referred to the Civil and Commercial Procedure Law No. 38 of 1980 regarding methods of appealing against judgments, which regulated four ways to challenge judgments, she; Appeal, which is the normal way of appeal, in addition to the unusual

methods of appeal, which are a request for reconsideration and cassation, and then the objection of the one outside the litigation (Aleem, 1979)

In addition to the appeal methods, whether in Egypt or in the Sultanate of Oman, which find their basis and source in the legislation, there is the original claim of invalidity. The Omani judiciary also allowed an exception to file this case. This research deals with the original nullity case in the Egyptian administrative judiciary and the Sultanate of Oman.

The importance of the research: Given that this lawsuit is the creation of the Egyptian administrative judiciary, so the importance of the research is highlighted in the need to identify the nature of this lawsuit and its rulings in the Egyptian administrative judiciary and the Sultanate of Oman (Ibrahim, 2018)

The research raises several legal problems that the researcher seeks to answer, namely: what is the original claim of invalidity and its basis is the administrative rulings that may be challenged in this case and the reasons for the appeal. The court competent to hear the original nullity claim, its procedures and rulings thereon.

***The first axis: What is the original nullity claim and its basis***

It is established that if the judgment is issued, it becomes a title of the truth, and if it is invalid, then the reasons for the disgrace that befalls it cannot be examined except by means of an appropriate appeal. The legislator limited and organized the methods of appealing against rulings, and set specific deadlines for them and certain procedures, so that if the appeal was not permissible or had closed its door, there is no way to waste the authority of the ruling by claiming the original invalidity, as the principle is that: "There are no original claims for the invalidity of the rulings. However, it is As an exception to this, it is permissible to file an original claim for nullity in judgments issued in a final manner, and that is in the case of the absence of a judgment, and it does not occur except when the judgment is stripped of its components or one of its basic pillars, in such a way that it loses its entity and its capacity as a judicial ruling. Opinions differed on how to adhere to the lack of judgment, and the disagreement was limited to the extent to which it is necessary to file an original nullity claim in order to issue a new ruling that decides the lack of that ruling, and what is the competent court to hear this case? Or is it not even necessary to file this lawsuit? (Aleem, 1979)

A trend in jurisprudence has gone to the fact that the non-existent judgment has no authority at all, in form, and does not exist, so if the one who issued it adheres to it in his interest, then it is sufficient for the other party to adhere to its non-existence by way of payment, and it does not need a judgment that determines its non-existence. If this party wants to file an original claim of non-existence - although he is not obligated to file it, then it will be acceptable. In it is the non-existent judgment, and the judge does not exhaust his authority by issuing it, nor does the correction respond to him. While another trend went to the report that the lack of judgment should be filed.

The following is an indication of the nature and basis of this case, the provisions that may be appealed against, the reasons for the appeal, and the competent court to hear it, its procedures, and to judge it, as follows

***First: What is the original nullity claim?***

This lawsuit can be defined as an exceptional way of grievance against judgments that have lost their basic components, and it is filed by the usual methods of filing lawsuits with the aim of determining the lack of judgment. When the defect attributed to the judge reaches a serious degree, and he is executed; But if the defect does not reach this degree, then it is not

permissible to establish it in view of the validity and strength of the rulings, but it is challenged in accordance with the rules and methods of appeal established (Aou, 2020)

The Supreme Administrative Court went on to define the original claim for invalidity by saying that "it has a special nature, as it is directed to judgments issued in a final manner, and in cases other than the cases of invalidity stipulated in the Civil and Commercial Procedure Law, it is an exceptional appeal path, which does not expand on it, and stops at cases that it involves a serious, fundamental defect that afflicts the entity of the ruling and makes it lose its character as a judge, by losing one of its basic pillars, which results in it being issued by a court affiliated with a judicial authority, and that it be issued by it with its judicial authority in a dispute, and that it be in writing - the objective reasons for appeal that all fall under Possibilities of error and correctness in interpreting and interpreting the law do not represent a waste of justice, and the judgment does not lose its function, and therefore does not stigmatize it with any defect that brings it to the point of non-existence, which is the basis for accepting the original claim of invalidity (Al-Qabbani, 1977)

***Second: The basis for the original nullity claim***

The Civil and Commercial Procedure Law, whether in Egypt or Oman, did not regulate the original claim of invalidity against the rulings, and in light of the absence of an explicit text authorizing the original claim of invalidity, some jurisprudence went to permit it based on general rules, saying that the matter is related to a negative report claim aimed at deciding not to The existence of judgment, and the lack of it is something that is not regulated by law because it does not need to be regulated.

If the principle of the authoritativeness of judgments, which is a fundamental principle of the judicial system, precludes in principle the consideration of the original claim of invalidity, because it includes reconsideration of judgments that have become final and have acquired the force of a decree, then it is not permissible to waste this authority by arguing that the error in applying the law or any other Another procedural defect, or the lack of representation of the litigants in the lawsuit, because the argument takes precedence over public order considerations. And the idea of the lack of judgments and their lack of reliance has its roots in jurisprudence and the judiciary in Egypt. Article (147) of the Civil and Commercial Procedure Law No. 13 of 1968, after it decided that the work or judgment of a judge would be invalid in cases of incompetence referred to in Article (146) of the same The law decided that if this invalidity occurred in a ruling issued by the Court of Cassation, the litigant may ask it to cancel the ruling and reconsider the appeal before another circuit, which implies that the ruling of cassation may be invalidated due to the incompetence of the one who issued it. And the Court of Cassation ruled that while the legislator limited the methods of appealing against rulings and set specific deadlines for them and certain procedures, then, according to what the court of cassation did, it is forbidden to examine the causes of defective rulings except through grievances against them by means of appeal that are appropriate to them, so that if the appeal against them is inappropriate. It is permissible or it has been closed, so there is no way to waste its authority in appreciation of this authority as the title of the truth in itself, and that although an exception may be made from this general principle in some forms - to say that it is possible to file a lawsuit for the invalidity of the original or adhere to the lack of judgment when invoking it, but this is only possible In the event that the ruling is stripped from its basic pillars (8). However, the Court of Cassation did not indicate the cases in which the ruling is stripped of its basic pillars and is non-existent (Aleem, 1979)

The Egyptian administrative judge, with his ability to develop, innovate, and establish legal rules, preferred to establish the original claim of invalidity as a way of challenging the rulings, without an explicit text authorizing the existence of this claim. The existence of this claim was linked to the establishment of the Supreme Administrative Court in 1955, where the administrative judge found it is about a situation different from that of the Court of Cassation, where the Supreme Administrative Court monitors the reality and the law together in a way that makes it closer to the Court of Appeal, and this necessitated that it may be mentioned in its rulings regarding reality in a way that makes it necessary to have a means to prevent this error, and return. In view of the non-adherence of the petition in the rulings of the Supreme Administrative Court, there was no need to revive the idea of non-judgment, which is not a new idea in jurisprudence and civil or procedural jurisprudence. Today, it has made it a recognized way of appeal before the Supreme Administrative Court in its rulings (Khalifa, 2022)

The mistake was the first of the rulings of the Supreme Administrative Court in which the court adopted this idea, was the ruling it issued on 2/18/1961, where the court concluded that the ruling was invalid because the statement of claim was not properly announced, which confirms that the reason for the tendency to strengthen this claim, it is what realistic errors may lead to in affecting the validity of applying the law, whether the error is actually a result of the Supreme Administrative Court's own error or by introducing the error to it by the litigants (Sami, 1992)

Hence the logic of the administrative judiciary in recognizing the original claim of invalidity in the rulings of the Supreme Administrative Court - however, the invention of this claim without a disciplined legislative organization made the administrative judiciary subject, when applied, to the foundations upon which it is based, to its personal jurisprudence, which differs in each case from the other, and this judiciary did not establish. In its rulings, there are absolute and abstract rules for cases of appeal against the original claim of invalidity, but they do not exceed individual applications for cases in which the violation of the ruling has reached a large level of seriousness, in which it considered that such a ruling may not be protected. It did not come across a realistic application, and he repeats it in the case of rejecting the lawsuit to invalidate the ruling issued by it, and taking from the original invalidation lawsuit in cases where the elements of invalidity are not available as his means to reach his ultimate goal, which is justice, which he had the first place. However, the administrative judiciary cannot stand before the rules of justice and overcome them over procedural and substantive obstacles at times, which makes it necessary for the legislator to intervene in organizing this case, and to set specific controls and fixed rules for cases of invalidity.

### ***Third: The grounds for appealing the original nullity claim***

According to the Egyptian administrative judiciary, the reasons for the original invalidation lawsuit are not limited to the reason for the judge's incompetence, as it is not the only reason for filing it. However, this lawsuit can be appealed for any reason that leads to a lack of judgment or a waste of justice. And if the original claim of invalidity, other than the cases of invalidity expressly stipulated, is directed only to the non-existent judgment, except that jurisprudence and the judiciary have not reached a fixed and comprehensive criterion to differentiate between the invalid judgment and the non-existent judgment, and the matter is nothing more than judicial applications that jurists differ in their evaluation, Or doctrinal perceptions can not be relied upon by the judiciary. By tracking) the original causes of invalidity in the rulings of the Supreme Administrative Court, it was found that they are

represented in cases of invalidity provided for in an explicit text in the Law of the Council of State or the Civil and Commercial Procedure Law, or cases of gross violation of the right of defense such as failure to notify the opponent of attendance and the issuance of the judgment in his absence, or cases in which it involves a serious defect that constitutes a waste of justice in such a way that the judgment loses its character as a judgment (Shamal, 2013)

The Court of Administrative Judiciary, in the early stages of its rulings, established an important principle in accepting the original claim of invalidity, and distinguished between invalid rulings and non-existent rulings. By way of payment in an existing lawsuit, but this goes to the rulings that, although they are null and void, yet they exist and produce their effects unless they are invalidated; As for the inexistants, which are considered non-existent and do not produce any legal effect, it was permitted to challenge them for Radi (2005) nullity with an original claim or with a defense in an existing case. The judgment has a degree of invalidity, and this case may be instituted. If it does not reach this degree, it may not be instituted in view of the validity of the judgments. This court also distinguished between invalid and non-existent judgment, and referred to the basic pillars of the judgment, which, if one of them is stripped, becomes non-existent, the legal effect is nullified, and it is permissible to appeal. In it the original claim of invalidity. So the court says that although it is decided to jurisprudence and judgment that there is no invalidity in the ruling, whether by a preliminary claim or by way of payment in an existing lawsuit, but this goes to the ruling that, although it is full of invalidity, but it exists and produces all its effects, unless it is ruled invalid by one of the legally prescribed methods for that - as for the non-existent judgment, which is the one that is stripped of the basic pillars of the judgment, the result of which is that it is issued by a court affiliated with a judicial authority, and that it is issued with its money from a judicial authority, that is, in a dispute, and that it is written, then this judgment is considered non-existent and not productive for any It has a legal effect, and it is not necessary to challenge it in order to adhere to its absence, but it is sufficient to deny it when adhering to the jurisprudence it contained, and it is also permissible to challenge it for invalidity in an original lawsuit or a defense in an existing lawsuit (Sami, 1992)

Among the applications of nullity in the Egyptian administrative judiciary are the following:

1- The incompetence of one of the judges who issued the ruling to hear the case: Article (146) of the Civil and Commercial Procedure Law No. 13 of 1968 clarified the cases in which the judge is not fit to hear the case, and he is prohibited from hearing it, even if none of the litigants did. Then Article (147) of the same law stipulates that the judge's action or judgment in the aforementioned cases shall be null and void, even if it was done with the agreement of the litigants. If this invalidity occurs in a judgment issued by the Court of Cassation, the litigant may request it to annul the judgment and reconsider the appeal before another circuit. The Supreme Administrative Court applied these two articles to administrative disputes, and its judiciary decided that the incompetence of one of the judges who issued the ruling denies this ruling the capacity of a judicial ruling that permits the filing of the original claim of invalidity against this ruling (Darwish, 2019)

However, the court ruled in this regard that the reasons for the incompetence are personal and do not exceed the person of the judge who performs it, and those who sit with him in the circuit whose number of members exceeds the quorum with which its rulings were issued are not affected by them... The ruling is not subject to invalidity if no one of those who They issued the contested judgment as one of the reasons for the authority to decide on the two aforementioned appeals... or what was done by the commissioner who prepared the two reports with the legal opinion.. nor what was done by the commissioner who attended the

court sessions when deciding them, because none of the commissioners does This chapter does not rule out any of it.... The appeal is not supported by the law and must be rejected

2- Other forms of non-existence of rulings that may be challenged on grounds of invalidity  
The original: The Supreme Administrative Court says that while it is not permissible to challenge the rulings by means of the original invalidity, and that if the ruling is invalid and the deadlines for appealing it have passed or have been exhausted, it is considered correct in all respects, and it is not permissible in any way to adhere to any aspect of its invalidity according to the rule of judgements. However, this rule is subject to several exceptions, namely: (Kanaan, 2001)

(1) Judgments issued by an individual or individuals who do not have jurisdiction.

2) Judgments issued by a court that has no function or contrary to the basic rules laid down for the judicial system.

3- Judicial decisions that do not decide on a dispute, even if they take the form of judgments, such as the judgment awarding the auction.

4- Judgments issued in the case against a person without properly notifying him of the session set for hearing the case, or against a deceased person.

5- A judgment that involves a serious defect and represents a waste of justice and in which the judgment loses its function is non-existent, and does not have the status of judicial rulings: (Ta'meya, 2020)

So the Supreme Administrative Court says: that while the appeal of the original nullity claim in the judgments issued in their final capacity is considered an exception, then this exception in cases other than those stipulated by the legislator, such as the text of Article 147 pleadings - must stop at cases that involve a serious defect, and represent a waste of justice and lose In which the judgment has its function and does not have the characteristic of judicial rulings, and that is when the judgment is issued from an incomplete composition, but if what the appellant takes against the judgment is not considered a serious defect that stigmatizes the judgment as invalid, then it is not permissible to challenge the contested judgment, and the appeal in this case has no support of the law, and shall be rejected.

When a judicial ruling is issued correctly, it remains productive with its effects. It is not permissible to discuss the causes of defectiveness that afflict it except by appealing to it in the ways specified by the legislator, exclusively - and the rulings of the Supreme Administrative Court are issued by the highest court of appeal in the administrative judiciary, and it is not permissible to comment on them or challenge them unless It no longer has the characteristic of judicial rulings when the judgment is close to a serious defect in which the original claim of invalidation is based. For the acceptance of the original claim of invalidity, it is required that it be directed to a ruling issued by a court affiliated with a judicial authority with its judicial authority (Al-Toukhi, 2013)

Despite the finality of the rulings of the Supreme Administrative Court and the impermissibility of appeal against them before any other court, these rulings must meet the description of judicial rulings and not be reduced and the matter with them descends to the loss of the basic pillars of the validity and invalidity of the rulings, including, for example, the cases that the legislator stipulated in the law regulating The Council of State or in the Law of Proceedings explicitly stipulates the invalidity of the ruling in the event that it is available, and in these cases there is no way to establish justice and remove the invalid ruling from the judicial and legal existence except by resorting to the judiciary in application of the rule of law and the achievement of justice. The invalidity of the rulings of the Supreme Administrative Court, as it is the apex of the courts of the State Council and the Court of Appeal and the

Supreme Supervision of those courts of various types. An appeal for invalidity must be lodged before the same court and a request for the annulment of the invalid ruling on that, and a body other than the one from which the invalid ruling was issued shall decide on it. Accordingly, this court is competent By adjudicating the original invalidation claims of any ruling issued by it if it is marred by a serious defect in the procedures or in the ruling itself that requires its invalidity and justifies the filing of an original invalidation claim. Explicit, as in Articles (167, 168, 174, 175, 176, and 177 (2) pleadings if it ceases to have the capacity of judicial rulings, which relegates the judgment to the rank of non-existence, which is achieved by the failure of one of the basic pillars of the court's existence and jurisdiction, or one of the essential pillars of the judicial ruling and That is when a judgment is issued by individuals who do not have the jurisdiction of the judiciary, or who are not fit to hear the case, or from an incomplete formation, or if the judgment was issued without the litigation and a dispute taking place, or if it took the form of the provisions of Articles (146, 147) pleadings) (28). On the contrary, the court refused to accept the original claim of nullity, in some cases: (Al-Toukhi, 2013)

1) If what was previously issued by the advisor at the time when he was head of the Fatwa Department before he joined the formation of the Supreme Administrative Court about determining the exchange rate from the date of the damage or the date of the judgment, then this opinion is not related to the origin of the appellant's entitlement to compensation for the sudden transfer. .. Which is a previous matter and is related to how compensation is calculated based on the exchange rate. As a result: the loss of the invalidity condition that prevents the consideration of the appeal.

2) The court's disregard for a rebuttal request whose elements were incomplete does not serve as a reason to challenge the verdict, on the basis of the original claim of invalidity. (Kanaan, 2001)

3) When it is proven that the party present on behalf of the litigant requested the continuation of the consideration of the appeal and the court considered it within the limits of its jurisdiction, there is no reason to say that a ruling was issued in a non-litigation case to claim its invalidity.

4) If the deadline for attendance is at least eight days Failure to observe this period, even if it leads to a formal defect in the procedures, affects the judgment and results in its invalidity in form. However, the way to adhere to its invalidity is to challenge it by the methods of appeal prescribed by law, and not to file a lawsuit initially with invalidity. As access to this exceptional method must stop at cases that involve a serious defect that represents a waste of justice with which the judgment loses its function as a judgment by losing one of its basic pillars according to the aforementioned statement, which is not achieved (Kanaan, 2001)

5- If the appeal against the rulings of the Supreme Administrative Court is limited to discussing the evidence on which the court relied or the subject matter of the appeal in terms of the interpretation and application of the law and it is not considered a serious defect, or the appeal is based on objective issues that all fall under the error in the interpretation and interpretation of the law or the issuance of a ruling in contradiction. Another ruling possesses the power of the ruling order, because these reasons do not represent a waste of justice with which the ruling loses its function... The ruling does not descend to the point of non-existence, and there is no way to challenge it by invalidity with the original claim of invalidity (Obaidat, 2012)

6- Excluded from the grounds for the original invalidation claim is the abstract claim of fraud and fraud if the defect attributed to the judgment is the failure to prepare the compensation

request by the State Commissioners Authority and to submit a reasoned report regarding it to the court before setting a pleading session to consider the request. The state, however, does not bring the judgment to the point of non-existence in such a way that it is not valid for him to challenge it for invalidity through an initial original case, and therefore the means to correct the defect of the judgment attributed to the judgment is to appeal against it before the competent court and not to file a case for its invalidity first before the court Which was originally issued by the Supreme Administrative Court as evidenced by the rule of law that it is the correct opinion in this ruling, including that there is no commentary on it, considering that it is level at the top in the runways of the judicial organization of the courts of the State Council ... and with that there is no way for him to attribute the gross error to her who loves to judge her To the realization of invalidity, except that this error is evident, undisguised, and the fruit of a flagrant error clearly informs about itself, and the error in this case, if it is not self-disclosing of its matter in a way that there is no room for a dispute between reasonable points of view, is not equal to an excuse to mobilize the original claim of invalidity and waste the judiciary Supreme Administrative Court (Al-Sharif, 1997)

9) Judgments issued by the departments of the Supreme Administrative Court contrary to the principles and other rulings issued by them or by other circuits of the court, without invoking the jurisdiction of the circuit formed in accordance with the text of Article (54) bis referred to, are correct judgments in conformity with the law, without any defect that makes them lose their character. As rulings, or losing one of its basic pillars that must be available in the ruling, which negates the grounds for accepting the original invalidity claim against it. (Kanaan, 2001)

### ***Second - applications of absence in the Omani administrative judiciary***

The judgment shall be inexistence, and this shall be in the following cases:

- 1- If the judgment loses one of its basic elements, as if the judgment was not written or stripped of its basic elements.
- 2- If the judgment is issued by a judge who has lost jurisdiction over the judiciary, or if this judge did not take the oath before assuming the judicial position that was entrusted to him.
- 3- If the judgment is issued in a non-existent litigation, such as if a lawsuit was instituted and its papers were deposited against a person who had died before the lawsuit was filed against him, or by a legal person whose bankruptcy was declared before filing a lawsuit. (Aleem, 1979)
- 4- If a judgment is issued against a person who was not originally announced of the case, or if he announced it in a crooked way that involves on cheats.
- 5- If a judgment is issued by the Court of Cassation despite the existence of a reason for the incompetence of one of the judges.
- 6- If a judgment is issued against a person and his representative in the case is someone who has no capacity to represent him, even if a petition is filed for reconsideration of the date.
- 7- If the judge combines the capacities of the opponent and the judge, as if one of the judges considered the dismissal case against him.
- 8- If the judgment is marred by a serious, fundamental defect that affects its entity and makes it lose its character as a judge and prevents it from being considered existing since its issuance, as if it was issued by a court formed in violation of the law of the judicial authority. (Khalifa, 2022)
- 9- If the ruling was issued in one of the cases of selective absolute guardianship, as if the ruling was issued in a sovereign action.



The Court of Cassation says: It is recognized that an exception is made in some forms - the possibility of filing an original claim for nullity or arguing for that. Provided that the conditions for accepting such a lawsuit or pleading for invalidity are the following:

1- The impossibility of appealing against the ruling for which an action for nullity is intended to be filed, or the exhaustion of other methods challenge it. (Khalifa, 2022)

2- That the judgment subject of the case has been stripped of its basic pillars, so that it is marred by a serious fundamental defect that defects its entity and makes it lose its character as a judgment or prevents it from being considered as existing since its issuance - and when the aforementioned conditions are met in the judgment - then the judge does not exhaust his authority regarding it because when that is the case, it does not arrange the authoritative order of the decree, nor does the correction respond to it because it is non-existent and the non-existent cannot be healed, and such as the issuance of a judgment against those whose death is proven before the lawsuit is brought against him or from a person who does not have the jurisdiction of the judiciary. The principle is the inadmissibility of appealing judgments on the basis of the original invalidity claim, and that it is an exception to this principle that it is permissible to plead the absence of the ruling or to file an original claim for that in the event that the ruling is stripped of its basic pillars, and it is not achieved unless it is stripped of one of its basic pillars, as if it is issued by a court that is not constituted. If the defect directed at the judgment is not a reason for its non-existence, then its penalty, if true, is invalidity, not non-existence, and it is forbidden to discuss the reasons for defectiveness that befalls it except by grievance against it through the appropriate methods of appeal and not by filing a lawsuit starting with its invalidity. The court clarified some forms of invalidity, saying: If an exception may be made in some forms, it may be said that a claim for the nullity of the original can be filed, or a plea for that, but this can only be achieved when the ruling is stripped of its basic pillars: (Hamouda, 2008)

- Like it is issued by a court that is not properly constituted.
- Or from a judge who has no jurisdiction.
- Or against a litigant who was not originally announced in the lawsuit document or whose death was proven before it was filed, and with the exception of the case of a judgment issued by the Court of Cassation despite the existence of a reason for the incompetence of one of the judges. This renders the ruling null and void.

### **The second axis: the court competent to hear the original nullity case and its procedures**

#### **First: The court competent to hear the original nullity claim**

The situation in Egypt: The original lawsuit for invalidation is filed before the court that issued the judgment, even if its jurisdiction changes with the requests that the lawsuit was filed with. Its acceptance annulled the ruling, and referred the appeal in which the invalid ruling was issued to another circuit for consideration in accordance with the provision of Article (147/2) pleadings (46). The Supreme Administrative Court ruled that an original nullity claim against a ruling issued by the Disciplinary Council for members of the Council of State falls outside its jurisdiction... and that while the legislator did not allow it to be appealed... by any means of appeal, this does not make what is issued by the Council Discipline is exempt from annulment if the defect attributed to the judgment reaches such a gravity that it descends to the point of non-existence, as in this case it is permissible to challenge it for invalidity, and this is an exception - if it is similar to a serious defect - it is allowed to file an original lawsuit for invalidity even if the judgment was issued in a final manner, and the appeal for invalidity is submitted To the court that issued the contested judgment, and the Supreme Administrative Court's

judiciary settled on its jurisdiction over the original invalidity suit filed against a ruling issued by it, as it is the summit of the State Council courts. The contested ruling is invalid. However, it ruled that the ruling is invalid and that the ruling is annulled and that the appeal is returned to the court for reconsideration - the Supreme Administrative Court in this case does not deal with the subject matter of the case because the ruling has been marred by invalidity that brings it to the point of invalidity due to the incompetence of one of the members of the body that issued it, in addition to its violation of public order (Ibrahim, 2018)

The judiciary, which requires the independence of the judge when sitting for the judiciary, by being unrelated to the dispute or having a prior opinion in it, may prevent him from weighing the size of the dispute in an abstract way with which he is provided with complete impartiality and objectivity necessary to perform the message of justice and preserve the right of the litigants to defend before the judiciary (the Department of Unification of Principles indicated in A later ruling indicated that the order to refer the original circuit, the subject of the appeal, to another circuit for consideration is due to the original circuit's discretion. In the event that an original invalidation lawsuit is filed against a ruling, the principle is that the circuit competent to hear the original invalidation lawsuit in the rulings of the Supreme Administrative Court circuits is the same circuit that issued The judgment challenged by the claim of invalidity or its reserve circuit in the event that the circuit whose judgment is challenged in the claim of invalidity considers it inappropriate to consider the claim of invalidity. However, the practical reality is that the original claim of invalidity is being considered by another circuit of the Supreme Administrative Court other than the one that issued the contested ruling in this case. It is often the reserve circuit that considers response and litigation cases. As for the case of the judgment issued by the administrative or disciplinary courts or the Administrative Judiciary Court, the closest to the direction of the Supreme Administrative Court is that the court that issued the judgment is the one that has jurisdiction to consider the original invalidity claim in the ruling issued by it, since if the invalidity is proven, it is as if it had not exhausted its powers regarding the lawsuit (Khalifa, 2022)

Some jurisprudence believes that the competence to hear the original invalidity case should be reserved for the Court of Appeal, meaning that the Administrative Judiciary Court should have jurisdiction over it as an appellate body in relation to the rulings of administrative courts and the Supreme Administrative Court in relation to the rulings of the Administrative Judicial Court, disciplinary courts and disciplinary councils. This is because the original lawsuit for invalidity is in fact an appeal requesting a determination of the invalidity of the judgment, so it must be submitted to the higher court to decide this invalidity. The same level as the circuit that hears the case by determining the invalidity, which requires a principle from the Supreme Administrative Court to decide it. However, what reduces the reliance on the original claim of invalidity to challenge the rulings of the Administrative Judiciary Court or the administrative or disciplinary courts is the possibility of appealing against rulings by seeking reconsideration, which reduces To a large extent, relying on the original nullity claim to challenge the rulings of these courts (Shamal, 2013)

The situation in the Sultanate of Oman: The Court of Cassation ruled that the case for lack of judgment is filed before the Court of First Instance, and not before the Court of Appeal, so that the litigants do not miss one of the two levels of litigation. It is permissible to challenge judgments on the basis of the original invalidity claim... However, the legislator, as an exception to this general principle, permitted the defense of the lack of judgment or the filing of an original claim in that case in the event that the ruling was stripped of its basic pillars for

what that was, and the appellant had filed his lawsuit from the beginning before the Court of Appeal requesting the ruling to be invalid Exceptional Judgment No.... and the absence of Judgment No.... supported by it, while it was necessary for him to file his case initially before the Court of First Instance so that the litigants do not miss one of the two degrees of litigation, and as the appellant embarks on the way to file his case and institute it initially before the Court of Appeal, then His claim is inadmissible (Kanaan, 2001)

However, the court excluded from that the rulings issued by it, pursuant to the second paragraph of Article (103) pleadings. If one of the reasons for invalidity - stipulated in Article 102 - pleadings is available in one of its judges who issued the ruling, in this case an original claim for nullity can be filed before The circuit that issued the judgment is an application submitted to the head of this circuit, so the opponent's way to appeal the invalidity of the cassation judgment in this case is an application that he submits to the circuit that issued it, not being restricted in submitting it to an inevitable deadline, taking into account the generality of the text and its generality, and it is not considered an appeal by him by way of cassation, but rather it is a lawsuit Invalidity is original. If the Court of Cassation proves that the application has met the requirements for acceptance, it cancels the ruling issued by it in the appeal and re-examines the appeal before another circuit.

**Second: Procedures for the original nullity case and its ruling:**

The Supreme Administrative Court ruled that the original nullity claim should not be accepted by those who were not litigants in the original appeal. The court said: If the original claim for nullity is considered one of the forms of appeal against the ruling issued by the Supreme Administrative Court as an exception, if it lacks the capacity of judicial rulings, then it is subject to the rulings that appeals are subject to, with the exception of the deadline, including that the right to appeal against the ruling is not Except for those who were a party to the litigation in which the appealed judgment was issued, and that he had been judged on something for which the appeal was instituted, and it is not permissible to appeal except from those who were a party to the lawsuit - and this means: - that whoever was not a party to the judgment..., That is, those outside the litigation may not appeal this ruling by claiming the original invalidity... And that the phrase "concerned persons" mentioned in Article 23/2 of the State Council Law means those concerned in the ruling and in the appeal against it, and not in the decision subject of the contested ruling, so the concerned person is Who was a party to the lawsuit (55). However, the court ruled that the plaintiff was not a party to the cancellation lawsuit... before the Administrative Court... The bottom line is that the plaintiff intervened for the first time on the side of the university before the Supreme Administrative Court in the appeal... filed by the university against the plaintiff on behalf of The same ruling, and such joining intervention, if it is permissible to say that it is permissible before the Supreme Administrative Court, does not result in separate rights for the intervening party, exceeding what is for the original party in the case on whose side the intervention took place, so it does not replace him in the litigation or represent him in it in any way. The annulment ... and certainty is established with him by a final ruling from the Supreme Administrative Court, and the litigants, the parties to the litigation in that case, abstained from appealing by any of the means of appeal, so it is not permissible after that for those who were not a party to the annulment lawsuit to raise alone, individually, an appeal of invalidity, the aim of which is for the litigation to restore its course The first, and whoever was not a party to it, as an original or subsidiary litigant before the Administrative Judiciary Court, lacks that capacity in its time. The invalidation of the aforementioned ruling has nothing to do with the ruling issued by the

Administrative Judiciary Court, as it is not a party or subject to the aforementioned appeal, and therefore the aforementioned has a clear interest in filing the original invalidation claim. At any time, and the right to file it does not lapse except by a long statute of limitations. The Supreme Administrative Court's judgment has settled that the original nullity claim does not adhere to the deadlines for appeal stipulated in Article (44) of Law No. 47 of 1972 regarding the State Council, whether it was instituted based on one of the reasons provided for in the Code of Procedure or other reasons (Aleem, 1979)

And that the legislator limited the methods of appealing against rulings and set specific deadlines and specific procedures for them - it is not permissible to discuss the causes of defects that may be attached to rulings except through grievances against them in appropriate ways - if the appeal is not permissible or closed, then there is no way to waste it except with the original claim of invalidity - the legislator authorized the person concerned The right to file an original nullity claim as a penalty for the fulfillment of any of the reasons for the inevitable incompetence of the court panel that issued the legislated ruling did not specify a specific date for filing this claim - the right to file it falls by the long statute of limitations

Likewise, the Court of Cassation in the Sultanate of Oman ruled that filing a lawsuit to invalidate the judgment does not adhere to an inevitable deadline, taking into account the generality of the text of Article (103/2) pleadings and its release, and filing a lawsuit to invalidate the judgment does not have the effect of stopping the deadlines for appeal

It is not permissible to file the original claim for invalidity regarding a judgment except once, and it is not permissible to file this claim for the same ruling repeatedly, whether it was decided in the initial case to reject it or not to accept it. Nevertheless, it is learned from the judgment of the Supreme Administrative Court that it is permissible to appeal against the ruling issued in the original claim of invalidity Addressed to the ruling of the Administrative Judiciary Court, issued by the Administrative Judiciary Court, rejecting the case. (Aleem, 1979)

### **Conclusion**

And if the original claim for invalidity in the Sultanate of Oman according to the judgment of the Court of Cassation is filed before the Court of First Instance, and not before the Court of Appeal, so as not to miss a degree of litigation for the litigants, then this means accepting the ruling issued in the original claim for invalidity to appeal by the legally prescribed appeal methods.

It is noted that when examining an original claim of invalidity addressed to a ruling issued by the Supreme Administrative Court, there was a problem in the implementation of the same ruling issued by the Supreme Administrative Court, so the court decided to combine the problem with the claim of invalidity to issue a single ruling, which indicates that the Supreme Administrative Court does not deal with the claim of invalidity The original is treated with special treatment, whether in defining a separate roll and numbers for it, or considering it in a specific way that differs from its consideration of the rest of the appeals

### **First- Results**

Through this research, the following conclusions can be drawn

The original claim of invalidity that is directed to the rulings of the administrative judiciary is the creation of the Egyptian administrative judiciary based on the primacy of the rules of justice. legally established.

The original claim of invalidity is an exceptional way of appeal, so it does not expand on it, so it stops in cases other than the invalidity stipulated in the Civil and Commercial Procedure Law, when cases involve a serious fundamental defect that affects the entity of the ruling and makes it lose its character as a ruling, and it descends to the degree of nonexistence. Acceptance of the original claim.

- The Omani judiciary allowed an exception to file an original lawsuit against the ruling if it was stripped of its constituents or one of its basic pillars, which loses its entity and its quality as a judicial ruling, when it was issued in a final manner or the legally prescribed methods of appeal were closed, with the exception of the rulings issued by the Court of Cassation, as they are not subject to appeal. The original invalidation claim against it, except in one case, which is the case provided for in Article (102), pleadings related to the judge's inability to hear the case, in contrast to the rulings issued by the Supreme Administrative Court in Egypt, which accepts appeals against that case for any of the reasons for invalidity that nullifies the ruling. And not only the reason for the incompetence of the judge.

The original nullity claim is not bound by a specific date for its filing, just as its filing does not stop the deadlines for other legally prescribed appeals. The court that issued the judgment is responsible for examining the original nullity case in Egypt, and the judgment issued in this case may be appealed by the prescribed methods of appeal, with the exception of the judgment issued in this case by the Supreme Administrative Court. While this lawsuit is filed in the Sultanate of Oman before a court of first instance in respect of the principle of litigation on two levels, and it is permissible to appeal against the ruling issued in it according to the prescribed appeal method, with the exception of the invalidity of the ruling issued by the Court of Cassation due to the occurrence of a case of incompetence of the judges who participated in the ruling. In this case, an action for invalidity is brought before the Court of Cassation that issued the judgment.

### **Second - Recommendations**

1- The need for the intervention of the legislator in Egypt and the Sultanate of Oman to organize the original invalidity claim and to set specific controls and fixed rules for cases of invalidity of provisions that may be challenged under this claim.

2- The need for the intervention of the Omani legislator to make the jurisdiction to hear the original claim of invalidity before the court that issued the judgment, and not to the court of first instance, in order to prevent the judiciary of a lower court over the judiciary of a higher court.

## References

- Aleem, A. F. (1979). *Disciplinary Guarantees in Public Service. Dar Al Nahda Al Arabiya, Cairo.*
- Al-Qabbani, B. (1977). *Administrative Law in the Arab Gulf States,. Dar Al-Maarif, Riyadh, first edition.*
- Al-Sharif, A. (1997). *Accountability of the Public Employee in Kuwait, Authorship,. Arabization and Publishing Committee.*
- Al-Toukhi, S. ( 2013). *The Legal System for the Management and Quality of Administrative Investigations, Judicial Department, . Abu Dhabi.*
- Aou, A.-G. A. (2020). *The Judiciary of Cancellation in Jordan. without a publishing house, first edition, p. 204.*
- Darwish, A. a.-H. (2019). *The End of the Administrative Decision Without the Judiciary. Dar al-Kutub al-Qanuni, Cairo, pg. 292.*
- Hamouda, A. M. (2008). *Explanation of the General Provisions of the Federal Penal Code of the United Arab Emirates,. General Section, Part 1, 3rd Edition, Dubai Police Academy, Dubai.*
- Ibrahim, M. A.-H. (2018). *The means of administration in ending its decisions. research published in the Journal of Law, Kuwait University, fourth issue, year 18, p. 175.*
- Kanaan, N. (2001). *Principles of Administrative Law and its Applications in the United Arab Emirates.*
- Khalifa, A. A. (2022). *The Comprehensive Administrative Encyclopedia on Reversing the Administrative Decision and Disciplining the Public Employee, Part Two, Controls on the Legality of Administrative and Judicial Discipline Procedures in .*
- Khattar, S. A. (1998). *The Jordanian Administrative Judiciary, Book One, The Judiciary of Cancellation, . The Arab Center for Student Services, Amman, first edition, p. 572.*
- Lilo, R. M. (2005). *Administrative Judiciary "A Study of the Foundations and Principles of Administrative Judiciary in Jordan. Dar Qandil, Amman, first edition, p. 167.*
- Muhammad, Z. S. (2019). *Judicial control over the legality of administrative decisions.*
- Negm, A. H. (2019). *Administrative Law, "A Comparative Study of the Organization and Activity of Public Administration," Part Two, Methods, Means, and Privileges of Public Administration. First Edition, p. 51.*
- Nougi, F. A. (2015). *The impact of salaries on job satisfaction, satisfaction with compensation, and self-motivation for. university professors, Algeria.*
- Obaidat, Y. (2012). *, Provisions of the Federal Labor Regulation Law No. 8 of 1980 and its amendments,. University Library, Sharjah.*
- Sami, J. A.-D. (1992). *Oversight of the Administration's Work "The Principle of Legitimacy - Organization of the Administrative Judiciary. without a publishing house, p. 145.*
- Shamal, A. (2013). *Disciplinary Guarantees for Public Employees, Master's Thesis, 1st edition,. University Library, Sharjah.*
- Ta'meya, A.-J. (2020). *The Principle of Legality and the Controls of Subordination of Public Administration to Law. Dar Al-Nahda Al-Arabiya, Cairo, p. 83.*