

EGYPT

Questionnaire Egypt Council of State

I- According to Article 10 of law no. 47/1972 a collective list of the Judicial Jurisdiction of the State Council courts could be summarized as follows:

1. Appeals relating to the local authorities' elections;
2. Disputes relating to wages, pensions, compensations due to the public servants or their successors ,
3. Requests made by the parties concerned to appeal the final administrative decisions concerning the appointment in the public positions, promotion or granting allowances.
4. Requests made by public servants to annul administrative decisions issued to retire such servants to pension, put them on provisional retirement or dismiss them by means other than the disciplinary way.
5. Requests made by individuals or authorities to annul final administrative decisions.
6. Appeals concerning the final administrative decisions issued by the administrative authorities regarding taxes and duties disputes according to the law regulating the method of examining such disputes before the State Council.
7. Nationality lawsuits.
8. Appeals lodged against final administrative decisions issued by administrative authorities having judicial jurisdiction with the exception of decisions issued by conciliation and arbitration bodies in labour disputes, once the appeal is traceable to non-jurisdiction, fault in the drafting form, a violation of the laws and regulations or a fault in the law implementation or interpretation.

9. Requests made by public servants to abrogate final decisions of the disciplinary authorities.
10. Compensation requests concerning the decisions prescribed in the preceding items whether made in original or subsidiary capacity.
11. Disputes concerning contracts of concession, public works, supply or any other administrative contracts.
12. Disciplinary lawsuits provided for in this law
13. Appeals on penalties imposed upon employees in the public sector within the legally prescribed limits.
14. Other administrative disputes.

Egypt's Council of State has a general jurisdiction with regard to administrative disputes and disciplinary actions. For such disputes and actions the ECS is the public law judicial body and its jurisdiction is extended over these cases with all its different forms.

The jurisdiction of the ECS is known as the censor of principle of legality. In essence, that principle means that all the actions and decisions of the administration is subject to the rule of law in its wider meaning.

“The principle of legality is no further restricted to the notion of respect of laws promulgated by the legislative authority. It embodies the rules enacted by the executive authority, whether it originates from regulations or individuals. The administration must respect the rules that it promulgates, this respect means that these rules must be executed and enforced”

(Egyptian High Administrative Court, Case no. 1261, judicial year no. 42, 19/1/2002, published in the Council of State technical office law reports, year 42 page 41.)

If the administration misinterpreted or did not act in accordance with the laws or regulations, its decision is subject to cancellation and indemnity if challenged before the ECS.

According to Egypt's High Administrative Court, the general regulatory rule or decision creates a general and abstract legal position or situation. A personal administrative decision creates a personal legal position however; it also represents an application of a legal rule which establishes general and abstract legal position. When there are limitations on the jurisdiction of the administration, we must differentiate between two situations where the limitations are for a rule that concerns a specific person and when the limitations are for a general and abstract rule. As for the first situation the administration is concerned only with the execution of that rule as this rule speaks of a specific person. In the second case before executing that rule the sphere of the application of that rule must be identified and this is done by identifying the persons subject to the application of that rule through personal decisions. This entails that a person who challenges a personal decision within the time limitations he is also challenging the general regulatory rule which was the basis for the personal decision. (Egypt High Administrative Court, case 3257, year 32, 9 August 1998).

II- It goes without saying that the jurisdiction is a matter of public order, which means that it is a basic issue that must be decided upon by the court without the need to be raised by any of the parties of the case.

Article 68 of the Egyptian Constitution reads as follows:

“The right to litigation is inalienable and guaranteed for all, and every citizen has the right to have access to his natural judge.

The State shall guarantee accessibility of judicature for litigants, and rapid decision on cases. Any provision in the law stipulating immunity of any act or administrative decision from the control of the judicature is prohibited.”

Additionally, Article 172 of the Egyptian Constitution states that: “The State Council shall be an independent judicial body and shall have the competence to decide administrative disputes, and disciplinary actions. The law shall determine its other competencies.”

The above means that the Judicial Section of the Council of State has jurisdiction over administrative decisions and all administrative disputes and it is considered as the natural judge for these types of disputes.

However, when the constitution or a law, only in allowable cases, states that the jurisdiction over any of these disputes lies in the hand of other courts or bodies, the council of state should abide. The Council of State should not over take these jurisdictional powers. This is to be done by the same carefulness and attention applied by the Council of State to safeguard its jurisdictional powers. The council of state must safeguard the jurisdiction accorded to it by law without exceeding or abandoning its jurisdiction.

(Egypt High Administrative Court, case no. 208, year 37, 16 February 1991.)

One of the basic rules that governs disputes before the Council of State is that deciding upon the jurisdiction of a court regarding a specific case must be settled before delving into the procedural or substance of the that case.

(Egypt High Administrative Court, case no. 2230, year 34, 2 March 1991).

It is also established that the Jurisdiction of the Council of State to hinder or the execution or nullify an administrative decision is tied to the execution of that decision by the willpower of the administrative authority that issued that decision. This is when the jurisdiction of the Council of State is established together with objective of examining that case before the Council of State, which is censoring of the principle of legality and rule of law. (Egypt High Administrative Court, case no. 2677, year 32, 28 February 1993).

III- According to Article 11 of the Law of organization of the Council of State and article 15 of the law of the judicial authority, issues related to sovereignty of the State are not subject to the jurisdiction of neither the Council of State nor to the Jurisdiction of the ordinary judiciary.

The legislator did not specify issues related to sovereignty, this led the council of state to exert interpretive effort to identify the issues.

According to Egypt's High Administrative Court the decision of the State President to invite voters to the parliamentary elections has been issued by the government in its capacity as political organ and not its capacity as the administration. It is established that the decisions of the government deriving from capacity as the administration is subject to judicial scrutiny.

On the other hand decisions related to sovereignty, issued by the government in its capacity as a governance body and within the remit of its political power, are not subject to judicial scrutiny. The decision of the President of the Republic to invite voters for parliamentary elections in derives from his capacity as a governance body and therefore it is not subject to judicial scrutiny. The concept of the sovereignty of the state does not contradict the principle of the constitutional review of laws. That principle could be applied since it aims at upholding the supremacy of the constitution. Application of the concept of the sovereignty of the state means that there are certain decisions of the government is not subject to judicial review as a result of its political nature. This nature does not coincide with the nature and the jurisdiction of the judicial power. (Egypt's High Administrative Court, case no. 1939, year 30, 12 December 1987.)