

## Conditions and the effects of intervention and entry before the administrative courts

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### **Abstract**

*Through this thesis, I tried to know the development witnessed by the Civil Procedures Law, within the framework of the litigation issue in the administrative matter, which means the total procedures followed before the courts since the filing of the case until the issuance of the ruling.*

**Keywords:** conditions, effects, administrative judiciary

### **Introduction**

In view of the issue resulting from exaggeration in the application of the principle of stability of the dispute, we find that modern legislation has turned away from this traditional concept, which means absolute stability of the dispute, so these legislations permitted modification of the scope of the lawsuit, by making adversarial requests during its course, and these requests would change the scope of the original dispute in terms of the subject matter. Or the reason or the parties, and these requests were called interlocutory requests to compare them with the original request, with which the litigation is opened, because the interlocutory requests are submitted during the course of the lawsuit, that is, after it has been filed and before its end, To the conditions and effects through two sections.

### **Literature review**

#### **The first topic**

Introducing and entering

One of the litigants in the lawsuit may have to litigate against other persons from third parties, and he missed their litigation when filing the lawsuit, and third parties may interfere in the lawsuit to submit specific requests related to the original lawsuit that he has an interest in submitting. If it occurs voluntarily, it is called interference, but if it occurs in an obligatory manner, it is called inclusion. We will explain this through the definition of intervention and inclusion.

#### **The first requirement: a statement of the meaning of the intervention.**

The definition of intervention requires shedding light on several matters, perhaps the most important of which is the statement of the linguistic and idiomatic concept of intervention in order to find out the most important opinions that dealt with the subject.

Section one: definition of intervention. Intervention is known language: entered, entered, and the entrance to the house: the opposite of exit: entered, made him enter. (1) And it is said: the interference of the thing, that is, little by little income. (2) As for the idiomatic definition, it is defined as the inclusion of one of the litigants in the lawsuit for a third person who was not a party to it, (3) or whereby a third person intervenes in the existing lawsuit, whether in the face of one The litigants or all of them. (4) It is also defined as a request by a person from a third party

to become a party to an existing lawsuit. (5) It is defined as a type of interlocutory request, with which a person outside the lawsuit enters of his own free will, defending his interests to or claiming charges. . One of the parties to it has the right to confront them. In addition to the definition that he describes as: “It is the behavior by which others join a lawsuit already filed” (6) and intervention in general is a kind of additional requests to the lawsuit, and the laws of assets included the permissibility of intervention by joining one The litigants or a request for a judgment for him in a request related to the case, and this acceptance was confirmed by the French Council of State. Or by the litigants themselves or the court. Article 83 of the Lebanese State Consultative Council system stipulates that “everyone with an interest may intervene in the case, just as the council or the decision-maker may be included in it.”(8) An example of this is the intervention of a taxpayer in an appeal of the value of The owner of the property objected to the decision affecting civil beautification. And Mr. A. s . N and another in Egypt, their interference in the lawsuit filed by the artist, Bertlani Abdel Hamid, requesting the annulment of the decision of the Minister of Culture and Information to delete scenes that are indecent, based on his status as a Muslim. (10) The wisdom of legislation permitting emergency intervention in the case despite all its implications - perhaps the most prominent of which is the widening of the scope of the litigation, whether in terms of it is because of the many advantages that he is entitled to. At the same time, the persons and the subject matter are the advantages of the incidental lawsuit in general, which prompted the legislation to consider this subject as an exception from the relative rule of the effect of the lawsuit, which stipulates that it is not permissible to increase the lawsuit, and to comply with the incoming requests. (11) It should be noted that a distinction must be made between the interference that occurs by a person who is not a party to the existing lawsuit, and the one who was a party to it and requested the court to do so. Therefore, the intervention is considered an authentic source of freedom of defense, and a feasible means of protecting rights, and it may be An aid to the proper performance of justice in relation to the original case.

#### Section Two: Intervention Pictures.

Due to the issuance of conflicting rulings that are difficult to reconcile, or because the raised lawsuit affects the interests of some persons who were not parties to it, the law requires entering into the lawsuit in order to protect their interests. And since the intervention aims to achieve one of two purposes, the first: is to claim a special right for the intervening party in the face of the two parties to the lawsuit, and the second: is to defend his interest by joining one of the two parties as well, and the intervention in the lawsuit is either an original (adversarial) interference, or ancillary (subordinate) interference. Original or adversarial interference: It is the intervention according to which a third party intervenes in the trial to prove or protect his rights towards the litigants or one of them, requesting a ruling for himself with a request that is correlated with the requests of one of the litigants, and thus his requests are different from the demands of the parties to the dispute and independent of them. (12) Intervention is also considered Optional is a type of interlocutory request in which a person from a third party intervenes of his own free will in an existing dispute to defend his interests, and organizes it for one of the parties to the dispute or claims a right for himself in their confrontation related to the existing dispute so that the dispute ends with one case instead of resorting to filing an independent lawsuit, or appealing through third party objection On the ruling issued therein if he does not interfere in the existing dispute, and a third party can intervene in the existing dispute on his own and he is called the intervening opponent, provided that he is not represented in that dispute by a legal representative on his

behalf such as the guardian, or he is a general successor to one of the original parties to the case, and accordingly it can be said Adversarial intervention is “a request in which a third party claims a special right for him, and he requests a ruling for himself in its articles, the parties to the lawsuit, and the right claimed by the intervening party may be the same right claimed in the original lawsuit or a right related to it.” (13) In this type of intervention, the latter does not join one of the parties to the dispute to defend him, but rather intervenes in order to achieve his own demands, so that he demands something for himself based on a personal right he claims. As the Iraqi legislator indicated in the first paragraph of Article 69 of the Procedure Law However, "every interested party may request his participation in the case organizing one of its parties or requesting a ruling for himself in it." The Iraqi legislator required that the original intervention request be subject to the idea of initial acceptance, meaning that the court has the authority to search for the availability of the conditions for accepting this medicine, starting with the fact that the intervening party is from a third party, and that the litigation is still standing before the court, and that the intervening party demands a right of his own against the two parties to the case. And the connection of the request to intervene with the original case, and that the applicant for intervention has an interest in the intervention, and if these conditions are met, the court decides to accept it in principle, and then assigns its owner to submit a list according to the procedures adopted to file the case, and assigns him to pay the prescribed fee for this medicine. While the Lebanese State Shura Council stipulated in Article 83, provided that the request for intervention is limited to supporting the point of view of one of the opponents, (14). In addition, the request for intervention must be submitted in writing by a lawyer (15). In addition to the obligation to advance The application is made according to a distinct and independent summons from the original summons.

accessory (sub)intervention.

It is whereby others intervene to preserve his rights and interests by joining one of the opponents and supporting his point of view without claiming a right of his own. In this type of intervention, the intervening party intends to preserve his rights by assisting one of the parties to the dispute in defending his rights. It is also called precautionary or preventive intervention. The intervening party also aims, through his intervention, to preserve his rights by joining one of the litigants - for example: the intervention of the challenged for his promotion before the Supreme Administrative Court as an litigant joining the appealed body in its request to dismiss the case - the intervening party in this case does not claim for himself a right independent of the right of the adversary he joined. The Lebanese State Shura Council also considered the dependent intervention (sub-joining) that does not allow the intervening party to represent himself alone and without joining one of the opponents, nor to submit requests of his own. The scope of joining intervention is limited to the defenses shown by the intervening party to support the request of the opponent who intervened on his side without the judiciary demanding a right for himself or creating a new legal order. In terms of the subject matter, the consideration of the type of intervention is the fact of the legal conditioning, not the description given to it by the litigants, because in the event that the intervening party requests a judgment for himself with a personal right that he claims in the face of the two parties to the dispute, then his intervention in this way will be an original intervention, and the rulings that apply to the lawsuit will apply to him. As it was stipulated and Article (69) of the Iraqi Law of Procedures, where it states (every interested person may intervene in the case by joining one of the litigants and shall be exempted from paying the prescribed fees), and Article 114 came as an amendment to a previous text according

to the amended Law No. (14) of (2001) AD It used to stipulate that (a person involved in a lawsuit existing between the two parties, and affected by the outcome of the ruling therein, may request to be included in the lawsuit.

This type of intervention requires the following to be accepted:

That the intervening party be among the third parties who are interested in the judicial decision that ends the litigation, so it is not permissible for someone who was a party to the litigation or a private or public successor to one of the original parties to the case to interfere, and it is not permissible for someone who was represented in the litigation by someone else to interfere in it, as he is not considered a third party in relation to it The principle is that the third party is foreign to the case and the judgment has no effect on confronting him. The litigation is still existing, and if the dispute has not been brought before the judiciary, the third person who fears that his rights may be lost can file an original lawsuit to secure these rights, and he may not do so. If the litigation ends before his intervention for any reason, and the request for intervention is submitted before the Court of First Instance in whatever state the case is, but on the condition that it is submitted before the close of the trial door so that his intervention does not result in delaying the decision in the original case, and with the understanding of the violation, if the case is returned to pleading again, the right is restored In expressing requests for intervention, and this is what was stipulated in the Iraqi Procedure Law in the first paragraph of Article 70 (the incident case is submitted to before the conclusion of the case).

That the intervening party has an interest in his intervention, and with this condition, the intervention represents a lawsuit in the full sense of the word, and it must fulfill the interest condition and its descriptions.

The existence of a link between the original lawsuit and the request of the intervening party, and it is sufficient for the title of these requests to have a link between them and the original request, and the judge has the discretionary power to estimate the existence of the link or not, as it did not require that the link reach the extent of indivisibility (16).

It should be noted that the principles of administrative trials in Lebanon do not define anything other than consequential interference, as evidenced by the provisions of Article 83 of the State Consultative Council system.(17) Whereas in France, interference is restricted to being consequential, by organizing the intervention either to the plaintiff's requests or to the plaintiff's requests. Accordingly, he may not express requests or reasons other than those on which one of the parties relies. ( ) While the Egyptian judiciary did not reject the original intervention in which the intervening party requests requests for himself. (18)

The third section: the differences between the original and accessory intervention.

Subsequent intervention does not affect the subject matter of the dispute, and it only results in widening the scope of the litigation. As for the original intervention, it leads to changing the subject matter of the requests presented to the court, i. The first degree, unlike the accessory interfering person, can be in the first degree or in the appeal.

It is required that the conditions for accepting the judicial request be met in the offensively intervening party in terms of interest and capacity and the absence of an obstacle preventing the acceptance of the lawsuit. As for the secondary intervening party, it has some leniency in terms of conditions. It is only required that the necessary capacity be available to carry out management work or preservation work. With regard to the interest, the original intervening party intervenes for an existing interest. In the case of the opposite of the dependent interventionist, he intervenes based on a probable interest.

If the litigation in the original request lapses for any reason, then its lapse entails the cessation of the accessory interference, but if the intervention was original, then his request remains on the table and the court must decide on it.

The secondary intervening party may leave the dispute at his own will and the remaining litigants do not need to agree. However, if the intervention was offensive, the remaining litigants must agree.

The methods of appeal differ. The original intervening party had the right to appeal through all the methods that the person against whom the judgment is issued has, and the adjoining party does not have the right to appeal if a ruling is issued against him.

If the original intervening party did not win the judgment and the right he requested was not granted, he will be charged with the expenses. As for the secondary intervening party, he shall bear the costs of his intervention, regardless of the judgment issued in the case.

### **The second requirement: a statement of the meaning of the entry.**

The action may not be confined to the original litigants with whom the litigation begins, but its scope may extend to include new litigants who were third parties to it. As the intertwined relationships Legality may lead to the ruling issued in a particular case affecting the rights of others, whether directly or indirectly. Therefore, in order to achieve justice and the desire to reach the real right holder, it requires the emergence of new people from outside the dispute to become parties to it, in order to claim the right in dispute for them. Or because they have an interest in supporting one of the original litigants, or to judge the case against them, or to judge them with certain requests, and the development of law and legal thought has had a great impact in shifting the perception of the role of the judge in the case, from a purely negative role to a positive one. As the judge has become, in light of modern legislation, enjoying a positive attitude in managing the litigation and directing it in the right direction, unlike what it used to be in the old legislation, as his role was purely negative, and the judge did not reach this role until after a long period of time had passed. And the court recognized its authority to It issues on its own initiative a decision to include third parties in the original case, which sparked a jurisprudential debate about the role that the judge can play in the civil case.

The first section: the definition of the entry.

Inclusion is the addition of a third party to the case after the litigation has been established by the court's order on its own, or at the request of the opponent for an interest that requires that. The judge arrives at a fair and urgent judgment in it.” (20) Article 151 of the Syrian Trials Law was subjected to the inclusion of the text stating that “the litigant may enter into the lawsuits whoever becomes his jurisdiction over them when they are filed, and that is by the usual procedures for filing the lawsuit before the day of clearing.” And Article 152 stipulated The same law stipulates that “the court – even on its own initiative – may order the entry of whomever it deems to be admitted in the interest of justice or to reveal the truth – and the court shall set a date not exceeding three weeks for the presence of the person it orders to be admitted and any of the litigants to admit him, and that shall be according to the usual procedures for filing a lawsuit.” As for inclusion under the decisions of the Lebanese State Shura Council, it has been explained as follows:

Inclusion in the annulment judiciary: The inclusion decided by the administrative judge within the framework of the annulment judiciary, i.e. the annulment reviews to exceed the limit of

power, is the right given, to each of the litigants or the judge on his own, in order to include a third person in the trial by informing him of the review papers as concerned with the dispute in order to hear the point of view or to assign him to show some documents and papers in his possession (21). Examples of this are:

It is acceptable to request the entry of the third person who is the lessor, who was originally given the construction license to be revoked according to the contested decision of the mayor (22).

The company licensed to build has a definite and direct interest in defending the license, which necessitates its inclusion in the trial (23).

The partner in the real estate disputed with the plaintiff has a definite interest to include him in the trial aimed at nullifying the decision to permit excretion (24).

**Inclusion in the Comprehensive Judiciary:** One of the types of administrative lawsuits that the administrative judiciary has jurisdiction in accordance with its general jurisdiction to consider administrative lawsuits is the comprehensive judiciary lawsuit, and some commentators call it the compensation lawsuit on the basis that the comprehensive judiciary originally guides to compensation, and is related to it from The practical aspect is closely related. As a result of the spread and increase of socialist ideas and the directed economy, and the subsequent increase in state intervention, there was a prominent place for the comprehensive judiciary among the administrative cases. (25) Inclusion in the comprehensive judiciary is a right given basically to each party in the lawsuit by including a third person in the trial against his will or at least without it with the intention of involving him in hearing the ruling, i. The litigants, and therefore inclusion would have a direct effect on the framework of the trial, both in terms of determining its parties and in terms of the subject of the review itself. (26) Inclusion in the administrative case under the comprehensive judiciary takes several forms, which are:

**Inclusion at the request of the plaintiff:** This is to pass judgment on him instead of the plaintiff in his original face or in a manner associated with him, and it is permissible at all times of the trial until its conclusion (27).

**Entry by the claimant on his behalf for the sake of the guarantee:** This entry is within the competence of the competent administrative judge, and the entry for the sake of the guarantee exempts the summoned on his own behalf from recourse for payment to third parties according to an independent review. And the response to the basic review also leads to the response to the entry, and this entry is only applied in the comprehensive judiciary.

**Entry by the appellant or the summoned in his face:** This entry is for the purpose of only involving him in hearing the judgment without obligating him to any extended requests, i. It is in his favor to become a party in the dispute to express his point of view and defend his rights without the need to file a lawsuit.

**The second subsection: the legality of entering into the lawsuit.**

The legality of entering into the lawsuit is indicated by the Book and the Sunnah, and the meaning and the reasonable:

kin, and forbids indecency, evil, and transgression, and admonishes you, so that you may remember (29), so in the entry of a third party when necessary, it is an achievement of the justice that God - Glory be to Him - commanded, so I indicated this to my project.

And from the Sunnah: What was narrated by Al-Bara bin Azib, may God be pleased with him, in the story of the daughter of Hamzah, that he said: "So Ali, Zaid, and Jaafar disputed about it, and

Ali said: I have more right to her, and she is the daughter of my uncle. So the Prophet, peace and blessings of God be upon him, judged her for her maternal aunt, and said: ((The maternal aunt is in the same position as the mother)).

The Prophet, may God's prayers and peace be upon him, heard the lawsuit from three in the custody, each requesting it for himself, and he was not limited to two, so he indicated the legality of a third party entering the lawsuit after it was filed. Because the incident in the hadeeth was general and includes their entry together, as it includes the entry of one of them after the lawsuit was filed.

From the meaning and reasonable: Entering into the lawsuit achieves three goals

Enabling the opponent who is harmed by the effect of the ruling - assuming it is issued - and he has to defend himself.

Alleviating the burden on the judiciary and the litigants in the multiplicity of judgments in a case whose procedures are the same.

Prevent conflicting rulings in a case with one subject matter.

All of these are valid legitimate purposes, which indicate the legitimacy of entering into the lawsuit, and the jurists mention images that support the inclusion in the lawsuit, including: the lawsuit of three or four, one eye, each claiming it for himself, or some of them claiming it for himself and others claiming a part of it, and what is in the jurists, even if they do not specify For a lawsuit that takes place after the litigation has been established, but the release of this requires that it be an independent lawsuit, and it is by entering the lawsuit after its establishment.

The third section: the categories of entry into the lawsuit in terms of being original or dependent  
The entry into the lawsuit from this side is divided into two parts: First: the original entry. What is meant by it: the rights of a third or more opponent with the pleadings after the litigation has arisen, claiming the disputed or some of it for himself. (30) Second: Accrual entry. What is meant by it: joining a third party in the litigation after its establishment by joining one of the disputing pleadings, for the purpose achieved by the joining of bringing a benefit to him or warding off the harm he inflicted. (31)

Fourth: Categories of entering into a lawsuit in terms of its obligation or permissibility:

The entry into the lawsuit from this side is divided into two parts:

1) Allowed entry (optional).

What we mean by it: the entry of a third party into the dispute after its establishment with his consent and choice. (32)

2) Obligatory entry (compulsory).

We mean by it: obligating a third party to enter into the case after the litigation has been established by the court's order on its own or at the request of the opponent. (33) Obligatory entry may be at the request of the opponent, as well as at the request of the case judge on his own, and it may be original or conjoined, The person next to whom the entry is to take the entry procedures, and this oath is expressed in this system as (entry).

The fifth section: the position of legislation on inclusion.

With the development of societies and public life in all its aspects, especially the legal one, it has shown great aspects for the use of inclusion in litigation. We believe that this approach adopted by comparative laws in allowing the court to litigate others in the existing lawsuit leads to the extension of the court's control over the dispute in all its aspects, and in violation of the negative neutral role of the civil judge and the important principle based on the fact that the lawsuit

belongs to its parties. (34) It can be said that most of the modern legislation at the present time agree to make the system of litigation of third parties based on the order of the court one of the systems well-established in its procedural laws, and the reference for the interest of these legislations in this system is that restricting the authority of the judge by preventing him from modifying the personal scope of the case may lead to the issuance of Judgments are far from truth and justice, and this explains to us that the laws of comparative pleadings made the ultimate goal of granting the power of litigation to the court to achieve justice and reveal the truth. Accordingly, we will divide this point into two branches:

Litigation of third parties based on court order in Iraqi legislation.

The Iraqi legislator in the Procedure Law No. 83 of 1969, as amended, adopted two methods. It sometimes makes the litigation obligatory for the court, as we notice in the third paragraph of Article 69, and at other times it makes this litigation permissible for the court, and this is what can be seen from the phrase contained in the fourth paragraph of Article 69. These two methods are:

Obligatory litigation.

The third paragraph of Article 69 of the Law of Procedures stipulates that “the court must summon the depositor, the depositor, the borrower, the lender, the lessee, the lessor, the mortgagee, the mortgagor, the usurper and the extorted from him when examining the lawsuit of the deposit against the depositor, the borrower against the lender, the rent against the tenant, the mortgaged against the mortgagee, and the usurped against the usurper.” If we look at the text, we find that the phrase “upon the court” indicates that it is obligatory, meaning that there is no discretionary power for the court in such cases, and if the court fails to include any of these, then its ruling will be subject to annulment or revocation by the courts of appeal. (35) The purpose of this litigation is to easily resolve the case and achieve justice. As for the ease of resolving the case, it enables the court to clarify the truth by having all its elements available before the judge. As for achieving justice, it comes through the fact that the ruling issued in the case becomes an argument against it, and the contradiction of rulings in the case is avoided. one. (36)

Passport litigation.

Sometimes it happens that the case is tainted with some ambiguity that cannot be cleared by the parties to the dispute. Therefore, the court can, on its own initiative and without a request from one of the parties, include others in the case to clarify from him the ambiguous points in the case to facilitate the issuance of a judgment thereon.

As Article 69 stipulates that “the court may invite any person to seek clarification from him about what is necessary to resolve the case” (37) and if we contemplate the text, we find that the phrase “to the court” means that the court has discretion in this case, but with this, the subject-matter court is If it fails to exercise this authority or it appears that the matter of clarification affects the outcome of the ruling, the matter becomes subject to the oversight of the Court of Cassation (38)

Litigation of third parties based on the order of the court in the Lebanese legislation.

The Lebanese State Consultative Council held in some of its rulings that its system permitted in its Article 83 a specific type of inclusion, which aims to support the point of view of one of the litigants and his requests, (39) meaning that it is limited, as is the case with regard to intervention, to accessory or subsidiary intervention.

As for the case of heroes, the administrative jurisprudence also defines a special kind of inclusion, which comes as a way of listening and monitoring. And that is with the intention of



hearing the judgment, that is, to involve him in hearing the judgment issued also in his face, or for the sake of guarantee, or in order to oblige him with requests related to one of the litigants, and thus the inclusion would have a direct effect on the framework of the trial, both in terms of determining its parties, and in terms of the subject of the review itself. (41)

### **The second topic**

Conditions and effects of intervention and entry

Intervention in the case is not acceptable unless certain conditions are met, as these conditions are the necessary controls for the validity of the intervention, just like in the case of a regular case. Hence, intervention and insertion procedures have many effects, as we will show in this section.

### **The first requirement: the conditions for intervention and entry.**

Intervention is not the only procedure that leads to modifying the scope of the litigation in the case in terms of its parties. Rather, the scope of the litigation in the case can be increased by introducing third parties, whether this entry is based on the request of any of the parties to the case and this is coupled with the approval of the court, or the court orders so on its own. As we will show here the conditions for intervention and inclusion in the case.

The first section: the conditions for intervention in the case.

Comparative legislation has shown the necessary conditions for the validity of the intervention, and these texts are somewhat similar to each other, but the difference may appear in the wording or even in the accuracy, which requires us to examine these texts to stand at the limits of the study. The first of Article 69 of the Proceedings Law deals with the conditions by saying, “Any interested party may request the entry of a third person in the case into one of the two parties, or request a judgment for himself in it, if he has a relationship with the case or connects him with one of the opponents, such as a bond of As for the second paragraph of the same article, it confirms that “every litigant may ask the court to include those who may have been litigated in it when it is filed, or to preserve the rights of the two parties or one of them.” Whereas the Lebanese State Shura Council has indicated its conditions for accepting intervention as follows:

First: The request for intervention can only be submitted by a person who was not a party to the dispute, represented in it, or invited to it.

Second: It is not permissible to interfere in the appellate judgment by a person who was present in the first instance trial if he has the right to appeal the verdict on behalf of one of the parties.

Third: The intervention is subject to the general rules for acceptance of the review, which impose the availability of the legal capacity, capacity and interest of the claim, and which require the applicant to prove his capacity and interest in the intervention under penalty of rejecting the request.

Fourth: The request for intervention can be submitted outside the judicial review deadline, i.e. without stipulating a deadline for its submission.

This is in addition to having the following:

### **Interest**

When reviewing the Iraqi text and the Lebanese text, we find that the interest condition represents the most important of these conditions, and the evidence for this is that it stressed that this condition must be met in the intervention, as it is not valid for a person who has no interest

in the lawsuit (42). It should be noted that interest is a condition. To accept any request, payment, or even an appeal against a ruling in the sense that the use of a lawsuit is by way of lawsuit and defense, because the right to resort to the judiciary has been legislated for the protection of rights, and the lawsuit, request, payment, and appeal against the judgment are only means to protect the rights that the law approves. Referring to the general rules, the interest of the intervening party must be legal, in the sense that it is based on a right or a legal position, and in the sense of violation, the interest is illegal if it is contrary to public order and morals, in other words, that the right of the intervening party is not based on a legal position or right, as in the case of intervention in order to harm one or both of the parties. That the interest of the intervening party be a state, that is, that his right in the request is not suspended on a condition or added to a term, so the interest is a state of affairs, that is, a time when the intervening party demands the benefit that the right decides immediately and intervenes in the case. As in the intervening requests to oblige the defendants to refrain from an act that had previously taken place. (43)

#### Link

By this condition, it is intended that there be a unity of connection between what the intervening party requests and the wanted person in the case in terms of the cause and the subject matter. The link is known to establish a link between two claims that require justice and the proper functioning of the judiciary, bringing them together in one court, in order to avoid the issuance of contradictory rulings (4). Flexible, the unit of requests submitted by the intervening party with the original case takes several forms according to what is referred to in the first paragraph of Article 69 of the Iraqi Procedure Law, meaning that the connection is not achieved, and therefore the intervention is not valid unless one of the following reasons is present:

1. The existence of a relationship between the requests of the intervening party and the original case. (45)
2. The existence of a bond of solidarity between the applicant for intervention and one of the litigants. (46)
3. If the applicant for intervention is an indivisible obligation between him and one of the litigants. (47)
4. If the applicant is harmed by the judgment issued in the case. (48)

#### Specialization

- But if it is not spatially competent in its view, there is no impediment to accepting it, because this jurisdiction is not considered a public order, but rather a right of the litigants. (49)

#### Pay the legal fee.

- If the admission applicant pays the prescribed fee, then the third person becomes a party to the case and a judgment is passed for him or him when the claimed right is proven. (50)
- Acceptance of intervention until before the closing of the pleading.

#### Section Two: Conditions for Inclusion in the Case.

Although the inclusion of third parties raises some problems because the third party enters the case against his will at a time that he may not deem appropriate for him, in addition to the fact that the inclusion may be a departure from the rules of jurisdiction, yet the legislation permitted applications for inclusion and specified them according to the following:

First: The entry must raise a legal issue that depends on its resolution as a result of the dispute. (52)

Second: The person to be included in the case must be a third person other than her.

Third: In order for the entry to be valid, it is necessary that the person entering the case have a specific relationship with it. (53)

Fourth: The entry request must be submitted before the reference is ready for judgment, i.e. before drawing up the report and reviewing it.

Fifth: Inclusion must not lead to delay in resolving the dispute or prolongation of the trial.

Sixth: The court to which the entry request is submitted must be originally competent to consider its subject matter, i.e. competent to consider the rights and obligations of the third party to be included. (54)

Seventh: The entry must not prejudice the rights of the party to be entered.

### **The second requirement: the effects of intervention and inclusion.**

If the conditions for intervention and inclusion were met, the court was obliged to accept these requests if and if it issued its decision to accept them, those requests produced their effects, and this is what will be indicated in this request.

The first section: the effects of interference in the case.

The effects of the intervention differ in the case of whether it was a primary intervention, or a consequential intervention.

First: Effects of the original intervention: This intervention results in several effects, which are: (55)

The intervening party becomes in the position of the plaintiff, and he has the right to express all requests, which each plaintiff has to express, and the intervening party is not bound by what the original parties have expressed, or by what they have the right to express. He has the right, like any opponent in the case, if he accepts his intervention, and he has the right to challenge the ruling in all permissible ways. Legally. (56)

The intervening party cannot be held in defense (57).

The plaintiff and the defendant in the original lawsuit become plaintiffs in the intervening lawsuit.

Decisions and judgments issued in the lawsuit prior to the intervention shall not apply to the intervening party. (58)

First: Effects of consequential intervention: This intervention results in several effects, which are:

The intervening party shall not take any action that conflicts with his being considered a party to the case. (59)

The intervening party shall not take any action that leads to the prevention of the case being extinguished or its expiration due to the lapse of time.

It is not permissible to object to the ruling issued by the court, whether the ruling is in favor of the party to which the intervening party joined or against its interest. (60)

The intervening party shall have the right to challenge the ruling issued in the lawsuit by the means permitted for all the original litigants.

The intervening party may not take a position that differs and contradicts the position of the opponent to which he joined.

All decisions and provisions prior to his intervention shall apply to the intervening party.

#### Section Two: Effects of Inclusion in the Case.

The acceptance of the request for the litigation of third parties, “incorporation,” entails, as a general effect, that the scope of the lawsuit expands.

The intervening party becomes a litigant in the lawsuit, and is considered a party to it. He is required to attend its sessions, express his defense, and follow up on the progress of the lawsuit.

The intervening party is not bound by the evidence presented in the case.

The judgment issued by the court shall be an argument against or against the intervening party.

#### Margins

1. Louis Maalouf, *Al-Munajjid in Language, Literature and Science*, Al-Jadeedah, Publishing House, Bla, 1956, p. 208 .
2. Imam Ismail bin Hammad Al-Johari, *Lexicon of Al-Sahih*, Dar Al-Maarifa, Beirut, 2005, pg. 335 .
3. Muhammad Mahmoud Ibrahim, *Al-Wajeez in Proceedings*, Dar Al-Fikr Al-Arabi, Cairo, 1983, p. 733 .
4. Amina Al-Nimr, *The Principles of Civil Trials*, University House, Beirut, year of publication, no, p. 111 .
5. Wajdi Ragheb, *Principles of Civil Litigation*, Dar Al-Fikr Al-Arabi, Cairo, 1978, p. 275 .
6. Ziad Ayoub, *Intervention before the Administrative Judiciary*, *Journal of Administrative Judiciary*, Lebanon, Issue 18, 2006, p. 38 .
7. Here, the French Council of State is tolerant, so it is not required that the intervening party have an interest in the original lawsuit, but rather it is satisfied with that in the intervention itself. For more, see: Burhan Zureik, *Principles of Administrative Judiciary Procedures*, The Legal Library, Damascus, 2011, pg. 357 .
8. For more, see: Article 69 of the Iraqi Procedure Law of 1969, and Article 36 of the Lebanese Civil Procedure Code of 1983 .
9. Ziad Ayoub, *Intervention before the Administrative Judiciary*, *Journal of Administrative Judiciary*, Lebanon, Issue 18, 2006, p. 38 .
10. Here, the Administrative Court discussed this in terms of the existence of a personal interest affecting him, and did not look at it from the perspective of the public interest that the administration defends and to which he joined. For more, see: Session 7/9/1976, Case No. 103. Quoting: Burhan Zureiq, previous source, p. 358 .
11. Ahmed El-Sayed Sawy, *The Mediator in Explaining the Law of Civil and Commercial Procedures*, Dar Al-Nahda Al-Arabia, Cairo, 1981, p. 196 .
12. Among the most important advantages achieved by the intervention are: It leads to achieving the principle of economy in judicial procedures, and in this first saving time,

effort and expenses. The intervention prevents the repetition of the subject matter of the case, as it avoids filing more than two cases in one subject matter. This, of course, is sufficient to reduce the number of numerous lawsuits that burden the courts, thus saving time and studying the case and resolving them within the specified time and through the prescribed time ceiling. . And highlighting the court's positive role in case management through the third important role that it plays in the scope of intervention, so that the court has the final say on whether or not to accept the intervention, in light of the availability of its justifications such as the existence of a clear interest in the intervention as well as its availability. For more, see: Abbas Al-Aboudi, Explanation of the provisions of the Civil Procedure Code, University of Mosul, 2000, p. 269 .

13. Ziyad Ayoub, Intervention before the Administrative Court, previous source, p. 38 .
14. Adam Wahib Al-Nadawi, The Extent of the Court's Authority in Modifying the Case, Al Thaqafa Library for Publishing, Baghdad, 2005, p. 276 .
15. This came in the administrative jurisprudence, if it was decided that the request to intervene in the reviews filed with the State Consultative Council is only acceptable to support the position of one of the parties in it, and the intervening party cannot request anything for himself. For more, see: Decision No. 51 dated 3/25/1960, Administrative Group 1960, p. 88. Citing: Ziad Ayoub, Intervention before the Administrative Court, previous source, p. 39 .
16. He ruled in this regard, according to his decision, "The request to intervene in the pending review before the Shura Council of the State will not be heard if the power of attorney given to the lawyer does not give the right to submit it." For more, see: Resolution No. 33 of 3/10/1971, Administrative Group, 1971, p. 182 .
17. Lebanese State Shura Council Decision No. 4 of 7/19/1977. Quoting: Ziyad Ayoub, Intervention before the Administrative Court, previous source, p. 40 .
18. Fathi Wali, Mediator in the Civil Judiciary, Cairo University, year of publication, no, p. 367 .
19. This is what the Jordanian and French legislators have adopted, and it is really good in anticipation of the loss of rights, unlike the Iraqi legislator, who stipulated that the link should reach the extent of indivisibility, just as it is not permissible for the intervening party to create a new case from his intervention that is not presented to the court, and in such a case it is necessary to Submitting an independent claim for the right that he claims for himself. In the intervention, the intervening party requests a judgment for himself with a request related to the original claim, and we are here facing an interlocutory request, and therefore he is subject to the rule of association to which interlocutory requests are subject .
20. Ziad Ayoub, Intervention before the Administrative Judiciary, Journal of Administrative Judiciary, Lebanon, Issue 18, 2006, p. 38 .
21. Accordingly, the French Council of State rejects the type of intervention known as the law for the intervening party to express requests different from those made by the opponent, in what is called the original or adversarial intervention. For more, see: The French Council of State, on 10/19/1934. Quoting: Burhan Zureiq, previous source, p. 358 .
22. The Egyptian judiciary stipulated two conditions for adversarial intervention to be accepted: that the intervening party claim a right for himself. And that the link is

- established between the request that the intervening party seeks to judge for himself and the original case. For more, see: The Supreme Administrative Court, 3/27/1966 .
23. Awan Abdullah Al-Faydi, *Interrogation of the Litigants in the Civil Case*, Dar Al-Fikr Al-Arabi, Cairo, without a year of publication, pg. 47 .
  24. . Adam Wahib Al-Nadawi, *The Extent of the Civil Court's Authority to Modify the Scope of the Case*, 1st Edition, Dar Al-Ilmiya and Dar Al-Thaqafa for Publishing and Distribution - Amman, 2001, p. 233 .
  25. . The State Council may decide to admit whomever it deems to be concerned with it, and that this would enlighten the governing body in terms of taking the decision to include him in a specific position on the review, or submitting documents that help in adjudicating it. For more, see: Decision No. 666 of May 27, 2004, *Administrative Judiciary Magazine*, 2008, 1207 .
  26. . Decision No. 197 of 11/12/2004, *Journal of Administrative Judiciary*, 2008, p. 361 .
  27. . Decision No. 280 of January 14, 2004, *Journal of Administrative Judiciary*, 2008, p. 500
  28. . Decision No. 288 of 19/1/2005, *Journal of Administrative Judiciary*, 2008, 519 .
  29. . Muhammad Suleiman Al-Tamawy, *Administrative Judiciary, Book Two, (The Judgment of Compensation)*, Dar Al-Fikr Al-Arabi, Cairo, 1986, p. 12 .
  30. . The judge here is obligated to respond to the admission request, if it fulfills the formal and substantive conditions. French Shura Council. Quoted from: Ziyad Ayoub, *Introduction to the Administrative Conflict*, *Journal of Administrative Judiciary*, Issue 21, 2009, p. 16 .
  31. . An example of this is in the case where the damage is believed to be attributable to a public person, so the plaintiff requests that he be judged to be liable for damages, but it becomes clear during the course of the trial through discussions or the expert's report that the damage is in fact the work of a person and another department, so it is up to the plaintiff to ask for the inclusion of the latter. To oblige it in full or part of the compensation, and that inclusion in this case avoids the plaintiff from filing another lawsuit in the event that the summoned administration is partially judged in its face or is considered irresponsible. On the other hand, it also spares the adjudicated administration from filing a lawsuit by recourse against the person or other administration involved in the dispute if it is ordered to pay compensation in full. For more, see: Ziyad Ayoub, *Inclusion in the Administrative Conflict*, previous source, p. 18 .
  32. . The administrative judiciary recognized the case of entry with the intention of the guarantee directed by the summoned administration against the concessionaire, so that if it decided its responsibility, it ruled at the same time its right to refer back to him with what might be judged against him. For more, see: Resolution No. 993 of 1/6/1965, *Administrative Group*, 1965, p. 159. Quoting: Ziyad Ayoub, *Inclusion in the Administrative Conflict*, previous source, p. 18 .
  33. Surat Al-Nisa, verse 58
  34. Surah An-Nahl, verse 90 .
  35. Qabas Al-Douri, *Inclusion in the Administrative Judiciary*, The Legal Library, Baghdad, 2018, p. 32 .
  36. Ruqaya Falah Hassan, *Administrative Judiciary*, Dar Al-Mahd Publishing House, Baghdad, 2019, p. 43 .
  37. Qabas Al-Douri, previous source, pg. 45 .

38. Ruqayyah Falah Hassan, previous source, p. 51 .
39. Lujain Adel, *Comparative Administrative Judiciary*, Ward Island Publishing, Cairo, 2017, p. 67 .
40. The Iraqi legislator quoted this article, as we mentioned, from Article (1637) of the Code of Justice, and these lawsuits are called the five lawsuits. Because of its impact on the real owner of the claimed property, as the owner may suffer damages from the judgments issued in these cases against the squatters only on the claimed property, and in order for the judgment issued in the case to be implemented against the owner and the squatter, the owner must be included as a party to the lawsuit, and for this The reason is that the stipulation came in the form of obligation, as it obligated the court to include the persons mentioned in the case. For more see: . Sadiq Haidar, *Explanation of the Civil Procedure Law*, Al-Sanhouri Bookshop, 2011, p. 13
41. Adam Wahib Al-Nadawi, *Civil Procedures*, Dar Al-Kutub, University of Mosul, 1988, pg. 242 .
42. Corresponding to it is the text of Paragraph 3 of Article 14 of the repealed Iraqi Code of Civil and Commercial Procedure, which states that “the court may decide to include a third person in the case if it deems that this would facilitate the ruling on it or preserve the rights of the parties or one of them. ”
43. Adam Wahib Al-Nadawi, previous source, pg. 242 .
44. Decision No. 4 of 10/17/2000, *Journal of Administrative Judiciary*, pg. 20 .
45. Ziad Ayoub, *Introduction to the Administrative Conflict*, *Journal of Administrative Judiciary*, Issue 21, 2009, p. 13 .
46. Ziad Ayoub, previous source, p. 16 .
47. The interest is the legitimate practical benefit that the plaintiff obtains from resorting to the judiciary. Therefore, it has become one of the established principles in jurisprudence and the judiciary that “there is no lawsuit without interest” and that “the interest is the basis of the lawsuit.” For more, see: Abbas Al-Aboudi, previous source, p. 206 .
48. Fares Ali Omar, previous source, p. 8 .
49. Abbas Al-Aboudi, previous source, pg. 271 .
50. An example of this is the existence of a dispute between a buyer of the real estate and his seller. The auctioneer, who mediated in the sale and purchase process, requests his participation in the case as a litigious intervention, asking for a ruling for himself on his fees stipulated in the sale contract itself. For more, see: Medhat Al-Mahmoud, *Explanation of the Civil Procedure Law and its Applications*, Baghdad, 2005, p. 110 .
51. Such as the existence of a bond of solidarity or commitment, and the defendant's sponsor asked to intervene on his side to dismiss the case on his behalf. For more, see: the previous source, p. 271 .
52. For example, the partner's request to intervene in the lawsuit filed against his partner in the joint property, including a claim for the value of the improvements made by the plaintiff to the joint property .
53. As in the case of a dispute over the ownership of an eye between the seller and the buyer, someone who claims to be the real owner of the property intervenes and asks for a ruling on this property before the two original parties to the case .
54. Fares Ali Omar, former Egypt, p. 11 .

55. The second period of Article 70 of the Iraqi Law of Procedures stipulates that the entry fees of the third person must be paid so that his entry is considered and produced its effects, because the accident case is considered existing only from the date of payment of the fee on its behalf or the issuance of a decision to postpone its collection .
56. After it decides to conclude the pleading, the court may not hear clarifications from one of the litigants except in the presence of the other litigant, and it may not accept notes and documents from one of the parties. This requires that you write down what justifies this decision. For more, see: Article 157 of the Iraqi Procedure Code .
57. The subject of entry, although it differs from the subject of review, but it must not be alien to it and must not be related to it in any concomitant relationship, and the judge has the power of discretion in this regard .
58. Here, the headquarters of his admission to the trial is allowed to request his removal from it, as he considers that there is no benefit from his presence there, after the approval of the competent judge or the governing body. For more, see: Decision No. 317 of January 22, 2004, Administrative Judiciary Magazine, 2008, p. 574 .
59. French Shura Council, 9/6/1967, Libon Group, p. 241. Quoting: Ziyad Ayoub, Inclusion in the Administrative Conflict, previous source, p. 25 .
60. Yasser Ali Ibrahim, Intervention and Inclusion, a comparative analytical study, an unpublished doctoral dissertation, Faculty of Law, Al-Azhar University, Gaza, 2014, p. 94 .
61. Wajdi Ragheb, The Brief in Administrative Law, p. 386 .
62. Here, the court must decide on the original case and the requests for intervention together, if possible. For more, see: Ahmed Abu Al-Wafa, Civil and Commercial Pleadings, Article 183, pg
63. Ahmed Abu Al-Wafa, Civil and Commercial Pleadings, previous source, p. 206 .
64. Adam Wahib Al-Nadawi, Extent of the Authority of the Civil Court, previous reference, p. 324 .
65. Ahmed Abu Al-Wafa, Civil and Commercial Pleadings, previous source, p. 183.

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- Abbas Al-Aboudi, Explanation of the provisions of the Civil Procedure Law, University of Mosul, 2000
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  11. Here, the court must decide on the original lawsuit and requests for intervention together, if possible. For more, see: Ahmed Abu Al-Wafa, Civil and Commercial Pleadings, Article 183.
  12. Here, the one who is scheduled to enter the trial is allowed to request his removal from it, as he deems that there is no benefit from his presence there, after the approval of the competent judge or the governing body. For more, see: Decision No. 317 of January 22, 2004, Administrative Judiciary Magazine, 2004.
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