



Judiciary Preparation and Management of Civil Lawsuits

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Abstract: *The Formalities' procedures are among the most important legal conditions that must be met in filing and accepting a civil lawsuit by the judiciary. When any of these conditions are not met, the lawsuit will receive a procedural penalty for not accepting the lawsuit, because these conditions were decided by the Act in its texts that regulate how the lawsuit is instituted. Based on that importance, some laws have established legal rules that separate between examining the civil lawsuit from the formal point of view and examining the lawsuit from the substantive side. These procedures are carried out by a competent judge are called the preparation judge to the judicial lawsuit. To introduce this system and demonstrate its importance to protect the civil lawsuit as a form of appeals that it receives, we decided to research this topic as an explanation, and an evaluation of this system and research in its advantages and disadvantages.*

Keywords: *Preparation Judiciary, Judicial Preparation in the Civil Lawsuit, Judiciary Language, Language Preparation, Managing the Lawsuit, Judiciary Preparation in Act.*

1. INTRODUCTION

The judiciary preparation means checking the formal aspect of the civil lawsuit, such as the failure of a condition of the conditions for filing the lawsuit or the lack of evidence related to the persons in the litigation, its completion, the eligibility of the parties, the interest, and the extent to which it relates to the lawsuit and does not exceed the substantive procedures.

1.1.The importance of research

The importance of the form lies in the procedures for filing a civil lawsuit, and more clearly in the disputes raised between the dealers within the various economic activities, and the need to address these formal deficiencies before issuing a judgment in them.



1.2.The reason for the research

Iraqi law did not approve the judiciary of preparation and administration of civil cases, as in Egypt and before that, France preceded it by decades, followed by other countries such as the Emirates and Jordan. This void of Iraqi legislative and jurisprudence was a catalyst for writing and research on this subject.

1.3.The scope of the research

To clarify the scope and concept of the preparation judiciary and the management of the civil case and the comparison between the laws, what is in the same legal, jurisprudential, and judicial context in the laws of pleadings and civil procedures in the countries that adopted it, such as Egypt, the Emirates and France, and the similar in the Iraqi legislation.

1.4. The research problem

The existence of a formal defect in filing a civil lawsuit before the court, its impact on the fate of the case under consideration, the judicial position on those formal deficiencies in the case, and to prevent cases of formal dismissal of the lawsuit.

1.5. Research Structure

To demonstrate the importance of the preparation judiciary or Lawsuit management in the civil Lawsuits, to clarify its meaning and objectives in legislation, jurisprudence, and judiciary in the laws of comparative countries, they adopted this system, and we decided to study it according to the following structure:

The concept of judicial preparation in the civil lawsuit

Before entering the subject of the preparation court and the management of the civil lawsuit, and to clarify the concept and vocabulary of this court in the procedural laws that have been adopted, we will introduce our vocabulary in a linguistic, jurisprudential and legal definition.

The first requirement

Judiciary preparation as a language; To understand the meaning of the Judiciary preparation, it must be defined linguistically and idiomatically in the following branches:

Section I - judiciary language

To define the judiciary in language, it is necessary to investigate the specialized linguistic references, including their linguistic definitions. So, the judiciary is linguistically: So, the judiciary linguistically: it is judged, the judiciary: judgment and its origin are judicial; Because I have judged except that the ya' came after the alif is hamza. Ibn Burri said: His correctness is after the extra thousand, hamza, and the plural of judicial'. the plural is likewise, and the plural of the judicial is weight of the active, and its origin is the active. Judged - judgement - judiciary - and case, and the last is a Gerund like the first, and the noun is a case only (Ibn Mandoor, 1990).

According to the Hijaz people, the judge in linguistic meaning is (the person who decides matters and airtighting its), and so-and-so asked for a judge that means he/ she is selected to



occupy as a judge who judges between people. For instance, the prince is ruled a judge, the same as the meaning, the prince commanded a prince. As a result, judiciary, and judgement both is lawsuit (Ibn Mandoor, 1990).

Section II - language preparation

Definition and meaning of preparation in the dictionary of the meanings inclusive. 1- Preparing (noun) and preparing the source of attendance 2- Preparing (noun) Contributed to the preparation of the party: In its preparation and preparation, it began in full swing to receive the guests: Preparations began (Attia, 2023).

Section III - managing the lawsuit in the Arabic language.

Management is defined in the language as: derived from the verb manage, and it means (surround) so he managed the thing - he surrounded it - and the word management is the noun and the source is administered, and the director is the one who investigates the thing or who takes over the management of a specific part of the country (Ibn Mandoor, 1968).

As for the lawsuit, it was defined linguistically as: claiming by argument and proof, as it is called upon a person adding something to himself, whether it is property or entitlement (Al-Zubaidi, 1986).

We conclude from the above definitions that the most appropriate linguistic definition for preparing a civil lawsuit is preparing and managing a civil case before referring it to the competent court to decide on its subject matter. This definition, in our estimation, is a comprehensive definition between the linguistic definitions that make up the vocabulary of the main title of the study.

The second requirement

Judiciary preparation by the Jurisprudence; Jurisprudence has an important role in introducing legal terminology, so that it is a title for it that is understood from its reading of the incident that it means without suspecting anything else, as in the term “Preparation Judiciary”, which we are examining from the point of view of comparative jurisprudence.

Section I - The judiciary preparation in Egyptian jurisprudence

As for the judiciary in the jurisprudential terminology: it is a term for the total divine judgment in the eyes of the existing beings as they are in the current conditions in eternity to eternity (Al-Jurjani, 1983).

Here, the question arises, what is the impediment that prevented the judge from preparing the case, preparing its documents, following up on its formal procedures in preparation for a decision on a matter, and avoiding procedures of a deferred nature that lead to prolonging the duration of unjustified procedures? (Al-Jazzar & Al-Abriqi, 2019).

The idea of the regime in Egypt is summed up in assigning several members of the civil prosecution, or court judges, to work under this title. Their job is to prepare civil lawsuits so



they reach the competent judge, which will be ready to judgment on its subject matter (Omar, 1999).

The ideal situation in the concept of preparing a judicial case, when the court convenes to hear a lawsuit, is that all the litigants in it have prepared their statements, requests, and documents, and their opponents and the court have seen them (Muslim, 1999 & Dowidar, 2009).

Section II - The judiciary of preparation in Emirati jurisprudence

Some have called the preparation judiciary the civil case management system and adopted it as in the UAE case management system in Code No. (33) of 2020 amending some provisions of Cabinet Resolution No. (57) of 2018 regarding the regulatory regulation of Federal Law, The Civil Procedures No. 11 of 1992, a designation whose content does not differ from the preparation judiciary.

The phrase “management of a civil case” consists of two parts: the first part relates to the word “administration”, which refers to all issues prior to the basic task of the judge, from the fact that the case fulfills its essential papers and documents, and to ensure that the declaration is made. As for the second part of this phrase, it relates to the nature of the judicial method used to present the dispute. On the competent court and does not include the system of orders (Ramadan, 2019).

The Civil lawsuit Department is defined as: a judicial department in the Court of First Instance, which is handled by one or more first-instance judges and employees, working to supervise the case file since its registration, exchanging regulations between the parties, trying to urge them to reconcile, and determining the essence of the dispute (Al-Lawzi, 2007). It was also defined as: a group of legal procedures that are carried out under early judicial supervision before the start of the trial (Jawdat, 2005).

As known, lawsuit management: It is a set of procedures aimed at organizing the case, collecting its papers and documents, determining the essence of the dispute, and examining mechanisms for its amicable settlement through alternative means to resorting to the judiciary.

Section III - The judiciary of preparation in French jurisprudence

In the French Code of Civil Procedure, the recent amendments in the decrees issued on December 28, 1998, August 20, 2004, and in 2005 led to the strengthening of the independence of the work of the preparation judge, the end of his subordination as a follower of the collective formation of the court, the strengthening of his position as a real judge of the first degree, and with exclusive jurisdiction that he alone has the right to exercise. In general, the decree that issued December 28, 1998, not only expanded the powers of the preparation judge, but also reconsidered the procedures and methods of preparing the judicial lawsuit, without prejudice to the main principles of the preliminary texts of the law.

Where this development allowed digital expansion through the establishment of the digital network for lawyers and the digital justice network with the immediate exchange of parts, notes and orders when preparing the case file (Al-Jazzar & Al-Abriqi, 2019).



In order to realize the purpose of the texts in the lawsuits, we find that echo in the opinion of Professor (Henry MOTOLSKY) that “justice as a value is never absent from the courtroom,” and that “it is the task of the judge to ensure the victory of the main principles of the lawsuit procedures, and that the desired result – a correct solution as possible to the dispute – is not It can only be achieved through the active cooperation of all judicial mechanisms” (Dalouz, 1972 & Al-Jazzar, 2019).

The concept of preparation in a civil lawsuit expanded in the French judiciary, with the issuance of the new Code in 1975, which changed the name of the preparatory judge to the preparation judge, giving him effective powers to direct the judicial case and monitor the actions and behavior of the litigants in the case, based on the principle that the judge is a public servant who serves It is not permissible for persons to discuss the matters of their case alone or to interfere with the work of the judge (Al-Manasrah, 2012).

As for what can be considered a jurisprudential approach to the preparation case in Iraqi legal jurisprudence, which mentioned it with a synonymous definition when he linked it to the expression formal defenses and defined them as: “The defenses in which the opponent challenges the legality of the procedures before entering into the subject matter of the lawsuit. Formal defenses, such as invalidating the notifications, exceeding the legal deadlines, requesting the transfer of the lawsuit, requesting the appointment of the legal reference, the plea of lack of spatial jurisdiction, or the plea of lack of qualitative or value jurisdiction (Youssef, 2008).

This is a clear reference in Iraqi jurisprudence to consider the formal defenses, starting before entering the subject matter of the case, and it is the main justification on which the preparation judiciary or the administration of the civil lawsuit is based in its existence.

The third requirement

Judiciary preparation in Act; The comparative laws have their scopes regulating the preparation process, or the administration of the civil lawsuit, which they decided in their respective texts, and to see the scope of this system in them, we will discuss them according to the following:

Section I - The judiciary of preparation in Egyptian law

After abolishing it for decades, the Egyptian legislator returned and, under the pressure of the need to create a reassuring investment climate for foreign capital, to work in an appropriate and stable investment environment, the need was to issue Code (No.120 on 2008), that aimed By establishing economic courts and regulating their work, including reintroduction of the preparation judiciary that was approved in the canceled Civil and Commercial Procedure Code No. 77 in 1949, and in Article (8) of it, it was decided to establish a commission to prepare lawsuits within the jurisdiction of the Economic Court (Muhammad, 2021).

As the Egyptian legislator had previously unified, by the Code (No. 100 in 1962), the procedures for preparing and examining the case, regardless of whether the court is partial or



preliminary, it required the plaintiff, in the Article 71 of the Egyptian Civil and Commercial Procedure Code (That repealed No. 77 in 1949), according to the article, to attach the case statement when Submitting to the Registry of the Clerks all the documents that support his claim. It also required the defendant in all cases except the urgent one to deposit with the Registry of the Clerks a memorandum of his defense to which he attached his documents at least three days prior to the session set for consideration of the session in accordance to the Article (108/2). The time limit set by the legislator for the defendant to submit a memorandum of his defense and to submit his documents (at least three days before the session) is a regulatory time that does not result in any invalidity in violating it (Seif, 1967).

As a development imposed by practical conditions and keeping pace with electronic litigation, Code (No. 146 in 2019) was an amendment to Code (No. 120 in 2008) regarding the establishment of economic courts, as Article (5) of it stipulates that “the Minister of Justice, in coordination with the Minister of Communications and Information Technology, they issue the decisions regulating registration in the aforementioned register. It is referred to in Article (17) of the accompanying Code, organizing, filing and conducting the case electronically, announcing it, methods of protecting it, linking the economic courts electronically, and the relevant authorities are committed to implementing it....” Article (8) of the Code was amended by adding mediation to the preparation of the economic lawsuit, as it stipulated that “a panel called (the Preparation and Mediation Commission) shall be established in every economic court, referred to in this code as the commission.” Thus, the commission is no longer limited to preparing the lawsuit, but it can terminate the lawsuit by mediation, and this is an enhanced development of the work of the preparation committee and an update of its tasks and the importance of what it is doing.

Section II - The judiciary of preparation in the UAE Act.

As for the preparation system in the UAE Act, and according to Federal Code (No. 10 in 2014) amending some provisions of the Civil Procedure Code (No. 11 of 1992), Article “42 bis” added to the Federal law (No. 10 in 2014), issued in 11/20/2014 states: “It is established by a decision of The Minister of Justice or the head of the local judicial authority - each according to his competence - at the headquarters of the competent court is an office that called (the Lawsuit Management Office), and the decision determines the office's work system. It is noteworthy that Article (42 bis) of the law of Civil Procedures has been replaced by Article 17 of Regulation (No. 57 in 2018) (Muhammad, 2021).

Preparation in the UAE Civil and Commercial Procedures Act (No. 11 in 1992) aims at adopting this system, whose idea is based on the establishment of the office, on the replacement of this office in the place of the court clerk's office which canceled, in undertaking some of the competencies assigned to this office, equipped with a functional and administrative cadre that carries out judicial work under Supervision of a competent judge called the supervising judge of the lawsuit management office. (Ramadan, 2019).

All these procedures aim to achieve speedy adjudication of civil lawsuits.



Likewise, Article 3/17 of Regulation (No. 57 in 2018), as amended by UAE Prime Minister's Resolution No. 33 in 2020, states, "The case management office is entrusted with preparing and managing the case before the trial stage, including its registration, announcement, and exchange of notes, documents, and expert reports between the litigants." (Muhammad, 2021).

Article 3/17 of the regulations clarified the scope and limits of the lawsuit management office, which is to work on preparing the judicial case, starting from the moment it is filed, until the case is referred to the trial court for a decision.

Section III - Judicial preparation in French Act.

In the French Civil Procedure Code of 1976, there are wider processing systems than the comparative other laws. As it appears from the text of Article (793) that the lawsuit after it is filed, and the competent department is identified, it referred to this department. The latter, examines the case in terms of form in the broad sense and in terms of subject without issue subsidiary rulings in these matters. If finds that the lawsuit cannot be decided in the manner in which it was presented, decides to refer it to preparation and delegate a judge from among its judges.

The purpose of envisaged by the legislator is to entrust the preparation of the judicial lawsuit to a judicial commission separate from the commission that considers the lawsuit objectively, then entrusted it with the task of studying the documents with which the plaintiffs base their claim in proof or denial. Consequently, the supporting evidence will be strengthened and gives clarity to the course of the lawsuit that dispels the ambiguity surrounding the claim. In addition, the direction of the lawsuit will be stable with him after it is referred to the panel for adjudication in the matter. The competence of the judiciary preparation can be summarized according to the following:

Supervising the progress of procedures regarding: (a) Monitoring the exchange of memoirs. (b) trading conflict papers between opponents. (c) hear the lawyers. (d) directs orders to lawyers. (d) the prepared judge may ask the attorneys to provide factual and legal explanations to resolve the dispute. (e) he may extend the deadline - Les Competences du Juge e la Mise en Etat. (f) he/she may do refer to the original papers and announce them to the litigants and request the deposit of photocopies thereof (Omar, 1999).

As for the Iraqi Civil Procedure Code (No.83 in 1969), there is no legislation concerned with regulating the preparation judiciary in a special legislation like the comparative laws. However, we can take the texts of Articles 47, 48 and 49 of the Iraqi Civil Procedure Code, as an It's straightforward and clear approach towards adopting the preparation judiciary. without being assigned an independent administrative or judicial body. The plaintiff must submit proof or clarification of his claim and must submit the original documents to the court registry along with their copies and a list of the attached related to these papers (Al-Allam, 2008).

Article (3/47) of the Iraqi Civil Procedure Act, "It is not permissible to set a day for examining the lawsuit covered by the provisions of Paragraph (2) of this article except after submitting



the documents and photos, and in the event that they are not submitted within three months from the date of payment of the fee, the lawsuit petition is considered invalid by law.”

Corresponding to it is Article (99) of the Egyptian Civil and Commercial Procedures Code (No.13 in 1968) as follows: "The court may, instead of imposing a fine on the plaintiff, decide to stay the lawsuit for a period not exceeding three months after hearing the defendant's statements. If the period of suspension expires and the plaintiff does not request proceeding with his case within the thirty days following its expiry, or if he does not implement what the court ordered, the court shall rule to consider the case as if it did not exist."

Corresponding to it is Article (71) of the UAE Civil and Commercial Procedures Code (No.11 in 1992), as Article (71) states: "...and the court may - unless the defendant objects - Instead of imposing a fine on the plaintiff, it shall order the suspension of the case for a period not exceeding three months If the period of suspension expires and the plaintiff does not request proceeding with his case within the thirty days following its expiry, or if he does not implement what the court ordered, ruled to consider the lawsuit as if it did not exist.”

The above texts dealt with a common theme, which is the plaintiff's implementation of what ordered within a period of three months from the filing of the lawsuit. Otherwise, the lawsuit statement is considered null and void by virtue of the law without the need for a judicial ruling. As for the UAE and Egyptian laws impose the court to issue a judgment considering the lawsuit as if it did not exist (Abd, 2020).

Due to the importance of protecting the civil lawsuit from the formal deficiencies that may be tainted in it before the issuance of the final judgment in it, or accompany the judgment issued in. Thus, it constitutes an appeal against the decisive ruling of the lawsuit, which returning the case to its starting point after it had taken a long time, spent effort and costs, which exhausted the litigants. The preparatory judiciary is a legal system that works to check and complete the formal procedures in the case within a specified period, before referring it to enter into the matter without fear of provoking deficiencies in the formality after this stage. This system is what we expect it to constitute a legal basis upon which we can build for the draft law of preparing or managing the future civil lawsuit, and that we aspire to adopt in the Iraqi legislation.

2. CONCLUSION

Through this research in defining the judiciary of preparation and the administration of civil advocacy, we can summarize some of the conclusions obtained and the recommendations that we propose in this brief study, as follows:

- The return of the Egyptian legislator to the preparation judiciary legislation after more than fifty years of its abolition is evidence of its practical importance, and the mistake of abolishing it.



- The Iraqi legislator did not consider the judiciary preparation, but what was stated in the Iraqi Civil Procedure Act (No. 83 of 1969) in Article (47) of the Iraqi Civil Procedure Act is a legal approach closer to the judiciary preparation.
- The preparation judiciary is a preventive judiciary that provides protection for the civil case from a formal response, by completing the case's documents during a limited preparation period.
- Protects the case from procedural wastage, with the abundance of postponements and procrastination, by specifying a specific period to attach sufficient evidence and support to decide on the matter during the preparation period.
- Judgment of preparation is a procedural judiciary associated with time and a penalty for negligence in the proceedings of the case by its parties by arranging a procedural penalty for negligence in the follow-up, by depriving the inductee of his/her evidence if he/she neglects to present it within the period of preparation.
- The UAE legislator equated the competent court with the lawsuit management office in carrying out one of the case procedures within the time specified by one of them.
- Unlike the Egyptian and Emirates Acts, the preparation judge in French Act is a judge in the department to which the lawsuit has been distributed, while he is an independent judge in the two aforementioned Acts.

Recommendations and Suggestions

- We urge the Iraqi legislator to adopt a law to manage or prepare the lawsuit, even in the economic aspect, to protect the lawsuit from the late, and costly formal response to the lawsuit.
- We recommend the Iraqi legislator to legislate an Act for mediation, another for conciliation, and another for the one-session system. That will end disputes amicably, relieve the burden of the courts, and achieve the interests of the parties to the dispute.
- We suggest that the judge supervising the management of the civil lawsuit be assigned periodically between the judges of the one department, to provide them with practical experience in preparing the case, and not to affect their objective experience.
- We suggest to the legislator in the countries that adopt the preparation system in comparative Acts, to add to this system the urgent court lawsuits, and to consider them as part of it.

Summary

The Formalities' procedures are among the most important legal conditions that must be met in filing and accepting a civil lawsuit by the judiciary. When any of these conditions are not met, the lawsuit will receive a procedural penalty for not accepting the lawsuit, because these conditions were decided by the Act in its texts that regulate how the lawsuit is instituted. These texts where the prescribed provisions cannot be overstepped or violated because they are related to public order, and therefore violating them will result in the loss of the right to litigate before the civil courts.

Based on that importance, some laws have established legal rules that separate between examining the civil lawsuit from the formal point of view and examining the lawsuit from the



substantive side. The one who adopts the reception of the lawsuit from the moment of its establishment and undertakes to check it in terms of formality and attach the required documents in it such as evidence of evidence, expert reports, conducting judicial inspection, and lawsuit report. These procedures are carried out by a competent judge are called the preparation judge to the judicial lawsuit, assigned to him by the court in whose department he works for the period that it deems sufficient according to the judicial system of that country. To introduce this system and demonstrate its importance to protect the civil lawsuit as a form of appeals that it receives, we decided to research this topic as an explanation, and an evaluation of this system and research in its advantages and disadvantages, and the countries that approved it in their judicial system, such as France and Egypt. Then more recently the UAE and Jordan.

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