

PalArch's Journal of Archaeology
of Egypt / Egyptology

A COMPARATIVE STUDY ON THE DUTIES OF THE AUTHORITIES HANDLING THE VIOLATION AND BREACH OF LAW BY THE ADMINISTRATIVE UNITS IN IRAN AND FRANCE

Mohammad Mazhari^{1*}, *Fatemeh Jangjooy Khelejan*², *Farzaneh Monadi*³

¹Assistant Professor, Department of Law, University of Tabriz, Tabriz, Iran.

²PhD Student in Public Law, Tabriz University, Tabriz, Iran.

³Master of Public Law, Tabriz University, Tabriz, Iran.

Email: m.mazhari@tabrizu.ac.ir

Mohammad Mazhari, Fatemeh Jangjooy Khelejan, Farzaneh Monadi: A Comparative Study on the Duties of the Authorities Handling the Violation and Breach of Law by the Administrative Units in Iran and France -- PalArch's Journal Of Archaeology Of Egypt/Egyptology 18(4), ISSN 1567-214x

Keywords: Administrative References, Iran's Court System, France's Court System, the Court of Administrative Justice, the Governmental Council

ABSTRACT

Forming a democratic society requires paying attention to people rights. Since in an unequal administrative laws, the relationships between the government and individuals are built on the basis of power, the government can always make one-sided decisions and enforces them using public power, in return people have the right to object to anti-law and out-of-jurisdiction decisions and measures of the officials. So, the existence of a reference which handles complaints from the executive administrations is essential. In Iran, this duty is on the Court of Administrative Justice and in France it is on the Governmental Council. In comparison with the Governmental Council, the jurisdiction of the Court of Administrative Justice encompasses a limited domain of government organizations. In addition, the lack of a precise criterion to identify the entity of the issues that can be raised in the Court of Administrative Justice has brought up some problems to judicial supervision. However, the Governmental Council has divided its judicial supervision with other administrative courts and has accepted wide variety of cases and in general the bases of the cases are interpreted wider in the Governmental Council. In this paper, in addition to clarifying the duties and jurisdiction of these administrative references, their structures and basic differences have been discussed.

INTRODUCTION

One of the basic principles of public law is the principle of law sovereignty. According to this principle, administrative officials should act upon laws and regulations in their decisions and measures. To guarantee the maximum degree of law sovereignty principle, there should be administrative authorities and people should have the right to resort to these authorities without any limitations.(Wade, 2004, P. 24) Among these,

measures of the Executive Power are more important and should be done by law. But for the adaption of these measures with laws, it is essential that the principle of law sovereignty should enjoy sufficient executive guarantee. However, what is important is the handling these measures, if they are done out of jurisdiction which is divided into two general categories:

In some countries such as England and United States, the forum for the violations and breach of law by the officialdom and their officials is public or ordinary courts. In reality, there is a unity in handling the cases and all the cases of any kind should be referred to the public courts, therefore there is no special court in this system. On the other hand, in some countries such as the Republic of France and the Islamic Republic of Iran (I.R. Iran), there are special courts beside public courts. In these countries, public or ordinary courts are forum of cases which their both sides are private persons (including real and legal). However, in special courts, one side of the case is government (especially the Executive Power).

The main reason of administrative courts' existence is the proficiency of judges in different affairs. Nowadays, the social and economic activities are so developed that the necessity of specialty in all the technics is felt as a need and the judging skill is not an exception in this regard. For this reason, the necessity of formation of Administrative Courts which are of the special courts is accepted as a social necessity. Moreover, there is an advantage in these courts that there is not any complex paperwork and longtime handling in them and administrative cases and complaints are handled quickly, carefully and neutrally. Therefore, it is better to fulfil the justice faster and more precise.

In I.R. Iran's system, to achieve this goal, there is a special court named the Court of Administrative Justice whose duty is handling such cases. One of the remarkable features of judicial system of France is that there are different specialized courts for different violations and crimes, in a way that for any kind of crime a special court has been defined and formed. In France's judicial system, administrative courts are subjected to a higher court named the Governmental Council which is equal to the Supreme Court. The Supreme Court and the governmental Council are the two important bases of France's Judiciary and their judges are independent and secured from job and financial point of view, a security that makes the pressure and interference of Executive Power effectless. In I.R. Iran, the Court of Administrative Justice has the same position as the Governmental Council in France. Therefore, the controls and supervisions which is studied in this paper is the one exerted by the Governmental Council in France and the Court of Administrative of Administrative in Iran. In this paper, similarities and differences of the Court of Administrative Justice in I.R. Iran and Governmental Council in the France have been discussed, especially in the field of structure and domain of their jurisdiction.

The History of both Authorities

Although the Court of Administrative Justice is an institution out of the I.R. of Iran Constitution and is considered as one of the achievements of Iran Islamic revolution in 1979, its literature dates back to 1960 (Mosazadeh, R., 2002, p. 280). In this year, the law named "Governmental

Council Foundation law" enacted whose purpose was forming a special court for handling the conflicts between people and government. Approval of that law was carried out following France judicial system in 1960, but it was never executed (Tabatabaee Motameni, M., 1999, p. 423). Some jurists related this fact to unfavorable political condition and lack of loyalty of governments to the sovereignty of law (Matin Daftari, A., 1996, p.524). Long years before the approving of that law, the Constitution law of the Constitution had predicted the right of raising complaint against the government for the people. Article 32 of the Constitution Law of Constitution approved in 1906 stipulated that "Every individual of the people can deliver his/her complaint or criticism in written to the bureau of the complaints of the Parliament, if the issued is related to the Parliament he adequate response should be given to the individual and in case it is related to one of the ministries, it should be sent to that ministry to study and give an adequate response.

According to the current constitution law of I. R. of Iran, supervision on the good observance of rules and regulations in different officialdom is conducted by two important institutions i.e. State General Inspectorate and The Court of Administrative Justice. Article 173 of I.R. Iran Constitution law – passed in 1979 - Says: "In order to investigate the complaints, grievances and objections of the people on government officials, organs, and statutes, a court will be established to be known as the Court of Administrative Justice under the supervision of the head of the judiciary. The jurisdiction, powers, and mode of operation of this court will be laid down by law." Even though this article was modified in 1989 revision, there was no significant change in it, except the point that with regard to the omission of High judiciary Council from the judiciary system, the phrase "under the supervision of High judiciary Council" was omitted from the Article and was replaced with the phrase "under the supervision of the head of the judiciary".

The history of the Governmental Council in France, but not in today's form, dates back to 8th century in which the King Philip IV established some councils to consult with them in governmental matters (Frydman, P., 2008). After the Great Revolution in France, the revolutionists believed that if handling the administrative cases were under the jurisdiction of public courts, the independence of the Executive Power, especially executive organizations would be in danger. Therefore, the revolutionary parliament in 1789 approved the principle of Power Separation that logically led to the independence of government branches and their separation. In 8th year of revolution in Consolas era, there was little progress in the administrative proceeding (Ashtiani, M.H., pp.1-2). In that year, Governmental Council founded in Paris and Governor's Council were founded to give advises to governor's offices and handling the administrative cases were given to them. It should be known that these councils were not like a court and never issued verdict; but they were consultative councils that give advises about administrative cases and complaints that referred to them (Tabatabaee Motameni, M., 1999, pp.447-449).

Nowadays, there are two types of courts in France: public courts and administrative courts. Public courts are subjected to the High Court and

administrative courts are subjected to the Governmental Council. Administrative cases are under the jurisdiction of Governmental Council and administrative courts.

The Administrative Structure of Authorities

In I.R. Iran, the Court of Administrative Justice is the highest administrative authority, and its duty is handling the complaints of people from administrative organizations. In comparison, this duty is on the Governmental Council in France which is subject to the executive power.

- **the structure of authority in Iran**

The I.R. Iran Constitution Law reiterates in article 173 that the Court of Administrative Justice is subjected to The Judiciary. The Court is located in Tehran and consists of primitive, revision, public and professional boards. The chief of the Court, the Chiefs of its branches, subbing members and the Court consultants are all appointed by the head of the Judiciary's decree for two years and reappointment is possible (Article 2 of the Court law). This court primarily consisted of 10 branches according to the law enacted in 1981. But after 1999 modification, they are increased to 25 branches. Any increase in the number of the branches depends on the suggestion of the Court chief and the confirmation of the head of the Judiciary (Article 1 of the Court law). Each branch has a chief or a subbing chief and a consultant. The chief of the 1st branch is the chief of the Court and in his absence, the chief of the 2nd branch will be replaced. Every revision branch consists of a chief and two councilors (Vizhe, Aghah, 2012, p. 90). The modification done on the revision branches are: the change of the system of polarity in judges into the unity of judge in the primary branch (Article 3), developing the revision branches with three judges (Article 3), omitting and dissolution of distinction branches after handling the cases under way (Vizhe, Aghah, 2012, p. 90-91). Public Board of the Court is formed with the attendance of two third of the Court judges and its chairman is the chief of the Court or his judicial assistant. The unit of performing sentences is formed in 1996 in its structure. (Afshari, Mosavizadeh, 2015, pp.346-349)

- **The Structure of Authority in France**

The authorities attending Administrative disputes in France includes Administrative courts and the governmental council.

- ✓ **The Governmental Council**

This council, as a head of Administrative Courts, has 500 personnel that 138 of them are judges. Out of these judges, 40 ones issue verdict who decide about the related issues in different branches and 80 one are the consulting or investigating judges. These judges are doing expert affairs of cases and give their opinions about them (Tabatabaee Motameni, M., 1977, p.198). Accepting members in the Governmental Council is done in two ways: giving competitive examination and governmental appointment. Every year, five primitive expert or inspection positions are delivered to graduates of the Supreme School of Administrative Science. After their competition in an examination, the newly employed members become

inspectors and after promotion become legal experts (petition inspection experts) and finally become government consultants. Beside this kind of taking members (tour extérieur), one of each four legal experts and one of each three governmental consultants are appointed by the government. One out of four legal experts and one out of six government consultants is taken in tour extérieur method and get promotion. Moreover, there are 12 government consultants in special services appointed for four years and will work in administrative section exclusively. This type of outside appointment enriches the special services of France Governmental Council and leads to valuable experiences and jurisdiction in members (Joneidi, M.A.).

Contrary to the structure of the High Court which consists of experienced judges, the Governmental Council consists of adolescences and elder members. In fact, the experience and discretion of elders with the effort and eagerness of youngsters have formed a temperate media for judgment. In order that the realities and necessities of affairs are not ignored by the judges of the council in judging between the people and the government and the judgement is done in the complete atmosphere of neutrality and with regard to the principles of justice, the legislator has tried to provide an environment that the council members have complete awareness of the administrative affaires alongside the experiences and literature in public services. Although the members of the Government Council are not like judges who cannot be removed, most of France administrative law compilers admitted that councilors have adequate independence like the Court judges. The Governmental Council of France enjoy total independence before the public courts. In order that the above mentioned courts do not interfere in the jurisdiction of the administrative courts or vice-versa, there is also a special court named "Conflict Resolution Court" which its duty is to handle conflicts between public and administrative courts. This special court is composed of nine judges four of whom are the High Court counselors, and the other four ones are the Governmental Council counselors. The chief of this court is Judge Minister, since he does not attend the meetings as he does not do anything in the meeting because of the fact that he is so busy, the real chairman of the Conflict Resolution Court is its vice-president who is elected with the majority of votes by from the councilors (Ghamami, 1997, p 137). (www.conseil-etat.fr) The Council full tribunal is constituted in two forms: the complete form which consists of all members and ordinary form which consist of 35 members including:

- three members of each administrative department (totally 15)
- 13 agents of litigious section
- six chiefs of departments and
- the Council vice president

In fact, this assembly is a miniature form is a general assembly. After 1963 amendments, the complete general assembly (complete form) has assigned his jurisdiction to ordinary general assembly and convenes only 12 times in a year (Brown, N., Bell, J.S., 1998, pp.70-71). In the cases that their urgency is clearly emphasized by the Prime Minister, the full tribunal and administrative department are replaced with an association or

standing committee responsible for investigation of bills, circulars and regulations. This standing committee is managed with vice president of the Council. It consists of a chief of one department, 12 members of the Governmental Council and some legal experts and inspectors. This committee may be consulted at any moment and should decide quickly.

✓ **France Administrative Courts**

France administrative courts are classified into 3 groups:

- administrative courts with general jurisdiction
- revision administrative courts
- administrative courts with special jurisdiction

✓ **First Group: administrative courts with general jurisdiction**

According to regulations, all cases are within the jurisdiction of township administrative courts established at the center of the township; except those which law refers them to special administrative courts. This jurisdiction is real and intrinsic and their sentences revision is on administrative courts located in all over the country. The Governmental Council exceptionally handles some cases and complaints in early stages and some in revision stages. Therefore, administrative courts system is like a prism that the Governmental Council is in

its summit and the primary administrative courts are at lower levels and the administrative revision courts are in the middle. According the studies in 2009, there are about 42 administrative courts with the general and special jurisdiction and 8 appeal courts which have been organized in rooms the number and the speciality of these rooms are different and depends on the object of the court and the choice of the internal organization by the administrative manager of the court. (Administrative Justice in Europe, report of France, available at; <http://www.Juradmin.Eu/eu/eurtour/i/countries/France-en .pdf> (last vis at; 20/3/2015) The prosecutors of Administrative courts of the township, traditionally called councilor, are elected from the graduates of National School of Management in Paris. Paris administrative court consists of a chief, a vice president, six branch chiefs and 30 councilors that 12 of them are responsible for government commissar duties. The councilors of the township administrative courts are divided into two classes: the councilors of the second class are taken from the graduates of Management School of Paris who have passed apprenticeship of the adversarial part of the Governmental Council. The councilors of the first class are taken from the councilors of the mentioned second class. One fourth of the posts of the councilors of the first class of the township administrative court are in the authority the government, who are taken from the higher rank of the employees having bachelor degree in law. (Tifine, P ,2012,p:67)

✓ **Group Two: Revision Administrative Courts**

This court is a revision authority for issued verdicts from administrative courts of townships and all the verdicts are within the jurisdiction of its revision court; except for the election conflicts of municipalities and local councils, the cases of jurisdiction violations and the

cases of interpretation or inspection of legal credit of verdicts, acts and administrative by-laws which are within the jurisdiction of the Governmental Council. Nowadays there are eight revision administrative courts (Khosravi and Rostami, Summer 2013, PP. 108-109) which are settled in Paris, Bordeaux, Lyo, Nancy, Nantes and Douai. (Hodavand, 2017, P. 736)

✓ **Group Three: Administrative Courts with Special Jurisdiction**

These courts don't have any special members, and their members are mainly the judicial officials from other courts, governmental consultants and administrative court prosecutors. Dealing with cases in these courts is a one-stage procedure and revision of their sentences is under the jurisdiction of The Governmental Council. (Pro, 2005, PP. 257-313)

In general, these courts which are the authority of violation and verification of the disciplinary National Council verdicts are as the followings:

- accounting courts
- Budget and financial courts
- The Bank Commission in charge of Supervising the Credit Institutions
- Central Commission for Social Aids
- The High Council of National Education
- Local and National Council Related to the Vocational Regulations (Taisne , 2000, pp59 et60)

Handling sequences in both Authorities

The Court of Administrative Justice Law and its proceeding procedure (passed in 1983 Higher Judicial Council) have stipulated some regulations for dealing with cases. These regulations are so comprehensive that the discussing all of them is out of the scope of the topic of this paper. Some of them are:

- 1- delivering petition is essential for handling the case in the Court. Plaintiff should write his object of claim on the specially printed papers in Farsi (Article 16 of the Court law and its note)
- 2- The claimant should attach the legible copy of his documents to the petition. (Article 20 and its notes)
- 3- The Court sentences are obligatory for all relating organization. Violators are sentenced to dismissal from governmental and legal services (Article 112).
- 4- Because of numerous branches of the court, it is possible to issue contrary verdicts for similar cases in some branches. So, the article 89 of the Court law says: "If contrary sentences for similar cases in one or more branches are brought in, the matter should be discussed in full tribunal of the Court. The comment of the majority in this tribunal is indispensable for all branches of the Court and other related authorities in similar cases."

In France, all beneficiary people, organizations and offices can complain to the Government Council in 60 days after the issue of circulars,

procedures and decisions of governmental offices. Received complaints are referred to investigators at first to do enough researches and inquiries. Then they are referred to branches of the Government Council. The claimant or his lawyer will be invited to the Council and related organization defenses in case necessary. Investigator judge attends the council meeting and gives his oral opinion and finally the Council will issue its verdict, and it is decisive. The Council doesn't have any right to handle petitions about harms or losses, because according to the Constitution law, all the petitions should be discussed in qualified courts. (Chapus, R.2001, p:637-775)

No circulars, procedures and decisions of governmental organizations should be in paradox with the Constitution, ordinary laws and enacted international conventions of Belgium parliament. So, if there were any case, the complained regulations would be investigated according to these laws and they would be annulled, if there were any conflict. Justice Judges can refrain from performing the anti-law circulars and procedures in their decisions; but complaining of these types of regulations is only on the beneficiaries in the legal period.

Therefore, the procedure in the Court of Administrative Justice due to some reasons such as: financial, administrative and organizational dependence to its related unit (Savadkouhi Far, Winter 2005, P. 94) (since the independence and impartiality as it is called a fair judging principle about the public authority is not seen) and handling the case in the absence of the beneficiary in most of special authorities (One of the rights of people is that the judging session should be open (Joseph et, al., 2005, p.423) yet in most of special authorities in Iran the handling if the case is done in the absence of the person, and only when his/her presence is deemed necessary, the person is invited to the session and this increases the possibility of misuse or deviation from justice, in a way that even Francis report in 1957 is about the administrative courts in England and states that one of the three principles known as for the desirability of these court ' special courts' is their being open to all and the presence of the people (Taisne, 2000, pp.3)) and concentration of most of these authorities mostly in the province capital causes some limitations in the availability and as a result makes people to waive the right to complain to these authorities.

But in France, the procedure in all the administrative court is 'desired by the users' and referring to it is easy, in a way that it can be claimed that both the structure of the court and the procedure is the fairest possible system available for the common citizens. For example, the judges do not depend on the reasons given by the parties to decide upon the case, but the realities of the case is the tool to discover the reality and also the reasoning path is directed and developed by the "reporting judge" in the stage of "investigation" (Bell et al. 1998, p 113).

Duties of Authorities

More or less, both the Governmental Council and the Court of Administrative Justice can have litigious, advisory, and studying duties. But in each of these authorities, one of the duties is bolder and one is weaker or nil.

- **litigious duties**

Litigious duties of the Governmental Council include primary stages, revision stage and cassation stages.

✓ **litigious duties of the council in primary stages**

The Governmental Council handled many cases and conflicts in primary stages previously. But after the foundation of public administrative courts in 1953, the newly founded one is the main authority of administrative cases and conflicts in public law field. Only a few number of important cases are within the jurisdiction of the Council for handling in primary and final stages; such as a case against president's commands and governmental acts, the by-law by the ministers and the complains against the decisions of the important government officials or mass organizations.

✓ **litigious duties of the council in revision stages**

Although revision courts are responsible for dealing with the complaints against primary administrative court sentences, the Governmental Council deals with township administrative court verdicts substantively in some rare cases that the law has defined and it is of a fundamental dealing.

✓ **litigious duties of the council in cassation stages**

After 1953 amendments, two following cases were added to the Council jurisdiction in cassation stages:

- Decisive verdicts of special administrative courts with special jurisdiction, in this case, the council can handle the case in primary and final stages and issue the verdict.

- Sentences of the revision administrative courts about which according to a traditional principle the Council has selection right. It can reverse cassation judgment and refer the case to another equivalent branch of that court for handling, or it can deal with the case substantively in primary and revision stages and issue a sentence due to expediency in the case. Furthermore, revision administrative courts can ask the Governmental Council to solve problems in the interpretation of governmental sentences and procedures and their legal verifications provided to its special importance (Ashtiani, M.H.,2013,bita).

Duties of the Court of Administrative Justice in I.R. Iran on the basis of article 10 of the Court of Administrative Justice law are:

1. dealing with complaints, grievances, and objections of the people (real or legal) from:
 - decisions and measures of governmental units including ministries, organizations, institutions, governmental companies, municipalities, Social Security Organization and revolutionary organs and their related institutions.
 - decisions and measures of governmental unit officers mentioned above in their related affairs and duties.
2. dealing with complaints and objections of decisive verdicts and decisions of the Handling Boards of Administrative Violations, commissions like tax commission, Conflict Resolution Board of worker and employer and commission of article 100 in municipalities on their laws and regulations exclusively.

3. dealing with complaints of judges and those who entitled by State Service Management Act and other employees of units and institutions mentioned above in part 1 and employees in all martial and administrative organizations on spoilage of their employment rights.

Note 1: determination of the amount of damage from the mentioned organizations and officials in part 1 and 2 of this article is the duty of public court after the Court sentence for violation.

Note 2: decisions and sentences of other courts, martial and judicial authorities, Justice Judges' disciplinary courts and armed forces can not be complained of in the Court of Administrative Justice (Hodavand, 2005, p.58).

On this basis, unlike the litigious duty of the Governmental Council of France, the Court of Administrative Justice of Iran does not involve itself in litigious cases. There is discrepancy about which cases are cognizable in the Court and there is not a clear interpretation. The majority of jurists believe that the cases related to the principles of public law are cognizable in the Court. To determine an obvious boundary about this matter, it can be stated that the cases against administrative tasks of governmental organization, public institutes and legal persons with public law jurisdiction and all their officers who can apply the sovereignty as well as the sentences of semi judicial authorities all are cognizable in the Court. (Emami, Ostovar Sanghi: 2012, p. 175) Generally, retributive cases, legal cases from the viewpoint of civic responsibility, financial cases against governmental organizations and contract cases are not cognizable in The Court, because of their litigious essences.

For example, the full tribunal of the Court in No. 33 unity procedure verdict announced that two-sided cases of governmental units have litigious verdicts and are not cognizable in the Court. This verdict says:” dealing with the contract cases which are legal and should be handled litigiously, are out of the Court Article 11. But there is exception in employment contract because of its legal essence. As it is accepted in No. 942 unity procedure verdict” (Nejat Khah, Faghih Larijani, 2016, 241-242)

- **advisory duties of the council (Consulting)**

The Governmental Council was developed after the revolution of 1789. Previously, the Governmental council had a role of government consultant in legislation affairs. A part of it dealt with people complaints against the government which expanded its jurisdiction of this judiciary part gradually through the rules mainly through the judiciary procedure route. (Zarrabi, 1999, p 73). Although the judicial duty of the Council has developed and got supreme importance, its advisory duty has not developed significantly in comparison with early years. Nowadays, the council doesn't have any legislation jurisdiction and the government can only consult with it about the bills. The consultation of the Governmental Council is mainly in administrative affairs which arise for the government during performances and it is essential to get the council advice. Its Advisory jurisdiction is not limited to acts and procedures, but it can give legal consultation to the president, prime minister and ministers individually. (Brown, N., Bell, J.S., 1998, p.66).

About the executive by-law, it is legally obligatory to get the consulting opinion of the council; but about the other kinds of by-laws it is optional. About the individual administrative decisions, obtaining the consulting opinion of the council is generally optional, except for the cases that the law has deemed it necessary in which the government is to observe the council's idea. For example, in depriving of the ownership and identifying the quality of public utility for the private institutions, getting the consulting opinion of the council is obligatory. Occasionally, it is possible that the government asks the council to comment on some legal issues, in this case the council give the consultation as a legal councilor. In addition, the administrative courts with the general jurisdiction and the revision administrative courts can get consultative opinion about the verdict issues from the Governmental Council and the council announces its opinion within three months. (Eliot and Wernon, 2003, pp. 151-154). Advisory of the Governmental council and in general the administrative courts are a tool to clarify the duties of the administrative units and officials and prevent the disputes and problems that occurs in practice and generally leads to paradoxes.

The lack of such an authority for answering questions and inquiries of different governmental organizations forced the Court of Administrative Justice in Iran to form a special commission for this important affair. So "the advisory commission of the Court" founded with the order of the Court chief in 2009. Supporting the different stages of this Commission activity such as calling for meetings, preparing documents and precedence of questions, compiling the opinions and finally supervising on their publication are all with the general office of research.

- **study duties of the council**

From 1963 on, the Governmental Council is inspecting and researching in favorite projects of government. This new role is not advisory, but it is mostly about preparing expert reports for the government. These reports are printed, published and available for all. For example, this council has published a report about the development of internet legal issues (www.conseil-etat.fr).

According to the articles of I.R. Iran Constitution Law, there isn't any study role and duty for the Court of Administrative Justice, unlike the Governmental Council in France. Maybe, considering this role is due to its general and pervasive jurisdiction in comparison with the Court in Iran. A short review of duties of both authorities and comparing them shows that the Governmental Council has litigious, advisory and study duties. Also, this Council as an appellate court can deal with all sentences brought in administrative courts. Moreover, the Council is a cassation court of administrative courts sentences provided it would not be the research handling source to do this court sentences (Ghazi, S.A., 1991, pp.617-618).

Duties of the Full Tribunal in both Authorities

According to article 12 of the Court law, Duties of the Public Board of the Court of Administrative Justice in I.R Iran are:

1 - dealing with complaints, grievances, and objections of the people (real or legal) from procedures, other organization, governmental

regulations, municipalities and non-governmental public institutions in the cases that their regulations cause person rights spoilage due to contrariety with religion or law, lack of jurisdiction of related reference, aggression or abuse of authority, violation in law performance and refraining from doing duties.

2 - Issuing the procedure unity verdict for similar cases which have the contrary verdicts from different branches of the Court

3 - Issuing the procedure making verdict for one case which numerous similar verdict are issued from different branches of the Court

Note: dealing with the judicial decisions of the judiciary, procedures, circular and decisions of the head of the judiciary and decisions of the Guardian Council, the Nation's Exigency Council, the Experts Parliament and Supreme Council for National Security are entitled by this article.

Assembly or the full tribunal of the Governmental Council should give his advisory opinions in all governmental circular, commands and bills. Other inquiries and consult requests provided they are useful, important or proper are referred to full tribunal by administrative section.

In comparison with the Court of Administrative Justice in I.R. Iran, the full tribunal of Governmental Council in France has only advisory duties. Whereas the full tribunal of the Court of Administrative Justice can annul any anti-law circular. The detection of proceeding conflicts with the religion is within the jurisdiction of the Guardian Council in I.R. Iran. The Court can annul them after its opinion. The annulled procedure has its influence from the date of cancelling (Golizadeh, 2010, p 30-35)

The Scope of Powers and Jurisdiction of both authorities

Studies show that the powers and jurisdiction of both authorities are different on "claimant", "defendant" and "claim".

- **Jurisdiction of both Authorities about "Claimant" (people)**

In the article 173 of I.R. Iran Constitution Law, cited before, the plaintiff or claimant in the Court of Administrative Justice is called "people" (Sadrolhefazi, 1993, p108). Also No. 37, 38 and 39 procedure unity verdicts of the Court full tribunal (1989), considers "people" as "claimant" in the Court. This word is vague, and to understand the intention of the legislator, we should refer to the ordinary law. Article 10 of the Court law says:

"Authorities and jurisdiction of the Court are:

1 - dealing with complaints, grievances, and objections of the people (real or legal) from ..."

According to this phrase, plaintiff or claimant of the Courts are real or legal persons. This expression is not clear too, because there is a question whether its intension is "legal persons of private law" or "legal persons of public law". Applying the expression "legal persons" requires knowing the Court as a valid authority in handling complaints of "legal persons of public law". But this conclusion is seemed to be incompatible with the purpose of legislator. Because his intension of compiling Article 173 in the Constitution Law has been the prevention of governmental aggression to people rights. Besides, it is not customary to use the term "people" for legal

persons of public law. So handling the conflict between the executive and administrative organizations is not within the jurisdiction of the Court. In other words, if both sides of a case are legal persons of public law, the handing of the case is out of the Court's jurisdiction. Thus complains and objections of governmental units from each other is not cognizable in the Court and its branches. The procedure unity sentence of the Court Public Board in 1989 confirms this interpretation. This verdict says: "According to the fact that in article 173 of I.R. Iran Constitution Law, the foundation goal of the Court of Administrative Justice is reiterated to handling complaints, grievances, and objections of the people with respect to government officials, organs, and statutes, and according to literal and customary meaning to "people", governmental units are out of the inclusion of "people" and it refers to real persons or legal persons of private law" (Nasirae, S., 1998, p.114)

According to this sentence, the intension of the term "real or legal persons" is real persons or legal persons of private law. So plaintiff or claimant in the Court are people meaning real persons or legal persons of private law.

In France Constitution Law and its administrative law and regulations, there isn't any article or principle for defining the claimant in administrative affairs for administrative courts and the Governmental Council. In this case, the council judicial procedure has interfered and after validation of civil proceeding procedure, has approved the claimants of all real and legal persons of public and private law. So, all the people and legal persons such as companies and association have the right of complain and object. In addition, the foreigners residing in France also have the right to put a case in the administrative courts like the citizen of that country. (Tabatabae Motameni, M., 1999, p.97). The Governmental Council of France has taken this procedure about the legal persons of public law and in addition to the complaints of the internal legal persons of public law, the legal persons of the public law of the other countries can put the complaints in this council.

So, it is concluded that the Court of Administrative Justice in I.R. Iran, unlike Governmental Council of France, has limited the claimant to real and legal persons. And with regard to the awareness of some disputes in this regard the new law has also used this phrase without mentioning the "private law". Maybe it can be said that because the Governmental Council in France is subjected to the Executive Power, there is not any problem to discuss the complaints of governmental organizations from each other. But the Court in I.R. Iran is related to the Judiciary, and the complaints of governmental organizations from each other are against the principle of power separation. However, the principle of power separation never means the complete separation of them. The goal of this principle is to divide duties and power between ternary powers of a regime. So, dealing with the conflict of legal persons of public law in organizations related to the Judiciary is not in paradox with the principle of power separation. Thus it can be possible for the Court to accept the complaints of governmental organizations from each other absolutely, like the Governmental Council in France, and to handle them according to law and regulations. (Hauriou, M, 1914, p:768-1011)

- **Jurisdiction of both Authorities about "Defendant" (Government)**

It is concluded from article 173 of I.R. Iran Constitution that "defendant" in the cases within the Court Jurisdiction are governmental officers and units. But who governmental officers are and what governmental units are. Are the officials and units of executive power the purpose or does it encompasses the officials and units of the Judiciary and Legislature Powers, too?

In that article, the legislator refers the terms governmental officers and units to procedures. So, if the meaning of procedure is understood, the meaning of these terms will be elucidated symmetrically. It seems that the intension of the legislator from governmental procedures in article 173 is the same concept as article 138 of I.R. Iran Constitution Law. This article says: "In addition to instances in which the Council of Ministers or a single minister is authorized to frame procedures for the implementation of laws, the Council of Ministers has the right to lay down rules, regulations, and procedures for performing its administrative duties, ensuring the implementation of laws, and setting up administrative bodies. Each of the ministers also has the right to frame regulations and issue circular in matters within his jurisdiction and conformity with the decisions of the Council of Ministers. However, the content of all such regulations must not violate the letter or the spirit of the law. The government can entrust any portion of its task to the commissions composed of some ministers. The decisions of such commissions within the rules will be binding after the endorsement of the President. The ratification and the regulations of the government and the decisions of the commissions mentioned under this Article shall also be brought to the notice of the chief of the Islamic Consultative Assembly while being communicated for implementation so that in the event he finds them contrary to law, he may send the same stating the reason for reconsideration by the Council of Ministers. "

The topic of this Article is the Executive Power acts. Moreover, in article 170 the governmental procedures are equals to acts of the Executive Power. This article says: "Judges of courts are obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam, or lie outside the competence of, the Executive Power. Everyone has the right to demand the annulment of any such regulation from the Court of Administrative Justice. "

So considering Article 138 and 170, it is concluded that the intention of governmental procedures in article 173 are the ratifications of the Executive Power symmetrically. Thus the intention of governmental officers and units are the officer and units of Executive Power. In reinforcement of this idea, some of the comments available in the parliament discussions in final study of the Constitution Law consider the administrative units and offices as the units which can be the aim of people's complaints. (Mahmoodi, J. 2004, p.61). Therefore, according to the Constitution, the defendant in the cases related to the Court is the officer and units of government as Executive Power. However, it should be noticed that jurisdiction and authority of the Court cited in article 173 are the minimums. The legislator has assigned the authorities of the Court to the law.

Also it should be said fairly that in most cases, the Court has tendency to extend his supervision scope to legal and organizations beyond the Executive Power and issued most of its new verdicts on the base of this fact. Of course it worth mentioning that before the approval of the new Act of the Court, the full tribunal used to issue its verdicts according to the interpretation of the guardian council of the Article 170 of the Constitution Law and it couldn't handle the administrative enactments of the Judiciary and the Units of the Legislature. But with the approval of the Act of the Court the problem was removed (Erfan, 2007, P. 93). The new verdict of the Court indicates the extension of the jurisdiction of the Court to the domain beyond the Executive power, such as No. 401 to 405 sentences of the full tribunal about annulations the circular of Instruments and Landed Property Registration Authority of Iran and No. 374 verdict of the full tribunal about annulations of Social Security Organization circular. (Gholizadeh, H., 2010, p.65).

The France Governmental Council and other administrative courts have jurisdiction in dealing with objections and complaints of administrative affairs. France administrative law, unlike I.R. Iran administrative law, has not defined the defendant but defines administrative affairs and its exceptions. So, someone who does these affairs is the defendant and will be the litigant party in the Governmental Council and other administrative courts.

In the comparison of the defendant place in the Governmental Council of France and the Court of Administrative Justice of I.R. Iran, two points should be considered:

1 - The Governmental Council of France is subjected to the Executive Power, and the Court of Administrative Justice is related to the Judiciary.

2 - The design of the Council in the Executive Power

The stipulation of the Governmental Council inside the Executive Power in France is a due to their different interpretation of the principle of power separation in which the supervision of the Judiciary on the Executive Power is considered as the opposition of that principle. But practically the Council has approved some complaints from administrative decisions of the judicial system and even private institutions with public service responsibility. Nowadays Administrative Court's jurisdiction is a general one in administrative affairs and involves all administrative affairs except which are exempted by the law. But in the Court of Administrative Justice in I.R. Iran, despite its dependence on the Judiciary and the supervision of the Judiciary on the other powers which is not interpreted against the principle of power separation, the defendant is limited due to this excuse that the Court is a special authority. (Gholizadeh, H., 2010, p.67).

- **the Object of Claim in both Authorities**

Considering the Court law, it is determined that the claim can be one of these objects:

1- the cessation of decisions and measurements that contradict the people right and stopping it

2 - the annulations of by-laws which are against religion and law.

Therefore, decisions and measures of governmental units including ministries, organizations, governmental companies, municipalities and their related institutions and also decisions and measures of governmental unit officers mentioned above in their related affairs and duties can include in the Court branches. According to the interpretational law of Article 11 of the Court law, passed in 1995, dealing with complaints against the public organization cited in the list of non-governmental organization and public institutions are within the Court's jurisdiction. So, handling the cases against non-governmental organization (NGOs) which are organizations of private law and don't have any organic relation with the government, is not within the Court jurisdiction. In the cases within the Court jurisdiction, if the dealing branch detected that this affair has led to spoilage of person's rights, the appropriate sentence would be issued. It can be reverse a judgment, cancellation the effect of decision and measure or obliging the defendant to restore the spoiled rights. Furthermore, according to paragraphs 2 and 3 of article 10 of the Court law, dealing with complaints and objections of decisive decisions and verdicts of administrative special authorities with respect to their laws and regulations exclusively and dealing with complaints of judges and those who involves in " State Service Management Act" and employees in all martial and administrative organizations with respect to spoilage of their employment rights are within the jurisdiction of the Court. However, according to its note 2, there are some exceptions cited in section 5.

For the first time in 1790, the tasks of executive branch are separated from judicial branch and prohibited judicial officials from interfering in executive duties. Indeed, not all the tasks of the executive branch have administrative essence so that they are in the jurisdiction of administrative authorities. (Rezaeezadeh, 2005, p. 99) The essence of the matters in the Council is based on power, profit and general services. From 1950 on, verdicts extended to the wider scope of Public Service Theory.

In comparison with the Court of the Administrative Justice of Iran, the Governmental Council has designed criterions using judicial power. So when a criterion is discussed, it determines the essence of the subjects which are within the jurisdiction of the Council and other administrative courts. Also, it has another profit which inspects the administrative affair itself, not its doer position. The natural result of this is the extension of supervision territory of administrative courts to a territory beyond the Executive Power. Accordingly, maybe it would better that the law of the Court - with the adoption of France law - would define a criterion for separating subjects which are within its jurisdiction. On the other hand, if an affair is detected not to be investigated in France administrative courts, it would be within the jurisdiction of public courts. Such condition is for some affairs in Iran such as administrative contractions which handled in public courts.

As it is inferred from the duty explanation of the Governmental Council of France, it enjoys a general jurisdiction and is in complete similarity with the Court of Administrative Justice in this regard which is as the general authority handling the cases against the government. From the side, unlike the Court of Administrative Justice of Iran, the Governmental Council does not oblige itself in the statutes of the internal codes, but it

applies the general principles for judicial supervision which takes them from different sources like the Constitution Law and the international documents of human rights. (Ghazizadeh, 2001, P. 285)

- **The exceptions of the Jurisdiction of the Authorities**

Accepting the Court's jurisdiction in administrative and executive affairs solely, legislating affairs of the Legislature, judicial decisions of the Judiciary, political and sovereignty affairs of the Executive Power and the acts and decisions of the Guardian Council, the Nation's Exigency Council, the Experts Parliament, the Supreme Council for National Security and the Supreme Council for Cultural Revolution are all out of the Court's Jurisdiction.

The exceptions of the Governmental Council jurisdiction and other France administrative courts can be categorized into several classes:

1 - the exceptions related to legislating affairs

2 - the exceptions related to the judicial system including unjudicial decisions, and punishment to the president's decision in using mercy right (Neville, PP.136-137)

3 - the exceptions related to sovereignty affairs with political essence such as the dissolution of parliament by the president (Rezaeezadeh, M.J., 2005, p.119)

4. administrative exceptions with the activity quality of private sector. The public official can possess properties like the private owners or acts in industrial or economic fields. Naturally the regulations for these activities are the regulations governing the private sector and cases arising from these activities lie in the jurisdiction of the public courts.

5 - the matters which are within the jurisdiction of civil courts including: the cases related to, freedom of persons, social right of voting, etc.

6 - special legal exceptions including indirect tax, employer responsibility, accidents and nuclear events. The cases related to nuclear events are within civil courts jurisdiction (Amir Arjomand, A., p.41)

7. the theory of remarkable idleness and other exceptions

It seems that the exceptions of the France Governmental Council are more than the Iran Courts' ones. But considering the scope of the Council jurisdiction, these exceptions are not more. Because, the jurisdiction scope of the Council is wider than the Court's. On the other hand, the jurisdiction territory of the Court is limited to administrative and executive affairs of Executive Power according to the interpretation of the Guardian Council. So, the existence of some exceptions can restrict this limited scope more and more.

CONCLUSION:

-The existence of an authority which handles the administrative complaints is essential for the institution of law sovereignty. In I.R. Iran, the Court of Administrative Justice is the highest administrative authority. In France, administrative courts are subjected to a higher court named Governmental Council. I.R. Iran's Court has the same position as the Governmental Council in France with some similarities and differences.

The goal of the foundation of both authority is to restore people rights and fulfillment of justice.

- In I.R. Iran, the Court of Administrative Justice is independent of the Executive Power. But the Governmental Council in France depends on the Executive Power; though its main activities are judicial. The duties of the full tribunal of Government Council of France is merely consultative, while the full tribunal of the Court of Administrative justice of Iran has the right to annul the decisions and the enactments in case it deems them against the law.

- Unlike Iran's Court, the Council in France has advising, litigious and studying duties. The lack of a reference for answering questions and inquiries of different governmental organizations forced the Court to form an advisory commission in 2009.

- The Court has jurisdiction in handling the cases of real persons and legal persons of private law. Handling the cases of legal persons of public law is out of its jurisdiction. On the other hand, the France Council approves the complaints of all real and legal persons of public and private law. The court and the Council both has jurisdiction in dealing with cases against governmental officials, units and procedures. Here, the government refers to the Executive, Judiciary and Legislative Powers of the regime.

- Apparently the exceptions of the Governmental council of France is more than the exceptions of the Court of Administrative Justice of Iran. But in reality, considering the restrictions of the jurisdiction of the Governmental Council it is not great, since the jurisdiction of the Governmental Council is far more than the Court's and these exceptions are not so more in comparison with its jurisdiction.

- The existence of the criticism on the special administrative authorities in Iran such as the organizational, administrative and financial dependency to its related unit, the absence of the people in the judging session make the possibility of misuse and deviation from justice more. Therefore, to solve these problems, it can be stated that using the experience of the other countries like France can be useful, of course the mere copying of the other country's regulations cannot be useful, the work should be performed on the basis of the political, legal, economic and historical status of the countries.

- Nowadays in developed countries like France, the Theory of Administrative Law Scattering has not the previous position. They have complied some fundamental principles in the field of administrative law. But in I.R. Iran, this Theory is dominant, and there is a lack of a comprehensive law for the making approach of administrative affairs. So some sporadic and sometimes paradoxical laws which all of them has some problems are the criterion in judgment. Moreover, these extant laws are interpreted as used especially in the forms shown by the interpreter organization (the Guardian Council) and lead to more irregularities in administrative affairs, while the administrative judgement should enjoy a hierarchy in structural point of view as the general courts to experience the administrative justice in a suitable way. For this purpose, it is necessary that the primary administrative courts should be established in the province capitals and by establishing the regional revision courts between several adjacent provinces, the structure of administrative judiciary system be

renewed. This makes the availability of the judicial authorities easier for the citizens and also decreases the work-mass of the courts. In any case, as the duality system of the courts, i.e. establishing of a higher special court to handle the administrative cases and disputes in some countries such as France has been successful and today everyone certify that this system is able to execute the real justice. Therefore, the experience of the others must be used and if there are any defects in this regard, the most must be done to solve it, to enable he Court to conduct the duties bestowed by the Constitution about settling the law in the administrative units.

REFERENCES

- Ashtiyani, Mohammad Hosein, (2013), Historical investigation of the France Governmental Council, the Research Office of the Court of Administrative Justice, Bita
- Afshari, Fatemeh and Seyyed Shahabeddin Mosavizadeh,(2015) Some discussions about the Court of Administrative Justice, the research center of the Judiciary, Tehran
- Amir Arjomand, Ardeshir, (1999), The pamphlet of matching administrative law, the Occurrence and change in France administrative law, Shahid Beheshti University
- Bell, John , Sophie Boyron and Simon Whittaker,(1998), Principles of French Law, Oxford University
- Brown, Neville and John S. Bell, (1998), French Administrative Law, Fifth Edition, Clarendon Press, Oxford
- Eliot Katrin and Katrin Vernon, (2003), France Legal System, Translated by Safar Beigzasdeh, First Edition, Islamic Consultant research Studies Center
- Emami Mohammad, Ostevar Sangari, Kouroush, ((2012) Iran Administrative Law, Fifteenth Publication, First Volume, second Edition, Mizan Press, Tehran
- Frydman, Patrick ,(2008), Administrative Justice in France, 11 the Australasian Institute of Judicial Administrative Tribunals Conference/ available at www.aat.gov.au.
- Ghamami, Majid,(1997), Government's civil responsibility for the actions of its employees,First edition, Justice Publication, Tehran
- Chapus, Rene, (2001) Droit administratif général, paris: Montchrestien.
- Ghazi, Seyyed Abolfazl,(2005) The necessities of fundamental law, Mizan publication, Tehran
- Ghazi, Seyyed Abolfazl ,(1991) Fundamental law and political organizations, Tehran University Publication, Tehran
- Hauriou, Maurice (1914). Précis de droit administratif, Paris : Sirey, huitième édition.
- Hodavand, Mahdi and Moslem Aghae Toogh, (2005), Administrative private courts in fairly procedures, the legal assistant of the Judiciary, Tehran
- Hodavand, Mahdi, (2017) Comparative Administrative Law, second volume, Tehran, sixth Publication, SAMT Press
- Matin Daftari, Ahmad,) 1996(, Commercial and civic proceeding, Civil Proceeding, vol. 1, Supreme Educational Complex of Gom

- Mahmoodi, Javad,(2004), Analytical investigation on administrative proceeding, Jangal publication
- Mosazadeh, Reza, Administrative law, (2002),(1-3), Third publication, Mizan publication, Tehran
- Nasirae, Saeed,(1998), Collection of united procedures in the Court of Administrative Justice, Sekkeh publication
- Perro, Rozheh, (2004), France judicial Institution, Translated by Shahram Ebrahimi and others, First Edition, The legal and Judicial development deputy of Judiciary, Sajsabil press.
- Rezaeezadeh , Mohammad Javad,(2005), France administrative course and its jurisdiction in handling the cases, Moeen Edareh Publication, Tehran
- Sadrol Hefazi, Seyyed Nasrollah,(1993), Judicial supervision on government affairs in the Court of Administrative Justice, Shahriar Publication, Tehran
- Sara, Joseph, Jenny, Schultz, Melissa Castan ,(2005), The international covenant on civil and political Rights, cases, materials and commentary, oxford university press, second edition
- Sensibles a la theorie de Montesquieu dite de la separation des pouvoirs, les revolutionnaires ont voulu contonner le pouvoir judiciaire don't ils se mefiaient par experience (Jean-Jaques Taisne, Institutions Judiciaries,7eme edition, Dulloz, 2000, pp3)
- Tabatabaee Motameni, Manochehr, (1999), Administrative law, Samt Press
- Taisne, Jean - Jaques ,(2000), Institutions Judiciaries, 7eme edition , Dulloz
- Tifine, Pierre ,(2012) Droit administratif français, paris: Éditions juridiques franco- allemandes
- Wade, (H,W,R), Henry William Rawson(2004), Administrative Law, Ninth ed, Oxford University Press, New York
- Erfan, Mohammad, (2007), Public Board in new law of the Court of Administrative Justice, Pajoheshname
- Najatkhah, Mortaza and Faghieh Jarjani, (2016), A thought on the jurisdiction of the Court of Administrative Justice in Handling the cases out of the Administrative Contracts, Public Law Studies Quarterly, Circular 46, Issue 2
- Khosravi, Ahmad, Rostami, Vali, (2013), The Suitable Pattern to Write Administrative procedure in Iran and the Necessity of that System English or French?The researches of Comparative Law, Circular 17. Issue 2
- Savad Kouhi Far, Sam, (2005), The Cmparative Study of the Unity Principle or the Separation of Powersin Iran Justice system. Conistitution Law Magazine, Year 3, Issue 3
- Vizheh, Mohammadreza, Agah, Vahid, (2012), A critical Study in the structure and Produre bill od Court of Administrative Justice, Public Law Studies Quarterly, year 14, Issue 38
- Gholizadeh, Hossein, (2010),Matching investigation on jurisdiction of the Court of Administrative Justice and Governmental Council, MS Theses
- Zarrabi, Hamid, (1999),Judicial supervision on administrative structures in legal system of Iran an France, the MS theses, Shiraz University
- www.divan-edalat.ir-

www.conseil-etat.fr
www.hughoug.blogfa.com/post/28
<http://lawjournal.mihanblog.com/post/240>
<http://nedalat.ir/post-533.aspx>