

COMPARATIVE LEGAL STUDIES

Research Article

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The Correction of the Invalidity of the Civil Trials Procedures in Jordanian and Egyptian Legislation: The Modern Judicial Trends

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Abstract: The research deals with correcting the invalidity of procedures in the Jordanian Civil Procedures Law and the Egyptian Civil and Commercial Procedures Law. It highlights the status of the procedural invalidity and the mechanism of its correction. These conditions must be met to correct the procedural invalidity and the period specified by the Jordan and Egypt legislator to correct the invalid procedure. The study concluded several findings and recommendations, the most important of which is that the Jordanian legislator did not specify a period for correcting the invalid procedure and did not explicitly grant this right to the court in determining the period of correction, just as the Egyptian legislator did by granting the court the authority to specify the period for correction, and that the invalid procedure may be corrected, even if it pertains to the general system, as long as this correction has been made within the specified time.

Keywords: procedural invalidity; civil procedure; correction of procedures; general system; civilian trials; correction period; judicial trends

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I. Introduction

The procedural action must be carried out by the conditions established by law, which determines the actions or the incidents that affect it. Defining the spot referred to as invalidity is necessary to clarify the concept of invalidity itself (Omar, 1999, p. 669). For an action to be considered a procedure, the action must be lawful. It must constitute positive conduct, the law has direct procedural effects on the activity, and the procedural activity is part of litigation (Al-Ansari, 1999, p. 234).

Therefore, the importance of the research lies in clearly addressing the procedural invalidity correction mechanism, as this subject is considered one of the important topics that have a major role in practical reality. In this research, we will conduct through and in-depth analysis of this subject by addressing all aspects, whether theoretical or practical, of two important cases related to this topic, namely availability of the conditions for correcting the invalid procedure and availability of methods to correct invalid procedure, noting that the failure to address this issue leads to ambiguity and weakness in the provisions of Articles 25 and 26 of the Jordanian Civil Procedure Law (Al-Qdah, 2008, p. 291).

These provisions did not specify a legal period for correcting the invalid procedure, did not grant the court the right to specify this period, and did not stipulate any penalty if the invalid procedure was not corrected within the specified legal period. By referring to these provisions, it is observed that the legislator did not expressly provide for all methods of correction, but rather the term “correction” was mentioned in general, nor did the legislator refer to the types of invalidity that are related to the Public System and not related to the

Public System, where the research will address the shortcomings in these provisions by consulting the provisions of the Jordanian Court of Cassation, the Egyptian Court of Cassation, and the Egyptian Civil and Commercial Procedures Law, to address some matters not mentioned in the provisions of Articles 25 and 26 of the Jordanian Civil Procedures Law (Ghossoub, 2010, p. 233).

The selection of this research topic came as a result of the emergence of new practical facts worthy of analysing. Among these facts is that the legislator did not specify a period for correcting the invalid procedure, did not expressly grant this right to the court in order to determine the period of correction, and did not mention the court's role in determining a reasonable period for the correction procedure, did not specify the penalty for exceeding this period (Ragheb, 1978, p. 23), and the state of availability that corrects the invalidity, as well as identifying methods to correct invalidity, among these methods, the correction by completing procedural actions, and the correction while the invalidity remains, it is also permissible to correct the invalid procedure, even if it is related to the Public System, whereas, the litigant who wants to relinquish the invalidity is required to have the capacity to litigate (Hindi, 2005, p. 49).

This research aims to clarify the role of the court in determining a specific period to correct the invalid procedure and to clarify that if the procedure is not corrected, a financial fine is imposed on the opponent who refrained from correcting, and showing that if the opponent's representative attends the court sessions after notification, then this attendance corrects the invalidity. On the other hand, if the opponent's attorney attended the trial proceedings and did not contest the validity of the notification on the date of the first session, this act is considered an implicit relinquishment of the appeal of the invalidity of the notification of the said session; thus, he will not be able to raise this issue to the Court of Appeal and Cassation (Tzerrin and Khowaldi, 2016, p. 50).

In this research, we will address several dilemmas, as there is a defect in the provisions of Articles 25 and 26 of the Civil Procedure Law. We will try to consider this deficiency by answering several questions. Some of the most important questions are as follows. First, what does

the procedural invalidity correction mean? Secondly, what conditions must be available to correct the invalidity of the procedures stipulated in Article 26 of the Civil Procedure Law? Third, what is the period set by the Jordanian legislator to correct the invalid procedure? Fourth, what is the court's role in setting a reasonable legal period for correcting the invalid procedure? Finally, what is the penalty imposed on an opponent who does not comply with the periods set by the court for correction?

The descriptive-comparative approach will be adopted in this research due to the diversity of legislations that differed in addressing the sub-sections and sub-topics of the main topic of the study, clarifying the differences between these legislations, pointing to the strengths and weaknesses of these different legislations, and the extent to which they are considered. The research also followed the analytical approach to analyze all the provisions of legislation related to the subject of this study to determine its contents, implications, and objectives, then criticizing and commenting on it and highlighting the critical aspect of the researcher. The author also adopted the critical approach to highlight the viewpoints and trends of jurisprudence in the topics that were addressed, where the critical aspect of the researcher is highlighted in every aspect that he dealt with in the jurisprudential trend, where this research necessitated the use of several research methods due to the nature of its complexity among the texts of the law, the viewpoints, the jurisprudential trends, and the judicial rulings (Malkawi, 2008, p. 13).

II. The terms of correction of the procedural invalidity

What is meant by correcting the invalid procedure is to remove the invalidity, that is, the invalid procedural procedure has a legal effect, and that invalid procedure that is revocable will not be invalid (Abu Attia, 2007, p. 395) where the legislator resorts to correction so that the litigation continues until its objectives are achieved. In contrast, the correction aims to avoid the judgment of invalidity (Wally, 1973, p. 813).

Article 20 of the Egyptian Civil and Commercial Procedures Law states the following, "The procedure shall be invalid if the law expressly stipulates its invalidity or if it was marred by a defect for which the

purpose of the procedure was not achieved, and it is not permissible to judge its invalidity despite the condition of its invalidity, if it is proven that the purpose of the procedure has been achieved” (Article 20, The Egyptian Civil and Commercial Procedures Law, 1986) while the Jordanian Court of Cassation defined invalidity as follows, “It is a legal adaptation that goes in contradiction with its original legal form, such contradiction leads to the failure to produce the effects that the law entails if it is complete. (If it was entire).”¹

Correction of invalidity is permissible for the judge; the correction does not have a retroactive effect, as the procedure is considered effective in its results from the date of its correction and not from the date it is decided (Tim, 2008, p. 116). To correct an incorrect procedure, it is required that the correction be made within the legally prescribed period for the procedure to be carried out and that the procedure is taken into account only from the date of the correction (Akhras, 2012, p. 417).

The correction must be made within the legally prescribed period for the procedure so that the legislator’s approval of the correction does not mean that the correction will be made at any time in order for the correction achieves its objectives that avoiding obstructs and procrastination in the progress of the lawsuit (Hindi, 2005, p. 49). In contrast, article 26 of the Jordanian Civil Procedures Law stipulates the following, “The invalid procedure may be corrected, even after adhering to the invalidity, provided that the correction is made within the legally prescribed period for the procedure to be implemented” (Article 26, The Jordanian Civil Procedures Law, 1988).

While Article 23 of the Egyptian Civil and Commercial Procedures Law states, “The invalid procedure may be corrected, even after adhering to the invalidity, provided that this is done within the legally prescribed period for the implementation of the procedure. If the procedure does not have a specified date in the law, the court shall set a reasonable date for the correction to be implemented. The procedure shall be

¹ Court of Cassation (civil), Greater Amman Municipality Council v. Aida Ahmed, 16 September 2009, D 2009, 1775 (Jordanian Court of Cassation).

considered only from the date the correction is carried out” (Article 23, The Egyptian Civil and Commercial Procedures Law, 1986).

It is observed that the Jordanian legislator did not specify the period of correction and did not grant the court the right to specify this period, unlike what the Egyptian legislator did when he granted the court the authority to set a specific period for correcting the procedure if it was not specified by the legislator (Omar and Khalil, 2004, p. 352).

While the Jordanian Court of Cassation ruled the following, “With regards to the two reasons for the appeal, where the two reasons concluded that the appealed judgment violated the interpretation and application of the law, as the invalid procedure issued against the person against whom the cassation decision was issued by giving an incorrect name to the appellant when depositing the rent allowance is a material error that does not exceed a lapse, because this invalid procedure occurred before the lawsuit was filed, whereas the court does not have the authority to correct the invalid procedure under the provisions of Article 26 of the Civil Procedure Law, the appealed judgment also indicated that the appellant against him had deposited the rent by using the triple name of the appellant, while it was proven that he had deposited the rent in a different name than the appellant’s name.”² In another ruling of the Jordanian Court of Cassation, it was stated, “It is benefited from Article 26 of the Civil Procedures that it is permissible to correct the invalid procedure even after adhering the invalidity, provided that the correction is made within the prescribed specified period.”³

However, there are some cases in which the Jordanian legislator stipulates to take a specific action based on it; this action will have its effect. In contrast, Article 107 of the Jordanian Civil Procedure Law stipulates the following, “ If any party fails to comply in response with the decision issued regarding the production of a document or permission to disclose it, so that if that party is the plaintiff, then he is by this act expose his lawsuit for dropping the basis of untraceable, and

² Court of Cassation (civil), Fawaz Mahmoud v. Heirs of Ishaq Abdul-Jabbar, 18 August 2015, D 2015, 1213 (Jordanian Court of Cassation).

³ Court of Cassation (civil), Jerusalem Insurance Company v. Social Security Corporation, 30 September 2001, D 2001, 2269 (Jordanian Court of Cassation).

if this party is the defendant, he will expose his defence to cancellation if he presented a defence, while the court issues its decision to drop or cancel at the request of the party who requested access to this document” (Article 107, The Jordanian Civil Procedure Law, 1988).

Although there is no explicit provision in Article 26 of the Jordanian Civil Procedure Law that grants the court the authority to set a specific date for conducting the procedures, nevertheless, the court can be granted this authority as Article 85 of the Jordanian Civil Procedures Law and its amendments No. 24 of 1988 states, “If one of the obligated litigants fails to deposit the amount to be deposited within the specified period, the opponent may deposit this amount without prejudice to his right of recourse against his litigant, the court is also entitled to consider the failure to deposit the amount by the opponent obliged by the deposit, as evidence that he relinquish from the proof of the incident, which he requested the appointment of an expert to prove it”(Article 85, The Jordanian Civil Procedure Law, 1988). Therefore, it can be said that the authority to set the time limit refers to the court, and the litigant must correct the invalid procedure during this period (Ghossoub, 2010, p. 233).

A distinction must be made between the procedure for which the legislator sets a specific period for the correction procedure, such as the periods of appeal, cassation and pleading, where correction must be made during these periods. In contrast, the correction has no effect unless the specified date is observed and if the deadline has passed. The correction has not taken place, then the correction is not permissible after that (Article 69, The Jordanian Civil Procedure Law, 1988), and between the procedure which does not have a specific period for it, under this, the court sets a specific period for its correction (Wally, 1959, p. 533).

The procedure is taken into consideration only from the date of its correction, so that the invalid procedure may be corrected, even if the concerned person insists on invalidity (Nasir & Dakhil, 2016, p. 237), however, Article 26 of the Jordanian Civil Procedure Law states the following, “The procedure is only valid from the date it was corrected”(Article 26, The Jordanian Civil Procedure Law, 1988), where the Jordanian Court of Cassation ruled that “the deficiency in

the statement of the defendant's name in the statement of lawsuit is not considered a deficiency that necessitates the cancellation of the statement of lawsuit, for not requiring invalidity on the one hand, and not harming the litigant due to this cassation on the other hand, even if it stipulates for invalidity on the other hand, according to Article 24 of the Civil Procedures Law, provided that the defendant has attended all court procedures represented by her attorney.”⁴

Notwithstanding, correction may be carried out even if the invalidity is related to the Public System, as long as such correction eliminates the invalidity,⁵ Furthermore, such correction is implemented within the specified period (Abu Al-Wafa, 1988, p. 136).

In the case of a request for invalidation of judgments, the matter is different, as in the event of such invalidity occurring, this procedure is corrected by requesting a correction procedure, and it does not entail the invalidity of all procedures, the Jordanian legislator identified cases of invalidity of judgments in the provisions of Articles 132 and 133 of the Jordanian Civil Procedures Law, which are related to cases of the judge's incompetency to consider the lawsuits and preventing him from handling it, under the penalty of invalidity of the judgment, the invalidity was also stipulated in Article 160 of the same law”(Articles 132, 133, 160, The Jordanian Civil Procedure Law, 1988), whereas the Jordanian Court of Cassation ruled that “the invalidity results from the court judgments which did not indicate the court that issued it, the date and place of its issuance, the names of the judges who participated in its issuance and attended its pronouncement, the full names of the litigants, their attendance or absence, their names and surnames, overviewing all the facts of the lawsuit, the litigants' requests, a brief summary of their essential pleads and defences, and the reasons for the court judgment and its text, based on Article 160 of the Civil Procedures Law, which necessitated the fulfilment of the above-mentioned conditions.”⁶

⁴ Court of Cassation (civil), Iraqi National Insurance Company v. Trans Shibnj, 15 December 1991, D 1991, 591 (Jordanian Court of Cassation).

⁵ Court of Cassation (civil), Jordan Telecom Public Shareholding Company v. Osama Mahmoud, 9 February 2005, D 2004, 3015 (Jordanian Court of Cassation).

⁶ Court of Cassation (civil), Faiza Amin v. Samir Amin, 31 March 1999, D 1998, 2016 (Jordanian Court of Cassation).

The invalidity is due to a defect in the judgment procedure itself, as the defect distorts the judgment itself as a judicial procedure, which leads to its invalidity, such as, if the ruling was issued by a committee that formed in a lower quorum (Al-Zoubi, 2006, p. 884), whereas the Jordanian Court of Cassation ruled that” the judicial ruling is a procedural act which its issuance required to be in writing and signed by the judge and all members of the judicial committee that issued this decision, and sign the draft decision that archived in the case file, including the reasons for the ruling and its text, so that the decision is valid, and it constitutes a valid basis for its issuance, in accordance with the provisions of Articles 159 and 160 of the Law of Civil Procedure, and since the draft decision was signed by all members of the committee considering the lawsuit in the Court of Appeal, the judgment fulfils all its conditions and legal requirements, the unavailability of the signature of the commission member on the final printed version does not affect the validity of the ruling, especially since the court seal is stamped in the place of the commission member’s signature to indicate that the draft decision bears his signature, and that this member was in a state of absence during the period during which the judgment was prepared and printed, therefore this reason must be rejected.”⁷

If the litigant corrects the procedure, considering that there is a defect in his right, the judgment does not prevent the first procedure from being considered valid. Its effect shall be effective from the date of its consideration. If the court finds that it is free of defects, the plaintiff’s submission of the list of claims is clearer and more comprehensive than the list he submitted. The court considers that the list presented at the beginning fulfils the lawsuit’s purpose, and this does not result in the invalidity of the first list. Therefore, the court decided to add the list submitted later to the lawsuit record. Suppose the appellant provides a legitimate excuse to justify his absence from the trial date. When the Court of Appeal considered the appeal, it found that he had been notified of the invalid procedure. In that case, this does not prevent the judgment from being rescinded (Abu Azzam, 2008, p. 77).

⁷ Court of Cassation (civil), Heirs of Fadl Mansour v. Taiba Investment and Advanced Food Industries Company, 17 March 2021, D 2020, 6262 (Jordanian Court of Cassation).

The jurisprudence stipulates other conditions to correct the invalid procedure, including the following reasons: 1) The correction process leads to the correctness of the invalid procedure; 2) correction must be carried out before invalidity is judged; 3) The procedure is subject to correction does not exist (Fouda, 1993, p. 313).

III. The methods of correcting the invalid procedure

What is meant by correction is the elimination of invalidity. Suppose it is combined with an invalid act that leads to its derogation or invalidity. If the invalidation is corrected by the availability of all its requirements in the performance, it has become not defective. In that case, it shall not be judged invalid (Wally, 1973, p. 813).

The jurisprudence divides correction into methods; although the Jordanian legislator did not specify methods of correction, it can be considered as the term “correction” contained in Article 26 of the Jordanian Civil Procedures Law came in a general form. Therefore, it includes all correction methods (Al-Sharqawi, 2013, p. 116).

There are many correction procedures, where the first method of correcting the invalid procedure is to correct it by completing the procedural action, completing the invalid procedure, through adding what is missing and correcting the invalid requirement, the procedural action must satisfy the requirements for judging its validity based on what established by the legislator. If the procedural action violates these requirements, it will be invalid and void (Al-Shwarabi, 2010, p. 48), while if it is possible to complete the deficiency in the action, it must meet all its requirements in order for it to become valid (Wally, 1959, p. 527).

A distinction must be made whether a deficiency or defect is one of the basic requirements that must be fulfilled in the procedure, an example of this is the adjective in the lawsuit, which is a condition of the lawsuit and not a procedural action (Hillel, 2007, p. 312; Abu Al-Wafa, 1957, p. 291), and by referring to French law, it differentiates between invalidity on formal reasons or invalidity on objective reasons, Article 115 of the French Civil Procedure Law regarding the formal reasons state, “The invalidity shall not be judged if the defect is not

corrected and the correction shall have a retroactive effect, so the act is considered valid since its adoption and the defect associated with it disappears, and it is considered as if it did not exist since the original, so the possibility of holding on to its invalidity ceases,” while Article 121 of the same law above provides objective reasons, as it stipulates the case in which the invalidity can be covered, and it is not judged if its cause disappeared before the decision was issued, therefore, the effect of the correction is subject to two assumptions only: a-the ability to cover violation; b- eliminating the reason that led to the invalidity within the specified time, that is, before the issuance of the decision (Articles 115, 121, The French Civil Procedure Law, 2020).

Hence the importance of differentiating between a text that has a period, as it is necessary to adhere to this period and correct during it, and if the correction period is not specified, the correction shall take place before the judge decides to dismiss the lawsuit, regardless of the opponent’s adherence to invalidity (Al Qadi, 1994, p. 82). All legislator requirements must be added to the invalid procedure and what is lacking so that the complement shall be completed and achieves the desired objectives (Al-Rashidi, 2011, p. 99).

For example, if an unclear pleading is submitted, the defect is removed by presenting a more comprehensive and clear pleading by the provisions of Articles 117 and 118 of the Jordanian Civil Procedures Law; this indicates that the complement must be made at the time specified by the legislator, and if this is not done within the time specified by the legislator. Furthermore, suppose a period is not specified. In that case, as is the case in Jordanian legislation, the court shall set a period to carry out this procedure, as the court has the discretion to set a specific period for completing the invalid procedural action, and there is no penalty for the opponent if he does not correct the procedure within the period specified by the court (Abu Azzam, 2008, p. 79; Articles 117, 118, The Jordanian Civil Procedures Law, 1988).

It is advised that the text of Article 26 of the Jordanian Civil Procedures Law should be amended by adding a maximum period of three months granted to the opponent to correct the invalid procedure, so that if he does not carry out this correction during this period, the lawsuit will be dropped, accordingly, the opponent will be obliged

to carry out the complement during this period, which will fulfil the purpose of this provision, and it is also possible to grant the court the authority to impose fines on those who fail to correct this procedure during this period, the provision of Article 24 of the same law is also amended by adding a paragraph granting the court the power to drop the lawsuit in the event the opponent fails to correct it at the time specified by the court, under penalty of dropping the lawsuit, whereas Article 72 of the Jordanian Civil Procedure Law stipulates, “The court’s ruling against one of its employees or the litigants who failed to deposit documents or perform any of the pleading procedures within the period specified by the court, with a fine not exceeding twenty dinars, this shall be by a decision recorded in the minutes of the session, and has what judgments have executive power, and it is not subject to appeal in any way, nevertheless, the court may dismiss the convict from the full fine if he presents an acceptable excuse” (Article 72, The Jordanian Civil Procedures Law, 1988).

While the second method to correct the incorrect procedure is to perform the correction while the defect remains, this correction is represented in the Civil Procedure Law in Relinquishing adherence to invalidity, the relinquishment is the opponent’s declaration of his will by relinquishing his right to adhere to invalidity, the relinquishment can be express or implied (Salman and Mohammed, 2018, p. 265), and that this relinquishment may respond to the request for invalidity, and it has the right to respond to this request and has the right to adhere to the invalidity (Al-Shawarbi, 2004, p. 218), whereas Article 25 of the Jordanian Civil Procedures Law states the following, “It is not permissible to adhere to the invalidity except for the cases which legislated the invalidity for its benefit, and the invalidity may not be adhered by the opponent who caused it, and all this except in cases where the invalidity is related to the Public System” (Article 25, The Jordanian Civil Procedures Law, 1988).

The invalidity shall lapse if it is expressly or implicitly relinquished by the person in whose interest it is legislated (Moloki, 2009, p. 90), except in the cases related to the Public System and what is meant by express relinquishment, which is the tendency of the opponent’s will to relinquish his right to invalidity, the Jordanian legislator did

not stipulate a specific form for relinquishment of invalidity, as it is permissible to relinquish by verbal during the session. However, this relinquishment is recorded in the session minutes; it may also be in writing that the opponent gives written notice of his relinquishment of invalidity (Wally, 1959, p. 557).

The Jordanian Court of Cassation ruled that “since it does not invalidate the procedure unless it is defective so that if a defect is found in the procedure, shall lead to its invalidity, then the requirement that the procedure missed was added, or the defective requirement in the procedure has been corrected, so that the procedure has all its requirements, so it becomes non-defective and is not judged invalid, explicitly based on the text of Article 26 of the Law of Civil Procedure.”⁸

Another ruling of the Jordanian Court of Cassation stated that “the invalidity of the litigant’s private procedures is not from the Public System because it was legislated for the benefit of the one who was harmed by leaving it in the manner specified in the law. Therefore, Article 25 of the Civil Law Stipulates the following: it is not permissible to insist on the invalidity except for the one who legislated the invalidity for his benefit, and the invalidity is lapse if it is expressly or implicitly relinquished by the one who legislated in his favour, except in cases where it is related to public order, and whereas, the relinquished procedures are not related to the Public System, and the litigant representative did what she did base on a legal mandate authorizing her to do what she did, therefore, the claim of the plaintiff and this case, for the reasons mentioned in the statement of claim, have no legal basis.”⁹

A question at this moment arises as to the permissibility of prior agreement on this express relinquishment; therefore, a distinction must be made if this relinquishment responds to the right to adhere to the invalidity of a particular activity for a specific reason so that the relinquishment may be pre-approved, or whether this relinquishment is general and indefinite, then this agreement is not permitted, because the relinquishment is without knowing the reasons for the invalidity, as

⁸ Court of Cassation (civil), Social Security Corporation v. Amjad Qadri, 10 May 2021, D 2021, 754 (Jordanian Court of Cassation).

⁹ Court of Cassation (civil), Mohammed Sameh v. Lands Circle, 22 June 2009, D 2008, 3519 (Jordanian Court of Cassation).

in event he knew of these reasons, he would not have relinquished his right to adhere the invalidity (Al-Aboudi, 2007, p. 152).

What is meant by implicit relinquishment is that the opponent adopts a behaviour. This behaviour indicates his relinquishment of invalidity and his willingness to bear the defective act (Al-Sabawi and Yahya, 2011, p. 382), and the circumstances of the condition should be a clear indication of this relinquishment. Therefore, the competent judge shall study the opponent's behaviour so that if it becomes clear to the judge that the behaviour of this opponent indicates a conclusive indication of his relinquishment of invalidity, then the opponent's adherence to invalidity is not accepted afterwards (Wally, 1959, p. 558).

In a decision of the Jordanian Court of Cassation, it was stated that "if the attorney appointed by the appellants attended the trial proceedings until the issuance of the judgment in the lawsuit in the Court of First Instance and the attorney above did not appeal the validity of the notification on the date of the first session, this behaviour would indicate that the appellants have implicitly relinquished the appeal to the invalidity of the notification for the previous session. Therefore, they may not raise this issue at the Court of Appeal and Cassation, under Article 25 of the Law of Civil Procedure."¹⁰

Where the text of Article 25 of the Jordanian Civil Procedures Law corresponds to the text of Article 22 of the Egyptian Civil and Commercial Procedures Law, which states the following. "The invalidity shall be forfeited if the person in whose favour the law was issued expressly or implicitly relinquished it, except in cases where the invalidity is related to the Public System" (Article 22, The Egyptian Civil and Commercial Procedures Law, 1986).

The legal jurisprudence stipulated three conditions for the relinquishment to be affected, whether explicit or implicit. The first condition is the issuance of the relinquishment of the opponent who is entitled to adhere to the invalidity, so if it is issued by another person (Wally, 1959, p. 562), then it has no effect, as a dispute arises regarding the attorney's right to relinquish the proving invalidity in favour of

¹⁰ Court of Cassation (civil), Khalil Ibrahim Company v. Jordan International Travel and Tourism Co, 24 April 2002, D 2002, 730 (Jordanian Court of Cassation).

his client, however, this legal dispute is determined in the Jordanian judiciary, where the attorney has the right to relinquish the proving invalidity in favour of his client. In contrast, a ruling of the Jordanian Court of Cassation stated, “If the notifications are done correctly, the claim of invalidating it shall be extinguished in the presence of the addressee at the specified session or by submitting his defence memorandum, and since the appellant attorney attended the specified session, and since the appellant attorney has attended the specified session, and submitted his defence memorandum in the lawsuit, therefore, raising this plea after that is not acceptable, and must be rejected.”¹¹

Article 21 of the Egyptian Civil and Commercial Procedures Law states, “It is not permissible for anyone to adhere to the invalidity except for one who legislates invalidity for his benefit. Furthermore, it is not permissible to adhere to the invalidity by the opponent who caused it, and all of this except for cases where the invalidity is related to the Public System” (Article 21, The Egyptian Civil and Commercial Procedures Law, 1986).

Another ruling of the Jordanian Court of Cassation stated that “Article 25 of the Jordanian Civil Procedure Law has established a stable provision from a legal and juridical point of view, that invalidity is adhered to only by the one who legislated for his benefit and not the one who caused it, except for cases where the invalidity is related to the Public System, and the invalidity lapses if it is explicitly or implicitly relinquished.”¹²

While the Egyptian Court of Cassation (Labour Chambers) ruled in Appeal No. 7096 for Judicial Year 90 issued on October 27, 2021 as follows, “As a basis for the appellant’s obligation to submit an official version copy of the primary judgment, in accordance with the provision of Article 255 of the Pleadings Law, amended by Law 76 of 2007, that the contested judgment was referred to him with its justifications and without indicating these reasons in the minutes, while if the contested

¹¹ Court of Cassation (civil), Abdullah Rashid v. Zulfiqar Corporation for Import and Export, 20 September 2005, D 2005, 4465 (Jordanian Court of Cassation).

¹² Court of Cassation (civil), Civil attorney general assistant v. Ibrahim Ahmed, 10 December 2000, D 2000, 1726 (Jordanian Court of Cassation).

judgment discloses in its minutes the reasons on which the primary decision was based, and none of the litigants contested that, then the purpose of submitting the official version copy of this ruling was achieved, and the invalidity is prohibited in this case under Article 20 of the Pleadings Law, according to what was stated, and it was clear from the contested judgment that it disclosed within its minutes the reasons on which the primary decision was based in his judgment in the lawsuit filed by the appellant, and those filed by the appellee, and none of the litigants challenged the provisions of the contested judgment in this regard, thus, the purpose of submitting an official version copy of the preliminary judgment issued in these two cases has been achieved, and this plea remains void.”¹³

The second condition is that the opponent can relinquish. This condition is assumed in the opponent automatically because the eligibility for relinquishment is the same as eligibility for litigation, so if the litigant does not have the litigation capacity, then there is no capacity to relinquish the invalidity (Al Lahi, 1996, p. 562).

In a decision of the Jordanian Court of Cassation it was stated that “Procedures that take place after the juvenile has reached the age of majority are void because the litigation is invalid, where his father represented him in the case through the civil lawyer and his registrar to file the lawsuit, and by referring the documents to the Court of First Instance, which adopted the procedures that took place after that date, arguing that the plaintiff’s attorney (i.e., the plaintiff’s attorney after reaching the age of majority) authorized the previous procedures on behalf of his client, while the defendant’s attorney did not accept the aforementioned plaintiff’s consent to the previous procedures, since those actions and procedures relating to the dispute, are related to the Public System, therefore, permitting a juvenile after reaching the age of majority and completing the eligibility for litigation does not discriminate behaviour contrary to the Public System, as permission responds to behaviour that revolves between benefit and harm that is not related to the Public System, since the Court of First Instance

¹³ Court of Cassation (civil), 27 October 2021, D 2021, 7096 (The Egyptian Court of Cassation — Labour Chambers).

adopted the above-mentioned previous procedures and the Court of Appeal followed them, the Court of Appeal issued a judgment based on invalid procedures that should be revoked.”¹⁴

While the Egyptian Court of Cassation ruled the following, “Since the confrontation between opponents is one of the main elements of litigation that only occurs with it, this confrontation can only be achieved by initiating litigation and its procedures, including announcements from and by whom has the capacity to litigation, where litigation capacity means the capacity of the litigant to perform or receive the procedural act, and it is available when the litigant eligibility to perform the right subject of the dispute, while if the litigant does not have this capacity, notifications and other procedures shall be directed to his legal representative in the litigation and its procedures, such as the guardian, trustee or in charge, as the litigant must monitor any death or change in character or status of his opponent so that the litigation takes its proper legal path.”¹⁵

The third condition is that the opponent has the will to relinquish, which must be determined by the opponent, this will is not available to the opponent if he is not aware of the defect that leads to invalidity. If these conditions are met, relinquishment shall have its effect (Al-Shwarabi, 2010, p. 14); Article 25 of the Jordanian Civil Procedure Law summarized the case for relinquishing invalidity, which is not related to the Public System, as stated in the Jordanian Court of Cassation decision, “However, jurisprudence and the judiciary have established that the challenge to the invalidity of the notification is not from the Public System and that it is the right of the litigants, and it may be relinquished explicitly or implicitly, and the right to present its pleading is forfeited if it is not carried out at the first opportunity available to the litigant by the provisions of Articles 24, 25, 110 of the Civil Procedure Law.”¹⁶ Whereas the effect of this relinquishment is the inability of this

¹⁴ Court of Cassation (civil), Salim Abdul Karim v. Mohamed Rady, 14 December 2008, D 2008, 1063 (Jordanian Court of Cassation).

¹⁵ Court of Cassation (civil), 28 February 2000, D 2000, 7353 (The Egyptian Court of Cassation).

¹⁶ Court of Cassation (civil), Civil attorney general assistant v. Sabri Mahmoud, 5 January 2009, D 2008, 2464 (Jordanian Court of Cassation).

opponent to adhere to the invalidity by any means or in any degree of litigation, and this relinquishment extends its effect to the Public System (Al Tahyiawi, 2003, p. 197).

It is a process of correction while the defect remains or a state of correction through achieving a legal fact. In contrast, this state is an application of the rule that states “there is no invalidity if the correction fulfils the purpose of the form required by law” (Wally, 1959, p. 567). The legislator addressed this case in Article 110/2 of the Jordanian Civil Procedure Law, which states, “The invalidity of the notification and the lawsuit memorandum arising from a defect in the notification or its procedures or on the date of the session shall be eliminated by the presence of the person who required to be notified at the specified session or by submitting his defensive memorandum” (Article 110/2, The Jordanian Civil Procedure Law, 1988).

It is observed that the legislator relied on a legal fact, which is the fact of notification of the lawsuit and its memoranda, and that the invalidity is eliminated in the presence of the person who is required to be notified or by submitting a defensive memorandum. Therefore, the Jordanian Court of Cassation ruled, “If the defendants’ attorney attends the sessions following the notification, his attendance corrects the invalidity according to Article 110/2 of the Civil Procedure Law.”¹⁷

In another ruling, the Jordanian Court of Cassation ruled that “the jurisprudence of the General Assembly of the Court of Cassation has been established that Article 109/e of the Civil Procedure Law allows the litigant, before deliberating on the merits of the lawsuit, to request the court to rule the invalidity of the notification documents of the lawsuit, Paragraph 10 of Article 11 of the aforementioned law also expressly states that a plea that is not related to the Public System must be submitted before any procedural defence or defence request is presented in the lawsuit, otherwise, the right to it shall be forfeited, also Paragraph 20 of the same article expressly states that the defendant’s filing of his defence memorandum forfeits his right to adhere on invalidity, as is the case for attendance (Cassation of the General Assembly Right 1255/2005), whereas the defendant’s attorney attended the session of April 30, 2007

¹⁷ Court of Cassation (civil), Ziad Ismail v. Arab Bank, 21 July 2010, D 2010, 273 (Jordanian Court of Cassation).

and did not raise the pleading that the notification of the lawsuit was invalid, then submitted a later date on May 8, 2007 the aforementioned invalidation request, that is, after the legal period stipulated in Article 5 of the Civil Procedure Law, and after submitting his respond to the lawsuit memorandum, it was concluded that the rejection of the request is sound, and that its decision is in accordance with the law.”¹⁸

While Article 24 of the Egyptian Civil and Commercial Procedures Law stipulates the following, “If the procedure is invalid, while the elements of other procedure are available, it will be considered valid as a procedure which all its elements available, and if the procedure is invalid in part, then this part alone is invalid, and the invalidity of the procedure does not result in the invalidation of the previous procedures or subsequent procedures if they were not based on it” (Article 24, The Egyptian Civil and Commercial Procedures Law, 1986).

The Jordanian Court of Cassation ruled in its judgment No. 2996/2020 (General Assembly) issued on October 25, 2020 as follows, “Article 83/3 of the Law of Civil Procedure states the following: the expert must be qualified to carry out the expertise in the task assigned to him, scientifically, technically, professionally, or practically, and to perform his task with integrity, honesty, and sincerity, and to disclose, whether in the trial minutes or in a separate report, the presence or absence of any circumstances or reasons that would raise doubts about its impartiality and independence from any of the parties of the lawsuit, their attorney or the court committee, and if it is proven that this disclosure is inaccurate or not submitted, the expert’s report shall be considered invalid and the expert is obligated in this case to return the wage he received, accordingly, and to determine the extent to which the expert’s report is invalid in this lawsuit, initially, it is noted that the experts disclosed that there are no reasons that would affect their impartiality and independence from the parties to the lawsuit, their attorney, or the court committee, as this disclosure came in the introduction to the experts’ report, where Article 24 of the Civil Procedure Law states the following: the procedure is invalid

¹⁸ Court of Cassation (civil), Nael Camel v. Mohammed Abdullah, 24 January 2010, D 2009, 2612 (Jordanian Court of Cassation).

if the law stipulates its invalidity or if it is marred by a substantial defect that results in harm to the litigant, and invalidity is not judged despite the stipulation if the procedure does not result in harm to the litigant), in light of this and with regard to procedural invalidity (that is, with regard to procedures as distinct from substantive invalidity, the legislator adopted the rule (there is no invalidity without stipulation or a fundamental defect that results in harm to the opponent), and to mitigate this rule the legislator adopted the second rule contained in Article 24 of Civilian Assets that (invalidity is not judged despite the stipulation if the procedure does not result in harm to the litigant), by applying the provisions of Article 24 of Civilian Assets to the violation of the provisions of Article 83/3 of Civilian Assets, the non-disclosure of experts shall result in invalidity because of the explicitness of the Article provision, however, this invalidity is not judged despite its stipulation, if the procedure does not result in any harm to the litigant, where the procedure caused harm to the opponent can be determined from the total experience procedures, so that if the disclosure is a necessary matter, the violation of which results in the invalidity of the expert's report, then preparing this disclosure and completing this part of the expert's procedures at any stage, whether, when understanding the experts the task entrusted to them, when preparing the report of the expert procedure, within the expert report, or in experts acknowledgment that comes after submitting the expert report and before deciding the lawsuit by the court that considering the lawsuit, all of this achieves the purpose of disclosure, achieves the purpose of this procedure, or the form decided by law for the procedure, so there is no harm to the opponent in all the cases that have been referred to, in which the required disclosure can be made, this is supported by the fact that the court, before adjudicating the lawsuit, if it finds that this disclosure is inaccurate for any reason, may decide to invalidate the expert's report, the court also has the right to reopen the trial to ascertain any matter it deems necessary to settle the lawsuit Article 158/3 of Civilian Assets, accordingly, there is no justification to claim the invalidity of the expert's report (if it has not been disclosed) at a particular time, the legislator explained how to disclose as what was indicated in the provision by doing so (in the trial records or in a separate report), but he didn't specify the time period,

and since the experience report replaces the separate report, because if it is submitted, it will be included in the trial minutes, and therefore the reference in the report (for disclosure) achieves the purpose that the legislator intended from this disclosure, and this purpose is to verify the impartiality and independence of the expert by the court, accordingly, the experts in this lawsuit disclosed in the introduction of the expert's report that there are no reasons that would affect their impartiality and independence from the parties to the lawsuit, their attorneys, and the court committee, upon that, the appeal by nondisclosure becomes misplaced.”¹⁹

While the Egyptian Court of Cassation (Commercial Chambers) ruled in Appeal No. 6275 for Judicial Year 87 issued on July 7, 2021, as follows, “The invalidity of the litigation by the invalidity of the notification of one of the litigants is a relative invalidity, that is established for the benefit of the one who was legislated to protect him and is not related to the Public System, only the litigant whose notification is invalid may plead it, even if the subject matter of the lawsuit is indivisible, and this court had ruled “different committee members” on January 16, 2019 to accept the appeal as a form, this implies that it judged the validity of the notification of the respondents against the first to the sixth in the memorandum of appeal in cassation, accordingly, it is not permissible to reconsider whether or not the invalidity of their notification in this memorandum is invalid, in addition, the pleading of this invalidity is legislated for their benefit, and it is not permissible for others to plead with it, this is what makes the apparent pleading by the invalidity of this notification on an unfounded basis.”²⁰

IV. Conclusion

The Jordanian legislator did not specify a period to correct the invalid procedure and did not expressly grant this right to the court to determine the period of correction, as did the Egyptian legislator who granted the

¹⁹ Court of Cassation (civil), Madarak International Meat and Livestock Trading Est v. Feed Development Company, 25 October 2020, D 2020, 2996 (Jordanian Court of Cassation).

²⁰ Court of Cassation (civil), 7 July 2021, D 2021, 6275 (The Egyptian Court of Cassation).

court the right to specify the period of correction; the invalid procedure may be corrected, even if it is related to the Public System, and as long as this correction has been performed within the specified period. In contrast, the Jordanian legislator has not explicitly stipulated all correction methods, but these methods can be adopted, as the term “correction” is in a final form.

The court has a discretionary authority to set a specific period for the completion of the invalid procedural act, and there is no penalty for the litigant if it is not corrected within the period specified by the court; the invalidity of the litigant’s private procedures is not part of the Public System, since it was legislated for the benefit of those who were harmed by not doing so, in the manner prescribed by law, thus, it is not permissible to adhere to invalidity except for those who legislated invalidity for their benefit. The invalidity lapses if it is relinquished explicitly or implicitly by the one who is legitimized for his benefit, except in cases related to the Public System. In contrast, the procedures that have been relinquished are not related to the Public System.

The presence of the appointed attorney in the court proceedings until the issuance of the judgment in the lawsuit, and since he did not appeal the validity of the notification on the date of the first session, this act indicates his implicit relinquishment of the appeal to the invalidity of the notification of the previous session. Accordingly, he may not file this lawsuit later in the Court of Appeal and Cassation. In contrast, the litigant who desires to relinquish the invalidity must have the capacity, and what this capacity means is the litigation capacity. If the defendant’s representative attends the sessions after the notification, his attendance corrects the invalidity.

It is recommended to amend Article 26 of the Jordanian Civil Procedures Law by adding a specific period for correction or granting the court to specify this period, provided that the text is as follows. First, the invalid procedure may be corrected even after the invalidity is adhered to, provided that this correction is performed within three months from the date of knowledge, and the procedure is only considered from the date of its correction. Second, the court may drop the lawsuit if the previous periods were not considered. Alternatively, the text could be formulated differently. First, the invalid procedure may be corrected,

even after adhering to the invalidity, provided this is done within the legally prescribed time for performing the procedure. If the procedure does not have a date specified in the law, the court shall set a reasonable date for correction, and the procedure is considered valid only from the date of its correction. Second, the court may rule against the one who exceeds the period it specifies with a fine not exceeding twenty dinars, by a decision that is recorded in the minutes of the session, and has what judgments have executive power, and it is not permissible to appeal against this decision in any way; nevertheless, the court may dismiss the convict from the full fine if he presents an acceptable excuse.

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