



Voluntary intervention procedures in the civil lawsuit

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Abstract

The civil lawsuit requires the presence of two parties, as a general rule, at least, which are the plaintiff and the defendant, and since the plaintiff is the one who initiates the lawsuit and determines its scope, whether in terms of the subject, the parties, or the reason, except that the exception is that this effect extends to persons who are not a party, and the intervening party may have an interest or related to it, and third parties may play a role in that lawsuit pending before the court in one way or another. For the validity of procedures for the intervention of third parties in civil lawsuits, several controls are stipulated by the Iraqi legislator and comparative legislation, among them that there is a link between the third party involved and the subject matter of the lawsuit brought before the judiciary. from him. And that the intervention, according to the general rules, must appear before closing the pleading door, and it should not be misplaced. The Iraqi legislator and comparative legislation set a time when third parties should intervene, so by closing the pleading door, there is no room for a third person to interfere in the litigation.

Keywords

Intervention in the lawsuit, Acceptance, Rejection, Appeal.

Introduction

First: Introduction to the topic

The civil lawsuit requires the presence of two parties, as a general rule, at least, which are the plaintiff and the defendant, and since the plaintiff is the one who initiates the lawsuit and determines its scope, whether in terms of the subject,

the parties, or the reason, except that the exception is that this effect extends to persons who are not a party, and the intervening party may have an interest or related to it, and third parties may play a role in that lawsuit pending before the court in one way or another.

The general principle is the stability of the judicial dispute, but this principle has not been proven in the face of the development of social and economic life, the complexity of legal life, and the entry of people into complex legal relations.

Hence the idea of the development of the conflict to mitigate this principle by introducing some flexibility to this principle through requests for intervention, and therefore these requests came in order to introduce a new mechanism in the course of procedures before the courts. It also permitted most of the procedural legislation necessary for the validity of the intervention in a lawsuit in terms of how to submit a request for intervention, either through the usual procedures for filing a lawsuit, i.e., by depositing a lawsuit petition in the clerk's office of the court competent to consider the original lawsuit, or by expressing it orally in the session.

Second: Reasons for choosing the topic

It is well known that the law permits each person the right to resort to the judiciary based on a specific interest and a right to be claimed by others, and if the lawsuit was filed starting from the plaintiff and the defendant with the possibility of multiple, then the law permitted the intervention of others in this lawsuit.

The research is exposed to several questions, all of which cannot be limited in this regard, but we refer to the most important as follows: 1- Does the intervention have specific times? In other words, is the will of individuals restricted by time in filing a lawsuit? Is the will restricted to the place in the intervention? 2- When is the court entitled to accept or not accept the intervention in the lawsuit? 3- How to submit a request for intervention? 4- Is it permissible to intervene for the first time before the Court of Appeal?

Third: Research Methodology

In writing the subject of our study, we relied on the comparative approach, which is based on comparing the system of intervention in civil lawsuits in the Iraqi Civil Procedure Code with both the Egyptian Civil and Commercial Procedure Code and the amended French Civil Procedure Code, in addition to the analytical approach that is based on the analysis of legal texts and jurisprudential opinions.

Fourth: Research Plan

In order to fully understand the voluntary intervention procedures according to a systematic framework that deals with all the ideas related to the subject of our research, this topic has been divided into two sections, as follows:

Introduction

The first topic: submitting a request for intervention to the court

The first requirement: the deadline for submitting the request to intervene in the lawsuit

The second requirement: the procedural form for submitting the intervention request

The second topic: the court's decision on the request for intervention

The first requirement: acceptance of interference in civil lawsuits

The second requirement: refusal to interfere in civil lawsuits

The third requirement: the extent of acceptance of intervention before the Court of Appeal

We have concluded this research with a conclusion that includes the most important findings and recommendations related to the core of the matter that we reached through the research journey.

The first topic

Submitting an application for intervention to the court

Intervention is an interlocutory request submitted during the course of the original litigation brought before the court and existing between the two parties to the lawsuit, whether the intervention is joining or adversarial. In a lawsuit according to different legislations in different countries. Any lawsuit or request submitted to the judiciary must comply with the necessary procedures for filing it, because these procedures and deadlines are related to public order, and violating them results in nullity or forfeiture. Therefore, we will divide this research into two requirements as follows:

The first requirement: the deadline for submitting the request to intervene in the lawsuit.

The second requirement: the procedural form for submitting the intervention request.

The first requirement

Deadline for submitting a request to intervene in a lawsuit

The question that comes to mind is does the intervention have specific times? In other words, is the will of individuals restricted by time in filing a lawsuit? Is the will restricted to the place in the intervention?

The Iraqi legislators and their Egyptian counterparts in the Procedures Law expressly permitted that requests for intervention can be submitted as a case filed independently until before the closing of the pleadings door, in order to facilitate the procedures and prevent delay in adjudicating the cases, and this is understood from the text of Article (70/1) of the Civil Procedure Code The Iraqi, which is in application of the general rules in accepting interlocutory requests, which stipulated (1- The incident lawsuit shall be submitted to the pre-conclusion of the case with a petition notified to the opponent or by making it verbally in the session in his presence, and the entry or entry of the third person is considered an accident case, and the person after his acceptance becomes a party to the lawsuit and judge him or him).

As for the Egyptian legislator, it stipulated in the text of Article (123) of the Civil and Commercial Procedures Law that interlocutory requests will not be accepted after the conclusion of the pleading, i.e. after the issuance of the court's decision, to conclude the pleading and prepare it for judgment, which is what Article (126/2) of the Egyptian Procedure Law stipulates: (Interference is not accepted after closing the pleading door) and closing the pleading door means determining the validity of the litigation to adjudicate it in its case after enabling the parties to defend them, and this comes with the judge announcing the reservation of the litigation to rule on it, or issuing a decision to close the pleading door or deciding it in the closing session of the pleading and determining the pronouncement session by judgment.

The second requirement

Procedural form for submitting a request for intervention

Each of the Iraqi legislators, according to the text of Article (70) of the Law of Procedures, and the Egyptian legislator in Article (123) of the same law, specified the procedures for submitting a request to intervene in the litigation, so it is necessary to submit a request to intervene in the lawsuit with the usual procedures for filing the lawsuit, that is, with a newspaper deposited with the court notary, then announces to the parties, and if these procedures are not taken, the request for intervention is based on an outlier, and it is tainted by invalidity. The lawsuit is the basis on which the other litigation procedures are based. The invalidity of this procedure entails the invalidity of the subsequent litigation procedures, based on the idea of correlation.

Hence, the intervention, according to the general rules, must be shown before closing the pleading door and not be located in a wrong place. By closing

the pleading door, there is no room for a third party to interfere in the lawsuit. The principle in civil litigation is that it is filed in a newspaper to the competent court, and the exception is that it is filed in an oral manner, such as the lawsuit.

After submitting the request for intervention, whether in written or oral form, in order for this request to be valid and accepted by the judge, the applicant for intervention must pay the legal fee, as this was expressly stipulated in Article (70/2) of the Civil Procedure Code. However, the formality if it is necessary, so respecting it should not lead to the loss of the substantive right or prolong the conflict.

Through the foregoing, each of the Iraqi legislator and comparative legislation drew specific means for submitting a request to intervene in the lawsuit, where the applicant adheres to the legally specified form, so we find that there are only two means through which the opponent submits his request, the first with the usual procedures for establishing the judicial lawsuit, and the second is verbal. During the session, its validity requires the presence of the other litigant in the session and its entry in the minutes of the session.

First: The usual procedures for filing the civil lawsuit

The intervention procedures take place with a petition that is deposited with the clerk's office of the competent court that hears the original dispute, and it is announced to the original parties, and the filing and announcement must take place before the day of the session set for examining the original dispute. Before the day of the session, the parties to the lawsuit shall be notified of the petition requesting intervention.

The request for intervention must include several statements that Article (46) of the Civil Procedure Code required to mention in the petition of the lawsuit for the validity of filing it, because the intervention is a lawsuit and that the lawsuit is a remedial method aimed at redressing what actually occurred in terms of the infringement of the right.

Second: submitting a request to intervene verbally in the civil lawsuit

The request for intervention may be submitted orally during the session set for hearing the original lawsuit, and the presence of the parties to the lawsuit is required in this session, provided that the request for intervention is recorded in the minutes of the session.

It is worth noting that the absence of the opponent in the session in which an oral intervention request is initiated is not achieved by the oral confrontation, and the latter is considered a means of knowledge of the judicial procedures. Which is done verbally in the session in the presence of the parties, and it is recorded in the minutes of the session, and it is a sure means of information.

In the event that he expresses it verbally in the session, the addressee of the request for intervention has the right to uphold his right to postpone the lawsuit

in order to prepare to present his defense, for a period not less than the period specified for the date of appearance in Article 66 of the Egyptian Civil Procedure Law.

The second topic

Court decision on the request for intervention

Interfering in the litigation is one of the types of contingent claims in which the scope of the litigation expands, whether the person, the subject or the cause. Therefore, the legislator gave the judge a discretionary power in conducting the lawsuit procedures, and among that is what the legislator gave the court to accept requests to intervene in the lawsuit, and to identify this power in accepting or rejecting those requests. Therefore, we will divide this topic into three demands, as follows:

The first requirement: acceptance of interference in the civil lawsuit

The second requirement: refusal to interfere in the civil lawsuit

The third requirement: the extent of acceptance of intervention before the Court of Appeal

The first requirement

Acceptance of intervention in the civil lawsuit

The third party outside the lawsuit does not become a third person in it and is not considered a party to it, except after a decision is issued by the court to accept his intervention based on his request, and to pay a legal fee for that intervention, and the court has discretion in considering the litigation procedures, including what the legislator granted to the court. In accepting the request to intervene or not, and its authority to accept the request is determined by the availability of the conditions required by the legislator to accept that intervention, whether organizational or adversarial, and this is what was stipulated in Article (127) of the Egyptian Civil and Commercial Procedure Law that (the court shall rule in every dispute Regarding the acceptance of interlocutory requests or intervention...)

The second requirement

Refuse to intervene in the civil lawsuit

The law specifies for some lawsuits and requests a specific time during which they must be filed, and it specifies for the intervention of others a specific time and

a specific form, and in both cases if the form is not available or the time is not respected, the court decides that the request is considered inadmissible without examining its basis, and if the court finds that the conditions for intervention are not met, It rules that he is not accepted, and this leads to the intervening party retaining the status of a third party with regard to the original lawsuit, and he may not re-submit the same request to intervene in the lawsuit again, because the ruling not to accept his intervention takes the authority of the thing that is ruled in relation to him; and prevents him from re-submitting the same request in the lawsuit, and therefore it is considered a party that is condemned to intervene, and then it is permissible for it to appeal the ruling that judges its non-acceptance of its intervention, immediately after its issuance, as it is considered a judgment ending the lawsuit in relation to him, even if it was not ending the lawsuit in relation to the rest of the parties, since it results in preventing him from challenging it as soon as it is issued. The opportunity to intervene permanently, which is equivalent to depriving him of his right to appeal.

The court's decision to accept or reject the request for intervention is one of the preparatory decisions that cannot be appealed until after a final judgment is issued in the litigation in accordance with the provisions of Article (170) of the Code of Civil Procedure, and therefore when the court decides to refuse to accept the request for intervention, this ruling cannot be appealed. There is no cassation on its own, but he can appeal against it with the ruling issued in the subject matter of the original dispute. Because the decision of acceptance or rejection is not considered among the decisions that end the litigation, and it is not among the decisions that are permitted to be independently cassation in accordance with the law.

The third requirement

The extent of acceptance of intervention before the court of appeal

Interference in the lawsuit is the entry of a third party who submits a judicial request, either with the aim of supporting one of the litigants, so his intervention will be joining or consequential, or by claiming the right subject of the lawsuit or claiming a right related to it, or with the procedures of the lawsuit, so his intervention will be offensive or adversarial.

Accordingly, in this study, we will address the issue of the widening of the litigation in terms of its parties by expressing new requests for the first time in the appeal trial, represented by requests for intervention that seek to attract a person from others who did not appear and was not judged before a judge of first instance, and monitor the position of the Iraqi, French and Egyptian procedural legislators regarding these requests, and the extent to which he accepts them in the appeal stage.

First: Joining intervention before the Court of Appeal

Joining intervention is the intervention of a third party in a lawsuit between two parties, and he did not request a judgment for himself with a personal right he claims against the two original parties to the dispute, but rather to support one of them (the plaintiff or the defendant) in defense of his right, and thus he does not replace him or represent him, but his motive is to investigate his personal interest in it.

Article (1/186) of the Iraqi Procedure Law states that (the third person may not intervene in the appeal unless he requests to join one of the litigants...) (), then, the right of the intervening third party who has an interest to intervene in the civil judicial dispute held Between its parties, it is confined to the case of joint intervention by one of the litigants, whether the plaintiff or the defendant before the court of first instance or before the court of second instance (appeal), and this is what is permitted and agreed upon by both the Iraqi legislator and comparative legislation, in the primary and appeal stages.

It is noted from the text of this article (186/1) of the Procedure Code that it is not permissible to intervene in the litigation of the appeal except for those who request to join one of the litigants, and this is agreed upon by the Iraqi, Egyptian and French legislators.

The Iraqi legislator permitted intervention as an exception to the aforementioned rules, expanding the scope of the litigation in terms of its parties in one case, which is the intervention of someone who requests to join one of the litigants, even if he is not an litigant in the lawsuit in which the appealed judgment was issued, such as the creditor who did not intervene before the court of first instance in the existing lawsuit Between his debtor and third parties, to intervene in the appeal with the intent of defending his rights so that the debtor does not lose the lawsuit, and the general guarantee established for the creditor on all his money is affected, because this intervention is not considered to be conservatory.

Second: Adversarial intervention before the Court of Appeal

We said that the offensive intervention is achieved when the person who intervenes in the lawsuit intervenes in it out of his own interest in confronting the two parties to the lawsuit, and he demands an order independent of the requests of each of them.

It is what expands the procedural scope of the case compared to what it was before the court of first instance, as the original in it is the prohibition because it simply contradicts the principle of litigation on two levels, while the consequential intervention remains the subject of the litigation as it was before the court of first instance (the Court of First Instance), so it is permissible.

This means that adjoining intervention is unlike the adversarial offensive intervention before the Court of Appeal. As long as the first intervention remains the subject of the litigation as it was before the Court of First Instance, therefore it is always permissible in the appeal, in contrast to the intervention of its second

type (offensive adversarial) as long as the intervention is an adversary. It is real for the original parties, so the principle in it is not permissible because the acceptance of the third person in the appeal litigation on an appeal basis will deprive his opponent if the judgment of the third person with his requests is one of the degrees of litigation and violation of the general rules. This requires the court to rule on its own rejecting the new request to intervene for the first time before the Court of Appeal.

Accordingly, we study this subject in three points, dedicating each of them to explaining the position of Iraqi, Egyptian and French law:

1. Adversarial intervention in the appeal in Iraqi law

The Iraqi legislator deviated from this rule in the Law of Proceedings (the inadmissibility of creating new requests in the appeal), so it is permissible to interfere in the litigation as well for those who fulfill the conditions for appealing the ruling through the objection of others.

This is what Article (186/1) of the Iraqi Procedure Law stipulates that (the third person may not interfere in the appeal unless... he has the right to appeal the ruling through the objection of others).

We note from the text of this article (186/1) that the basic principle in Iraqi law is the impermissibility of adversarial and offensive interference in the appeal trial, except that one case is excluded from this principle, which is the issue in which the interfering person has the right to challenge the first instance ruling by means of the objection of others, As the behavior of the last appeal (the objection of others) requires the existence of certain controls or conditions to accept this exception, and deviating from the general principle.

We will deal with the statement of these conditions, in order to reach the cases in which adversarial intervention is permissible in the appeal accordingly.

2. That the applicant for the litigation intervention in the appeal be from a third party

The word "other" has multiple meanings related to many topics and does not have a single connotation in all of them. Rather, its meaning differs in the branches of law, and more than that even in the same branch, there is a difference according to the legal system used. In this regard, the third party to be litigated in relation to the appeal litigation means: (He is the one who was not a party to a litigation of the first degree and was not represented in it). Whoever is present in a litigation of the first degree may not be accepted as a casual litigant in the appeal, because he was present in the litigation and a party to it and he had ample time to trigger his intervention as he had the right to appeal the ruling. The issue issued in the first-degree litigation and the parties to the first-degree litigation are the plaintiff and the original defendant, as well as the third party who intervened or entered into it, because these are considered litigants in the lawsuit, and therefore

it is not permissible to interfere in the litigation of the appeal if they lose their right as others.

3. That the appealed first instance ruling be among the rulings that may be appealed against by means of a third-party objection

According to the text of Article (1/224) of the Iraqi Civil Procedure Law, that (every judgment issued by a court of first instance, appeal, or personal status may be challenged by the objection of a third party who was neither an opponent nor a representative nor a third person in the lawsuit if the judgment is infringing or prejudiced his rights, even if he has not acquired the degree of absoluteness).

As the rulings that the law has allowed to be appealed by way of the objection of others are the rulings issued by the Court of First Instance and Appeal in its original capacity and the Personal Status Court, and what concerns us here are the rulings of the Court of First Instance only because they are subject to appeal and therefore it is possible to imagine adversarial intervention at this stage, and to justify a position The Iraqi legislator authorizes such interference in the appeal whenever the third person has the right to appeal through the objection of others, and that the Court of Appeal is competent to consider the methods of appeal against the decision that it previously considered in the appeal is acceptable in form, so the third person who requests offensive intervention in the appeal stage He will resort to the court to challenge its ruling through the objection of others, as long as he is not allowed to interfere in the appeal trial.

4. That the appealed judgment is infringing or prejudicial to the rights of the applicant

The basis for ruling on the rights of the intervening party has many forms and cannot be limited, because the main purpose of the decision being infringing or unfair to the rights of others (the third person), is that the interest is available to him as a condition for accepting his claim or request, as there is no claim without interest.

As if harm was caused to others by the decision, that is, this damage may arise from the mere issuance of the decision or from the procedure for its implementation, whether the damage is material or moral, so that it represents an assault on the right or interest of others, and without it the right to request intervention or to object to others does not arise. Then the Court of Appeal has wide discretion in estimating the occurrence of damage or not.

5. Adversarial intervention in the appeal in Egyptian law

As the adversarial intervention is completely different from the consequential joining intervention, because it includes a new request, so its

acceptance in a second-degree trial is explicitly contradictory to the rule of litigation on two degrees.

The position of the Egyptian legislator and judiciary on adversarial interference in the trial of the second degree

When the Egyptian Procedure Law No. 13 of 1968 was issued, the system of objection to judgment by third parties outside the litigation was abolished, and therefore there was no longer a place to link this system to offensive interference in the appeal stage, and therefore the text was limited to the previous rule in the canceled law of limiting the permissibility of intervention before a court Second degree for whoever requests to join one of the parties, Article (2/336).

Accordingly, the law has completely prohibited adversarial interference in the appeal trial, without any exception to that, and thus guarantees absolute protection for the litigation rule on two levels.

The Egyptian judiciary accepts litigation intervention in the appeal in some cases:

Although the text of Article (236/2) of the Procedure Law was explicit in the inadmissibility of adversarial interference in the appeal trial, the Court of Cassation's judiciary used to accept this type of intervention in the appeal trial in the event of an appeal against the decision issued by the court of first instance not to accept Intervention, and then appealed this decision as a convict in the request for intervention. If he did not appeal the judge's decision not to accept his intervention in the trial of the first instance, he may not interfere in the appeal trial.

6. Adversarial intervention in the appeal in French law

The new French Code of Procedure issued in 1975 stipulated in Article (554) of it the requirement of interest to intervene in the appeal trial, and the requirement of interest required to authorize the request for intervention is subject to the discretion of the judge, as the French Court of Cassation ruled that.

Consequently, the French legislator allowed any third party to interfere in the appeal dispute. And only one condition was stipulated in this, which is the condition of interest, in addition to what he previously stipulated in order to accept the request for intervention in general, the necessity of linking it to the requests of the parties with sufficient connection, and in the general text of Article (554) French pleadings, optional intervention is permissible in the appeal trial of both types (principal and accessory). This legislative direction may lead to the expansion of acceptance of this interference in the trial of the second degree as is permissible before the court of the first degree without adding other restrictions to it - as was the case in previous procedural legislation, and this means allowing others to deviate from the principle of litigation on two levels just because the condition of interest is fulfilled. and the link in the request for intervention.

Conclusion

Results

1- The intervention request must be submitted by one of the two means, which is either submitted by the usual procedures for establishing the civil lawsuit, or verbally in the session in the presence of the litigants and recorded in the minutes of the session. In both means, the intervention request must be submitted before the conclusion of the pleading in the original dispute.

2- The judge, after submitting the intervention request to him, checks the request to verify the availability of all the conditions required by the legislator to accept the request, but if the judge finds that one or all of the conditions are not met, he rejects the intervention request, but if he finds that the request fulfills all the conditions, he issues his decision to accept the request.

3- The Iraqi legislator and comparative legislation agreed that the principle is that it is not permissible to create new applications that were submitted for the first time in the appellate lawsuit, due to the view that the legislator in these countries considers the appeal as a way to reform the ruling of a first-degree judge. And they consider the principle of litigation on two levels of public order that cannot be sacrificed and allow the parties to submit requests for intervention before the Court of Appeal, just as the principle of litigation on two levels has reduced its intensity, and deviating from it has become permissible in some cases by the text of the law.

Recommendations

1- We call on the Iraqi legislator to the importance of amending the text of Article (69/1) of the Iraqi Procedure Law in order to ensure more benefit, by making the text of Article (69/1) that (the voluntary intervention of others is accepted at any stage of the lawsuit in the courts of law). first degree if his application has an interest in it and his application is related to the original application).

2- We call on the legislator to amend Article (186/1) of the Iraqi Procedure Law, which states that (the third person may not interfere in the appeal unless he requests to join one of the litigants), and stipulates that the adversarial intervention may be permissible in the appeal as long as the intervening party fulfills the conditions of acceptance. Intervention, which is the interest and the attribute...etc., promised to limit the contentious intervention to those who had the right to object to the ruling.

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