Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

# Acts of Sovereignty in Law, Jurisprudence and Judiciary: A comparative Study on Sudanese, Tunisian and Saudi Law, Jurisprudence and judiciary

**Almoatuz A. Munsoor [*1], Najib O. Aouinet [2], Khalid A. Alshafi [3]**

[1] Associate Professor of Public Law, University of Jeddah, Saudi Arabia, e. mail: aaadam@uj.edu.sa

[2] Associate Professor of Public Law, University of Jeddah, Saudi Arabia

[3] Associate Professor of Public Law, Majmaah University, Saudi Arabia



| Date of send: 11 / 08 / 2020 | date of acceptance: 01 / 11/2020 | Date of Publication: 01/12/2020 |
|---|---|---|



[*]**Corresponding author**

**Abstract :**

This research paper discussed the Acts of Sovereignty in Sudanese, Tunisian and Saudi Law, Jurisprudence and judiciary, as a trial to compare between approaches in these three different ideologies putting in consideration that Sudan adopts the Anglo-Saxon Legal school, Tunisia adopts the Latin Legal School, while Saudi Arabia adopts the Islamic Legal School, in order to explore the differences between them in identification what the Acts of Sovereignty are?

The research problem was the ambiguity of the concept of the acts of sovereignty, because what falls within the scope of these acts has not been precisely defined, therefore this research paper tried to respond to this problem by assuming that the lack of accurate identification of the acts of sovereignty has several causes, including the difference of ideological reference in countries, so the research adopted the inductive approach to present multiple jurisprudence opinions in this regard, as well as to present legal texts and related judicial rulings, and then - using the analytical method - analyzing texts, judicial rulings and jurisprudence opinions to conclude to results that serve the research problem.

The research concluded to find that many factors affects the identification of Acts of sovereignty. Among these factors: Ideology, political and Temporary circumstances.

**Key word:** Judicial observation, Sudan, Tunisia, Saudi Arabia.

## 1. Introduction

The principle of legality is based on the existence of strict rules that the administration is committed to respect and observe in its actions. It imposes restrictions on administration for the benefit of individuals, but the protection of individual freedom must not obscure the need for administration to have a degree of freedom that guarantees good management.

If it is necessary to avoid the tyranny of the administration, then this should not lead to the administration being described as routine, by killing the spirit of innovation, and for this the jurisprudence, the judiciary and the legislator offer the administration some privileges that aim to balance the principle of legitimacy by giving the administration a degree of freedom that varies narrowly and broadly according to the circumstances.

Therefore, law excludes some of the actions of the executive authority and offers them immunity from judicial observation. These excluded acts are known as the acts of sovereignty.

### 1.1. ResearchSignificance

The significance of the research is represented in the ambiguity of the concept of the acts of sovereignty and the lack of clarity of the criteria that can be relied upon in distinguishing these acts, therefore, comparative jurisprudence plays a great role in establishing many legal principles and standards, especially in the field of Administrative Law that is always evolving, so this research seeks

to compare between the three legal ideologies: (Islamic, Anglo-Saxon and Latin) to highlight the differences between these different ideologies.

### 1.2. ResearchProblem

The research problem is in the ambiguity of the concept of the acts of sovereignty, although it is clear that these acts are excluded from judicial observation, but it is not precisely defined what falls in the scope of these acts. In this context, jurisprudence and the judiciary should play a significant role in clarifying this ambiguity, putting in mind the differences in legal intellectual schools and other influences that can lead to different outcomes.

### 1.3. ResearchHypothesis

The study assumes the ability of jurisprudence and judiciary to clarify and precisely define the ambiguity surrounding the acts of sovereignty. It also assumes that determining the acts of sovereignty is subject to the ideology adopted by jurisprudence and the judiciary in each country, which can be affected by a set of circumstances, whether political or otherwise.

### 1.4. ResearchMethodology

This study tries to respond to the research problem and verify its hypotheses by using the inductive approach in reviewing legislations, opinions of jurisprudence and judicial rulings related to the acts of sovereignty in Sudan, Tunisia and Saudi Arabia, putting in consideration that Sudan adopts the Anglo-Saxon Legal school, Tunisia adopts the Latin Legal School, while Saudi Arabia adopts the Islamic Legal School. And using the analytical method in analyzing these texts and judicial rulings to conclude to findings that serve the research problem.

## 2. The concept of sovereigntyActs

Sovereignty Acts are defined as: “the actions issued by the government as a ruling authority, not an administrative authority, so it undertakes it according to this supreme authority to regulate its relations with other public authorities whether they are internal or external, or takes it as a force to preserve the state entity at home or abroad” (Abutalib, 2012, 33). They also defined as: “A group of the executive authority acts that have immunity against judicial observation in all its forms or manifestations, due to special considerations” (Hafiz, 1993, 53). These considerations are that these acts are related to the sovereignty of the state, which is represented in preserving the entity of the state (people and territory) by facing external or internal threats. This theory was invented by the French Council of State, in order to avoid clashing with other authorities on highly sensitive matters, and then jurisprudence dealt with it either by criticism and support in an attempt to establish a framework for the theory and identifying acts which are considered of sovereignty and which are not by setting standards for that as follows:

1- The criterion of political motivation, according to it, if the motivation for the administrative act is political, so, it is one of the acts of sovereignty. Considering the motivation as political, stems from a desire to protect the society from visible or hidden enemies in the present or in the future.

2- The criterion derived from the nature of the work itself: Jurisprudence differed in the criterion of distinguishing. Some of them believe that the act of sovereignty is carried out by the executive authority in implementation of a constitutional provision as for what the executive authority is doing in implementation of the regular laws, it is considered an ordinary administrative act. Some of them distinguish between the function of administration and the function of governance, the act that relates to the administrative function is administrative act, while the act that relates to the function of governance is sovereign.
3- The exclusive census criterion: It relies on referring to the judgments and issuing a list of them that includes what the judiciary considered to be sovereign. (Abutalib, 2012, 34).

This theory is an explicit departure from the principles of legality and legitimacy, and therefore it is considered - if misused - a dangerous weapon in the hands of the executive authority that threatens the rights and freedoms of individuals, therefore, the term or concept of the acts of sovereignty is considered one of the disputed issues in legal thought, as this concept narrows in the old countries in a democracy in which the principle of the rule of law is established, and it expands in other countries until it almost includes many of the administration's actions. (Abutalib, 2012, 81-83).For example, the State Cases Authority in Egypt tried to prevent the judiciary from dealing with administrative actions, given that the government does not observed about the legislations that are issued, whether issued in the form of a law, decree, regulation, or just a ministerial decision, according to the principle of separation of powers, based on this, the administrative decision that prohibits a student who has been remanded in custody from entering the exam is considered an act of sovereignty that prevents the judiciary from dealing with it. (Abutalib, 2012, 47).

Accordingly, there are two important characteristics of the act of sovereignty: The first is that it has a national character, so each country has its own list, in which it determines what it considers of the acts of sovereignty, and these actions are similar in most countries. The second is that this theory is changing with the passage of time and according to the change of political circumstances. (Almarakbi, 2005, 83), so what is considered an act of sovereignty at a particular time and under certain conditions, may not be considered as such at another time and under other conditions.

The jurisprudence has differed regarding the basis for immunity of sovereignty acts against judicial observation, as EDWARD LA VEIR considers that the theory of sovereignty acts is based on political considerations, and he says in this context: “The executive authority actually holds two primary functions: governance and management, and accordingly the decisions it issues and the actions it takes may be taken as a government, or as an administration, and the first group of acts is predominantly political, and then it goes out of the observation of the judiciary and is subject to the supervision of political bodies, so the general principles of law and the nature of things require the necessity to

distinguish between the act of governance and the act of administration" (Hafiz, 1993, 54).

Another aspect of jurisprudence is that the theory of the acts of sovereignty is based on the fact that the act of sovereignty is a mixed work in the sense that it is not issued by the executive authority alone, but rather it is issued by it in the field of its relations with other authorities that are not subject to judicial observation. Another aspect went to the fact that this theory is based on some legal and practical considerations, so decided that the law is a means, not a goal, as it is a means to preserve the integrity of the state and maintain its entity. Hence, rulers should be granted the right to break the law whenever required to achieve that higher goal (Hafiz, 1993, 54).

### 3. Acts of sovereignty in the Sudanese Law, Jurisprudence and Judiciary

In Sudan, Article (8) of the Administrative and Constitutional Justice Act of 2005 states in its first paragraph that: "Considering the provisions of Article 4/1, it is not permissible to appeal the acts of sovereignty". It also stated in Paragraph (2) that "it is considered an act of sovereignty:

A - Appointment in federal and state constitutional positions.

B - The declaration of war.

C - Declaring a state of emergency.

D - Representing the state in its external relations with countries and organizations.

E - Appointing and accrediting ambassadors.

F- The appointment of incumbents of leadership positions in the public service."

The term "acts of sovereignty" entered the legal language in Sudan for the first time under the Judicial Authority Act of 1972 to prevent the courts from observing acts of sovereignty, and after that, it moved to successive judicial authority laws except for the 1406 AH. It goes without saying that the aforementioned acts were mentioned only for example, considering that Paragraph (2) considered these actions to be acts of sovereignty, and therefore there are some acts that the judiciary may consider as such at a later time.

Jurisprudence has criticized this on the grounds that the acts of sovereignty are an exception and it is permissible to appeal all decisions issued by the President of the Republic or other officials, the rule is that the exception cannot be expanded in its interpretation, therefore, it is more appropriate for acts of sovereignty to be limited to the cases mentioned in the article and not to exceed them. (Fadl, 2008, 216).

Jurisprudence in Sudan also criticized the consideration of Paragraph (f) of the acts of sovereignty, considering that this represents an administrative decision related to the civil service, which is considered politicization of the civil service. (Yousuf and Khalifa, 2009, 863).We agree with what jurisprudence has gone to, because the nature of the transactions of the executive authority sometimes requires immunizing some acts from judicial observation, so that this authority becomes effective and capable of carrying out its responsibilities, but this immunization is an exception to the general rule that permits the appeal of

all actions, therefore, it is not permissible to expand on such an exception because, as already indicated, it could constitute a dangerous weapon if it is misused by this authority.

Some jurists in Sudan believe that the sovereign order issued to give the authority "discretionary power" does not prevent the judiciary from observing the implementation of that authority, although the order issued to give the authority itself is not subject to judicial observation. One of the famous quotes in this attributed to Judge Abu Qusaisa: "It seems to us that the theory of the acts of sovereignty - under the rule of law - has become of a limited meaning. The constitution does not leave absolute power, and if the acts of sovereignty or what is left of them are far from the hands of the judiciary, then they are not far from other state institutions" (Fadl, 2008, 220).

The Sudanese judiciary discussed the acts of sovereignty. In case No. 11/1988 Deng Deng and others v. the governor of the Eastern Region (Journal of Judicial Precedents, 1988, 81), the Court of Appeal in Kassala decided in the year 1988 that the legislator followed his approach to abolishing sovereignty activities from the observation of the judiciary, as the legislator was according to the Judicial Authority Law of 1983 has prevented the judiciary from observation the acts of sovereignty, because the constitution itself removed the immunity from all actions of the state, and therefore the orders issued by the administrative authorities to implement the emergency regulation are considered administrative orders, and therefore subject to judicial observation and able to be appealed before courts whenever they are in violation of the law.

In the case of James Athor et al. v. The Government of Sudan (Journal of Judicial Precedents, 1987, 365), the Supreme Court considered that Cabinet Decision No. 52/1987 establishing a Council for the South was a political decision that preventsjudicial observation. The court clarified the considerations that call for the judiciary not to interfere with observation of political decisions by saying: " It is clear from the preamble of the decision, the circumstances in which it was issued and the body that issued it, that it is a political decision, and the judiciary is keen not to interfere in political decisions due to the following considerations:

1 - The judiciary must strive to avoid being involved in political disputes and refrain from entering as a party to the struggles of political forces.

2- The principle of the separation of powers by the Sudanese constitution places the power to make political decision in the hands of the executive authority, without which it is inconceivable that executive action can be practiced, it is not prudent for the judiciary to involve itself in the executive's practices of its discretion.

3 - It is impossible to express an opinion on a political matter except from a political point of view, while the judiciary requires complete neutrality regarding political matters.

4- The judiciary's taking a separate position regarding a political decision taken by the executive authority is incompatible with the due respect of the judicial authority *vis-à-vis* the executive authority, which is competent

and must abide by its political decision, just as it is obligatory to adhere to judicial rulings.

5 - The elements and criteria on which a political decision depends are completely different from those that make up the judicial decision, and therefore the courts do not have the standards that enable them to make a judicial decision about a purely political matter.

6 - The interference of the judiciary in political matters might lead to conflicting decisions of the state authorities on the single issue".

The Supreme Court followed the same approach in the case of Muhammad Al-Hassan Al-Amin v. The Government of Sudan (Saad, 2008, 36), where it considered the order issued to declare a state of emergency as a political decision not subject to judicial observation, as stated in its ruling: "The reasons on which the state of emergency is based are inextricably linked to political issues in the first consideration, and thus come out of the field of appeal before the judiciary".

As for the Constitutional Court, it decided in case No. 10/99 on 12/3/2000 Jamal Al-Din Ahmad Al-Mubarak and others v. the government of Sudan ((Al-Shahid Organization)) (Journal of the Constitutional Court 1999-2003, 129- 136), " offering immunity to administrative decisions does not prevent them from observation by the judiciary if they are out of legitimacy or the rule of law".

The Constitutional Court in Case No. 1/2000 dated 17/1/2000 Ibrahim Youssef Habani and others v. the President of the Republic (Journal of the Constitutional Court 1999-2003, 174- 200), After affirming that the Sudanese judiciary decided not to interfere in political matters, it decided that "the theory of sovereignty acts that the Attorney General had depended on in his pleadings and that was known and applied in previous times had gone with kings and traditional presidents and dictatorships which based on power and oppression, and there is no longer a theory that says the king cannot make mistakes". The court affirmed that: "The rule of God, and sovereignty is of the people and the law, and that people are equal before the law, rulers and ruled". It also decided that: "The decisions issued by the President of the Republic are in the political circle in which the courts in Sudan and other countries decided not to interfere in them except in cases that violate the constitution, arbitrariness in its application or the exploitation of its powers, but the situation has changed in Sudan after the establishment of the Constitutional Court and has become It is its jurisdiction to deal with all matters stated in the constitution and law, whether political or non-political, and the Constitutional Court Law did not stated that the court is prevented from dealing with political disputes".

We believe that this Constitutional Court decision represents an evolution in the matter of judicial observation of immunized administrative acts, as despite the fact that what the Constitutional Court went to does not cancel the immunization of acts of sovereignty, the development shows that the courts were refraining from merely looking at issues of a political nature. The

decision of the Constitutional Court came to represent a new trend that gives the courts the right to deal with and observe political issues while preserving non-interference in aspects that require the use of discretion power.

**4. Acts of sovereignty in the Tunisian Law, Jurisprudence and Judiciary**

The administrative judiciary in Tunisia, organized according to Law No. 40 of 1972 of June 1, 1972 related to the Administrative Court - which has been revised many times - is divided into two parts: a comprehensive judiciary and the abolition judiciary, as the latter is limited to considering requests to cancel administrative actions issued by the administration according to the conditions required by law, whether related to the appealed decision, the appellant, or the procedures. One of these conditions is that the decision to be appealed with cancellation is an administrative decision. Based on this, non-administrative acts were excluded from the appeal, and those who were excluded from the scope of judicial observation by the cancellation lawsuit, so, what are these excluded actions? What is the exclusion and the basis for that? What is the position of legal jurisprudence and administrative justice from that?

According to Chapter 3 of Law No. 40 of 1972 dated June 1st, 1972 - revised by the Basic Law No. 11 of 2002 of February 4, 2002 - "The Administrative Court is competent to deal with cases of abuse of authority in administrative matters."

Both jurisprudence and the judiciary in Tunisia have contributed to showing the discipline of acts of sovereignty, but all of this is still in obscurity.

Tunisia is practicing in its administration what could be called the two activities for the government, an activity that is considered an ordinary administrative act; It is subject to observation, whether administrative or judicial, and the activity of political nature. And apparently, the government - any government- exercises both sides. However, it is still not clear what is the difference between the two activities.

The Administrative Court has devoted the existence of this type of work on the occasion of Pierre Falcon's decision dated April 14, 1981, by saying: "The so-called acts of sovereignty in jurisprudence are intended for important political actions such as war, foreign relations, and government relations with the legislative authority, because the authority has two characteristics: The first as an administration, it uses administrative decisions as a tool to reach its goals in running services and facilities to serve the public interest, and the second is political, which uses another type of decision to preserve the integrity of the state".

This extract from the Falcon decision show that there are two types of acts of sovereignty. It can be said that the acts of sovereignty on one hand are the actions of the executive authority in its relationship with the parliament, and on the other hand is the actions of the executive authority in its relationship with international organizations and foreign states.

Among the acts of sovereignty that fall within the first category, we can mention the following acts:

A- Presidential orders and government actions related to inviting the People's Assembly to an exceptional session during the parliamentary holiday in accordance with Chapter 57 of the Tunisian Constitution of 2014.
B- Presidential orders relating to the dissolution of the People's Assembly in accordance with Chapter 77 of the Constitution.
C- Actions that concern the constitutional relations between the President of the Republic and the cabinet, i.e. forming a cabinet, naming the head of the cabinet, submitting the cabinet resignation (Published in the official journal of the Republic of Tunisia, 2016).

In a decision issued on August 25, 2016 Ziyad al-Hani v. President of the Republic Al-Beji Qaid al-Sebsi, the Administrative Court rejected the request to suspend the implementation of Presidential Order No. 95 of 2016 dated August 3, 2016 related to the assignment of Mr. Yusuf al-Shahid to form a cabinet on the basis that this matter are acts of sovereignty. The judge considered it an order regulating the relationship between the executive and the legislative authority on one hand, and within the executive between the President of the Republic and the Prime Minister on the other hand.

According to Chapter 77 of the Tunisian Constitution of 2014, among the acts of sovereignty that fall within the second category are those acts related to external relations, so the actions taken within the scope of the military field such as declaring war, achieving peace, or sending military forces to contribute to keeping international peace and security. The court also mentioned the area of international relations, which includes procedures, decisions and practices issued by the competent authorities during negotiations or related to the implementation of international treaties within the framework of diplomatic relations.

But it should be noted that the administrative court under the Ben Ali regime used the theory of the acts of sovereignty to justify the legitimacy of its call for a referendum regarding the revision of some provisions of the constitution, especially the number of presidential sessions in order to enable him to run for a new session, this found in the ruling issued on July 15 2008, whereas, the Administrative Court considered that the lawsuit is unacceptable because the appealed order constitutes a governmental order. It said in its ruling: "As a result of this, the jurisprudence and the judiciary have settled that the lawsuit of overstepping the authority is accepted only when the appealed decision was administrative in nature, executive and influencing the prevailing legal situations, which leads to the exclusion of judicial observation of the acts of the executive authority that do not fall within The scope of its administrative function, but it falls into the governmental activities that it undertakes in accordance with the provisions and principles of the constitution when it enters into a relationship with the legislative authority or with foreign states and international organizations, such as calling for MEPC elections or referendum".

We find it hard to go along with the administrative court in its approach because it did not distinguish between the conflict of sovereignty acts on one hand and the political elections conflict on the other hand, it is indisputable that

the referendum process has a political character when the people interfere in the ratification of a proposed law, it does not, of course, considered as administrative act. However, we cannot consider the referendum process to be sovereign, as the Administrative Court went to in the previous ruling, for two reasons:On the one hand, in the referendum process, it is the people who vote, not the government. On the other hand, according to the traditional distinction established by the jurisprudence between the voting process and the organization of voting, the organization of voting is an administrative act, and the actions taken by the executive authority regarding this organization are administrative actions that could be appealed to the administrative judge. In this case, it was not difficult to note that the decision related to the referendum is organizational, and the administrative judge could have found a more solid basis for exercising his jurisdiction, without taking cover behind the act of sovereignty.

**5- Acts of Sovereignty in Saudi Law, Jurisprudence and the Judiciary**

In Saudi Arabia, pursuant to the idea of the judicial list and to be adequate with determining these acts; and as s a result of the difference between the jurists view of the judicial rulings when interpreting them and commenting on them, a number of agreed issues were drawn up, which represent the practical applications of the act of sovereignty. They are extracted from the judgments:

A- Acts related to the relationship between the executive and the legislative authority: These acts mean those in which the executive authority participates with the legislative authority in the performance of the legislative function, as well as its decisions – the Executive authority- regarding the formation and appointing the members of the legislative authority.

Jurisprudence has settled in Saudi Arabia that the political relations between the executive and legislative authorities are considered acts of sovereignty. They are: procedures related to conduction of sessions, legislative assemblies and decrees governing their organization, invitation by the king to the Shura Council ((The Parliament)), opening and postponing its session, and inviting the Shura and Council of Ministers to convene jointly.

B- Acts related to international relations and foreign affairs: The jurisprudence unanimously agreed that all acts related to the state’s relationship with international authorities or persons are not within the jurisdiction of the judiciary to monitor. The organization of these relationships mainly relates to the nature of the state's diplomatic activity and the nature of its relationship with other states, and this is called the state's foreign policy, and because this sector differs in its standards and orientations in a way that is commensurate with the political vision, so, many jurists have tended to exclude these actions from the observation of the administrative judiciary because of its nature and specifications. (Alitaibi, 2011, 70). These actions include all the acts performed by state representatives abroad in relation to their diplomatic functions, as well as instructions that the state directs to its diplomats, as well as decisions regarding the annexation of new territories of the state, procedures to protect state citizens residing abroad, and decisions to establish or cut off political relations.

Actions related to international treaties and agreements, such as negotiations and their conclusion, ratification, and interpretation, also fall within the scope of these actions. But procedures and executive actions of these treaties are subject to judicial observation because of their internal character.

C- War-related acts: War-related acts are considered acts of sovereignty in accordance with the provisions of the administrative judiciary, and such acts are: the decision to declare war and the procedures related to the conduct of war operations, as well as the actions that the administration takes towards nationals of hostile states, such as deportation, arrest, or custody of their money. Likewise, requests arising from military damages, provided that such damages arise directly from military operations; That is, as an inevitable consequence of it; whether these military operations take place on the homeland or outside the region, but if the actions taken by the government are not directly related to the military operations, then they are not considered sovereign acts and are therefore subject to the observation of the administrative judiciary cancellation and compensation. (Alitaibi, 2011, 73).

D- Some procedures related to the internal security of the state: The judiciary considers the internal security procedures that are concerned with keeping the internal security of the state as an act of policy targeting the national interest in which the judicial dispute is not valid.

The administrative judiciary in Saudi Arabia concluded to many principles and provisions, as stated in the rulings of the Board of Grievances (Administrative Courts) in the Saudi Arabia. For examplein Case No. 20 / D / 1431 AH, the Administrative Court ruled: "The Courts of the Board of Grievances are not permitted to hear cases related to acts of sovereignty, and therefore they are not competent to hear the appeal against cancellation or compensation, and the Court of Appeal No. 403 / issued S / 6 for the year 1429 AH, and No. 422 / S / 6 for the year 1429 AH, and accordingly this court decides that the administrative courts are not competent to hear the case".

Article (14) of the Board of Grievances Act, issued by Royal Decree No. (M / 78) dated 19/9/1428 AH, states that "Courts of the Board of Grievances are not allowed to hear cases related to acts of sovereignty ...". This principle was stated in Article 9 of the previous Board of Grievances Act. According to this principle, all administrative courts of all levels affiliated with the Board of Grievances are not permitted to hear any lawsuit aimed at appealing any transaction or administrative decision related to sovereignty acts, whether the object of the appeal is to cancel or stop the execution of the transaction or the administrative decision, or to compensate for the damages it entails.

As Sharia law is considered the main source of legislation in Saudi Arabia, the view of Sharia in this regard should be discussed. The term ((acts of sovereignty)) means in the contemporary language, a set of special administrative decisions. According to Islamic law, the ruler - who has the original jurisdiction - may grant the judiciary general jurisdiction in terms of type and location, and specify that, and he may restrict dealing with some cases with some restrictions for the public interest. There is no argument that what is

not entrusted to the judiciary is not permissible by law to deal with for lack of jurisdiction. Therefore, the judiciary must refrain from examining all internal cases within the framework of the so-called acts of sovereignty, not because it falls within this framework only, but because the ruler did not give the judiciary jurisdiction to deal with what is included in this case.

Accordingly, it is the king who determines for the administrative judiciary issues that fall outside its jurisdiction, including treaties, declaring war, declaring martial law, deporting foreigners, granting political asylum, and dissolving representative councils, and then the administrative judiciary decides whether the action in question is an act of sovereignty or not. (Alshihri, 2015, 235).

## 6- Conclusion

The administrative judiciary exercises observation the actions of the administration to protect those affected by these actions from the administration's violation of law or the abuse of the exercise of the right or other reasons that is required to appeal against the administrative decision or transaction, therefore, the judiciary's jurisdiction to monitor the actions of the administration is strongly linked to the rights and freedoms of individuals. In the contrary, the administration’s performance of its duties imposes offering it a broad discretion, thus excluding the judiciary from observation some acts with the aim of preventing the administration from obstructing its duties.

It is difficult to find a balance for this equation, so we saw during the previous review that there are many factors that play a role in determining what is meant by the actions of sovereignty in different states.

What is agreed upon that there are acts of sovereignty that must be prevented from the observation of the judiciary, but what are these actions? There is what is agreed upon and there is what is not agreed upon in different states, as ideology and political circumstances play an important role in this difference. Rather, this difference can appear even within the framework of a single state, as we have seen in the contradictory administrative judgments in Sudan and Tunisia.

The continuation of this mysterious situation is very serious to individual rights and freedoms, given that we recognize the need to exclude some administrative actions from judicial observation, we think that the effect of ideological or circumstantial factors on identifying these actions is what gives them this ambiguity and contrast, so the correct situation - in our point of view – is to frankly state those excluded acts from judicial observation in the constitution of each state and not be left to the jurisprudence and the judiciary.

## References

**Abutalib**, H. M (2012)., Preventing the Judiciary from Observation of Acts of Sovereignty in Islamic Law and Egyptian law, University Book Press, Cairo.

**Alitaibi**, M. M. (2011), Ruling on Compensation for Damages to Acts of Sovereignty in the Administrative Judiciary, A comparative study.

**Almarakbi**, A. A. (2005), International Trade and State Sovereignty, Arab Renaissance Press, Cairo.

**Alshihri**, A. A. (2015), Sovereignty Acts in the Saudi Administrative Judiciary, An Applied Comparative Study, (unpublished doctoral thesis) Naif Arab University for Security Sciences, Riyadh.
**Fadl**, A. M. (2008), In Explaining the Sudanese Administrative Judicial Act of 2005, Arab Renaissance Press, Cairo.
**Hafiz**, M. (1993), Administrative Judiciary in Egyptian and Comparative Law, Arab Renaissance Press, Cairo, first edition.
**Saad**, S. A. (2008), The Condtitutional Court in Sudan – Jurisdiction & Procedures, Sudan currency Press, Khartoum.
**Yousuf**, Y. O. and **Khaifa**, M. A. (2009), The Administrative Judiciary (Cancellation), Renaissance Press, Cairo.

**Legislations**

Saudi Board of Grievances Act, 1428 AH.
Sudan Administrative and Constitutional Justice Act 2005.
Sudan Judicial Authority Act 1972.
Sudan Transitional Constitution 2005.
Tunisian Constitution 2014.
Tunisian Law No. 40 of 1972 of June 1, 1972 related to the Administrative Court.

**Periodicals & precedents**

**Constitutional Court - Sudan** (1999-2003), Journal of the Constitutional Court.
**Publications of the official printing press of the Republic of Tunisia** (2011), Jurisprudence of the Administrative Court, volume 413838.
**Saudi Administrative Court**, Case No. 20 / D / 1431 AH.
**Technical Office of the Supreme Court** (1987), Sudan Judicial precedents journal.
**Technical Office of the Supreme Court** (1987), Sudan Judicial precedents journal.
**The official Journal of the Republic of Tunisia** (2002), volume 51.
**The official Journal of the Republic of Tunisia (**2014), volume 42.
**The official Journal of the Republic of Tunisia (**2016), volume 63.