

The Idea of Succession by Interest in the Annulment Lawsuit

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ARTICLE INFO	ABSTRACT
Received: 15 Nov 2024	Succession by interest is one of the fundamental concepts in annulment lawsuits. It allows the lawsuit to continue when one of its parties changes, ensuring the continuity of judicial oversight over the legality of administrative decisions. This succession occurs when the legal interest in the challenge is transferred to the successor, whether due to death, loss of legal capacity, or a change in the plaintiff's legal status. The conditions of succession by interest are divided into personal and substantive conditions. The individual conditions pertain to determining who has the right to replace the original party, such as a general successor (e.g., heirs) or a specific successor (e.g., a buyer of a disputed right in the lawsuit). As for the substantive conditions, they involve the existence of an actual and transferable legal interest that necessitates the continuation of the challenge, ensuring that the successor has a direct and legitimate interest in the annulment of the administrative decision. The succession by interest aims to achieve several objectives, most notably safeguarding the right to litigation by ensuring that the lawsuit is not disrupted due to a change in one of its parties and reinforcing the principle of legality by enabling the judiciary to exercise its oversight over administrative decisions without being affected by the substitution of litigants. This ensures legal stability and protects individuals from administrative arbitrariness. Thus, succession by interest serves as a legal mechanism that balances the stability of judicial procedures with the individuals' right to challenge unlawful administrative decisions, contributing to administrative justice in accordance with the requirements of the rule of law. Keywords: Annulment Lawsuit, Succession, Interest in the Lawsuit.
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Research Problem

The annulment claim is considered one of the most important means of judicial oversight on the legality of administrative decisions, as it represents a fundamental safeguard for protecting rights and freedoms from administrative abuse. However, this claim may face a legal and procedural obstacle, which is the cessation of litigation due to the death of one of the parties, the loss of their legal capacity, or a change in their legal status. This raises the issue of transferring the interest in the appeal to a successor and the consequences of this on the course of the case.

The problem lies in determining the legal basis for the succession of interest in an annulment claim, its regulations, conditions for its realization, and its consistency with the general principles of litigation in administrative courts, especially in light of the differences in legal systems regarding the regulation of this transfer—between those that grant it an automatic character to ensure the continuity of judicial oversight and those that impose procedural restrictions requiring certain actions to resume the case.

Therefore, the research raises the question of whether the legal framework for the succession of interest in annulment claims is sufficient to ensure the achievement of administrative justice and prevent the disruption of judicial oversight over legality, while outlining the similarities and differences between comparative laws in addressing this issue, and proposing legislative solutions to enhance the effectiveness of annulment claims in achieving their objectives.

Research Objective

This research aims to clarify the legal basis for the succession of interest in annulment claims, through analyzing the legislative and judicial framework that governs the transfer of interest to a successor. It will also outline the personal and substantive conditions that must be met to ensure the validity of this transfer. The research seeks to explain the purpose of the succession of interest, which is to preserve the right to litigate, strengthen the principle of legality, and prevent the administration from benefiting from procedural interruptions to delay judicial oversight over its decisions.

Additionally, the research aims to review the differences between comparative legal systems and assess the effectiveness of the current legal framework in Iraq in achieving a balance between the stability of administrative transactions and ensuring that cases are not disrupted due to changes in their parties. The research will also propose legislative suggestions that would enhance the continuity of judicial oversight over administrative decisions and ensure the protection of the interests of the concerned parties.

Research Methodology

This research relies on the analytical descriptive method, where legal texts related to the succession of interest in annulment claims in different legislations will be analyzed, particularly Iraqi legislation in comparison with French and Egyptian laws, to understand how this succession is regulated in each legal system. Judicial decisions issued by the State Council courts in the concerned countries will also be reviewed and analyzed to assess their impact on the interpretation and application of the principle of succession of interest.

In addition, the research will adopt the comparative method to study the similarities and differences between legal systems regarding the succession of interest in annulment claims, to conclude the benefits and challenges that different legal systems may face in achieving justice and protecting rights through this principle.

Research Outline

The research is based on two main requirements: In the first section, we will clarify the conditions for the succession of interest. In the second requirement, we will explain the purpose of the succession of interest.

The first requirement: Conditions for the Succession of Interest in an Annulment Claim

The succession of interest is one of the essential issues in annulment claims, as it allows new parties to join the case based on a legal interest transferred to them. To achieve this, certain personal conditions must be met regarding the determination of who has the right to substitute the original party, based on their relationship to the contested right. There are also substantive conditions related to the transfer of the interest itself and its impact on the continuation of the case, ensuring that there is a real interest that aligns with the requirements of administrative law. Accordingly, in the first subsection, we will address the personal conditions, and in the second section, we will examine the substantive conditions.

Section one

Personal Conditions

First, it is necessary to highlight the concept of succession of interest before delving into the conditions:

The successor is "one who receives a right from another."¹

The successor can either be a general successor or a specific successor. A general successor, in the legal context, is defined as "the person who succeeds their predecessor in the entirety of their financial estate, or in a common

¹ Dr. Hassan Ali Al-Zanon, *Principles of Obligations*, Al-Ma'arif Library, Baghdad, 1970, p. 153.

portion of it, such as half or a third, like in the case of an heir or a legatee entitled to a common share of the inheritance.²

Interest is "the benefit the claimant achieves by resorting to the judiciary. This benefit is the motive for filing the lawsuit and the objective behind initiating it. In this context, it is said that there is no lawsuit without interest, as interest is the basis of the lawsuit."³

Thus, the succession of interest in an annulment claim is defined as⁴: the transfer of the legal interest in continuing the procedures of the case until it is decided, from the predecessor who has been prevented from proceeding due to an obstacle, to the successor who has been harmed or is likely to be harmed by the execution of the administrative decision.

First - The Connection:

The transfer of interest from the predecessor to the successor in an annulment claim requires a legal or factual connection that justifies the successor's continued participation in the litigation. It is not enough to have a mere formal relationship; there must be a genuine link that grants the successor a legitimate interest in pursuing the case. This connection appears in various forms. It may arise from kinship, as in cases related to pension rights, where heirs have the right to continue the lawsuit after the employee's death, if they were challenging an administrative decision affecting their rights. The connection may also be based on shared legal standing, as in cases involving the transfer of concession licenses, where the new beneficiary has the right to continue the lawsuit as they have replaced the predecessor in the same legal position. Additionally, a common interest between the parties may be the reason for the transfer of interest, as in cases of expropriation for public benefit, where the buyer has the right to continue the appeal initially filed by the original owner against the expropriation decision. In some cases, the predecessor's interest in the case may end, but the successor may acquire a new interest that justifies their continued litigation, such as when the challenged administrative decision has a direct impact on the successor after the predecessor's interest has ended. On the other hand, the connection may be based on economic interest, as in commercial cases where companies challenge administrative decisions affecting their interests, where the successor—whether a new partner or a company purchaser—continues the lawsuit to protect economic rights. Thus, the transfer of interest in an annulment claim is not merely a formal procedure, but is tied to a legal or factual connection that confirms the continuation of the right to litigate, strengthening the stability of the legal system and ensuring the achievement of administrative justice.⁵

Second - Legal Capacity:

For the acceptance of the succession of interest in an annulment claim, the successor must possess the legal capacity to carry out the procedures. This is a condition for valid representation before the judiciary, but it is not a condition for the succession itself. In French⁶ and Egyptian⁷ law, legal capacity is governed by the general rules of civil law, with exceptions allowing certain groups (such as unauthorized associations or foreigners) the right to challenge administrative decisions. As for Iraq, the State Council Law does not explicitly mention legal capacity, but it is determined according to the Civil Procedure Code, which requires that both parties in the case have legal capacity. The Supreme Administrative Court has confirmed that legal capacity is necessary for the acceptance of an annulment claim, and those who are not legally qualified cannot file the lawsuit. However, this can be corrected by

² Dr. Abdul Majid Al-Hakim, Abdul Baqi Al-Bakri, and Mohamed Taha Bashir, *The Concise Theory of Obligation in Iraqi Civil Law*, Vol. 1, 2nd Edition, Legal Library, Baghdad, 2008, p. 130.

³ Dr. Abdul Hakim Foda, *The Defense of Lack of Legal Standing or Interest in Civil Disputes*, Manshiyet Al-Ma'arif, 2007, p. 53.

⁴ **Legal Interest:** Legal interest refers to an interest based on a right or legal status, with the purpose of the lawsuit being the protection of this right or legal status. Legal interest may be material, protecting a material benefit for the claimant, such as a claim for a debt. It could also be non-material (moral), such as a claim for compensation for defamation or slander. This means that legal interest is not merely a theoretical or moral interest. For further details, see: Dr. Wagdi Ragheb Fahmy, *Principles of Civil Justice - Civil Procedure Law*, Dar Al-Fikr Al-Arabi, Egypt, 1987, p. 95.

⁵ Dr. Yasser Basim Znon Al-Sabbawi, *The Impact of Procedural Substitution on the Authority of the Judicial Ruling: A Comparative Study*, Kuwait International Law College Journal, Vol. 7, Issue 1, Serial No. 25, Jumada Al-Akhira 1440 AH, March 2019, pp. 403-405.

⁶ **Articles (390-393)** of the French Civil Code of 1804.

⁷ **Article (6/F1)** of the Egyptian Civil Code No. 131 of 1948, as amended: "The provisions related to legal capacity apply to all individuals who meet the conditions prescribed in these provisions."

appointing a representative for those lacking legal capacity, thus achieving a balance between protecting public order and ensuring justice.⁸

Third - Legal Standing:

Legal standing is an essential condition in an annulment claim, as the lawsuit can only be accepted from the party who holds the right or their legal representative. Although it overlaps with interest, legal standing refers to the claimant's ability to represent the legal position that is subject to protection. In French law, the Conseil d'État has broadened the concept of legal standing, considering personal and direct harm as sufficient grounds for a challenge, even in the absence of hereditary standing⁹. In Egypt, the Supreme Administrative Court has linked legal standing with interest, so that the loss of interest leads to the loss of legal standing¹⁰. In Iraq, the State Council Law does not explicitly mention the condition of legal standing, but it is inferred from the Civil Procedure Code, which distinguishes between legal standing and interest¹¹. The Supreme Administrative Court has confirmed that legal standing for representing a legal entity ceases when the position is no longer held, preventing the continuation of the lawsuit in that capacity. Therefore, the succession of interest in an annulment claim can only be realized if the connection, capacity, and standing are present, as the loss of any of these conditions prevents the legal continuation of the lawsuit.¹²

Section two

Substantive Conditions

First - Interest:

It is required for the succession of interest in an annulment claim that the successor has a personal and direct legal interest. The lawsuit cannot be continued for the benefit of others. This condition has been emphasized in various legal systems, where the French¹³, Egyptian¹⁴, and Iraqi courts require that the interest be present, possible, and realized. Administrative courts have sometimes expanded their acceptance of interest, as in the case of the heirs of the appellant, if the contested decision directly affects their rights. In contrast, courts have rejected appeals that lack a direct effect on the appellant's legal position¹⁵, reflecting the balance between the strict procedural conditions and the protection of legitimate rights.

Second - The Transferability of Interest:

The interest being transferred must be present and realistic, so the successor can continue the lawsuit after the original party's interest has ceased. This interest must be based on a solid legal foundation, such as compensation for material or moral damage, and not merely a personal right linked to the original party¹⁶. If the interest relates to an unlawful administrative decision that affected the original party, the successor (such as heirs) may continue the lawsuit if the damage is material or financial, as in the case of compensation for damages caused by the unlawful administrative decision. However, if the interest is of a narrow personal nature, such as a lawsuit to annul a decision to transfer an employee, it cannot be transferred to the successor, as it depends on the connection of the

⁸ **Decision No. 943/Employee Judiciary/Appeal/2015**, dated 27/7/2017, published in the State Council's Decisions and Fatwas of 2017, p. 465.

⁹ **French Conseil d'État Decision**, June 3, 2019, No. 414098, available at the website <https://juricaf.org/arret/FRANCE-CONSEILDETAT-20190603-414098>. Date of visit: 15/11/2024.

¹⁰ **Appeal No. 3675**, 37th Year of the Supreme Administrative Court, dated 29/11/1997, available on the website <https://azizavocate.com>. Date of visit: 15/11/2024.

¹¹ **Article (4)**, Civil Procedure Law No. (83) of 1969.

¹² **Appeal No. 250/Administrative Judiciary/Distinction/2017**, dated 13/4/2017, published in the Decisions and Fatwas of the State Council for the year 2017, page 549.

¹³ **Administrative Court of Appeal of Nantes**, Decision No. 20NT00761, Session of 10 December 2021. Available at: <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/1889-12-13/66145>

¹⁴ **Article (12)**, Law of the Egyptian State Council No. (47) of 1972, also the ruling of the Supreme Administrative Court in Egypt, dated 18/1/2023, case No. 61, published on the website <https://site.eastlaws.com/Search/Search?searchText=%D8%A7>, date of access 18/2/2025.

¹⁵ **Appeal No. 1509/Employee Judiciary/Distinction/2021**, dated 15/6/2022, published in the Decisions and Fatwas of the State Council for the year 2022, page 441.

¹⁶ **Pierre Julien and Natalie Fricero**, *Droit judiciaire privé*, L.G.D.J., 1999, No. 73, p. 35.

right to the personal status of the original party. Therefore, if the interest is linked to a tangible legal effect, such as financial compensation, it can be transferred to the successor. However, if it is linked to non-transferable personal characteristics, the lawsuit cannot be transferred and remains confined to the original party.¹⁷

Third - Damage: The third condition for the transfer of interest in an annulment action is the existence of damage caused to the successor due to an unlawful act by the administration. This damage may be material, such as financial loss or the loss of an opportunity, or moral, such as harm to reputation or psychological well-being. The damage must be real and direct, so that the affected party, or their successor, can demand its removal or compensation. It is required that the damage must have affected a legitimate interest, whether material or moral, according to administrative law. The damage must be tangible, as compensation cannot be claimed for damage that is uncertain or speculative. In the context of an annulment action, the damage must result from an unlawful administrative act, such as an unlawful administrative decision that deprives the affected party of their rights or harms their legal standing. Therefore, damage is a crucial element to ensure the legitimacy of transferring the interest in the lawsuit.¹⁸

The second requirement

The Purpose of Succession of Interest

In the context of an annulment action, the purpose of the succession of interest is to ensure the continuity of litigation and reinforce the principle of legality. It allows the successor to replace the original party when there is a change in the parties involved, such as in the case of death, loss of legal capacity, or a change in legal status. This prevents the interruption of legal proceedings and preserves the successor's right to challenge the administrative decision under dispute. In this way, prompt justice is achieved by enabling the successor to continue the case without the risk of losing the right or the claim simply due to a change in the original plaintiff.

Moreover, the succession of interest contributes to reinforcing the principle of legality, which is one of the fundamental tenets of administrative law. By allowing the case to continue despite changes in the parties involved, it provides the administrative judiciary with the opportunity to exercise its oversight over the legality of the actions of public administration without being impacted by procedural changes. The succession allows the successor to continue challenging unlawful administrative decisions, preventing the administration from evading judicial scrutiny simply due to a change in the plaintiff's identity. As a result, the oversight of the administrative judiciary remains in place, further cementing the principle of legality as a key guarantee for protecting rights and freedoms from administrative abuse.

Section one

Preserving the Right to Litigate: The annulment action is a legal means of protecting rights from unlawful administrative decisions. Its procedures may temporarily stop due to death, loss of legal capacity, or a change in the legal status of the plaintiff. To ensure the continuity of the case and the protection of rights, it is reactivated through one of two means:

1. Physical attendance to follow the procedures.

If the successor or their representative attends the designated session, the case is automatically resumed without the need for any additional procedures. The attendance is considered evidence of knowledge of the litigation, which upholds the principle of confrontation between the parties and ensures the continuity of the litigation without delay.¹⁹

¹⁷ Dr. Ahmed Abdel Haseeb Abdel Fattah El-Sentresy, "The Role of Heirs in Administrative Lawsuits in Light of Administrative Judicial Rulings: An Applied Study," published in the Journal of the Shari'a and Law Sector, Al-Azhar University, Cairo, Issue 13, 2022, p. 1951 and onwards.

¹⁸ Suleiman Mohamed Al-Tamawy, *Administrative Judiciary*, Volume II, Dar Al-Fikr Al-Arabi, 1986, pp. 451-461. **Decision No. 154/Employee Judiciary/Distinction/2022**, dated 16/3/2022, published in the Decisions and Fatwas of the State Council for the year 2022, p. 361.

¹⁹ Article (373) of the French Civil Procedure Code No. 1123 of 1975. Also, Article (133) of the Egyptian Civil and Commercial Procedure Code No. 13 of 1968, as amended. Also, Article (86) of the Civil Procedure Code No. 83 of 1969, as amended.

2- Official Notification: In case of non-attendance, the lawsuit is resumed by officially notifying the successor in accordance with legal procedures, either by the court or upon the request of one of the parties, to ensure their right to defense and the continuation of judicial oversight over the contested administrative decision.²⁰

In the case of multiple successors, one of them may continue the lawsuit individually, acting as a representative for the others, unless the dispute concerns personal rights for each of them. This ensures a balance between the continuity of the litigation and the protection of the rights of all the successors in an annulment case. It is sufficient for one of them to express their intention to resume the lawsuit for the proceedings to continue, even if the others refuse to participate, according to the rulings of the French State Council²¹. Furthermore, the lack of capacity of one of the successors does not prevent the others from continuing the lawsuit, while preserving the right of the person lacking capacity to take a later stance through their legal guardian. Resuming the lawsuit leads to the resumption of all proceedings from the point at which they were halted, without the need to restart the litigation. The proceedings remain in person if resumed after the notification and the successor does not attend, as in Iraqi and Egyptian law, where procedural deadlines are calculated based on the periods before and after the interruption, ensuring the continuity of litigation without harming the rights of the successors.²²

Section two

Establishing the Principle of Legality: The suspension of proceedings in an annulment case is a temporary situation that ends when it is resumed by the successors. However, if they do not attend after the legal notification, the provisions regulating absenteeism must be applied, ensuring the stability of the procedures and the respect for the principle of legality.

In France, the Administrative Justice Code does not specify a statute of limitations for the lawsuit, but Article (475) of the Civil Procedure Code stipulates the application of the rules on absence if the successor does not attend after being notified. The litigation is deemed to have ended after two years from the last valid procedural action.²³

In Egypt, if neither party attends, the lawsuit is dismissed and considered as if it never existed after 60 days of inactivity. Additionally, the lawsuit may be dismissed if it is not reactivated within six months.²⁴

In Iraq, Article (87) of the Code of Civil Procedure stipulates that if the lawsuit is suspended for six months without justification, its petition will be deemed invalid by law, meaning there is no need to reinstitute legal proceedings as is required in Egypt.²⁵

The dismissal of a lawsuit in annulment cases shows a balance between protecting the right to litigation and ensuring the efficiency of the judicial system. The failure to pursue the case after notification indicates a lack of seriousness, which justifies the termination of the lawsuit to maintain the stability of administrative procedures and prevent the obstruction of justice.

Conclusion:

In conclusion, after a thorough study and comprehensive analysis of the subject, we were able to reach the most important findings and recommendations that could contribute to the development and improvement of the understanding of the principle of succession of interest in annulment cases.

First: Conclusions

1. Through the study of the succession of interest in annulment cases, it was found that this principle is fundamentally based on the availability of clear legal conditions related to the person who can succeed in

²⁰ Article (R611-4) of the Administrative Justice Code, as applied since January 1, 2001. Also, Article (133) of the Egyptian Civil and Commercial Procedure Code No. 13 of 1968, as amended. Also, Article (86) of the Civil Procedure Code No. 83 of 1969, as amended.

²¹ Ministry of Justice, response to a written question from Mr. Jean-Louis Masson, published in the French Senate Official Journal on November 23, 2017, page 3686.

²² Dr. Abdul Rahman Al-Alam, Iraqi Procedural Rules, Volume 1, Shafiq Printing, Baghdad, 1961, page 401.

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the case (the heir or the person who acquired the interest), as well as the substantive conditions associated with the transfer of interest, which must be real and urgent to ensure the continuation of the case.

2. It was emphasized that the succession of interest aims to ensure that administrative cases do not stop, even in the case of the death of the plaintiff or a change in their legal status. This contributes to the continuity of justice and the protection of the rights of interested parties, thus reinforcing the principle of legality and preventing cases from being frozen.
3. A comparison between the Iraqi, French, and Egyptian legal systems revealed clear differences in how the succession of interest in annulment cases is handled. While French law recognizes the succession of interest with flexibility, both Egyptian and, particularly, Iraqi law require additional procedures to ensure that the case continues with seriousness.
4. Most legal systems give an individual who has not appeared after being notified the opportunity to resume the case. However, some systems, such as the Iraqi system, are stricter with legal procedures that result in the case being dismissed if not resumed within a specified period, reflecting the limited time the law grants the parties involved.

Second: Suggestions

1. **Develop mechanisms for the smooth transfer of interest:** Legislative amendments should be made to ensure that the succession of interest process is clearer and more streamlined. This includes providing precise guidelines for how the interest is transferred in the case of interruption of the lawsuit, especially regarding procedures related to heirs or their legal representatives.
2. **Modify legal systems related to the dismissal of a case or its invalidation after interruption:** Legal systems should be revised to make the procedures more flexible, offering additional opportunities for parties to resume the case. This would help in achieving justice without complicating the legal process.
3. **Expand the scope of the principle of succession of interest in administrative cases:** The application of this principle should not be limited to cases represented by heirs, but also extended to cases involving the transfer of interest or rights between other parties. This would ensure greater flexibility in applying the laws and facilitate the legal process.
4. **Courts should be more open to judicial oversight:** Courts should adopt a more proactive approach to judicial review in cases where lawsuits are continued in the absence of successors, ensuring that justice is not delayed or hindered due to a lack of interaction with legal procedures.
5. **Enhance legal awareness campaigns:** Legal awareness campaigns should be strengthened to improve understanding of the principle of succession of interest and the rights of the parties involved. This should include providing legal advice to individuals who may be affected by such procedures, ensuring that justice is served transparently and effectively.