

The impact of the administrative court's transition to ordinary court chambers upon the justice system of the Sultanate of Oman

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ABSTRACT

Royal Decree No. 35/2022 on the organization of the administration of justice, which transformed the "Administrative Court of Justice" into trial and appeal chambers within the ordinary courts, implicitly abolishing the Administrative Court of Justice from the Omani judicial system, where the judicial facility was reorganized. Since the issuance of this Decree, the Omani judicial system has applied the unified justice system, which is intended to have a single judicial authority in the State whose jurisdiction includes the consideration of all kinds of disputes, whether between individuals themselves or between individuals and government administrators, and whether they relate to administrative, civil or commercial matters. Prior to the above-mentioned decree, the Sultanate followed the dual judiciary, which is intended to have two independent jurisdictions. One of which will deal with administrative disputes between government administrative bodies and individuals, called administrative justice. This transformation will inevitably have implications this study will explain and analyze.

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Introduction

While the Sultanate has known the legal judiciary during the period between the entry of the people of Oman into Islam and 1970. During the period following 1970 and until 1999, it created a special judiciary in addition to the legal court with general jurisdiction. However, everything has differed after the Royal Decree No. 92/99 establishing the Administrative Court and promulgating its law. The Sultanate has adhered to the dual justice system by creating an administrative judiciary besides the ordinary judiciary, whose task is to adjudicate on administrative litigations (Mohammad, 1998).

The Omani judiciary has been using the dual system since 2000. Until the promulgation of Royal Decree No. 35/2022 on the organization of the administration of justice, which transformed the Administrative Court of Justice - as an independent judiciary. By making it merely a trial and appeal chamber within the ordinary courts. Thus, the Omani legislator has applied the unified system of justice instead of the dual jurisdiction (Al-Sharqawi, 1995).

The problem of the study is that the establishment of the judiciary unified system and the elimination of the duplication that Oman's legislature has followed for almost a quarter of a century raises different difficulties in understanding the contents and dimensions of administrative judicial practice in its present form, compared with those of duplication. This is reflected in the application of procedures in administrative disputes and in the mixing of their procedures with ordinary judicial procedures, which are dominated by special rules. The process of moving from judicial duplication to judicial unity may be a reason for obstructing judicial action. Through the lawmaker's continuous intervention in issuing successive rules for the purpose of the new regulation of the adjudication of administrative disputes, such as the slow process of application, especially since the Omani legislature abolished the administrative judiciary prior to its promulgation of the Code of Administrative Procedure. Therefore, the problem is the impact of the dual justice system's transition to a unified judiciary.

The importance of the study is to highlight the importance and development of duplication and unilateralism in the Omani judicial system. The legislator reversed the system of duplication and the introduction of a single judicial system by incorporating the administrative judiciary in and around the ordinary judiciary into the ordinary courts. The study highlights the importance of demonstrating the impact of this transition on the Omani judiciary, particularly in terms of oversight.

On 16 June 2022, the Official Gazette published Royal Decree No. 35/2022 on the organization of the Department of Justice, which turned the "Administrative Court of Justice" into trial and appeal chambers within

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the ordinary courts. Thus, implicitly abolishing the Administrative Court of Justice from the Omani judicial system.

This is a shift from a system of judicial duplication to a system of judicial unity, which raises many questions, including: why has the Omani legislator abandoned the system of duplication and returned to the system of unity? Is the Unity system better for the Oman judicial system than duplication? Would the Unity system achieve more advantages for litigants in administrative disputes? Why has the Omani legislature abandoned the system of dual justice nearly a quarter of a century later? All those questions we're trying to answer through this study.

Methodology

In this study, the researcher followed the analytical methodology by analyzing the topics of the study and the opinions of the jurisprudence on the subject of the study and extracting what is inherent therein in order to serve the subject of this research. As well as, the historical methodology that dealt with the historical stages of the transformation of the Omani judicial system from one to dual and then returning back to the unified system.

Results & Discussion

Independence of the administrative judiciary in the system of dual justice

The independence of the administrative judiciary is meant by its separation from the executive branch. First, as a fundamental party to the administrative dispute. It is also independent of the ordinary judiciary by virtue of the application of the dual judicial system that the country has known since the establishment of the Administrative Court of Justice, and its allocation of a law regulating it and the proceedings before it (Al-Tamawi, 1995).

Since the Omani legislature considered that the independence of the administrative judiciary from the ordinary judiciary ensured the speedy disposition of administrative litigations. This ensures that individuals' rights are protected in a timely manner and necessitated by the regular and steady functioning of public facilities. The objective of the administrative judge is primarily to evaluate the work of the administrative authority, if it deviates from respect for the law, and to remove it from arbitrariness and exaggeration when using its powers (Mahmoud, 2009).

The administrative judiciary is therefore the sanctuary for individuals to exercise their rights and apply the law. It is the field in which individuals' rights and freedoms are protected. In order to ensure effective protection of their rights, individuals must enjoy fundamental guarantees that result in a fair trial before the judiciary in general, and before the administrative judiciary in particular. This must be based on a set of foundations and determinants that define its features and specificity, which in turn are mainly reflected in the administrative judgement and its provisions, and indicate the extent to which the guarantees of the trial are respected (Khadir, 2002). The Omani legislature's use of the dual justice system was a simulation of the Egyptian model of duplication of justice, which in turn took it from the French judicial system.

Since the beginning of its work, the Administrative Court has exercised its functions under article 6 of the Code, which stipulates its competence to adjudicate on other administrative litigations. This has had a great impact in assisting management bodies in adhering to the principle of legality in their actions. This has played an important role in enhancing the administrative authorities' role in safeguarding public rights and freedoms.

Accordingly, the Administrative Court is the protector of the principle of legality. It imposes, inter alia, the existence of a judicial authority to sanction a violator in the event of an infringement or violation of the law. If we perceive that the administrative authority issued an unlawful decision. It dismissed a staff member from his post without, for example, enabling him to exercise the right to defend himself or herself, to have access to his or her disciplinary file, or to be notified of his or her attendance at the disciplinary hearing (Awabdi, 2004).

This is what the doctrine called "judicial control", which is the actual guarantee of individuals in the face of the excess of the Department's functions, its arbitrariness in the use of its authority and its deviation from the limits of the principle of legality (Amr, 2004).

Judicial oversight in the system of dual justice

The administrative judiciary has a role to play in the existence of effective judicial oversight, which is one of the fundamental elements of the principle of legality. Such oversight is a genuine guarantee of the protection of the rights and freedoms of individuals and of respect for the country's legality and the rule of law. However, *jus cogens* rules governing administrative authorities and how they operate and demonstrate individuals' rights

and freedoms under laws and regulations, the administration sometimes makes decisions against the law (Al-Shubaki, 2001).

The reason for this is that the administrators of those bodies and the implementation of laws, regulations and charts are only human beings at risk of error and omission. Thus, the fundamental safeguards for the protection of rights and freedoms can only be rectified through effective supervision of the administration's work, as they are the best types of oversight. Whereby any person affected by an infringement by the administration of his or her right, legal status or freedom may have recourse to the courts, seeking redress for the invalidity and compensation of the unlawful decision against him or her if necessary (Al-Hilu, 2004).

Such judicial oversight will undoubtedly be fully achieved in the presence of a specialized administrative judiciary independent of the ordinary judiciary. Which was taken by the Omani legislature when it established the Administrative Court of Justice in Royal Decree No. 91/99 independent of the courts of the judiciary exclusively competent to adjudicate on administrative litigation.

Based on the foregoing, the administrative judiciary considers administrative disputes and monitors the legitimacy of the Department's work. And may rule on the annulment of its unlawful decisions and provide compensation for its wrongful acts against the law. However, if the administrative judge considers the lawfulness of the administrative act, he is not entitled as a public asset to examine the adequacy and proportionality of the act with achieving the purpose for which it was issued (Radi, 2003).

It is also not for the Administrative Court to issue orders or directives to the Administration or oblige it to take a particular position even if this position is a logical consequence of the illegality of the Department's decision. If the judiciary overturns the decision to dismiss a worker, for example, it may not order the administration to reinstate him. The Administrative Court also has no recourse to fines for threatening the Administration to force it to act in a particular manner (Khaleel, 1978).

Despite the advantages of judicial oversight under the dual system, this has not prevented jurisprudence from making some criticism of this type of censorship (Abdel Basit, 2005).

Advantages of judicial oversight in the dual justice system

The advantages of judicial oversight under the dual justice system are that the supervision of administrative justice over the Department's work balances the public interest with the private interest, a task that requires knowledge of administrative law, the nature of administrative disputes and the ability to distinguish between private law and common law relationships (Fahmi, 2004).

The administrative judge has a special and distinct position in the face of management and individuals. This requires him to be specialized in the adjudication of administrative proceedings independently of the ordinary judiciary. And to be well prepared legally, so that he plays the important role entrusted to him. Which has made the administrative judiciary a founding role for the rules of administrative law - this has already been demonstrated. It is evolving increasingly by the evolution of the theories created by the administrative judge, especially with regard to public office legislation, and the principles governing the functioning of public utilities whose subjects are completely independent of the subjects of private law (Abdo Imam, 2007).

As a result, the dual justice system is essentially established only if the administrative courts and administration are separate, the principle of dual justice includes the fundamental principle of separating the working administration and the administrative judiciary (Mohammad, 1998).

The task of the administrative judge is to consider a dispute against the Department's decisions and actions. He should check the lawfulness of the administrative decision and its conformity with the law. Then, shall be considered valid if so, and to eliminate it if it contravenes legal rules. The judge isn't entitled to address the appropriateness of the Department's actions in terms of the choice of time or type of work with discretionary powers in this regard. As a result, he is not entitled to replace himself or to issue orders and instructions to it when it cancels his decisions (Al-Sharqawi, 1995).

Moreover, the administrative judiciary is an independent judiciary that makes enforceable judgements against the administration. Therefore, there is no room for favor of the administration at the expense of individuals - as some claim. As long as the administrative judiciary is independent, issues judgements rather than mere recommendations, and judges enjoy immunity (Al-Tamawi, 1995).

Appeal in cassation against administrative judgements as an effect of Judicial Unity

Of major importance is the question of the extent to which cassation may be appealed against the judgements of the Appeals Administrative Chamber of the Court of Appeal in Muscat? Before answering this

question, it should be noted that the administrative judgements rendered by the Appeals Chambers of the Administrative Court of Justice were inadmissible in cassation.

It should be noted that most of the provisions of the Administrative Court of Justice Act have been abolished by article 9 of Royal Decree No. 35/2022 on the organization of the administration of justice. Which stipulates that: "The provisions of the Act of the Administrative Court of Justice referred to shall be abolished, except articles (3) to (23), and articles (25) and (107 with respect to judicial fees). The provisions of the Code of Civil and Commercial Procedure, including appeal of cassation, shall apply to administrative disputes that were not mentioned in these articles."

This article sets out the possibility of appealing to the Supreme Court against judgements to be rendered by the Appeals Administrative Chambers. This was what litigants sought to achieve justice and full equality, especially after the recent amendment made through Royal Decree No. 23/2022. Which established the Court's power to control administrative decisions to examine their lawfulness without addressing their appropriateness. This required an opportunity to appeal to the Supreme Court for justice to examine the application of the judgements. Thus, litigants in administrative proceedings can appeal to the Supreme Court after being limited to only two primary stages and an appeal in order to achieve justice and equality among litigants (Mahmoud, 2009).

It should be noted that the litigation stages of the Administrative Court of Justice were in two phases, namely, first instance and appeal. They are called trial courts and the function of the Court of Appeal shall be to examine the case before the Court of First Instance again. And its judgement on appeal shall be final and can't be challenged by ordinary means. Following the above-mentioned judicial organization, litigants could appeal in cassation to the Supreme Court if they were not satisfied with the Administrative Court of Appeal's judgement. Thus, the Supreme Court has the status of supervising the judgements of the Administrative Court, and be assured of the validity of the law's application to the judgement in question. Therefore, it is not a third degree of litigation because of its oversight function entrusted to it by the legislator (Khadir, 2002).

It should be noted that, according to origin or rule, the Supreme Court is not a court of adjudication of litigation. It is prosecuting the judgement in terms of the validity of the application and interpretation of the legal rules. As well as in terms of the procedure followed in the trial, without interfering in the depiction of the facts or in the evaluation of the evidence (Awabdi, 2004; Al-Billeh & Al-Qheiw, 2023).

The Supreme Court's function is to hear appeals against final judgements for unlawful, erroneous application, interpretation or other defects in order to achieve two objectives: to repeal unlawful judgements; and to unify the judiciary on disputed matters. Also, determine the correct legal principles and evaluate the courts' anomalies in the application of the laws.¹ We address the nature of the appeal to the Supreme Court and its reasons as follows:

It has already been indicated that the judgements of the Appeals Administrative Chambers will be appealed to the Supreme Court. And the appeal to the Supreme Court will apply the rules of the Code of Civil and Commercial Procedure. Article 105² of the Law of the Administrative Court of Justice prior to the repeal of its law provided that: "In the absence of any provision in this law, the provisions of the Code of Civil and Commercial Procedure shall apply to administrative litigation, while not inconsistent with the nature of such litigation".

Article 9 of Royal Decree No. 35/2022 on the organization of the Administration of Justice states: "..... The provisions of the Code of Civil and Commercial Procedure, including by way of cassation, shall apply to administrative disputes."

Since the Code of Civil Procedure is the general procedural law³, and the general law for litigation proceedings. It is therefore to be consulted whenever other procedural laws are lacking or obscure. However, the Code of Civil Procedure applies to administrative and criminal proceedings only to the extent consistent with the nature of administrative and criminal law.

It is therefore necessary to enact a law governing the procedure in administrative disputes before administrative chambers established before the ordinary court. We hope that the legislator will come up with a

¹ Mohammad Hamid Fehmi, Egyptian Court of Cassation and Conclusion, Overview of the Law issued on May 2, 1931, Journal of Law and Economics, 2nd year, 1st issue, 1932 1st article, p. 35.

² Article 105 of Sultanate's Decree No. 3/2009 was amended and repealed by article 9 of Sultanate's Decree No. 35/2022 on the organization of the administration of justice.

³ Dr. Dawood Bin Suleiman Al-Khursi, Mediator in the Commentary on the Code of Civil and Commercial Procedure, 1st Edition, 2021, p. 17.

law addressing the lack of procedural rules before these chambers. And that he will take care of the issue of appeals to the Supreme Court, by allocating administrative chambers to the Supreme Court to hear appeals from the Appeals Administrative Chambers (Amr, 2004; Al-Billeh, 2023).

Where the last paragraph of (article VIII) of Royal Decree No. 35/2022 on the Organization of the Administration of Justice provides that the phrase "the Law of the Administrative Court of Justice" shall be replaced by the phrase "the Code of Administrative Procedure" wherever it appears in the Royal Laws and Decrees. This means that Omani legislator is in the process of establishing the rules of the Code of Administrative Procedure. And we hope once again, not last, that this law will fulfil the hopes of the jurists of administrative law and represent an unprecedented rise in administrative justice in the Sultanate of Oman. The role of the administrative judiciary should not be confined to administrative chambers of the civil judiciary by ensuring that they are independent in terms of their full independence from the civil procedural rules applicable before the ordinary courts. Its substantive and procedural rules shall be a guarantee to individuals in the event of their dispute with the administrative authorities. And that judges shall be assigned to those chambers and shall proceed with the approach of the Administrative Court of Justice before it is transferred to the ordinary court chambers with development corresponding with the current situation.

Extent of the judicial system's unity in resolving the problem of conflict of jurisdiction

The dual system of justice leads to inevitable conflicts of jurisdiction between ordinary and administrative jurisdictions. This is because of the inaccuracy of the criteria for the distribution of jurisdiction and the existence of overlaps and exceptions in this area. If conflicts of jurisdiction occur and arise within the system of the judiciary and between the different levels of the ordinary judiciary, the arousal and existence of conflicts of jurisdiction are inevitable under the dual system. The dispute of jurisdiction is one of the difficulties that may require the legislator to intervene to determine which authority is competent to resolve this dispute. Thus, the dispute of jurisdiction must be determined by the establishment of an independent judicial body to determine the nature of the conflicts (Al-Shubaki, 2001; Al-Billeh, 2024).

Applying this to this study, we find that under the dual justice system adopted by the Sultanate of Oman, before the Administrative Court of Justice became Trial and Appeal Chambers in the ordinary courts. There was an urgent need to find a body to adjudicate what might arise from a conflict in the jurisdiction of the courts, whether it was a positive or negative dispute, or a dispute in two opposing judgments, which needed to be decided (Al-Hilu, 2004).

Therefore, article 10 of Royal Decree No. 90/1999 promulgating the Judicial Authority Act establishes that "the Supreme Court shall constitute, where necessary, a body consisting of the President of the Supreme Court and the oldest five of his deputies or senior judges of the Tribunal are joined by the President and Vice-President of the Administrative Court of Justice. His Deputy and three of the Court's most senior advisers are competent to adjudicate on cases of positive and passive jurisdiction disputes between the courts provided for in this Act and the Administrative Court of Justice and other courts. As well as, to appoint the sentence to be enforced in case of a conflict of judgement.

In the absence of any of the President or members or the presence of a barrier, he or she shall be replaced by a successor in either Tribunal. The Presidium of the Supreme Court shall, in the absence of the President or in the presence of a barrier, be replaced by its oldest members, and shall rule by a majority of at least seven."

The work of the Authority for Conflict of Jurisdiction is regulated by Royal Decree No. 88/2008 concerning the Authority for Conflict of Jurisdiction and Judgements, article 2 of which provides that: "The Tribunal shall have exclusive competence: (a) To adjudicate cases of positive and negative jurisdiction disputes between the courts provided for in the Law on the Judiciary, the Administrative Court of Justice and any other court, if the case is brought on a single subject before two of the courts in question and not abandoned or abandoned by both of them. (b) Adjudication of the dispute concerning the execution of two contradictory final judgements, one on the judicial side and the other on another judicial side."

Extrapolating from previous texts, there are two types of conflicts of jurisdiction that are both positive and negative. The positive is to bring one case before two courts, or different jurisdictions, each of which claims to be the competent authority to consider it, one of which has not renounced it, or issued two contradictory judgements, the latter being called incompatibility of judgements (Radi, 2003; Al-Billeh, 2022).

The negative conflict of jurisdiction is the abandonment of jurisdiction by both the ordinary and the administrative judiciary, which constitutes a negative conflict of jurisdiction. This gives rise to the jurisdiction of

the Supreme Court's jurisdiction to adjudicate the present application, with a view to appointing the competent judicial authority to consider the dispute (Khaleel, 1978).

The criterion for determining jurisdiction between the Administrative Court of Justice and the ordinary courts of justice is an objective criterion provided by law in article 8 of the Judiciary Act. Namely, to examine the nature of the dispute. Where the litigation is administrative, the Court of Administrative Justice has jurisdiction over the litigation. And, in the event that the litigation is no longer administrative, the courts of the ordinary judiciary have jurisdiction (Abdel Basit, 2005).

According to the foregoing, we deal with disputes concerning the present administrative chambers, which were under the jurisdiction of the Administrative Court of Justice before they were transferred to the ordinary courts' chambers.

(a) Disputes under administrative jurisdiction:

Article 6 of Royal Decree No. 91/99 establishing the Administrative Court of Justice and promulgating its amended law provides that the Court shall have exclusive jurisdiction to adjudicate administrative disputes, including the following:

- (1) Public officials' actions to review final administrative decisions relating to their other occupational affairs.
- (2) Applications submitted by persons of interest to review final administrative decisions.
- (3) Cases submitted by persons of interest to review final decisions issued by administrative committees with jurisdiction.
- (4) Claims for salaries, pensions, emoluments, etc., due to public officials or their heirs.
- (5) Claims for compensation relating to administrative disputes, whether filed in an original or subsidiary capacity.
- (6) Proceedings concerning administrative contracts, without prejudice to article 6 bis of this Law.
- (7) Other matters for which the Court's jurisdiction is provided by law. The refusal or failure of the administrative authorities to take a decision that they should have taken in accordance with the laws and regulations is considered in the provision of administrative decisions provided for in sections "1" and "2" of this article.

The authority of the court to control administrative decisions shall be limited to examining its legitimacy, without addressing its appropriateness."

As for liabilities for administrative contracts, article 6 bis of the Administrative Court of Justice Act provides that the provisions of the Arbitration Act in Civil and Commercial Disputes shall apply to litigations for administrative contracts. And shall have jurisdiction over arbitration matters referred to the judiciary by the said Act in respect of administrative contracts of the Trial Chamber, the Appeals Chamber or the President of the Court as the case may be."

It should be noted that, in cases involving review of administrative decisions, the basis of the case must be a lack of competence, a defect in the form of the decision, its cause, a violation of laws, regulations, an error in their application, interpretation or abuse of power. The reason for the decision is legitimate if it is based on security considerations.

(b) Disputes that don't fall under the administrative jurisdiction:

Article 7 of the Administrative Court of Justice Act stipulates that: "The Court shall not be competent to consider the following:

- (1) Applications relating to acts of sovereignty, decrees or royal orders.
- (2) Actions relating to the work of the security and military units other than decisions relating to the performance of public services for their respective stakeholders.
- (3) Claims relating to nationality and tribal affairs.

- The problem of conflict of jurisdiction:

After addressing the problem of the conflict of jurisdiction and indicating the administrative disputes of the present Administrative Chambers, which were the same as those considered by the Administrative Court before it became Chambers. The question arises: Will the Administrative Court's transformation into ordinary court chambers reduce the problem of jurisdictional conflict?

For our part, this will not affect the resolution of that problem, which the legislator intervened to resolve by establishing a so-called dispute body of jurisdiction in the Supreme Court. The problem of the conflict of jurisdiction that existed during the existence of the Administrative Court of Justice, which, in the view of the proponents of the unified judicial system, resolves that problem, will continue to be irrelevant. Administrative and ordinary chambers of the ordinary judiciary will have many problems of jurisdiction, and we believe that the

unity or duplication of the judiciary does not affect and is not affected by conflict of jurisdiction. It exists in both systems (Fahmi, 2004).

Finally, before I address the conclusion of the research, I would like to express my humble opinion on the reasons for the Omani legislature's return to a single judicial system:

In our view, the reasons for Omani legislators' abandonment of the system of dual justice and its introduction of the system of unity lie in the following reasons:

(1) Lack of judges: The limited number of judges, especially competent and experienced judges, has forced Omani legislators to return to a single judicial system. Because the administrative judge is supposed to have considerable experience in the law in his public and private branches and a wide range of comparative administrative justice. There is no doubt that judges of such quality are few in most countries, including the Sultanate.

(2) Lack of funds: The Administrative Court of Justice of the Sultanate required substantial funds. Given the world's economic crises, and the Sultanate is an integral part of this world. All countries are moving to reduce their expenditures, to overcome the crises they may experience. This prompted the Omani legislature to integrate the Administrative Court in the ordinary courts.

(3) Integrate the administrative judiciary into a single judicial system that will save effort, time and money to litigants:

The Omani legislature did not circulate the administrative courts at the level of all the Omani governorates. Rather, he established a single administrative court in Muscat, which is reached by both near and far. Litigants outside Muscat, especially in the governorates far away from Muscat, suffer the most because of the court's geographical distance. Which increases the financial burden on litigants, while the ordinary courts exist in each state at the level of the governorates of the Sultanate. Consequently, the legislator's return to the system of the judiciary unity brought the judiciary closer to the litigants and reduced their burden by the fact that the administrative chambers of the courts were spread throughout the Sultanate. Merging the administrative judiciary into a single judicial system would save litigants' effort, time and money to pursue their rights (Abdo Imam, 2007).

Conclusion

The current Omani judicial system is the unified judicial system. However, the jurisdiction assigned to the administrative services of the ordinary courts to adjudicate administrative disputes has led to the separation of the administrative judiciary from the ordinary judiciary. Resulting in the Omani judiciary's taking over the unified system after duplication. Litigants in administrative proceedings are able to appeal to the Supreme Court after being limited to only two primary stages (trial and appeal). Thus, achieving justice and equality among litigants.

Indeed, the system of unity of the judiciary is, in the view of its supporters, characterized by the fullest realization of the principle of the rule of law. Because all cases will be subject to the same legal rules, and the courts will hear all disputes in different forms, both civil and administrative, which is an application of the principle of legality. And The administration and individuals will be subjected to the same courts without distinction, thereby reinforcing the idea of protecting individual rights and freedoms because the administration does not discriminate in different courts according to different rules as well.

We therefore recommend that the Supreme Court of Appeal Chambers, called Administrative Appeals Chambers, be established with judges specializing in administrative justice to appeal appeals from the Administrative Appeals Chambers. We also recommend that the Omani legislature make use of the States preceding the Sultanate, including the State of Kuwait, which allocates administrative chambers to the Court of cassation.

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