

Review of International Geographical Education | RIGEO | 2020

RIGEO 

ISSN: 2146 - 0353

**Review of International
GEOGRAPHICAL EDUCATION**



www.rigeo.org

The Impact of the Statement of Claim Being Devoid of the Signature of the Plaintiff or his agent in Jordanian Law

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Abstract

This study aims to shed light on the mandatory data in the statement of claim and to investigate the Impact of its absence from the signature of the plaintiff or his representative in accordance with the provisions of the Jordanian Civil Procedure Law No. 24 of 1988 and its amendments, and to investigate this topic as well in the Jordanian Bar Association Law of 1972 and its amendments. The study clarified the mandatory data, including the signature and its importance, the penalty for not signing the statement, and the position of the Jordanian Court of Cassation on this. The researchers relied on the descriptive and analytical approaches in the study by analyzing the legal texts that are the subject of the study, and describing the judicial cases that apply to those texts through the rulings of the Jordanian Court of Cassation. The researchers concluded that the Jordanian legislator stipulated a set of mandatory data in the statement of claim, including the signature, but did not specify an Impact when this statement is not provided. The Bar Association Law also stipulated that the statements submitted to a group of courts be signed by a professor lawyer, but the Jordanian Civil Procedure Law did not rule on the invalidity of the unsigned statement. However, the Court of Cassation's interpretation settled on the validity of the unsigned list. The researchers recommend the necessity of amending the texts related to the subject of the signature in a way that removes ambiguity about the validity of the list and ensures the achievement of its purpose.

Keywords: List of claims, signature, validity of the list, invalidity of the list.

Introduction

Constitutions have guaranteed the right to litigate for all individuals before the judiciary without discrimination, in order to claim or protect their rights. Constitutions have also emphasized that (courts are open to all) (). The lawsuit is considered one of the most important trial procedures that begin the judicial dispute, when a person submits a request to the judiciary to rule in his favor on what he claims, and this procedure is called (the statement of claim). The dispute arises as a result of registering the lawsuit.

The validity of the dispute requires the submission of a statement of claim that includes all the data required by law in addition to paying court fees and having the capacity to litigate. It also requires initially the availability of conditions in the lawsuit itself in terms of interest () and its descriptions. ¹The statement of claim may lack one of the data required by law, which raises questions about the Impact of this on the validity of the statement of claim, specifically if it is not signed by the plaintiff or his agent. This is due to the absence of a legal text that addresses this issue, which raises the question of the possibility of ruling the invalidity of the regulation in such a case, or the lack of impact on its validity, which makes us look into this issue with the help of the various rulings issued by the Jordanian Court of Cassation in this field.²

The importance of the study and its objectives:

The importance of this study from a scientific and practical point of view is represented in researching the Impact of not signing the statement of claim on the validity of the statement, as a jurisprudential controversy arose about the Impact of not signing the statement of claim by the plaintiff or his agent due to the absence of a legal text that addresses this issue, in addition to the existence of conflicting rulings of the Jordanian Court of Cassation, as it was heading towards deciding the invalidity of this regulation and then returned in other rulings to say the validity of the regulation, which requires studying this issue and trying to find a legal solution for it.³

Study Problem:

The study problem lies in clarifying the validity of the unsigned statement of claim by the plaintiff or his agent, as the signature is one of the mandatory data required by the Jordanian Civil Procedure Law. With another set of data that clarify the truth of the claim, the identity of its parties, the court and the subject. This is in light of the absence of a clear text that defines this Impact , with the existence of conflicting judicial rulings of the Jordanian Court of Cassation.

Study Limits:

¹ Article (101) of the Jordanian Constitution of 1952

² Article (56) of the Jordanian Civil Procedure Code No. (24) of 1988 and its amendments.

³ Article (3) of the Jordanian Civil Procedure Code (No request or plea shall be accepted if its owner does not have an existing interest recognized by law).

This study will be within the limits of what is stated in the Jordanian Civil Procedure Law No. 24 of 1988 and its amendments, including articles related to organizing the statement of claim and its data in addition to the Jordanian Bar Association Law of 1972 and its amendments.

Study Methodology:

The researchers relied on the descriptive and analytical approaches in the study by analyzing the legal texts that are the subject of the study with the help of judicial rulings that dealt with these texts issued by the Jordanian Court of Cassation.

Study plan:

The subject of the impact of the absence of the signature of the plaintiff or his representative in the statement of claim will be studied through two sections, the first: on the nature of the statement of claim and its mandatory data, as it includes two requirements: the first, on the mandatory data in the statement of claim, and the second on: signing the statement of claim and its importance. As for the second section, it addressed the penalty resulting from not signing the statement, through two requirements, the first on the invalidity of the statement and the second on the validity of the unsigned statement.

Section One

The Nature of the Lawsuit and the Mandatory DataT herein

The lawsuit is a legal means to defend and obtain the rights of individuals and it is a means to move the judiciary, and the law has specified certain procedures and stages that must be followed. The lawsuit is filed by submitting a list from the plaintiff to the competent court to explain his claim and request a ruling in his favor. The lawsuit is defined as (the means that the law has authorized the right holder to resort to the judiciary to establish a right or protect it) (⁴). The acceptance of the lawsuit requires that there be an interest for its owner, provided that this interest is existing, legal, personal and direct (⁵).

The judicial dispute begins with the claim before the judiciary by submitting a list of lawsuits from the plaintiff, so the lawsuit is filed based on the plaintiff's request with a list that is deposited in the court registry and includes a set of data specified by law (⁶). This means that the list, in terms of form, is a judicial paper that is supposed to be written and includes certain data. The list of

⁴ Alqudah, Mufleh Awad, Civil Procedures and Judicial Organization, Amman, Dar Al Thaqafa for Publishing and Distribution, 4th ed., 2020, p. 214

⁵ Article (3) of the Jordanian Civil Procedures Law.

⁶ Article (26) of the Jordanian Civil Procedures Law.

lawsuits is also known as the newspaper or petition in comparative laws (⁷), as it is a judicial paper in which the judicial claim procedure is written and is written by the plaintiff or his agent.

Since the law requires that the lawsuit be filed through a petition that is deposited with the court registry, this means that it must be in writing in order to ensure its conditions and the defendant's knowledge of its contents in a specific manner, and the court reviews it in preparation for a ruling in accordance with what is stated therein (⁸). The general rule is that a single petition may be filed by a number of plaintiffs, provided that the right is the same for all of them. However, in the event of multiple requests without any connection between them, the petition will include several lawsuits in a single petition, and therefore it will be invalid (⁹). We will explain the mandatory data in the petition, specifically signing it, in this section through the first requirement on mandatory data in general, and the second we will dedicate to signing the petition.

First requirement

Mandatory Data in the Statement of Claim

The law has specified the necessary data that the statement of claim must include. The Jordanian legislator has set conditions related to the statement of claim including certain requirements (), in addition to setting conditions for its registration. This data required by Jordanian law is consistent with most Arab legislations (), which specify the necessary data, the purpose of which is to inform the interested parties of the legal claim and its content, which includes the name of the court, the name of the plaintiff, the name of the defendant, the subject of the lawsuit, the facts and requests, the signature and then the date, although the Egyptian legislator did not stipulate the necessity of including the subject of the lawsuit in the statement, as it is sufficient for the rest of the data to be in the statement (¹⁰).

The necessary data in the statement of claim is necessary to ensure the smooth running of the dispute and the seriousness of the lawsuit and to remove ambiguity about its parties or its subject or facts and requests. In this requirement, we will provide a brief presentation of this data, then we will devote the second requirement to the statement under study, which is the signature alone.

First: The name of the court before which the lawsuit is filed:

The name of the court must be mentioned in detail to avoid confusion and confirm the jurisdiction of the court (¹¹). This falls on the plaintiff to summon the defendant to appear before the court. It

⁷ Malkawi, Bashar Adnan, Musaada, Nael, Explanation of the Texts of the Jordanian Civil Procedures Law, Amman, Wael Publishing House, 1st ed., 2008, p. 109.

⁸ It is called (the newspaper) in the United Arab Emirates and also in Egypt

⁹ () Al Nimr, Amina, Procedures Law, Alexandria University, Alexandria, 1st ed., 1992, p. 373

¹⁰ Bastami, Basil, Civil Procedures, Amman, 1st ed., 2003, p. 48.

¹¹ Article (63/2) of the Egyptian Civil and Commercial Procedures Law.

is usually not necessary to mention the address of the court, chamber or judge because these actions are carried out within the court (¹²).

Second: The full name of the plaintiff, his profession or job, place of work and residence, the full name of the person representing him, his profession or job, place of work and residence, the mobile phone number of the plaintiff's representative or his e-mail address, and the mobile phone number of the plaintiff and his e-mail address, if possible.

This information determines the identity of the plaintiff, whether he represents himself or through someone else. The importance of this information is to facilitate notification and for the defendant to know the identity of his opponent. (¹³) Returning to Article (56) of the Code of Civil Procedure, we find that this information indicates the identity of the plaintiff without ambiguity, so this information complements each other, as each statement is not necessary in itself, but it contributes, with others, to negating ignorance about the plaintiff (¹⁴).

This data identifies the identity of the plaintiff whether he represents himself or through others. The importance of this information is to facilitate notification and for the defendant to know the identity of his opponent. (¹⁵) Returning to Article (56) of the Civil Procedure Code, we find that this information indicates the identity of the plaintiff without ambiguity, so this data complements each other. Each statement is not necessary in itself, but it contributes, with others, to negating ignorance about the plaintiff (¹⁶).

Third: The defendant:

The full name of the defendant, his profession or job, place of work and residence, and mobile phone number or email address, if possible, and the full name of the person representing him, his profession or job, and place of work, must be mentioned. If the defendant or his representative does not have a known place of work or residence, then the last place of work, residence, or place of residence he had. In the event of multiple defendants, all data must be mentioned for each one of them. This data is necessary to identify the defendant as a party to the lawsuit. If the defendant's name is not mentioned correctly in the list, the lawsuit may be dismissed. The plaintiff does not have the right to request the addition of the defendant's real name after filing the original lawsuit (¹⁷).

Fourth: Subject of the lawsuit:

¹² Hindi, Ahmed, Civil and Commercial Procedures Law, Dar Al-Jamiah Al-Jadida, Alexandria, 2nd ed., 2003, p. 553

¹³ Al-Masry, Muhammad Walid Hashim, Explanation of the Civil Procedures Law, Dar Qandeel for Publishing and Distribution, Amman, 1st ed., 2003, p. 168.

¹⁴ Al-Zoubi, Awad Ahmed, A Brief Introduction to the Jordanian Procedures Law, Dar Wael for Publishing and Distribution, Amman, 2nd ed., 2019, p. 260

¹⁵ Al-Masry, previous reference, p. 168.

¹⁶ Al-Zaabi, Awad, previous reference, p. 261.

¹⁷ Al-Qudat, Mufleh, previous reference, p. 192.

The plaintiff must, when submitting the statement of claim, specify the subject of his lawsuit. He is the one who chooses this claim in terms of specifying its type, details, and the money related to it. The purpose of mentioning and specifying the subject of the lawsuit is to designate the competent court, in terms of type or locality, for the subject of the dispute, whether it relates to real estate or movable property. This specification also helps the defendant in responding and defending, and as a result helps the court to decide on the subject as quickly as possible ⁽¹⁸⁾.

Fifth: Facts of the lawsuit, its grounds, and plaintiff's requests

It is assumed that the facts from which the reasons for the lawsuit arose are mentioned so that the defendant can respond to the statement. And so that the court decides on the matters on which the plaintiff relied in his lawsuit ⁽¹⁹⁾.

It is not necessary to mention a specific legal text that applies to these facts ⁽²⁰⁾. However, the Jordanian legislator added with the facts the necessity of mentioning the evidence on which the plaintiff relies to prove the facts, in accordance with the principle of limiting evidence. It is required that these facts and grounds be specified in a sufficient manner and not just a general mention ⁽²¹⁾.

Sixth: The date of filing the lawsuit: The plaintiff must mention in the petition the date of filing, day, month and year, except that the date considered in terms of the legal Impact s resulting from filing the lawsuit is the date of its registration in court in accordance with Article 57/5 of the Jordanian Civil Procedure Code, which stipulates that (the lawsuit is considered filed and produces its Impact s from the date of this registration, even if the court is not competent). Therefore, the date that is considered is not the date recorded on the petition by the plaintiff or his agent, but rather when it is registered in the lawsuits register at the court registry and after completing the procedures, this registration results in interrupting the statute of limitations ⁽²²⁾, starting the legal interest, determining the eligibility to litigate, and stating whether the obligation is due for performance ⁽²³⁾.

Second requirement

Signing the Statement of Claim and its Importance

We previously explained the mandatory data that Article (56) of the Jordanian Civil Procedure Code requires to be included in the statement of claim, including: Signature by the plaintiff or his agent. The signature is usually done by the person concerned placing his seal or fingerprint or marking the papers by hand, and it is usually with symbols that indicate the person who signed,

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²⁰ Al-Zoubi, Khaled Yousef, *The Lawsuit*, Amman, 1st ed., 1995, p. 27

²¹ Al-Qudat, Mufleh, previous reference, p. 242

²² Al-Zoubi, Khaled Yousef, previous reference, p. 28.

²³ Al-Qudat, Mufleh, previous reference, p. 242

and the signature in language (²⁴): is the signature, or the written symbol that the person takes to indicate who signed himself, and the signature is also known as: marking the document with the name that the person is accustomed to indicating, whether by signing the document, sealing it or fingerprinting it, and the mark is not sufficient, but it must include the name of the person who signed the document (²⁵), and if the plaintiff is illiterate, his thumbprint can be placed, and in the event that there is a representative on his behalf, it is sufficient to place the representative's signature to act in place of the plaintiff (the principal), and this requires attaching the power of attorney to the statement of claim (²⁶).

The presence of the signature of the plaintiff or his agent means: attributing the statement of claim to the plaintiff because the presence of the signature indicates the intention of the plaintiff to present the dispute with his opponent before the judiciary (²⁷). The signature generally indicates the identity of the person who issued a specific document, and the same applies to the statement of claim. It is assumed that there is something that indicates the identity of the plaintiff or his agent, by the signature indicating the person concerned, and since the statement is a request submitted to the judiciary, whether by the principal or his agent, it must be signed.

The signature is not only required on the statement of claim, but also in everything issued by the opponents of statements or memoranda in the case because they are considered a judicial acknowledgment by the signatory (²⁸). The purpose of requiring the signature is that the facts and statements contained therein are valid for adoption as claims (²⁹). This is what the rulings of the Jordanian Court of Cassation confirmed by stating that (the purpose of requiring the signature of the statements is that the facts and statements contained therein are valid for adoption as claims or defenses in a way that does not allow for dispute over their issuance by the person to whom they are attributed and so that the court can limit the dispute or decide on it (³⁰)).

As for the necessity of signing the list by a representative of the plaintiff, the texts included in the Jordanian Civil Procedure Code did not specify when the signature must be made by a representative of the plaintiff (lawyer). However, with reference to the Jordanian Bar Association Law, Article (41/A/2) stipulates that (litigants may not appear before courts of all types and degrees, arbitration bodies and enforcement departments except through lawyers representing them, with the exception of the following:

²⁴ Dictionary of Lisan Al-Arab, Part Eight, Publisher: Dar Sader, Beirut, 3rd ed., 1441 AH

²⁵ Al-Kilani, Mahmoud Muhammad, Rules of Evidence and Provisions of Enforcement (Volume Four), Dar Al-Thaqafah, Amman. 2024, p. 49

²⁶) Abu Al-Rab, Farouk Younis, Introduction to the Explanation of the Palestinian Civil and Commercial Procedures Law, 1st ed., 2002, p. 114.

²⁷ Al-Dulaimi, Muhammad Abdullah Hamoud, Explanation of the Law, Bahraini Litigation, University of Applied Sciences, 1st ed., p. 150

²⁸ Bastami, previous reference, p. 51

²⁹ Al-Shoushari, Salah Al-Din, Al-Wafi in Explaining the Civil Procedure Law, Amman, 1st ed., 2002, p. 141
Cassation Rights Decision, 770/2019, Qarrak website, Bar Association.

³⁰ Law of the Regular Bar Association of 1972

A. Appearing before conciliation courts in rights lawsuits whose value is less than one thousand dinars, settlement lawsuits, lawsuits to correct the population registry, criminal cases and enforcement cases whose value is less than three thousand dinars, provided that the pleading is conducted by the person directly concerned or through a lawyer.

B. Practicing and former lawyers, and working and former judges.

Article 41/2 states that (it is not permissible, under penalty of nullity, to file any lawsuits before the Court of Cassation, the Supreme Court of Justice, the Court of Appeal, the Income Tax and Customs Courts of Appeal, and the Courts of First Instance of all types, unless they are signed by one of the senior lawyers under a properly organized power of attorney, with the exception of the Public Prosecution, the Administrative Public Prosecution, the Civil Attorney General and his assistant) ⁽³¹⁾).

From this text, we find that the legislator did not mention among the entities before which the regulations must be signed by senior lawyers, the conciliation courts. Therefore, the question arises here: about the necessity of signing the regulations submitted before the conciliation courts by a senior lawyer, especially since paragraph (2) of Article (41) did not mention this court, and paragraph (1) of the same article states that the litigants must appear before the conciliation courts in lawsuits exceeding one thousand dinars by senior lawyers. Returning to the efforts of the Jordanian Court of Cassation in this field ⁽³²⁾ it went on to say that (the Bar Association is the body concerned with organizing the affairs of lawyers and their work in the courts.

It has determined the courts to which the signed statement of claim must be submitted, and the conciliation courts were not included among them for considerations that are consistent with the justifications that required the legislator to allocate a special law regulating the provisions specific to these courts to facilitate litigation procedures and reduce the procedures of judicial litigation....) The court concluded by saying: that the failure to mention the conciliation courts in Article (41) of the Bar Association Law was not an oversight or omission ⁽³³⁾). The researchers believe that the Bar Association Law specified in paragraph

(1) of Article (41) the bodies before which professorial lawyers must appear, including the conciliation courts and execution departments. It returned in paragraph

(2) of the text of the article by saying that the statements submitted without the signature of professorial lawyers are invalid, namely: the Court of Cassation, the Supreme Court of Justice, the Court of Appeal, the Court of Income Tax and Customs Appeal, and the Courts of First Instance of all types. We agree with the esteemed Court of Cassation that the omission of the text to mention the conciliation courts is not an oversight, but rather is consistent with the nature of the trial procedures before this court. However, we see that after the approval of the Conciliation Courts

³¹ Regular Bar Association Law.

³¹ Cassation Decision No. 2381/2013, KARARK website.

³³ Regular Bar Association Law.

Law No. 23 of 2017 and the expansion of the jurisdiction of the conciliation courts (³⁴) in terms of value jurisdiction (in lawsuits where the value of the claim exceeds ten thousand dinars) and type jurisdiction (such as lawsuits demanding wages due on the rented property, terminating the property lease contract, and vacating the rented property regardless of the value of the rent).

As well as amending the procedures of the civil trial before this court, which are similar to the procedures followed before the courts of first instance, with a difference in the periods, which means that the procedures of the conciliation court have become in need of the presence of a senior lawyer on behalf of the plaintiff, which requires amending Article (41) of the Law of the Regular Bar Association so that it stipulates the invalidity of the regulations submitted before the conciliation courts if they are not signed by a senior lawyer.

While maintaining the exception related to lawsuits of less than one thousand dinars or three thousand dinars before the execution departments (³⁵). At the end of this analysis, we conclude that the Civil Procedure Code, although it mentioned the necessity of the signature of the plaintiff or his representative as a necessary statement in the statement of claim, did not mention nullity as a penalty for its failure, but the Bar Association Law emphasized the necessity of the signature of a professor lawyer in certain cases and ruled the nullity of these unsigned statements in accordance with the Bar Association Law.

Section Two

The penalty for Not Signing the Statement of Claim

After we explained in the previous section the importance of signing the statement of claim as a mandatory statement according to Article (56) of the Code of Civil Procedure, the question arises here about the Impact of the absence of the signature of the plaintiff or his representative on the statement of claim? Especially since it is a mandatory statement in the statement, which means that its absence renders the statement invalid as a general rule; and this leads as a result to the invalidity of the procedures or the validity of the dispute that began with the submission of this statement.

This topic has raised a jurisprudential controversy, especially with the issuance of the rulings of the Jordanian Court of Cassation, which go between saying that the statement is invalid due to the absence of the signature, since the signature is a necessary statement and an essential procedure in the statement, and this is what came in a number of its decisions, or the absence of invalidity based on the general rule that (there is no invalidity except by text) and the absence of a text stipulating invalidity due to the failure to sign the statement by the plaintiff or his representative.

³⁴ Cassation Decision No. 2381/2013, KARARK website.

³⁵ Cassation Decision No. 2381/2013, KARARK website.

Therefore, we will examine this penalty resulting from failure to sign by analyzing the texts included in the law and discussing the rulings of the Court of Cassation on this issue, through two requirements: the first, which states that the statement of claim is invalid due to failure to sign. The second, which states that the unsigned statement is valid and stating our position on this, in order to reach a solution to this legal problem, God willing.

First requirement

Invalidity of the Statement of Claim due to the Lack of Signature of the Plaintiff or Representative

Article (56) of the Civil Procedure Code specified the data that must be available in the statement of claim, as the text begins with (the statement of claim must include the following data) Therefore, the absolute text means that all of these data are mandatory, necessary and essential, and the absence of any of them must affect the validity of the statement.

Returning to this data, we find that they differ from each other in terms of the possibility of correcting or adding the statement, especially if the purpose of it is achieved by the presence of the defendant, for example, when the plaintiff neglects to specify the name of the competent court, and yet the defendant appears before the competent court, which removes this invalidity (). The court may order the plaintiff to complete some of the deficiencies in the statement, such as ordering him to submit another statement in order to simplify the claim or defense (³⁶). However, upon returning to the texts of the law, we did not find among them anything that could give the plaintiff the opportunity to remedy the failure to sign the statement, which means omitting a necessary and essential statement, which leads to the invalidity of this statement.

Here we must talk about the provisions of nullity - in general - stipulated in the Civil Procedure Code, where the legislator has provided legal protection for procedural rules, and in some cases has stipulated a penalty for violating them, which is nullity, which is of three types (³⁷).

1. Nullity related to public order:

If the rules stipulated for the public interest are violated, the procedure is absolutely null and void, and this means that every interested party may adhere to it and it may not be corrected and the court rules on it on its own. It may be invoked at all stages of the lawsuit, and among these procedures is the notification procedure within the deadlines specified in the law (³⁸).

2. Nullity resulting from the existence of a text stipulating nullity:

³⁶ Al-Hindi, previous reference, p. 537

³⁷ () Article (117) of the Code of Civil Procedure.

³⁸ Kanakrieh, Walid, Principles of Notifying Judicial Papers with the Jurisprudence of the Jordanian Court of Cassation, Amman, 1st ed., 2008, p. 225 and following

Article (24) of the Civil Procedure Code states that (the procedure is null if the law stipulates its nullity or if it is tainted by a fundamental defect and nullity shall not be ruled despite the stipulation if the procedure does not result in harm to the opponent).

So the principle is that this procedure was to protect a specific interest (), so it is ruled invalid when there is a defect in this procedure, and the text on the invalidity of the procedure is in clear terms indicating that by saying, for example: it is not permissible, or it must.

Nullity related to public order:

If the rules established for the public interest are violated, the procedure is absolutely null and void, and this means that every interested party may adhere to it and it may not be corrected and the court rules on it on its own. It may be invoked at all stages of the lawsuit, and among these procedures is the notification procedure within the deadlines specified in the law (³⁹).

2. Nullity resulting from the presence of a text stipulating nullity:

Article (24) of the Civil Procedure Code states that (the procedure shall be null and void if the law stipulates its nullity or if it is tainted by a fundamental defect and nullity shall not be ruled despite the stipulation thereof if the procedure does not result in harm to the opponent).

So the principle is that this procedure was to protect a specific interest (⁴⁰), so nullity is ruled when there is a defect in this procedure, and the text on the nullity of the procedure is in clear terms indicating this by saying, for example: it is not permissible, or it must.

3. The last type of invalidity:

It is caused by a procedure that is marred by a fundamental defect, as the procedure contains a fundamental defect that loses its purpose, even if the law does not stipulate its invalidity, as it causes harm to the opponent (Article 24) of the law, and the judge is left to determine whether the defect is fundamental or not. Returning to the mandatory data in the statement of claim in Article (56), which begins with the phrase (must ...), which indicates the necessity of this data, the absence of one of them means a violation of the text, which leads to invalidity. The statement is marred by a fundamental defect if it does not include the signature of the plaintiff or his representative. This is because the signature is required as an acknowledgment of the allegations or defenses contained in the statement, which enables the court to limit the dispute and adjudicate it, especially since there is no text in the Civil Procedure Code stipulating invalidity, but it is possible to rely on the text of Article (24) as this is a defect or fundamental defect. This ruling (invalidity of the unsigned list) can also be based on Article (41/A/2) of the Law of the Regular Bar Association, which explicitly stipulates the invalidity of lists not signed by a professor lawyer submitted to the Court of Cassation, the Supreme Court of Justice, the Court of Appeal, the Income Tax and Customs Appeal and the Courts of First Instance, which means the invalidity of the list not signed by the lawyer even if it was signed by the plaintiff, because the plaintiff does not have the right to appear

³⁹ Al-Qudah, Mufleh, previous reference, p. 245..

⁴⁰ Abu Al-Rab, previous reference, p. 415

in person before these bodies or courts. Therefore, a trend in Jordanian jurisprudence⁽⁴¹⁾ went to say that the list is invalid due to the lack of signature by the plaintiff or his agent, based on the fact that the procedural action is defective due to the existence of a substantive or formal violation, which means that the signature is an essential procedure, the violation of which results in invalidity⁽⁴²⁾. Some also believe that the signature is an essential procedure and that its absence on the list is a violation punishable by invalidity (). The Jordanian Court of Cassation has ruled in a number of its rulings⁽⁴³⁾ that the list is invalid due to the lack of signature by the plaintiff's representative, even if the name of the plaintiff or his representative is handwritten or printed, because the signature is an essential procedure. The court also rejected the appeal submitted to it in form because the list was not signed and stated that (the court shall not be addressed except with a signed list, considering that the signer of the list is responsible for all its contents and that merely mentioning the name of the representative does not replace his signature on the list)⁽⁴⁴⁾.

Second Requirement

The validity of the statement of claim not signed by the plaintiff or his agent

This trend goes to say that the statement of claim that is devoid of the signature of the plaintiff or his agent is valid, based on the fact that the procedure is not invalid unless the law stipulates its invalidity, or if it is tainted by a fundamental defect that results in harm to the opponent (). Also, it is not possible to rule invalidity despite the stipulation if the procedure does not result in harm to the opponent.

Therefore, although the legislator required in Article (56) of the Code of Civil Procedure the signature as part of the mandatory data in the statement of claim, he did not rule invalidity due to the absence of this data⁽⁴⁵⁾. The lack of signature is not considered a fundamental defect that results in harm to the ruling, so there is no room to say that the statement is invalid due to the lack of signature⁽⁴⁶⁾, especially since the purpose of requiring the signature of the statements is for the statements and facts included therein to be valid for adoption as claims or defenses in a way that does not allow for dispute over their issuance by the person to whom they were attributed and so that the court can limit the dispute or rule on it. This goal is achieved by subsequent admission before the court or by repeating it or supporting it by the person who issued it before the court⁽⁴⁷⁾.

⁴¹ Al-Zoubi, Muhammad Abdul Khaliq, Explanation of the Code of Civil Procedure, Amman, 1st ed., 2024, Dar Al-Thaqafa, p. 177.

⁴² Cassation of Rights No. 350/76 published on page 195 of 1977, Lawyers Syndicate Magazine

⁴³ Cassation of Rights No. 770/2019 and Decision No. 1037/2015, your decision website.

⁴⁴ Cassation of Rights No. 770/2019 and Decision No. 1037/2015, your decision website.

⁴⁵ Article (24) of the Jordanian Civil Procedure Code.

⁴⁶ Al-Bastami, previous reference, p. 51.

⁴⁷ (Al-Zahir, Muhammad Abdullah, Explanation of the Civil Procedure Code, Amman, p. 245.

If we return to the rules of invalidity, especially those resulting from a procedure that is marred by a fundamental defect, determining whether the defect is fundamental or not is left to the discretion of the court. If the procedure loses some of its powers without losing its main character or characteristic, then it is a non-fundamental defect (⁴⁸).

Therefore, invalidity is not ruled, also in application of the general rule that states: There is no invalidity except by text, and it is possible to identify the legislator's purpose in requiring this statement, which is that the facts mentioned in the regulations are such that they can be adopted as claims or defenses that do not allow for disputes over their issuance by the opponent to whom they are attributed, and that this matter may be achieved by subsequent admission before the court by the plaintiff or his agent despite not signing it (⁴⁹), therefore, the violation in this procedure did not result in harm that requires a ruling of invalidity.

The researchers believe that by returning to the provisions of the Jordanian Civil Procedure Code, the legislator did not specify an Impact on the absence of one of the mandatory data mentioned in Article (56), including the signature, so the general rule (no nullity without a text) must be applied, especially if the purpose of requiring this data has been achieved despite the absence of one of them, as this does not affect the validity of the list and there is no need to rule nullity. As we can extrapolate the texts mentioned in the law, we find that the legislator in some cases gave the court discretionary authority to decide to dismiss the lawsuit for lack of a reason for it (Article 124 ()). At the same time, it allowed it to oblige the plaintiff to submit a more complete list in which he explains the claim (Article 117 (⁵⁰)).

Therefore, we conclude that: If the legislator wanted to arrange an Impact on the failure to sign the list of the lawsuit, which is less important than stating the reason for the lawsuit, he would have presented this Impact and arranged a penalty for that. We have explained that the legislator gave the court the authority to order the plaintiff to complete an important statement - the reason for the lawsuit - and did not rule on the invalidity, which makes us compare the issue of not signing the statement to this case, which can be remedied by the plaintiff or his representative repeating his statements before the court, which means that this acknowledgment plays the role of the signature that was overlooked.

As for the position of the Jordanian Court of Cassation: it used to - as we have shown - go in the direction of declaring the list invalid for not signing, but it went back and changed this direction (), and the decision No. (503/87) was issued, which changed this direction by stating that (even though the law requires the list to be signed, there is no text in the law that stipulates invalidity for violating this condition, and the rule in procedures is that there is no invalidity without a text). Some believe that the court's deviation from its previous jurisprudence is consistent with the law; because Article (24) of the Civil Procedure Code considered the procedure to be invalid if the law

⁴⁸ Kanakrieh, previous reference, p. 227

⁴⁹ Cassation Rights No. 153/1994, Journal of the Bar Association, for the year 1994.

⁵⁰ Cassation Rights No. 153/1994, Journal of the Bar Association, for the year 1994.

stipulates its invalidity or it is tainted by a fundamental defect that results in harm to the opponent, so there is no room to say invalidity here ⁽⁵¹⁾).

The court also confirmed this direction in its ruling ⁽⁵²⁾): that (it is clear from Article 56/7 of the Civil Procedure Code that the list of claims must be submitted signed by the plaintiff or his representative, but there is no text in the law that stipulates invalidity for violating this condition, and the rule in procedures is that there is no invalidity without a text). The Court of Cassation then followed the same trend and issued a set of judicial rulings () that confirm this.

It stated that (the purpose of requiring the signing of the regulations is that the facts and statements included in those regulations are valid for adoption as claims or defenses in a way that does not allow for disputes over their issuance by the person to whom they are attributed, so that the court can limit the dispute or decide on it. This purpose is achieved through subsequent admission before the court or its repetition or confirmation by the person who issued it before the court before engaging in the trial procedures. As long as the appellants' attorney repeated the regulations before the Court of Appeal, the purpose of the signature has been realized, and therefore the appeal regulations not signed by a lawyer are not considered invalid based on the text of Article 41/2 of the Lawyers Syndicate Law. The intended purpose of this text is achieved by the regulations being prepared by a lawyer to ensure justice) ⁽⁵³⁾).

The court also confirmed in another set of its rulings (⁵⁴) regarding what was stated in Article (41/2) of the Law of the Regular Bar Association regarding the necessity of signing the regulations submitted before a group of courts by a senior lawyer, not including the Magistrates Court - as previously mentioned in the first section - the court went on to say that (by referring to the provisions of Article 41/2 of the Law of the Bar Association, we find that it explicitly stipulates that it is not permissible, under penalty of nullity, to file any lawsuit before the Court of Cassation, the Supreme Court of Justice, the Court of Appeal, the Income Tax and Customs Appeal Courts, and the Courts of First Instance of all types, unless it is signed by one of the senior lawyers pursuant to a properly organized power of attorney... And since this text did not include among the aforementioned courts the Magistrates Courts, the failure of Article (41) to include the Magistrates Courts was not a matter of oversight or omission, but rather is in harmony with the judicial function that the legislator seeks to achieve...)

We have previously discussed Article (41/2) of the Law of the Regular Bar Association regarding the lack of a requirement to sign the regulations before the Magistrates Court. However, from the approach of the Jordanian Court of Cassation ⁽⁵⁵⁾), we find that it settled on the validity of the statement of claim despite its not being signed by the plaintiff or his agent, despite the existence of the text of Article (41/2) of the Lawyers Syndicate Law, considering that the purpose of requiring the signature as a statement in the statement has been achieved by the presence of the

⁵¹ Cassation Decision No. 770/2019 karak website.

⁵² See Decision No. 5661/2019 and 4502/2020 karark website

⁵³ See Rights Cassation Decision No. 4502/2020 Your decision website.

⁵⁴ Rights Cassation Decision 1814/2004 and Decision No. 2317/2013 karark website

⁵⁵ Decision 5281/2018 Your decision website

plaintiff or his agent, with the repetition of the statements contained in the statement, which does not require the invalidation of that statement (⁵⁶).

Conclusion

After completing the study, in which we talked about the statement of claim, which is a request submitted by the plaintiff to the judiciary to explain his claim and request a ruling for him, which the Jordanian Civil Procedure Code requires to include all the necessary data. However, this statement may be devoid of one of these data, especially if it is not signed by the plaintiff or his agent, which raises controversy about its validity. The Jordanian Court of Cassation used to say that the unsigned statement is invalid, but it returned and settled on the validity of the statement in many of its rulings.

Results:

1. The law stipulated in Article (56) a set of mandatory data in the statement of claim, including the signature by the plaintiff or his agent.
2. The purpose of mentioning the data is to ensure the smooth running of the dispute and the seriousness of the lawsuit, clarify the dispute to the court, and enable the defendant to present his defense.
3. The purpose of requiring the signature on the statement is to make it valid for adoption as claims or defenses in a way that does not allow for dispute over its issuance by the opponent. This purpose may be achieved by subsequent acknowledgement before the court, and the presence of the representative and repetition of his statements is an acknowledgement that replaces the signature.
4. Article (41/2) of the Jordanian Bar Association Law requires the signing of the statements submitted before a group of courts mentioned in the text by a professor lawyer, and among them were no conciliation courts.
5. The law did not include anything that requires the invalidity of the statement of claim not signed by the plaintiff or his representative, and the general rule is that there is no invalidity except by text.
6. The Court of Cassation used to consider the invalidity of the unsigned statement, but it changed its mind and settled on the validity of the unsigned statement of claim

Recommendations

1. The researchers recommend: amending Article (56) of the Jordanian Code of Civil Procedure, by specifying the necessary data in the statement of claim in detail and determining the impact of

⁵⁶ Decision 5281/2018 Your decision website

its absence in terms of the possibility of processing or amending it later and correcting what was violated or arranging nullity by explicitly stating the absence of one of these data according to its importance and impact.

2. The researchers suggest: amending Article (41/2) of the Jordanian Bar Association Law, by adding conciliation courts to the group of courts that the law requires the signing of the statements submitted to them by a professor lawyer, after amending the Conciliation Courts Law in 2017, in terms of the court's jurisdiction and the procedures of the civil courts before it.

3. The researchers recommend: that in the event that Article (56) of the law is not amended, a text is added stipulating the validity of the statement of claim despite its not being signed by the plaintiff or his representative in the event that he acknowledges what is stated in the statement and repeats his statements before the court before engaging in the trial procedures, which confirms that it was issued by him, or stipulating that this is left to the discretion of the court and giving it the authority to do so.

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