

## The Administration's Responsibility when it Refuses to Implement Administrative Judiciary Verdicts

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### Abstract

Usually Non-implementation of the judicial ruling issued by the administrative courts occurs when the administration refuses to implement it, the administration sometimes refuses to implement the judiciary verdicts, which means deviating from the provisions of the law and that considered dangerous, the administration duty and concern is implement the orders issued and decisions because it is a waste of the true value of the judiciary, and it is also considered an abuse of power. In this research, we will discuss the legal solutions to the administration's refusal to implement the judiciary verdicts in Iraq.

**Keywords:** Judiciary Verdicts, Administrative Judiciary, Refuse to Execute, Administration, Law, Abuse of Power, Punishment

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### Introduction

The judiciary is the resort that individuals resort to in order to obtain their rights, to respond to the aggression against them (Law, 2008). However, the aim of resorting to the judiciary is not only to prove that the plaintiff has a right, but also to obtain that right. The rights holders confront those who have been issued an administrative court verdict in their favor difficulties in implementation of the judicial verdict issued against the administration, since the administration enjoys many privileges through its profession. It may threaten the rights and interests of individuals, its threat may lead to disregard for judicial verdicts and refraining from implementing them. If no deterrent was taken in confronting the administration and allowed it to evade the verdicts of the judiciary, then in this case the judiciary is not considered a real guarantee for the rights of individuals, so there must be an appropriate legal method that guarantees the implementation of the verdicts of the administrative judiciary and places legal responsibility on the administration when it refrains from implementing the verdicts of the judiciary.

### Duty of the administration to implement the verdicts of the administrative judiciary

The administration is obligated to implement the administrative court verdict issued against it, the basis of the administration's obligation to implement judicial verdicts is the law, based on idea of the legal state according to which all state authorities must submit to the law. and not violating it, including the administration, otherwise it entails its legal responsibility. Judicial

verdicts acquire the force of law when they acquire the final degree. The administration must implement the judicial verdict issued against it, and failure to implement it is a violation of the authority of the thing decided, which must raise its responsibility (Schoenbrod, 2008). The authority of judicial verdicts is a constitutional principle that must be respected because it is linked to the principle of the rule of law.

We will dedicate the next two branches to explaining the manifestations of the administration's refusal to implement the verdicts of the administrative judiciary and obstacles to implementing them.

### **Manifestations of the administration's refusal to implement verdicts of the administrative judiciary**

As we mentioned previously, the administration may abstain from implementing the rulings of the administrative judiciary, but the administration's abstention may not take a specific form. The administration could refuse to implement the judicial ruling explicitly and announce it clearly (Vermeule, 2016). It may also express this implicitly when it remains silent, and the administration could refrain from implementing the entire ruling, so any part of it may not be implemented, or it could refrain from implementing a specific part.

The administration's refusal to implement verdicts of the administrative judiciary may take several manifestations (Van Harten & Loughlin, 2006). The failure to implement the judicial verdict may take an explicit or implicit manner. It may also be a complete or partial refusal, and this is what we will discuss in the next two items.

### **Failure to Implement the Judicial Verdict by the Administration, Explicitly or Implicitly Manner**

The administration may resort to procrastination or even refrain from implementing verdicts of the administrative judiciary, as it may refrain from implementing the verdict explicitly (Daniel, 2022). It takes the method of refusing to implement the judicial verdict, beyond any doubt of violating the originality of the prescribed thing, which means deviating from the provisions of the law. Although cases of explicit refusal are rare, in the event of their occurrence they are considered serious, and their danger is that the administration's refusal to implement in this way will inevitably lead to the loss of the true value and prestige of the judiciary. It also expresses cases of abuse of power, for example, Minister of Agriculture's refusal to implement the verdict issued by the Supreme Administrative Court to return the employee to his position after canceling Council of Ministers order dismissing him from his position. The administration should be obligated to implement judicial rulings within a reasonable period, so its procrastination in implementation for a long period indicates its unwillingness to implement and its implicit refusal. If, in fact, this period is not explicitly determined by judicial rulings because the issue varies according to the circumstances of each case, some believe that it should not exceed three or four months, except in exceptional cases.

### ***Non-implementation of the judicial verdict by the administration***

Fully or partially: The administration may refrain from implementing the verdict in its entirety, this is the common thing. If the administration refrains from implementing everything that is contained in the judicial verdict, it may also resort to implementing it partially or incompletely. This manner is instead of an explicit refusal or delay in execution in order to avoid violating the ruling of the thing that is lit against her, such as issuing a judicial decision to return the employee.

The dismissed person returns to his position, so the administration resorts to returning him to

another position other than the previous one, the incomplete implementation takes the place of non-implementation in terms of its impact on the verdict.

### **Administration obstacles in implementation of verdicts of the administrative judiciary**

After the issuance of the verdict and the acquisition of the final degree, some obstacles may appear that lead to its non-implementation, these obstacles may be due to the administration as a whole or the person in charge of the implementation or to the surrounding circumstances or to others. administrative responsibility, we will address it as follows:

First: Reasons for non-implementation of verdicts of the administrative judiciary that are not carried out by the administration (1) The administration may refrain from implement the judicial verdict for fear of disturbances affecting security and public order. The employee who refuses to implement is not penalized in this case, but the administration remains obligated to compensate for not implementing the judicial verdict; (2) The enforcement of the judicial verdict for compensation may be impossible due to the lack of sufficient financial allocation by the administration. If a decision is issued by the administration to deduct certain amounts from the employee, the employee has already paid those amounts to the administration, then he appeals the administrative decision and the judiciary shows the invalidity of that decision. Or one responsible for the enforcement of the judicial verdict in the administration may be subjected to coercion to induce him to refrain from executing the verdict, which prevents its implementation; (3) The impossibility of implementation may take another form, where the administration's refusal to deliver certain documents to the person concerned is due to the damage of those documents. The issuance of a decision by the administrative judiciary invalidating the administration's decision for its refusal to deliver those documents faces impossibility in implementation, a judicial verdict may be issued stopping the implementation of a decision. Although this decision has already been implemented and reached an end; (4) The reason for the administration's refusal to implement verdicts of the administrative judiciary may be due to the lack of clarity or ambiguity in the operative part of the verdict to be enforced, or the presence of material or linguistic errors in it, which contributed to the delay in its implementation.

It is clear to us that the administration refrained from implementing the judicial ruling due to a reason in which it had no control, meaning that it did not refrain from implementing it for the purpose of harming people and did not have bad intentions, but rather its refraining from implementing it is due to reasons present in the judicial ruling such as its lack of clarity or ambiguity, for reasons due to force majeure or exceptional, or for other reasons in which the administration has no hand, so its abstention from implementation in these cases may not result in its legal responsibility for its abstention from implementation.

Reasons for non-implementation of verdicts of the administrative judiciary, which the responsibility of the administration.

After we have explained the cases in which the administration refrained from implementing the rulings of the administrative judiciary and there is no legal responsibility, this does not mean that the administration can evade the implementation of the judicial ruling in all cases. Therefore, we must explain cases of the administration's failure to implement court rulings and determine its legal responsibility, and these cases include; (1) The administration may resort to delaying the implementation of the verdict or procrastinating in its implementation by issuing some regulations and instructions to waste the opportunity for the person in whose favor the judicial verdict was issued; (2) The administration's refusal to implement the judicial verdict may be for personal purposes or because of enmity or hatred with the person in whose interest

the judicial decision was issued. The administration's abstention may be the result of personal differences away from its lofty goal of achieving the public interest.

The administration's failure to implement judicial verdict and its lack of respect for the authority of administrative judicial decisions is a breach of its legal commitment and an explicit violation of the provisions of the law, which entails its legal responsibility and negatively affects the protection of fundamental freedoms of individuals.

### **Means of ensuring the administration's implementation of the provisions of the administrative judiciary**

In order for the employee to obtain his right to confront the administration after the administrative court ruling is issued in his favor and the administration refrains from implementing it, there must be legal provisions that work to force the administration to implement the administrative court ruling and to guarantee the rights of employees, and among these guarantees is a legal system that criminalizes what administrative do In case the administration refuses to implement, this will entail its criminal and even administrative liability, as well as its civil liability. This is what we will discuss as follows:

#### **Criminal liability of the administration**

The Iraqi legislator did not lose sight of the criminalization of the administration's act by refraining from the implementation of the judgments in general and that when; (1) He is punished with imprisonment and a fine or one of these two penalties. Any judgment or order issued from one Courts or any specialized public authority or in delaying the collection of funds or fees and the law decision; (2) The same penalty shall apply to every employee or person entrusted with a public service who refrains from implementing a verdict or order issued by a court. Or from any competent public authority after eight days of being officially notified by date of implementation, when the implementation of the verdict or order is within his jurisdiction.

It is good for the Iraqi legislator to criminalize the work of the administration by stopping, suspending, or refraining from implementing judicial verdicts, in order for it to be understood that it does not constitute a sufficient deterrent. Giving the competence to impose the penalty on the employee who refuses to serve the criminal judiciary requires a new lawsuit and new litigation procedures, which wastes many privileges on the one who issued the administrative court verdict in his favor and incurs him a lot of time and effort. The general public facility in which he works (Bennett & Iossa, 2006). This makes it difficult to identify the real abstainer from implementing the judicial verdict and makes the application of the punitive text impossible. Hence, the difficulty and length of the procedures required to take the path of filing a criminal case, time and effort it requires, which leads to the loss of the rights of individuals in the face of the administration in many cases, especially with the impossibility of using methods of compulsory implementing against the administration. Because one of the judiciary jurisprudence and established principles in public law is that public law persons are not subject to methods of compulsory implementation because public funds are not considered a guarantee for creditors, the administrative judiciary lacks the power to direct the matter to the administration and replace it, which makes the administration escape from the scope of the law and refrain from implementing the provisions of the administrative judiciary. Therefore, we find that the text on criminal penalties in itself is not enough to force the administration to perform its duties by implementing verdicts of the administrative judiciary, that it is necessary to give authority to the administrative courts to direct orders to the administration in addition to giving them the power to issue a threatening fine on the administration to ensure that the

rulings issued by them are implemented, as is the case with the French legislator.

### **Disciplinary administration responsibility**

The administration's refusal to implement judicial verdicts should result in, in addition to the administration of penal responsibility, disciplinary responsibility. The role of disciplinary responsibility is no less than the role of penal responsibility in ensuring the implementation of administrative judicial verdicts, especially if the administration's failure to implement the judicial verdict is due to the employee's mistake: Refraining in this case constitutes a breach of the official duties according to the law of discipline of state employees, so the employee must be held accountable in accordance with the provisions of Article 7 of The aforementioned law, but the accountability of the employee who refused to implement the administrative judicial verdict by his department is rare to obtain in practice. Often, the employee refuses to implement the verdict of the administrative judiciary based on the will and directives of his department, from here it is clear to us that the disciplinary penalties are not sufficient. As well as the insufficiency of disciplinary penalties as a guarantee that the person in whose favor the court ruling was issued will obtain his rights. If the abstaining employee is punished with a disciplinary penalty, this does not necessarily mean that the administration will implement the administrative court ruling.

### **Civil liability of administration**

As for the responsibility of the civil administration, the administration's failure to carry out its duty imposed on it by law to implement the judicial verdict makes it responsible for the damages it caused to others as a result of this failure. On the authenticity of the verdict.

However, there are some obstacles that direct the litigant who issued the administrative judicial verdict in his favor to obtain his right to civil compensation, including procedures for submitting a request for compensation.

They are long and complex procedures, even after the issuance of the civil judgment in his favor, the convict must notify the administration of that judgment, this is what makes him refer to the opponent who refrained from implement the first judicial verdict.

In the event that the administration resorts to paying the civil compensation, then payment of an amount is faced with obstacles, including the slowness in the payment process, especially when the amount of money adjudicated exceeds the budget of the administrative body with the possibility of the administration's arbitrariness by abstaining or laxity in executing the judgment issued against it for compensation, as it does not include an order for the administration to pay the amount, but includes a report on the entitlement of the judged individual to compensation.

All of these obstacles facing individuals may make resorting to the civil judiciary to obtain a civil ruling for compensation, due to the administration's refusal to implement the administrative judiciary ruling, an insufficient deterrent to the administration and may not be an effective guarantee that individuals can resort to.

We conclude that it is necessary to resort to legal methods different from those stipulated by the Iraqi legislator. Iraqi legislation needs amendment in order to force the administration to perform its duties and implement the rulings of the administrative judiciary, including giving authority to the administrative courts to direct orders to the administration and force it to implement the judicial ruling Similar to the French legislator. In addition to giving it the authority to impose a threatening fine on the administration to ensure the implementation of the rulings issued by it.



## Conclusion

Through the foregoing, it is clear to us the failure of the Iraqi legislation to find effective means to force the administration to implement the verdicts of the administrative judiciary, which prompted the administration to evade the implement of judicial rulings that have the power of the thing decided. The traditional means represented by the responsibility of the employee for non-execution based on Article 329 of the Iraqi Penal Code and the responsibility of the civil administration is no longer a sufficient guarantee to put an end to the breach of judicial verdict and to preserve their validity. Therefore, it is necessary to resort to other means and methods to force the administration to perform its duties, including giving authority to administrative courts. By directing orders to the administration, in addition to giving it the power to impose a threatening fine on the administration to ensure the implementation of the verdicts issued by it. We therefore call on the Iraqi legislator to issue special legislation for that.

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The authors declare that they have no competing interests.

## Authors' Contributions

Ruqaya Hamzah wrote the manuscript and provided data, and Shaimaa Toman conducted all review and coordination conceived of the study, Aymen Almayyahi participated in its design and coordination and helped to draft the manuscript. All authors read and approved the final manuscript.

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## References

- Bennett, J., & Iossa, E. (2006). Building and managing facilities for public services. *Journal of public economics*, 90(10-11), 2143-2160.
- Daniel, W. L. (2022). The Canonical Norms on the Judicial Examination or Interrogations: Their Purpose, Implementation, and Non-Observance. *Jurist*, 78, 137.
- Law, D. S. (2008). A theory of judicial power and judicial review. *Geo. LJ*, 97, 723.
- Schoenbrod, D. (2008). *Power without responsibility: How Congress abuses the people through delegation*. Yale University Press.
- Van Harten, G., & Loughlin, M. (2006). Investment treaty arbitration as a species of global administrative law. *European Journal of International Law*, 17(1), 121-150.
- Vermeule, A. (2016). *Law's abnegation: from law's empire to the administrative state*. Harvard University Press.