

Liability For Failure To Implement Decisions Of The Supreme Administrative Court In Iraq

¹Dr. Abdolsaeed shojaei · ²Hamid Raddad Drigh Al-Atwi

¹Faculty Member, Payame Noor University, Tehran, Iran, Dr.saeedshojaei62@pnu.ac.ir

²University of Qom/Islamic Republic of Iran, Jurisdiction/Public Law, Administrative Law, hmedaa1977@gmail.com

Abstract:

This research highlights the responsibility resulting from the failure to implement the decisions of the Supreme Administrative Court in Iraq. This court was established in accordance with the Fifth Amendment Law to the State Council Law No. (17 of 1933, and it was granted powers and its structure was drawn up in accordance with this law, as the judicial department was among the council's departments, which consists of (the Supreme Administrative Court, the Administrative Judiciary Courts, the Disciplinary Courts and the Administrative Courts .

The legislator has noted that the ordinary courts cannot achieve the desired justice sought by the employee due to the development of life in all areas, which has led to an increase in problems that arise between individuals, between institutions, or between institutions and individuals. This makes the ordinary judiciary late in resolving disputes, which required the creation of other courts parallel to the ordinary courts that are concerned with resolving disputes that occur in an important aspect, which is the administrative aspect. Thus, these courts contribute to reducing the burden on the ordinary courts. Therefore, the legislator concluded by legislating laws that regulate the work of these courts, as State Council Law No. (65 of 1979 was legislated, which regulated the work of the State Council in Iraq, and several amendments were made to it that contributed to Iraq's transition from a unified judiciary system to a dual judiciary. This transition contributed to the formation of the Supreme Administrative Court, which is resorted to to appeal the decisions of the administrative judiciary courts, as the effects of this appeal are represented by the implementation of the decisions of this court and the penalty resulting from failure to implement.

INTRODUCTION

If the administration's failure to fulfill its obligation to implement judicial rulings exposes it to civil liability, the problem facing the determination of liability is that the one who acts in the name of the legal person and issues the behaviour that gives rise to liability is always the natural person. Accordingly, it is necessary to draw the boundaries between the error attributed to the natural person (the employee , i.e. the personal error, and the error attributed to the legal person (the administration . Therefore, assuming the distinction between the personal error attributed to the employee and the service error attributed to the administration and on the basis of which its liability is based, the legislator intended to impose criminal liability and disciplinary liability on the employee who fails or refrains from performing his duty in implementing the judicial rulings that he is entrusted to implement.

Researching this topic requires us to adopt the analytical legal approach, as the topic will be analyzed from multiple aspects by analyzing the decisions issued by the Supreme Administrative Court and the resulting liability for the natural or legal person if they are not implemented.

The decisions of the Administrative Courts in Iraq are appealed before the Supreme Administrative Court, and its decisions are final. Administrative bodies must implement them without delay. In order to highlight the responsibility for non-implementation, Decisions of the Supreme Administrative Court. Given the nature of the research on this topic, it will be divided into two sections. The first deals with criminal responsibility and the second with disciplinary responsibility.

Section One/Criminal Responsibility:

The refusal of competent employees to implement judicial rulings is a crime punishable by law, and in this case the convicted person has the right to file a criminal lawsuit with the competent court. The crime of refusal to implement a judicial ruling occurs when a public employee deliberately uses his job authority in any way to stop the implementation of a judicial ruling. He intervenes with his subordinates who are responsible for implementing the ruling and orders them verbally or in writing

to ignore the implementation of the ruling. The crime does not require that the perpetrator be competent to implement a judicial ruling for the crime to occur. The crime requires that this intervention by the employee with his subordinates results in stopping the implementation of the ruling, as there is no attempt at a crime.¹ An employee is held criminally liable if he commits, during his work or through the performance of his job, an act that constitutes a crime punishable by the Penal Code, due to the negative repercussions that this has on the interests of individuals and society and consequently the interest of the state as a whole.² The Iraqi legislator did well to criminalize the action of an employee who refuses to implement a judicial ruling, as this, as we mentioned, violates the principle of the validity of *res judicata*, which is a legal principle that must be respected. The Iraqi judiciary has established that failure to implement judicial rulings does not require judicial intervention to issue a ruling for implementation. Rather, the act of the person who refrains, if proven, is considered a crime according to Article 329 of the Penal Code.³ Article 329 of the Penal Code No. 111 of 1969, as amended, stipulates that all competent state agencies are obligated to implement court rulings, stating that (1- Any employee or person charged with a public service who exploits the authority of his position to stop or obstruct the implementation of orders issued by the government or provisions of laws and regulations or any ruling or order issued by a court or any competent public authority, or to delay the collection of funds, fees, etc., prescribed by law, shall be punished with imprisonment or a fine, or with one of these two penalties. 2- Any employee or person charged with a public service who refrains from implementing a ruling or order issued by a court or any competent public authority after eight days have passed since he was officially notified to implement it, provided that the ruling or order is within his jurisdiction, shall be punished with the same penalty.⁴

The employee does not blindly execute the order issued to him by his boss, but this obedience must be within the limits of the laws and regulations on the one hand, and he must investigate and confirm the legitimacy of this action, and whether it is in accordance with the laws and regulations or not, so that he will not be criminally responsible for his action.⁵ This is what Article 40 of the current Iraqi Penal Code stipulates, "There is no crime if the act is committed by an Emirati employee in the following cases: "First, if the act was committed in execution of an order issued by a superior, he must be obeyed. Second, if his intentions were good and he committed an act in execution of what the laws ordered or he believed that its implementation was within his jurisdiction. In any case, the employee must prove that he did not commit the act except after verification and investigation and that he believed in its legitimacy and that his belief was based on reasonable grounds."⁶ Therefore, some jurisprudence has held that in order for the criminal liability of an employee who has refused to implement an order issued to him by his superior to be negated, the conditions contained in Article 40 of the Iraqi Penal Code must be met, in addition to proving that his violation of the law and his refusal to implement was in implementation of a written order issued to him by his superior, despite his supervisor being notified in writing of this violation.⁷ While others say that it is necessary to refrain from implementing the order issued by the administrative head if implementing this order constitutes a crime punishable by law.⁸

Section Two / Disciplinary Responsibility An employee's failure to implement a judicial ruling or his intervention to obstruct such implementation is considered a disciplinary error that entails liability, as this is considered a departure from the requirements of the job's duty according to some public service laws.⁹ Respecting judicial rulings and working to implement them in a way that achieves their goals without disruption is the most important duty of the job, because violating that duty constitutes a violation of the law on which the ruling was issued, and within which the employee performs his work, such that he is considered at fault if he violates it. In addition to that, the judicial ruling falls within the concept of law in its broad sense.¹⁰

As we mentioned previously, the employee who refrains from implementing judicial rulings is punished criminally as a result of that refrain, in cases where the act of refraining is a crime, but it constitutes a breach of public order and obstruction of the course of public interests. The employee is a crime punishable by law. However, in cases where the act of refraining is not a crime, but it constitutes a breach of public order and obstruction of the course of public interests, then in these cases the disciplinary responsibility of the public employee arises.¹¹

The disciplinary responsibility of a public employee is based on the error attributed to the employee, as a result of his failure to perform his job duties and his violation of the regulations, laws and rules of professional conduct that he must observe as a public employee.¹² The violation committed by the

employee may be an error on the basis of which both criminal and disciplinary responsibility are established. The employee's failure to implement the court's ruling leads, according to Article 329 of the Iraqi Penal Code, to the initiation of both criminal and disciplinary responsibility against the employee, as it stipulates, in addition to the penalty of imprisonment, the penalty of dismissal, which is one of the most severe disciplinary penalties that can be imposed on an employee.¹³.

However, the correlation between the two responsibilities is not absolute. The mistake made by the employee may be an administrative sin, but it does not require criminal responsibility for the employee because the law does not stipulate a penalty for committing that sin.¹⁴ While he can be held disciplinary accountable for committing that sin, in order for the employee to be held criminally accountable, the act he committed must be a crime punishable by law, while the acts that make the employee guilty and result in disciplinary liability cannot be limited.¹⁵.

Failure to implement the ruling may constitute a personal and corporate error at the same time. There is nothing in the law that prevents the government from being responsible for its independent error alongside the employee's responsibility for his personal error. It also does not prevent the compensation claimant from combining these two responsibilities in one case. However, in the end, the employee's responsibility is negated in the event of necessity.¹⁶, The employee shall be responsible in the following cases:

1- Non-implementation of a judicial ruling due to a state of necessity: Among the excuses for delaying the implementation of administrative rulings that the judiciary considers acceptable administrative rulings, such that the party concerned does not have a right to compensation, are cases of necessity or the occurrence of a force beyond the control of the administration that prevents implementation. The case of necessity does not usually arise as a result of human action, but rather is the result of natural forces, and thus it denies the freedom of choice of the perpetrator. The state of necessity is represented by the crime of refraining from implementing judicial rulings in the form of refraining from implementation for fear of disturbances affecting security and public order, or the presence of force majeure that makes issuing the implementation of the decision impossible. The public employee who refrains from implementation in this case of necessity is not criminally liable, but the administration remains obligated to compensate for the failure to implement the judicial ruling. Such as in the case of the death of the President of the Republic who is entrusted with issuing the necessary presidential decree to implement the ruling (¹⁷).

2 - Non-implementation of the judicial ruling due to coercion The condition of liability for the employee is not fulfilled if the employee is not able to direct his behavior towards a specific act or refrain from a specific act due to external influences that would move and direct the will without the consent of its owner. If the coercion, whether material or moral, with the availability of the conditions of its validity, results in the competent employee stopping the implementation of the ruling and refraining from implementation, his liability is negated and the liability of the one who forced him to do the act of refraining or stopping implementation is established.¹⁸.

3 - Failure to implement the judicial ruling in obedience to the president's order: The employee's commission of the wrongful act and his failure to implement the judicial ruling as a result of an order issued to him by his superior has no effect on the liability of the injured party. This consideration, if it has a place, is taken into account in the relationship between the erring employee and the administration with regard to who bears the ultimate burden of the compensation awarded. Therefore, the employee may not, in order to evade liability, claim that his failure to implement the judicial ruling was in implementation of an order issued to him by his superior that he must obey in light of what is stated in the text of Article 4 of the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended.¹⁹.

CONCLUSION

RESULTS

1- The implementation of the decisions of the Supreme Administrative Court is an obligation upon the administration to implement, and it is not permissible to delay implementation or refrain from implementation for any reason whatsoever except in very rare cases, otherwise the employee who is responsible for implementation will be exposed to legal accountability.

2- Refraining from implementing court decisions exposes the administration to a matter and makes it subject to the law, as Article (329 of the Iraqi Penal Code applies to it, which imposes punishment on those who refrain from implementing court decisions with imprisonment or a fine.

3- Disciplinary responsibility is another penalty resulting from the administration's failure to implement decisions issued by the courts.

4- There is an exception to the rule of the obligation to implement judicial rulings, whereby an employee who is responsible for implementing judicial decisions may refrain from implementing them for three reasons: a state of necessity, such as the existence of force majeure that prevents this, or the occurrence of coercion on the competent employee, in which case the responsibility falls on the one who forced the employee not to implement judicial decisions, or the employee responsible for implementing the decisions refrained from implementing them due to a directive from his superior.

Recommendations:

1-Penalties should be more severe for those proven to have deliberately obstructed its implementation without justifiable reasons, meaning that the penalties should be imprisonment and a fine together, not just one of these two penalties.

2-The disciplinary responsibility of the employee who refused to implement must be specific, meaning that the minimum penalty directed at him should be a reprimand and above.

3- Although there is an exception to the rule of criminal and disciplinary liability for failure to implement court decisions, it should not be expanded and attempts should be made to narrow it so that it does not become a reason for procrastination and failure to implement decisions.

References:

(¹)Dr. Abdel Aziz Abdel Moneim Khalifa, Implementation of Administrative Rulings, Dar Al Fikr Al Arabi, Cairo, 2008, p. 105

(²)Mazhar Jaafar Abdul, The Crime of Abstention in Iraqi Legislation, PhD Thesis Submitted to the College of Law, University of Baghdad, 1987, p. 298.

(³)The General Assembly of the Kurdistan Regional Shura Council ruled (.... Upon reviewing the contested decision, it was found to be correct and in accordance with the law, as the Administrative Court is competent, based on the text of Article Thirteen of the Kurdistan Regional Shura Council Law No. 14 of 2008, to consider the validity of administrative decisions issued by employees and bodies in the departments of the region after the enforcement of the above law, which did not appoint a reference to appeal them, and it is not within its jurisdiction to consider what relates to refraining from implementing a judicial ruling in violation of the provisions of the law, as the failure to implement judicial rulings does not require intervention from the judiciary to issue a ruling for implementation, but rather the act of the refrainer, if proven in the form of a crime, according to the text of Article 329 of the Penal Code No. 111 of 1969 as amended, and since the contested ruling adhered to the aforementioned legal point of view, it adhered to the correct law, and it decided to confirm it and reject the appeal list..) Decision No.: 109 / General Administrative Authority / 2012 Decision date: 12/31/2012. See also its ruling No. 94/General Authority/Administrative/2012 dated 9/25/2012.

(⁴)Revolutionary Command Council Resolution No. 30 of 1994 abolished the alternative fine penalty stipulated in Penal Code No. 111 of 1969 and special laws.

(⁵)Counselor Mustafa Bakr, Disciplining State Employees, Dar Al Fikr Al Hadith, Cairo, 1966, p. 49.

(⁶)Article (40) of the Iraqi Penal Code No. (111) of 1969.

(⁷)Counselor Mustafa Bakr, Disciplining State Employees, Dar Al-Fikr Al-Hadith, Cairo, 1966, p. 49-50.

(⁸)Dr. Mustafa Abu Zaid Fahmy, A Brief Introduction to Administrative Law, Modern Publications, Cairo, 1957p. 409.

(⁹)Chafika Ben Sawla, The Problem of the Administration's Implementation of Administrative Judicial Decisions (A Comparative Study), Dar Houma for Printing and Publishing, Algeria, 2010, p. 285

(¹⁰)Dr. Abdel Aziz Abdel Moneim Khalifa, Implementation of Administrative Rulings, Dar Al Fikr Al Arabi, Cairo, 2008, p. 105.

(¹¹)Muhammad Khader, Implementation of Judicial Rulings and Guarantees of the Good Administration of Justice, a published research, Journal of the Palestinian Center for the Independence of the Judiciary and the Legal Profession, Issue 27, Palestine, 2014, p. 71.

(¹²)Dr. Mahmoud Helmy, Administrative Judiciary, First Edition, Dar Al Fikr Al Arabi, Cairo, 1974, p. 214-216.

(¹³)Article 329 of the Iraqi Penal CodeNo. (111) of 1969.

(¹⁴)Dr. Suleiman Al-Tamawi, Administrative Judiciary (Compensation Judiciary), previous source, p. 282-283

(¹⁵)Hussein Hamouda Al-Mahdawi, Explanation of the Provisions of Public Service, First Edition, General Establishment for Publishing, Distribution and Advertising, Tripoli, 1981, p. 231.

(¹⁶)Dr. Suad Al-Sharqawi: The distinction between personal and self-interested mistakes has become useless. Administrative Sciences Journal, Tenth Year, Second Issue, Cairo, 1968, p. 231..

(¹⁷)Dr. Abdel Aziz Abdel Moneim Khalifa, previous source, p. 79.

(¹⁸)Dr. Ragheb Al-Helou, Administrative Lawsuits, Maaref Establishment, Alexandria, 2004, p. 300.

(¹⁹)See Article 4 of the State and Public Sector Employees Disciplinary Law No. 14 of 1991, as amended.