

COPIES OF THE ADMINISTRATIVE IMPLEMENTATION OF THE ANNULMENT JUDGMENT

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ABSTRACT

The execution of the judicial judgment is either to be chosen by the convict to implement the content of the judgment or to be forcibly executed using the force of the public authority to inform the convict in the implementation of what is stated in the judicial judgment by resorting to the execution judge in Egypt and to the executor of justice in Iraq. However, some provisions do not accept forced execution, as is the case in the implementation of the rule of compliance, it is limited to warning only, as the Iraqi Execution Law stipulates that "the implementation of the wife's obedience to her husband is limited to warning only", and by referring to the practical reality, we find that there are many cases in which the administration refrains from implementing judicial rulings voluntarily, which puts us either an important question Is we entitled to resort to direct implementation to force them to implement the rulings issued by the judiciary, which is spent To address the direct implementation to know its terms and conditions and the extent to which they can be adopted in the face of management. For all of the above, we will divide this research into three demands in the first of which we deal with the voluntary implementation of the cancellation ruling, the second dealt with the forced implementation of the cancellation ruling, and the third is concerned with the statement of exceptions to the non-implementation of the cancellation ruling.

Keywords: cancellation ruling, voluntary execution, annulment decision, legal effects, material effects.

Introduction

First: Introducing the subject of the study and its importance:

The administrative authority is subject to judicial control in the exercise of its executive functions, which are represented in the implementation of laws, the management of public utilities, the maintenance of security and public order, and the welfare of individuals. Since the administration enjoys many privileges characterized by the nature of a public authority (such as the power of direct execution and the powers of exceptional circumstances), which leads to the fear that it will violate the requirements of the public interest entrusted to it and infringe on the rights and freedoms of individuals, it was necessary to subject the administration to judicial oversight.

Administrative decisions are the most important manifestations of the administration's expression of its will and its preferred means of carrying out the tasks entrusted to it, so the administration is obligated when making its decisions to respect the principle of legality, otherwise these decisions are subject to the judiciary of cancellation as one of the main pillars of judicial control over its work, and they have been canceled to ensure respect for this principle.

Control of annulment is exercised through annulment proceedings, which results in a judgment annulling the unlawful administrative decision. The importance of an action for annulment is measured in practice by the effects and results of the annulment judgment. In theory, this study is a fertile field for research into many important jurisprudential problems and issues raised by the annulment ruling and unique to it.

The real benefit of the judgement is reflected in its practical consequences through the administration's implementation of the judgements of annulment. The problem of the administration's implementation of the rulings issued against it by the administrative judiciary has occupied many jurists, as the administration's commitment to issuing the necessary administrative decisions to implement the positive or negative effects of the annulment ruling ultimately depends on its good faith, and this represents the weakness of the administrative law. Since the administrative judge does not have the right to replace the administration in issuing decisions or issuing orders to it, otherwise this constitutes a violation of the principle of separation of powers and an assault on the competences of the administrative authority, the issue of forcing the administration to respect the rulings of the administrative judiciary has become an important issue on which administrative law is based, since many judicial rulings are not implemented or implemented in a lot of slowness and laxity.

Second: Study Questions:

This study aims to explain the effects of the ruling on the annulment of the illegal administrative decision in depth and detail. In other words, this study aims to answer the following questions:

1. What are the effects of the judgment annulling the contested decision?
2. What are the obligations that the annulment judgment entails on the administration in order to achieve its purpose, in other words, how does the administration implement its obligations arising from the annulment ruling?

Third: Hypotheses of the study:

Through this study, the following results can be reached:

1. The authority of the annulment judgment does not only affect the annulment appeals and the annulment decision itself, but extends to include decisions related to the annulled decision, such as ancillary decisions and similar decisions. The authority of the annulment judgment can also be applied in disputes involving complex legal processes.
2. The administration's violation of its obligations to implement the annulment judgment is represented in many aspects, the most important of which are the following: total abstention from implementing the judgment, incomplete implementation, mis implementation, re-issuance of the canceled decision, slowing down the implementation of the judgment, or disabling the effects of the annulment judgment by issuing legislation or regulation.

Fourth: Study Methodology:

In this study, we will follow the analytical and comparative approaches to legislative texts and judicial rulings in Egypt, France and Iraq and jurisprudential opinions whenever necessary, provided that the greatest effort will address the situation in Iraq legislatively and judicially.

2. Voluntary execution of the annulment judgment

Judicial rulings issued against the administration impose on it a basic obligation to implement, and the forms of implementation that appear in judicial rulings vary into two basic types, the first of which is to restore the situation to what it was, and the second is the administration's refusal to issue the canceled decision in another way, and we will try to explain the following two types:

1.2 Restoration

The obligation to restore the status quo ante of the administration is to give effect to the retroactive effect of the annulment ruling. Since the annulment judgment means that the canceled administrative decision is illegal since its issuance, it has become the duty of the administration to restore the situation to what was before the issuance of the canceled decision, and this shall be in accordance with the following:

1.1.2 Removal of the canceled decision

By acquiring the annulment judgment, the authority of res judicata, we are faced with a legal fact according to which the legally contested administrative decision was annulled from the legal regulation with all its effects to deprive it of its legal force¹, but is this alone sufficient to reach the implementation of the annulment ruling? The truth is that the annulment judgment is often not the direct basis for the person concerned to obtain his legal status prior to the issuance of the canceled decision, but the administration must play its positive role in implementation, through which all measures are taken that Requires the implementation of the judgment fully and properly, and in any case did not set legislation nor jurisprudence nor the judiciary a specific date itself to start the administration implementation after the issuance of the judgment of annulment also did not draw the necessary path to proceed with the intention of implementation about each judgment of annulment issued against one of its decisions The reality of each case in terms of its circumstances and merits is different from the other and the judicial precedents that were presented to the French Council of State as well as the Egyptian administrative judiciary were never fixed nor absolute, but no matter how different The circumstances of each case are different from the other, but all of them in the implementation of the annulment judgment are due to one principle, which is that the annulment judgment restores things to what they were before the issuance of the annulled decision as if it were not² originally. Arranging their legal status in a manner consistent with the requirements of the judgment and restoring

¹Dr. Mostafa Kamel Ismail, *Judicial Control of Administrative Works*, Cairo University, Cairo, 1969. Dr. Abdul Hamid Sidqi, *The extent of the administrative court's control over the discretionary authority of the administration*, Dar Al-Nahda Al-Arabiya, Cairo, P.S., p. 398; Dr. Abdul Rahman Nurjan Al-Ayoubi, *The Administrative Judiciary in Iraq - Present and Future, A Comparative Study*, Dar Al-Shaab Press, Cairo 1965, p. 35.

²Dr. Mustafa Kamel, *op. cit.*, p. 306.

the situation to proper³ order.

Since the authority of *res judicata* is a legal fact confirmed by the annulment judgment that executed all legal effect of the decision issued against it, it became obligatory for the administration in order to coincide with the *res judicata* to withdraw the decision ordered to annul it as a first step in implementing the annulment ruling⁴. Based on the fact⁵ that the withdrawal of an administrative decision in the legal organization is often made by a similar administrative decision, and this withdrawal of the decision contrary to the authority of *res judicata* does not adhere to the legally prescribed appeal dates that the administration is bound by when withdrawing the administrative decision on its own, and this is an exception to the administration's adherence to the legal period, which must be taken into account when issuing the withdrawal decision of its own will, which is the same period prescribed for the judicial appeal, and the withdrawal decision should be in the same form and means that The annulled decision was rendered by the same body whose decision was rendered⁶.

2.1.2 Removal of legal effects and reorganization of legal positions in accordance with the cancellation provision

The removal of the canceled decision is often not enough to restore the situation to what it was, the canceled administrative decision since its issuance until the issuance of the annulment judgment against him, often has generated effects that affected the legal status of the appellant and affected the legal positions of others, the interval between the issuance of the decision and until its cancellation may be prolonged, which leaves the fingerprints of the decision on the legal organization in which it was found, the effects of the canceled decision are material legal consequences resulting from the canceled decision directly, they are not It is not for the administration to decide or prevent such effects as long as it has issued the administrative decision that automatically produces such legal effects generated by the annulled decision, which are inevitable and automatic consequences of it⁷.

Administrative jurisprudence and jurisprudence have often stressed the importance of removing the legal effects of the annulled decision in accordance with the logical consequences of the

³Dr. Hosni Abdel Wahed, *Implementation of Administrative Judgments*, Defense Council Press, Cairo, 1984. , p. 224; Abdel Ghani Bassiouni Abdullah, *The Jurisdiction of the Administrative Judiciary over the Work of the Administration - Cancellation Judiciary*, Al-Maaref Foundation, Alexandria, 1983. , p. 334; Mustafa Abu Zeid Fahmy, *Administrative Judiciary and the State Council*, National Center for Publications, Cairo, 2008. p. 788.

⁴Dr. Suleiman Muhammad Al-Tamawi, *The General Theory of Administrative Decisions*, 3rd Edition, Dar Al-Fikr Al-Arabi, Cairo, 1966, p. 539; Dr. Abdel Fattah Hassan, *Cancellation Judiciary*, Al-Galaa Library, Mansoura, 1982, p. 355.

⁵Dr. Mahmoud Helmy, *Administrative Judiciary*, Dar Al-Fikr Al-Arabi, Cairo, 1977. , p. 492; d. Abdel Fattah Hassan, *op. cit.*, p. 355; Mustafa Kamal Wasfi, *Principles of Administrative Judiciary Procedures*, International Press, Cairo, 1981, p. 573.

⁶Dr. Hosni Darwish Abdel Hamid, *The End of the Administrative Decision without the Judiciary*, Dar Al-Fikr Al-Arabi, Cairo, 1981, p. 439.

⁷ Ibrahim Fahmy Shehata, *The Positive Effects of the Judgments Issued to Cancel Promotion Decisions and the Role of the Administration in Achieving Them*, *Journal of the State Council*, Years 8, 9, 10, Cairo, 1960, p. 2176.

annulment ruling by erasing the legal effects of the annuled decision and reorganizing the legal status in accordance with the requirements of the judgment, even if the judgment does not expressly stipulate⁸ how to organize the legal positions of the stakeholders in whose favor the decision was issued or to those who contributed to the annuled decision and affected their positions. Decision to dismiss an employee The administration must reorganize his career in accordance with the annulment judgment and draw the life of that employee as if the invalid decision had not been issued in the first place and taking into account all the individual rights and moral and material privileges that would have guaranteed him the legal status denied to him by the annuled decision⁹. The judiciary The administration is legally obliged to implement the judgment fully and absolutely by all means at its disposal and cannot deviate from that, in fact it is obliged to restore the situation to what it was before, whatever the consequences¹⁰. before its issuance..." In¹¹ another ruling, "the issuance of a ruling annulling the decision to dismiss a mayor cancels all the effects of the dismissal decision, including the measures taken in preparation for the appointment of his successor, which began to edit and present the voters' lists ...",¹² the administration's obligation to remove the legal effects of the annulled decision is accompanied by the need not only to issue administrative decisions to erase all the consequences of the annuled decision, but also to issue administrative decisions to erase all the consequences of the annuled decision, but also to issue Administrative decisions through which the situation in the legal organization is restored in the form that would have been if the canceled decision had not been issued, if an individual decision is canceled the administration is obligated to restore the convict in his favor his legal status and the rights guaranteed to him by this center as if the canceled decision had not been issued, and perhaps this stage of the implementation of the judicial judgment is one of the most accurate stages that the implementation process is going through, as the administration must use what it can to reorganize the legal situation as required by the judgment and therefore We find that the administration is forced to deviate from the rule of non-retroactivity of administrative¹³ decisions, to issue retroactive decisions to restore the situation to what it was, because retroactivity in the

⁸r. Suleiman Muhammad Al-Tamawi, Administrative Judiciary - Cancellation Judiciary - Compensation Judiciary, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 1038; Dr. Mustafa Kamal Wasfi, previous source, p. 561.

⁹ Hassan Kamel, Lawyer, Cancellation of the Administrative Decision to Dismiss a Public Employee and its Effects on the Same Employee and its Repercussions on Other Employees, Contemporary Egypt Magazine, Eastern Advertising Company Press, 47, No. 281, Cairo, 1956. p. 12.

¹⁰r. Suleiman Muhammad Al-Tamawi, Administrative Judiciary, previous source, p. 1030.

¹¹ Judgment of the Administrative Court, Case No. 98/Session of 6 March 1969 of 121, Set of Legal Principles Decided by the Court of Administrative Justice in Three Years from November 1966, September, 1969.

¹² Judgment of the Administrative Court, Case No. 1202 / Session of 23 December 1952 for the judicial year 6, State Council Group - Administrative Court Rulings - Seventh Year, 26/7/1952.

¹³ amdi Yassin Okasha, Encyclopedia of Administrative Rulings in the Judiciary of the State Council, Manshaat Al-Maaref, Alexandria, 1997, p. 649.

implementation of the annulment ruling is an inevitable issue¹⁴. The¹⁵ administration will often have to reconsider many of the legal centres that have been affected by the annulled decision or built on its proper delivery.¹⁶

3.1.2 Removal of the physical effects of the repealed decision

It may suffice to remove the canceled decision and then remove its legal effects that resulted from it to reach the full implementation of the cancellation ruling, as with the cancellation of some regulatory decisions and instructions related to granting building permits, by canceling them, individuals are not obliged to do so and do not have any effect on their positions and their impact is interrupted as soon as the cancellation ruling is issued against them, but most administrative decisions after their issuance and enforcement go through successive stages, so the entry of the administrative decision into the legal organization and meeting it produces its legal effects and then its effects Materialism that is applied at the level of reality. The obligation that falls on the administration at this stage of the implementation of the annulment judgment is to remove the material effects that resulted from the application of the canceled decision, and the administration may not relieve itself from this obligation to remove the material impact of the canceled decision on the basis that it is an independent act of the administrative decision as long as this effect has been achieved as a natural result of the implementation of the canceled administrative decision. It is a material act, but it is only done in implementation of an administrative decision disclosed by the administration... It is therefore not justifiable to consider the fact of seizure independent of the decision that was signed in implementation of it, as it is closely related to it because its entity derives from it..."¹⁷ The administration must use all its capabilities available to it and necessary to remove these material effects of the decision, which is the practical value of the annulment ruling and the positive face of the implementation process. The principle is that the issuance of the ruling to annul the administrative decision entails a return to the case, and the annulled decision was never issued and did not have any legal existence... In this case, all the executive and material acts resulting from the annulled decision shall be removed..."¹⁸ and in the same content it asserts the fact that the effect of the annulment judgment is to apply its actual consequences by removing the decision in terms of concrete reality by saying "... It is not sufficient for the administration to issue its decision to implement the judgment until it is said that it has implemented it, but the actual implementation

¹⁴Dr. Suleiman Muhammad al-Tamawi, Principles of Administrative Law, Dar al-Nahda al-Arabiya, Cairo, 1973, p. 166; Mustafa Abu Zeid Fahmy, Administrative Judiciary and the State Council, National Center for Publications, Cairo, 2008, p. 826.

¹⁵Dr. Hosni Abdel Wahed, Implementation of Administrative Judgments, Defense Council Press, Cairo, 1984. Dr. Mahmoud Helmy, The End of the Administrative Decision, Journal of Administrative Sciences, Q6, p. 14, Cairo, 1994, p. 319.

¹⁶Ibrahim Fahmi Shehata, op. cit., p. 256, and Dr. Suleiman Muhammad al-Tamawi, The General Theory of Administrative Decisions, op. cit., p. 577.

¹⁷Judgment of the Supreme Administrative Court in Egypt, Appeal No. 11/11 - Session 30/11/1968, Year 14, p. 115, referred to: Hamdi Yassin Okasha, Encyclopedia of Administrative Judgments, previous source, p. 19.

¹⁸Judgment of the Egyptian Administrative Court, Case No. 1655 of 17, 30/7/1968.

of its decision must be followed by the necessary actions of the content of the said decision, and the content of the decision to implement a judgment issued to annul is the effective application of the legal consequences of the judgment, which entails the physical removal of the decision ordered to be annulled and the erasure of all its executive and material effects resulting from the annulled decision..."¹⁹

The de facto existence of the annulled decision cannot be ignored, and no matter how much the administration tries to remove the annulled decision from the legal regulation and demolish all its legal effects, it is not enough.²⁰ However, factual circumstances may require cases in which the annulled administrative decision has exhausted all its material effects between the issuance of the annulled decision and the ruling to annul it, which makes it impossible to remove them, and the administration, no matter how committed it may be, cannot implement a judgment. In such cases, the decision is executed theoretically and legally, but in terms of the obvious material effects, they remain, as in canceling a decision to prevent a demonstration on a certain day or a decision issued to demolish an ancient house on the grounds that it was about to fall and demolish the house in implementation of the canceled decision, it is not possible to remove the material effects of the decision because it was exhausted and cannot be erased, but this does not mean silence in the face of the inability to remove the material effects of the decision annulled by the annulment judgment, so compensation is the way to redress the damage caused by the impossibility of removing the material effects, and the annulment ruling must be fully and correctly implemented.²¹

If the administration violates its obligation to remove the material effects and does not harness its capabilities of tools and workers to re-work the telephone and the possibility of using it, this is prepared as an incomplete implementation of the cancellation provision for breach of its obligation to remove the material effects of the canceled decision, and it was better here for the plaintiff to request the suspension of the implementation of the administrative decision until the lawsuit is decided and the rule of law is imposed on its subject matter, and the original, as it is known, cannot suspend the implementation of the administrative decision once it is judicially challenged because it is one of the general principles of appeal before the judiciary. This is because the work of the administration is supposed to be necessary and urgent, and so that individuals do not have the opportunity to paralyze the work of the administration by simply filing an action for annulment whenever they want to stop an administrative act, which often offends and calls into question the work of the administration⁽²²⁾.

Challenging the legality of a decision does not stop the implementation of an administrative decision, but at the same time there are decisions that, if implemented, it is difficult to remove its material effects if it is ruled to cancel this decision, the administration may save its

¹⁹Judgment of the Egyptian Administrative Court, Case No. 1655 of 17, 30/7/1968.

²⁰Dr. Mustafa Kamal Wasfi, op. cit., p. 754.

²¹Dr. Suleiman Muhammad Al-Tamawi, Cancellation Judiciary - Compensation Judiciary, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 375.

²²Dr. Mohamed Kamel Lail, The Theory of Direct Implementation in Administrative Law, Direct Implementation in Administrative Law, Dar Al-Fikr Al-Arabi, Cairo, 1979, p. 340.

administrative decision to remove the building. There is room left to remove the material effects of the decision, so the administration was supposed not to implement its decision, but rather direct it until it finds out the judgment of the judiciary, but the administration often does not act wisely, but rather implements its decision despite the appeal and that implementation is at its own risk and it always finds a solution if a judgment of cancellation is issued against its decision and this solution is through compensation for the inability to remove the material effects of its canceled decision because it has already been exhausted. All of them have been achieved, but monetary compensation may not compensate for the loss of such an archaeological building or any material effects resulting from the canceled decision, so that individuals do not remain vulnerable to the executive power of the administration's decision and to the inability to suspend the implementation of its decision once it is appealed, no matter how serious the judge deems the effects that the decision may have if it is criticized before the issuance of the annulment ruling and the inability to remove it. Administrative until the annulment action is decided on the original annulment²³, so that consequences that are difficult to remove are remedied later.

However, if the plaintiff does not pay attention to the material consequences that may be achieved from the decision he challenged until the annulment judgment is issued, he misses the opportunity to avoid them, in which case only compensation remains for the impossibility of removing the material effects as necessary for the correct implementation of the annulment judgment.²⁴

2.2 Management refrains from otherwise issuing the rescinded decision

The other obligation that falls on the administration and is in parallel with its commitment to restore the situation to what it was, is to refrain after the issuance of a judgment of annulment against an administrative decision from issuing the same canceled decision again, otherwise this is a clear violation of the principle of *res judicata* as well as not to restore the situation to what it was according to the judicial ruling and it is obvious that this obligation is the continuous respect for the authority of the *res judicata*, if the administration re-issues the canceled decision itself. If the new formula differs, it indicates that it insists on its position tainted by violating the legality and violating the principle of *res judicata*, which requires the administration to always remain determined by it in the future after the issuance of the annulment judgment against its decision. Unscathed from the defect that had previously marred and led to its cancellation²⁵.

The rule is that the administration does not have to issue a decision that comes with the canceled decision, so whenever the judiciary has said its word in determining the illegality of the decision and ruled to cancel it, it has confiscated the right of the administration to return this decision, even in a different way, but this does not prevent the existence of cases in which the administration has to re-issue the canceled decision, correcting the defects that have already

²³Ahmad Khurshid Hamidi Al-Mufarji, *Suspension of the Implementation of the Administrative Decision by Cancellation*, PhD thesis submitted to the College of Law at the University of Baghdad, 1995, p. 66; Dr. Fouad Al-Attar, *Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 1993, p. 620.

²⁴r. Suleiman Muhammad Al-Tamawi, *Administrative Judiciary*, previous source, p. 375.

²⁵Dr. Mustafa Abu Zayd Fahmy, *op. cit.*, p. 797.

marred it, which are very specific and narrow cases, and the basis for canceling the decision is not related to the place, but rather falls. If the principle is that the administration has discretionary power to issue its decisions, it acts in the form and time appropriate to it, and its conduct is based on its discretion of matters, the administrative judiciary shall not have the right to comment on its conduct as long as the administration has taken its action within the framework of the so-called law.²⁶ In another case, however, its authority is restricted and in this case it must act as required by law and strictly observe the *jus cogens* of the law governing the sphere in which it is located, and here its decisions are based on restricted authority.^{27, 28}

If the administration issues a decision that is required by law and annulled by a similar defect, it still faces an obligation even after a judgment of annulment has been issued against its decision to issue it corrected to achieve the purpose intended by the legislator when it obliged the administration to issue it in the first place^{29, 30}, taking into account the unchanged circumstances and facts surrounding the issuance of the first annulled decision and the legal text that obliged them at the time of issuing the annulled decision³¹.

Opinions differed in the motive for this obligation, so whether the administration's re-issuance of the canceled decision correctly, avoiding the defects that marred it and led to its judicial cancellation, comes from being a step in the procedures for implementing the annulment ruling, that is, its issuance of the corrected decision is an effect of the annulment ruling, or does its conduct oblige it when its authority is restricted only because by not taking the initiative to issue the canceled decision again corrected, it has violated a legal text that the legislator has restricted it to the need for the administration to take.³² For example, if a decision is issued to annul a regulatory decision regulating one of the activities of individuals and the legislator has already obligated the administration by a legal text to issue such a decision in order to clarify the parts of the rule of law in this area, the regulatory decision is issued to clarify and facilitate the implementation of the general rules of law and to indicate in accordance with the law the details of work in a particular area, any failure to manage or lax in issuing such a decision is a violation. Legal³³.

There are those who do not see a difference between the restricted administrative authority and

²⁶Judgment of the Court of Administrative Justice, Case No. 1158 of 12 / Session of February 12, 1970, Collection of Legal Principles Decided by the Court of Administrative Justice, 24 October 1969 to September 1970, p. 293; Dr. Suleiman Muhammad Al-Tamawi, Principles of Administrative Law, Dar Al-Nahda Al-Arabiya, Cairo, 1973, p. 230.

²⁷Samir Sadek, The Date of Filing a Cancellation Lawsuit, Dar al-Fikr al-Arabi, Cairo, 1966, p. 258.

²⁸Dr. Mahmoud Helmy, The End of the Administrative Decision, op. cit., p. 311; Dr. Hosni Abdel Wahed, op. cit., p. 256.

²⁹Amr Yassin Okasha, Encyclopedia of Administrative Judgments, op. cit., p. 280.

³⁰Abdel Moneim Geera, The Effects of the Cancellation Ruling - A Comparative Study in Egyptian and French Law, Dar Al-Fikr Al-Arabi, Cairo, 1971. p. 432.

³¹Ibrahim Fahmi Shehata, op. cit., p. 267.

³²Dr. Mustafa Abu Zeid Fahmy, op. cit., p. 508.

³³Saad Saad Burhan al-Din, Termination of Administrative Decisions by the Unilateral Will of the Administrative Authority, Master's Thesis submitted to the College of Law - University of Baghdad, 1977, p. 47.

the discretionary administrative authority with regard to its obligation to reissue the annulled decision, corrected from the defects that it has already marred on the basis that if its authority is restricted, it must issue a new decision, taking into account the legal conditions decided by the legislator to be legitimate³⁴. For example, if the administration has discretionary authority in the movement of promotions and was not limited to promotion on the basis of absolute seniority and this decision was canceled by a court ruling, it has previously licensed with its right to choose to issue the promotion movement and its timing and choose the most suitable for it, even if it is the most recent, but it did not reveal its bad faith in issuing this movement of promotions, it cannot after the cancellation of this decision to adhere to what it had of optional mandate that it had previously exhausted. The annulment judgement proved that it had been issued in bad faith, and the situation requires restitution of the situation³⁵.

All this is based on the fact that if the law gives the administration the freedom of choice in conducting a particular administrative order, all of this is under the umbrella of the law and in that public interest, and does not mean at all that the discretionary power is absolute and arbitrary, and thus it reacts innocent of the defects that marred the decision that was annulled and that its conduct is in conformity with the provisions of the law and what the judicial ruling indicated for annulment³⁶.

In fact, opinions have fluctuated in the introduction of the obligation of the administration to reissue the decision that is revoked in the event that the administration has the discretionary power in that area between acceptance and rejection of it and has not found a clear and limited direction. However, we tend to favour the tendency to reissue the decision taken by the administration on the basis of its discretion and annulled by a court ruling, as is the case in order to oblige the administration in its restricted power to issue the decision that is annulled corrected and on which the consensus is reached.

As for the second case, in which we find the administration obligated to re-issue the canceled decision properly, avoiding the defects that previously led to its cancellation, and the extent of the amount of authority it possesses does not have an impact on that, whether it is discretionary or restricted, and this case we find when the administration issues several administrative decisions related to a group of persons and all of them were in similar legal positions and one of these decisions was annulled, the requirements of justice equality that apply to these persons and impose on the administration an obligation to reinstate. The issuance of the annulled decision after avoiding the defect that has been revoked also includes retroactive effect dating back to the date of the issuance of the first decision, similar to the decisions issued against others, and to the contrary, it is considered a violation of the rules of justice and equality and a deviation from the public interest, except in the case that between the issuance of the annulled decision and the new decision, the circumstances of the *fait accompli* and the law have changed, which

³⁴Dr. Mahmoud Helmy, *Administrative Judiciary*, Dar Al-Fikr Al-Arabi, Cairo, 1977, p. 486.

³⁵r. Amr Fouad Ahmed Barakat, *Promotion and the Impact of the Judgment to Cancel it*, *Journal of Administrative Sciences*, Q28, Volume 1, 1986, p. 197.

³⁶Judgment of the Egyptian Administrative Court, Case No. 298 of 21 / Session of March 6, 1969, *Set of Legal Principles Decided by the Egyptian Administrative Court in the years 21-23*, p. 586.

makes it impossible to issue the decision again, even if the administration takes into account all aspects of legality³⁷.

1.2.2 Forced execution of the annulment judgment

Compulsory execution shall be carried out by forcing the debtor to perform it if he does not perform it voluntarily, in other words by acts of the element of compulsion and responsibility in the obligation in accordance with the rules of compulsory execution in the Execution Law. This will be addressed in this requirement and through two separate sections as follows:

Implementation means investigation, procedure and implementation of the thing is to achieve it and take it out of the space of thought to the field of concrete reality, and in the legal terminology it is the fulfillment of the obligation as it is disowned by the debtor's blood, as it is a legal group that regulates the procedures and methods to be followed in the implementation of judicial rulings forcibly when refraining from voluntary implementation, and the origin is that individuals are tasked with implementing management decisions, and the origin as well that these decisions are legitimate and include all the conditions required by law, and this is what is expressed by the optional implementation of individuals and these It is the general rule, but if individuals refrain from implementing the decisions of the administration, what is the solution, we will be here in front of two hypotheses, either the administration resorts to the judiciary to obtain a judicial ruling, or it implements its decision directly, that is, to resort to coercive force to implement its decisions, with the seriousness of that procedure, especially since this is simultaneously exempted from resorting to the judiciary³⁸.

Direct execution can be defined as "the right of the administration to execute its orders against individuals by coercive force if they refuse to carry them out voluntarily without the need for prior permission from the judiciary".³⁹ Civil means compelling the debtor to fulfill what he has committed to, whether this obligation is to deliver an eye by coercing the debtor to deliver and the implementation of the obligation not to build is by coercing the obligor to demolish what he has built⁴⁰. The stakeholders addressed by these provisions, including private individuals and administrative authorities, are obliged to implement⁴¹ them, and this is one of the most important foundations on which the Execution Law in Iraq No. 45 of 1980 is based.⁴²

³⁷Dr. Mahmoud Helmy, *The End of the Administrative Decision*, previous source, p. 307; Dr. Abdel Moneim Jira, previous source, p. 437; Laith Hassan Ali, *The Legal System of Form and Procedures in the Administrative Decision*, Master's Thesis submitted to the College of Law, University of Baghdad, 1983, p. 158; Dr. Mohsen Khalil, *The Administrative Judiciary and its Control of the Work of the Administration - A Comparative Study*, Knowledge Foundation, Alexandria, 1968, p. 372.

³⁸ Dr. Mahmoud Mohammed Kilani, *Rules of Evidence and Execution Provisions*, Dar Al-Thaqafa for Publishing, Amman, 2013, p. 187.

³⁹ Amar Boudiaf, *Administrative Decision - A Legislative Judicial Jurisprudential Study*, Jusoor for Publishing and Distribution, Algeria, 2007, p. 204.

⁴⁰Dr. Ibrahim Abdel Aziz Chiha, *The Origins of Lebanese Administrative Law*, Dar Al-Ilm Li Malayin, Beirut, 1981, p. 481.

⁴¹Dr. Omar Muhammad Al-Shwaiki, *Administrative Judiciary*, Dar Al-Thaqafa, Amman, 2007, p. 186.

⁴² See: The text of article 2 of the Iraqi Execution Law.

While the place of direct execution in both cases is different, while in administrative law the object of execution is an administrative decision whose execution the administration wishes to impose forcibly on individuals, on the one hand, the object of execution in the Code of Civil Procedure is a court ruling, and on the other hand, the direct execution of the administrative decision are employees of the administrative authority⁴³.

Despite the foregoing, there are many similarities between the two, the most important of which is that there is a case of non-implementation faced by both the administrative decision and the judicial ruling, that is, the administrative decision or the judicial ruling in the face of it refrains from implementation, as well as all of the above if the administrative decision affects the legal centers, the judicial ruling has the same characteristic, and if the administrative decision is related to the rights of individuals mostly, the judicial ruling is in order to protect those rights, and if the administration wanted to stabilize the legal situation and impose its prestige when resorting to direct execution, those reasons were largely reflected in the execution of the judicial ruling⁴⁴.

Therefore, is it permissible to resort to direct execution to enforce the execution of judicial rulings issued against the administration or not, and then it was assumed that there is no dispute about the forced execution against the administration if the execution is direct, which is the thing or money that is being executed to fulfill, in other words it is the same thing that the debtor (the management authority) should have fulfilled under the indebtedness relationship, and therefore the administrative executive bond that obliges the management to do an act or refrain from acting, is implemented directly. even by the use of force, when the judge of execution so requests⁴⁵. As in the case of the administrative ruling issued to annul an administrative decision to seize a specific property that is directly executed by returning the seized property by the administration, or the ruling obliging the administration to vacate or hand over real estate and everything related to doing or refraining from doing an action. However, the fact remains that one of the most important obstacles to the implementation of judicial rulings against the administration is the legislator's exclusion of the use of coercive methods of execution against it, because it is a well-established principle. In common law and jurisprudence, public law subjects should not be subject to the methods of compulsory execution, especially those relating to public funds, because public funds are not a guarantee for convictions. As the administration is an honest debtor and the origin to implement its obligations naturally without evasion or bad faith, it is not reasonable to use the force at the disposal of the administration against itself to secure the implementation of the judgments issued against it, however, the failure of the administration to implement the judicial rulings issued against it contradicts an important constitutional principle, which is the need for fair treatment in judicial and administrative procedures, which is confirmed by the Iraqi Constitution in Article (19 / paragraph VI) thereof and the implementation of judicial rulings possessing the authority of the *res judicata* In order

⁴³Dr. Suleiman Muhammad Al-Tamawi, *The General Theory of Administrative Decisions*, op. cit., p. 615.

⁴⁴Dr. Mahmoud al-Kilani, op. cit., p. 178.

⁴⁵Dr. Mahmoud al-Kilani, op. cit., p. 181.

to respect the principle of legality and the rule of law, and to guarantee the financial rights of individuals with the administration, the legislator has therefore developed other means that would compel the administration to implement⁴⁶.

2.2.2 Conditions for direct forced execution

Direct execution requires the availability of a set of basic conditions and assumptions for such implementation, namely the possibility of implementation, and the fulfillment of the basic elements established in favor of the administration, which we will briefly speak, while trying to indicate the possibility of meeting these conditions if we want direct implementation against the administration in order to force it to implement the judicial rulings issued against it,⁴⁷ as follows:

First, direct execution relates to a decision of a bit-grade judgment.

Second: Direct implementation must be possible: Direct implementation must be replaced by (administrative decision) possible, not impossible, and legitimate, i.e. based on a specific and enforceable legal text against those whose implementation is to be implemented in their face.

Third: The person against whom the judgment has been issued refuses to execute it voluntarily after being requested to do so by warning him, unless the warning is not possible for one reason or another, and gives it a certain period for voluntary execution, and this does not entail any effect of execution, except for the interruption of the statute of limitations in force for the benefit of the executor against him⁴⁸, and it must be taken before commencing execution, whether the execution is direct or indirect, otherwise the execution shall be null and void⁴⁹ Since fair execution has obligations, the most important of which is that it is after a reasonable period of diarrhoea that allows the executor against him to prepare and take the necessary measures for voluntary execution.⁵⁰

From the foregoing, it is clear that conditions must be met in direct execution, including informing the debtor (the management authority) of the need to fulfill the obligation, as well as that the creditor submits an application for execution, provided, as we have seen, that the implementation is possible and not impossible, and the intended impossibility is absolute, but if the impossibility is partial, the possible part may be executed⁵¹.

Fourth: Direct execution shall be immediate, such as the eviction of real estate by force if a

⁴⁶Dr. Mahmoud al-Kilani, op. cit., p. 181.

⁴⁷For more details on the conditions of direct execution, see: Dr. Maged Ragheb Al-Helou, Administrative Law, Dar Al-Nahda Al-Arabiya, Cairo, B.S., p. 568.

⁴⁸Dr. Abdel Aziz Abdel Moneim Khalifa, Implementation of Administrative Rulings and its Temporary Problems, University Press, Alexandria, 1992, p. 164.

⁴⁹Dr. Mahmoud al-Kilani, op. cit., p. 183.

⁵⁰Dr. Hussein Ahmed Al-Mashafi, op. cit., p. 177.

⁵¹Salah al-Din Shushari, Forced Execution in Civil and Sharia Matters, Dar al-Thaqafa, Amman, 2009, p. 5.

judicial decision is issued to that effect and the decision becomes final.⁵²

Fifth: The administration should not exceed what is necessary to implement the decision by force, by violating the rights of those who save the decision in the face of it. Perhaps a quick extrapolation of the advanced conditions confirms the availability of all of them in the judicial ruling, and then the possibility of resorting to the direct implementation of judicial rulings, as resorting to a mechanism is only in exceptional cases, which are cases of the administration's failure to implement judicial rulings issued against it, while the judicial judgment is indisputable that it is the title of the legal truth, and therefore it is - of course - legitimate, possible, and based on a legal text, it is not implemented until after the degree of bits is converted by fulfilling the methods of appeal or the expiration of the period Legal without appeal, judicial rulings are possible of course, because no assignment is impossible.

Finally, if the judicial ruling is the title of the legal truth, as mentioned above, there will be no need to talk about the judiciary's assault on the rights of the executor against him - an administration or an ordinary individual, in addition to all of the above, if the reason for non-implementation is forced to protect public money in the face of judicial rulings that may impose financial obligations on the administration, there are judicial rulings that do not have such an impact, yet the administration refrains from implementing them, so we hope that it will be to directly implement this type of decision, at least to protect the rights of individuals vis-à-vis the administration that refrains from implementation.

3.2.2 Exceptions to non-enforcement of the annulment provision

The basic obligation that falls on the administration is the obligation to implement the annulment judgment correctly and fully and to achieve all the desired results of the annulment judgment and that any violation of this obligation is a clear violation of the principle of res judicata. However, there are cases in which the administration's failure to implement the annulment judgment is not intended to stand in the way of the authority of res judicata, but can be interpreted by jurisprudence and judged by the judiciary as a legitimate abstention required by factual and legal circumstances. It prevented its implementation and the administration had no way to face its obligation to implement the annulment ruling⁵³.

There are many cases faced by the administration, which makes its illegal position of non-implementation legitimate, as these cases are obstacles beyond the control of the administration, and we will try to clarify them through three branches, as follows:

1.3.2.2 Conflict of execution of the judgment with the public interest

Public order has a broad connotation that revolves around the preservation of public health, public security, public tranquility, the national economy, the safety of public funds and the

⁵²Dr. Naguib Ahmed Abdullah Thabet Al-Gabali, Special Procedures for Forced Execution against the Administration, Dar Al-Kutub Al-Qanoon, Cairo, 2009, p. 44.

⁵³Dr. Ahmed Fathy Sorour, Constitutional Legitimacy and Human Rights, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 719.

comfort of citizens.⁵⁴

The administration always finds excuses for not implementing the annulment judgment issued against its decision, as the administration often resorts to the pretext that such implementation may harm the public interest, but the administrative judge has always been vigilant, so he files a lawsuit before him against the non-implementation of the judgment by the administration. Many judicial decisions annul administrative decisions for the public interest, and the latter are often impossible to administer, while there are many different motives that the administration tries to cover up by hiding behind its concern to preserve the public interest, and this is more contrary to it⁵⁵.

The judiciary has always been on the lookout for the administration in the face of its endless attempts to claim it, as it was stated in a decision of the Administrative Court in Egypt "... The search shall be behind the intention of the employee if the decision he issued aims to achieve the public interest... But if it turns out that he did not work in the public interest and was acting motivated by personal factors... The Minister's insistence on not implementing the Administrative Court involves a violation of the force of *res judicata* and any legal violation of a basic principle and an asset dictated by public tranquility and the necessity of stable rights and social ties, so the legal violation in this case is serious and grave because of its flagrant violation of the laws ... This is not affected by the absence of personal motives or his statement that a public interest should be pursued, since this interest is not achieved by the commission of unlawful acts."⁵⁶

However, the excuse of the administration may have credibility in fact, there is no denying that the administration in certain situations finds itself in a difficult position between its commitment to implement the cancellation judgment and the breach of that implementation of the need to preserve the public interest, and often the administration exploits the broad and rubber idea of the public interest by referring its lack of commitment to implement the cancellation ruling to it. Public interest and damage to it Perhaps the case (Kotias) of the most famous and early cases that passed before the French judiciary, the administration was right in refraining from implementing a judicial ruling in favor of (Cotias) as the latter got a judicial ruling by putting his hand on a vast land that he had already bought in Tunisia and when trying to exploit it was surprised by the presence of an Arab tribe inhabiting it and after obtaining the ruling the administration refrained from providing him with a public force in order to expel this tribe because this would entail serious results and ignite the dangers of sedition and revolution There, when he appealed to the Council of State, he approved the administration's conduct because of the clear breach of the public interest in the implementation and awarded him compensation⁵⁷.

In similar cases, the administrative judiciary has affirmed that the administration's decision to

⁵⁴Saad Saad Burhan al-Din, *op. cit.*, p. 17.

⁵⁵Dr. Suleiman Muhammad al-Tamawi, *Administrative Judiciary*, *op. cit.*, p. 65.

⁵⁶Dr. Mohsen Khalil, *The Lebanese Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 1982, p. 534.

⁵⁷Abdel Moneim Jira, *op. cit.*, p. 547.

refrain from execution is not considered an offence if it is found to be true that the administration's statement that such implementation is harmful to the public interest^{58,59}.

Therefore, what the judge is doing is to find out whether these material facts on which the administrative decision was issued to refrain from implementation have an origin in reality. The administrative authority, although it has the discretionary power to assess the importance of the facts and appropriateness, must all agree and also commensurate with the material facts on which it is based, because although he has recognized the administration with discretionary power, it remains subject to the law and follows the principles of justice, and so on in the matter of the administration's abstention. Regarding the execution of the annulment judgment in the public interest, the judge shall have control over the administration to ensure the validity of the facts that justify the administration to take such a decision.

If the judge finds the administration's allegations in taking this decision on the basis of facts that he ascertains the existence of, this decision shall not be considered contrary to the principle of *res judicata* and shall be an abstention.⁶⁰

2.3.2.2 Operative ambiguity of the provision

Often explain the administration difficult to interpret the judgment or it is not clear to her and interpretation is to determine the true meaning of the content of the judgment any determine the intended meaning of it and as a kind of interpretation is judicial interpretation, and may appear negative management in the implementation of the judgment of cancellation reasoning ambiguity operative judgment or lack of clarity of what it means, but they are *bona fide* any that if they misimplement the judgment or hesitate to implement it, it is actually due to its misunderstanding of it and can The court is required to interpret the judgment, or the judgment may be interpreted on the basis of an individual appeal against the administration's decision to implement the annulment, and its poor execution of this judgment is the result of its lack of full understanding of the consequences of the judgment.⁶¹

A decision by the Administrative Court in Egypt stated, "If what happened on the part of the ministry is nothing more than an error in understanding what is meant by the judgment and not a deliberate abstention from implementation, and the order in it does not depart from the sequence of ordinary procedures that are not tainted by apparently arbitrary or a deliberate desire to disrupt the judgment or challenge the judicial order, but rather its reference to the normal routine system and the slowness and exaggeration of caution that is not without

⁵⁸Dr. Mohsen Khalil, *The Lebanese Administrative Judiciary*, op. cit., p. 615.

⁵⁹Dr. Essam Abdel Wahab Al-Barzanji, *The Discretionary Power of Judicial Administration and Oversight*, Dar Al-Nahda Al-Arabiya, Cairo, 1971, p. 472.

⁶⁰Dr. Nabil Ismail Omar, *The Judge's Discretion in Civil and Commercial Matters*, Dar Al-Maaref Publisher, Alexandria, 1984, p. 39.

⁶¹Dr. Wajdi Thabet Ghabri, *The Principle of Equality before Public Burdens as a Basis for Administrative Responsibility*, Publisher Knowledge Foundation, Alexandria, 1988, p. 137.

complexity, so why There shall be grounds for awarding compensation."⁶²

It is assumed that since the administration is required to understand what is meant by the annulment ruling, this does not mean that the administration should interpret the judgment at its own will or as it wishes, since this falls within the procedures for the execution of the annulment judgment, which remains under the control of the judicial ruling⁶³.

Egypt's Court of Administrative Justice confirmed this in another decision: "... In that each of the parties decides that the judgment is clear and unambiguous in the meaning that it holds, but it shows the foregoing the extent to which they differ in the understanding of its meaning in a difference that separates them when its impact is reflected in the manner of implementation according to this different understanding, which must clarify what they inspired and interpret what blinked to put the matter in perspective and since it must be noted at the outset that the ruling to cancel an administrative decision may not In the operative part, it means what will be the focus of the execution in particular, so that such execution must be carried out on the basis of the requirement of the judgment as indicated by its reasons within the limits of the subject matter dealt with by the decision to annul it in the light of what the parties disputed and disputed⁶⁴.

The interpretation of this provision deals with the parts that enjoy the authority of res judicata and these parts are the operative and the reasons associated with it substantially and the judgment issued by interpretation after characterized by the judgment that it approves and has the same authority for this judgment and is not considered an independent judgment⁽⁶⁵⁾, and thus does not take the ambiguity of the judgment as an excuse to evade the implementation of the judgment to the fullest The administration resorted to the State Council to inquire or request clarification about any doubt it has in the implementation of the annulment ruling. No. 65 of 1979 amended to the competencies exercised by the Council in the field of opinion and legal advice in Article (Sixth / Item II / Fifth Paragraph): "Clarification of legal provisions when clarified by one of the ministries or bodies not associated with the Ministry." In the event of any ambiguity in the operative part of the judgment, there is a possibility of clarifying this ambiguity by interpreting the judgment by the judiciary without being a pretext for reconsidering the case again after the expiry of the appeal deadline⁶⁶.

3.3.2.2 Impossibility of executing the annulment judgment

The reason for the administration's failure to fulfill its obligations towards the annulment judgment may be the existence of material difficulties that would prevent the implementation

⁶² Judgment of the Court of Administrative Justice, Case No. 608 - Judicial Year 14 - Session 15/4/1953, Collection of Judgments of the Egyptian State Council, seventh year, p. 889.

⁶³ Dr. Hosni Abdel Wahid, *op. cit.*, p. 43.

⁶⁴ Judgment of the Administrative Court, Case No. 165 of 2, session of 11 February 1949, collection of rulings of the Egyptian State Council, third year, p. 298.

⁶⁵ Dr. Taima Al-Jarf, *Judicial Control of Public Administration Works*, Dar Al-Nahda Al-Arabiya, Cairo, 1977, p. 337.

⁶⁶ Dr. Mahmoud Helmy, *Administrative Judiciary*, *op. cit.*, p. 499.

of the judgment and conformity with the authority of *res judicata*, although the annulment judgment must be fully implemented and the situation must be returned to what it was before the issuance of the canceled decision and its retroactive effect in order to reach that, but in many cases time has passed and it remains very difficult to turn time back and remove the material effects that it arranged. The issuance of the annulled decision, it is not possible in practice for the implementation to have any tangible effect to restore the situation to what it was, and these cases are known as cases of preponderance of reality over the law or cases of non-retroactivity due to the⁶⁷ impossibility of implementation, and these cases can be seen in several forms, the first cases in which there is no possibility in the acts of the practical effect of the annulment ruling, and here the annulment provision is decided in favor of the law only because of the impossibility of actual implementation. The decision aims at it, such as demolishing a specific building, preventing it from giving a lecture at a certain time, or removing an eye from the road. All these images turn from a judgment that must be materially implemented to something impossible in reality⁶⁸, but the person in whose favor the judgment was issued must be compensated for this impossibility, as he is not responsible for it, whatever the image or condition in which it is. Not all⁶⁹. If a person is prevented from practicing a profession and the ban decision is illegal and then cancelled cannot be reverted to the past and the period of time during which the person was affected by this prohibition can be erased, but this may be compensated by the administration at the discretion of the court for the damages suffered by him in practicing the profession in the future. The other picture of the inability to implement is that there are financial difficulties that may hinder the implementation process by basing its failure to implement on the lack of implementation. The existence of a sufficient financial appropriation stipulates that it is not possible to reinstate a number of employees to their posts based on the cancellation ruling and the need to remove them.

Of course, this curtain with which the administration tries to cover its abstention is often considered invalid and does not deceive the judiciary except in rare cases where we believe that the administration has the right to do so, and also this abstention is forced by material compensation by the administration. However, this does not absolve the administration of its responsibility to compensate in a manner that remedies the damage caused by the annulled decision. The administration may put itself in this position by either proceeding quickly with the implementation of its decision without waiting for the decision of the case against the decision in an attempt to impose its opinion, or delaying⁷⁰ implementation to the extent that it is prejudicial to implementation because it is too late. However, the French legislator has been able to gradually implement administrative rulings by force, by introducing the implementation of decisions and rulings within the necessities and imperatives of the fairness and impartiality of cases by the European Court of Human Rights, which The administrative judge was granted

⁶⁷Dr. Ibrahim Fahmi Shehata, *op. cit.*, p. 262.

⁶⁸Dr. Abdel Moneim Jira, *op. cit.*, p. 356.

⁶⁹Dr. Hosni Abdel Wahed, *op. cit.*, p. 433.

⁷⁰Dr. Ibrahim Fahmi Shehata, *op. cit.*, p. 263.

many ways to reach the implementation of his decisions and rulings, but the lack of commitment to the application of these methods has sometimes led to the judge taking his leadership and dictatorial authority to reach his goal, and this was confirmed by the French law of December 24, 1976 on instructing the administration to respect judicial rulings by respecting the authority of *res judicata* and implementing it within the period determined by it, through a republican mediator, in the event of non-instruction and failure of the administration to respect this decision to implement it. The mediator may express his opinion and his own reports in the newspapers on mismanagement and non-implementation of judicial rulings⁷¹. As for the administrative judiciary in France, it has been able in three legal steps to expand the powers of the administrative judge to respect the *res judicata* and to implement judgements, namely:

First: The decision of January 15, which assigned for the first time to the Council of State the task of ensuring the implementation of the decisions of the judiciary, and in this regard, the decree of June 30, 1963 entrusted the Committee of Reports in the French Council of State to target two types of requests, including requests submitted by plaintiffs to the Committee for the Assistance in the Implementation of Judgments, when they collide with non-implementation after the expiry of the period of three months from the start of the date of issuance of the decision.

The second type of such requests relates to requests for clarification of the party to the implementation of the decisions of the Council of State submitted by the ministers, which could help them to solve the problems of the judicial system with regard to the enforcement of sentences. The French Council of State recently ruled not to challenge the report of the Head of the Reports and Studies Section that the applicant's application had been rejected.⁷²

Second: The administrative judge may expand his powers to execute judgments in accordance with the law of 16 July 1980, and it aims to facilitate the implementation, whether this concerns the execution of material penalty judgments or annulment rulings due to exceeding the authority, by authorizing the French Council of State to resort to the weapon of a fine.⁷³

Third, the law of February 8, 1995, which gave the administrative courts and administrative courts of appeal in France the power to take over requests not to implement their decisions and the power to try and punish rebel individuals.

It also recognized to all judicial authorities the power to direct and compel the administration, which means the power to dictate orders to them, thus putting an end to the principle of separation between the powers of the administrative judiciary and the authority of the public administration, which the administration used as a pretext for not implementing

⁷¹Dr. Jihan Mohamed Ibrahim Gado, *Administrative Procedures for Appealing Administrative Judicial Judgments*, Dar Al-Kitab Al-Qanooni, Cairo, 2009, p. 324.

⁷² *Ibid.*, p. 325.

⁷³ Mohamed Bahi Abu Younis, *Threatening Fine as a Means of Forcing the Administration to Implement Administrative Rulings*, University Publishing House, Alexandria, 2001, p. 84.

decisions and judgements⁷⁴.

In Iraq, based on the provisions of Article (VII / II / i) of the State Council Law No. 65 of 1979, as amended, "... The court's uncontested decision and the decision of the General Assembly of the State Shura Council issued as a result of the appeal shall be final and binding, which obliges the administration to restore the situation to what it was, as if the annulled decision had not been issued, but forced execution against the administration faces obstacles because what is established in the principles of public law and judicial jurisprudence, including Iraq, is that public law persons are not subject to methods of forced execution⁷⁵

Conclusions:

1. The ruling on the annulment of the administrative decision shall result in the invalidity of ancillary decisions, whether organizational decisions or individual decisions, and therefore the administration shall be obliged to withdraw them, even if these decisions are not challenged within the prescribed dates. In order to give effect to the retroactive effect of the annulment ruling, it is necessary that these decisions be stripped of their legal basis and *raison d'être*. Thus, there is no place to exclude the idea of the absence of individual decisions issued in implementation of the canceled regulatory decision to protect acquired rights, otherwise this would be a waste of the principle of legality.
2. If the annulment judgment is sufficient in itself to achieve its legal effect before the judicial authorities. The implementation of this provision raises many difficulties, as it requires the administration to issue one or more administrative decisions retroactively to restore the situation to what it was before the repealed decision was issued. This is to remove the legal and material effects of the resolution and to destroy the legal acts that were issued on its basis.
3. The phenomenon of the administration's failure to implement the annulment rulings in its various forms is a serious phenomenon that needs to find effective means and methods to ensure that it is addressed, especially since the administrative judge does not have to replace the administration in implementing the judgment, or issuing orders to it to take decisions that rearrange the legality.
4. Failure to execute the judgment in its various forms constitutes a violation of the *res judicata* that allows it to be challenged on the grounds of annulment as a kind of violation of the law, or for abuse of power.

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⁷⁴ Muhammad Bahi Abu Yunus, *op. cit.*, p. 85.

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