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The Administration's Failure to Apply Laws and Implement Orders "Causes and Remedies" Article 36 of the Federal Budget Law No. 9 Of 2018 As A Model

By

Saad Aziz Taher
University of Thi Qar, College Of Engineering, Legal Affairs Section, IRAQ.
Email: Saadazeez97@utq.edu.iq

Abstract

The duty of the administration and its first concern is to implement the decisions and orders issued to it by its supreme references. It cannot invoke flimsy and unconvincing reasons, including the lack of clarity of the text and its mistake interpretation of some texts or the existence of priorities in its work, the prevention of aggression or damage to the state threatening it with chaos, crime and disorder. Security, the interests of individuals are no less important than what was mentioned, even if in all cases; the balance of eliminating the enemies of the state, crime and the superiority of the country's interest, outweighs the narrow interests of individuals.

Keywords: laws; administration's failure; Causes and Remedies

Introduction

No doubt, the legal actions and disposals of the administration included within the name of administrative work, which naturally provides great services at the general level represented before the general authority. The facilities affairs are managed by a manner consistent with the tasks and responsibilities assigned to perform them according to the powers granted whereof. They shall not to exceed them otherwise the administration is accused by using power. Its decisions become tainted with the defect of deviation from the objective for which it was established.

The administration also provides its services at the special level represented by the special interests of citizens and individuals to ensure that they are achieved in a way that satisfies those requesting these services, even at a minimum level.

The law in every society is the main pillar and its protective wall, works hard to maintain the social fabric and strikes with an iron hand for anyone who begs himself to offend this entity “society” and try to undermine its security and system. Security, system and tranquility are among the most important elements and priorities of every political system which aspires to elevate society to the highest levels of security, tranquility and justice among its members through these elements.

It is free from crime and chaos that result from the absence of law and its arms represented by the judiciary and courts in all its forms, whose rulings are reassured by the litigants to its provisions therefore the applying law is objective which it makes at the highest level to all objectives.

As a result of the overlapping of this work carried out by the administration and the problems and intersections that it causes, it sometimes refrains from implementing laws,

decisions, orders and instructions of a peremptory nature in many cases, which may lead to many big problems for which the citizen or the individual pays.

Perhaps, through this research, we enlighten on a subject of great importance to which many distinguished professors have preceded us and our efforts is deemed as a point in the sea in their science so that we asked Almighty Allah the success in what they mentioned whereof.

Research importance

The importance of this Subject is manifested in the search for the real reasons for the departments' abstention in all its forms from applying the laws in force and implementing the laws issued by the higher references, leads to any refrain related to the administration for disrupting the public interests, not to mention the damages to those with special interests from employees and citizens affected by this refrain.

Research Methodology

In our research, we followed the analytical approach based upon analyzing the legal clauses that departments shall implement and the reason for their prevention to implement laws and orders.

As for the difficulties that the researcher faced, it is the difficulty of finding references regarding the research that reinforce what we desire in this research, in addition to the political, social and economic complications that the country is going through that have misled the Iraqi reality.

Search problem

What are the reasons that make the administrations to refrain and non-compliance for applying the legal laws and implementing the orders, especially Article No.: 36 of the Federal Budget Law No. 9 of 2018 and what are the treatments that compel them to implement what stipulated in the clauses of the law without disrupting, delaying or impossibility with unjustified pretexts, as This does not allow to the executive management position for protesting against the law under various pretexts, including the ambiguity of the law and the lack of instructions explaining its clauses...etc.

The penalties shall be enforced it in the case that it refused, deviated from the objectives to be achieved and the authority has jurisdiction in cases arising from this dispute and separating thereon.

The research was divided into an introduction and two sections. In the first section, we dealt with the emergence of administrative law in Iraq, the definition of management, the nature of administrative work and decision. The deviation of management is to achieve the objectives for which it was established whereof.

As for the second subject, we dealt with the reasons for the administration's refusal to apply and implement the laws and orders, especially Article 36 of the Federal Budget Law for the year No. 9 of 2018, The amendments that urge the administration to abide by orders and not rebel against them and the authority that has jurisdiction to adjudicate such disputes. Finally, the penalties that administrations are subjected whereof in case that she insists on not carrying out the issued orders.

Finally, we reached the conclusion and the results that led to the knowledge of the reasons for the management's failure and the necessary amendments whereof.

Preamble

- The first subject: the inception of administrative law.
- The first requirement: the inception of administrative law in Iraq
- The second requirement: standards and foundations of administrative law
- The third requirement: the management's deviation to achieve the objectives for which it was established whereof.
- The second subject: the reasons for the administration's refusal to apply and implement laws and orders, especially Article No.: 36 of Law 9 of 2018, the amendemets that urge the administration to abide by orders and not rebel against them, the judicial authority with jurisdiction to separate such disputes. Finally, the penalties of which administrations face if they insist on not carrying out orders outgoing.
- The first requirement: the reasons for the administration's refusal to implement and apply laws and orders, especially Article 36.
- The second requirement: the amendments that urge the administration to abide by orders and not rebel against them.
- The third requirement: the judicial authority that has jurisdiction to adjudicate such disputes. Finally, the penalties that administrations face if they insist on not carrying out the issued orders.
- The third requirement: the judicial authority has jurisdiction to adjudicate such disputes. Finally, the penalties that administrations face if they insist on not carrying out the issued orders.

The first subject / the emergence of administrative law

Administrative law has been found in legal systems with a dual direction in the judiciary and the origin of its existence is to settle disputes that arise among management and individuals, where administrative law is defined as "a set of legal rules that regulate the administrative apparatus, whether in terms of building its structure or in terms of its activity and performance his job (Shiha,1996, P,19). those legal rules mean to clarify the administrative organization on the one hand; It governs the activity of this organization on the other hand and on the other hand, it is related to part of its rules for organizing judicial control over the activity of that the administrative organization of the state (disputes arising from the application of laws).

To understand and determine the management standards, which can be classified into the following:

First: The material criterion is concerned with knowing the most important activities and business that the government undertakes in all its branches and the government apparatus's endeavor is to provide the needs of the people and the desires of the persons.

Second: The organic criterion is concerned with identifying the authorities that are responsible for this activity and includes the administrative authority starting from the president of state and the executive entity working with him from ministers, their agents, general managers and their assistants to the youngest employee within the administrative structure of this entity.

From the previous definition, we conclude that in every country in the world under the name of the modern state and its constitutional, legislative and oversight capabilities, many

legal clauses are issued that stipulate the composition and competence of the administrative authorities and the knowledge of the best means to coordinate with each other in order to carry out the tasks entrusted whereof.

The first requirement / the emergence of administrative law and its characteristics

France is rightfully considered the cradle of the independent administrative judiciary, which is distinct from the ordinary judiciary by virtue of its specialization in disputes

of the general department, in which the emergence of administrative law dates back to the beginning of the French people's revolution against injustice and tyranny in 1789. This prompted its leaders to search for real reforms in all institutions of the modern state, but the revolutionaries feared that the judiciary authority would stand in the face of the desired reforms. If their pretext were revolves around the possibility of this authority interfering in the work and tasks of the administration and putting obstacles in order to disable them. In light of this situation, the revolution took its bold decision to deprive the courts of monitoring the work of the administration despite the revolution being based on a lack of understanding of the rule of separation of powers.

This principle states, while the administration is prohibited from interfering in the work of the judiciary or exercising judicial jurisdiction within the jurisdiction of the courts, the courts, in turn, are prohibited from interfering in the work of the administration meaning that these actions shall be supervised". (Al-Jarf, 1970, p. 108)

Features of Administrative Law

Administrative law is characterized by its independent tendency from the special law with its distinct principles, inspired by its rules from the repercussions of administrative conditions and what solutions must be presented to urgent problems in administrative work, where administrative law is always flexible and responsive to the development of political, social and economic systems, hence the distinction of administrative law from the rest of the branches. Other laws and those features are unique to it so it can be limited to the following: -

1- His modern upbringing

Administrative law first appeared in France and the credit for the emergence of this law is due to the attempt of the French revolutionaries to find an appropriate interpretation of an important principle, namely the separation of powers and giving it a different understanding of what was known before the revolution due to the social and political conditions that occurred at the time, as the interpretation of the leaders of the revolution of the concept of the mentioned principle differed. The above is circulated by other countries that have worked on it, such as the United States and Britain.

In accordance with what was interpreted for this principle, the cases were considered by the judiciary in everything related to the administration were removed and the administration was given the right to settle the disputes to which it was a party, except that the French State Council was established, which in turn took over the settlement of disputes related to the administration, and from it came the opinion that The emergence of administrative law was not for philosophical reasons in itself or for applying of determined rules, but rather the whole matter is due to purely historical reasons. This law in its current form did not appear to be completely independent from the rest of the other laws until the beginning of the 16th century. Even, the basic principles and assumptions were specific whereof, were not mature

after the turn of the 20th century.

Second, judicial law is characterized as follows

The civil and criminal judiciary is a judiciary in which the codified legal rules laid down in the form of rules are applied within a written framework. The civil or criminal judge may not rule without referring to these rules, while the administrative law is an improvisational law in which the judge can rule according to his diligence, knowledge, knowledge and possession of a huge amount from the legal culture in the administrative field. the "judge" has to harness all these advantages in deriving judicial rulings in order to resolve administrative disputes arising from legal actions and actions

issued by the administration as a general authority. This necessarily calls for the administrative judge to be able to create appropriate solutions for any an emerging dispute, by returning to what was previously ruled. If the disputes are similar to what are called judicial precedents or through jurisprudence based upon strong evidence and proof cannot be refuted or weakened.

Third / Unwritten Law

The issue of setting the legal rules for administrative law and limiting them to written templates is of the utmost difficulty, as this law is developed and its rules gradually increased until it became the current situation. It cannot be putted the administrative law within a written framework due to its being a renewable law and responding to emergency and changing situations in the work of the administration, which requires that this law interact with the changes that occur and the developments that occur whereof.

Some legal scholars promised the necessity of formulating legal rules and putting them in a written form for ease of reference by the administrative judge to them. On the other hand, this opinion opens the way for legal amendments to keep pace with the development taking place in all areas of life and to eliminate the concept of legal stalemate. However, not codifying administrative law does not mean the absence of legislation related to the administration that organizes its work and defines its activities, as everything that is issued by the judiciary, which is considered "the haven that individuals resort to in order to impose the rule of law and its provisions". (Dr Khalil, 1982, p. 5)

Fourth / The law is flexible and able on the development

The fact of the administrative law was not putted within written and codified rules, gave a wide scope for some jurists to consider it a flexible and easy law capable of developing and keeping pace with the rapid changes that characterize the administrative work, as its rules are considered to be closely related to every event in the state in which the administration is one of its parties. Despite the abovementioned advantages in favor of the law; however, these advantages may be an influential factor in undermining the society's confidence and appreciation for this law, because the stability and consistency of transactions is an objective that everyone seeks to achieve justice among them.

The establishment of the administrative judiciary in Iraq

The emergence of the administrative judiciary in Iraq was very late compared to other countries such as Lebanon and Egypt, where the first administrative judiciary law was issued

in 1946. If some jurisprudence believes that the establishment of the State Consultative Council came to organize the mechanism and method of litigation before the council, making Lebanon one of the first Arab countries in the field of establishing the judiciary. The administration is influenced by the French administrative judiciary.

The first Resolution No. 2668 dated on 6 September 1924 provided for the establishment of the State.

Consultative Council and the second Resolution No. 29 dated on 9 February 1925. The procedures and principles of litigation are specified before that council thus Lebanon became the first Arab country to adopt a dual-judicial system or the dual-judicial method.(Saliba2017, p. 94.)

The Egyptian legislator also followed it in the same way in order to follow the example of the Lebanese legislator, as Egypt is considered one of the first countries in the Arab world to enter this field in 1946, where the ordinary judiciary was the one who looked into disputes and settled them except that the State Consultative Council was established in Egypt in The abovementioned year, to later specialize in the settlement of administrative disputes.

Whereas some jurisprudence believes that the emergence of the administrative Judgment in Egypt, despite being affected by the French laws, which were the cornerstone in the development of many laws of paramount importance to the administration, which closely approaches to the privacy of the Egyptian society and its life and everything related to it. But he worked hard to put this law by using the ideas of the French revolution.

Law No. 112 of 1946 was issued according to which the State Council was established and the Egyptian State Council has evolved since its establishment in terms of the scope of the competencies it has been entrusted with. The General Assembly considers all administrative disputes, whether they are related to the cancellation of administrative decisions or compensation for damages arising from these decisions or otherwise" (The Egyptian State Consultative Council 1972)

As for Iraq, the administrative judicial system was defined by the issuance of Law No. 106 of 1989, Law of the Second Amendment to State Consultative Council Law No. 60 of 1979. For the first time in Iraq, an independent administrative judiciary was established alongside the ordinary judiciary and Iraq became one of the countries with a dual-judicial system.

But unfortunately, the country such as Iraq is much behind neighboring countries such as Egypt and Lebanon in establishing the rules of administrative law and adopting the dual system since the work had previously adopted a unified judiciary that considers and decides on all ordinary and administrative disputes alike, which generates great pressure on the judicial authorities and makes it impossible to know. all the cases heared before it, so it was necessary for the Iraqi judicial authorities to find a solution to the problems arising due to the administration's work and legal actions, and the resulting waste of rights and great injustice against the litigants towards the government, as it is the most powerful and decision-maker in it, especially since Iraq for a long time He followed a very dangerous principle that contributed to strengthen the administration and its tyranny against others, which is the principle of acts of sovereignty.

The second requirement / standards and foundations of administrative law

Section One / Standards of Administrative Law

No doubt, the absence of a positive clauses that defines the nature of administrative activities and the type of administrative decisions that are subject to the control of the administrative judiciary, thus the settlement of the disputes arising whereof. The main reason for making the jurisprudence of the French administrative judiciary to prove its competence over the nature of disputes and its powers to settle them, where several trends and theories emerged, on the basis of which the activities of the administration were subjected to the powers of the administrative judiciary, including:

A- The standard of general authority as a basis for administrative law and thus making the dispute a prerogative of the administrative judiciary.
B- The standard of general facilities as a basis for administrative law, thus making the dispute a prerogative of the administrative judiciary
C- The general interest criterion as a basis for administrative law, thus making the dispute a prerogative of the administrative judiciary.
E- The double standard (ie, general authority and facility) as a basis for administrative law and thus making the dispute the prerogative of the administrative judiciary (Shiha, 1996, p. 292) The Iraqi legislator has taken the double standard as a basis for administrative law.

Briefly, we will take these criteria with the aim of increasing within the limits permitted by the scope of the research:

First / some jurisprudence believes that the standard of general authority as a basis for administrative law has "prevailed this idea in France during the nineteenth century and considered administrative law related to this idea and based whereof. These aspects are represented in its ability to command and forbid and bind persons to its orders and preventions. Hence, it is not suitable for this activity to apply to it the rules of special law and the disputes arising from its case that should not be subject to the ordinary judiciary, but to the administrative judiciary (Badir and others, Bt, p. 58)

Accordingly, every activity carried out by the government or a legal person that can be framed by the general authority and "French jurisprudence distinguished between the work of the authority and the work of the ordinary administration (Dr. Badir and others, a previous source, p. 58)

As the issue of distinguishing among the actions of the general authority and the actions of the administration is shrouded in ambiguity, as it leads to uncomfortable and unacceptable results. It can be sorted difficultly in a place of general authority business regarding the

Works management so that this theory shall be submitted by side as it does not survive before critics which faced for whereof (Dr Al-Qaisi, , 2007, p. 15)

Second / the general appendix standard as a basis for administrative law

General appendix means "the activity that the state or other general persons undertake, directly or entrust it to others such as persons or special legal persons, but under its supervision, control and direction, in order to satisfy the needs of public interest and achieve the public interes (Dr. Badir and others, pg. 60)

Accordingly, the public interest has become attached to the general facility therefore the general appendix by its nature in terms of its organization or rules that govern its activity and behavior cannot agree with the rules and activity of the special sector whose rules were originally established to organize the relationship among ordinary people and settle their disputes. There are three factors

1-The general facility be characterized by a mission of public benefit

2-The presence of a device in charge of implementing

3-This device enjoys special privileges that contribute to carrying out its work easily and solvency

Although the general appendix standard has contributed greatly to the development of administrative law and the general facility theory has played a major role in rooting many theories and principles of administrative law, it has been criticized because of the nature of the standard itself and on the other hand because of the state's activities and intervention in several aspects, including economic ones. This criterion was criticized for not to fulfill the needs and desires of deserters. In Iraq, The general facility are only established by law or based on a law, where the government, represented by the Council of Ministers, undertakes the supervision and follow-up of the work of the ministries and entities affiliated whereof Planning and implementing the state's general policy, general plans and supervising the work of ministries and entities not associated with a minist (The Iraqi Constitution, 2005, Article 77).

Third / the public benefit criterion as a basis for administrative law

As a result of the apparent defect in fulfil the public interest and satisfying the needs of individuals and the overlap among the work of the general authority and the behavior of the administration that made it impossible to reconcile these criteria and choose the most appropriate ones, another criterion appeared, which is the criterion of "public benefit", as the mark Marcel Valin is considered the first to call for the application of this criterion, as "He rejected the idea of the general facility in his view because the general facility is only one of the means directed to serve the public benefit(Dr Shiha, 1996, p. 292(

Whereas this idea was considered more flexible and comprehensive than the general appendixes standard, however, the applying of this standard did not last long and did not escape criticism, in that the core of the state's work is related to achieving the public benefit or the public interest. Also, achieving the public benefit is not confined to the state and its administrative bodies only, as it is possible for people to contribute to achieve it through the departments and projects that are marked as being of public benefit, are subject by law to special law and are concerned whereof.

Ordinary judiciary in disputes arising from it shall be settled, for example, special law person shall be responsible to manage a general facility in order to provide services and fulfill the needs of persons.

Therefore, the theory of general power was not able to proceed permanently, so this theory is no longer a rule for administrative law and taken as a criterion herein, which led to the emergence of another criterion that we will discuss later, combining both the general authority and facility.

Fourth / the double standard (combining among the standards of the general power and

Facility): no doubt, the criticisms made at the previous standards were a major reason for not considering those standards a basis for administrative law and they defaulted to define a clearly defined standard, with which administrative law can adhere to and as a result of this confusion in choosing the appropriate standard, which leads to satisfy the needs of individuals and achieve the public interest. Both jurisprudence and the judiciary could not search for an appropriate and acceptable idea, which is to combine the criteria of general authority and facility, as a basis and base for administrative law, as a result of what the previous two criteria were exposed to and their inability to be the only basis for the law in order to define and know the jurisdiction of the administrative judiciary.

We believe that the standards of general authority and facility are difficult to implement in Iraq, given that the country is new to administrative law. There is an important issue that governs this matter, which is the system of centralization and hold the power in the center. The difficulty of developing a clear-cut approach even in decentralized administrations that have proven their failure because its ability to manage the file of service provision and satisfy the needs of persons, being emerging departments under the control of very large accumulations of the central administration, which was the main reason for the failure of this experience.

Section Two / Foundations of Administrative Law:

Whereas we discussed the most important criteria that administrative law jurists considered its basis, the criticisms leveled against these standards, we present in this section the foundations on which administrative law is based, the most important of which are as follows: - Legality

Perhaps one of the most important features of administrative law as we mentioned previously, this law is not codified, and therefore the most important role for it is for the administrative judge to devise provisions that would settle all forms among the parties to the litigation or dispute. Therefore, any jurisprudence issued by the judge must be based on articles outstanding legality that make the judge within the scope in which he can perform what his legal and moral duty.

Whereas legality means the subordination of the state with all its entities, institutions and all natural and moral persons to the authority of the law that they do not exceed the limits set by the law among the requirements of this principle is that the administration respects the provisions of the law in its actions, otherwise its actions are considered illegal and outside its framework and its decisions are subject to nullity. Based on the foregoing, we will discuss the most important sources of legitimacy: 1- Written sources

The written sources include the constitution, ordinary legislation (law) and subsidiary legislation, ie.

Systems and instructions
A- Constitution

The articles of the Constitution are among the highest legal rules and the highest rank in terms of legal evaluation, as the constitutional texts are formulated with great care. There is absolutely no room for appeal or belittling the provisions of the Constitution, which must be clear, explicit and uninterpretable and bear only one aspect. Accordingly, the constitutional authorities must The three represented by the legislative authority confined to Parliament, the executive authority represented by the government and the rest of its other organs, and the

judicial authority, which consists of all kinds of courts; To submit and abide by the provisions and articles of the Constitution, and on the contrary, its legislation, decisions and rulings are tainted by the defect of its violations of the Constitution, which leads to its revocation or cancellation. It has to be bound by the rules of the Constitution and not to contradict it in its actions and works because this exposes its actions to cancel and compensate for the damages it caused. (Al-Helou, 1995, p. 25.)

Whereas codifying the constitutional clauses and putting them in an entity that we can refer to whenever we want and when necessary is not a sacred rule that cannot be violated. On the contrary, the constitutional clause can be unwritten. This is what Britain knew in an anomaly from the rest of the world whose constitutional articles are codified and this is called "customary law".

B- The law

The most important function of the legislative authority is the enactment of laws that concern the interest of the people, who have delegated their representatives from the representatives elected by them to follow up their interests and conduct their affairs. These legislations issued by the House of Representatives are considered to be inferior to the constitutional clauses. Therefore, the jurists considered the legal clauses as one of the most important sources of legitimacy after the constitution.

The government, in its capacity as an administrative authority, must abide by and be subject to the text of the law and not violate it, or if any unconstitutional administrative act was issued by it, it must cancel it. Therefore, the parliament in Iraq is the only and often competent authority to legislate laws. This authority takes into account that its legislation is in accordance with the constitutional texts and does not contradict them.

C- Instructions and Regulations

In order to manage the affairs of the administration and provide services in all its forms and fulfil the

needs of people, the administrative authority works to issue a number of decisions of an organizational nature, the purpose of which is to simplify the procedures and facilitate the work of the staff.

Based upon the above-mentioned, the instructions can be divided into the following:

First / Executive Instructions

These are issued by the administration in its capacity as a general authority and works on interpreting the law. For example, but not limited to, the instructions issued by the Ministry of Finance to interpret the Federal Budget Law every year. These instructions are binding on all departments and they must be bound by them.

Second / Regulatory Instructions***:*** They are also called independent instructions and they are regulations that exceed implementing the laws to organize some matters that are not covered by the law so their function is close to legislation.

Third / Emergency Instructions: These are the instructions issued by the government due to the absence of the legislative authority and the failure to perform its role entrusted to it

for many reasons, including but not limited to money, its members enjoying the legislative recess or the dissolution of the House of Representatives. The executive authority takes these instructions due to emergency circumstances that the country have be occurred. Natural quarrels and the declaration of war or the outbreak of an epidemic, which calls for urgent and quick decisions to be taken in order to confront them. The government shall present those decisions to the board of Representatives when it convenes and the excuses for his absence are removed as soon as possible. The exceptional circumstances disappear in order to approve them and gain their legitimacy.

Fourth / Administrative Control Regulation: the administration shall carry out the tasks entrusted to it, it shall take a package of decisions to help it maintain public system, which is particularly important as it closely affects the life, security, health and tranquility of society. Its desire compels persons to respect the law and not to breach its rules, which exposes them to punishment in case of violation. Among these regulations, for example, is the imposition of financial fines for violators and trespassers on the streets or the failure to obtain the fundamental approvals for building residential houses (a building permit) and breaching the conditions to practice the health professions.

Fifth / Delegation Regulation: It is issued by the government as the general authority in the state and is delegated by the House of Representatives as it is the legislative authority in specific issues that do not exceed the scope of legislation. Delegation is often for reasons related to Parliament and its decisions are characterized by the force of law.

2-Unwritten sources

Unwritten sources of legality can be subdivided and limited to the general principles of law, jurisprudence and custom.

First/ the general principles of law

The general principles of law, it means “the principles decided by the administrative judiciary and which do not find their source in the legal clauses of all forms (Al-Qaisi, a previous source, p. 12)

The general principles of law shall be included in written legal clauses, as they may not be stipulated herein. It is the responsibility of the judge to extract them from the origin of the legal nature, social and economic values, religious beliefs and cultural principles that the community pursues and believes in.

Despite in doubt arising from the enjoyment of these principles by the force of law and what constitutes a legal basis that can be relied upon the judiciary and referred to when necessary. The legal jurists have been assured that these principles can compel the administration to correct its decisions and cancel them in the case that they include a violation of the rights of others, It requires a compensation for the damage caused by its decisions to the persons.

From the foregoing, the administrative judiciary cannot find and create these principles. Rather, its role lies in demonstrating these principles and ensuring their existence within the nation’s ethics and principles. It is obligatory to respect and abide by them on the part of the administration as they are among the binding rules and everyone must respect and apply them.

Secondly, the judiciary

There is no doubt that one of the main duties of the judge is to put the law into practice and to resolve the disputes that are presented to him. In the absence of a provision in the law.

Accordingly, the jurists are no longer the source of the judiciary from the sources that can be consulted, because of its role that includes interpreting the legislative text and applying it in the real field and working to explain the ambiguity that surrounds it. on him.

According to some jurisprudence, "there are countries such as Iraq, Egypt, France and countries that are similar in their legal systems, where the judiciary - according to the original - is not considered an official source of law, but rather an explanatory source only (Dr Badir, a source, p51)

However, the nature of the legal rules of the special administrative law, which imposed the non-codification of its rules, the reasons for its establishment and the broad coverage of its activities, which led as a result to the administrative judge to go beyond the role of his colleague the ordinary judge due to the ruling circumstance and the evolution of life in all its details, which resulted in keeping pace with the situation in the work of the administration And this necessarily leads to the deduction of the provisions and principles contained in the administrative law, to become an official source for it.

Its provisions are considered distinct in that they are not subordinate to other laws such as civil law. The administrative judge must conclude that there is no text for the existing dispute, and here his role comes in order to establish the appropriate rule for settling the dispute, without restriction imposed on him by other laws.

On the other hand, the authoritativeness of judicial rulings is relative, and its effect extends to the litigants only and the matter under consideration by the ordinary judiciary, without that extending to other parties.

In summary, the administrative judge's ability to derive and establish a ruling is wide in this law, and through this it can be considered an important source of legitimacy.

Third, administrative custom

There is a unanimity of jurists on defining administrative custom as “what is being done by the administration to treat a specific case on a steady basis, and with one behavior so that this behavior becomes a binding rule that it cannot deviate from as long as it does not modify this behavior, or cancel it permanently, or by issuing it written text contrary to this behavior” (Salibi, p. 62)

From the definition provided, we see that custom in management is what it acquired of skills, attitudes and experiences that gave the administration the right to set controls that regulate its work and performance. This is the adaptation of individuals to their legal conditions with the inevitability of imposing punishment on violators, which generated a psychological feeling among the employee of the necessity of these controls, as well as generated a state of realism in the issue of inflicting punishment, habituation and acceptance of anyone who commits a functional mistake, and this led with the passage of time that these customary rules settled into binding rules Just like the other rules.

The existence of custom in the administration necessitates that it does not contradict a

written legal text, and therefore it cannot be said that the administration violates a legal text in taking a decision and invoking the existence of custom and invoking it.

Administrative custom is a source of legal rules in the administrative field, but it may not be resorted to unless the administrative judge does not find in the texts of laws and regulations what can be applied to resolve the conflict, and it can be said that the role of administrative custom is less important in the field of administrative law than in the field of private law. Considering that its formation requires a long period of stability and stability, while the provisions of administrative law are constantly evolving and changing.

From the foregoing, we see that the written and unwritten sources have given enough space for legitimacy to exercise its activities freely, but this freedom was not absolute. Some exceptions to legality may make the administration in an unenviable position. The most important of these exceptions are:

First / Discretion of Management

To begin with, we must say that the law gave the administration the discretionary power, with which it can exercise some legal actions, and this is the general rule. The exception to it is to make the administration's authority restricted in making its decisions, by explicitly stating the restrictions imposed on the administration, and determining the decision This falls under the term of the powers granted to the administration, meaning that the administration is not free to issue its decisions without a restriction restricting it.

From the foregoing, the discretionary authority of the administration is defined as "that the administration in regard to certain facts is free to take a decision and not take it, or by choosing the decision it finds appropriate, so the administration has the right to assess the facts and take its decisions based on this assessment (Al-Qaisi, p. 158)

Therefore, some jurisprudence sees that the existence of the management discretion theory "was not a result of a coincidence or as a temporary result of filling accidental gaps, but on the contrary it was an important requirement agreed upon by the scholars of jurisprudence and the judiciary (Fawzi Farhat, 2004, p. 77)

Second/ Acts of Sovereignty

The administration represented by the executive authority deliberately performs some actions that enjoy immunity from judicial oversight, whether for the control of the annulment judiciary or the compensation judiciary, and the authority exercises this behavior inside or outside the state and these actions are called - government actions - where acts of sovereignty are among the most important principles, which clash to an extent It is significant with the principle of legality or the supremacy of law in the state and its subordination to it, as we find with this concept; The state's subordination to the supervision of the judiciary is reduced by taking away its authority or competence and prohibiting the consideration of disputes related to it, and then it operates through it above all institutions, and freedoms may be violated or restricted, and it may infringe on rights and restrict actions without being subject to oversight or accountability, citing this To the existence of more important and priority interests to care and protect than all individual or group interests, and these acts are considered a problem in front of the principle of legality, especially in the field of public rights and freedoms that are exercised in the name of acts of sovereignty, as it cannot be imagined that the acts of sovereignty are free from the control of the judiciary. Under flimsy pretexts, we will come to

the most important acts that are immune to judicial oversight, knowing that the effective Iraqi constitution expressly stipulates that "it is prohibited in laws to immunize any action or administrative decision from appeal (Iraqi Constitution of 2005, Article 97)

Therefore, some of the jurists did not recognize the existence of the theory of government business and deny its existence, while others "may see that the idea of acts of sovereignty is an existing reality and the judiciary is still applying it, albeit with caution, and that the judge will clash with the administrative authorities if he subject certain actions to his control, which may lose him greatly. of his position (Dr Latif, 2001, p. 74)

From the foregoing, the actions of sovereignty or government actions can be divided into three criteria in order to be considered governmental actions and not subject to judicial oversight, including, exclusively, the criterion of political motivation, the criterion of the nature of administrative work, and the criterion of the judicial list, and there is no need to delve into this area as many studies, research and publications I dealt with it at length, not to mention the university theses and theses, which are hardly devoid of them with regard to the study of public law, specifically administrative law.

Third / physical works

Physical actions are defined as "everything that is issued by the administration without its will to bring about a specific legal effect on its performance. The administration achieves certain legal positions, or these actions may harm the rights and lives of citizens, resulting in them by filing a lawsuit before the full judiciary, as it is the means by which individuals can protect their rights and interests.) Heikal, 2007, p. 275)

And we see through these actions that the administration is responsible before the judiciary in the event that the individual suffers harm as a result of its material actions, and it is obligated to compensate for all the mistakes committed by it towards others.

In summary, legality is the origin through which all actions and actions undertaken by the administration are considered legitimate and right, provided that these actions do not violate the law or even the constitution, or else its decisions will be invalidated. The exception to legality is called, and we have discussed the most important of these exceptions.

The third requirement / deviation of the administration from achieving the goals for which it was established:

Deviation in the use of authority means "that the authority issues an administrative decision for a purpose other than what is legally prescribed for it (Dr. Al-Jarf, , pg. 436)

Where all administrative decisions, without exception, aim to achieve the public interest, and this is the rule, but there is another rule that comes as an exception and complements it, and it requires that administrative decisions aim to achieve the private interests of individuals, as the legislator gave the administration this right, but in a narrow scope. Hence, we see that the administration deviates from the goal set by the legislator, and its decision is tainted by a very serious defect, except for "deviation from authority." This defect, if revealed, makes the administration's decisions void and requires cancellation and compensation in the event that individuals suffer material and moral damage.

The decision is considered defective and perverted if the motive behind its

establishment and issuance is necessary to achieve a purpose other than the goal for which the public authority was established, and the administration's intention to issue the defective decision is not considered to serve the public interest or satisfy a need or achieve a purpose regardless of the interest that the legislator aims to achieve. And the contrast between the administration's deviation from achieving the public interest and the principle of goal allocation in which the administration is well-intentioned in issuing its decisions, it only seeks to achieve the public interest, but it uses what is available from the means available to achieve its purposes. As for Iraq, for the administrative decision to be considered null and requires cancellation, as the Fifth Amendment indicated 17 of 2013, as the legislator specified in Article (7/ Fifth and Sixth) the reasons for appealing to the court in particular, and the judge must ensure the existence of one of these reasons to rule that the defective decision be rescinded. To appeal before the court in particular, and the judge must ascertain the existence of one of these reasons in order to rule the annulment of the defective decision, given that among the reasons for appealing orders and decisions in particular are the following- :

-That the order or decision includes a breach or violation of the law, regulations, instructions or internal regulations.
-That the order or the decision was issued in violation of the rules of jurisdiction or defective in its form, in the procedures, or in its place.

- That the order or decision includes an error in the application of laws, regulations, instructions, or internal regulations, or in their interpretation, or includes abuse or abuse in the use of authority or deviation from it. What concerns us in the above is the third point, which considers the administration to have abused or abused power and deviated from the goal set by the law for it.

Therefore, the administrative decision issued by it is considered null and does not result in any legal effect or the creation of a new legal center. It is clear from the foregoing that "the defect of deviation in authority affects the administrative decision in the corner of the end or goal that the administration seeks to achieve by issuing the decision, because the administration is not free to choose its goals, but rather the law imposes on it that the public interest be the goal of all its works and activities, or the achievement of the goal that specified by the legislator in connection with a specific act" (Dr. Al-Ani, 2015, p. 287)

Summary of the first study:

There is no doubt that the administration's refusal to carry out its entrusted duties and implement the law without any deterrent faces this abstention with a strong will and strict penalties that limit the administration's rebellion against the legislator. It is very difficult to force the administration to implement the law whose benefits revolve primarily for employees and individuals, in order to improve their living conditions, especially laws directly related to their livelihood and change their job positions for the development of their self and professional capabilities. With deterrent penalties in the event the administration delays or refrains from implementing the law.

The second subject: the reasons for the administration's refusal to implement and implement laws and orders, especially Article 36 of Law 9 of 2018, and the treatments that urge the administration to abide by orders and not rebel against them, and the judicial authority with jurisdiction to settle such disputes.

There is no doubt that the main and most important work of the administration is the

application of the law issued by the legislative authority. Its materials are simple and easy.

We will discuss in the first requirement the reasons for the administration's refusal to implement the law and orders, especially Article 36. In the second requirement, we dealt with this issue by urging the administration to abide by the orders and not rebel against those disputes.

The first requirement: the reasons for the administration's refusal to implement and implement laws and orders, especially Article 36.

First branch

To begin with, we must raise a very important topic that is considered the backbone of the political, economic and social life in the state, from which it can carry out its duties towards the people and meet their multiple needs and satisfy their desires, which is the "general budget" as it is the backbone of the body of the state through achieving the achievements of its general performance. The method used by the legislature to know the efficiency of its legislative, executive and oversight bodies.

Where the concept of the general budget is called that legal document approved by the parliament of the state to monitor and estimate the necessary expenditures for the state; For the purposes of satisfying general requirements and needs, and writing down the necessary revenues to be obtained for the purposes of covering all expenses during the next period of time, which is usually estimated in only one calendar year.

Where the Council of Ministers submits the draft general budget to the House of Representatives, accompanied by the final accounts for the past year, as Article 59 / first of the effective constitution indicates that "the Council of Ministers submits the draft general budget law and the final account to the House of Representatives for approval".

We believe that the legislator did not give a specific time to approve the budget, which causes a waste of time and money and confusion in the various joints of the state and its dependence on a complex mechanism in disbursing the necessary expenditures for the conduct of state affairs, including the 1/12 ratio, which is intended to return to the sections of the previous budget and divide it into twelve months and spend on In the event of the approval of the general budget, what was spent can be deducted as an advance that can be extinguished.

We can also define it as: an annual financial plan that gives its author a clear picture of the volume of revenues and expenditures in a quantitative manner. This plan is executable by the government and its agencies. The most important purpose of the general budget is to achieve the desired objectives of the state's economic plan. The Iraqi constitution gave the right to ratify the President of the Republic within fifteen days from the date of sending it in an official letter to the presidency.

It has the right to express its observations and opinion without being obligating the government to work with it. The fact is that the Iraqi constitution did not give the presidency the right to change the clauses of the budget. The constitution in force indicated in Article 70/fourth.

In summary, the general budget is a legal document prepared by the government in which it lists the volume of revenues entering it from different sources and the volume of

expenditures in which the government meets the needs of individuals and fulfills their needs in various parts of the state. It is possible to address this economic malaise in different ways, including austerity, lending, and finding other outlets to obtain revenue.

Second branch

After this introduction, in which we briefly discussed the definition of the general budget and the most important constitutional articles that were exposed to it, we return to our basic demand, which is the reason for the administration's failure to implement the laws and orders issued to it with regard to the implementation of what is required of it.

The principle in the work of the administration is its compliance with the laws, instructions and orders issued to it by the relevant authorities. This commitment is from the nature of the basic work of the administration. Any breach in its work will expose it to the legal issue. The exception is that the administration refrain from applying the above without legal justification and this naturally leads to damage public interests, not to mention harming individuals, causing disruption of their private interests and jeopardizing their legal status due to its refusal to implement what is required of it.

First picture/ direct or explicit violation of the law

One of the important forms of the administration's failure to apply the law and its explicit violation. this violation is achieved "when the administration ignores the legal rules in whole or in part, by performing an act or an act prohibited under that rule, or by refraining from doing an act imposed by the rule, where this violation is called a positive violation Likewise. the violation can be negative, for positivity means the administration's intentional departure from the rule of law, such as its violation of a constitutional provision, for example, such as the case of the administration handing over a political refugee in violation of a constitutional provision that prohibits political refugees from it (Dr. Al-Ani, p. 270)

We understand from the above-mentioned that a direct and explicit violation of the legal rule occurs when the public authorities ignore the legal rules binding on them and issue actions and behaviors that are prohibited by virtue of these rules, and in addition to what was suggested above. The administration does not respect the implementation of a legal rule within a law issued by the highest legislative authority. this What happened when the various departments tried to refrain from implementing Article 36/Second, which stipulates that "the job title of the employee who obtained a higher or similar certificate during the service, which is compatible with the nature of his work, with the approval of his department to complete the study every two years, from the date of obtaining the certificate while retaining it." His job grade and the stage. He is in on the time of submitting the application to change his job title, as an exception to Law 103 of 2012. The provisions of this article shall apply to employees whose degrees were lowered before the entry into force of

This law does not entail any financial consequences retroactively or during 2018, provided that it is audited by the Federal Board of Financial Supervision·(Iraqi Federal Budget Law, No. 9, of 2018)

Through our reading of the text of the article, which was considered one of the new articles in the field of public employment in Iraq. It was not addressed by the laws in force, the most important of which is the amended Civil Service Law No. 24 of 1960, which the Iraqi legislator tried to include in the Federal Budget Law of 2018 and what preceded that was the

amendment of the State. Employees' Salaries Law and the public sector No. 22 in 2008, in an attempt to treat thousands of employees' cases who obtained a higher or similar certificate during service, knowing that the laws in force had enough legal shortcomings and the lack of real treatments for such cases. But what was stated in Law 103 of 2012 and what was accompanied by a great injustice to the employees segment who obtained a higher or similar certificate during service, in which it was stipulated in Paragraph 1 that "An employee who has obtained a higher certificate during service in the field of his professional competence. He exercises in his department may request a change of his job title in the light of his testimony".

We see that the legal clauses ignored many certificates that are not allocated whereof, including the employee who holds a preparatory certificate and works as a writer, for example, and obtained a higher degree, for example, a bachelor's degree in engineering. We ask here in what he can work in the field after a certificate is obtained higher than his previous certificate. This calls us to discuss here in what circumstances this law was drafted without taking into account the educational and academic variables of the employees, their specializations, and their current and future fields of work.

Paragraph 2 of the same law indicated that "the employee shall be re-housed in light of his last testimony and his salary and allowances shall be granted." Cancel this long service for him and bring him back to the first quadrant, being given a higher degree, is in itself unfair to the long service because of which he reached the present degree.

We believe that the clauses is in clear violation of what was stated in the re-hosting of the employee, and to this the Civil Service Law indicated. It stipulates that "every employee who obtained a university degree during or outside service is granted a one-year advance for the purpose of promotion, provided that this certificate is not It has been taken as a basis for determining his salary for the purposes of this law. This provision does not include those who obtained that certificate before 1/4/1960. (Civil Service Law No. 24 of 1960, paragraph 4, Article 19)

This clearly indicates that the issue of the employee obtaining a higher certificate during service and granting him another privilege, which is to grant him a one-year period, has a clear indication that the employee can benefit from the privileges of the higher certificate without having adverse effects by returning him back to cancel the long service, We spent in order to reach the degree. The occupation in which he is currently inhabited and the issue of granting the foot and raising it based upon an issue of great importance. It is a matter of not taking that certificate as a basis to determine his salary.

We believe that the legislator is fully aware that the employee's obtaining a higher certificate is in the interest of the state first, because of the development of his functional capabilities and the development of his practical mentality, even if this results in an increase in financial expenses.

As for the last part of Law 103, it completely eliminated the issue of the employee's retention of his job grade, salaries, and allowances. All of what he receives and returning him to the job grade worthy of the certificate he obtained, which led many to refrain from calculating them because the salary and allowances for the degree to which he was restored do not fulfill at all the ceiling of his living, needs and obligations. As he is accustomed to a certain lifestyle, he cannot be abandoned or waived and what accompanies the law is that he considered the soothing from the date of obtaining the certificate.

The second Case / Default in the interpretation of the law

No Doubts, the issue of the interpretation of the law rests with experienced and expert parties in the legal field. The administration cannot ignore the legal rule but rather it must work to implement it. But the difference in this case from the previous case is that it actually applies the legal rule and it has not explained in the interpretations therefore it contradicted the interpretation. What the legislator intended, as the issue of interpreting the legal rule may be intentional or with no explaining to the interpretation. The administration invokes its mistake in interpretation to the ambiguity and ambiguity of the legal rule itself, but it is possible to solve these forms of giving the correct interpretation by the administrative judge when he monitors the legality of the administration's actions therefore some jurisprudence sees the concept of error interpretation. The administration intent to expand the scope of the legal base, to accommodate other areas that are not included in its field in the first place. it may also work to add an emerging provision that is not stipulated in the law. But the administration may deliberately misinterpret the legal rule, then the defect of the shop in this case overlaps with the defect of the purpose, where the administrative decision is a legal act issued by the competent administration authority to create new legal conditions or to modify legal conditions until the issuance of the administrative decision.

Based on this, the place of the administrative decision, the legal case or the legal modified conditions, in more precise terms, it is the effect that occurs directly and immediately and is considered the essence and substance of the decision. This is what distinguishes the administrative decision as a legal law different from the material action that is always replaced by a material and realistic result. .

As for the purpose or what is called the purpose in the administrative decision; the final result that the management wants to achieve is considered the issuance of the administrative decision.

The third case / the error in applying the law to reality

The application of the legal rule is related to the inception of certain facts or in the presence of determined conditions is that must be fulfill in order for the legal rule to be applied. In the case that these conditions and facts are proven, the action issued on this basis is void.

The error may occur in the case of the decision being issued on the basis of a material reality. The facts did not occur in the first place. As a disciplinary decision is issued to dismiss one of the employees, then it becomes clear that he has not committed any disciplinary offense that requires the decision to be taken.

The mistake in the application of the law takes two forms: the first is in the case of the decision being issued without based on material facts that support it, for example, the administrative head issues a disciplinary penalty by punishing an employee without committing a mistake that authorizes the penalty. The second is in the case that the facts do not justify the administrative decision here, there are certain facts, but they are not sufficient or they did not meet the legal conditions necessary for making this decision.

Also, in order to obstruct the implementation, it follows ways and methods that lose the effect of implementation, including its resort to the House of Representatives and urges it to legislate a law, working to correct its decision, which ruled its illegality, or arguing that it is taking the necessary measures to implement the law. The desired benefit of the law is lost. The

efforts of jurisprudence monitored the percentage of laws that the administration refrained from implementing in various forms and forms.

Fourth case / political, social and economic conditions:

No doubts, the above circumstances played and still is playing an important role in applying the law or not, or even circumventing it to prevent its application or cajoling in its application under various pretexts. The government and the rebellion of the administration and the employees against the law was the main reason for the administrations' reluctance to implement the law. Therefore, the state had to put in a place of the mechanisms, in which the administration shall be not interfered in political work and not be a party to the disputes among the political parties and their struggles based upon achieving the narrow interest.

Without regard to the public interest, but the matter in Iraq differ from many countries that suffer from the same problem. The politician in the state weaken and often does not take the status of case and he is not able to force the administration to implement it in many cases, which led to the disruption of many The laws, the loss of public interests, the waste of the interest of employees and individuals, the squandering of their rights and the cutting off of their livelihoods.

The economic conditions in Iraq have also misled the political decision and affected it greatly. The limited economy and its dependence on a single source "oil" and the fluctuation of its prices in global markets, and controlling of terrorist organizations large areas in the country, an important part of which was under their control and subjected to sabotage. The theft at the hands of these groups contributed greatly to transforming the state's economic effort and allocating huge funds to fight the imminent danger that surrounded it. After the honorable religious authority sensed the danger of this fierce barbaric attack, His blessed fatwa gave a necessary amendment under a legitimate item(Saeed, 2009, p. 178)

With "sufficient struggle" *, start a new page, more painful than the previous one, which is the reconstruction of the human being first. the broken will of his will and many psychological diseases and the accompanying displacement and displacement far from his home and homeland, due to the war operations in which the security forces of all kinds tried to preserve the lives of citizens and rid them of the clutches of ISIS crime. This matter prompted the state and its administration to pay attention to a more important issue, which is preserving the state's entity and prestige and the implementation of the law is neglected in many aspects, as the state's stability and future are un guaranteed and it has no time to consider matters less important from the point of view of the authority.

The deteriorating political and economic conditions in the country led to many social problems, in which the Iraqi citizen, with all its addresses, became a dumping ground for the problems of the state, which bears the largest share in its existence. The problems of electricity, the lack of equipment, the deterioration of services in all its forms, the high level of poverty, problems in the sectors of agriculture, health and education, scarcity of jobs and queues of the unemployed People with certificates, a high rate of ignorance and the emergence of currents that disintegrated in the society as much as they had an interest in it and a respected position in it, namely the clan and the inception of mafias in the areas of murder, organized crime, the sale of human organs, drug trade, slave trade, family disintegration and the increase in suicide cases that have become apparent in Iraqi society. Although society did not know this phenomenon before the fall of the regime in 2003, the state has no choice but to stand helpless and watch the citizen's conditions that are getting worse day after day. There is no light at the end of the

tunnel, with problems greater than what exists now. This is what led the citizen to Demonstration, rebellion and disobedience to demand his usurped rights, which prompted some of those with weak souls to tamper with public property special and private matters without the state having a role in resolving the above-mentioned crises.

To sum up, from what was mentioned of the forms of the administration's refusal, they are in fact a small part of many other forms that we do not have the time to mention. Serve the public and special interest alike.

The second requirement / amendments that urge the administration to abide by orders and not rebel against them:

We previously mentioned that the administration as an organic body may sometimes refuse to implement the law on many pretexts in order to deter the administration. Interest must be exerted on it to make it comply with the law. Therefore, the administration shall implement it according to the above-mentioned, but it often ignores this obligation and its indifferent authority. It refrains from implementing it, whether explicitly or by deception and delay in it. Just as the administration's failure to implement the law and decisions, there are two types of reasons on the other hand: "The first type is the unreal reasons, which are: the public interest or the proper functioning of the public facility, security and public order, and material and legal difficulties.

*Shiite jurisprudence adopts two types of struggle fatwas according to its seriousness and the ability to repel aggression. Leaving it has grave social and legal consequences in the case of abandoning whereof. They are both general and sufficient struggle. There should be no treaty among Muslims and their enemies and it be under the leadership of the just imam.

The second type of these reasons is called "the real reasons or the hidden motives, and we mention the regional, political, bureaucratic and personal reasons.(1) "

However, these reasons never justify, the administrative authority's failure to implement decisions and judicial rulings, thus disrupting the interests of bodies, institutions and individuals, subsequently causing definite harm to them for non-implementation, citing pretexts and reasons such as compromising the public interest, security and tranquility.

Before delving into this subject, we must first give a definition of the administrative decision issued by the administrative authority, which is the focus of administrative work and its important pillar.

Subsection One/ Definition of Administrative Decision

Some jurisprudence believes that the administrative decision is defined as a legal act issued by the administration as it is a public authority on its part only. It has legal implications in terms of rights and obligations.

Dr. Mohieddin al-Qaisi defined it in the same context, using the same meanings and premises for the administrative decision, as defined by Dr. Amin Atef Saliba, "It is a legal act issued by the administration with its public authority, creating a new legal center or affecting a previous legal center, which means that the administration does not take The prior approval of those affected by this decision, as it is the only concern concerned with achieving the public interest. (Saliba, p. 148)

Accordingly, setting this definition has become a duty placed on the shoulders of the judiciary and jurisprudence. the extent of the importance of the administrative decision shows us, its impact and the consequences of its issuance from the above-mentioned, we note that there is a consensus among jurists of administrative law that the decisions issued by the administration are in fact an expression of its desire and unilateral will to carry out a legal act with a legal effect.

As for the elements of the administrative decision, they are: it was issued by the administrative authority and unilaterally on its part, creating a new or influential legal position in a previous legal position.

Subsection Two: Methods of pressure on the administration to implement and implement the law:

Undoubtedly, the administration's negative attitude towards the provisions of the law finds its important basis in the absence of methods that require the administration to abide by the implementation of the law, or else it will be exposed to the issue and punishment, so it is not possible to use the normal methods of implementation in confronting it, as there are no serious means of implementation in the law that can be used against it or its money. This is because the financial disclosure of public legal persons is not considered a general guarantee for their creditors and public funds are not subject to attachment.

The judge shall not be entitled to issue orders to the administration to take situations that comply with the requirements of the application of the law and he cannot impose threatening fines on them in support of these orders.

Also, the administration's failure to implement the decisions and laws of the court and its refusal to do so, offends the prestige and prestige of the judiciary and undermines trust among the litigants and doubts the ability of the administrative judiciary to perform the tasks assigned to it, which was originally found to establish the right and establish justice in society to solve their problems by confronting the state represented by the administrative power.

In view of the administration's refusal to implement the legal provisions, the judiciary did not stand idly by in light of the administration's ignoring of its obligations towards others. Rather, it took a number of measures and sanctions to ensure that the administration pushes the administration to implement these provisions, including the threatening fine, as stipulated in the Egyptian law or what is called the coercive fine in Lebanese law. The content of this procedure is to compel the administration to carry out its obligations towards third parties who have been harmed as a result of the administration's intransigence and its failure to carry out the duties entrusted to it and its failure to implement the judgments issued by the judiciary.

Based on the foregoing, we will discuss the most important laws, which dealt with punishing the administration in the case of its refusal to implement the law in Iraq, Lebanon and Egypt:

1-Iraqi law

Although the Iraqi legislator did not name the penalty, as did both the Lebanese and Egyptian legislators, he continue with his counterparts in imposing the penalty on the administration that refrained from implementing judgments and decisions thus the legislator guarantees are gave to protect human rights and freedoms.

This is the view of the State Consultative Council Law No. 65 of 1979 in force by saying, “It is considered in the judgment of decisions and orders that may be challenged, the refusal or abstinence of the employee or bodies in the state departments and the socialist sector to take a decision of orders that they should have taken legally Article 7/six

In summary, the legislator considered the responsible employee who refrained from implementing the law and the decisions issued by the legislative and supervisory authorities, as a crime that requires penal punishment. This is what was stipulated in the Iraqi Penal Code, which mentioned that the employee or assigned to a public service be punished with imprisonment, a fine, or one of the two penalties.

Whereas the text indicated if he "refrains from executing a judgment or order issued by a court or any competent public authority after eight days have elapsed from being formally warned to implement, whenever the execution of the judgment or order is within his jurisdiction (Iraqi Penal Code ,1969, article 329)

We believe that this penalty has not been implemented in many cases. The legal article has been stuffed into the law through implementing it easily and without complications and unacceptable excuses.

Therefore, it is necessary for the legislator to resort to new legislation from laws; it includes a rewarding and strict punishment for anyone who tempts himself, "the administration and employees", to try to break up and dilute the laws directly related to employees and their livelihood, including, for example, but not limited to:

A. Exempting the administrations that are reluctant to apply or implement the law.
B. Imposing appropriate compensations for employees whose rights have been violated, to obtain their funds from the departments and those directly responsible for non-application of the law.
C. Setting a specific time limit for implementing the law and not leaving the matter without a specific time.
D. The subordination of the departments work and the extent of their response to the law through supervisory bodies whose first task is to follow up on the implementation of laws.

In issuing the law, the legislator must take into account the ease of its articles, not ambiguity in its content, choose clear words that do not accept interpretation and explain each other.

2- Lebanese law

We note that the Lebanese law has tightened the issue of forcing the administrative authority to implement decisions and legal provisions and imposing penalties that effectively contribute to their implementation, despite the fact that the administrative authority in many cases circumvents its implementation, because decision-makers enjoy a strong influence that extends to the highest levels in light of Protecting the state and some influential people in the service of their own interests, political parties, or religious and sectarian sect.

Lebanon has recently known a punitive principle that is more respectful compared to the countries of the region in an attempt to compel the administration to implement its obligations towards others and apply the law, as it adopted the principle of coercive fines “The coercive fine was not approved in the administrative law before 1993, where the legislator

amended Article 93. From the system of the State Consultative Council, according to Law No. 259/93 dated October 6, 1993, which introduced a coercive fine in the administrative judiciary(Brigadier General Nasrallah, 2001, p. 38)

The coercive fine was defined as "an accessory financial penalty that is generally determined for each day of delay, meaning that the judge obliges the debtor to implement his obligation in kind within a certain period. If he delays in implementation, he shall pay a threatening fine (according to the Egyptian legislator) for this delay a certain amount of money. For every day, week, month, or any other unit of time, or for every time he performs an act or method that breaches his commitment and then the judge issues it with the aim of ensuring the implementation of his judgment or ensuring the implementation of any of the investigation procedures (Safa Ziada, op. cit., p. 198)

We find that the text gave the administration the right to impose a coercive punishment whenever it was necessary to compel the debtor to perform his legal and financial obligations towards the administration. It can be bypassed, or delayed fines will be imposed on the violator.

We believe that the legislator has obligated the administration to implement the decisions and laws issued by it, and to abide by the legal conditions specified by these provisions, obliging the legal personality in the common law to be implemented within a reasonable period, but the legislator did not specify this exact period. We believe that the legislator should specify this period so that the administration does not take an excuse to flatter and gain time. The legislator referred to the State Council an estimate of the value of the fine and it remains in effect until the implementation of the

Decision. It obligates the employee who uses his authority for non-noble purposes or uses his influence for illegal purposes with the aim of impeding or delaying the implementation judicial law provided that the Audit Bureau fines him no less than 3 months' salary and no more than 6 months' salary.

3- Egyptian law

As for the Egyptian legislator, he put the threatening fine as a means of stress on the administration that refrained from implementing decisions and laws in order to implement whereof.

From the foregoing, we see that the ordinary judiciary decides to impose punishment in the disputes among individuals, as well as the disputes in which the administration is a party in order to compel it to implement the decisions and judgments issued against it and the decisions and rulings issued by the ordinary judiciary, authoritative on the parties to the dispute without going beyond that to other parties. However, the position of the ordinary judiciary is completely different from the administrative judiciary.

"The ordinary judge is considered an innovator of the idea of a threatening fine even before it is legally stipulated, whether by the Egyptian legislator in Article 213-214 of the Civil Code or by the French legislator by Law 5/7/1972 regarding the establishment of an enforcement judge(Ziadeh, earlier source, p. 198)

However, the Egyptian legislator was clearer in setting a date for the payment of the fine in the event the administration refrained from implementing it. "The request for a threatening fine is bound by a determined date and this is considered part of the public order

therefore it is not permissible to submit a request for a fine after 3 months from the day the decision was announced by administrative courts of cassation. As for the State Council, a request for a fine may not be submitted until 6 months have passed from its announcement (Dr. Ziadeh, earlier source, p. 211)

The third requirement: the judicial authority has jurisdiction to adjudicate such disputes and finally the penalties are that administrations face if they insist on not carrying out the issued orders.

Judicial oversight is the real guarantee of the rights of individuals especially employees among them and accordingly. They resort to an independent and impartial body that enjoys actual immunities and the ability to cancel, amend or compensate employees who were harmed as a result of the actions taken by the administration in violation of the established legal rules. The administration shall comply with the implementation of judicial rulings. Issued by any judicial authority, whether those rulings were in favor of individuals or for them, but the practical reality has proven beyond any doubt that there is a clear infringement on the judicial authority by the administration or the executive authority. Against it, therefore, the constitutions of various countries try to emphasize a lofty and important principle. The constitution includes in its articles the necessity of the independence of the judiciary and granting it guarantees that guarantee the judiciary's performance of its function without stress or influence from any other constitutional authority, out of respect for the principle of separation of powers.

From this introduction, we will discuss the two parts of the judiciary, which are the administrative and ordinary judiciary who has the absolute ability to consider the disputes that arise as a result of the application of the law or not. Effectiveness and impact of guarantees for public rights.

The authority of the judgments varies from one judicial authority to another and we will see which of the two parties has the right to issue judgments and decisions that would compel the administration to implement and apply the law.

Section one: the ordinary judiciary

Judiciary language: "It is mentioned that the judiciary is taken from judged, Judge, Counsel and case and the judiciary is intended to give the judgment, dismiss or perform. The judiciary is a work related to the judge." Judgment idiomatically: showing the Sharia ruling in the incident who must sign it (Arabic Language Academy, p. 743)

Some countries have taken two steps to ensure judicial oversight of administrative actions:

First / the one "unified" judiciary

It is also called the ordinary judiciary (or judicial as it is called in some countries such as Lebanon) and its function is to assume the responsibility of judicial control over the work carried out by the administration. On the authority issuing the administrative work, the cause of the dispute, which is characterized by being within the scope of the authority, is called for this type of control by the single or unified judicial system.

In spite of this, he criticized this system for many reasons, including that it ends the independence of the administration in directing orders to it, which hinders the conduct of its

work. This is what allowed the administration to issue legislations that in turn prevent appeals against its decision. The society is the employees and most importantly, this system is described as determining the personal responsibility of the employees. This unfortunately leads to their fear of performing their jobs as required of them, in order to avoid asking them and accusing them of negligence. Compensate them appropriately for the financially negligent employee's inability.

Second/ Double Elimination

This means that there are two judicial bodies by in depending of each other, with which it is not possible to overlap except in very narrow circumstances, since each body is competent to consider a specific type of case in which the other party cannot present the matter to it in terms of the exclusive jurisdiction of each party. In terms of persons, the administrative judiciary only considers cases in which the state or the administration, with all its names, is a party to the matter and has special courts in which they judge, decide and determine on the disputes presented to it.

We are not able to mention that there are Arab countries and have adopted the dual judiciary system thus the ordinary and administrative courts are separated because this separation has a positive impact on the speedy resolution of disputes in the cases before the judge, as well as the exclusive jurisdiction of the two jurisdictions over cases that include within his jurisdiction and neither of them may decide on The topics presented to the other and from those countries (Egypt, Syria, Iraq, Lebanon, Tunisia, Jordan, Algeria and Al-Merb).

Third / Administrative Judiciary

The majority of administrative law jurists agreed that “France is the first home for the inception of administrative law (Dr Shiha, 1996, p.56) being the first country in the field of administrative justice that has established for the administration its own rules different from the clauses of special law. As a result, courts have been allocated to it that deal with the disputes of an administrative nature and the reason is in which the leaders of the French Revolution at the time adopted a very important legal principle in their view and the separation of constitutional powers. This is what made them to insist on the idea of the existence of two authorities, the administrative authority and the judicial authority, each of which specializes in a certain aspect of issues. The reason for this is due to the revolutionaries’ fear of returning the ordinary judiciary to the same method of considering all kinds of cases, including disputes arising from the work of the administration therefore they stood firmly towards separating the two courts and making each of them consider only the subjects that are within its competence.

Therefore, the administrative judiciary provides the greatest amount of guarantees that guarantee their independence and confidence. The ideal system protects the rights and freedoms and taking into account the requirements of the public interest. This is what we call for and urge Arab and Islamic countries to work in order to develop their judicial system so that a competent judicial authority is responsible for adjudicating administrative disputes arising among the administration and persons.

The laws for distributing jurisdiction among the administrative judiciary and the ordinary judiciary are considered general order. The disputing parties may not agree to refuse with them, and the judge must adhere to and raise them, even if automatically.

These laws are very complex and difficult to understand and control accurately and

have important consequences, especially for litigants because the procedures before each of the two systems differ and the matter requires understanding the objective laws for the distribution of jurisdiction and studying the conflict of jurisdiction.

As for the position of the administrative judiciary, it differ from its regular counterpart regarding the imposition of punishment, whether it was directed against individuals or against the administration, as the judiciary does not have the power to direct the orders to the administrative authority or compel it to perform a determined law or refrain from doing it.

The judiciary is also not allowed to replace the administration and issue administrative decisions. All of these restrictions set by the legislator are in fact in the interest of the administration, citing an important constitutional principle, which is the separation of powers. No other constitutional authority has the right to interfere in the work and tasks of another authority.

Conclusion

The administration would not have refrained from performing the tasks entrusted to it and not applying the law and implementing the judgments and decisions issued by the relevant authorities, had it not been fully aware that its abstention will not be confronted with firmness that pushes it to comply with the law and not take risks and expose it to deterrent penalties that would topple the highest positions in the executive authority has the will to implement the law.

Results Through our study, we reached the following conclusions

(1) The methods used by the administration to dilute the law and not to apply it by resorting to the legislative authority to clarify the content of the law and to argue that the law is not clear, which leads to the loss of time and the possibility of its application during the imposed period.
(2) The departments' failure to implement laws, decisions and rulings is due to weaken the legislative performance and the absence of legislations of a deterrent nature.
(3) Decision-makers dominate the executive authority and their view of the rest of the constitutional authorities is superior thus this feeling leads to non-compliance with the implementation of laws.
(4) The turbulent political, economic and social conditions in the country give the administration an excuse not to apply the law on the pretext of paying the damage first.
(5) People’s ignorance of the ways to be used to obtain their usurped rights, their lack of knowledge of the law about their rights and the administration’s suggestion to them that it can harm them in various ways and different means.
(6) The absence of deterrent penalties are that the administration fears if it does not apply the law or the issued laws and decisions.

Recommendations

(1) We recommend the legislative authority to take the most severe penalties against violators by enacting laws regulating in this field and not to leave individuals and their rights exposed to the moods of the administration in applying the law or not.
(2) Giving more space to the ordinary and administrative courts with regard to the rights of persons and the disputes arising among them and the administration and full coordination among them in order to end the unfairness of those affected.
(3) Directing the administration, nurturing the spirit of citizenship, and consolidating the

moral aspect in everything related to the rights of employees and the necessity of applying the law and implementing judgments and decisions issued that directly affect them.

(4) Monitoring the work of the departments and setting an integrated program and specific time periods in their application of the law.

(5) Punishing the departments that refrain from implementing the laws with the most severe penalties and placing them under the heading of violating public order and misusing authority that would force the department to carry out its assigned tasks.

(6) Implementing laws related to public employment related to the punishment of negligent employees who delay in implementing orders and decisions, including the Penal Code 111 of 1969 and the State Employees Discipline Law No. 14 of 1991.

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Third / Constitutions

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(3) Egyptian State Consultative Council Law (1972) No. 47 of.
(4) The Lebanese State Consultative Assembly System, for the year1976.
(5) State Consultative Council Law (1979): No. 65 of
(6) State Employee Salaries Law (2008) No. 22 of.
(7) Federal Budget Law (2018): No. 9 of.

Fifthly, decisions

(1) Resolution of the Lebanese State Consultative Council No. 412/3/24 1964 Administrative Group Eighth Year.

Sixth: Opinions

Shiite jurisprudence adopts two types of struggle fatwas according to its seriousness and the ability to repel aggression. Leaving, it has a grave social and legal consequences in the case of abandoning them and they are both physical and sufficient struggle. Allah is that there should be no treaty among Muslims and their enemies, and it is under the leadership of the just imam.