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The administration's refusal to implement administrative judicial rulings between the legal authority and the administrative judge's confrontation with it

رفض الادارة تنفيذ الاحكام القضائية الادارية بين الحجية القانونية ومواجهة القاضي الاداري لها

PhD student /Ibrahim ayed ibrahim albasayta[1*]
Medea University faculty of law, algeria, aboalaksa1995@gmail.com
Informer of sovereignty and globalization

Dr/ benaicha nabila
Medea University faculty of law, algeria,benaicha.nabla@gmail.com

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Abstract :
The administration takes several forms or arguments to refrain from implementing the administrative judicial ruling, but in return for this, the Algerian legislator tried to find ways or means to prevent non-implementation.
However, a question arises about the extent of the administrative judge's authority to intervene to ensure the implementation of administrative judicial rulings, and whether his task ends at the point of issuing this judicial ruling, or whether the failure to implement it is a matter for the administration as it is the only responsible for this implementation.
Keywords*: Implementation of an administrative court ruling ;pictures of abstinence ; execution order ; threatening fine.*

ملخص:
يقال "ان الدعوى تربح مرتين المرة الاولى امام القضـــاء ومرة اثناء التنفيذ، فنجاح القضـــاء يقاس بمدى تنفيذ احكامه"، لذا تتخذ الادارة عدة صــور او حججا للامتناع عن تنفيذ الحكم القضــائي الاداري، ولكن في مقابل ذلك فقد حاول المشرع ايجاد طرق ووسائل من اجل اجبار الادارة على تنفيذ هذا الحكم القضائي الاداري.
لهذا يثار التســاؤل في مدى ســلطة القاضــي الاداري في التدخل لكفالة تنفيذ الحكم القضــائي الاداري، واذا كانت مهمته تنتهي عند حدّ اصــدار هذا الحكم القضــائي، ام اعتبار ان عدم تنفيذه امر راجع الى الادارة فقط باعتبارها المسؤولة الوحيدة عن هذا التنفيذ.
الكلمات المفتاحية: تنفيذ الحكم القضـــائي الاداري، صـــور الامتناع، حجج الامتناع ،الامر بالتنفيذ، الغرامة التهديدية.
كلمات مفتاحية:*تنفيذ الحكم القضائي الاداري، صور الامتناع، حجج الامتناع ،الامر بالتنفيذ، الغرامة التهديدية.*

[1].*ibrahim ayed Ibrahim albasayta*

I- Introduction:

The culmination of judicial work is evidenced by the implementation of judicial rulings, and in reality it shows the role of balance that justice must play in society, as it is supposed to be based on procedures characterized by simplicity, efficiency and transparency. The administrative court, especially since we are facing two unbalanced parties, one of whom enjoys the privileges of the public authority, so the latter takes arguments and justifications that prevent the judicial and administrative execution and make the implementation of that administrative judicial ruling almost non-existent. It has that its justifications were flimsy and illegitimate

The administration takes several forms or forms to refrain from implementing the administrative judicial ruling, but in return for that, the Algerian legislator has tried to find ways and means to prevent the administration from escaping from the implementation of this judicial ruling, but the question arises about the extent of the administrative judge's authority to intervene to ensure the implementation of judicial rulings. Administrative, and if his task ends at the point of issuing this judicial ruling, or if he considers that the failure to implement it is a matter for the administration only as it is the only responsible for this implementation.
The study requires the use of the analytical method to solve the problem of the study, and it is based on the two axes.

The first axis: pictures of abstaining from implementation:

The principle is that the administration has discretion in how to implement the administrative judicial ruling, but that does not mean deviating from the principle of legality and adhering to the legal controls related to the implementation of the administrative judicial ruling, otherwise this judicial ruling becomes meaningless for it, especially if the administration resorted to different forms and forms such as execution Defective and not taking into account what is mentioned in the text of the administrative judicial ruling, and the sentenced administration may resort to avoiding the effects of this judicial decision by refraining from implementation and creating different arguments and excuses.

First: methods of abstaining:

Failure to implement takes the form of either voluntary or material action issued by it, or it is a result of the management's reluctance to take any action that would confirm its intention to implement, and the abstention may take a different form from which the management's reluctance to implement is understood. This is reflected in the administration's negligence to do Defective execution or execution.

1: The explicit or implicit abstention from implementation:

Failure to implement takes two forms according to the method expressed by the sentenced administration in the administrative judicial decision. Either the abstention is explicit or it is implicit.

The department's explicit refusal to implement the administrative judicial decision by issuing an explicit decision not to implement it leaves no room for doubt that it violates the force of the adjudicated thing, and the reason for the explicit abstention may be justified by the administration due to the existence of an emergency circumstance or force majeure that impedes its ability to implement or evade Management from execution for an ulterior reason.

And the French Council of State issued numerous decisions rejecting the ruling of the threatening fine to force the administration to implement judgments and decisions issued against it whenever it became evident to it that an exceptional circumstance prevented it from doing so in implementation of the provisions of Article 4 of Law No. 80-539 related to the threatening fine, and this is what has been decided In the case of Mrs. menneret, and it is clear that the administration deliberately failed to implement it, and this is what the Algerian legislator explicitly stated in Article 984 of the Civil and Administrative Procedures Law, stating: “The judicial authority may reduce the threatening fine or cancel it when necessary.” That is, when The administration's justification for not implementing the administrative judicial decision due to necessity exempts it from the threatening fine decided to force it to execute, so the administration is not sufficient when it comes to issuing an administrative decision suggesting that it will implement the administrative judicial decision. Rather, the issuance of this decision must follow its actual implementation and the content of the administrative decision. And in it, this decision, with its legal consequences, must be effectively implemented.(Belhoual, p. 12)

It also constitutes an implicit abstention from implementation by the administration when it is silent about the administrative judicial decision, so it does not issue an explicit decision of rejection, and for this method two positions, either the administration continues to implement the canceled administrative decision or it re-issues an administrative decision similar to the one who canceled:

In the event that the administration continues to implement the canceled administrative decision, we find what the French Council of State decided in the Rousset case,(Decision dated 3/13/1979 referred to in Ibrahim Ovaida, p. 189)and in a decision issued by the President of the Administrative Chamber of the Algiers Judicial Council in a case whose facts are summarized: that the tax administration deducted from a French company operating in Algeria an amount of money 193267778 D C without a right, so the company filed a lawsuit before the Administrative Chamber of the Judicial Council of Algeria to stop the executive procedures for this deduction and refund the deductible amount.(Belhoual, p. 13)

Such cases in which the administration circumvents the implementation of the administrative judicial decision by issuing a new administrative decision with the content of the canceled administrative decision and alleging that the new decision was issued based on new reasons that allow it to do so, and then it becomes evident that this allegation is invalid. An

evidenceagainst the administration is based on it. They resort to convincing means with the intent to achieve the same effects that were aimed at achieving the canceled administrative decision, and the burden of proving that the new administrative decision was intended to achieve the public interest falls on the administration, and the matter is ultimately subject to the judge's discretion in light of all the circumstances surrounding the issuance of the new administrative decision.(Kanaan, 2001, p. 273)

The administration may also resort to disrupting the implementation of the administrative judicial decision by amending some of the regulations on which it relied in issuing the canceled administrative decision. A judgment was issued to cancel an individual decision for violating a regulatory decision. After modifying the organizational decision, the administration may re-issue the canceled administrative decision again provided that this does not involve On suspicion of circumventing the implementation of the judicial and administrative decision, such as if a judicial decision is issued to cancel a dismissal from the position, then the administration modifies the conditions of appointment with strictness so that these conditions are not met by the judgment to whom it is impossible to return to work.(Kanaan, 2001, p. 274)

2: Misapplication of the Administrative Judicial Decision:

The implementation of the administrative judicial decision requires some time that the administration needs to arrange the situations that are covered by this judicial decision. If the matter deviates from that, the implementation is considered defective or incomplete, and it becomes evident that there is abstention on the part of the sentenced administration.

Management may resort to this in several forms:

Partial implementation of the administrative judicial decision:

As for Algeria, despite the absence of any administrative judicial decision indicating this case, the legislator stipulated this principle in Article 983 of the Civil and Administrative Procedures Law, which states: "In the event of complete or partial non-implementation, ... the administrative judicial body shall liquidate The threatening fine I have ordered. "

The implementation may be incomplete as a result of the administration's erroneous understanding of the content of the administrative judicial decision, and perhaps the solution followed is to return the decision on the problem of ambiguity in the operative to the administrative judge and that is on the case of interpretation that the administration submits to the administrative judge to explain the ambiguity. Their interpretation was considered a flawed implementation that constitutes abstention from implementation.

Late implementation of the administrative judicial decision:

The implementation of the administrative judicial decision requires some time that the administration needs to arrange the situations that are covered by this judicial decision, but that does not mean that the administration is lax about this more than the necessary time estimated by the judge, and the administration often invokes and in this regard we find that the Algerian legislator It gave the maximum period for the implementation of the administrative decision that included a financial conviction against the management, as it required the treasurer to take payment procedures within a maximum period of two months from the date of filing the execution request with respect to those issued in the interest of the department and within a maximum period of three months for individuals , The administration has a period of three months from the date of the official notification of the judicial decisions pronouncing the cancellation.

Second: Management's arguments for non-implementation:

The administration invokes arguments to evade the implementation of the administrative judicial decision issued against it, including factual and legitimate arguments, some of which are arguments, including arguments that result in breaching its responsibility and resulting in legal sanction, and these arguments are divided into legal arguments and material arguments:

1: Legal Arguments:

The legal arguments invoked by the administration relate to legislative reform and stopping the implementation of the administrative judicial decision.

Legislative Correction:

Legislative correction means that the legislator issues legislation or the administration issues an organizational or regulatory decision whereby the effects of a judicial decision judge cancellation are corrected, and in this case the administration finds a kind of liberation about its commitment to implementation, but the problem arises about the legislative reform and the extent of compatibility between it and the authority. The adjudicated thing, and here a distinction is made between two cases:

The first: The correction only includes the consequences of the canceled administrative decision and does not extend to the content. Here, the administration is exempt from its obligation to implement it for the first stage, but it remains committed to implementing the requirements of the judicial decision following its issuance.

_ The second: The legislator cannot do the correction for a personal motive. Rather, the goal of correction is to achieve the public good.

Correction in this regard shall be constitutionally restricted by two restrictions through which coexistence is achieved between it and the authenticity, and through them the conflict over the imposition of its existence is resolved between them, the first of which is an objective restriction and the other is final, and the first means that if the legislator is to make a correction, then this must be within the scope of The effect of the administrative judicial decision is not within its content,(Muhammad Bahi , p. 143) meaning that it has nothing to do with this judicial decision when it pursues the path of correction, as it only has the right to correct the effects of the canceled administrative decision retroactively, that is, in the period between the issuance of this administrative decision and the administrative judicial decision The judge can cancel it, and he does not have more than that, so he cannot, for example, with the correction, confer legitimacy on the canceled administrative decision nor restore it to life after his judicial execution, and he cannot hinder or hinder its implementation with regard to the future. So the correction in terms of the implementation of its effect is considered a break for the decision in two stages:

The stage preceding the issuance of the administrative judicial decision, and its subsequent stage, it does not extend its effect except to the first stage only, so it exempts the administration from its obligation to implement the requirements of the decision regarding it, while the second stage has no effect on it, so the administration remains committed to implementing what the decision requires in its regard, so it does not deal with the decision Administrative canceled in the future as an illegal action.

As for the second restriction that is related to the legislator's authority to make the correction, its effect is that the legislator does not come driven by a personal or personal desire. Rather, it must target the public interest, and this restriction is broad and difficult to control and is not easy to determine, which tempts the legislator to take it as a way to undermine the decisions And its authority is under the hearing of the law.(Kanaan, 2001, p. 276)

Stopping the implementation of the administrative judicial decision:

The administration may rely on evading the implementation of the administrative judicial decision on preserving public order, especially in exceptional circumstances that require raising the safety of the state over all other considerations such as war and crisis situations, especially if the implementation of the administrative judicial decision would expose the public order to breach and Disturbance, it can delay its implementation, but not its failure to implement it completely.(Muhammad Bahi , p. 141)

Execution may be suspended according to Article 324 of the Civil Procedures Law after being amended by Law 01/05 of 05/22/2001, (Article 324 of the Civil Procedure Code, after its amendment, states: "All judicial rulings and decisions are enforceable in all parts of the Algerian territories.)i.e. the governor can request the suspension of execution, after a reasoned request from the Public Prosecution within three days from the date of his notification. A temporary suspension of execution is sought through him for a maximum period of three months, and that this act is considered a wrong understanding and contravenes the provisions

of Articles 183 and 324 Paragraph 2 of the Civil Procedure Law, because in implementation of Article 183, the second paragraph of the same law, the authority to order the suspension of execution belongs to the President The court, as he is the competent specialist in broadcasting issues of implementation, is supposed for the governor to submit a request for a stay of execution to the president of the court and not to the prosecutor of the republic, and it is also not within the powers of the governor to broadcast the extent of the seriousness of implementation, but rather the president of the court is the one who assesses whether this is Execution constitutes a breach of public order, and Article 324, the second paragraph of the same law stipulates that the governor requests the suspension of execution and does not specify who is to direct the request, and whether it is necessary to refer in this case to Article 183 which entitles the president of the court to examine the problems of implementation (the judge of urgent matters), so the governor must submit his request to the president of the court with the knowledge of the representative of the republic, and the request is not submitted to the latter as it is currently being implemented.(Bakari , 2002, p. 72)

Mr. Khalloufi Rashid believes that "Article 324 of the Civil Procedures Law is unconstitutional, because according to Article 136 of the Constitution, which stipulates:" All competent state agencies must implement at all times and in every place and in all circumstances implement provisions Judiciary. "

It is true that the third paragraph, Article 324 of the Civil Procedures Law only talks about "postponement." But Mr. Khalloufi believes: "I think that postponement affects a clear legal text that has a higher legal value that must be respected, and I think that it is not in the intention of the legislator (in the constitution) That it allows, even temporarily, to add the third paragraph.(Khaloufi , 2001, p. 55)Professor Masoud chihoub supports and wonders, "If Article 324, Paragraph 3 of the Civil Procedures Law is an exception to the general rule stipulated in the Constitution, and is it permissible for the law to place an exception on the Constitution, especially since the latter is not resolved by the law in organizing and applying the rule?" ".

2: Physical or Realistic Arguments:

The administration may refrain from implementing the administrative judicial decision if there are incidents outside the scope of this judicial decision and its implementation becomes impossible, whether they are personal or circumstantial.

Personal arguments:

This case faces the inability to implement the administrative judicial decision, which is mainly due to the convicted person. Here, it is impossible to implement the administrative judicial decision due to the occurrence of circumstances that lead to the inability to implement, for example: the administrative judicial decision is issued to cancel the administrative decision that separated the employee from his job, and upon implementation The administrative judicial decision is that the employee has reached the retirement age, and

its implementation is impossible. A decision issued by the French court on 3/27/1987 was found to cancel the dismissal of an employee after reaching the age of pension, which required the judiciary to reject the request for the threatening fine to force the administration to implement it. In the event that a judicial decision is issued to cancel the dismissal of an employee who has subsequently reached the age of retirement, then the administration must issue two administrative decisions. The first decision is to re-list the dismissed employee in implementation of the judicial decision, and the second decides to refer him to retirement in order to calculate and estimate the retirement pension and that implementation takes place. Pictographically.(Belhoual, p. 18)

Situational Arguments:

The reason for the non-implementation of the administrative judicial decision by the sentenced administration is to extraordinary circumstances that are more deserving of care. The administration has no choice but to preempt the implementation of this judicial decision or its reference to a foreign reason that it could not push through a situation between it and its implementation, or the matter relates to the ruling of suspending the implementation of a decision Its implementation has reached its end. For example, the administration lost some administrative documents, and the administrative judiciary ruled to cancel the decision to refrain from handing them over to the concerned person, but the administration was unable to implement this judicial decision because the required documents were lost despite it being proven that it took all possible precautions to prevent this, also in the case that The administrative judiciary is required to impose a threatening fine on the administration to force it to implement a judicial decision to suspend the implementation of its administrative decision to grant a building permit to a specific property, but it turns out that the construction work has ended and the building has been completely constructed, in this case the moratorium is returned to the person who is not doing the work that is authorized to be built It would be impossible to implement the suspension order and the threatening fine application would be refused by extension.(Muhammad Bahi , p. 147)

The second axis: the powers of the administrative judge to confront the non-implementation of administrative judicial rulings:

The Civil and Administrative Procedures Law created new powers for the administrative judge in the stage of non-implementation of the administrative judicial decision, represented in the possibility of directing orders to the administration in addition to the possibility of imposing the threatening fine on the condemned administration.

First: The authority of the administrative judge to direct execution orders to the administration:

The authority of the administrative judge in the extent of the possibility of directing execution orders to the administration passed through two stages: The first stage was through the Civil Procedures Law, where there was a prohibition on the administrative judge from directing orders to the administration, and the second stage was the possibility of the administrative judge directing orders to the administration and that is what It was brought about by the Civil and Administrative Procedures Law.

1: The administrative judge's refusal to issue orders under the Civil Procedures Law:

There is no legal text stipulating that execution orders should not be directed from the administrative judiciary to the administration that is sentenced by an administrative judicial decision, but only as a position for the administrative judiciary based on several reasons or principles for this prohibition, although this prohibition - as a rule - comes with some exceptions. .

- Reasons for prohibiting the administrative judge from directing execution orders to the administration:

The administrative judge's ban on directing execution orders to the administration is justified on the grounds that this breaches the principle of separation of powers, in addition to prejudice to the principle of legality and the rule of law.

The prohibition is based on the principle of separation of powers:

The jurisprudence of the administrative judiciary states that the administrative judge has no right to direct orders to the administration pursuant to the principle of separation of powers.(Baali, 2006, p. 153)The principle of separation of powers means that each authority is independent and has a set of competencies that it exercises in a monopolistic and exclusive manner, and it is prohibited for other authorities to exercise those competencies or even intervene to monitor them. Or comment on it, and thus the executive authority - the administration - exercises its work in the manner it wants without the judicial authority being able to consider the validity of these actions or to adjudicate the disputes that arise from them, and when the administrative judge directs execution orders to the administration, it is as if it interferes to modify the work What is taken by the administration and its removal from its intended purpose, while the power of amendment is considered to be one of the powers that the president possesses in confronting his subordinates within the framework of what is known as the powers of the presidential authority that exercises within the confines of the administration, that is, within the executive authority, so the judge is not considered a presidential authority over the administration due to his belonging to the authority Judicial authorities that are separated from the administration,(Boudriouh , 2007, p. 47)both organically and functionally, may not be authorized to direct orders for implementation to the group Administration, and from this, the orders that the administrative judge sends to the administration to carry out an act or to refrain from it would transform the administrative judge into an administration man, which constitutes a clear violation of this principle,(Auby &

Drago, 1992, p. 541) and accordingly, relying on the principle of separation of powers to justify the inability of the administrative judge to direct orders The administration has an erroneous reliance, because the search for the concept of the principle of separation of powers: It was not intended that each authority should be independent with a set of specializations. Rather, it was intended to distribute jobs among the authorities with a balance between them.(Troper, p. 286)The administrator shall refer to the administration without prejudice to the principle of separation of powers.

Respecting the principle of legality and the requirements of the state of law:

The constitution enshrines the concept of the state of law, democracy and human rights, to affirm that the people are the owner of sovereignty and that they exercise it as mandated by the elected bodies, just as the administrative bodies work for the achievement of the public interest and the smooth functioning of public facilities regularly and steadily respecting the requirements of the principle of legitimacy and their submission to guaranteeing judicial control The principle of the inadmissibility of directing the administrative judge to orders for implementation to the administration comes out from the idea that the judiciary exercises its authority in monitoring all actions, and to consider the extent to which it corresponds with what the legislator intended and desired, meaning that When the judge punishes the administration's actions and orders it to do something, he does not do it as managing director over it or replace it, but rather does it briefly and with permission from the legislator if the violation of the law is proven.(Boudriouh , 2007, p. 53) He must enable the judge to direct orders to the administration constitutes an effective implementation of the requirements of the state of law and a protection of the principle of legality, and there is no doubt that the administration will take all necessary measures and precautions in order to avoid violating the law, and to avoid the embarrassment of the judge directing orders to it, which will achieve effectiveness in the activity The administrative and seriousness of work may not be found in the case of applying the principle of the inadmissibility of the administrative judge directing orders to the administration.(Boudriouh , 2007, p. 54)

The position of the administrative judiciary:

The position of the administrative judiciary did not differ with regard to directing orders to the administration, whether before the Administrative Chamber of the Supreme Court previously or before the State Council now. We find what was decided by the Administrative Chamber of the Supreme Court in its decision of 12/15/1991, a case between "BB" against the Minister of Higher Education and Scientific Research It should be stipulated in the law ... that the administration is obligated to reintegrate it without any discretionary power being given to it regarding the possibility of reintegration ... "

So it is evident in this judicial decision that the administrative decision is illegitimate, but that no order has been issued to the administration to reintegrate the concerned person in his work position, and this is an implicit admission of the impermissibility of issuing execution orders to the administration.(Lahusain bin Sheikh, p. 477)

Despite this prohibition, exceptions are provided that allow the administrative judge to direct orders to the administration, and this is what we find in cases of physical assault and illegal seizure. A decision was issued by the State Council on 02/01/1999 in a case between the Algerian Automobile Company against the municipality of Oran and it stated : "... cancellation of the appealed order, and after confronting and dismissing again, the municipality's order to put an end to the case of physical abuse ...".(Lahusain bin Sheikh, p. 21), And a decision was issued by the Administrative Chamber of the Supreme Court in a case between "Team Kenawy Mohamed and those with him" against the "Director of Religious Affairs and Habous," after the team appealed the decision issued by the administrative room of Mostaganem District Council, which declared that their lawsuits were not accepted in form and not established in substance, So the Supreme Court canceled this appealed decision based on the theory of seizure and ordered the concerned administration to return the disputed buildings.(Mograni , 1998, p. 66)

And he must work with the theory of the illegal seizure of property by the administrative judge is a positive thing because this illegal administrative act that affects the right enshrined in a constitution did not find an appropriate solution in the lawsuit bypassing the authority, a lawsuit that does not allow the administrative judge to use appropriate powers as is the case with the powers enjoyed by the judge Administrative in the cases of illegal property grab and physical assault.(Khalloufi , p. 291)

The matter did not differ with regard to the French administrative judiciary, as it has been established for a long time that the ban on execution orders by the administrative judge to the administration has been established, but with the beginning of the last quarter of the twentieth century, a demand began on the French jurisprudence platforms for the necessity to abolish the prohibition of the authority of the matter of the administrative judge that principle inherited from the nineteenth century And demanded that the judge be given effective powers to implement his judgments and decisions, on top of which the authority to direct orders to the administration to complete the foundations of the modern state of law, so that the decisions of the administrative judiciary take their way to effective implementation,(Debbasch , 1996, p. 161)The law of February 8, 1995 was issued in France and granted the authority to the administrative judge to include in his judgment an order that includes the obligation of the administration to carry out a specific executive procedure, but it is required that this executive procedure is necessarily separate from the ruling or judicial decision, and the administrative judge cannot rule on the matter on his own. Rather, he must judge it based on the litigants 'requests, that is, if the litigants do not ask the judge to rule on the administration, then he will not be able to exercise his authority in the matter.(Debbasch , 1996, p. 166)

2: Regulating the directing of judicial orders to the administration in the Civil and Administrative Procedures Law:

This is determined from the legal framework that regulated the directing of judicial orders by the administrative judge,

And to clarify the conditions that must be met for the possibility of using this power.

- The legal framework :

The legal framework for regulating the directing of judicial orders to the administration is evident from Law 08-09 Civil and Administrative Procedures Law, and that is in articles 978 which stipulated the following: "When the order, judgment or decision requires a public legal person or a body whose disputes are subject to the jurisdiction of the judicial authorities The administrative body, in taking specific implementation measures, instructs the judicial authority requested to do so in the same judicial ruling with the required measure, with setting a deadline for implementation when necessary.

And Article 979 which stipulates the following: "When an order, judgment or decision requires an obligation to a public legal person or a body whose disputes are subject to the jurisdiction of the administrative judicial authorities to take certain implementation measures that have not been ordered by it because of its lack of request in the previous litigation, the administrative judicial authority shall order the request from it. That is by issuing a new administrative decision within a specified time. "

Conditions and stages of directing judicial orders to the administration:

It is concluded from Articles 978 and 979 of the Civil and Administrative Procedures Law that the administrative judge can direct execution orders to the administration in order to implement the administrative judicial decision, but the administrative judge cannot rule on the matter on his own, rather he must rule it based on requests submitted by the litigants. The meaning is that if the litigants do not ask the administrative judge to rule the matter against the administration, then he cannot exercise his authority in the matter, then the plaintiff must ask the court to include in the text of its judgment a clause that includes the obligation to the administration to the specified procedure, and the request in this case must be clear and Specifically because if the request is presented in a general form without including the request to order a specific procedure, then it is worthy of rejection, and the request to direct implementation orders to the administration refusing to implement the administrative judicial decision, whether in the same decision or by a new administrative decision in the event that it is not requested during the litigation, meaning that the judge has the right To order the administration to implement a judicial decision issued previously, but not executed by it, and this issue raises problems related to the competent authority to consider the requests of the order in this case for him, Article 978 of the same law came with "... the administrative judicial authority required to do so in the same judicial ruling ..." and from Article 979 it came with "... the judicial administrative body required to do so by issuing a new administrative decision ..." And, accordingly, the competent administrative court in this case if a judgment was issued from it, was not executed, was not appealed, and had the power of the adjudicated thing, but if the ruling issued by the administrative court was appealed before the State Council and this ruling was not implemented After the side of the administration, and the appeals judge at the State Council had not decided on the ruling of the Administrative Court, the judicial body that has jurisdiction to consider the requests of the matter in this case

is the Administrative Court. However, if the State Council examines the appeal of the ruling of the Administrative Court and it invalidates it, it is no longer relevant. A decision against the administration as the first degree of administrative litigation, and the administration refused to implement it.

Second: The authority to impose the threatening fine:

The Algerian legislator introduced in the Civil and Administrative Procedures Law the authority to sign a threatening fine over the administration. Therefore, the concept of threatening fine and its procedural system, as well as the procedures for reviewing and settling the threatening fine, must be addressed.

1: The concept of threatening fine:

The concept of threatening fine is determined from its definition, extracting its characteristics and distinguishing it from some similar concepts to remove confusion and confuse concepts, especially since it led to the belief that the threatening fine is a punishment or a penalty.

Definition of threatening fine:

The reviewer of the legal texts related to the threatening fine system notes that the Algerian legislator did not provide a legal definition of the threatening fine, but rather clarified the Sharia provisions that regulate it as a legal system, as he clarified the terms of its ruling and the competent authority in that as well as the implications of judging it through Articles 980 to 988 of the Civil and Administrative Procedures Law, and before the legislator's silence on the definition of threatening fine, reference is made to the judiciary and jurisprudence.

The administrative judiciary defined the threatening fine as follows: "The threatening fine is mandatory, pronounced by the judge as a punishment, and that the principle of legality of crimes and penalties should be applied to it, and therefore it must be enacted by law." (Decision No. 14989 issued on 04/08/2003 by the Fifth Chamber of the State Council, a case between (KM) against the Ministry of Education and the jurisprudence of the State Council, the Algerian law portal of the Algerian Ministry of Justice website www.mj) Accordingly, the administrative judge considered that the threatening fine is a punishment and is subject to the principle of legality of crimes and penalties.

Consequently, the administrative judge is prohibited from pronouncing a penalty that is not stipulated in the law.

I also found several jurisprudential definitions, including:

_ The threatening fine is "a means of coercing the debtor and compelling him to implement the obligation incumbent upon him in kind. When the creditor demands it and its image, the

judiciary obliges the debtor to carry out an obligation to work or abstain from work, regardless of its source, and give him a period of time for that, so if he delays in fulfillment he must pay a fine for every day or week Or a month or a unit of time that it designates, and that is when the concrete implementation is still possible and this requires the debtor's personal intervention. "(Al-Sanhouri, 1982, p. 1052)

_ The threatening fine is "the judiciary's determination of a sum of money for the benefit of the creditor, and upon his request the one who is not committed to execution is obliged to pay him for every period of time the commitment has been made, provided that the judicial custom has been set in days."(ranaye, 2003, p. 147)

_ The threatening fine is "an ancillary financial penalty determined in general for each day of delay and issued by the judge with the intention of ensuring the implementation of his judgment or even with the intention of ensuring the implementation of any of the investigation procedures" (3).(Mansour , 2002, p. 15)

_ The threatening fine is "a financial indictment on the convict convicted of paying a sum of money, and it is determined for each day of delay until the execution of the obligation imposed on him."(Vincent , 1999, p. 25)

Characteristics of the threatening fine:

The threatening fine is characterized by the following characteristics: it is threatening, arbitration, and temporary, and it is estimated for each unit of time, as the judge assesses the threatening fine as an arbitration estimate and is only bound by taking into account the debtor’s fate of resistance or procrastination in execution, and the extent that he thinks is productive in achieving its goal, which is to subjugate and hold the debtor Provided that he performs his obligation in kind, the judge’s authority in this aspect is very wide. The judge may specify an amount for the threatening fine that is not commensurate with the damage, and it may not even require the existence of the damage in the first place, and the judge may explain to him that the amount sentenced as a threatening fine is not sufficient to carry the debtor and force him On the implementation of Al-Ain, which makes the threatening fine threatening in nature.(Mardassi, 2008, p. 14)

The ruling of the threatening fine is not enforceable even if it is issued by the State Council, as the cause of his rise ends whenever the debtor takes a final position, either by his commitment to the obligation or by his insistence on default, and when this position is clarified, the judge will liquidate the threatening fine, it is nothing but a temporary description destined for disappearance Therefore, the creditor cannot perform the execution to obtain the amount of the threatening fine imposed.(Mardassi, 2008, p. 15)

Therefore, the threatening fine is not estimated as a one-time sum until the meaning of the threat is fulfilled, so that the convicted person feels that the longer the time for his delay from execution, the greater the amount of the threatening fine imposed.(Mardassi, 2008, p. 16)

Ruling on and adapting the threatening fine:

The ruling for the threatening fine is indicated by two points: The first point of the general procedural system for the fine. The second point: the procedures for reviewing and liquidating the threatening fine.

General procedural system for threatening fine:

The general procedural system for threatening fine specifies the issues related to the judicial body competent to judge and decide on the threatening fine, as well as the conditions that must be met and fulfilled to enable the judicial authority to deal with it and the extent of the judge's authority when ruling on the threatening fine.

The competent judicial authority in imposing the threatening fine:

Determining the judicial authority competent to adjudicate the threatening fine is a procedural matter that requires research into the procedural rules stipulated in the Civil Procedures Law as well as the Civil and Administrative Procedures Law, in the Civil Procedures Law from Article 471 in its two paragraphs and in the Civil and Administrative Procedures Law from Article 980 to 987 of which it came in the body The judicial authority, without specifying any, that the judicial authority competent to decide on the threatening fine in the two laws is the administrative judiciary, as well as the administrative emergency court.

The jurisdiction of the administrative judiciary in imposing the threatening fine:

Articles 978 and 979, based on Article 980 of the Civil and Administrative Procedures Law, contain the terms "... the judgment or the decision," and accordingly, the Council of State can act as the source of the decision, and the Administrative Court, as the source of the judgment, can impose the threatening fine, as well as from Articles 981 and 983 984, 987, 985 of the Civil and Administrative Procedures Law clarifies, "The judicial and administrative body is the Council of State and the administrative courts.

Urgent jurisdiction in signing the threatening fine:

Through the Civil and Administrative Procedures Law, the legislator allowed, if he asks the urgent judge to impose the threatening fine, to ensure the implementation of the urgent orders issued by him or the judgments and decisions issued by the subject judges because the "judicial authority required to do so" is mentioned, that is, as soon as the request has the imposition of the threatening fine. " The judicial authority that issued the judgment, decision, or orders and is requested from it, "and therefore it is possible.

The judge's urgent competence is based on the text of the second paragraph 471 of the Civil Procedure Law and Articles 980, 981, 983, 984, 985, 987 Paragraph Two of the Civil and Administrative Procedures Law and not on the basis that an urgent element is required as required by Article 183 of the Procedures Law Civil and Article 924 of the Civil and Administrative Procedures Law, and this is what was stated in a decision issued by the Supreme Court where it relied on Article 471 of the Civil Procedures Law and not Article 183 of the same law. (Supreme Court Decision of 10/22/1997, Judicial Review of 1997 Issue 2, page 81.)

Conditions for ruling with a threatening fine:

The Algerian legislator granted the judge the authority to impose the threatening fine in order to ensure the implementation of the administrative judicial decisions that he surrounded with a number of conditions, namely:

The convicted person requested to sign the threatening fine.

_ The administration's refusal to implement the obligation imposed on it by the administrative judicial decision.

Respect the deadlines in requesting the imposition of the threatening fine.

_ The content of the administrative judicial decision to perform an action or abstain from work.

Request for the convicted person to impose the threatening fine:

The convicted person submits a request to impose the threatening fine, and this is what we find stipulated in Article 471 of the Civil Procedures Law, as well as Articles 980, 981 and 987 of the Civil and Administrative Procedures Law, which mentioned "... what is required of them ..." That is, the administrative judge and the urgent judge cannot Signing the threatening fine on his own initiative, rather at the request of the convicted person.

As for the French legislation, we find that the administrative judge can inflict the threatening fine based on the litigant's explicit request or on his own initiative if he deems it necessary, that is, the administrative judge has wide discretionary power in this field, and the French Council of State decided that the right to request the threatening fine is not limited only.(Chapus , 2008, p. 1172) On the parties to the litigation, but rather extends to all persons directly involved in the decision that triggered the dispute.

The administration's refusal to implement the administrative judicial decision:

The Algerian legislator has included the threatening fine to ensure the implementation of administrative judicial decisions, because when the administration executes what is the benefit of imposing the threatening fine, and this is what articles 981 and 987 of the Civil and Administrative Procedures Law urged that the threatening fine can only be imposed after non-implementation or after refusing to implement the matter The ruling or the administrative judicial decision. It is a matter that we will try to explain further when talking about the deadline for the entry into force of the threatening fine.

Respect for deadlines in requesting the threatening fine:

The Algerian legislator did not specify specific times in the Civil Procedures Code, but in Articles 987 and 988 of the Civil and Administrative Procedures Law, it set deadlines as follows:

_ The lapse of 3 months upon the administration's refusal after it has been formally notified of the judicial administrative capacity.

_ In the event that the administrative judicial authority determines in its ruling the subject matter of execution the time-limit for the implementation of the administration, it is not permissible to submit the application for the ruling for the threatening fine unless this time has expired.

_ In the event that a grievance is submitted to the administration and the latter is rejected for the grievance, then the calculation of the term of 3 months begins.

The content of requesting a threatening fine to do or abstain from action:

The threatening fine application is submitted to the administrative judicial authority in order to oblige the administration to implement the ruling or the administrative judicial decision that possesses the power of the adjudicated thing that includes carrying out an act or abstaining from work. Article 986 of the Civil and Administrative Procedures Law has stipulated that the judgment possessing the power of the decided thing is to bind someone Public legal persons to pay a specified amount of money to be executed in accordance with the legislative provisions in force, i.e. according to Law 91-02 issued on January 8, 1991 specifying the special rules applicable to some of the judiciary provisions, so the threatening fine is not required in light of the Civil Procedures Law, the threatening fine is not applied Executing a pronouncing court ruling to pay a monetary debt, and this is what came in the Supreme Court's decision. (Supreme Court Decision of 02/16/2005, Judicial Review 2005 Issue 1, p. 185 .)The validity of the threatening fine was not specified in the Civil Procedures Law. Therefore, there are those whose beginning is determined from the date of notification of the administrative judicial reporter, and there are those who determine it one month after notification or even two months after notification.(Ben Chniti , 1982, p. 167)

2: Procedures for reviewing and liquidating the threatening fine:

It clarifies the determination of the threatening fine procedures through the judicial authority competent to liquidate the threatening fine, as well as the elements of estimating the liquidated money, especially since when ruling with the threatening fine it must be reviewed and liquidated, otherwise it is considered contrary to the law and this is what came in the Supreme Court decision. (Supreme Court Decision of 19/07/1989 Judicial Review Year 90, Issue 4, p. 175.)

The judicial authority competent to liquidate it:

The right to request the imposition of the threatening fine from the judicial authority, whether it is the administrative judiciary (trial judges) or the urgent judiciary.

Liquidation takes two types: final liquidation and temporary liquidation:

The temporary liquidation: is when the administration has not taken a position in the matter of the threatening fine, since the convicted person in this case may demand compensation for the delay in the execution while keeping the fine in effect, meaning that the temporary liquidation only represents the period during which the administration was late for implementation, as it is temporary for the judge To retract or reduce it, and the wisdom of temporary liquidation is to speed up the implementation, which makes the threatening fine be effective and its intended purpose. The Civil and Administrative Procedures Law in the form of temporary liquidation, Article 984, was stipulated, but it contained a condition "when necessary".

Elements of liquidated money estimation:

The elements of estimating the liquidated money can be deduced based on the text of Article 175 of the Civil Law and Article 471 of the Civil Procedures Law, as well as Article 985 of the Civil and Administrative Procedures Law.

Accordingly, the final amount liquidated from the damage inflicted on the convicted person and the stubbornness that appeared from the administration is estimated.(Ben Chniti , 1982, p. 184)

Actual damage element arising:

The amount of compensation is determined on the basis of the actual damage arising, and that compensation for the damage includes two important components, which are what the convicted person suffered and what he missed.

The element of obstinacy and insistence not to implement:

Therefore, the Algerian legislator improved when it stipulated in Article 175 of the Civil Law that obstinacy as an element in assessing money The liquidator, which gives the threatening fine system its effectiveness, but it is worth noting that Article 471 of the Civil Procedures Law and Article 985 of the Law Civil and administrative procedures neglected the element of obstinacy and provided for only the element of damage as a criterion and the only element to determine the amount of final compensation after liquidation.(Mardassi, 2008, p. 71)

Conclusion :

In the end, what can be said is that the issue of the intransigence of the administration sentenced to the implementation of the administrative judicial ruling seems to be broader than imagined and more complex, which makes the issue of surrounding it from all sides and in an accurate manner seem difficult to reach - somewhat -, as a result of the functional development of the administration, due to the impact of developments The different circumstances, whether economic, social, political, or even cultural, etc. ...

From all that study, we extracted the following results:

- The desire of the legislator to protect a litigant who is adjudicated in the administrative court ruling.

- To prove the effectiveness of the administrative judicial ruling in protecting rights and freedoms.

- Evidence of the existence of the principle of separation of powers, and that the judiciary is sufficient to strike a balance between the two parties to the administrative case.

- Evidence that all persons are subject to the rule of law, whether they are natural or legal individuals.

- The ability of the administrative judge to ascertain the authenticity and justifications of the sentenced administration for not implementing administrative judicial rulings.

- The Civil and Administrative Procedures Law devoted powers to the administrative judge to compel the sentenced rent to implement judicial rulings, which were prohibited in the Civil Procedures Law.

- The administration shows its goodwill in not executing with legitimate arguments and justifications, and the administrative judge has the full authority to verify them and exempt them from the penalties for non-implementation, and to find a solution to protect the rights and freedoms of the convicted person.

But we find a set of recommendations as follows:

-The truth is that the Civil and Administrative Procedures Law came with new legal rules, but some of those texts were incomplete or somewhat ambiguous, as proved by the study.

- Failure of the legislator to keep pace with the judicial and administrative development in the implementation of administrative judicial rulings - despite its devotion to the authority to order execution and the authority of the threatening fine, but it did not provide legal rules for the authority of solutions that have proven effective in eliminating the problem of the administration's intransigence in implementing the administrative judicial ruling.

-Lack of confidence in the execution of the convicted person and the loss of the serious will to apply the administrative judicial ruling, due to the complexity of the execution procedures.

- There are no justifications and arguments for the administration that are precise and specified in the law, which makes the convicted litigant doubtful about the good faith of the sentenced administration or not.

- Adding costs burdens makes the persons convicted in the administrative court ruling hesitate to initiate execution procedures.

- It would have been better to research the execution judge system similar to what is in place in France, to supervise all procedures related to implementation and its problems, so that he would be the competent authority to issue execution orders and other matters related to implementation.

-Putting the judicial bailiffs under the supervision of the execution judge, as the current situation hinders the development of this profession.

- Activating the advisory role of the State Council to implement administrative judicial rulings.

- Activating the supervisory role of the first administrative official over employees who refuse to implement administrative judicial rulings, and hold them responsible for criminal, civil and administrative responsibilities.

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