

Compulsory Execution and the Administrative Judge

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Abstract

Saint-Just's decision, which was concluded by the Commissioner of Government Romieu has played a significant role in defining the concept " compulsory execution ", Romieu mentioned in his famous decision the three conditions of compulsory execution. This research aims to distinguish between direct and indirect compulsory execution. In the first section, the research addresses methods of execution through imposing penalties, the administration enforces administrative decisions, execution when it is issued, optional execution, etc. In the second chapter, the researcher presents some jurisprudential and judicial approaches, explaining how the jurisprudence differed over determining the legal nature of direct compulsory execution, and whether it is a general privilege of the administration. Then it addresses the issue of exceptional circumstances in administrative law and their relationship to compulsory execution. Undeniably, the judiciary enjoys powers in exceptional circumstances that it cannot exercise in normal circumstances. Thus, it deals with and assesses each case according to its circumstances and details. To implementation the theory of exceptional or emergency circumstances, three conditions must be met, which are facing truly exceptional circumstances, impossibility to act in a way other than that which the administration has taken, and so on. Finally, this research presents the relationship between compulsory execution and human rights. Many active human rights organizations argued about the validity of compulsory execution regardless of its conformity with the law. Therefore, the method presented by Commissioner Romeo in the founding resolution "Saint-Just" must be widely reconsidered because it has changed after human rights laws. There are forced executive acts that were carried out without concern and accountability, but today they are considered a violation of human rights.

1. Introduction

Compulsory execution of administrative decisions is not the only procedure that the administration exercises to enforce its decisions. The administration may resort to the judiciary, whether criminal or civil, to force individuals to implement their decisions, indicating that the administrative decision may be implemented directly by compulsory enforcement or through the judiciary. The administration may resort to the judiciary to punish those who refuse to comply with regulatory and individual administrative decisions. Sometimes the administration chooses to resort to the civil judiciary to force individuals to respect its decisions when it deems that this way is more appropriate than resorting to compulsory execution. Forcible execution is enforced after giving the addressee a specific period to implement the decision, or it may be enforced directly.

This research addresses the issue of compulsory execution from diverse aspects, including the relationship of forced execution to human rights. Distinguishing between direct and indirect compulsory execution is very crucial, therefore this research introduces the different methods of compulsory execution and the execution of judicial rulings and the administration's refusal to enforce judicial rulings. If our issue is the administration's compulsory execution of its decisions, the researcher also discusses this not-so-positive phenomenon briefly. The administration sometimes refuses to enforce judicial decisions: Is this not a double standard? We also present the French experience, given the great influence of French law and jurisprudence in all Arab legal systems. The relationship between compulsory execution and human rights lies in the fact that the administration's method of executing its decisions is considered a violation of rights and freedoms because all unlawful cases of compulsory execution are a source of violation of rights and freedoms, even though it conforms with the law, it is still the object of criticism for those interested in promoting human rights.

This research aims to clarify the true meaning of compulsory execution and the causes of jurisprudential differences regarding this definition. It also aims, by addressing the concept and its historical and discretionary development, to investigate the possibility of conducting a legal review over the administration so that it does

not enforce execution in a way that violates people's rights. Sometimes the administration invokes exceptional circumstances to take entirely illegal decisions or to forcibly execute legitimate decisions, but their execution is performed illegally. This research mainly seeks to call for changes concerning the compulsory enforcement of the administration's decisions to make them sound decisions that are compatible with human rights.

The importance of this research lies in the topic it discusses because compulsory enforcement constitutes the ideal field where people's rights can be the subject of grievance and injustice. Undoubtedly, stopping work in a factory, preventing gathering by force, or deducting a salary unilaterally by the administration, all of these situations are among the cases for claiming grievances and administrative lawsuits are of interest to citizens, judges, lawyers, and legal scholars.

Compulsory execution is a cruelty proceeding utilized against the citizens, and even if the administration is right, the processes of compulsory execution are heart-trembling and fearful actions. Accordingly, it is critical to address this issue for each party to abide by its limits, thus, the administration should resort to compulsory execution provided it is necessary, and the citizen must abide by the administration's decisions within the rules of respect for the rule of law. Perhaps the main problem that we tried to answer is the following: Compulsory execution is necessary in certain cases to impose respect for the legal system and the rule of law, but how can state regulations be imposed without the administration exceeding its limits, whether in terms of preserving the legitimacy of its decisions or in terms of issuing compulsory execution decisions that respect the rules drawn by the texts on international human rights.

Chapter One

Compulsory enforcement: Evolution of definition and methods of execution

In this research, we try to present the definitions of compulsory execution and the problems that these definitions present, then in a second section we present the methods of compulsory enforcement.

Section One: compulsory execution and the administrative judge: Definitions

In this section, we deal with the definition of compulsory execution and its problems, then we will discuss the controversial jurisprudence on the issue of compulsory execution stated by Government Commissioner *Romieu*.

A. Definitions and Problems

Administration sometimes resorts to forced or direct execution to carry out its decisions forcibly on individuals without obtaining a court ruling. And this action or this authority given to the administration threatens the freedoms of individuals if it is exercised in violation of freedoms and rights. In the field of compulsory enforcement, the administration carries out a material act of using coercive force to compel individuals to its administrative regulations and decisions. The compulsory execution of administrative review decisions is special enforcement of the general theory of direct implementation of administrative decisions, and it is subject to annulment lawsuits (appeals cases for annulment). The greater the number of immunized decisions, the worse the situation, because immunization prevents the filing of appeals, and thus the issue of direct or indirect enforcement does not arise. In fact, the government commissioner, *Romieu*, defines compulsory enforcement as a necessary means practiced in the absence of other legal means and it finds its legal justification in the necessity for individuals to obey the law. The French jurisprudence laid the foundations for compulsory execution in the famous "Société Immobilière St Just", which will be discussed later in this research. There are many conclusions of the French government commissioner, *Romieu*, who decided that enforcement can only take place in special cases.

B. Romieu's conclusions and position of jurisprudence

1. Romieu's conclusions

French jurisprudence does not permit resort to compulsory execution except in two cases specified by the government commissioner, "Romeo", in the "Saint-Just" decision, which we will deal with in more depth:

- Case of necessity, according to *Romieu*, the government commissioner, if the fire breaks out, do we wait for the judge to ask permission to put it out?

- When a text was issued in which the legislator did not notice the imposition of penalties on violators, such as the case of this founding decision, *Saint-Just*, where the nuns refused to evacuate the monastery despite the mayor's decision, which did not note any penalties. Despite this fact, nothing prevents the administration from respecting the principle of proportionality, and if it does not respect it and a violation of private property or freedoms occurs, the administration commits the offense of infringement and requires referring the case before the judicial judge to punish the administration.

2. Jurisprudence position and other definitions

Concerning the position of jurisprudence, the opinions of the jurists have varied, some believed that the privilege of forced or direct enforcement is the principle and that the administration has recourse to it as a general principle to enforce its decisions, without the need to resort to the judiciary, and others considered that direct compulsory execution is an exception to the general rule requiring that the administration resort to the judiciary, like individuals, to obtain a judgment and then enforce it.

Unquestionably, direct compulsory execution in administrative law differs from direct compulsory execution in private law: in private law, in civil and commercial pleadings law the execution may be direct, that is, execution in kind, and the execution may be indirect, that is, an execution by force. While the execution in the administrative law, it may be a direct compulsory execution without the use of coercive force, and it may be direct enforcement using force.

Compulsory execution within the scope of the pleading law is that execution carried out by the state represented by the enforcement authority to implement a judgment or any other executive document and with compulsory force when required, and it is either direct, in-kind, indirect, or by the method of seizure and sale at the request of the right holder and by way of compensation. This is what was stated by the French Court of Cassation in its judgment of 16 January 2007 in the following provisions: "The party to whom the contractual commitments or obligations have not been met has the right to force the other party to enforce the agreement where this is possible."

Where the compulsory execution in administrative law, the administration can issue decisions that are enforceable on individuals and without resorting to the judiciary to obtain permission for execution, and we mean the use of material force to enforce its decisions when individuals refuse to implement them, under certain conditions and in specific circumstances and conditions. Others define compulsory enforcement as "the right of the administration to fulfill its orders on individuals by coercive force if they refuse to voluntarily implement them without the need for prior permission from the court. This right is considered one of the most hazardous rights and privileges of the administration because if the basic principle in dealing with individuals among themselves is that the holder of the right cannot take his right if someone disputes this right, he must first resort to the judiciary to approve his right, and then he resorts to Public authorities to enforce the judges' judgment. In this situation, we notice that the administration is the one who issues an executive decision and then enforces it on the individuals. What concerns us in this research is not indicating all the definitions on the issue of compulsory execution, but rather presenting the basic ones before addressing more in-depth and new topics such as the relationship of enforcement to human rights, the development of French and international jurisprudence, and our perceptions about the tasks of the Jordanian administrative judge and the important role that he can play to protect the rights of citizens from whoever abuses the administration, especially after the issuance of the Administrative Judicial Law, which strengthened the position of the supervisory authority of the Jordanian administrative judge, especially, now it is possible to challenge the administrative decisions, provided the availability of one or more of the following reasons: lack of jurisdiction, violation of the constitution, laws or regulations, a mistake in their application or interpretation, a decision or its issuance procedures associated with a defect in form, abuse of authority, defect of reason.

3. Distinguishing between direct and indirect compulsory execution

Some jurisprudence distinguishes between direct compulsory execution and indirect algebraic execution, as they believe that the direct compulsory execution of the administrative decision occurs in two cases: The first one is the case of individuals willingly executing the administrative decision. Here it is considered direct enforcement because the administrative decision depends on the power of coercion that urges individuals to implement its decisions against their will, even though the administration did not use coercive force or resort to the judiciary. In this case, direct enforcement is one of the effects of the legal force of the administrative decision, and individuals have no role in its execution, such as the decision imposing a disciplinary penalty such as deducting the salary. In the case of these decisions, the required result of the decision is achieved as soon as it is issued, which means in these decisions the enforcement of the decision is confused with its execution.

The second aspect of the privilege of direct compulsory execution is when individuals do not implement the administration's decisions willingly, they refuse to enforce them or lag intentionally. Indirectly compulsory enforcement is the one that takes place through the courts. Therefore, it is necessary to be aware of this ambiguity:

It is noteworthy that, some consider that indirectly compulsory execution is the one that takes place through the judiciary, while others believe that it takes place when the concerned refuses the execution. Accordingly, indirect execution is the one that takes place through elimination and all other forms are direct algebraic execution. We also see that it is not necessary to use the direct adjective and to be satisfied with the distinction between execution by administration and execution by the judiciary.

Section Two: Methods of compulsory execution

of compulsory execution is implemented in various ways. This section addresses the enforcement by imposing sanctions, and the multiple execution methods and legal solutions.

1. Execution by imposing sanctions

compulsory enforcement is carried out through imposing sanctions, an example of this procedure is administrative fines which are enforced through closing the facility, annulling licenses, traffic offenses or revoking a driver's license, seizing the vehicle. Some jurists argued that there was no need for the definition of administrative sanctions, since there was a theory of compulsory enforcement, given that the purpose of administrative punishment is to ensure the execution of administrative decisions, and it is the same goal that the theory of compulsory enforcement seeks.

In a matter of fact, and as we see, direct compulsory execution is more comprehensive than administrative sanctions because if administrative sanctions are signed or imposed, it is considered one of the procedures for direct compulsory execution, as there are other proceedings for direct compulsory execution which have no relation to the sanctions, such as expropriation of public ownership and appropriation on real estate. We see that it is not permissible to separate between the administrative sanctions and the privilege of direct compulsory execution that characterizes the administration in enforcing its decisions, because the enforcement of the administrative sanctions is only possible if the administration undertakes it on its own by compulsion or coercion on behalf of the person concerned. Unsurprisingly, the concept of sanctions intersects with what happens in administrative contracts where the administration has the right to the authority to review, direct and modify, as well as the right of the authority to impose the sanctions on the contractor with its own will. If the contractor breaches his obligations. Among the forms of this breach are negligence in execution, poor execution, fraud, or delay from the specified dates, even if it was not stipulated in the contract. This position is justified by the necessity to ensure the continuity and regularity of public facilities to obtain public interest. The contractor with the administration must fulfill all his contractual obligations, and thus the administration can impose two types of penalties on him, which are financial penalties and pressure sanctions.

These penalties in the field of administrative contracts are imposed by the state as a form of compulsory execution, that is, without consulting the contractor and even without warning him. It is, then, an amount of money that is obligated to pay the party that breaches one of its contractual obligations whenever this results in harm to the other party, and the contractor is not obligated to compensate unless his act results in harm. The compensation includes the sums that the administration can impose on the contracting party, or that the administration is judged to be due to the contractor's breach of his contractual obligations, and the compensation is not specified or estimated in the contract, otherwise, it will come under the rule of another financial penalty which is called (fines). The same thing is said about the administration, which must fulfill its obligations and, accordingly, to implement its sanctions.

2. Multiple implementation methods and legal solutions

A- Executing administrative decisions by the administration 1- Executing administrative decisions that grant rights

Administrative decisions that grant rights to individuals, such as the works of the public road inside cities, are issued by a competent authority under the terms and conditions stipulated in the law because they are considered decisions that enforce it thereby, and for this reason, whoever given the license issued, has to initiate the use of this right. Consequently, these decisions come out of the framework of being considered exclusive and compulsory execution decisions.

A ruling issued by the Iraqi State Shura Council on 3/3/2011 stated that: "Whereas Article (22) of the Law of Sale and Leasing of State Funds No. (32) of 1986 permitted the leasing of immovable property without public auction, by a decision of the competent minister or the supreme head of a body not associated with a ministry or whoever authorizes him to associations to exploit the immovable leased money as a headquarters for its activities. Since the construction stipulated in the decision of the Revolutionary Command Council (dissolved) differs from the activity of marketing fruits and vegetables, the council considers that cooperative societies shall not establish places for the sale of fruits and vegetables and yards for the sale of livestock to improve the social and economic situation of the cooperative societies ... "Thus, the decision issued Granting leave in such cases is not conceivable to be implemented by force, because this type of decision is supposed to be implemented with mere good faith from the administration. After all, it creates rights in favor of the offeree.

2- Enforcing administrative decisions as soon as they are issued

In such decisions, the entry into force of decision is similar to its execution. This means that the execution of the decision has mixed with the legal effect that it causes, and therefore they do not require material measures to

implement them. Mostly, the administration issues them to obtain their rights, and often it is known as the legal execution of the administrative decision, for example, the decision issued with a penalty warning to an employee.

An example of executive decisions as soon as they are issued is the expiration of the grievance period: "The passage of two months after submitting a grievance to the administrative body without a response from it is an administrative decision of rejection."

3- Voluntary execution of the decisions of administrative orders

These decisions are of the kind that relates to an obligation that individuals shall implement without delay, such as the decision to close stores on a specific day of the week.

4- Direct compulsory execution using public force

In short, what we have explained above is that some of the decisions can be executed without resorting to any other procedure and that there are administrative decisions requiring measures to be enforced, but the administration does not need to recourse to these procedures if individuals implement them voluntarily. But if individuals do not voluntarily comply with the administrative decision, and the administration cannot resort to the judiciary, then the administration may resort to the method of compulsory execution that the law has granted the right to resort to.

5- Direct compulsory execution of the administrative decision

The compulsory execution, in this case, will be immediate and without notification of the concerned parties and with legislative permission and when the administration decides to compulsorily implement its decisions. If the affected has an objection to the legality of the decision, he must resort to the judiciary to challenge this decision and proves its illegality as a plaintiff, and the administration as a defendant shall prove the legality of its actions. The most important administrative decisions that are implemented directly are the decisions to remove the infringement of public funds, and the manifestations of direct compulsory execution, in this case, are evident in the steps taken by the public authorities to remove the encroachment on part of the public streets or public or private property without giving any warning to the perpetrator. Work because the administration legally has the power to enforce the decision automatically and directly.

Finally, it is worth noting that, the concept of compulsory execution does not enter into force except in a few cases, mainly involving the legislator's interference, but the frequent interference from legislators has aroused the criticism of jurists and politicians. In France, several jurists expressed their rejection of the legislator interference because he exceeded the cases of allowing the administration to intervene for compulsory execution as in the case of removing advertising posters, expelling foreigners whose request for asylum was rejected, removing cars from public roads, weeding works to avoid fires, etc. Certainly, the legislator always perceives the need to notify the concerned person, even if he refuses to comply, the administration resorts to compulsory execution. As for the costs of compulsory execution, they are not at the expense of the executor, unless the legislator notes this.

6. Indirect compulsory execution of the administrative decision

By this, we mean the administration's recourse to compulsory force to implement the administrative decision if the violator refuses to comply with it, and here the compulsory execution lapses until after the person concerned has stated his position. Whereas in the event of rejection, the administration finds a legal basis to compel him to enforce it. In other words, the administrative body must inform the concerned person of the administrative decision, whether he is an individual or a group, and if they refrain from execution, the administration, with the power of the public authority, shall implement its decisions forcibly if the conditions are met, just as happened in the French "Saint-Just" decision. Which was showed previously.

B- The Judicial execution of administrative orders

The enforcement of the administrative decision can be performed by the judiciary. The administration has the right to resort to the judiciary to institute one of the criminal or civil lawsuits. The legal text requires individuals whether to commit themselves or to abstain from doing an act, and at the same time it sets the penalty imposed on those who violate that text, and since it is one of the duties of the administration to carry out laws, so when a law is violated, the administration resort to the judiciary to impose the sanctions on the violator and the administration shall implement this penalty according to the verdict.

1- Criminal lawsuit

The legislator sometimes sets a text in a law to ensure the execution of administrative orders to motivate individuals to implement administrative orders. The establishment of these provisions constitutes a deterrent to individuals so that they do not refrain from executing the orders. The administration has the right to initiate criminal lawsuits to force individuals to respect administrative orders, by resorting to the criminal judge to penalize whoever refuses to implement statutory and individual administrative orders to obtain a sentence. Thus, the penalties determined by the legislative texts to ensure the implementation of the administration's actions by force, and naturally contained within the framework of laws and punitive texts, are not based on the authority of the administration, but rather on the criminal judiciary that is already competent to punish those who refrain from implementing them.

2-Civil lawsuit

Although the administration has the means of compulsory execution of its verdicts and has recourse to the criminal judiciary to enforce the verdict and penalize who refuses to implement its judgments voluntarily, the question arises: is it permissible for the administration to file a civil lawsuit before the regular court to demand individuals to execute its judgments? After a long debate, the judiciary and jurisprudence in France have turned to the inability of the public administration to resort to a civil case to impose the implementation of its decisions on individuals except in cases of infringement. It is necessary, then, to use the means of direct compulsory execution, as the administration does not have the right to waive. Nevertheless, some cases are provided by way of exception in which the administration is permitted to resort to the ordinary courts with a civil case as if the law explicitly stipulates the administration's right to use a civil case.

C -The executive actions of the judicial rulings and the administration's refusal to enforce the judicial rulings

a) Preview of general rules

The general rule is that the administration is obliged to fulfill judicial rulings without discussion or request for reconsideration, under the principle of the authenticity of judicial decisions. Government Commissioner Lavriere confirms this by stating: "The execution of the judicial decision is a legal duty of the administration and it is punished if it fails to enforce. " This executive power of governance is necessary and linked to it. Compulsory means can be utilized to achieve the ruling's content with the assistance of the public authority and with no need to issue an administrative ruling to implement it, such as removing the material effects or the entitlement of sums of money specified by the judgment, which open a case for compensation because it is one of the actions that do not rise to the level of administrative decisions.

b) State abstention and the authority of the Shura Council

According to the principle of separation of powers and separation between the administrative judiciary and judiciary, the Shura Council is not authorized to reviewing issues related to the responsibility of the administration (the state, public institutions, and municipalities) for the work of the judiciary. However, the Shura Council is competent to consider all reviews regarding the state's failure to implement judicial decisions, whether judicial or administrative.

The question: Why does not the administration enforce judicial decisions? Some argue for economic deficits, failure to respect individual rights, and inaction. There are other reasons, including:

- Citizens' lack of awareness of their rights, especially their right to sue the administration, to urge it to implement judicial decisions.
- Barriers to accessing justice (assigning a lawyer, wasting time, litigation center in capitals).
- The collusion of some employees (corruption).

The French experience

France has made great strides in this respect, as the administrative judge has the power to direct orders to the administration. However,

why did this development occur in France? At the beginning of the twentieth century, an administrative judge saw that there was no point in making binding rulings for the administration while they would not respond in any case, because the administrative judiciary did not have any means to force the administration to execute it. This is natural because the administrative judiciary did not have any authority in this area.

As a result of the reluctance of the administration (the state, especially the decentralized administrations) to implement judicial decisions, the administrative jurisprudence proposed at the beginning actions of personal responsibility for the employee who has to execute the res judicata, and who refuses for illegal reasons to do so. This dire reality was revealed by a famous French case, "Fabrègues": Where ten municipal decisions were issued to stop the concierge, Fabrègues, truly, all these decisions were intended only to retaliate against the concierge, the mayor issued the same decision ten times after ten invalidation decisions from Shura. Every time the Shura Council repeals the dismissal decision, the mayor reinstates the dismissal. Therefore, after a hard

effort, laws were issued granting the administrative judge the power to compel the administration to implement its decisions.

Chapter Two

Jurisprudence positions, practical applications, and the relationship of compulsory execution to human rights

In this section, we deal with the theoretical jurisprudential approaches, including the jurisprudential judicial positions and We discuss the problem regarding compulsory execution under exceptional circumstances and how to preserve their compatibility or respect for human rights.

Section One: Jurisprudence and judicial approaches

In the first section, we present the legal and judicial approaches and the reasons for the disparity in deciding the legal nature of direct compulsory execution and whether it is a right of the administration. Other views of opposition that are worth considering are also discussed in the second part.

1. Different views and interpretations

Direct compulsory execution within the scope of administrative law is one of the most important topics reviewed by the judiciary. Therefore, various views emerged regarding compulsory execution. The jurisprudence went to regard the privilege of direct compulsory execution as a general principle, and that the administration has the right to implement its verdicts directly within the limits of the law, and that the administration's resort to the judiciary, just like ordinary individuals, to obtain its rights is the exception. Others thought otherwise and concluded that the general principle is that the administration turns to the judiciary to obtain a judgment, and after obtaining the judicial judgment, it implements it and that the administration's actions through direct compulsory enforcement are the exception.

The jurisprudence differed on determining the legal nature of direct compulsory enforcement, and whether it is a general privilege of the administration, and therefore the administration must take administrative decisions by which its rights are decided and then resort to directly to implement these decisions without resorting to the judiciary, or is it an exception to the general rule that the administration must resort to the judiciary to obtain approval to fulfill its decisions, just like individuals, and direct compulsory enforcement is only an exception to that rule. Since the compulsory execution is a serious matter related to the various fields and applies to individuals and their money, the judiciary has recognized conditions and procedures that must be met, so that the administration can use the privilege of direct compulsory execution. And we do not forget that most of the theories, principles, and provisions of administrative law are the creation and innovation of the administrative judge. The administrative judge, by practicing his function, plays a legislative role because he establishes law the rules and principles of the making of his judicial rulings.

Direct compulsory enforcement can be defined under the civil and commercial pleadings law, in the administrative law and within the scope of the procedures law is the execution that the state, represented by the enforcement authority, perform to enforce a ruling or any other executive document and with compulsory force when requirement, and it is either a direct or in-kind execution, or either indirectly, or by the method of seizure and sale, as we previously explained previously, and this is what was confirmed by the French Court of Cassation in its judgment issued on January 16, 2007, by stating: "The party whose pledges or obligations have not been implemented Contractual, has the power to compel the other party to implement the agreement, when possible."

2. Opposing jurisprudential opinions

Other jurisprudential views consider most definitions a link between direct compulsory execution and indirect compulsory execution because most approaches claim that there is no compulsory execution without the administration's use of compulsive force when applying its decisions. To resolve this issue, it should be considered that the direct compulsory execution of the administrative verdict takes place in two cases:

The first case: it is the case of individuals voluntarily executes the administrative decision. In this case, it is considered a direct implementation, because the administrative decision depends on the power of coercion that urges individuals to implement its decisions against their will, although the administration did not use coercive force or resort to the judiciary. Direct compulsory execution could take place without the need to resort to coercive force, if individuals willingly complied with it, which is a content that differs from direct compulsory execution which always presupposes non-compliance or voluntary obedience. In this case, direct compulsory execution is an effect of the legal force of the administrative decision, and individuals have no role in its enactment, such as the ruling issued on the subject of disciplinary sanctions like the warning decision issued

against an employee. These decisions achieve the required result of the decision once it is issued, and this means that the entry into force is mixed with its enforcement in these decisions.

The second case of the privilege of direct compulsory enforcement, when individuals do not carry out the administration's decisions willingly, as the ruling was not one of the rulings that are enforced once they are issued, here the administration uses the other side of the privilege of direct compulsory enforcement, which is its use of compulsory power to enforce these rulings. Most of the jurisprudence defined the privilege of direct compulsory enforcement of an administrative decision as the possibility of the administration to fulfill its decisions without prior recourse to the judiciary. Therefore, the direct compulsory execution is the direct form that the administration recourses before resorting to the judiciary to obtain a verdict to carry out its decisions. However, the administration did not resort to the judiciary to obtain a ruling granting it the right of execution, but rather issued its decision and it was implemented without resorting to the judiciary. We see that, despite this jurisprudential difference, all of them agreed on two characteristics of the direct compulsory enforcement that are the administration does not use material force in executing its decisions, and it uses force in implementing its decisions, and this means that the implementation of administrative decisions Without the use of coercive force and carrying it out with the use of that force are two forms of direct compulsory enforcement.

Section Two: Compulsory execution in exceptional circumstances and respect for human rights principles

This section presents the situation of exceptional circumstances and how to approach them in compulsory execution after defining them. The second part is devoted to presenting the means for administrative actions that respect the rules of contemporary human rights.

A. Exceptional circumstances

The administrative judiciary enjoys powers in exceptional circumstances that it cannot exercise in normal situations. Accordingly, each case is dealt with independently and "assesses its circumstances in light of the details of each case separately and assesses the limits of the powers that the administrative body enjoys".

Considering these considerations, the judiciary in France and the Arab countries that follow suit has had to intervene to fill the deficiency in legislative solutions regarding the issue of exceptional circumstances to include what the exceptional texts cannot cover. Some jurisprudence defines exceptional judicial circumstances as "an invention of the French Council of State, to bridge the deficit in law and to enable administrative review and administration bodies to face the difficult conditions that the country is going through. It can only be practiced by following conditions and procedures that may take a period, which prevents the swift action required by exceptional circumstances in some cases, and it is not comprehensive as it covers all aspects of the situations and crises that the country may go through.

During the First World War, the French Consultative Assembly believed that respecting the principle of legitimacy did not convey the same content in war and peace. In an old decision (Heriès), the council decided that exceptional circumstances allow the government to take a decree that stops the implementation of a law. A law was passed in 1905 granting government employees a guarantee that they would have access to their files before any decision was made against them. During the World War, the government believed that respecting this principle would hinder administrative work and suspended the work decree of this law. Mr. Heriès appealed against the disciplinary measure imposed against him and demanded that it be revoked for exceeding the limit of authority.

Where Shura Council justified this by considering the decree as legitimate despite its violation of the law, based on the theory of exceptional circumstances. In the famous "Dol and Laurent" decision, the French Consultative Assembly recognizes the military authority in wartime rights that it does not enjoy in normal circumstances. The theory of exceptional circumstances finds room for it, especially in external and internal wars, when the occurrence of natural disasters, etc. .. Although it is difficult to define this concept, it is possible, based on Ijtihad, to draw some defining criteria such as:

1. The situation must be abnormal and beyond normal conditions.
2. That there is an impossibility to act in a way other than that which the administration has taken.
3. The primary motive for this extraordinary actions must be the public interest.

Regarding compulsory execution, the French Council of State recognized, in the existence of a state of necessity, the right of the administration to direct compulsory execution in the "Saint-Just Estate" case, which was brought before the French Dispute Tribunal on December 2, 1902, to which we previously presented. The report was prepared in this case by State Commissioner Romieu and some argued that this report should be the starting point for all studies revolving around the point of direct forced implementation.

We can conclude from the previous ruling of the French Council of State, that the conditions that must be met for the existence of a case of exceptional judicial circumstances or judicial necessity are:

- 1- The sudden occurrence of severe and unexpected accidents.
- 2- The impossibility of the administrative body to act legitimately, that is, according to the normal legal rules.
- 3- The continued existence of the state of necessity at the date of the disputed decision.
- 4- The public interest shall be the reason for the taken procedure, as the French Council of State decided that the public interest element is the criterion for the validity of direct forced execution in all cases.

The Egyptian Supreme Administrative Court ruled in a verdict issued on December 23, 2006, that: "The second reason the administration relied upon in issuing its contested decision to transfer the respondents' activity in the wholesale trade of dates from the grain market in Rawd al-Farag Square to the Obour market is that this activity has become inconsistent with the requirements of public security after the area became overcrowded, and the practice of activity in it obstructed traffic, and this procedure was within the powers of the administrative body due to its wide powers in the field of administrative control that are limited only by the restriction of abuse or deviation With authority, which is evident in the papers. "

B. Compulsory execution and human rights

Humanity has today achieved a conviction that individuals deserve to enjoy basic natural and acquired rights and freedoms., in addition to protecting them utilizing all texts constitutional or unconstitutional. Despite the signed international documents, arbitrariness by administrations is still the master of the situation regarding respect for rights and freedoms. In this case, the law and jurisprudence had to intervene to regulate this issue through a set of legal means that enable individuals to obtain their rights in the face of the administration's unlawful actions against it. The violation of rights and freedoms is closely related to compulsory execution, given that all cases of forced execution illegal is a source of violation of rights and freedoms, and this is because when the legislator granted this dangerous privilege, the legislator restricted it under specific strict conditions. Regarding human rights, what is meant is that compulsory execution, even if it conforms with the law, it faces increasing convictions led by the active human rights organizations. Therefore, the equation presented by Commissioner Romieu in the founding resolution "Saint-Just" must be reconsidered because it changed after the introduction of human rights through the broad section. And the Arab world after the Arab Spring may follow the same path.

Administrative law is based entirely on the principle that individuals are subject to administrative decisions and hence the administration has the right to forcibly implement its orders. Generally, A human rights violation occurs when the administration uses methods of forced execution when it could have resorted to another alternative that does not violate rights. It is committing what is called physical force. The idea of physical assault is considered the most severe and violent means of administration, as it relies on the means of force and oppression. It is characterized by general and comprehensiveness and represents an assault on the freedoms and rights of individuals, and by this means the administration does not carry out legal action but a physical action, whereby the administration uses compulsory force to compel individuals to abide by regulations and decisions.

According to Mustafa, " Physical force is the use of the privilege of direct compulsory execution, harmful or unlawful because it - physical force- is a method that the administration uses to obtain its rights or implement its desires that contradict the legal way, often using physical coercion and violence against others, and coercion may fall on the basic general freedoms of human rights."

Violation of human rights in the field of compulsory execution occurs in two cases: direct force with no right to the basic legal execution and direct force with the absence of the legal nature of executive actions.

These two cases are different from each other: the first case applies to the administrative decision itself, while the second case applies to the implementation procedures, even if the direct compulsory implementation of a legitimate administrative decision. The compulsory execution is so severely flawed that it is not merely an illegal decision, but rather a decision that does not exist. As for the implementation process itself, it may be flawed with illegitimacy when the administration, for example, resorts to direct compulsory enforcement procedures in cases other than those allowed to do so.

Finally, compulsory execution is an act based on coercion, but it is a legitimate act. However, the development of a human rights culture today considers some of the enforcement decisions as illegal, while they were always considered legitimate. Even the judiciary changed its positions because of its convictions in the concepts of human rights. For example, when a decision was issued to close a restaurant, it was executed at the

same hour. Today, the French administrative judge considers that the warning is necessary, even for several days.

Conclusion

From our study of compulsory execution, we conclude the significance of the administration's implementation of its decisions and respect for human rights. Compulsory execution must be fulfilled in a manner that respects the rules that protect people's rights, property, and freedoms. The compulsory execution of administrative decisions is a special realization of the general theory of direct implementation of administrative decisions, and it is perhaps the ideal field of treatment because it is directly related to individual and public freedoms, as we have already indicated. We also concluded that the jurists differed in opinion about the basic concepts related to compulsory execution. Some of them believed that the privilege of direct force is the principle and that the administration has recourse to it as a general principle to fulfill its decisions, and some considered that direct forced execution is an exception to the general rule. We tried to clarify the confusion resulting from the multiple interpretations: We saw that some consider that indirectly forced execution is the one that takes place through the judiciary, while others believe that the indirect execution is the one that takes place when the concerned person refuses the execution. Accordingly, we concluded that the administration has the full right to compulsorily implement its decisions if the violator refuses to comply with it, but if it is carried out voluntarily, there is no longer a justification for compulsory execution.

We also recognize how the French judge handled the issue of expelling poor groups from the places they occupy freely, and how the French administrative judge does not easily initiate or implement forced decisions with great caution for fear of violating a human right. We hoped that the Arab judge would follow this human path in dealing with this segment of people. It was not lost on us to point out that the French judge would not have acted like this without the pressure exerted by the European Court of Human Rights, which is strict in the matter of respecting human rights, which punishes the negligent European countries, and France had the remarkable share of its refusal in this regard. The issue of compulsory execution is considered a difficult and multifaceted topic, but I hope that I have succeeded in presenting its various enforcement clearly, especially in clarifying the relationship between the issue of compulsory execution of judicial decisions and the issue of human rights, especially as we aspire for the Arab administrative judge to be a forerunner in this field and give others discreet lessons.

Recommendations

- strengthen the authority of the administrative judge and the independence of the judiciary in general. As the more independent the judge, the more he can review the administration and urge it to implement compulsory implementation under legal due process without any abuse.
- Establishing a human rights department in every judicial body and all Arab countries. Its mission is to develop studies and research in human rights and to review the state's judicial actions to be consistent with the rules of these rights.
- Stating new laws and regulations that reduce the chances of the administration issuing compulsory execution decisions. The automatic forced execution stipulated in advance in legal texts does not constitute an element of surprise to individuals and reduces the possibility of violating human rights decisions.

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