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### STAY OF EXECUTING ADMINISTRATIVE DECISIONS BY THE LAW OF IRAQI STATE ADVISORY COUNCIL

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#### **ABSTRACT**

The key principle in administrative decisions is that they can be presumptive to be authentic and enforceable. Therefore, challenging these decisions does not stay executing them, which makes them enforceable when issued, causing serious consequences in these decisions when defected afflicting the administrative decision. Albeit, administrative authorities maintain executing these decisions. Staying executing administrative decisions was treated a significant guarantee of public rights and freedoms, protecting individuals from the arbitration of the administration. The Iraqi State Advisory Council consider all challenges related to administrative decisions, including the motions to stay executing these decisions that were challenged to abrogate.

#### **INTRODUCTION**

The state of law is the state which pays respect for the principle of lawfulness, requiring public authorities in the state subjected to the law. To achieve the purpose of lawfulness, its approval must be accompanied by adequate guarantees for its execution and application. The real and effective guarantee of the principle of lawfulness is to subject the actions of public authorities to judicial surveillance. The penalty for the illegality of administrative decisions is to abrogate them and remove all their effects retroactively and consider them as if they were never filed and return the case to what it was before its issuance with the possibility of material compensation when necessary. Affirming motions to stay executing the administrative decisions is linked to the interest of judiciary to respect for legality. The rights of those affected that may be seriously damaged in the cases where the administration initiates the execution of decision instead of challenging. Therefore, the lawsuit to stay the

execution of administrative decisions represents a procedural guarantee that protects the rights and economic and financial interests through staying the execution of the declined decision until legitimacy is decided.

### **RESEARCH SIGNIFICANCE**

The significance of this topic is shown in the sense that the stay of executing the administrative decision judicially is considered key urgent matters that the legislator and judiciary are interested in and thoughtfully keen to address the outcomes resulting from execution. It is one of the most dangerous privileges granted to the executive authority as previously mentioned and it is one of the forms of legal guarantees to protect the principle of legitimacy.

### **RESEARCH OBJECTIVES**

This research aims at studying the legal system to stay executing the administrative decision in terms of its rules and effects in the Iraqi law. It also aims at clarifying the claimant's right to file a lawsuit before the administrative judiciary stay executing the administrative decisions which are subject to appeal until they are decided upon with a description of the procedures for filing the lawsuit and its conditions and the execution of the adjudication issued in it.

### **THE RESEARCH PROBLEM**

The research problem is ascribed to the fact that the Iraqi legislator did not tackle explicit texts regulating the stay of executing decisions in the State Advisory Council Law No. (65) at 1979 and its amendments. It could raise many legal and real problems regarding the legal foundations through which the execution of administrative decisions in Iraq is suspended. This raises a major question: What is the possibility of staying the execution of administrative decisions in the Iraqi administrative judiciary? The research attempts to address the various legal aspects that constitute the content and nature of staying the execution of the administrative decision. Subsequently, highlighting the extent to which the stay of executing the administrative decision plays a crucial role in resolving administrative disputes in Iraq. Through the previous problem, the research will attempt to answer a number of the main questions that fall under a number of sub-questions that the topic of research revolves around answering, including:

\_ What is the concept and nature of staying the execution of the administrative decision?

\_ What are the conditions for staying the execution of the administrative decision?

\_ What are the terms and procedures of lawsuit for staying execution?

\_ What are the effects of staying the execution of the administrative decision?

What is the legal nature of the adjudication to stay the execution of the administrative decision?

## **RESEARCH METHODOLOGY**

To understand all aspects of the topic in order to answer the above-mentioned problem and the resulting questions, it will be relied on more than one scientific method. The descriptive approach will be relied upon through an accurate description of what the situation is according to the Iraqi Advisory Council law. By the analytical method, the constitutional and legislative texts are analyzed to show the legislator's position, both in textually and semantically. Analyzing what was mentioned within those texts is not only inadequate, but rather highlighting what is lurking behind the texts guided by the opinion of legal jurisprudence and the comparative judiciary adjudications as possible.

## **RESEARCH SCOPE & LIMITATION**

To achieve the goal of this research, it is to know the acts related to staying the execution of the administrative decision. The focus is mainly on the Iraqi State Advisory Council Law No. (65) of 1979 and its amendments, and some other Iraqi laws such as the Iraqi Civil Procedure Law No. (83) of 1969 and the law Judicial organization No (160) at 1979, as well as judicial verdicts and opinions of law illustrations.

## **THE FIRST SECTION**

### *Importance and nature of staying executing the administrative decision*

An administrative decision is known as the action by which the administration uses its authority to amend legal centers by its sole will or is an expression of the individual will of an administrative authority with the intent to produce a specific legal effect. (Leila 1970). One of the provisions of the General Assembly of the State Advisory Council referred to the definition of the administrative decision by stipulating that "since this motion does not fall within the concept of administrative orders and decisions because it does not enact and establish a legal status. (Jamaladdin 1995).

## **THE FIRST REQUIREMENT**

### *Definition of staying the execution of the administrative decision*

The Iraqi legislator did not address a definition of staying the execution of administrative decisions, but the jurists have mentioned various definitions of staying the execution. Some have defined it as "a measure taken by the court to prevent results that cannot be avoided later. It takes a judicial adjudication that has its substantive justifications and serious reasons that the claimant of staying bases it on. Khalifa (2006) stated that staying execution of the administrative decision is also defined as: "a temporary preventive measure issued by the administrative judge with the intention of providing urgent legal protection for an interest that cannot be adjourned to the final decision on the issue of the abrogation lawsuit in order to avoid the impossibility or irreversibility of avoiding the effects of ongoing administrative decision which is challenged until the adjudication to annul it. Abdel-Baset (1997) stated that staying execution is an authority which whereby the judge can adjudicate to

stay the execution of the administrative decision upon challenging the annulment if the appellant requests motion in the lawsuit and the necessary conditions are met to stay the execution.

### **RESEARCHER'S DEFINITION**

Staying execution is defined as a sub-motion of a lawsuit abrogation which has certain conditions that the plaintiff proposes a motion intending to obtain a judicial adjudication to prevent the administration from executing the administrative decision instead of challenging till the legality of the decision is decided upon or not. Staying execution is a motion that derives from the abrogation lawsuit which the plaintiff proposes a motion and the court does not adjudicate own accord. Rather, it must be motioned, and certain conditions must be met so that the judge can decide to stay executing the challenged administrative decision, until the abrogation case is decided upon.

### **THE SECOND REQUIREMENT**

#### *The legal nature of staying the execution of the administrative decision*

The basic principle is that issuing a specific administrative decision by the administration shall be in accordance with the authenticity of the law and with the intention of achieving the public interest. Therefore, staying the execution of administrative decisions is an exception to that general principle that requires executing when issued. Staying execution of administrative decisions in Iraqi law is through two requirements.

### **FIRST BRANCH**

#### *The general rule for administrative decisions*

Administrative decisions are the most significant legal means by which the administrative authorities can directly perform their legal functions. Administrative decisions produce their legal effects by the day the signature of whoever has the authority to issue and direct the rulers to work and execute them. Abdel-Baset (1997) believed that such authority is not limited to administrative decisions, but rather, includes all administrative decisions including defective administrative decisions, provided the defect does not reach a degree of gravity that strips them of their administrative character and makes them non-existent. This rule is called the presumption of integrity of the administrative decision, as it is assumed that every administrative decision was issued in de jure, which shall be correct, legitimate in addition to soundness and defectiveness of its pillars. However, it is assumed to lead to a valid and consistent decision with the law, so that the general principle is that all decisions of the administrative authority have been issued correct and defectiveness. (Allawi 1991) Such presumption means that every administrative decision has the validity of the provisions included in and of a legal value until the contrary is proven.

The reference to the presumption of the integrity of administrative decisions is based on the existence of special controls and guarantees within the

administrative work from the good selection of employees and their subjection to presidential control by their managers in the same administrative authority. Additionally, issuing administrative decisions shall be in accordance with formal and legal procedures that are committed to those bodies when issuing these decisions. The administrative decision has the presumption of integrity of administrative decisions which includes all of the pillars on which legitimacy depends on in terms of the specialization, form, position, cause and purpose. The presumption of integrity of the administrative decision has some consequences, which some legal jurists see as privileges granted to the administration. Others see that these results are not a privilege, but rather a natural result of the safety and authenticity presumption of the administrative decision.

***The first result is the commitment of individuals to implement the administrative decision***

The presumption of integrity of the administrative decision results in the necessity that individuals are obliged to enforce the administrative decision. If the decision was issued by the related administrative body fulfilling its clauses, it must have a legal presumption, and then it is implemented immediately. The enforceability does not depend on the consent of those addressed to, as the decision is enforced against them by the date they became aware of it in one of the ways determined by the law and the judiciary is considered valid. The defective decision does not reach the extent that it makes it non-existent and takes the administrative capacity off, but the presumption of safety applies to all administrative decisions which make individuals committed to this administrative decision. It must be executed on basis that it was principally issued in conformity with the law.

***The second result: management is always in the position of the defendant***

All the administrative decisions issued by the administration authority presume the authenticity and safety presumption that the administration body is always in the position of the defendant. Individuals shall start the litigation procedures and face the administrative decision according to legal procedures if they want to get rid of the obligations issued in the administrative decisions, they only need to start litigating procedures and face the administrative decision in accordance with the legal procedures. Thus, the management authority becomes a constant defendant (Al-Tamawi 1993). Being in the position of the defendant makes it in a better position, where the burden of proof is on the person who challenged the administrative decision. The Iraqi Evidence Law stipulated that "First: Evidence is on the one who claimed and the oath is on the one who denied.

Second - The plaintiff is the one who adheres to the contrary of what appears, and the perpetrator is the one who adheres to keeping the original. Thus, the burden of proof is on the plaintiff by the decision of the administration, which is a heavy burden because the administration is the one who owns the files and documents, which often have the decisive impact in the case. The plaintiff's role is limited to assisting the judiciary with guidance on the documents in the

administration that supports his case. The judge has the authority to instruct the administrative body to submit the documents related to the facts of the case, and the administration must obey the judge's order and provide the required papers and documents. Otherwise, the prevarication and stubbornness and refusal to submit the documents is considered authentication of the claimant's data (Abdel-Latif, 2000).

## THE SECOND SECTION

### *The exceptional nature of staying the execution of administrative decisions in Iraqi law*

(Jarouni 2009) indicates that the constant rule in the administrative judiciary is that filing administrative cases against administrative decisions does not stay executing them, due to the direct execution feature of administrative decisions and the presumed safety in these decisions. The challenge against abrogation, which is called the principle of the non-stay effect of abrogation cases, does not stay the execution of the decision originally. The administrative decision continues until deciding to abrogate it or be withdrawn by the administration. If it is attested by one of the illegitimacy aspects it prescribed assets for that. This is the general principle that the appeals of abrogation in administrative decisions do not stay execution.

This principle is treated as a logical result of the principle of the executive force of the administrative decision. It is considered a basic rule in public law, because the administrative decision is a legal act that is enforceable whenever legal stipulations have been legally completed. As long as it has not been withdrawn by the administration and it is not abrogated by virtue of safety and legitimacy until the opposite is proven by judicial decision (Al-Ani 2012). By referring to the Iraqi Procedural Law, it also applies to the Advisory Council. There is a stipulation indicating that the challenge does not stay execution except in the case that the court adjourned that, because the law stipulated that: "challenge by cassation shall adjourn the execution of the cassation judgment if it relates to possession of estate or real estate property. Otherwise, the Court of Cassation may issue a decision to stay executing until the outcome of the challenge is decided.

The majority of jurists in Iraq view that merely filing a lawsuit requesting the annulment of the administrative decision cannot impair the enforcement of this decision, because the administrative decision is a legal and enforceable act when stipulations of enforceable are legally completed. As long as it is not withdrawn from the administration, it is not required to abrogate it because of its safety and legality presumption until contrary is proven by a judicial decision (Radhi 2010). Undoubtedly, the absence of the law of the Advisory Council of the Iraqi state from stipulating the principle of the non-stay effect of the abrogation lawsuit is a legislative deficiency that requires amendments. If the non-stay effect principle represents the general rule, then the motion for staying execution is considered an exception from this general principle so that the plaintiff has the right to submit a motion to stay executing the challenged decision until the case is dispositioned. Thus, the system of staying

the execution of administrative decisions is an exception to the general rule, namely "the rule of non-staying effect to challenge abrogation", in order to avoid many disadvantages that may occur as a result of executing the challenged judgment (Al-Tamawi 2013).

The Court of Cassation in Iraq affirmed the judge's right to decide to stay executing decisions because the decision falls within the general jurisdiction of the courts by mentioning, "the court should have dismissed the case from this authority, because the plaintiff can return back to the court to stay executing the order issued by the municipality, for the court is a general mandate to guarantee these rights. The Court of Administrative Justice of Iraq also ruled to stay executing an evacuation decision until the case dispositioned.

## **THE SECOND SECTION**

### ***Conditions for staying the execution of the administrative decision and the Binding force to stay the decision***

Accordingly, if the system for staying the execution of administrative decisions is a measure of an exceptional nature on the basis of the non-staying effect of the abrogation lawsuit, all legislations tend to stipulate some conditions that must be met so that the court may decide to stay executing the challenged decision. So, staying the execution in cases where avoiding effects of execution and urgency cannot be carried out. That could stay executing decisions causing work shutdown and confusion for the administrative work and the administration and its inability to perform its functions (Boualam 2012)

## **THE FIRST REQUIREMENT**

### ***The objective and procedural conditions for staying the execution of the administrative decision in the State Advisory Council Law***

It was known that the Iraqi State Advisory Council Law No. (65) of 1979 and its amendments did not address stipulations to organize the procedure to stay executing administrative decisions. Connectedly, the administrative judiciary in Iraq found its cause by referring to the provisions of the Iraqi procedural law, as the general Sharia of the state Advisory Council law in regulating those non-tackled issues.

## **FIRST BRANCH**

### ***The objective conditions for staying the execution of the administrative decision***

The system for staying the execution of administrative decisions is possibly considered an exceptional system for the enforcement of administrative decisions. It is provided by conditions as follows:

### **URGENCY CONDITION**

It is required for the adjudication to stay executing the challenged administrative decision to be aware of executing the challenged administrative decision may result irreversible outcomes, which is expressed as a matter of urgency. If the case is adjourned without a decision to stay the execution of the challenged decision until the decision to propose a motion of abrogation case is made, a possible enormous damage could affect the concerned person. It cannot be avoided and remedied when judging nullification or abrogation (Abdel-Wahab 2010).

The condition of urgency expresses the seriousness of the situation resulting from the execution of the administrative decision that is conducted, resulting in serious harm to the concerned person. It cannot be reformed in the future if the challenged decision is abrogated. So, the appellant has an interest in requesting staying as a matter of urgency, once the subject that may take a lot of time is resolve (Muhammad 2018).

The Iraqi legislator did not explicitly mention this condition in the Law of the State Council Validity-No. 65 of 1979 with all its amendments. However, it indicates that this condition must be met to rule to stay executing the challenged administrative decision through some urgent judicial rules stipulated by the legislator in the effective civil procedural law. It stipulates that "the defendant may issue a decision from the urgent court to prevent the defendant from traveling if there are serious reasons for believing that the defendant's decision to call is eminent. The Iraqi judiciary has gone along with the requirement to provide an urgent element for the adjudication to stay executing the challenged decision, as it stipulated that "the state order requires the availability of two pillars, namely the state of urgency and the presence of a text in the law authorizing the judge to take it.

The Iraqi State Council also indicated in one of its adjudications on the condition of urgency and the irreversible effects of staying the execution. The decision of the General Assembly of the State Council when ratifying the adjudication of the Administrative Judicial Court, which stipulated the discontinuation of an evacuation order, stated that 'On the cassation decision, it was found that it is correct and in accordance with the law, because the court decision dated 17/2/1992, which includes staying the evacuation of the shop in order to avoid possible damage.

### **SERIOUSNESS CONDITION**

It is also conditioned for the adjudication to stay executing the challenged administrative decision, that there is seriousness in the motion for abrogation and staying of execution. It is meant that the judge first examine whether the challenged decision is legitimate or not. If it is apparently found that the administrative decision has been defective and probably to judge abrogating the administrative decision replaced by the motion for staying, the judge, then, issues his decision to stay executing. In other words, the doctrine that the court makes about the motion for staying execution is a preliminary doctrine based on the likelihood of issuing its decision to abrogate when examining the issue of the abrogation case.



The Iraqi legislator did not explicitly stipulate this condition, while the judicial adjudications stipulated that the condition for seriousness must be met to stay executing the challenged decision. The Iraqi judiciary indicated this in many of its adjudications, including the decision of the Dhi Qar Court of Appeal in its capacity as discriminatory regarding the numbered case (1 / Urgent Judgment / 2011), which issued its decision that stated, " the court had to assign the distinction to prove the existence of the serious reasons that justify preventing the travel of the distinguished person and the lawsuit he is trying to escape from and link it with the case file ... So he decided to nullify the probated decision and return the case to its court to follow.

## **THE SECOND BRANCH**

### ***Procedural conditions for staying the execution of decisions in the Iraqi Advisory Council law***

It is required that some procedural conditions be met in order to affirm the motion to stay the execution of administrative decisions, and these conditions are as follows:

#### ***Submitting a grievance to the administrative body***

The Iraqi legislator stipulated that a grievance should be filed with the administrative authority that issued the decision before challenging it or motion staying execution. The Iraqi Advisory Council law stipulated that "before submitting the challenge to the Administrative Judicial Court, it is required that the grievance is directed to the specialized administrative authority within (30) days from the date of informing him of the order or challenged administrative decision or considering him informed.

#### ***Associating the motion to stay executing the administrative decision with the motion of abrogation***

Some laws and legislations are required in different countries to affirm the motion for staying execution, provided that this motion must be associated with the claim of abrogation. So, it is inconceivable to affirm this motion without being associated with the writ of the abrogation against the same decision (Al-Arman,2011). The Egyptian legislator stipulated that "handing the motion to the court does not entail staying the required decision to be abrogated. The court may order the staying of its execution if requested in the lawsuit file and the court held that the execution results may be irreversible. The Iraqi legislator did not stipulate to compel the plaintiff to submit a motion to stay the execution of the administrative decision at the same time with the motion to abrogate the decision. So, there is nothing to prevent people from submitting an application of staying of execution in the abrogation petition or in a petition independent of the lawsuit. But what is common in the administrative judiciary in Iraq is that the plaintiff usually motions in a lawsuit to abrogate the administrative decision to stay the execution of the decision. One of these lawsuits is the lawsuit by the President of the Association of

Hotels and Restaurants in Iraq against the President of the Tourism Authority to demand the abrogation and staying of the execution of the decision of the President of the Tourism Authority to dissolve the administrative authority of the Hotels and Restaurants Association and assign the management of the Association to a temporary body which stated in its text". The defendant issued a decision to dissolve the administrative committee of the Hotel and Restaurant Association (528) on 24/1/2004, and assigned the administration of the association to a temporary body, violating the internal system of the association. Nevertheless, the elections were held in an authentic and legal way, so the mentioned decision is illegal to motion of staying execution or abrogating it.

Also, a motion for staying execution is submitted at a later time to submit a claim to abrogate the administrative decision. Relatedly, the lawsuit by the President of the Iraqi Jurists Union before the administrative judiciary against the Prime Minister demands the abrogation of the Prime Minister's Resolution No. (D / Q / 3/35 on 9 / 2/2005). The prosecutor's agent then made a regular motion to the court to demand the staying of the execution of the challenged decision to abrogate until the case is dispositioned.

## **THE SECOND REQUIREMENT**

### ***The binding force of judgment issued to stay executing the administrative decision in Iraqi law***

A judgment issued to stay the execution of the challenged administrative decision is considered a judicial adjudication in all respects, but it is a temporary measure that remains pending on the outcome of the adjudication in the motion to abrogate the administrative decision. The effect of the staying execution will be abrogated if the abrogation lawsuit is rejected, becoming irrelevant if it decides to abrogate the challenged administrative decision (Al-Kabilat 2011). The adjudication issued to stay the execution of the administrative decision is a judicial adjudication that has the basis of the provisions and their characteristics. The judicial adjudication has a binding authority for what was decided by. This authority applies to the parties to the lawsuit and the court that issued the adjudication.

## **FIRST SECTION**

### ***The binding force of the adjudication to stay executing the administrative decision***

The adjudication issued to stay the execution of the administrative decision is considered a temporary abrogation of the administrative decision, and this does not prevent the conversion of the temporary abrogation into a final abrogation. This adjudication does not restrict the judge when judging the abrogation lawsuit, and also rejecting the motion for staying of execution does not limit the court when deciding the abrogation lawsuit. So, the court can reject the motion to stay the execution, and then abrogate the administrative decision (Zahir, Mohamed & Salih 2018).

Thus, the adjudication issued in the motion to stay the execution is a final adjudication and has the merits and characteristics of the provisions. Basically, it possesses the authenticity of the adjudications regarding the subject of the motion itself, although it is temporary in nature, as long as the circumstances have not changed, and until the issue of the abrogation case has been decided. (Al-Heiny 2014). The verdict issued for staying execution is a adjudication in an urgent matter, and the urgent adjudications are judicial adjudications that acquire a binding force of the matter decided by and binding on the court and the parties to the case, but this force is not taken into account. These adjudications are not decisive in the dispute, but are temporary adjudications which can be refrained from when expiring the reasons of issuing (Al-Sarayrah 2013).

## **THE SECOND BRANCH**

### ***Executing the decision to stay the execution of the decision and the penalty resulting from the administration refusal to implement***

If the staying judgment is as binding as it in the case of the administration or the court that issued it previously, then it will be the responsibility of the administration to execute this issued adjudication. Refusing to execute the adjudication is considered a crime to be penalized legally. The following is a description of how to execute the staying of executing judgment and the penalty to refuse executing:

#### ***First, how to execute the adjudication to stay the execution of the administrative decision***

If the court issues its adjudication to stay the execution of the administrative decision, the administration is responsible for executing this adjudication and refraining from taking any action that could be considered as execution of its decision of staying execution. Additionally, it shall refrain from issuing any decision based on it, and the administration shall not have to refer to the previous case when executing. The stayed administrative decision remains pending until the adjudication of the abrogation lawsuit. If a decision is made to abrogate the decision, the decision will cease retrospectively by the date issued. If the motion for abrogation is rejected, the decision will be returned to effect as before the end of the stay. The administration shall refrain from taking any executive action that will have an effect on the decision to stay its execution.

#### ***Second, the penalty for the administration refusal to implement the adjudication to stay the execution of the administrative decision***

That the administration refuses to execute the decision of staying the execution of the administrative decision has a criminal responsibility. Connectedly, refusal to execute the judicial adjudication is a criminal act. The Iraqi Penal Code No. 111 of 1969 defined penalties that constitute a penalty

for those who refrain from executing judicial adjudications, in Article 329 thereof, which stipulates that:

1- A penalty of imprisonment, a fine, or one of these two penalties for any employee or official charged with a public service who used his position to stay or obstruct the execution of orders issued by the government, provisions of laws and regulations, or any judgment or order issued by a court or any competent public authority, or adjourning the collection of funds or fees and the like determined by law.

2- Any employee or person charged with a public service that refuses to implement a adjudication or an order issued from a court or from any competent public authority after eight days have passed from the official warning to implement whenever the execution of the judgment or the order falls within its jurisdiction shall have the same punishment (imprisonment or fine).

There is no doubt that the administration refuse to adhere to the judicial adjudication is a violation of the rule of “the binding force of the matter adjudicated”. Respecting the authority of the adjudication issued to stay the execution of the administrative decision to execute and not defrauding it by issuing a new administrative decision carries the same content as of the stayed administrative decision.

## **CONCLUSION**

All Thanks are due to the Almighty Allah for finishing this research entitled “staying the execution of administrative decisions in accordance with the law of the Advisory Council of the Iraqi state”. In fact, after completing that humble effort we made it clear to us that its subject is extremely important as it is an important guarantee that protects public rights and freedoms from the arbitrariness of the administration. In cases the administrative authorities initiate their decisions by one of the defects that may be caused in such cases. The importance of the decision to stay the execution of these decisions is evident until the original lawsuit "abrogation action" is decided.

## **FINDINGS & RECOMMENDATIONS**

The research has come up with a list of findings and recommendations as follows.

## **RESULTS**

The most important results reached through this research are as follows:

Staying execution is a sub-application for a abrogation action of annulment that has certain conditions, which the plaintiff proposes a motion with the intention of obtaining a judicial adjudication to prevent the administration from executing the administrative decision in question, until the legality of the decision is decided on whether or not.

The Iraqi legislator did not address the provision to regulate the procedure for staying the execution of administrative decisions in the State Advisory

Council Law No. (65) for the year 1979 and its various amendments, which represents a major deficiency of legislation. A motion for staying execution is an exceptional measure based on the principle of the non- stay effect of the abrogation lawsuit. So, its objective and procedural conditions must be met for the court to adjudicate it. However, that the terms of staying execution the laws dealt with stipulated in and the judiciary ensure that there is a kind of balance between the rights of individuals not to execute decisions by illegitimacy, and between the authority of the administration and its right to execute its decisions.

## RECOMMENDATIONS

The key recommendations to recommend are as follows:

It is recommended that the Iraqi legislator first put in place a law for the State's Advisory Council that deals with the praise of all the amendments that were mentioned in Law No. (65) of 1979.

It is recommended that the Iraqi legislator to put in place special stipulations for the procedure to stay the execution of administrative decisions to address the report of this procedure. Additionally, it must indicate the conditions that need to be met by an explicit text and take note of all its aspects and benefit from the observations of scholars and researchers so that this system is free from errors and deficiencies experienced by some other legislation

It is recommended allocating departments in the Advisory Council of the Iraqi state, which is competent to consider motions to stay the execution of administrative decisions independently of the trial courts, provided that each of these departments is composed of one judge. So that quickly deciding the motion to stay execution is completed, as they are in most cases aimed at imposing urgent protection of rights and freedoms, which calls viewing these motions quickly.

Likewise, it should stipulate a report of a subordinate punishment for the crimes of refusing execution, inaction or negligence of judicial rulings and decisions. That punishment is to publicize the crime and its perpetrator in the daily newspapers, in addition to the penalty of job dismissal and imprisonment to achieve deterrence for the administrative authorities and their employees in executing the judicial rulings and refusing executing the decisions that have been suspended.

## REFERENCES

- Abdel-Baset, Mohammed.** (1997). *Staying the execution of administrative decisions*. Alexandria: Al-Fikr Press.
- Abdullah, Adil.** (2007). *Staying execution of the administrative decision in the adjudications of the administrative judiciary* Beirut: Al-Halabi Human Rights Publications.
- Abdullah, Adel & Daoudi, Hussam.** (2014). 'Staying the execution of the administrative decision between Algerian legislation and France'. *Journal of Humanities*, No. (34/34).

- Al-Ani, Wisam.** (2012). 'The effect of the abrogation lawsuit on the execution of the challenged decision'. *The Law Journal*, College of Law, Al-Mustansiriyah University, Volume (4), No. (16, 17).
- Al-Arman, Abdulrahman.** (2011). 'Conditions for staying the execution of the administrative decision'. *Journal of Legal and Political Sciences*,
- Al-Heiny, Mohamed.** (2014). 'Staying the execution of administrative decisions'. *Journal of Legal Sciences*, No. (1).
- Al-Helou, Majid.** (1995). *Administrative court*. Alexandria: University Press House.
- Al-Kabilat, Hamdi.** (2011). *The brief of administrative judiciary*. Jordan, Amman: Wael Publishing, First Edition.
- Allawi, Maher.** (N/D). *Principles of administrative Law*. Baghdad UP.
- Allawi, Maher.** (1991). *Administrative decision*. Iraq: Al-Hekma for Printing and Publishing - Baghdad, First Edition
- Al-Sarayrah, I, S.** (2013). 'The effectiveness of the urgent judiciary and its execution mechanism in Jordanian legislation'. *Anbar University Journal for Legal and Political Science*, Vol. (1), No. (8).
- Al-Tamawi, Salman.** (1967). *Administrative judiciary*. Egypt: Arab House of Thought.
- Al-Tamawi, Salman.** (1993). *General theory of administrative decisions*. Egypt: Arab Renaissance House.
- Bedair, A, M. & Mahdi Yassin Al-Salami, M,Y. et.al.** (2009). *Principles and provisions of administrative law*. Egypt: Atik Book Company.
- Hameed, Mohamed.** (2014). *General principles of administrative decision*. Jordan: Al-Wael Publishing and Distribution, First Edition.
- JamalAl-Din, Sami.** (1990). *Administrative lawsuit and procedures before the administrative judiciary*. Alexandria: Al-Maaref Institution.
- Jarouni, Fayza.** (2009). 'Reviewing of execution of administrative decisions'. *Journal of Research and Studies*, No. (7).
- Khalifa, Abdulaziz.** (2006). *Judicial matters judiciary*. Cairo: Arab Renaissance House.
- Khalifa, Abdulaziz.** (2007). *Administrative decisions in jurisprudence and the judicial Council of the State*. Egypt: Arab House of Thought.
- Khalifa, Abdulaziz.**(2008). *Staying execution of the administrative decision*. Egypt: Alexandria Al-Fikr Press.
- Khalifa, Abdulaziz.** (2009). *Administrative decisions*. Alexandria: New University House.
- Leila, Mohamed.** (1970). *Judicial oversight of administration works*. Cairo: Arab Renaissance House.
- Mansour, Sami.** (1980). *Administrative law*. First Edition, Baghdad. Ltd Press.
- Musa, Ahmed.** (1980). *The Idea of evidence before the administrative court. The State Council, Technical Office of the Sunnah (27)*. The Egyptian General Book Authority, Cairo.
- Radhi, Mazin.** (2010). *Administrative Judiciary: A study of the foundations and principles of administrative judiciary in Iraq*. Iraq: Duhok University.
- Zahir, Fawaz, & Salih, Ayed.** (2018). 'Staying the execution of negative administrative decision'. *Journal of Law*, University of Al-Nahrain, Vol. (19).

*Dissertations and Theses*

- 1- **Al-Ani, Abdullah.** (2000). The administrative decision between the imperatives of execution and the requirements of staying execution: A comparative study with an applied study of the reality of the Iraqi judiciary. PhD thesis, University of Aden.
- 2- **Al-Mufarriji, Abdullah.** (1995). Staying the execution of administrative decisions. Published PhD Thesis, University of Baghdad.
- 3- **Al-Uqbi, B.** (2013). Lawsuit for staying the execution of administrative decisions. MA Thesis, Faculty of Law, Kassadi Merbah University, Algeria
- 4- **Boualam, Awrkkat.** (2012). Staying implementing administrative decisions. Master Thesis, Faculty of Law, Mouloud Mamari University, Algeria.
- 5- **Muhammad, Aabdulrahman.** (2008). Staying execution of the administrative decision in the Libyan system, MA Thesis, Faculty of Law, Al-Marqab University, Libya.
- 6- **Muhammad, Majid.** (2018). Staying the execution of the administrative decision in Iraqi law: A comparative study". Master Thesis, Faculty of Law, Al Isra Private University, Jordan.
- 7- **Muhammad, Majid.** (2013). The provisions and implications of staying the execution of the administrative decision in both Jordanian and Omani law. MA thesis, Mu'tah University, Jordan.
- 8- **Saleh, Kamal.** (2017). The Impact of the authenticity and safety decision of the administrative decision on abrogation procedure. Master Thesis, Faculty of Law, Middle East University, Jordan.

*Rules and Regulations*

- Iraqi Penal Code No. 111 of 1969  
 Iraqi Civil Procedure Law No. (83) of 1969.  
 Iraqi Evidence Law No. 107 of 1979  
 Law of the Iraqi State Advisory Council No. (65) of 1979.  
 Egyptian State Council Law No. (47) of 1972.

*Judicial Adjudications and Decisions*

- 1- Decision of the General Assembly of the State Council in its discriminatory capacity No. (94 / administrative / distinction / 1995) session on 3/26/1995
- 2- Judgment of the Iraqi Court of Cassation in the discriminatory decision No. (468 / Urgent / 988 dated 11/15/1988, issued on 11/24/1988)
- 3- General Assembly Decision of the Advisory Council of the State of Iraq No. (35 / Administrative Discrimination / 96 dated 15/4/1996)
- 4- The General Assembly Decision in the Advisory Council of the State of Iraq No. (212 / Discipline / Discrimination / 2009), the session of 4/13/2009
- 5- The decision of the Iraqi Administrative Judicial Court No. (95 / Administrative / 2004) session on 27/7/2005
- 6 - Iraqi Federal Court Decision No. (3 / Federal / Discrimination 2005) on August 9, 2005

- 7-Decision of the ThiQar Court of Appeal in its discriminatory capacity No. (153 / T / H / 2011), 6/13/2011 session
- 8- The decision of the Iraqi Federal Supreme Court No. (35 / Federal / Cassation 2010) session of 6/5/2010