



OBJECTIVE IMPEDIMENT AFFECTING FORCED EXECUTION WITHIN THE SCOPE OF IRAQI LAW

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Abstract

The legally issued executive bonds fulfill all their conditions set by the law, and are subject to execution through the execution directorates. The executive procedures may encounter some impediment that affect the normal course of the execution procedures, some of which lead to stopping or delaying the execution. The impediment that the executive procedures may encounter are what represent impediment that the law explicitly requires to delay implementation if they are available. Among these symptoms is what is suspended for execution by giving the competent court to hear the case the power to suspend this suspension or not.

Keywords: Impediment, Force Execution.

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INTRODUCTION

Originally, the forced execution of executive judgments and documents must be carried out without any obstacles that hinder the progress of the execution procedures for these bonds, and this is an application of the principle of good faith assumed between the parties to the executive transaction.

As long as the executive bonds are legally issued and meet all the conditions specified by law, they shall be subject to execution through the Enforcement Directorates. At the same time, however, the executive procedures may be hindered by some impediment that affect the normal course of the implementation procedures, including what leads to suspension or delay of implementation. The impediment that may encounter the executive procedures, including those that represent impediment, are expressly required by law to delay implementation if available. One of these impediment is what is suspended for execution by giving the court competent to hear the case the power to suspend this suspension or not.

Delay of execution is the action resulting from a decision issued by the executor of justice to delay implementation based on the verification of objective impediment that hinder the execution procedures, some of which are due to the judgment to be executed, such as reviewing the ordinary methods of appeal or to the objection of the debtor or to the issuance of a decision by the competent court to delay these procedures. While what is meant by suspension of execution is the procedure that results in the non-continuation of implementation due to impediment related to the same provision to be executed. As a result of these objective impediment, the effects of the realization of these impediment vary in terms of the stability of this impediment, which led to the suspension or delay or its partial decline or its absence at all,



which makes these effects limited between the suspension of implementation procedures or the resumption of procedures and their annulment and restoration of the situation to what it was before the start of implementation.

The importance of studying the objective impediment affecting the forced implementation in terms of knowing these impediment and determining the person who can be the main direct to the existence of these impediment and knowing the effects of their realization and their effects in obtaining rights through the implementation directorates by tracking the legal materials within the scope of Iraqi law, which will represent the scope of this study, while tracking the practical application of these materials by the Iraqi judiciary, by dividing the research into two sections, the first to study the verification existence of objective impediment affecting implementation, divided into two requirements, the first for the objective impediment delayed for implementation and the second for the objective impediment standing for implementation. As for the second section, we deal with the legal effects of the realization of these impediment by dividing it into three demands, the first to suspend the implementation procedures and the second we allocate to resume the implementation procedures, while the third is devoted to invalidating the implementation procedures, the conclusion of the research with a conclusion that we guarantee the most important findings of the research.

The first topic

Check the existence of objective impediment affecting the implementation

There is no doubt that the judicial decision is one of the most important execution bonds and there is no obstacle that prevents its implementation if it is one of the mandatory provisions, and it is one of the official bonds that do not work unless it is safe from suspicion of forgery¹. The decision must also be issued in accordance with legal procedures. In accordance with the specific jurisdiction of the Court, the legal period of limitation has not expired on this decision.² Issued by an Iraqi court, the duly issued judgment may not be carried out by the Enforcement Department or delayed. that impediment, the execution procedures may encounter However.⁴ may lead to delaying or suspending implementation, which we will show each in a separate demand.

First order

Objective impediment delayed for implementation

The execution of judicial rulings is not required to be final. Unless it is one of the rulings issued against the house of money, endowments, minors, absentees, insane, insane or other incapacitated persons, as well as provisions containing the annulment of the marriage contract, separation or divorce if they were not upheld by a court of cassation after depositing them with it. that may encounter the implementation impediment However, the law has stipulated some⁵ and lead to its delay, as in the case of reviewing the ordinary methods of appeal, and these impediment are related to the elements of the executive transaction itself

First branch

Review of Ordinary Methods of Appeal

As is known, the methods of appeal are divided into two parts, ordinary methods of appeal and unusual methods of appeal, where both the objection to the judgment in absentia and the appeal by appeal represent the ordinary methods of appeal, while the extraordinary methods of appeal are discrimination, correction of the discriminatory decision, retrial and objection of others⁶. As well as by appealing in favor of the law. However, the law has singled out the ordinary methods of appeal with the advantage of delaying executive procedures without reviewing the extraordinary methods of appeal, while allowing the implementation of judicial rulings during the legal appeal periods to take into account the interest of the creditor, making the mere review of the debtor

the ordinary legal methods of appeal sufficient to delay implementation in order to protect the interest of the debtor. Where the appeal by way of objection to the judgment in absentia and the appeal by appeal shall result in a delay in implementation and by virtue of the law. The same is the case of appeal by way of cassation if the judgment is related to the possession of a property or a right in rem over it. We will address each of them in a separate section. ⁸

First branch

Objection to the judgment in absentia

Objection to the judgment in absentia is defined as one of the ordinary methods of appeal that the convicted person may resort to in absentia with the intention of annulling or amending the judgment in absentia and is submitted to the same court that issued it⁹. Whether it is from the courts of first instance or before the Court of Appeal in the event that one of the litigants is absent from the case from the first session until the issuance of the judgment in it despite being properly notified¹⁰. If the judgment filed for execution is a judgment in absentia, the objection to it must be delayed, in accordance with the provision of the first paragraph of Article (183) of the Civil Procedure Code and the first paragraph of Article (53) of the Execution Law if the executor presents a citation from the court that issued it supporting his objection to that judgment, and that the mere presentation of the citation of the occurrence of the objection obliges the Enforcement Directorate to delay the implementation, whether the objection is within the legal period or outside it, fulfilling its conditions or not fulfilled, because the competent authority in these matters is the Court of First Instance that hears the case and not the Enforcement Directorate¹¹. Whereas the text of the first paragraph of Article (53) of the Execution Law came in general and without exception certain cases or facts¹². If the decision executed in the executive file is in absentia and the objection is signed by the defendant and the executor supports the justice executioner, then this is the case of the text of Article (53) of the Execution Law and the delay of implementation in the file until the result of the objection lawsuit. However, it should ¹³ be noted that the decision to be delayed is not covered by expedited enforcement, as the delay in implementation in this case must cancel the decision issued for expedited implementation, otherwise the Enforcement Directorate must continue the implementation work. Unless the ¹⁴ decision is related to alimony¹⁵. However, if the objection to the judgment is from a person other than the one against whom the judgment was issued, this objection issued by third parties does not delay the implementation of the decision. ¹⁶

Section II

Appeal

Appeal is defined as one of the ordinary methods of appeal aimed at reconsidering a ruling of the Court of First Instance and its role is not limited to monitoring the validity of the judgment from a legal point of view, but leads to the reconsideration of the case to decide on it again in terms of reality and law before the Court of Appeal to its annulment with the issuance of a new judgment in it or the amendment of the initial judgment. The delay in implementation is conditional on the appeal by way of appeal against the executed judgment itself. However, if it is signed by way ¹⁷ of appeal against another decision that has nothing to do with the executed decision, this appeal does not affect the implementation of the decision. ¹⁸

Section III

Discrimination

As for the distinct appeal, it does not affect the executive procedures unless it is related to a property¹⁹. This is referred to in paragraph (a) of Article (53) of the Enforcement Law and paragraph (1) of Article (208) of the Code of Procedure. It is noted that the article has added that the discrimination is related to the possession of real estate or a right in rem over a property. If the executed judgment includes exposure to the possession of a property or to a right in rem such



as the right of ownership or the right to dispose of and other rights in rem, or the executed judgment includes preventing opposition to the benefit of a property, the appeal against it is discriminatory and providing support for this obliges the Enforcement Directorate to take the decision to delay the implementation of the result of deciding on the discriminatory appeal. Accordingly, the Nineveh Federal Court of Appeal, in its discriminatory capacity, issued a^{.20} decision to delay the implementation of a decision related to the termination of the lease of a property and oblige the tenant to hand over the property free of concerns, as the said judgment is related to the possession of a property and its implementation must be delayed when the discriminatory appeal occurs against it..^{.21}

Second Requirement

Impediment associated with the elements of the executive transaction

The Execution Directorate cannot initiate the procedures for the implementation of judicial decisions on its own and automatically, but the execution applicant must review this Directorate and submit a request for implementation or deposit the executive bond with the Execution Directorate to implement this decision against the person against whom the decision was issued, and the implementation may encounter some objective impediment that are related to either the applicant for execution or the executor, including what may be related to the bond to be implemented or the money to be executed. What is meant by the elements of the executive transaction is each of the applicant for execution (the creditor of execution) and the execution is required against him (the debtor of execution) and the bond to be executed.

First branch

Impediment related to the creditor of execution

What is meant by the execution applicant is the original creditor or his contractual or legal representative or his private or public successor, who must have the capacity of the applicant for execution legally, in addition to the availability of interest in the request for execution, like the plaintiff in the lawsuit, which must have the legally required capacity²². The Enforcement Directorate's decision on execution requests and its implementation of judicial rulings and executive documents may require access to some documents. Which requires this directorate to^{.23} assign the creditor to carry out some work or submit some documents and documents related to the bond in question.^{.24}, The creditor may not respond to this request deliberately or negligently. e executor must delay the Thirty days have elapsed since such abstention, in which case th^{.25} execution until the creditor submits a petition requesting the renewal of the executive transaction. The creditor must submit a request for renewal of the executive transaction within^{.26} a period not exceeding seven years from the last transaction, which is the period of the fall of the executive bond, if the creditor reviews during this period and pays the due fee, the executive transaction shall resume from the point where it was decided to delay the implementation²⁷. However, if the reason for the creditor's refusal to respond to the requests of the Execution Directorate is based on a legitimate reason or excuse, the executor shall in this case reverse his decision and proceed with the execution procedures.^{.28}

The second paragraph of Article (50) of the Execution Law referred to the case of the execution applicant leaving the executive document and not reviewing and following up the executive procedures after filing it with the Execution Directorate for a period of one year from the date of the last transaction, the executor of justice must delay the implementation until a petition is submitted for renewal.

The reason for the creditor's abandonment to follow up the execution procedures may be due to the fulfillment of his right from the debtor or his agreement to settle with the debtor or the insolvency of the debtor and the creditor's certainty of the futility of reviewing the Enforcement Directorate and following up the procedures. the scope , What is meant by abandonment within²⁹

of this paragraph is abandonment resulting from the negligence of the creditor himself and the failure to review the Execution Department. As the wisdom of this paragraph is to prevent the³⁰ accumulation of executive files and delay their completion without a legitimate excuse, as the survival of these files without review leads to confusion in the progress of work in the Directorate of Implementation in addition to violating the principle of facilitating and accelerating the completion of executive transactions in order to achieve the objectives of the Implementation Law³¹. However, if the abandonment is caused by a reason unrelated to the debt, the judgment or the editor shall not lose his executive power, no matter how long it takes, as if the abandonment had taken place in order to inform the debtor.³²

Section II

Impediment related to the execution required against

The death of the debtor represents one of the objective impediment of the execution sought against him, as Article (37) of the Execution Law stipulates (a- The executor of justice shall take the creditor's oath of invocation of his own accord in the event of the death of the debtor), as the case of the death of the debtor causes a delay in execution by a decision of the executor of justice until the presentation of the legal division of the debtor for the purpose of proving the death of the debtor first and limiting and identifying his heirs in order to notify them for the purpose of resuming the execution procedures against them in addition to the estate of their testator³³. The debt shall be collected from the heirs, each to the extent of his share in the estate, after the creditor has taken the oath of invocation stipulated by law. The executor of³⁴ justice may issue his decision to delay the execution in the event that the heirs deny to seize the estate and the creditor is unable to prove this with written evidence and the estate funds are not visible in a way that can be seized and sold. It is not permissible to³⁵ prosecute the property of the deceased debtor that the heirs disposed of after the lapse of three years from the date of the death of the debtor, as the disposal of the heirs of the estate funds becomes effective unless their disposition was issued in collusion with third parties to the detriment of creditors. The aim of the creditor's oath of invocation is to ensure that the creditor³⁶ has not paid the debt himself, and this oath shall be sworn even if the heirs do not request it, as the executor of justice is bound by this procedure even if the heirs acknowledge the debt or refuse to swear to the creditor because the oath is the right of the deceased without a lawsuit or request.³⁷

The debtor's grace period is one of the objective impediment facing the execution. As it may be a requirement of justice in some cases to grant the executor against him an appropriate period, otherwise the continuation of execution leads to serious damage to the debtor or causes unavoidable damage that could have been avoided if the debtor had been granted an appropriate period. Where it was ruled (that the extradition of the minor before the date specified for the³⁸ grace period causes more damage to her than the damage caused to her parents, provided that this grace period is final) Determining the amount of grace period granted to the debtor in order³⁹ to enable him to execute and pay the debt owed by him is within the discretion of the executor of justice and in a manner consistent with the objectives and foundations of the Execution Law stipulated in Articles (1) and (2) thereof..⁴⁰

It was also ruled that the executor of justice should have granted the debtor a grace period to allow the performance of his children and the end of the school season and then resume the enforcement proceedings. Granting the debtor this period does not prevent it from being⁴¹ repeated if the purpose for which the delay was made is not fulfilled, and the decision to grant the period is considered a postponement of the executive transaction..⁴²

The origin is that there is no effect of changing the hand on the thing to be executed⁴³, After the date of filing the lawsuit in which the executed judgment was issued or after the registration of the executive document⁴⁴, Article (38) of the Execution Law promised the change of hand of the



objective impediment that hinder the implementation, as it stipulated (does not affect the executive transactions change of hand located part or all on the thing to be executed on the date of filing the lawsuit in which the executed judgment was issued or after the registration of the executive editor, unless the change in fact has taken place for reasons unrelated to the debtor and supported by the executor of justice in writing, then the last hand holder shall be given a period not exceeding five Ten days to review the competent court and obtain a decision to delay implementation). The text of Article (38) aims to prevent the debtor from evading the provisions of the law in his attempt to smuggle his money for which a judicial judgment or an executive editor has been issued and to obstruct the execution procedures. If the change of hand before ⁴⁵ the filing of the lawsuit or before the issuance of the executive document, the decision cannot be implemented on the one who moved the eye to his hand, unlike if the hand was changed after the lawsuit or the issuance of the executive editor⁴⁶.

Section III

Impediment related to the executive deed

As for the objective impediment of the executive bond, they appear either in the form of ambiguity of the judgment to be implemented or the objection of the debtor to the execution of the commercial paper or the bond containing an acknowledgment of a debt or proving a personal right. Which we will discuss successively in the following paragraphs

First: The ambiguity of the judicial decision

Article (10) of the Execution Law stipulates (for the executor of justice, to clarify from the court that issued the judgment about the ambiguity contained therein, and if necessary, a decision is issued from it, understand the relevant parties to review it without prejudice to the implementation of what is clear from the judgment to be executed) If the judicial judgment to be implemented is ambiguous so that it has become vague and unclear, it is impossible to understand the intention of the court that issued it or to know how it is implemented, the executor of justice must clarify from the court that It was issued with similar ambiguity, and until the court responds to the clarification, the executor of justice decides to delay the implementation⁴⁷. The executor of justice must implement the decision without discussing it, and in the event of ambiguity, he should approach the court that issued it, and he can also seek the help of more than one expert, especially the experts who provided their experience in the case subject to implementation. . Therefore, it is required for the permissibility of referring to the court to interpret the judgment ⁴⁸ issued by it that the operative part of the judgment is ambiguous or ambiguous, and that the executor of justice requests the court to explain the ambiguity by approaching the court after checking the decision, and that the decision has acquired the degree of bits, and that the interpretation is issued by the court that issued the decision.. The court from which it is ⁴⁹ inquired shall send sufficient clarification to the Directorate of Execution, while adhering to the limits of clarification without amending the judgment, whether in addition, deletion or change, and in the event that it is not possible for the court to clarify the ambiguity or the issue exceeds the scope of clarification, the executor of justice must understand the relevant parties to review the competent court to resolve the ambiguity judicially. In all cases, the executor of justice ⁵⁰ may not interpret the judgment to clarify the ambiguity on his own, but the executor of justice may refer to the annexes of the ambiguous judgment to consider these annexes as an integral part of the judgment, such as the reference of the executor of justice to the report of the judicial expert., The ambiguity may be partial affecting part of the decision to be implemented, so the ⁵¹ justice executor must continue the implementation procedures for the clear part that was not ambiguous and delay the implementation for the ambiguous part of the decision and approach the court that issued the decision implemented for the ambiguous part, if the court's decision came to remove the ambiguity, the justice executor continued to implement from the stage in which he stopped⁵². However, if the competent court is unable to resolve the ambiguity or if it has provided an explanation outside the limits of the clarification, the Directorate of Execution shall alert the

concerned parties of the necessity of reviewing the competent court to resolve the ambiguity judicially.

Second: Objection to Execution Documents

As for the objection to the commercial paper submitted for execution or the bond containing an acknowledgment of a debt or the bond proving a personal right⁵³. If the objection to these documents occurs within the legally specified dates, this objection results in a delay in implementation according to whether the creditor is a regular person or from the state departments, when the creditor is a regular person, the executor must take a decision to stop the execution procedures and inform the creditor of the withdrawal of the deposited document for execution and review the competent court to file a lawsuit to prove the right contained in the document to be implemented and obtain a judicial decision to do so, and in the event that the objection is part of the right, the implementation shall apply to What the debtor acknowledges and stops the performance of the remaining part⁵⁴, but if the creditor is one of the state departments, the objection to any of these bonds does not delay the implementation, but rather assigns the executor of justice to the debtor to review the competent court to prove his innocence⁵⁵, the court before which the objection is submitted may decide to delay the execution until the result of the resolution of the case if the debtor deposits the amount of the debt and its expenses in the court's fund or with the Execution Directorate or obliges the court to provide a bank or real estate guarantee to secure the debt and its expenses.⁵⁶

Second Requirement

Objective impediment standing for implementation

Second Requirement

Objective impediment standing for implementation

The objective impediment standing for implementation are divided into two parts, the first is a standing objection for implementation by virtue of the legal texts and the second is a judicial objective objection based on the ruling of the court competent to hear the case, which is what we will show successively.

First branch

Legal impediment standing for implementation

Article (51) of the Execution Law stipulates (first - if the executed judgment is annulled, rescinded or revoked in its entirety, the situation shall be returned to what it was before the execution without the need to obtain a judgment to that effect. Legal impediment are the impediment that are expressly stipulated in the legal articles that they are suspended for implementation if they are achieved, and then the courts are obliged to suspend execution, and they are represented in the annulment or total or partial annulment of judicial decisions and the acceptance of the request for a retrial.

First: Annulment of the Verdict

Paragraph (2) of Article (183) of the Iraqi Code of Procedure stipulates that (if the judgment is annulled in absentia as a result of the objection, the execution procedures that took place before the objection occurred shall be canceled, but if it is amended, the execution shall take place within the limits of the section of the aforementioned provision not covered by the amendment). What is meant by the annulment of the judgment is the action taken by the Court of First Instance if the judgment issued in absentia is challenged before it by objecting to the judgment in absentia or appealing by way of a retrial and the objection of others.⁵⁷

The judgment in absentia is the judgment issued against one of the litigants in the event of his absence and non-attendance from the first session until the issuance of the judgment despite his

correct notification⁵⁸, it is one of the inalienable rights of the parties to the lawsuit, whether a plaintiff or a defendant, in order to provide the opportunity for the opponent absent from the pleadings to present a defense before the court that issued the judgment in absentia. As we have shown previously that the mere objection to the judgment in absentia and the submission of what supports this objection leads to a delay in implementation, the case here is after the resolution of the case and the issuance of a decision as a result of this objection to invalidate the previous decision both or amend the judgment in absentia as a result of the objection that does not invalidate it all.⁶⁰

Retrial is defined as one of the extraordinary methods of appeal used by one of the litigants with the intention of reconsidering the judgment issued against him before the same court that issued it if one of the reasons stipulated in the Civil Procedure Code is fulfilled. The court may decide to suspend the execution of the appealed judgment by way of retrial if it is confirmed that the request for retrial is based on one of the reasons stipulated in Article (169) of the Code of Procedure, where the court decides to accept the request for retrial and at the same time decides to suspend the execution of the appealed judgment until the result of the lawsuit is filed, as it is natural that if the validity of the lawsuit is found, the judgment will be annulled and a new judgment will be issued to replace the judgment that was annulled due to the retrial.⁶²

Second: Annulment of the Judgment

Article (2/194) of the Code of Procedure stipulates that (if the judgment is annulled as a result of the appeal, the execution procedures that took place before the appeal took place shall be canceled). As it became clear to us that the appeal delays the implementation and until the subject of the appeal is resolved, while if the court finds that the deficiencies and errors that marred the judgment and which it avoided by reform and completion have an impact on the result of the judgment or if the judgment itself is contrary to the law, it ruled to annul it in whole or in part and issued a new judgment without returning the case to the court of first instance⁶³, in this case, the execution procedures shall be suspended.

Third: Cassation of the Judgment

The cassation of the judgment is one of the objective impediments that lead to the suspension of execution, when the Court of Cassation decides to overturn the distinguished decision when there is one of the legal reasons that require its reversal⁶⁴. Noting that if the discrimination is related to a property, the mere application for discrimination leads to a delay in implementation, as we explained earlier.

Section II

Judicial impediment standing for execution

The principle is that the judicial judgment may be implemented with the execution directorates during the period of appeal against the decision, and the competent court may, in all cases, take a decision to stop the implementation. The enforcement bodies are judicial bodies and not a judicial competent to adjudicate any dispute related to the basis of the right subject to the executive deed. In the event of a dispute regarding the right subject to execution, the executor of justice delays the implementation and asks the objecting party to review the competent court, and the general principle established by the Execution Law in this regard is that the execution is suspended in all cases if a decision is issued by the competent court to do so. The reason for giving the court competent to hear the appeal the power to suspend execution, because it often resorts to taking a decision to suspend execution when the circumstances of the appeal arise, what the appellant relies on in his request is that it is likely that a court decision will be issued in favor of the appellant⁶⁷.

It should be noted that the decision to suspend execution does not mean lifting the attachment on the debtor's funds, but rather means suspending the delivery of the amounts collected as a result

of the attachment until the decision on the suspension of execution⁶⁸, The decision to suspend execution may be issued by the Court of First Instance or the Court of Appeal or Cassation in a related case or during the consideration of the appeal against the judgment filed for execution, noting that the mere filing of the lawsuit does not suspend the execution unless a court decision is issued to do so.⁶⁹

Among the cases in which the judiciary can issue a suspension order is the case of objection to the negotiable commercial paper or the bond containing an acknowledgment of a debt, the bond proving a personal right, and the case of the debtor's denial of the debt in whole or in part., The⁷⁰ debtor shall also institute a claim for restitution for what he has unlawfully collected and compensate him for the damage suffered within one year from the date of payment of the debt⁷¹ and others⁷².

The second topic

Legal effects of the realization of objective impediment

The effects of the realization of the objective impediment during the execution of the bond are to postpone the continuation of the executive procedures until the disappearance of this offer. The effect depends on the result of the disappearance of the reason for the suspension or delay, the effect may be represented in the proceeding of the implementation procedures prior to the realization of the bidder or the restoration of the situation to what it was. This is what we will show each in a separate demand.

First Requirement

Suspension of execution procedures

In the event that the substantive bidder is available, whether by delay or suspension, the executive transaction will be stopped at the limit reached by the executive transaction before the substantive bidder for which the execution was delayed or suspended occurs and until the judgment obtained as a result of the pleading is deposited with the Enforcement Department.,⁷³ it follows that all measures taken by the Directorate of Enforcement before the issuance of the delay decision remain considered.e Execution Directorate has seized the debtor's money, , If th⁷⁴ these funds remain under seizure.,But if the attachment is harmful to the attachment, it is⁷⁵ perishable and the expenses of its preservation take its value or are subject to decline due to the delay of the pleading and the debtor does not offer another way to ensure the payment of the debt, the executor decides to sell it and keep its price in trust with the Directorate of Execution for the result of the delay⁷⁶, however, during the period of delay, the Enforcement Directorate may hear the creditor's requests to seize the debtor's funds for fear of smuggling them, and the executor decides to seize them, because delaying implementation due to the debtor's review does not invalidate the creditor's right and deprives him of that.n the event that a decision is issued i,⁷⁷ to imprison the debtor and actually place him in prison and the incident is verified, then the Enforcement Directorate must issue a decision to release him from prison until the result of the lawsuit or appeal that he is returned to prison again to complete the period of detention if the result of the lawsuit or appeal shows that he is not right in his lawsuit or appeal, noting that the decision to release or the decision to return him is issued by the executor of justice if he is a judge or by the judge of first instance if he is not The executor of justice as a judge⁷⁸, the debtor's salary shall continue to be withheld until it takes up the expenses and interest that all the debt and its accessories are frozen, provided that this frozen amount remains in trust in the fund of the Execution Directorate and is not delivered to the creditor until the last judgment is deposited with the Directorate or the reason for the delay disappears.⁷⁹



Second Requirement

Resumption of Execution Procedures

The delay or suspension of execution shall not take place unless there is a legal provision or a decision of a competent court that decides so. According to the rule that (if the obstacle is removed, the forbidden returns) the Directorate of Execution shall decide to resume execution t,⁸⁰ if the substantive objection that led to the delay or suspension of implementation remains. It should be noted that the resumption of execution procedures does not require taking new procedures or canceling previous procedures or suspending the resumption of their progress on the basis of a decision from the executor of justice or a court decision, but when it is proven that the reason for the suspension or delay has disappeared. If the suspension or delay has occurred to give the creditor the oath of invocation or waiting until the answer of the court that issued the executed judgment regarding clarification of ambiguity, if the creditor swears the oath or the court's answer is received, the Enforcement Directorate must resume the implementation procedures for the disappearance of the obligations of suspension or delay. However, if the .⁸¹ reason for the suspension of execution is to review one of the ordinary methods of appeal, the proceeding of the execution procedures shall be one of the suspended procedures, subject to the confirmation of the executed judgment or its ratification by the court competent to hear the appeal. Where several cases may occur, the most important of which is the dismissal of the ⁸² debtor's lawsuit, the dismissal of the objection, appeal, cassation, or proving the creditor's eligibility after reviewing the competent court, in these cases, a copy of the new judgment must be filed with the Enforcement Directorate, which resumes the progress of the executive procedures from the point at which it stopped⁸³. In the event of invalidation of the executive bond, the debtor must file this judgment with the Execution Directorate, provided that the Directorate notifies the creditor of the judgment. However, if the debtor proves payment h, ⁸⁴ outside the Execution Directorate or before the competent court, the judgment obtained from the court must also be deposited with the Execution Directorate. The amendment of the judgment t, ⁸⁵ as a result of reviewing the methods of appeal, if it is based on special reasons for the appeal, the appeal was based on a defect of satisfaction, the appellant alone benefits from this amendment and does not benefit those who did not appeal the judgment. The question arises whether the ⁸⁶ judgment that may be issued as a result of this appeal is limited to those who have been reviewed, or does it include all of them, although some of them have not been reviewed in other than the previous case? Article (176) of the Code of Procedure answers this question through the following (1) The appeal shall not benefit except from the one who filed it and shall not be invoked except against the one who filed it. 2. However, the amendment of the judgment due to the appeal shall benefit those who have an interest derived from the rights of those in whose favor the judgment has been amended. 3. It shall also benefit those who are plaintiffs or defendants with those who amend the judgment in his favor if the litigation is related to something indivisible or from he shall be sentenced jointly with the person who amended the judgment in his favor. 4. None of these shall benefit from the amendment of the judgment if the amendment has been issued for its own reasons).

Third Requirement

Invalidation of execution procedures

The debtor may succeed in proving the bidder for which the execution was suspended or delayed, which results in the annulment of the execution procedures and the restoration of the situation to what it was before the execution, as in the case of suspension of execution due to the creditor's failure to review the executive transaction and the lapse of the period or his refusal to take the oath of invocation. In this case, it is necessary to return the parties to the executive transaction to the state they were in before execution. The Directorate of Execution shall issue a t,⁸⁷ memorandum to the creditor containing the request to return what he received from the debtor as a result of such execution and within a period included in the memorandum itself. If the period



passes without responding or showing what necessitates the suspension or delay of execution against him, the Execution Directorate takes execution measures against him and recovers what he received, even forcibly, without the need to assign the debtor to review the court to obtain a judgment on what he has received. general rule in the Execution Law allows the in the s,⁸⁸ implementation of judicial rulings - except for some judgments - before they acquire the final degree and during the legal appeal period, so the review of these methods of appeal is the most common case that leads to proving the reason for the suspension or delay of execution, which requires him to restore the situation to what it was before implementation without the need to obtain a judicial judgment if the judgment is invalidated, rescinded or completely revoked⁸⁹, but if the judgment is amended, rescinded or revoked part of it, the implementation will continue on the part acquired degree of bits, and the scope of replay includes only the other section affected by the amendment, annulment or cassation. er, if the judgment is annulled, annulled or owevh,⁹⁰ revoked and returned to the court that issued it to decide on the case, the execution procedures in this case shall be annulled for the procedures that took place before the occurrence of the appeal that led to the annulment, annulment or cassation..⁹¹

The issue of restoring the situation to what it was before the sale of the seized funds and then invalidating the execution procedures and the debtor's insistence on recovering his sold funds through the Enforcement Directorate shall be raised. Where opinions differed towards that, as one side believes that the Directorate of Enforcement should recover from the convict the amounts he received first, if the convict agreed to take it, but if he insisted on recovering his money sold in kind and the money was still in the hands of the buyer, it must be recovered from him and the price returned to the buyer, but if the money is consumed, the convict must accept the price instead of his consumed money in this case with a claim for compensation for the damage he suffered because of that⁹², another direction goes to not the convict to recover his money sold in kind, but he has the claim for what he received from the price of his money through the Directorate of Execution and he also has to return the damages suffered, especially since giving the convict the right to recover his money sold in kind takes away confidence from the transactions carried out by the official authorities⁹³, it may not be possible to return the executive transactions to their previous state in some cases, as is the case in the case of a judgment to invalidate, rescind or revoke the executed judgment after the debtor is placed in prison and has served the term of imprisonment in whole or in part..⁹⁴

CONCLUSION

Objective impediment affecting compulsory execution can be defined as the sum of cases that may encounter the implementation procedures followed by the execution directorates while they are in the process of implementing a judicial decision or an executive editor that leads to delaying or stopping execution, some of which are by law or court order. What is meant by delaying execution is the procedure resulting from a decision issued by the just executor to delay execution, while what is meant by stopping execution is the procedure that results in non-continuation of execution due to impediment related to the same judgment to be executed.

The judgment issued in accordance with legal principles may not be refused or delayed, just as it is not required for the execution of judicial judgments to be of a peremptory degree. However, the debtor's mere review of the ordinary methods of appeal is sufficient to delay the implementation, and the mere presentation of a citation of the occurrence of the objection obligates the Execution Directorate to delay the implementation, whether it is The objection is within or outside the legal period, fulfilling its conditions or not.

The right of the Execution Directorate to delay execution in the event that the creditor in execution refrains from carrying out some work or submitting some documents and papers pertaining to execution, does not apply if the reason for the debtor's refusal to implement is based on a legitimate reason or excuse. In this case, the fair executor must not delay execution.

On the other hand, it should be noted that granting the debtor a deadline for execution and for a specific period does not prevent the repetition of this deadline if the purpose for which the delay was not fulfilled, and the decision to grant the period is considered a postponement of the execution transaction.

The decision to stop the execution does not mean lifting the attachment of the debtor's money, but it means stopping the delivery of the sums collected as a result of the attachment until a decision is made on the decision to stay the execution. During the delay period, the Execution Directorate may hear the creditor's requests to seize the debtor's money for fear of smuggling it, and the fair executor decides to seize it, because delaying execution due to the debtor's review does not invalidate the creditor's right and deprive him of that.

We suggest that the legislator intervene to address the issue of restoring the situation to what it was before selling the seized funds and then nullifying the implementation procedures and the debtor's insistence on recovering his sold funds through the Execution Directorate by allocating an article that requires limiting the claim to the price received by the Execution Directorate and recourse to the damages incurred.

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