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Administration Refraining from Implementing Judicial Rulings that Vacate its Administrative Decisions in the Saudi Legal System

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Abstract

Administration plays a key role in the field of implementing judicial rulings that are issued to cancel its administrative decisions and is directly responsible for them as one of the parties to the dispute. However, the process of implementing these provisions may encounter difficulties caused by the fact that the administration is the same executive authority that has the authority to implement the ruling or not. In practice, we find that there is inflexibility on the administration side to refrain from implementing judicial rulings in whole or in part. Therefore, the problem of executing the administrative judiciary's rulings by cancellation arose, and it became the obsession that haunts individuals who only need to wait until the administration cracks down on the judiciary's ruling and its implementation.

The failure to implement judicial rulings on the part of the administration represents a serious breach of the separation of powers principle. In addition, the principle of judicial independence and the respect for its provisions and their implementation has become an essential condition in any democratic system. However, the failure to implement rulings by the administration, in whole or in part, is considered a detraction from the power of the judicial rulings and a prejudice to the independence of the judiciary. Therefore, this study aims to search for ways that lead to obligating the administration to implement administrative judicial rulings and to suggest recommendations that could help in solving this problem.

امتناع الإدارة عن تنفيذ الأحكام القضائية الصادرة بإلغاء قراراتها الإدارية في النظام القانوني السعودي

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الملخص

تمارس الإدارة دوراً فعالاً في مجال تنفيذ الأحكام القضائية الصادرة بإلغاء قراراتها الإدارية، إذ يقع على عاتقها تنفيذ تلك الأحكام كونها طرف رئيسي في القضية، إلا أن عملية تنفيذ هذه الأحكام قد تواجه تحديات بسبب أن الإدارة هي نفسها السلطة التنفيذية التي تملك صلاحية تنفيذ أو عدم تنفيذ الحكم القضائي. ومن ناحية عملية، نجد أن الإدارة تمتنع في بعض الأحيان عن تنفيذ الأحكام القضائية بصورة كلية أو جزئية، لذا ظهرت إشكالية تنفيذ أحكام القضاء الإداري الصادرة بالإلغاء وأصبحت من أهم المواضيع التي تشغل الأشخاص الذين لا يملكون إلا الانتظار لحين قيام الإدارة بالانصياع للأحكام القضائية.

إن عدم تنفيذ الأحكام القضائية من جهة الإدارة يمثل مساساً جوهرياً بمبدأ الفصل بين السلطات، كما أن مبدأ استقلال القضاء وتنفيذ أحكامه أصبح ركناً جوهرياً في أي نظام ديموقراطي، إلا أن الامتناع عن تنفيذ الأحكام القضائية من قبل الإدارة يعتبر انتقاصاً من قوة الأحكام القضائية ومساساً باستقلال القضاء. لذا تهدف هذه الدراسة إلى البحث عن الوسائل التي تؤدي إلى إلزام الإدارة بتنفيذ الأحكام القضائية الإدارية والوصول إلى توصيات من الممكن أن تساعد في حل هذه المشكلة.

1. Introduction

The separation of powers principle is considered one of the most important principles upon which democratic systems are based. The idea revolves around regulating the relationship between public authorities and not concentrating the State's three legislative, executive, and judicial functions in one hand but rather on multiple bodies. So, the legislative authority undertakes matters related to the enactment of laws and political oversight, the executive authority is tasked with establishing and running public facilities, and the task of judicial authority concerns resolving disputes by issuing final judicial rulings.

The administration conducts its activity through a set of powers and privileges granted to it in order to run the work of public facilities and deliver services to individuals regularly and without interruption. Therefore, the administration performs two types of work, material work, which is the set of activities that the administrative authority undertakes in the process of carrying out its administrative function without creating a legal effect, and legal work that represent the actions carried out by the administration which aim to bring about a legal effect represented in the establishment of a legal status or the amendment of a legal status or the cancellation of a legal status and are divided into contractual legal works such as the administrative contract and the individual legal acts, which are the actions issued by the administration by its own will, such as the administrative decision.

When the administration exercises its powers by issuing an administrative decision, the possibility of appealing this legal action (administrative decision) is present through the so-called cancellation suit, through which the administrative court examines the legality of the administrative decision and issues a ruling dismissing the case for the validity of the administrative decision, or issuing a ruling accepting the appeal and canceling the decision as it violates the law, which requires the administration to comply with the implementation of this judicial ruling as it was issued.

It is agreed upon in jurisprudence and law that the main purpose of the judicial authority is to monitor the application of the provisions of law and to settle disputes by issuing final judgments that would apply the rule of law principle to all. Moreover, the principle of judicial independence and the respect for its provisions and implementation has become an essential

condition in any democratic system. If the judiciary puts an end to the dispute when it issues a final judicial ruling, then these rulings must be implemented. Otherwise, there would be no need in the country for the presence of courts, which is the highest level of danger to a country to ignore the rulings of the judiciary and refrain from implementing them.

In practice, we find that there is inflexibility on the part of the administration in refraining from implementing the judicial rulings in whole or in part. The problem of executing the administrative judiciary's rulings by cancellation appeared, and it became the obsession that haunts individuals since their only option is to wait until the administration complies with the judiciary ruling against it and implements it.

However, some studies have analysed the administration refraining from implementing judicial rulings that vacate its administrative decisions, but few have discussed the main principles that guarantee the implementation of judicial awards by the government. Despite the fact that nowadays this issue is seen especially in Saudi Arabia, choosing this legal issue to be the subject of study is considered one of the latest and most important topics to be examined and discussed, especially since most legal libraries lack material on this subject, and if any, it would be in the descriptive form without analytical study.

This article aims to address the phenomenon of the administration's refraining from implementing administrative judicial rulings and reducing the incidence of its occurrence. Therefore, the research will address the issue of the administration's refraining from implementing judicial rulings issued for cancelling its decisions by examining Saudi laws, rulings of the administrative judiciary, and various opinions of jurists.

Research Issue:

Judicial oversight is the real guarantee for the protection of rights and freedoms which occurs when individuals go to the courts to cancel decisions issued by the administration that violate the law. When a final ruling is issued by the administrative courts, the administration is obligated to implement the rulings as they are, whether those rulings were issued in its favor or in favor of individuals. However, the reality indicates that the administration refuses to implement judicial rulings for various reasons and arguments. Based on

this problem, several questions are raised in this field, of which the most important are:

- What happens to judicial rulings issued to cancel administrative decisions if the administration refrains from implementing them?
- What are the guarantees for the implementation of judicial rulings by the administration?
- To what extent is it permissible to impose penalties on the employee who refrains from implementing the final judicial rulings?
- What suggestions can be submitted to compel the administration to implement judicial rulings without delay?

Research Methodology:

This study relied on the analytical approach depending on the analysis of basic elements of the topics in question in an in-depth manner to derive provisions or rules through which some recommendations can be proposed. This method will help solve the problem of the administration's abstention or refraining from implementing issued judicial rulings to cancel administrative decisions.

Accordingly, the research will deal with the issue of the administration's refraining from implementing issued judicial rulings for cancellation by dividing this study into three sections: the first section deals with the concept of the administrative decision, its conditions, and how to appeal against it, while the second section will deal with the issue of the administration's refraining from implementing judicial ruling in details, and the last topic will be about the guarantees that the administration will not refrain from implementing judicial orders, including criminal liability, civil liability, and disciplinary liability. Finally, some recommendations and solutions will be presented that will play an important role in solving the research problem.

2. Administrative Decision

The administrative decision is considered one of the most important privileges derived from public law and granted to the administration, through which the administration can unilaterally establish rights, impose obligations, achieve public interests concerned, keep on going the works of public utilities, and deliver public services to people in the best ways without interruption.

Administrative decisions are also considered the preferred method for administration to carry out its various functions and activities, given that it solely takes them without the need to obtain the consent or approval of those concerned.¹ Therefore, it is necessary to define the administrative decision to distinguish it from other actions, such as material works, legislative works, and judicial works, especially since these actions may be similar to administrative decisions, so it is sometimes difficult to differentiate between them.

The administration's refraining from or refusing to implement judicial rulings that preceded the cancellation of its administrative decisions is considered a new administrative decision. Therefore, discussing the administration's refraining from implementing judicial rulings to cancel the topic of this study requires that we first address the definition of the administrative decision, its conditions, and how to appeal it, which will be addressed in the following divisions.

2.1 The Definition of the Administrative Decision and Its Conditions.

The Saudi legislator did not define the administrative decision and left the task of defining it to jurisprudence and the judiciary, which led to several definitions of the administrative decision. The Board of Grievances defined the administrative decision as the administration's disclosure of its binding will, with the authority it extracts from laws and regulations to create a legal effect that is permissible and legally possible². Dr. Suleiman Al-Tamawi defined it as the administration's disclosure of a binding will with the intent of creating a legal effect, either by issuing a rule that establishes, amends, or cancels a legal status for the benefit of "A" against the interest of an individual or group of individuals³. Also, one of the jurists defined it as an expression of the unilateral will of an administrative authority to create a specific legal effect⁴.

It can be noted that most of these definitions agree on the concept of administrative decision as a legal effect either by creating, amending, or

1. Tom Ginsburg & Albert Chen. *Administrative Law and Governance in Asia- Comparative Perspectives*, Routledge Publishing, 2009, p.49.

2. Board of Grievances Ruling No. (314/T/3) for the year 1409 AH, and Board of Grievances Rulings No. (56/T/1) for the year 1410 AH.

3. Sluiman Al-Tamawi, *The Theory of Abuse of Power*, Dar Al-Fikr Al-Arabi, Cairo, 1991, p.g 31.

4. Daly, Paul. *Understanding Administrative Law in the Common Law World*, OUP Oxford Publishing, 2021, p. 115.

cancelling a legal status; the administrative decision is a power granted to the administration to be exercised by its well; and the aim of any decision should be limited to achieve the public interest.

After mentioning the previous definitions, the administrative decision can be defined as the administration's disclosure of its will to create a legal effect, which is either the creation of a legal status, the amendment of a legal status, or the cancellation of a legal status with its powers under the legislation.

Several conditions must be fulfilled in the administrative decision, as one of the legal acts practiced by the administration unilaterally, for it to be considered a right compelling administrative decision by the law, otherwise it will be void. The conditions of the administrative decisions will be discussed as follow:

Jurisdiction Condition: The jurisdiction condition is defined as the legal qualification to undertake a specific work represented by the issuance of an administrative decision. The authority that has the jurisdiction and the power to issue the administrative decision is the authority that was granted the power to issue administrative decisions by the legislator such as a minister, a council, a body, or a committee. It's worth noting that the legislator must consider several things when distributing powers among the administrative authorities, such as the nature of the decision, its type, its importance, and its danger.⁵ To know the administrative authority of the jurisdiction, reference must be made to the jurisdiction sources such as legislation, authorization, solutions, and agency.

The competence condition means that the disputing parties may raise this defense/claim at any stage during the judicial proceeding and the court may also raise it on its own, meaning that even if the litigants do not raise this defense, the court can address it on its own and examine legitimacy and cancel the decision if it is void.

Subject Condition: It is the direct legal effect resulting from the issuance of the administrative decision, which is either to create, amend or cancel a specific legal status. For example, in the issuance of an administrative decision to appoint an individual as an employee for one of the ministries, the subject condition here is the appointment, which is the establishment of a legal status, or the issuance of an administrative decision to refer an employee

5. Mansour Ibrahim Al-Ottoum, *Administrative Judiciary*, Dar Wael, Amman, 2013, p. 55.

to retirement, the condition here is the cancellation of the employee's legal status, which is the referral to retirement.

The subject condition must be legitimate, in compliance with the legislation (constitution/law/system/instructions), in accordance with the general principles of the administrative law, and to be feasible from a practical point of view, otherwise subject to being void.

Reason Condition: The reason condition means the legal or factual situation that precedes the issuance of the administrative decision that prompts the administration to issue it. It is expected that every administrative decision has a basis for this condition to be achieved. If the administrative decision is issued without a valid reason, then it is a decision that is faulty by the defect of the reason and leads to its voidance. It is also required that the reason be present and available at the time of the issuance of the administrative decision. For example, the reason for the Minister's decision to accept the resignation of an employee is the submission of a resignation request by the employee concerned.

Purpose Condition: the purpose, as one of the conditions of the administrative decision, means the goal of issuing the administrative decision, which must be achieving the public interest. If the administrative decision did not achieve the public interest, the desired goal does not exist, which defects the administrative decision and results in its voidance. The lack of the purpose condition is also called the defect of abuse of power or deviation in the use of power.

For example, the administrative decision to appoint a person must have the goal of achieving the public interest, which is to provide public facilities with qualified human cadres. However, if the goal of issuing the administrative decision is favoritism or personal connections, then this type of administrative decision is void because it violates the purpose condition as it aims to achieve a private interest rather than a public interest.

Form and Procedure Condition: the form condition in the administrative decision means the external appearance in which the decision appears, which aims to ensure the proper functioning of the administration on the one hand and guarantee the rights of individuals on the other hand. If the legislator stipulates to follow a certain form, the administration must abide by this form, otherwise the issued decision is void⁶. The form of the administrative decision

6. Muhammad Ali Al-Khalayleh, *Administrative Law*, Dar Al Thaqafa, Amman, 2017, p. 210.

may require, for example, that the administrative decision be in writing or mentioning the evidence in its body.

As for the procedure, it means the steps and stages that the administrative decision goes through from the moment its issuance has been considered until it appears in its final form. These procedures differ according to the nature and type of administrative decision. In principle, these procedures were developed to achieve the public interest represented in the administration without rushing its decisions to ensure their validity, such as procedures related to the formation of disciplinary councils, recommendations, and advice.

After discussing the concept of the administrative decision and explaining its conditions, and reaching the subject of the study, the administration's refrains from implementing the rulings issued to cancel its decisions, the following division clarifies how to appeal the administrative decision and what is the competent court to cancel administrative decisions.

2.2 Appealing the Administrative Decision.

The discretionary power of the administration is neither absolute nor controlling, meaning that the administration possesses this power to achieve the public interest with the possibility that it will be mistaken and deviate in using it, which requires the presence of a judicial body that monitors the decisions issued by the administration. Therefore, the Kingdom of Saudi Arabi has an administrative judiciary consisting of the Board of Grievances, which consists of the Administrative Courts, the Administrative Courts of Appeal, and the High Administrative Court to hear all appeals related to final administrative decisions⁷.

7. The Board of Grievances for the year 1428 AH Article (8) stipulated that: The Administrative Court shall have jurisdiction to decide the following:

Cases related to the rights provided for in the Civil Service and Pension Laws for government employees and hired hands, and independent public entities and their heirs and claimants.

Cases of objection filed by parties concerned against administrative decisions where the reason of such objection is lack of jurisdiction, a deficiency in the form, a violation or erroneous application or interpretation of laws and regulations, or abuse of authority. It is considered as an administrative decision the rejection or refusal of an administrative authority to take a decision that it should have taken pursuant to laws and regulations.

Cases of compensation filed by parties concerned against the government and independent public corporate entities resulting from their actions.

Cases filed by parties concerned regarding contract-related disputes where the government or an independent public corporate entity is a party thereto.

Disciplinary cases filed by the competent parties.

An appealing the administrative decision can be defined as a lawsuit filed by one of the concerned employees, individuals, or bodies to the administrative judiciary to cancel an administrative decision issued by the administration if it is violating to the laws.⁸ It can also be defined as the method through which the administrative court can be reached, to challenge administrative decisions and requesting their cancellation, which is the most important means to protect legitimacy as it leads to voidance as a penalty that affects the decision violating the law⁹.

A set of conditions must be met in the cancellation lawsuit to be accepted before the administrative judiciary, starting with the necessity of the appealed administrative decision to be final and does not need ratification from a higher authority, has a legal effect, and is issued by a national authority.¹⁰

In addition to the fact that there are conditions related to the claimant, including the condition of interest as one of the basic conditions for accepting the form of the case, which is defined as the practical benefit that accrues to the claimant from the ruling on his requests¹¹. The administrative judiciary requires a set of provisions for the interest condition, representing it as personal and direct. Therefore, the administrative decision must have affected a special legal status that would affect the personal interest of the claimant, and the benefit that he would obtain from the ruling to cancel the decision would directly accrue to him¹².

The interest must be material or moral. The material interest is what affects the financial position of the appellant, and it may be in the form of decisions issued to close a restaurant. As for the moral interest, it affects the moral rights of the appellant and his feelings, such as decisions that affect the reputation of an individual¹³.

Other administrative disputes

Requests for implementation of foreign judgments.

8. Mohsen Khalil, *Elimination of Cancellation*, University Press, Beirut, 1998, p. 29.

9. Karim Kashakesh, *Date of the Cancellation Lawsuit in the Supreme Court of Justice*, Yarmouk University, Irbid, 2006, p. 631.

10. Article (14) of the Board of Grievances Law for the year 1428 states: "The Board of Grievances courts may not consider cases related to acts of sovereignty or consider objections to the rulings issued by the courts - not subject to this system - within their jurisdiction, or the decisions issued by the Supreme Council, the Administrative Judiciary Council, and the Public Prosecution Council."

11. Omar Muhammad Al-Shobaki, *Administrative Judiciary*, Dar Al Thaqafa, Amman, 2016, p. 208.

12. Mansour Ibrahim Al-Ottoum, *Administrative Judiciary*, Dar Wael, Amman, 2013, p. 87.

13. Jihad Dhaif Allah Al-Jazi, "The Timing of Interest Condition Existence in the Cancellation

Finally, the interest is required to be realized and probable, as it is required to file a cancellation lawsuit that the claimant has an interest that is realized, and this is achieved if the damage is confirmed, whether from a material or moral aspect, and the cancellation lawsuit may be accepted if the lawsuit filer has a potential interest.

The Board of Grievances in this regard issued an award that concerns the necessity of having the claimant to the private interest. It stated that: "The appellant is considered one of the residents of the neighborhood where the decision was issued by the Ministry of Education to establish a school for males, and since the school lacks a parking place, the appellant has a private interest in appealing the administrative decision because he will be harmed by parking cars in front of his house that enables individuals (teachers and students) to see his family. Therefore, we decide to cancel the appealed administrative decision."¹⁴

The Board of Grievances has also issued another award requiring the private interest to be available from the date of registering the case and continue till issuing the final award. It stated that: "it is known that the administrative case requires the necessity of having the claimant in the submitted case to the private interest when he registered the case and must continue till the end (final award). Therefore, the court decides to reject the case since the transferring decision of the claimant (the appealed decision) from Riyadh to Al-Baha was changed and cancelled by the Ministry of Education during the litigation process and before issuing the final award."¹⁵

To complete the conditions for accepting the annulment lawsuit, it is necessary to talk about the last conditions related to the date of filing the lawsuit. The Saudi legislator has set the period for appealing administrative decisions by sixty days starting from either the next day from the date of notifying the concerned person, from the date of publishing it in the official newspaper, or from the date of notifying him by any electronic means.¹⁶

After discussing the administrative decision and explaining its elements and how to appeal against it in the previous section, it becomes clear to us that when any of the conditions of the administrative decision are disrupted, the

Lawsuit", *Sharia and Law Sciences Studies*, 2015, (1), 23.

14. Board of Grievances ruling No. (14/T/3) for the year 1431 AH.

15. Board of Grievances ruling No. (24/B/12) for the year 1438 AH.

16. Law of Pleadings Before the Board of Grievances for the year 1435, Article (8).

administration must be committed to implementing the judicial rulings issued for cancelling it, but sometimes the administration refrains from implementing these judicial rulings, which robs individuals of their rights and freedoms, a topic that will be addressed in the second section.

3. The Administration Refraining from Implementing Rulings Issued for Cancellation

The implementation of final judicial rulings is one of the duties of the administration that is supposed to be implemented voluntarily and without hesitation, but in some cases, it does not perform this duty which prevents the individual's access to his right. The administration might deal with judicial rulings negatively, by procrastination and obstruction, and in some cases, it completely refrains from implementing the judicial ruling and ignores it.

To facilitate the discussion of the administration's refraining from implementing the rulings issued for cancellation, it is necessary to address the forms of refraining from implementing the judicial judgment and its poor implementation, which will be addressed in the following divisions:

3.1 Refraining from Implementing the Judicial Ruling Issued for Cancellation.

The issuance of a judicial ruling to cancel an administrative decision requires the decision to be treated as if it was not issued, and the administration, as a result, is obliged to implement this ruling in a way that leads to the reorganization of the legal statuses of individuals and restore the situation to what it was before the issuance of the cancelled decision.¹⁷ The principle is that the administration must implement judicial rulings and end the legal and material effects of the canceled administrative decisions.

This was confirmed by the Board of Grievances in one of its rulings that: (the administrative bodies are obligated to implement the final judicial rulings, given that the one entrusted with the implementation of these rulings is the guardian and his representative, as stipulated in Article (50) of the Basic Law of Governance that.... the king or those whom he delegates are concerned with the implementation of judicial rulings, and the administrative authorities are one of the guardian's means in implementing these judicial rulings, and

17. Bassam Mohammed Abu Ermaila, "The positive role of administration in implementing the cancelled ruling", *Studies of Sharia and Law Sciences*, 2015, (2), 103.

its ways of doing this is to issue decisions to bring the ruling into reality)¹⁸.

The administration that does not want to implement the judicial rulings issued for the cancellation undertakes several methods that enable it not to implement the ruling, such as reissuing the canceled decision, which happens when the administration reissues the decision in cases where it doesn't have the authority to do so, or by violating the conditions that it must consider when issuing it. Then, the administration issues a decision with the same meaning as the canceled decision, ignoring the judgment that was ordered to be canceled. Reissuing a decision like the one that was canceled is a form of the administration's violation of its obligations to implement ruling cancellation¹⁹.

The administration may resort to other methods to become unsuspecting of reissuing the canceled decision, such as searching the various legislative texts that clarify its terms of reference and powers and finding a text that allows it to issue a specific administrative decision which implementation requires suspending the implementation of the judicial ruling, as an attempt to give some sort of legitimacy over its behavior in terms of how it looks²⁰. This is considered a deception on the part of the administration for not implementing the cancellation of the ruling without the slightest regard for the rights of citizens and respect for the law. A clear example of this case is when the competent court cancels an administrative decision concerning the retirement of one of the employees, then, the administration issues another decision for transferring the same employee.

The administration can also refrain from implementing the judicial ruling in the form of explicit rejection, which can be embodied in the issuance of an explicit administrative decision refusing to implement the judicial ruling issued against the administration, and as simple as this form is to get rid of the implementation of judicial rulings²¹ and a waste of the validity of these rulings, the administration rarely resorts to this form because of its clarity,

18. Board of Grievances ruling No. (56/d/f/28) for the year 1426 AH.

19. Wafaa Bou Shour, *The Problem of Implementing the Provisions of Cancellation in Algeria*, PhD Thesis, Larbi Ben M'hidi University, Algeria, 2020, p.93.

20. Hassan Abdel Fattah, "Suspending the implementation of the judicial ruling article", *Journal of Administrative Sciences*, 1964, (1), 364.

21. Bandar Abdul Rahman Al-Falih, *Implementation of Judgments Issued by the Administrative Judiciary*, a paper presented during the Second Conference of Heads of Supreme Administrative Courts in the Arab Countries, Abu Dhabi, 1433 AH, p. 8.

its danger, and its indication of the bad faith of the administration towards judicial rulings²².

As for the position of the Saudi Board of Grievances, it tends to cancel the administration's explicit refusal decision, which happened when the Yanbu municipality refused to empty land for a citizen when he visits it on the pretext that the pledge is customary and is not taken into consideration, despite the issuance of a final court ruling that proves the validity of the pledge and his purchase of the land.

The reasoning for the ruling was as follows: (... and since it was proven that the claimant had submitted these allegiances to the Yanbu Court to extract a deed of ownership of the land, the court issued its ruling by deed No. 32/1 and on 21/10/1425 AH, in which it was stated that the claimant should refer to the municipality to finalize the procedures for the said grant deed, and since the defendant is currently reluctant to empty the land on the grounds that this allegiance is customary, and since it is established that this customary allegiance in which the claimant purchased the land has become valid and has gained finality by proving the pledge to the court, and according to what is prescribed in Sharia, the land is transferred to the buyer, and the defendant must take the necessary legal measures to empty the land to the claimant. Therefore, the division ruled: obligating the defendant / the municipality of Yanbu to empty the land Plot No.... in Yanbu al-Bahr, as indicated by the reasons)²³

It is noted that the administration's resort to the method of announcing its explicit refusal to implement a judicial ruling is rare because it is considered an open method that is not appropriate with the administration's primary goal of achieving the public interest. It is common for the administration to have legitimate reasons that justify its explicit refusals, such as if there is a force majeure that makes the implementation impossible or a change in the legal or factual status of the party that the ruling was in his favor²⁴.

22. Saad bin Othman Al Maadi, *The Administration's Failure to Implement the Rulings of the Administrative Judiciary*. Master's Thesis, Imam Muhammad Ibn Saud Islamic University, Saudi Arabia, 2009, p.85.

23. Ruling of the Saudi Board of Grievances No. 35 / D / E / 21 for the year 1427 AH.

24. Mahmoud Saeed Abdel Majeed, *Executive Protection of Administrative Provisions between Criminalization, Discipline, Cancellation and Compensation*, New University Publishing House, Alexandria, 2012, p. 135.

Moreover, the administration's refusal to implement a judicial ruling may be implicit without the administration taking any positive action required for the implementation of the ruling, such as issuing a judicial ruling to cancel an administrative decision to dismiss an employee from his job. And given that the implementation of this ruling requires the employee to be returned to his job, the administration could cancel this job to avoid the enforcement of the court ruling.

In the Kingdom of Saudi Arabia, it happens that the administration ignores the implementation of a judicial ruling issued against it and remains silent without taking any action that reveals its desire to implement it. Therefore, we find that citizens unsuccessfully visit the administration to demand the implementation of the ruling. Among many similar cases, we list a case published in the Al-Riyadh newspaper where one of the ministries refused to implement a judicial ruling supported by the Administrative Court of Appeal in Riyadh on 5/8/1430 AH, which includes a compensation of (1,860,427) Riyals for one of the companies due to the ministry's termination of a long-term contract with the company without a legitimate excuse.

The reasoning of the judgment stated that the ministry of defense was part of the State's public entity, which is the direct party to the contract and bears the consequences of terminating it if the claimant company has no control over the cause of the termination. According to what the claimant company's agent told Al-Riyadh newspaper: "He has been visiting the ministry for more than 7 months asking it to implement the final ruling issued by the Board of Grievances, and so far he has not obtained a result, indicating that the ministry refused to implement the final judgment and he does not know who is the party that obligates government agencies to implement the judgments issued against them."²⁵

The administration's refusal to implement the judicial ruling is considered an administrative decision issued by a competent national administrative authority that is open to appeal before the administrative court, especially since there is no legislative text that defines this type of administrative decision as an act of sovereignty that cannot be appealed²⁶. Accordingly, the Board

25. Osama Jamaan, Ministry refuses to implement the grievance judgment by compensating a company that terminated its contract without excuse, article published in Al-Riyadh newspaper, 1431 AH, available at <http://www.alriyadh.com>.

26. The Board of Grievances defined the administrative decision in one of its provisions as: "The

of Grievances ruled in one of its rulings that the administrative authority's failure to implement a judicial ruling was an administrative decision that could be appealed against with cancellation²⁷.

Therefore, the Board of Grievances is competent to consider a case to cancel the decision of the administration's failure to implement the judicial ruling, in applying section (b) of Article (13) of the Board of Grievances system issued by Royal Decree (M/78) dated 9/19/1428 AH, which states that it is possible to appeal the cancellation of the administrative decision if there is a defect in violating the rules and regulations or a mistake in their application. This is what the Court ruled in one of its rulings: "It is established in jurisprudence and law that the administration is obligated, in the exercise of its administrative activity, to respect the legitimacy of judicial rulings, whether issued by the administrative judiciary or others, and its violation of these provisions is considered as an administrative decision in violation of the law...."²⁸.

Perhaps one of the most important reasons that the administration argues for its refusal to implement judicial rulings is those based on the public interest. In many cases, the administration resorts to taking the cause of the public interest as an excuse for not implementing judicial rulings, as the concept of interest is comprehensive. The public interest is defined as a group of current or future interests that the public authority addresses to protect because it concerns most people. If there was an interest that the administration should target in its actions, it must be subject to judicial oversight, which means respecting the law and implementing the rulings of the judiciary because there is no other interest that can be given priority over it, and hence, the public interest lies in the implementation of the ruling and not the other way around.

The oversight exercised by the administrative judiciary over the work of the administration was decided to correct its actions to achieve the public interest, so it has no right to avoid its obligations due to the public interest since

administration's disclosure of its binding will with its authority under the laws and regulations with the intent of creating a legal effect that is valid and legally possible, and therefore its validity must be issued by a competent authority." (Ruling of the Saudi Board of Grievances No. 226 / T / 6 for the year 1427 AH, session 25 / 3 / 1427 AH, in Case No. 370 / 3 / s for the year 1423 AH, the set of administrative provisions and principles for the year 1427 AH, p. 1000).

27. Ruling of the Saudi Board of Grievances No. 61 / T / 3 of the year 1408 AH in Case No. 894 / 1 / s of the year 1407 AH.

28. Ruling of the Saudi Board of Grievances No. 56 / D / F / 28 for the year 1426 AH.

there is no interest above respecting and implementing the judicial rulings acquired by the force of the thing that has been decreed²⁹. Also, achieving the public interest does not come with an illegal means, which is refraining from implementing judicial rulings. The administration can sometimes refrain from implementing judicial rulings because they are incorrect and in violation of the law, and here the question arises about the possibility of the administration refraining from implementing them.

Hence, it could be said that the judicial rulings that gained the power of the judged thing are considered a title of the truth, and the administration must implement these rulings if they are finally issued by competent courts, and the administration has no right to refrain from implementing them if they are against the law, because the courts are the only authority that has this power and not the administration as an executive authority.

After addressing the issue and the reasons for the administration refusing to implement the judicial ruling issued for the cancellation, it is necessary to talk about the mis-implementation of the judicial ruling issued for the cancellation, and this is what we will address in the second division.

3.2 The Mis-implementation of the Judicial Ruling Issued for Cancelling.

The mis-implementation of the judicial ruling is achieved when the administration partially implements the cancellation ruling or in a manner contrary to its intended purpose, aiming to disrupt what it does not want and implement what it desires, and this is a waste of the validity of the decided order principle and a violation on the independence of the judiciary, hence, its implementation of the ruling is incomplete. It is the duty of the administration to implement the judicial ruling in full, considering what was stated in the ruling and the essential reasons associated with it.

Also, the mis-implementation of the cancellation ruling is no less dangerous than the non-implementation because it entails undermining the legal status, violating the independence of the judiciary, and indicating a lack of respect for the judicial ruling and when the administration resorts to this form, it takes it as an alternative to the explicit rejection of implementation.

It must be pointed out that the implementation of administrative judicial rulings against the administration is not limited to a specific period but is

29. Faisal Shatnawi, *Administrative Judicial Rulings Issued Against the Administration and Implementation Problems- Studies of Sharia and Law Sciences*, Dar Alnahda, Amman, 2016, p. 510.

up to the administration's assessment as it has discretionary authority in this regard. The estimate of the period for implementation, although left to the discretionary authority of the administration, it is not absolute and has to be an appropriate period given that this estimate is subject to the control of the administrative judiciary, which leads to the administration being responsible for any delays in implementation, as its refusal to implement is considered an illegal negative decision³⁰. The danger of procrastinating the implementation of the cancellation ruling lies in the fact that the administration does not disclose its intention not to implement the ruling that it is not explicitly satisfied with but resorts to slowness and procrastination to achieve its goals.

The administration's refusal to implement the judicial ruling using the procrastination method in implementation is a reality that requires speedy processing in the Saudi system, where most of the complaints of those convicted are concentrated on the delay in implementing the rulings issued in their favor, rather than their complaints about the refusal to implement. The reason for the administration's delay in implementation may be due to internal organizational problems, in addition to the lack of sufficient qualifications of the employee specialized in implementation³¹.

However, not every delay in implementing a judicial ruling is considered a reason to establish an administrative responsibility, rather, the delay must be for unacceptable reasons and exceeds the typical period. If the delay period by the administration is within the reasonable periods for which the work is carried out, then there is no responsibility for it³².

Accordingly, to consider the delay in the implementation of the judicial ruling a refusal, two conditions are required, the first condition is that the delay is for an unreasonable period, and the second is that there are no legitimate reasons for the administration's delay in implementation³³.

30. Shatnawi, Previous reference, page 4.

31. Muhammad Salih Saeed Al-Thabit, *The Delay in the Implementation of Judicial Rulings: An Applied Study in the Kingdom of Saudi Arabia*, Ph.D. Thesis, Omdurman Islamic University, Sudan, 1431 AH, p. 177.

32. Mahmoud Anis Omar, *Judgment in the Administrative Case and its Implementation*, Dar Al-Fikr Al-Jami'i, Alexandria, 2014, p. 703.

33. Maha Abdul Rahim Al-Zahrani, *The Administration's Responsibility for Not Implementing Judicial Rulings in the Saudi System*, University Book House for Publishing and Distribution, Alriadh, 2017, p. 87.

The reason why the Saudi regulator or the judicial ruling itself did not specify the reasonable period in which the administration is obligated to implement is that the ruling sometimes requires a review of all the legal statuses that resulted from the canceled decision, starting from the period in which it was issued to the date of its cancellation, which will require a longer period for its implementation. Contrary to rulings that do not affect any legal status, the process of implementing them does not take a long time, and therefore it was appropriate to give the administration sufficient time to overcome the difficulties encountered in the implementation of the ruling.³⁴

This was established by the Board of Grievances in a lawsuit filed by a teacher demanding the Ministry of Education to compensate him for the delay in implementing a final ruling issued in his favor, No. 26/D/ F/34 for the year 1426 AH, which includes the cancellation of the warning penalty, the decision to transfer him and compensation for the damage he faced. The Board of Grievances decided in the matter of the ministry's delay in implementing the aforementioned ruling, the following: ((... It is also not permissible to file a lawsuit for the days that are between the date of notification of the ruling to the date of its implementation, as immediate implementation is not possible because there are procedures and administrative letters that must be completed and need time. If this was permissible, it would lead to a role and sequence, and the case would never end because the claimant would return and demand compensation for the period from the notification of the judgment to its implementation, which is not permissible.³⁵)

In summary, immediate implementation is not possible in some judicial rulings because the administration may face legal or realistic difficulties that cannot be counted. Still, if the administration is late in implementing the judicial ruling and exceeds the reasonable period without legitimate justification in the judge's eyes, then its responsibility falls towards this delay. Its behavior is considered one of the forms of refusal to implement judicial rulings.

Examples of mis-implementation include the ruling to cancel a decision to dismiss an employee from service. Implementation requires two things:

34. Fawaz Fahs Al-Anazi, *Legal Means to Ensure the Implementation of Administrative Provisions in the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan*, Master's Thesis, Mutah University, Karak, 2007, p.69.

35. Ruling of the Saudi Board of Grievances No. 1 / d / f / 35 for the year 1428 AH.

to return the concerned employee to the same job and settle his job status since the dismissal decision issuance retroactively. If the employee is returned without settling his financial condition, then the sentence has been incompletely implemented, or if the court rule obligates the administration to pay a certain amount to the convicted with a certain interest rate while the administration only pays the amount without interest, or if the administration returns the employee whose service termination decision was canceled to a job other than the job he was occupying before the termination decision was issued, and this job is lower in rank and less important³⁶.

Another example of incomplete implementation is issuing a court ruling to cancel the decision to dismiss one of the employees from the service. If the administrative body returns the dismissed employee to another position lower in rank than what he previously occupied, then it has implemented the ruling of canceling the dismissal decision incompletely and partially. The full implementation of this provision requires returning the dismissed employee to the same job before the dismissal decision or returning him to another job that is similar to it in all aspects and advantages, as well as retroactively settling his job status³⁷.

The same thing is repeated when the administration issues new instructions or when it amends the current instructions, and this includes issuing a court ruling to cancel a decision for violating the instructions, so the administration amends these instructions in a manner consistent with the meaning of the decision canceled by the judicial ruling and then re-issues this canceled decision one more time³⁸.

The Saudi Board of Grievances emphasized that the administration's issuance of a decision intended to amend the canceled decision by the judicial ruling or correct it with new instructions is considered a refusal to implement the judicial ruling and has ruled in one of its rulings that: (...in view of the foregoing, the Court's ruling in the claimant's dispute with the defendant ministry has become protected from cancellation or modification, and it is no longer permissible for the defendant ministry or other parties, according to

36. Younes Bou and Mohamed Bahi, *Threatening Fine as a Mean to Compel the Administration to Implement Administrative Rulings*, New University Publishing House, Cairo, 2001, p. 160.

37. Maha Al-Zahrani, previous reference, page 97.

38. Salim Sahli, *Administrative Rulings Issued for Cancellation and How to Confront the Administration's Refusal to Implement Them*, Dar Al-Fikr and Law, Mansoura, 2011, page 139.

Sharia or law, to object to it or refrain from implementing it after this ruling was acquired - by exhausting its legal stages - the validity of the order, and a legal presumption that does not accept proving the opposite is now the title of the truth, the matter that is not entitled and may not be revoked or dealt with by any change or alteration...)³⁹.

Among the forms of manipulation revealed by the practical reality in the Kingdom of Saudi Arabia, the administration resorted to suspending the implementation of the ruling on the basis that there was a problem that must be resolved first. This method is considered a legal trick that puts at the disposal of each of the parties to the dispute a quick procedural means by which they guarantee the delay in the implementation of the ruling issued against them until other parties investigate the problem⁴⁰.

Among the applications of the Board of Grievances to cancel decisions of the administration's refusal to implement judicial rulings is its ruling in one of the cases, which facts are summarized as follows: the claimant who was working in an educational position was issued a court ruling to cancel the decision to transfer him to administrative work, and then the administration issued an executive decision for the Board of Grievances ruling to return the claimant to the education staff, but it refused to pay his salaries and allowances differences on the basis that the decision is not retroactive. So, the Board decided to cancel the decision to implement the administration's incomplete cancellation ruling on the pretext that it applies the rule of the non-retroactive effect of administrative decisions and that this is a violation of the system, which is a refusal to implement the ruling⁴¹.

39. Saudi Board of Grievances Resolution No. 209/T/3 of 1409 AH, in the objection to Resolution No. 15/D/F/7 of 1406 AH, issued by the Sub-Division in Case No. 376/1/F of 1406 AH (referred to in the author of Fawaz Fahs Al-Anazi, *Legal Means to Ensure the Implementation of Administrative Provisions in the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan*, previous reference, pg. 70).

40. An example of this is the decision of the Ministry of Municipal and Rural Affairs, quoting from Al-Hayat newspaper; where the ministry has refrained from implementing judicial rulings issued by the Administrative Court in Jeddah, to cancel the decision of the Jeddah Municipality to stop a plan in the north of the province, for violating Sharia and state regulations. See that, Maha Al-Zahrani, previous reference, p. 45.

41. The ruling included the following: "...Although it is stipulated in jurisprudence and the judiciary that decisions do not apply retroactively, this rule has exceptions, the most important of which are decisions issued in implementation of rulings issued by administrative judiciary bodies to cancel administrative decisions, and then the decision ruled to be canceled becomes as if it was not issued, and the defendant, when implementing the judgment issued to cancel the decision, must remove the canceled decision and

However, the author believes that refraining or mis-implementing the Judicial Ruling Issued for cancellation can be avoided by establishing a judicial enforcement department in the administrative courts whose mission is to consider and study the implementation problems that may arise and to facilitate the implementation of judicial rulings by the administration when it refuses.

It is also necessary to grant the administrative judge the powers to issue orders to the administration by issuing the necessary legislation to give the judge in the Board of Grievances the power to issue orders to the administration to ensure the implementation of his rulings while giving him the power to impose a threatening fine if the administration is proven to refrain from implementing judicial rulings.

After discussing the administration's refraining from implementing the judicial rulings issued to cancel, we must address the guarantees that prevent the administration from refraining from the implementation, which we will address in the next section.

4. Guarantees that the Administration Will Not Refrain from Implementing Rulings Issued for Cancellation.

Essentially, judicial rulings are to be implemented voluntarily. However, the administration may refrain from or slow down the implementation of the judicial ruling issued against it, which raises the question about the means and guarantees through which this body can be forced to abide by the implementation of the judicial ruling and function with its meaning⁴², and this is what we will discuss in the following divisions:

4.1 Criminal Responsibility.

The criminal responsibility that results from the employee refraining from implementing judicial rulings contributes to creating a state of respect for these rulings and working to accelerate their implementation, where the Saudi

all the consequences of it retroactively from the date of its issuance until the date of the judgment to cancel it.... For all of this, the division ruled: obligating the defendant to pay the differences in salaries and allowances to the claimant from the date of 29/7/1425 AH to the date of 10/14/1427 AH and granting him his annual bonuses during this period for what is explained by the reasons, and God is peacemaker and guide to the right path. Ruling of the Saudi Board of Grievances No. 20/D/F42 for the year 1428 AH.

42. Muhammad Ali Al-Khalayleh, *Administrative judiciary*. Dar Al Thaqafa, Amman, 2020, p. 325.

legislator set a clear text criminalizing the refusal of employees to implement judicial rulings.

The crime of refusing to implement judicial rulings requires the presence of three basic elements, namely, using the powers of the position, criminal consequence, which means the effect of the criminal behavior represented by impeding the implementation of laws, and there should be a relationship between the behavior that the employee has done and the criminal result⁴³. Thus, for the criminal responsibility to be considered for the crime of refraining from implementing judicial rulings in accordance with Saudi legislation, the two pillars of the crime must be present, namely the material pillar, the moral pillar, and the causal relationship.

The material element of this crime requires that the criminal be a public employee, which is defined based on judicial rulings as “every person appointed by the competent public authority to perform, with a degree of stability, a service in a public facility.⁴⁴” It can also be defined as the person appointed with a decision by the competent authority in a job listed in the job formations table, whether he works for a monthly salary in a job listed in the formations table or with a lump sum salary or is employed in it.

As for the moral element, the criminal intent must have two basic elements: knowledge and will. The employee must know certain facts and direct his will to the criminal activity and the consequence thereof. Therefore, it is achieved when the public employee intends to obstruct or delay the implementation of the judicial ruling without a legitimate reason, knowing that this behavior violates the law at the time of the criminal activity and not after it.⁴⁵

Finally, the causal relationship, which means that the public employee's negative action was the main reason for achieving the criminal result, meaning the failure to implement the judicial ruling issued to cancel the administrative decision.

The legal basis for the crime of the employee's refusal to implement judicial rulings in the Kingdom of Saudi Arabia is considered recent, where the Saudi Enforcement Law was issued on 8/12/1433 AH, and its article

43. Ali Khattar Shatnaw, *Encyclopedia of Administrative Judiciary*, Dar Al Thaqafa, Amman, 2011, p. 999.

44. Board of Grievances ruling No. (6/d/f/30) for the year 1414 AH.

45. Bassam Mohammed Abu Ermaila, “The positive role of administration in implementing the cancelled ruling”, *Studies of Sharia and Law Sciences*, 2015, (2).

(89) criminalizes this act if it is issued by the employee and punishes him with imprisonment as a standard punishment and dismissal from office as a consequential punishment. The article stipulates the following: (The public employee and those at his level shall be liable for a period not exceeding seven years if he prevents or obstructs the implementation of a judicial ruling, which is considered a crime against integrity)⁴⁶.

Despite the importance of criminal responsibility as a guarantee for the implementation of judicial rulings, it is considered an insufficient deterrent to oblige the administration to implement the judicial rulings because the legislator set an upper limit for the penalty, which is (7 years) and did not refer to the minimum limit, meaning that the employee who refuses to implement the judicial ruling may be sentenced of imprisonment for a short period that is not proportionate with the significance of the act committed.

It should be noted that the legislator in other countries, such as Egypt,⁴⁷ gave great importance to the administration refraining from the implementation of judicial rulings when it decided to criminalize the employees refraining from implementing judicial rulings in its constitution⁴⁸. This leads to strengthening the guarantees that ensure the execution of judicial rulings to the maximum extent as the constitution is classified as the highest level of legislation, and therefore its articles cannot be cancelled or amended, except in accordance with how the constitution is amended. In this way, the Egyptian legislator was able to impose constitutional protection on the implementation of judicial rulings and achieve sufficient deterrence for the public employee⁴⁹.

However, Article (89) of the Saudi Enforcement Law is the only legal text mentioned by the Saudi regulator to criminalize employees who refrain from implementing judicial rulings. The Basic Law of Governance in the Kingdom

46. Article (89) of the Saudi Enforcement Law issued by Royal Decree (M/53) dated 08/13/1433 AH.

47. For example, see the Qatari Penal Code 2044, article (182), also Kuwaiti Penal Code 1960, article (123 &58).

48. Article (100) of the Egyptian Constitution of 2014 stipulates: "Sentences are issued and implemented in the name of the people, and the state guarantees the means of implementing them in the manner regulated by law. Refusal to implement them or obstruction of their implementation by the concerned public employee is a crime punishable by law, and the person who is convicted is entitled to: In this case, the right to file a criminal case directly to the competent court, and the Public Prosecution, upon the request of the convicted person, shall initiate a criminal case against the employee who refrained from implementing the judgment or who caused it to be obstructed).

49. Muhammad bin Hassan Al-Qahtani, *The Constitutional Law of the Kingdom of Saudi Arabia*, Dar Hafez, Jeddah, 1432 AH, p. 203.

of Saudi Arabia did not provide for an article criminalizing the employee's refusal as the Egyptian legislator did in its constitution⁵⁰.

After discussing criminal responsibility, its pillars, and how to achieve it, we must turn to civil liability as one of the guarantees that the administration will not refrain from implementing judicial rulings issued for a cancellation, and this is what will be explained in the next requirement.

4.2 Civil Liability.

It is established that the administration's refusal to implement the enforceable judicial ruling is a withdrawal from the obligations arising from it, which is considered an illegal act and constitutes a mistake on the part of the administration in which compensation can be demanded. Therefore, the establishment of civil liability represented in compensation appears to be a fair matter because it creates a right to obtain compensation whose value the administration is obligated to pay. Civil liability is the compensation that the concerned person has the right to claim when the administration refrains from implementing the cancellation ruling. This is because this refrain is considered a negative administrative decision in violation of the law, and therefore it is considered an accompanying error that moves the responsibility of the administration⁵¹.

For the administration's responsibility to compensate, it is required that in addition to the existence of the error, the rest of the civil liability elements must be present. The error is represented by the administration's refusal to implement the judicial ruling, its mis-implementation of these provisions, and its delay and escaping the implementation. Other civil liability elements include the damage caused to the convicted, as stipulated in the element of the damage that is achieved when the administration refrains from implementing it, it has to be certain, that is, it already occurred or was about to occur with certainty, but if the damage is likely to occur or its occurrence is doubtful, there is no compensation for it.⁵²

Another element is the causal relationship between the error and damage, meaning that it is necessary for the administration's responsibility to

50. Maha Al-Zahrani, previous reference, page 105.

51. Faisal Shatnawi, Previous reference, p. 521.

52. Ayman Selim, Refusal is a Source of Civil Responsibility, Dar Al-Nahda Al-Arabiya, Cairo, 2003. P. 101.

compensate that the administration's fault is the direct cause of the damage, and the aggrieved party bears the burden of proving the causal link between the administration's fault and the damage⁵³.

As for the responsibility of the employee, the compensation is also a civil responsibility if one or more individuals suffer damage because of a wrong act⁵⁴. Therefore, to fulfill employee's civil responsibility, three pillars must be fulfilled, which are: ⁵⁵ the error that is dominated by a personal nature, the manifestation of bad faith, which is severe, and the harm of both types, material or moral. Also, it must be personal, certain, based on a legitimate right, capable of being evaluated in money, and implements the causal relationship that requires that the damage be a direct result of this error is applicable.

Suppose the elements of civil liability are fulfilled, and the convict suffers harm from the employee's refusal to implement the ruling issued in his favor. In that case, the employee is ordered to pay compensation from his own money, either directly or indirectly, so that the administration bears the burden of compensation and pays it to the aggrieved, and then takes the compensation value from the employee responsible for causing the damage⁵⁶.

Refraining from implementing judicial rulings by the employee is considered a disciplinary violation that requires a disciplinary penalty. However, this does not prevent filing a civil lawsuit to claim compensation since Article (31) of the Law of Employee Discipline for the year 1391 AH stipulates that "each employee proven to have committed a financial or administrative violation shall be disciplined, without affecting the filing of a prosecution or a compensation claim".

In addition, the employee's refusal to implement judicial rulings is a criminal offense in the Saudi system, and in this case, the civil liability is consequential because criminal responsibility entails civil liability, according to the origin, that is, if a person refrains from an act and his criminal responsibility is proven,

53. Muhammad Al-Khalayleh, Previous reference. p. 336.

54. Ali Al-Thnoon, the Mediator in Explaining the Civil Law (the Book of Damage), Wael Publishing House, Amman, 2006, p15.

55. Abdel Hakam Abdel Baseer Fouda, Civil Compensation (Contractual Civil Liability and Omissive Responsibility), University Press, Alexandria, 1998, p. 25.

56. Muhammad Hashim Al-Qaisi, The Consequences of the Personal Error of the Public Employee in Islamic Jurisprudence and Jordanian Law, Master's thesis, Omdurman Islamic University, Sudan, 2012, P.56.

the civil liability is decided accordingly. It is also considered an implicit acknowledgment by the Saudi legislator of civil liability if it is stipulated that criminal liability is established based on a refusal to act⁵⁷.

According to the legal system in Saudi Arabia, the criminal courts are competent to consider claims for the private right of compensation for damage caused to the convict due to the employee's refusal to implement the rulings issued in his favor during the examination of the criminal case⁵⁸.

It is also possible to file a compensation claim against the department responsible for the employee who refrained from implementing judicial rulings, and thus the jurisdiction falls to the Saudi Board of Grievances, as Paragraph (c) of Article (13) of the Board of Grievances Law issued in 1428 AH stipulates the jurisdiction of the Board: (Compensation claims provided by the concerned parties for the decisions and actions of the administration)⁵⁹. Accordingly, the administration bears the burden of compensation and then asks the employee to pay the value from his own money if his mistake is proven when the administrative judge rules the responsibility of the employee based on personal error.

This is what the Board of Grievances highlighted in one of its rulings in which it ruled that the employee was personally responsible for his refusal to implement judicial rulings, and the ruling included the following: "...refraining from implementing judicial rulings by administrative bodies determines the personal responsibility of a person who obstructed its implementation, or the general responsibility for the party that refused to do so..."⁶⁰.

4.3 Disciplinary Liability.

Many names have been given to the error committed by the employee, exposing him to disciplinary liability. Some of those names are administrative error, disciplinary offense, or administrative guilt, which all refer to the error

57. Ayman Selim, *Refusal is a Source of Civil Responsibility*, Dar Al-Nahda Al-Arabiya, Cairo, 2003, p. 74.

58. Article (147) of the Saudi Law of Criminal Procedure issued by Royal Decree No. (M/2) dated 22/1/1435 AH states: (Whoever suffers harm from the crime and his heirs after him may claim his private right before the court (before which the general criminal action is heard) in any status the case is in, even if his request was not accepted during the investigation).

59. Paragraph (c) of Article (13) of the Saudi Board of Grievances Law issued by Royal Decree (M/78) dated 9/19/1428 AH.

60. Ruling of the Saudi Board of Grievances No. 56 / D / F / 28 for the year 1426 AH.

that the public employee makes and causes damage to the public facility.⁶¹

Disciplinary liability is based on the error committed by the employee, which represents a breach of job duties and a violation of laws, regulations, and instructions that must be followed by public employees. Therefore, disciplinary liability is based on the idea of a behavioral error, and the employee's disciplinary liability is established when he commits this mistake even if it does not lead to harm.

Public employment contains many tasks, and the employee's refusal to implement a judicial ruling is considered a failure to perform the job duty. There is no doubt that the employee not implementing the judicial ruling is a behavioral violation that requires disciplinary responsibility for the appropriate punishment⁶².

The Saudi regulations related to the organization of public service affairs did not include a specific definition of a disciplinary violation or disciplinary penalty. Rather, it merely mentioned the duties of a public employee during the performance of his work and gave the authority to the administration to impose disciplinary penalties in the event where an employee violates these duties. In this regard, the Board of Grievances defined a disciplinary violation as (... a disciplinary violation is a charge based on a public employee's violation of his job duties, requirements, and dignity)⁶³.

A behavioral violation can be defined as any activity or refusal of a public employee, intentionally or unintentionally, during or outside the performance of his job, which violates the duties and rules of the public job or prejudice its dignity.

The establishment of disciplinary liability requires the presence of the material pillar and the moral pillar. The material pillar is the positive act (doing), or the negative act (refusing), committed by the public employee and considered in violation of the provisions of laws, regulations, and instructions⁶⁴. In this regard, the Board of Grievances has obligated the necessity of providing the material element for the establishment of disciplinary liability. In one of

61. Nawaf Kanaan *The Disciplinary System in the Public Service*, Ithraa Publishing and Distribution House, Amman, 2008, p. 17.

62. Hosni Abdel Wahed, *Implementation of Administrative Rulings*, Dar Al-Nahda Al-Arabiya, Cairo, 1984, p. 434.

63. Board of Grievances ruling No. (50/60) for the year 1401 AH.

64. Shaima Atallah, *Rules of Criminal Responsibility in the Field of Disciplinary Liability*, Dar Al-Nahda Al-Arabiya, Cairo, 2002, p. 57.

its rulings, it was stated that (...the disciplinary administrative decision is not based on valid reasons, as it is not attributed to the aggrieved employee if he did not establish the transaction and its writings)⁶⁵.

As for the moral pillar, it is represented in the will and knowledge of the employee who commits a positive or a negative act that constitutes a breach of the duties and requirements of the job. It was stated in one of the provisions of the Board of Grievances that (...what the employee did was done in good faith and as an implementation of the orders of his superior, therefore, the act committed by him lacks the moral pillar and does not constitute a violation that requires a disciplinary penalty)⁶⁶.

Refraining from implementing judicial rulings or the mis-implementation by the employee is considered a behavioral violation that requires a disciplinary penalty⁶⁷. In this case, the employee is subject to disciplinary accountability in accordance with the Saudi Law of Employee Discipline, including the procedures and guarantees it includes regarding investigation, accusation, and referral to disciplinary trial, as his behavior is considered a disciplinary violation represented in breaching the duties of the public service⁶⁸.

It should be noted that the employee who refuses to implement a ruling may be subject to a simple disciplinary penalty if the administrative authority decides that his behavior is an administrative violation that does not rise to the degree of seriousness and does not require the penalty of dismissal. The choice of the disciplinary penalty and the assessment of whether the violation is serious or not is left to the administration as the Saudi legislator did not specify the action that it must take, so the administration has the discretion to choose one of the penalties specified under Article (32) of the Saudi Law of

65. Board of Grievances ruling No. (42/T/2) for the year 1412 AH.

66. Board of Grievances ruling No. (182/T/2) for the year 1412 AH.

67. Article (31) of the Saudi Law of Employee Discipline for the year 1391 AH stipulates: "each employee proven to have committed a financial or administrative violation shall be disciplined, without affecting the filing of a prosecution or a compensation claim."

68. Article (32) of the Saudi Law of Employee Discipline for the year 1391 AH stipulates (Disciplinary penalties that may be inflicted on an employee are:

First: For employees of tenth rank, less, or its equivalent: warning - censure, salary deduction not exceeding three months' net salary, provided that the monthly deduction does not exceed one third of the net monthly salary, deprivation of one periodic bonus, dismissal.

Second: For employees who occupy the eleventh rank, above, or its equivalent: censure, deprivation of one periodic bonus, dismissal.

Employee Discipline issued in 1391 AH⁶⁹.

In this regard, the Saudi legislator considered that the employee's refusal to implement judicial rulings is a disciplinary offense and a criminal offense at the same time, based on Article (89) of the Enforcement Law issued in 1433 AH, and there is no conflict between the criminal and disciplinary liabilities⁷⁰. In the sense that the employee's refusal or refraining from the implementation of judicial rulings may expose him to criminal and disciplinary liability at the same time, and in the event of a judicial ruling acquitting him of the criminal offense, this also does not clear him from disciplinary liability based on the principle of separation and the permissibility of combining disciplinary and criminal penalties.

The Saudi Board of Grievances acknowledged the principle of the independence of criminal offense from disciplinary offense in one of its provisions, which states that: (... a disciplinary offense is essentially a stand-alone accusation independent of the criminal accusation, based on the employee's violation of the duties or dignity of his job, while the criminal offense is when the accused goes against society in what criminal laws forbid or order)⁷¹.

5. Conclusion

When an individual goes to the courts to issue a ruling in his favor that protects his abused rights from the administration, he hopes in return that he will be able to implement it easily and smoothly. However, the administration has taken a negative attitude regarding the ruling against it, which requires the Saudi legislator to intervene to enact clear legal rules that prevent compromising the prestige of the judiciary and the sanctity of its provisions.

The failure to implement judicial rulings on the part of the administration represents a serious breach of separation between authorities (legislative, executive, judicial) and a violation of the independence of the judiciary. Respect for its provisions and their implementation has become an essential

69. Maha Al-Zahrani, previous reference, page 231.

70. Article (89) of the Saudi Enforcement Law for the year 1433 AH states: (The public employee and those in his level shall be punished with imprisonment for a period not exceeding seven years if he prevents or obstructs the implementation of a judicial ruling, and this is considered a crime against integrity).

71. Decision of the Saudi Board of Grievances No. 50/86 of 1401 AH in Case No. 525/1 BC of 1401 AH.

pillar in any democratic system, and the administration may refrain from implementing judicial rulings in whole or in part, which undermines the power of judicial rulings and prejudice the independence of the judiciary.

This study addressed the problem of the research, which is represented by the administration's refraining from and refusing to implement the judicial rulings issued for cancellation by discussing the subject of the administrative decision, its pillars, and the method of appealing it in the first section. The second section dealt with the issue of the administration's refrainment from the implementation of judicial rulings, including forms of implementation refusal and mis-implementation. As for the third section, it deals with the guarantees of the implementation of judicial rulings, including civil, criminal, and disciplinary liability. Accordingly, this study reached the following results:

Issuance of a judicial ruling to cancel the administrative decision obliges the administration to restore the situation to the way it was before the issuance of its canceled decision.

The administration's refusal to implement judicial rulings takes several forms, such as mis-implementation, incomplete implementation, deception of implementation, implicit refusal, and explicit refusal. The latter is the most dangerous of these forms, but it is one of the easiest forms which can prove the bad intention of the administration.

The administration justifies its refusal to implement judicial rulings with many arguments and justifications, such as the public interest, public order, and material and legal difficulties. These justifications, despite their reality at times, should not constitute a justification for refraining from implementing judicial rulings because public interest and public order are achieved through the implementation of judicial rulings and not through refraining from implementing them.

When the administration refrains from implementing judicial rulings issued for a cancellation, there are guarantees and means to deter it from this refrainment, such as criminal, civil, and disciplinary liability.

After presenting the problem of the study and its results, the following recommendations should be taken into consideration by the Saudi Legislator to overcome the problem of the administration's refraining from implementing judicial rulings issued for a cancellation, including:

First: establishing a judicial enforcement department in the administrative courts whose mission is to consider and study the implementation problems that may arise and to facilitate the implementation of judicial rulings by the administration when it refuses.

Second: Issuing legislation that includes preventing all forms of the administration's violation of its obligations and its refrainment from implementing judicial rulings, in particular the Saudi legislator in the Enforcement Law that has dealt with defining the employee's criminal responsibility only in the two cases of refusal or obstruction of the implementation of judicial decisions, and this text did not include other cases such as reissuing the canceled decision, which is also considered a form of refusal or obstruction to the implementation of judicial rulings.

Third: The necessity of developing a legislative text which precisely determines a specific period to be granted to the administration to implement the judgments issued for the cancellation, with the possibility of extending this period after obtaining approval from the competent judicial authorities so that the administration does not argue that it is ignorant of the obligations imposed on it. This leads to avoiding more waiting by the person concerned for the administration's response.

Fourth: The necessity of granting the administrative judge the powers to issue orders to the administration issuing the necessary legislation to give the judge in the Board of Grievances the power to issue orders to the administration to ensure the implementation of his rulings while giving him the power to impose a threatening fine if the administration is proven to refrain from implementing judicial rulings.

Fifth: Despite the importance of the criminal penalty as a guarantee for the implementation of judicial rulings, the author believes that this penalty is considered an insufficient deterrent to oblige the administration to implement the judicial rulings because the legislator set an upper limit for the penalty which is (7 years) and did not refer to the minimum limit, meaning that the employee who refuses to implement the judicial ruling may be sentenced of imprisonment for a short period that is not proportionate with the significance of the act committed. Therefore, there is a need to amend the Saudi Enforcement Law regarding the phrase (a period not exceeding seven years) so that the period of (7 years) is the prescribed penalty period, not the maximum penalty period.

Sixth: since there is no disciplinary penalty upon the employee who refuses to implement the judicial rulings, it is necessary to provide more means and guarantees that prevent the administration from refraining from implementing judicial rulings issued for the cancellation because the existing guarantees are not sufficient or deterrent to the administration, which requires a legislative text that includes punishing the employee who refrains from implementing judicial rulings with a severe disciplinary penalty such as final dismissal from the job.

Seventh: The need to establish an independent section in the Board of Grievances, whose task is to assist in the implementation of administrative rulings issued against the administration, and to provide it with the means that lead to obliging the administration to implement, and to establish responsibility for it. This requires issuing a separate law organizing all matters concerning the competence of this section and the procedures that must be followed.

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