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# Manifestations Of The Weak Implementation Of Administrative Judicial Rulings In Iraq And Their Impact On The Principle Of The Rule Of Law: Legal Analytical Study

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**Abstract:** The obstacles to implementing administrative judicial rulings in Iraq are not incidental or circumstantial. Instead, they are structural impediments that highlight the need for profound legal and institutional reform. Moreover, the success of the implementation process is not limited to the issuance of rulings; rather, it depends on the existence of a legal, regulatory, and cultural environment that fosters respect for the judiciary and compels the administration to comply with its rulings.

However, addressing the crisis of implementing administrative rulings in Iraq requires comprehensive legislative and institutional efforts, beginning with a strong political will to reform the administrative and legal system and ending with building a societal culture that respects the judiciary and believes that implementing rulings is a national duty that cannot be neglected.

**INTRODUCTION:** The implementation of administrative judicial rulings is a fundamental aspect of the rule of law and an embodiment of respect for the principle of legality, which subjects the administration to judicial oversight. The administrative judiciary is not only intended to issue rulings, but also to ensure their implementation as a means of establishing rights, redressing grievances, and achieving justice. With the development of the administrative judiciary in Iraq and the issuance of numerous rulings requiring the administration to take corrective or compensatory measures, the problem of the non-implementation or

delayed implementation of these rulings has emerged, negatively impacting individuals' confidence in judicial and administrative institutions. Therefore, the objectives, situation, and scope of this research will be examined, as well as the adopted methodology and research plan, as shown below:

**First - Research Objectives:**

This study aims to shed light on the practical and legislative problems that hinder the implementation of administrative judicial rulings, analyze relevant legal texts, and present substantive proposals for reforming the executive system of administrative rulings in Iraq. The study also aims to provide a critical analysis of current administrative practices and examine ways to enhance the authority of the administrative judiciary.

**Second - Research Problem:**

The implementation of judicial rulings is of particular importance in the legal and administrative system, not only because it embodies justice, but also because it ensures respect for individual rights and imposes effective oversight over administrative conduct. The administration's failure to implement rulings issued against it constitutes behavior that violates the foundations of the rule of law, breaches the principle of separation of powers, and reflects the weakness of the legal oversight system over executive authority. This in itself constitutes a problem in the implementation of these rulings.

**Third - Significance of the Research:**

The importance of this study stems from the significance of administrative rulings and the fact that they represent the means by which those harmed by administrative decisions seek redress. Whenever these rulings are issued but fail to be implemented, they become mere ink on paper, a waste of judicial effort, and a disruption of justice. Hence, there is a need for a legal analytical study that reviews the reality of implementing administrative rulings in Iraq, identifies the obstacles that prevent this, and proposes appropriate solutions to ensure the effectiveness of these rulings and enforce their respect by the administration.

**Fourth - Research Methodology:**

This study employs a legal analytical approach, analyzing relevant legal texts and utilizing realistic models and partial comparisons as necessary, particularly in comparative judicial systems such as the Egyptian and French systems, which are considered pioneering models in the field of administrative justice. The study is divided into six main chapters, in addition to this introduction and conclusion. Each chapter covers a specific aspect of the study topic, beginning

with the conceptual and legal framework, proceeding to the practical reality, and concluding with proposed legislative and institutional solutions.

Through this study, we aim to make an intellectual and practical contribution that opens the door to developing a system for implementing administrative rulings, promotes the adoption of more effective legislation, and fosters a legal and administrative culture based on respect for the judiciary and its independence.

**Fifth - Research Plan:** This study was divided into five sections to encompass all the obstacles that hinder the implementation of administrative judicial rulings in Iraq. The first section addressed the legal concept of implementing administrative rulings, the second section examined the reality of implementing administrative rulings in Iraq, the third section highlighted the challenges that hinder the implementation of administrative rulings in Iraq, and the fourth section discussed the consequences of not implementing administrative rulings. The fifth section concluded the study.

**Section One: The Legal Concept of Implementing Administrative Rulings**

The legal concept framework necessary for implementing administrative rulings constitutes one of the most essential foundations for ensuring the effectiveness of the administrative judicial system, achieving the rule of law, and protecting the rights of individuals vis-à-vis the administration. Therefore, this framework will be presented in terms of both the scientific concept and the legal concept, explaining the nature of the special relationship between the judiciary and the administration, as shown below.

**First Requirement: The Concept of Administrative Ruling and Its Characteristics**

**First: The Concept of Administrative Ruling**

An administrative ruling is a decision issued by the administrative judiciary regarding a dispute of an administrative nature (1), often involving an administrative entity, and related to an administrative action such as a decision to dismiss an employee, revoke a license, or refuse to grant a permit. An administrative ruling is distinguished from its civil counterpart by several characteristics, the most important of which are:

1. A specialized judicial body issues it: In Iraq, these tasks are entrusted to the Administrative Judiciary Court of the Council of State, pursuant to Iraqi Council of State Law No. (71) of 2017. (2).
2. Nature of the dispute: Administrative disputes arise from the administration's use of public authority

against individuals, unlike civil disputes, which are based on a balance between two parties.

3. Subject of the ruling: Administrative rulings often concern the annulment or amendment of administrative decisions, or obligate the administration to perform or refrain from a specific action.

4. Mandatory nature of the ruling: Administrative rulings are not limited to establishing a right; in many cases, they include explicit orders to the administration, imposing a direct obligation to implement them.

#### Second: Administrative Judiciary in Iraq

The administrative judiciary in Iraq is a component of the judicial authority, based on the principle of specialization. It is entrusted with adjudicating administrative disputes that arise between the administration and citizens (3). The State Council Law has regulated this jurisdiction by stipulating the establishment of the Administrative Judiciary Court and defining its authority, which includes the annulment of unlawful administrative decisions and the compensation of those affected.

Administrative judiciary represents one of the fundamental guarantees for the protection of rights and freedoms, as it enables citizens to appeal administrative decisions that unlawfully affect their interests (4). However, this role will not be effective unless the ruling is translated into concrete reality through its implementation.

#### Third: The Legal Nature of the Implementation of Administrative Judicial Rulings

Although the implementation of judgments is a natural extension of the judicial function, it requires the cooperation of the executive authority, making it essential to have a clear and specific legal framework that obligates the administration to implement them promptly and without delay. In the Iraqi system, there is no specific law regulating the implementation of administrative judgments. Referral to the Enforcement Law No. (45) of 1980 is sufficient, a law drafted initially to regulate the implementation of civil judgments. This creates a clear legislative gap, as the administration is not treated as an ordinary individual subject to enforceable enforcement, but rather as an entity with privileges and authority that may refrain from implementing them without deterrence (5).

#### Fourth: The Special Nature of the Relationship Between the Judiciary and the Administration

The relationship between the judiciary and the administration in the area of implementation is a delicate one, requiring a balance between the principle of the administration's submission to the law, on the

one hand, and consideration of the specificity and flexibility of administrative work, on the other. Therefore, establishing executive rules specific to administrative rulings should take this specificity into account without compromising the essence of judicial justice (6).

From this framework, it becomes clear that the implementation of administrative rulings is not merely a subsequent procedure, but rather a fundamental pillar for achieving justice. It requires an integrated legal and institutional system that ensures the transformation of rulings into tangible results in practice (7).

#### Section Two: The Reality of the Implementation of Administrative Rulings in Iraq

The reality of implementing administrative judicial rulings in Iraq reflects a complex structural crisis rooted in the legal, institutional, and cultural framework of the administrative system. Despite an increasing number of rulings issued by the Administrative Court against state institutions and government departments, the implementation rate of these rulings remains low, weakening the effectiveness of judicial oversight and undermining the principle of the rule of law (8).

First: Low implementation rates despite the increase in rulings.

Unofficial data and judicial monitoring reports indicate that the implementation rate of administrative rulings in Iraq ranges between 30 and 40% in some years, and may be lower in sensitive cases related to leadership positions or ample financial compensation. In many cases, the administration postpones or ignores implementation, either due to the costs involved or political or factional considerations.

An example of this is the fact that there are real-life examples demonstrating the delay in implementation, such as the case of an employee's reinstatement. In one of the rulings issued by the Administrative Court in 2021, an employee was reinstated after it was proven that he had been unfairly dismissed. However, the implementation of the verdict took more than 18 months due to the court's refusal to respond and a change in management.

The same principle applies to cases involving civil compensation for damages resulting from an administrative decision. In another case in 2020, the court issued a ruling to compensate a contractor for damages incurred as a result of an administrative decision to cancel a project contract. The Ministry of Planning delayed implementing the verdict for more than two years, citing a lack of financial allocations (9).

However, the issue of annulling an administrative

decision that violates the law arises in some cases, as the administrative body delays implementing the new decision or reissues a similar decision under different names, seeking to deprive the ruling of its substance and validity.

#### Second: The Absence of a System for Oversight of the Implementation of Administrative Rulings

In Iraq, there is no independent oversight body responsible for monitoring the implementation of administrative rulings, and the law does not require the relevant authorities to submit periodic reports on implementation rates. This absence allows many institutions to ignore rulings without real accountability (10).

#### Third: Weak Institutional Will on the Part of Administrative Authorities

Many administrations view judicial rulings as non-binding or negotiable, especially when the rulings lack precise implementation mechanisms or when the party against whom the verdict was issued has significant political or administrative influence (11). Some administrations also suffer from a lack of resources or an administrative structure that hinders their ability to implement the ruling effectively. Fourth: Slow Implementation Procedures and Multiple Correspondences

Cases requiring official correspondence between the Administrative Court and the executive administration or ministries are characterized by extremely slow and complex procedures. Implementation of judgments often involves a series of correspondence between general directorates, legal departments, and inspectors general, leading to an accumulation of unresolved cases (12).

#### Fifth: Lack of Databases to Monitor Implementation

Neither the courts nor the Ministry of Justice has a unified electronic system to track the implementation of administrative judgments. This absence makes it difficult to evaluate performance and hinders the accumulation of administrative and legal expertise in implementing judgments.

#### Section Three: Challenges Impeding the Implementation of Administrative Judgments in Iraq

These challenges constitute the cornerstone of analyzing the problem of implementing administrative judgments, highlighting the most prominent obstacles hindering their implementation on the ground. The study revealed that these obstacles encompass a range of legal, institutional, financial, political, and cultural barriers, indicating the intertwining of factors that prevent the effective and disciplined implementation of judgments.

#### First: Legal Obstacles

1. The absence of a specific law for the implementation of administrative judgments: Iraqi legislation does not yet include an independent text or specific law specifying the mechanism for implementing judgments issued by the administrative judiciary. This forces courts to resort to Civil Enforcement Law No. (45) of 1980, which is not appropriate for the specific nature of administrative disputes and does not provide practical coercive tools for the administration (13).

This legislative deficiency makes administrative implementation a complex problem, as there are no practical tools to compel the administration to implement, nor are there clear procedures for escalating the matter in the event of refusal or delay (14). Consequently, the absence of this legal framework constitutes a fundamental obstacle that requires urgent legislative treatment. This constitutes a legislative vacuum regarding the penalty for failure to implement. The Iraqi legal system does not contain explicit provisions penalizing employees or administrative bodies that fail to implement an administrative court ruling. This weakens legal deterrence and encourages some administrations to procrastinate.

2. Deficiencies in the powers of the administrative judiciary, which affect the principle of the legitimacy of the decision. Furthermore, the Administrative Court lacks the authority to follow up on implementation or take direct coercive measures, such as seizure or threatening fines, as is the case in some comparative systems (15).

3. Multiple and conflicting legal authorities: In many cases, legal texts about administration conflict with judicial rulings, and there is no decisive authority to decide on the implementation of the ruling, leading to the suspension or emptiness of the verdict. For example, the Rosay case, which contained an apparent contradiction in its rulings, was issued in French Legislation No. 20, April 1932, in addition to the conflicting rulings in the jurisdiction of the Court of Conflicts (16).

#### Second: Institutional Obstacles

1. Lack of coordination between the judicial and executive authorities: There is no joint unit or precise institutional mechanism for coordination between the Administrative Court and the implementation directorates in the governorates. This means a lack of administrative interference in judicial jurisdiction, applying the principle of dispute resolution by transferring jurisdiction in some disputes to exceptional courts or legislative councils, which creates a gap in monitoring the implementation of rulings. This

challenge is considered detrimental to the practical application of the law. It impacts the legal system, resulting in problems for individuals, which in turn leads to a lack of trust and instability in the legal system (17).

2. Weakness of the specialized staff: Many ministries do not have legal units experienced in implementing judicial rulings, and the matter is often entrusted to employees who are not specialized or untrained in dealing with administrative rulings. However, the State Shura Council established new judicial bodies when the Council of State was abolished. Public Discipline, as issued in the Fifth Amendment No. (17) of 2013 (18).

3. Bureaucracy and Complex Procedures: Implementing an administrative ruling often requires going through a long chain of correspondence, signatures, and approvals. This leads to delays and exposes the ruling to administrative time constraints. This delay may be considered an adverse decision that violates the law, entitling the injured party to compensation (19).

4. Weak Internal Oversight: Internal administrative oversight of the implementation of rulings is often formal, as disciplinary action is rarely taken against those responsible for the delay (20).

#### Third: Political Obstacles

1. The Influence of Political Influence on Implementation Decisions: In some cases, a ruling is not implemented due to interference from influential political parties, especially if the ruling conflicts with specific interests or threatens administrative or partisan balances.

2. Lack of Administrative Independence: Some administrations are effectively subject to external directives or are linked to political power centers, rendering them unable or unwilling to implement judicial rulings, especially if these rulings affect officials, prominent figures, or political issues.

3. Politicization of some administrative issues: There is a tendency to politicize some rulings issued by the Administrative Judiciary and consider them to have a political dimension, which undermines the administration's impartiality in implementing them.

#### Fourth: Financial and Logistical Problems

1. Lack of financial allocations: Some rulings impose financial obligations on the administration, such as retroactive compensation or salaries. In many cases, executive bodies justify delaying implementation by citing the lack of necessary financial allocations (21).

2. Lack of contingency plans for implementation: There is no flexibility or contingency financial plans in the budgets of government departments to implement sudden judicial rulings, which leads to postponement of implementation to the following fiscal year. This delay

was not the result of negligence on the part of the ministry; in such a case, compensation for the delay would be illegitimate. In this case, it is impermissible to hold the administration accountable for delaying implementation as a result of these procedures, as this situation is considered among the difficulties facing the administration when implementing the ruling (22).

3. Weak administrative structures for implementing complex rulings: In some cases, a verdict requires reorganization, changes in functional structures, or institutional restructuring, which many departments lack (24).

#### Fifth: Social and Cultural Gaps

1. Weak legal awareness among administrative personnel: Many employees do not realize that an administrative judicial ruling has a binding force equivalent to laws, and consider it a recommendation or an opinion subject to postponement.

2. Lack of training and qualification: Administrative institutions lack training programs that explain how to handle judicial rulings, the mechanism for their implementation, and when they are final.

3. Lack of a culture of judicial oversight of the administration: The culture of submission to the judiciary remains weak among many departments, and the judiciary is sometimes viewed as an obstruction to administrative work rather than a partner in achieving justice (25).

#### Section Four: Consequences of Non-Implementation of Administrative Rulings

This section represents an essential aspect of the study, as it aims to identify the negative repercussions resulting from the administration's inaction or refusal to implement judicial rulings issued by the administrative judiciary. These effects are evident at the legal, institutional, and societal levels, making it an issue that touches upon the very essence of the rule of law and reflects the performance of the judicial system (26).

##### First: Undermining the principle of the rule of law

The administration's failure to implement judicial rulings constitutes a direct violation of the principle of the rule of law, which is supposed to be the supreme authority of all state powers. If an administrative judicial ruling is rendered non-binding, the judiciary loses its authority, rendering rulings mere recommendations with no effect.

##### Second: Weakening confidence in the judiciary and public institutions

When citizens realize that the ruling they obtained after lengthy litigation may not be implemented, they

develop a conviction that resorting to the judiciary is futile. This undermines their confidence not only in the judiciary (27), but also in the executive and administrative institutions that are supposed to be subject to the law (28). Thus, encouraging the administration to persist in violating the law when the administrative body faces no legal consequences for its failure to implement the rulings encourages it to repeat the violations, perpetuates impunity, and renders judicial oversight mechanisms ineffective, thereby undermining confidence in resorting to the judiciary.

In light of this reality, the urgent need to adopt radical legislative and regulatory reforms to ensure respect for the authority of the administrative judiciary and the effective implementation of its rulings within a reasonable timeframe becomes clear.

### Third: Threat to the Principle of Separation of Powers

The implementation of judicial rulings is one indicator of respect for the principle of separation of powers, as the executive authority is assumed to implement the rulings of the judiciary. If this rule is not respected, the balance of powers is disrupted, and the state transforms into an undisciplined, authoritarian entity (29).

### Fourth: Harm to Individual Rights and the Public Interest

Administrative judicial rulings are often issued to protect the rights of individuals from the arbitrariness or erroneous decisions of the administration. Failure to implement these rulings leads to continued harm to individuals and contravenes the goal of justice for which the judiciary was established. The public interest is also harmed by the delay in correcting erroneous administrative decisions, which contributes to the spread of administrative corruption. This is because an environment in which judicial rulings are not implemented is a fertile environment for the spread of corruption. The absence of judicial accountability weakens adherence to rules and fosters a culture of favoritism, bribery, and administrative manipulation (30).

### Fifth: The Negative Impact on Development and the Economy

The failure to implement rulings, particularly those related to government contracts or investment projects, may lead to the disruption of major economic projects and cast a negative image of the investment climate in Iraq, discouraging investors and hindering development.

### Sixth: Undermining the Idea of the Institutional State

The modern state is based on institutions and legal rules. Suppose administrations do not implement the

provisions of the law. In that case, they demonstrate a severe institutional weakness, rendering the state, in the eyes of citizens and external observers, a fragile entity that lacks self-respect (31).

From this, it becomes clear that the failure to implement administrative rulings does not merely represent a failure to execute a specific ruling; it is a structural crisis that affects the essence of justice, legitimacy, and the sovereignty of the state. The recurrence of this failure indicates a profound flaw in the administrative and legal system, and calls for urgent and radical reform to ensure respect for rulings and the achievement of prompt justice.

### Section Five: Ways to Overcome the Challenges Hindering the Implementation of Judicial Rulings

In light of the study's findings on real obstacles to implementing administrative judicial rulings in Iraq, a comprehensive reform plan is needed that incorporates legal, institutional, and cultural solutions to ensure respect for the administrative judiciary and the effective achievement of administrative justice. The following are the most important recommendations that could contribute to enhancing the implementation of these rulings:

#### First: Legislative Reforms

1. Enacting a law specific to the implementation of administrative rulings: The legislative authority must issue an independent law regulating the procedures for implementing administrative rulings, including binding time limits for implementation, and defining the court's powers to follow up on implementation, with penalties imposed in the event of failure or unjustified delay.

2. Amending the State Council Law: It is proposed to introduce amendments to the Iraqi State Council Law No. (71) of 2017, granting the Administrative Judiciary Court the authority to issue binding executive orders subject to immediate enforcement, as is the practice in some comparative judicial systems.

3. Penal provisions for failure to implement: Include penal provisions criminalizing the inability to execute or intentionally delaying administrative rulings. These penalties should be imposed by the direct administrative official, ensuring both general and specific deterrence (31).

#### Second: Reforming the Institutional Structure

1. Establishing administrative judicial implementation units: It is proposed to establish special units within the Administrative Court and the Council of State, tasked with monitoring the implementation of issued rulings and coordinating with executive authorities to ensure prompt implementation.

2. Requiring ministries to establish departments to

monitor judicial rulings: Each ministry or administrative body must allocate a legal or administrative unit specializing in the implementation of judicial rulings and following up on responses.

3. Independent Executive Oversight: Establishing an independent executive body or committee affiliated with the House of Representatives or the Supreme Judicial Council, tasked with monitoring the implementation of administrative rulings and submitting periodic public reports (32).

Third: Administrative and Organizational Procedures

1. Establishing a binding timetable for the implementation of each ruling: The court shall issue a ruling accompanied by a specific timetable for implementation, monitor its implementation stages, and provide written justification for any delay.

2. Adopting an electronic system for monitoring implementation: Establishing a unified digital platform linking the Administrative Court with all relevant executive bodies to monitor the rulings issued and the mechanisms for their implementation.

3. Simplifying administrative procedures: Reconsidering the bureaucratic communications mechanism to reduce the time and administrative complexity that hinders implementation (33).

Fourth: Promoting legal and institutional culture

1. Incorporating the topic of implementing administrative rulings into employee training curricula: Organizing mandatory courses for legal and administrative employees on the importance of judicial rulings and methods of their implementation (34).

2. Disseminating a culture of respect for the administrative judiciary: Through official media and civil society organizations, this will reinforce the image of the administrative judiciary as a tool for reform rather than an obstacle to administration.

3. Engaging civil society: Enabling human rights organizations to monitor the implementation of administrative rulings with a general impact and submit reports on failure to implement them (35).

Fifth: Activating the oversight and judicial role

1. The role of the House of Representatives: Obligating government agencies to submit annual reports on the rates of implementation of judicial rulings and activating interrogations regarding repeated failure to implement them.

2. Powers of the Administrative Public Prosecution: Granting the Public Prosecution the authority to initiate disciplinary or criminal proceedings against entities or officials proven to have failed to implement the provisions.

3. Expanding the Court's Powers: Allowing the Administrative Court to take incentive or punitive measures, such as imposing a coercive fine or a symbolic administrative detention (36).

## **CONCLUSION**

This study concludes that the implementation of administrative judicial rulings is a crucial aspect of respecting the rule of law and the enshrinement of the principle of legitimacy in the Iraqi legal system. However, the practical reality reveals the existence of serious obstacles that prevent the achievement of this goal. The study examined these obstacles from multiple perspectives, including legal, institutional, political, financial, and cultural aspects. It demonstrated their interconnectedness and direct impact on the weak effectiveness of the administrative judiciary. Accordingly, the study reached several conclusions and recommendations, as follows:

### **First: Results**

1- It became clear that Iraqi legal systems require a comprehensive system that compels the administration to implement judicial rulings smoothly and rigorously.

2- This leads to a legal challenge that may negatively impact justice, potentially compromising individual rights.

3- The analysis revealed that the implementation problem does not lie in the will of the court or in the text of the ruling itself, but rather in the weakness of the system supporting implementation and the absence of fundamental deterrent tools that compel the administration to comply.

4- This may lead to a decline in individual confidence in the judiciary, a lack of accountability, and the perpetuation of administrative corruption, leading to a partial disruption of justice.

### **Second: Recommendations**

The study presented a set of solutions and recommendations, including the following:

1- Legislative reform by enacting a law specific to the implementation of administrative rulings, in addition to the Iraqi legislature regulating the deadlines for notification of judicial rulings and the conduct of legal proceedings to ensure their implementation within the legally specified timeframes.

2- Amending the State Council Law, along with institutional reforms, including the establishment of implementation and follow-up units.

3- Activating the role of judicial, media, and community oversight, as well as establishing a specialized body at the level of the administrative courts and the State Council to monitor the implementation of

administrative rulings and address obstacles to their implementation, with the appointment of a judge tasked with following up on the implementation of judicial decisions within each body.

4- Allocating a separate chapter within the Iraqi Council of State Law No. (71) of 2017, which includes provisions related to the implementation of administrative judiciary decisions, with an explicit provision for publishing the decision condemning the party that refuses to implement it in the Official Gazette.

In conclusion, the study emphasizes that ensuring the implementation of administrative judicial rulings is not only a protection of individual rights, but is also a necessity for establishing a state of law and institutions and enhancing citizens' confidence in the judicial system. A ruling that is not implemented is worthless, there is no justice without application, and there is no reform without real and effective accountability.

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