

Defective Judicial Rulings and the Mechanism for Reviewing them Without Appeal

Dr. Saif Rashid Latif Jassim

Private Law Lecturer - Faculty of Law - Samarra University

saif.r.l@uosamarra.edu.iq

Abstract: Judicial rulings aim to end a dispute on the basis of which a lawsuit was filed, and judicial rulings are not issued except after careful consideration and scrutiny, as accuracy in issuing rulings is one of the most important characteristics that characterize judicial decisions, and judges are distinguished by characteristics that make it more wise and scientific, which makes their decisions far from the circle of doubt. Despite this, some judicial rulings may be ambiguous and lack clarity, or may include material errors, or judges may neglect to answer some requests in their decisions, which makes that decision or ruling vulnerable to appeal through the methods of appeal stipulated by the law, and for this reason the legislator tried to exclude those rulings. From the Department of Appeal and Reducing the Cases of Cassation of Judgments, he permitted the correction of those rulings by having the concerned parties review the courts that issued them.

Judgments are essentially valid, but as we said, their issuance may be accompanied by characteristics that make the ruling flawed in terms of application, as implementing those rulings in the implementation department will not be an easy matter and is fraught with difficulty, as the ambiguity of the judicial ruling or its inclusion of a material error will not enable the just executor to implement that ruling. In accordance with the principle of achieving justice, therefore, we are trying, through this research, to address the cases through which the law has permitted the correction of judicial rulings to reach the stage of perfection that brings the desired justice to its owner. Our approach to this topic will be in accordance with the defective judicial rulings and the mechanism for correcting them, away from the methods of appeal.

Keywords: rulings, judicial review, ambiguity, material error, just executor.

Introduction

Judicial rulings aim to achieve justice, but achieving justice may not begin through the issuance of a judicial ruling on the subject of the dispute, so the search for achieving justice is through resorting to legal means that follow the issuance of the ruling, and by that we mean resorting to legal methods of appeal.

We find talk about research into ways that could contribute to correcting the judicial ruling (correcting , interpreting, removing ambiguity , etc.) starting to occupy an important space in judicial circles because it aims, first of all, to give the judicial ruling the status of integration from a legal standpoint, and that this leads to Reducing the effort and time and then removing the obstacles that accompany the implementation of the ruling - provided that this does not lead the judge to retract the decision he made under the pretext of correcting his decision due to the defect that he encountered - until we reach the goal of the ruling, which is achieving justice.

Our study in this research aims to highlight the important impact that will result from reviewing the judicial ruling, as well as the many advantages that characterize this procedure. In addition, examining this topic will shed light on the legal and practical importance of judicial review of the ruling, away from the known means of enforcing the rights that follow the issuance of the ruling. Judicial ruling is an appeal against judicial rulings.

In addition to the above, correcting the defects in the judicial ruling is not limited only to the stage following the issuance of the judicial ruling, that is, through ordinary and extraordinary methods of appeal. Rather, it is possible to resort to the same court that issued the ruling for the purpose of removing any defect in the ruling, but talking about On this topic, we do not find writings that are dictated by legal libraries, so we chose this topic in order to examine it from another angle that would complement what the researchers began, and in order to encompass the topic of our research, we consider it to be researched according to two sections. In the first section, we address the concept of the flawed judicial ruling, of which we address in the first section the definition of the ruling. The defective judiciary. In the second requirement, pictures of the defective judicial rulings. Then, in the second section, we address the mechanism for reviewing defective judicial rulings without appeal. In the first requirement, we discuss the conditions for reviewing defective judicial rulings, and the second requirement, the procedures for reviewing defective judicial rulings, according to the following:

The first topic

The concept of a flawed judicial ruling

Litigation is a set of logically successive judicial procedures taken for the purpose of arriving at a decision on the subject of the lawsuit. Judicial procedures arise through lawsuits, that is, through a request for litigation represented by the lawsuit filed by the opponents. These procedures continue until reaching a ruling on the matter because the decision is the result of the natural nature of the procedures. Issuing the ruling is the primary goal in the case, as issuing the ruling does not take place except after studying and understanding the case papers and documents on the part of the judge for the purpose of arriving at a ruling that ends the state of dispute between the two disputing parties and then implementing the ruling . However, implementing the ruling requires that it be sound and free of defects., and this cannot be achieved in all rulings, as some rulings may be tainted with ambiguity or contain a material error that accompanied the issuance of the decision...etc. This defect is considered an obstacle to the implementation of the ruling , which requires the court that issued it to remove that ambiguity or correct the error that accompanied it. Issuing the decision by reviewing the defective ruling, so it is necessary to discuss this issue according to two requirements. In the first requirement, we address the

definition of the defective judicial ruling, and in the second requirement we discuss the forms of the defect, according to the following⁽¹⁾

:The first requirement

Definition of a flawed judicial ruling

In order to understand the review of a flawed judicial ruling, we must address the concept of this term in detail, both in terms of language and terminology, and according to the following:

The first section: Linguistic definition: It is said in the Arabic language that a defect is: games And the shame And the defect : the stigma, he said Sibawayh : They tilted games An analogy for him With a thousand Throw, Because she Upside down on J; and he rare; The plural : defects And defects; the first on fox; And chant As if promise you not yet From you, * and I have He comes to With Flaws And he narrated it son Bedouins : To With The cores And the troubles And defective : defect; And say my dad Zabid Al-Ta'i if Latex Raqat after Sickness It vanished, * and it occurred The empty stomach With mouths Shame Permissible in it that He is The shame A name for shame, Like a missile And the coward; It is permissible that Wants flaw Reproach, So he deleted it Added, And he established the addition mechanism His residence And he scolded The thing And the wall A defect : it became The flaw. A Y B : The defect And The shame also And games Meaning And nibble Baggage from door sold And Shame And Flirting also It happened The flaw And He scolded him jealousy Exceeds It is necessary He is defective And Defective also on the origin gesticulate in it Reproachful And Shameful Open Mimma any flaw And it was said position flaw And Shameful like Shameful And Disadvantages Defects And His shame Tired rate to The defect And His shame also Make it The flaw And He reproached him like him.⁽²⁾

As for the ruling, it is known in the language: (HKM), which is the judiciary where a ruling is made between them, a ruling is made for it, and a ruling is made against it, and the ruling: prohibition is said to be (ruling) whose origin is a prohibition to prevent the reform of something, and ruling on a thing means that you decide by it a matter whether you oblige it or not, and refer to it. So-and-so is in the money of so-and-so, if his ruling and the adversarial trial come to the judge and the judge is the executor of the ruling, and the ruling is the source of your saying (ruling) between them by the ruling, i.e. he ruled and ruled for him and ruled against him.⁽³⁾ The

(¹) The Iraqi legislator cited in the reasons for the Iraqi Procedures Law No. (83) of ,1969 amended, ((The law went to the strictest reasoning for rulings before pronouncing them to force the arbitrators not to rule in the case on the basis of an idea whose features were not clear or a sentence that was absent or overlooked. Its details and that the ruling should always be the result of clear and limited reasons on the basis of which deliberation took place between the judges before pronouncing it((

(²) Lisan al-Arab by Ibn Manzur, third edition ,Part Twelve, Sader Printing and Publishing House – Beirut, 2005, p. 634 .Mukhtar Al-Sahah, edited by Youssef Al-Sheikh Muhammad, fifth edition ,Al-Asriyya Library – Al-Dar Al-Tawmiyya, Beirut – Sidon, 1999, p. 222.

(³) Lisan al-Arab by Ibn Manzhar, previous reference, p.78 .

ruling (HKM) is of one origin, which is prevention, and the first of that is (ruling), which is prevention from injustice.⁽⁴⁾

As for the judiciary, it is known in the language: judgment (qā dā dā), the ruling, the plural is qādīyā, and the case is like it, and the plural is qādīh, and qādādī means the ruling of any ruling,⁽⁵⁾ and the ruling is the rulings on a thing and the completion of it, and it means approving the ruling, and the ruler is called the past because he judges things and makes them happen. Judgment is said to have decided something, to judge, meaning to rule by ruling.⁽⁶⁾

We see through linguistic definitions that the term ruling and judiciary indicate the meaning of adjudicating a thing, which is intended to end the state of dispute between the disputing parties in the best way, and that this adjudication or adjudication has become clouded and has become a defective ruling, which needs - that is, in the event that the ruling has the characteristic of a defect - to be removed. The state of defect In order for us to be faced with a ruling that fulfills the desired purpose, and in order to explain the concept of the mechanism for removing the defect in the judicial ruling, we must clarify its conventional meaning, which we will explain in the second section of this requirement.

The second section: The defective judicial ruling in terminology: The Iraqi legislator, as well as the Arab legislation, did not provide a definition of the defective judicial ruling other than to stipulate the cases in which it permitted reviewing the judicial ruling for the purpose of completing it, which prompted jurisprudence to develop many definitions, and even if they differed in wording, they agreed in defining it. The content of this concept, we find among them those who defined a defective judicial ruling as “the one that afflicts the operative part of the ruling and makes it ambiguous or completely or partially ignorant, which prevents it from determining what the court intended in its ruling or allows it to be interpreted in more than one sense, thus raising serious problems when... “Implementation.”⁽⁷⁾”

It is also known as “ a judicial ruling that is marred by a defect that does not cause it to lose its nature as a ruling. Rather, it is nothing more than a flaw that affects its validity without extending to its structure and existence,” as the authors of this definition believe that a defective ruling is protected and enjoys the validity of rulings unless it is challenged.⁽⁸⁾

The defect in the judicial ruling may be complete, such that it surrounds every operative part or paragraph of the ruling. The judicial ruling may be ambiguous, as if the court neglected to specify the location or sequence of the property from which the encroachment is requested to be lifted, or the defect of ambiguity may be complete, as if the court ruled to bind the defendant. By paying the debt owed to the plaintiff without specifying the process by which the debt will be paid. In all cases, whether the ambiguity defect is complete or partial, its implementation by the

⁽⁴⁾ Abu Al-Hasan Ahmed bin Qasim bin Zakaria, Dictionary of Language Standards, Book Al-Ha, Part Four, p. 396.

⁽⁵⁾ Zain al-Din Abdullah Muhammad bin Abi Bakr al-Razi, Mukhtar al-Sihah, previous reference, p. 225.

⁽⁶⁾ Mustafa Al-Jinn and others, Systematic Jurisprudence according to the doctrine of Imam Al-Shafi'i, Part Eight, Dar Al-Qalam for Printing, Publishing and Distribution, Fourth Press, Damascus, 1992, p. 172.

⁽⁷⁾ deya sheet letter, Research And studies in Law Pleadings Civilian No. 83 of 1969 , institute Research And studies Arabic Subordinate To a university Countries Arabic, Cairo , 1970 ,p. 270 ; Adam Waheeb Al-Nadawi , Provisions Law implementation, first edition, university Baghdad, 1984 , p. 20.

⁽⁸⁾ Dr.. Ahmed Abu Al-Wafa, The Theory of Provisions in the Law of Procedures, Mansha'at Al-Maaref, Alexandria, 1990, p. 321 et seq .Also see Judge Medhat Al-Mahmoud, Explanation of the Civil Procedure Law No. 83 of 1969 and its Practical Applications, Part Two, Al-Khairat Press, Baghdad ,2005 p. 12.

relevant implementation authorities will be impossible without removing that defect until the implementation process is completed completely and completely.

The defect in the judicial ruling may also be in the form of a purely material error - written or arithmetical - as if the court stated in its ruling that the injured person was injured in his right hand while the injury was in his left hand.

It was stated in the decision of the Baghdad/Al-Rusafa Court of Appeal in its cassation body, No. (229/Th/2022) on 3/22/2022, which supported the decision of the Enforcement Directorate in Al-Rusafa, No. 1012/2017 on 3/2/2022, which included (contact the competent court to inform us whether... The amount mentioned in the executed decision belongs to the creditor...or to all of his heirs, since the executed debt is in addition to the inheritance of their decedent and is mentioned according to their shares from the share), as the Court of Cassation saw that the executed decision was for clarification () from the court about the ruling decision issued by it regarding the ambiguity contained therein based on the provisions of Article (10) of Implementation Law No. (45) of 1980, as amended.⁽⁹⁾

Accordingly, it can be said that a defective judicial ruling is a defect in the ruling - which does not reach the stage of invalidity⁽¹⁰⁾ that violates the basis of the right - which causes its implementation to raise problems and inevitably push its people to resort to methods of appeal. The defect⁽¹¹⁾ that characterized the judicial ruling here can be removed from During the review of the court that issued the decision for the purpose of removing the defect that occurred in that defect so that the decision is implemented in a way that achieves the goal. However, removing the defect that plagues the judicial ruling can only be achieved if certain conditions and procedures are met, which we discuss in the second requirement of this study.

The second requirement

Pictures of flawed judicial rulings

We mentioned previously that a defective judicial ruling is a ruling that is issued correctly and in accordance with legal procedures, but that ruling was characterized by a characteristic that made its implementation not beyond the scope of difficulty, which means that achieving justice

(⁹) Decision of the Baghdad Court of Appeal - Al-Rusafa (229/ Th /2022) on 3/22/2022 , unpublished decision.

(¹⁰) Even the invalid judicial ruling among them is considered to be to rule Existing from side Materialism And legal But Like a minor flaw impact in His health Without that He executes him . If did not Stabbing with it during Duration Appeal decided Legally Arrange all The effects of the correct ruling based on the provisions of the third paragraph of Article (160) of the Iraqi Civil Procedure Code, which stipulates: "The ruling that Released from The court Remains Considerate And considering what did not invalidates or modify from before The court itself or Cancel or Ynq Z from higher court from him according to Roads Legal)) and that Duration Appeal she from the system General where She listened Subject (171) from Procedures Act Civilian The effective one on that it ((The extension appointed Review Methods Appeal in Decisions Inevitability It follows on Not being observed And get over it Dropp off Right in Appeal And you decide The court from On your own itself Cold petition Appeal if It happened yet expiration The extension " Legal ." And so The the law Treats Judgment Judicial Falsehood treatment Judgment the correct If you close Methods Appeal or Exhausted Without Cancel it or Cancel it or Edit it . But if Stab By judgment Judicial Falsehood through Duration Appeal decided Legally Van The court will get up void Judgment And as a result that will won't Be for him Legal implications Objectivity in Conflict except (1- Pieces Prescription . 2- Claim The affected person from Champions judgment, The one who caused the heroes to compensate)) considers Saddam in this regard He was embarrassed Yahya, the system Legal To judge Falsehood in Law Pleadings Civilian study Comparison ,first edition, National Center for Legal Studies, Cairo, 2019 , p . 97

(¹¹) What is meant by defect here is either that the judicial ruling was ambiguous and unclear, or that the court did not decide on some of the requests, or that the judicial ruling included purely material errors, whether written or arithmetical.

through its implementation necessitates correcting that ruling, and this means that defective rulings do not mean They are invalid or non-existent rulings. Rather, they are correct rulings in terms of origin as well as in terms of description, except that the character of defect came in view of the unintended deficiency that befell the ruling. The legislator saw that these rulings, based on the complementary jurisdiction of the courts that accompany their original jurisdiction, are able to Amendments are made to those defective rulings that were issued even though those rulings have been out of the hands of the court, and they cannot be reconsidered except by resorting to methods of appeal. However, the law permits the review of those rulings in accordance with the cases it stipulates so that this right is not used. For the purpose of changing a judicial opinion with another opinion under the pretext of correcting, this definition came exclusively. Therefore, for the purpose of explaining the types of defective judicial rulings that are subject to review, so to speak, it must be divided into two branches. In the first section we address the defect of material error and the defect of ambiguity, and in the second section we address the omission of separation in some matters. Requests are as follows:

The first section: The defect of material error and the defect of ambiguity

The court examining the dispute does not issue its ruling except after many procedures that the law requires to be taken into account before arriving at the pronouncement of the ruling. This in itself is sufficient to ensure that the judicial decisions or rulings were in accordance with the law. However, in some cases The judicial ruling may include a material or mathematical error that does not affect the validity of the ruling, which necessitates correcting this error based on a request from both parties to the dispute submitted to the court that issued that defective ruling, and this is what is indicated in Article (168⁽¹²⁾) (of the Iraqi Procedures Law No. (83).) of 1969, as amended by its regulations, as it indicated the correction of material errors in civil judicial rulings without the need to follow known methods of appeal, as Article (167) stipulated that ((1- No impact in health Judgment what Located in it from mistakes Materialism Purely - in writing or Arithmetic - but He should revision this The error from before The court building on to request Both parties or one of them . 2- If He fell to request correction, She called The court Both parties To listen Their sayings or from civilized region who are they About him And issued Her decision Correct The error reality . 3- It is recorded resolution Correction footnote To judge Outgoing And he records in register Provisions And he informs Both parties), as it is clear from the above text that the Iraqi legislator wanted, by avoiding the issue of the lack of correct application of the civil judicial ruling containing the material error, to allow the correction of that material error by the same court that issued the ruling or decision and in accordance with certain procedures and conditions - which we will discuss later in the second section. From this research. Among the judicial applications to correct material errors is what was stated in the decision of the Court of Cassation in its decision (Issue / 3123 / Personal First / 2009 on 2/7/2009) where it included ((I

(¹²) Corresponding to Article (191) of the Civil Procedure Code Egyptian Commercial No. (13) of 1968, amended, which stipulates: "He took over The court revision what Located in Her rule from mistakes Materialism Purely In writing or Arithmetic And that By decision You issue it from On your own itself or building on to request Sunday Adversaries from not pleading And being writer The court this Correction on Copy Judgment Original And he signs it he And the president Session . It is permissible Appeal in the decision Outgoing With correction if I exceeded The court in it Her right stipulated on him in Paragraph Previous And that In ways Appeal the prize in Judgment Theme Correction As for the decision that Issued With refusal Correction No Permissible Appeal in it on independence.((

have sympathy look on Judgment Distinguished Lost is found that it correct And I agree For the law ... that that Judgment separator in The suit Chest In person On 5/14/2009, one to request revision The error Physical foot On 5/31/2009 and did not He presents stab with it within Duration Legal stipulated on her in Article 204 of Law Pleadings Civilian or revision The error Physical According to To rule Article 167 of the law mentioned And within Duration Legal Also..so _ _ He decided ratification the decision Distinguished .⁽¹³⁾ ((In addition to the decision of the Court of Cassation (Issue / 6667 / Authority) . Conditions Personal / 2013 Sequence / 6831 on 8/13/2013) which included (((Correction Name)... I have sympathy look on Judgment Distinguished is found that it correct And I agree For the law And the law .. because revision The error Physical he ran According to For judgments Article 167 of Law Pleadings Civilian..and made _ name father Plaintiff - instead Of – and blogging that footnote in Judgment Numbered - so He decided Believing it.⁽¹⁴⁾

In addition to the defect of material error, the defect of the ambiguity of the civil judicial ruling makes its implementation difficult, and therefore the implementation of the judicial ruling will not be as easy or as easy as achieving its intended purpose, as the wording of the civil judicial ruling must be in sound legal language free of complexity and based on Logical rules, of a nature that the addressee understands, as the use of incomprehensible and unclear language will make it difficult or even impossible to implement the judicial ruling .⁽¹⁵⁾ As mentioned above, the ambiguity can be complete or partial. In the case where the ambiguity is complete, the entity implementing the ruling requires delaying its implementation until clarification is obtained from the court that issued the ruling to decide on that ambiguity, and in the event that the ambiguity surrounding The judicial ruling was limited to part of that ruling. What is delayed is only the ambiguous part until that ambiguity is decided, and this is what Article (10) of the Iraqi Implementation Law No. (40) of 1980 indicates, which stipulates: “(For the executor) Justice, that He clarifies from The court that issued Judgment About what rose in it from vagueness, If required The order is issued resolution Of which I understand With The relationship By reviewing it Without Breach By implementing what he Clear from Judgment the duty Implementation .⁽¹⁶⁾ One of the judicial applications to remove ambiguity is what was stated in the decision of the Baghdad Federal Court of Appeal/Civil Cassation Commission No. (675/Th/2017 on 10/19/2017),

(¹³) resolution court Discrimination Number / 3123 / Personal First / 2009 On 7/2/2009 , A group of decisions referred to by lawyer Ahmed Khalil Al-Zarkani on his personal Facebook page, available at the following link: https://web.facebook.com/ahmed.alzarkanylaw/posts/622480814573830/?locale=ar_AR

Date of entry:

2023/20/12

(¹⁴) resolution court Discrimination (Issue / 6667 / Authority Conditions Personal / 2013 Serial 6831 / on 8/13/2013 (,a set of decisions referred to by lawyer Ahmed Khalil Al-Zarkani , op. cit.

(¹⁵) Judge Awad Hussein Yassin, Interpreting legal texts by following the legislative wisdom of the texts, a balancing study in Islamic jurisprudence enhanced by judicial applications, Darar and Al-Imam Library ,Tripoli, Lebanon, 2012, pp. 59 et seq.

(¹⁶) The Egyptian legislator followed the same approach, which, as we mentioned, was more precise in using the word interpretation, contrary to what was stipulated in the Iraqi implementation law.

As stated in Article (192) of the Civil Procedure Code Egyptian Commercial No. (13) of 1968, amended, which is based on)) Joseph For opponents that They ask to The court that issued Judgment Explanation what He fell in Spoken from vagueness or Thumbs up And it offers the demand With the situation The usual To raise The lawsuit . It is considered Judgment Outgoing By interpretation Complete from all Faces To judge that He explains it , and it applies on him what It applies on this Judgment from the rules Private In ways Appeal Regular And other Regular. ((

which included: “When looking closely at the distinguished decision, it was found that it was incorrect and in violation of the law. This was based on The justice executor requested clarification from the court in accordance with the provisions of Article (10) of the Implementation Law regarding the ambiguity contained therein related to the part for which the encroachment is required to be lifted, as it is not within the area belonging to the execution applicants... Therefore, he decided to overturn the distinct decision and return the executive file to its destination to follow the above.. ..)) .⁽¹⁷⁾

The procedure for removing the defect of pure material error and the defect of ambiguity have in common that they are two procedures that respond to the flawed civil judicial ruling, and that they came for the purpose of correcting the error in the judge’s assessment of all the objective elements that make up the ruling, and this is what leads to difficulty in fully implementing the judicial ruling. In addition, they share in that the body that issued them is the same one that will work to remove both defects. However, despite that, they differ in several aspects, including 1 - Removing the ambiguity of a judicial ruling requires the presence of that ruling with the executive body, while correcting the material error It is not necessary to deposit it with the Execution Department, but the court can correct the error before implementing it. 2- Removing ambiguity in a judicial ruling focuses on the wording of the ruling, while correcting a material error is not limited to that, but may include the name of the court, judge, litigants, age, etc. 3- The competent authority to submit a request to remove ambiguity is the justice executor in accordance with Article (10) of the Implementation Law, while correcting the error is entrusted with submitting a request from both parties to the dispute in accordance with the text of Article (167/1) of the Iraqi Code of Procedure. 4- The law allows a discriminatory appeal against the court’s decision to accept or reject a request to correct a purely material error in accordance with the text of Article (216⁽¹⁸⁾) (of the Iraqi Code of Procedure, while this is not available in removing ambiguity, as there is no text that allows the parties to the relationship to appeal by discriminating by accepting it. Or the court rejects the request to remove the ambiguity.⁽¹⁹⁾

Second Section: Omission to decide on some requests:

Resorting to the judiciary is a guaranteed right, and it is done through a judicial claim to protect a right that has been violated. The claim here takes the form of a lawsuit, which will include the requests of the person who was attacked (in person or property), which, as some describe, (It is moving the claim from stillness and in animation to movement and life on its way to issuing a judicial ruling on the matter under the claim.

(¹⁷) resolution court Resumption Baghdad Federal / Authority Discriminatory Civilian No. (675/ Th 2017/ dated 10/19/2017) , unpublished decision.

(¹⁸) Where Article (216) stipulates that “(It is permissible to appeal by cassation against..... the decision to reject a request to correct a material error in the ruling or accept it”((....

(¹⁹) the judge Awad Hussein Yasin Al-Obaidi , implemented Provisions Judicial The mysterious And its problems The process, research published in the Tikrit University Journal of Legal and Political Sciences, Issue 8, Year 2 , ,2010p. 76 onwards. See also Dr. Abdel Moneim Abdel Wahab Al-Amer , Problems Organization Legal To explain vagueness Judgment Judicial Civil in the law Iraqi (study comparison between Legalists The Iraqi And the Egyptian , (article Published in magazine generation Studies Comparison - Issue 14 - Page 85. Available at the following link: https://jilrc.com/archives/15352#_ftn12

Date of entry:
.2023/28/12

Judicial protection is provided to whoever requests it, that is, by resorting to the judiciary, given that the judge does not exercise protection on his own without requesting it. The request here is a principle that governs all stages of litigation, starting from the necessity of submitting the case until the issuance of the ruling on what he requested, and in the ruling stage he does not have the right to The judge decides on a matter that the opponents did not request or changes in the content of his requests. He also does not exceed in his ruling the limits of the request and is restricted by its reason. He also adheres to the parties to the dispute and does not have the right to rule against someone who was not a party to the lawsuit filed.⁽²⁰⁾

Deciding on the subject of the dispute necessitates its departure from the jurisdiction of the court that heard it. This means that the original jurisdiction of the court has ended as soon as a ruling is issued in the dispute before it.⁽²¹⁾ It also means that the jurisdiction of the court has been exhausted once it has decided on the issues that were presented to it, and it does not extend to the issues that were brought before it. It has not been decided upon, and this leads us to investigate the means through which it is possible to remove such a defect that affects judicial rulings or decisions in civil matters. That is, the omission resulting from oversight and error in considering all the requests presented to him may be explained by the judge's preoccupation with work, which This results in a failure to take into account all of the subjects of the case.

It must be noted that the requests that the opponents chose to waive, and this waiver is not restricted by time, as the opponent can waive some of the demands at any time, even if the court has taken over the matter, and therefore the waiver makes the waived request as if it had not existed,⁽²²⁾ such as a lawsuit related to an ideal wage for certain years, the opponent can limit the claim to the last year preceding the judicial claim, and such as the plaintiff's waiver of precautionary seizure or his waiver of a document he presented as evidence,⁽²³⁾ meaning that the waiver in the previous example exempts the judge from negligence in deciding some requests.

Examples of requests that the court cannot ignore and not decide on are such as a ruling to impose a precautionary seizure on the property that the plaintiff requests to return it to him, or a lawsuit claiming the debt in addition to legal interest ,or a lawsuit to remove the exposure with a claim for compensation and other lawsuits.

Requests that fall within the discretionary authority of the judge are not considered among the requests that the judge has not decided upon, such as a case in which the plaintiff requests the appointment of an expert or a request to conduct an inspection, as the judge can not pay attention to those requests because they are among the procedures to which the court has discretionary

(²⁰) Dr.. Hoda Magdy, The Judicial System and Rules of Civil and Commercial Procedures, first edition, Arab Studies Center for Publishing and Distribution, Egypt, 2019, p. 22.

(²¹) Ahmed Abu Loyalty, Previous reference, p. 704 And beyond

(²²) Article (89) of the amended Iraqi Law of Procedure No (83) .of 1969, which stipulates that ((If the opponent during the case explicitly waives a procedure or paper from the pleading papers, the procedure or paper shall be considered as if it had never been)) is corresponding to Article (144) of the Law Civil and commercial procedures issued by Law No 13 .of 1968 Which states that ((If download Discount with Resurrection Rivalry on Procedure or paper from Leaves Pleadings Honestly or inclusive Considered Action or the paper He was did not It is not.((

(²³) Dr.. Abbas Al-Aboudi, Explanation of the Provisions of the Civil Procedure Law, without an edition, Dar Ibn Al-Atheer for Printing and Publishing, Mosul, 2000, p. 293.

authority to resort ,⁽²⁴⁾ .and the parties can appeal the failure to follow it along with the ruling that will be issued on the merits of the case.

and the parties can appeal the failure to follow it along with the ruling that will be issued on the merits of the case.

The second topic

Conditions and procedures for reviewing defective judicial rulings

The judicial ruling is the result of the convictions reached by the court regarding the case that was presented to it, and therefore what the two parties to the dispute are seeking is to obtain a final ruling that ends the state of dispute existing between them, and from the above, we find that the court's review is for the purpose of removing any defect in the ruling. If its implementation is characterized by difficulty, then this review focuses on the operative part of the ruling, and as we mentioned above, we found that the judicial ruling must be characterized by clarity in terms of its wording and in terms of sound language, and for the purpose of reaching this last goal, especially if the judicial ruling was described as having a defect of ambiguity or If a material error occurred or the court neglected to decide on some requests, a number of conditions must be met. In addition, reviewing the judicial ruling in accordance with the cases in which the law permits reviewing the judicial ruling requires the availability of a set of procedures in order to remove any defects in the judicial ruling, which we will discuss. According to two requirements, in the first requirement we address the conditions for reviewing a defective judicial ruling, and in the second requirement we address the procedures for reviewing a defective judicial ruling, according to the following:

The first requirement

Conditions for reviewing a defective judicial ruling

Judicial rulings that do not achieve justice from the point of view of the adversaries will be subject to appeal. In this case, the adversaries will be able to resort to the methods of appeal that the law has authorized through a higher judicial authority to correct the error that marred the court's ruling, but reviewing the flawed judicial ruling that did not reach The stage of unfairness to justice , or even the presence of a defect that makes its implementation difficult, will be corrected by the same court that issued it. However, correcting or reviewing the defective judicial ruling can only be done through the availability of certain conditions, which we will address as follows.

The first section: That the review be based on a final ruling

A final judicial ruling is the decision issued by a properly constituted and competent court in a dispute that was brought before it in accordance with the rules of the Code of Procedure ,⁽²⁵⁾ that is, it is the decisive decision of the court regarding the dispute presented before it ,⁽²⁶⁾ so the ruling, according to the previous meaning, is excluded. Decisions that do not end the dispute or

(²⁴) Dr.. Sania Youssef, Proof of Experience in Civil Cases, New University Publishing House, Alexandria, Egypt, 2020, p. 68.

(²⁵) Dr.. Saadoun Naji Al-Qashtini , Explanation of the Provisions of Pleadings, Al-Ma'arif Press, Baghdad, 1972, p. 666.

(²⁶) Dr.. Ahmed Abu Al-Wafa, previous reference, p. 27.

that do not result in ending the dispute, and we do not reach this stage except after following the procedures included in the procedural law, which is represented in the Code of Procedure, as the latter indicated a set of requirements that must be included in the judicial ruling, including the name of the court that issued it. The ruling, the date of its issuance, the names of the judges and the names of the opponents...etc.

In the event that the above requirements are met, that is, the ruling is issued in accordance with the procedures established by Article (162) of the Code of Procedure, we will be faced with a ruling that can be subject to correction. This leads us to say: Is it possible for orders on petitions to be subject to correction, i.e., the removal of any defect in them?

The answer here lies in searching for the issue of the dispute. The orders on petitions, even if they are issued by a judge who has judicial authority, are issued without a dispute, as they surprise the other opponent with their issuance and do not give him the opportunity to take precautions that prevent them from being implemented. The judge's goal of the orders on petitions is to achieve Things and advantages that are not available in normal lawsuit procedures, as it is carried out with procedures that are more convenient, less expensive, and far from formality .⁽²⁷⁾ In addition, the correction procedures, as we will see, are not completed except after inviting the other party, and in the orders on petitions there is only one party. Also, for the orders regarding petitions, the legislator has designated a path for objection through a grievance⁽¹⁾ ,⁽²⁸⁾ which is submitted through a lawsuit and includes all the procedures required in a regular lawsuit, from notification and pleading, ending with the ruling, and the issuance of the ruling in this case. The ruling that will be issued will be subject to the procedures. Review in order to correct errors.

In order for a judicial ruling to be subject to judicial review according to the above, it must be a final ruling, and judicial rulings can either be final rulings, non-final rulings, or temporary rulings.

The final ruling is the one that ends the dispute brought before the court and ends the judicial adversarial procedures. It is a ruling that resolves the dispute that is the subject of the lawsuit or part of it ,⁽²⁹⁾ taking into account that the adversarial procedures may be raised again if the dispute is referred to the courts of second instance.

As for non-conclusive rulings, they are the rulings that are a means of organizing the lawsuit procedures and their conduct, such as appointing a judicial guard or assigning an expert, etc.

The temporary ruling is the ruling that is limited to temporary and precautionary measures without prejudice to the origin of the matter.⁽³⁰⁾

Accordingly, the final rulings that end the dispute are the ones covered by the removal of any defect in the judicial ruling that makes its implementation difficult, that is, they are covered by review procedures.

(²⁷) Dr.. Adam Wahib Al-Nadawi , Civil Procedures, new edition, Al-Sanhouri Library, Baghdad, 2013, p. 3, p. 36.

(²⁸) Paragraph (1) of Article (153) of the Iraqi Code of Procedure, which stipulates: "To whom Issued The matter Against him And for the student when to reject His request that He complains I have The court that I issued it during Third days from date Issuance Orders from date Inform him And that Commissioned Discount the audience Before The court via Urgency . (

(²⁹) Dr . Ahmed Mr. Saw y, Mediator in to explain Law Rafait _ _ _ Civilian And commercial Without Press, 2001, p. 969.

(³⁰) Dr.. Adam Wahib Al-Nadawi , previous reference, pp 311 .et seq.

The second section: That the judicial ruling contains a flaw that requires review, not appeal: The goal of issuing judicial rulings is to achieve rights and achieve justice between the two parties to the dispute, and reaching that goal requires implementing what the court reached in its ruling. Otherwise, both parties to the dispute have the right to resort to the second level of the courts for the purpose of Appealing the ruling issued. However, the fact that judicial rulings have some defects may not require appeal. Rather, it is possible to remove that defect by referring to it again.

In order for the possibility of referring to the court to be available for the purpose of removing the defect, its ruling must be one of the cases in which the law permits reviewing the court without resorting to means of appeal, which are often characterized by effort and cost. In order for both parties to the dispute to be able to correct the defect in the court's ruling, the ruling must include **following:First** :That the judicial ruling contains material or mathematical errors , and this defect does not affect the validity of the ruling, but it leaves an impact on the possibility of its implementation without difficulty. The Iraqi legislator stated a general principle that he adopted in these cases of reviewing the judicial ruling without resorting to means of appeal, which is that The ruling, its validity and validity are not affected by the material or arithmetical error contained therein .⁽³¹⁾

What is meant by material and arithmetical errors that are considered a defect that characterizes a judicial ruling is those that occur as a result of addition or subtraction, or that occur as a result of writing down the name of one of the parties to the dispute incorrectly or writing down the name of the court incorrectly. These errors are not considered among the errors that affect the entity and existence of the judicial ruling. Rather, it is possible to return to the same court for the purpose of correction.

Second: The wording of the judicial ruling is ambiguous and requires an explanation from the party that issued it. As for the concept of the violation, if the judicial ruling is not ambiguous, then there is no need for interpretation in this case, as the matter here may be a means for the purpose of amending the ruling.⁽³²⁾

Returning to the Iraqi Enforcement Law in Article (10), we find that one of the conditions for the executor's request for clarification about the judicial ruling is that it be ambiguous and unclear, which requires that the implementation procedures be halted until the state of ambiguity that surrounded the judicial ruling is removed , whether this ambiguity includes the paragraph The entire ruling or some of its paragraphs should the ruling include multiple paragraphs. What is requested for clarification is only the ambiguous paragraph. As for the remaining paragraphs, work continues to be implemented by the Implementation Department.⁽³³⁾

Third: That the ruling includes an omission in adjudicating some requests as a result of an error or unintentional oversight on the part of the court that issued the ruling, as that court is obligated to respond to all of the plaintiff's requests included in the lawsuit petition in the required

⁽³¹⁾ Article (167) of the Iraqi Code of Procedure in force.

⁽³²⁾ Dr. Adam Wahib Al-Nadawi , provisions Law implementation, first edition, university Baghdad, 1984 , p. 371.

⁽³³⁾ Dr.. Ahmed Samir Muhammad Yassin, review Provisions Without Methods Appeal - study Comparison - Research published in the Journal of the College of Law for Legal and Political Sciences, College of Law and Political Sciences, University of Kirkuk, Issue 12, Volume 4, 2015 ,p. 282.

manner, otherwise it will be considered refraining from realizing the right, which exposes it to accountability. Therefore, negligence in answering all of the plaintiff's requests necessitates a return to the same court that neglected to decide on all requests as a result of error or oversight, which may be due to the pressure the courts are exposed to at work. The Egyptian legislator stated in Article (193) of the law Egyptian Civil and Commercial Procedures No. (13) of 1968 amended this procedure, and we did well, as it excluded the omission to decide on some substantive requests from the issue of contesting them along with appealing the entire ruling, and allowed the plaintiff to return to the same court that neglected to decide on some requests.

Section Three: That the review be carried out by the court that issued the decision:

The legal texts regulating cases of judicial review of rulings stated that the competent authority to review the ruling that requires correction is the authority that issued it, and this is what the legal texts indicated, as Article (10) of the Iraqi Implementation Law indicated. It is necessary for the executor of justice to seek clarification from the court that issued the ruling, as well as Article (167) of the Iraqi Code of Procedure, which clarifies that the court that issued the ruling containing material or arithmetical errors is the authority responsible for correction, and this is also the case in Articles (191-193) of the Code of Procedure. Egyptian civil and commercial, which included the same approach followed by the Iraqi legislator regarding the body that will review the judicial ruling.

But is it required that the same judge who issued the ruling review the judicial ruling?

Here some answer⁽³⁴⁾ that one of the conditions for reviewing a defective judicial ruling is that it be reviewed by the same court that issued it, but it is not required that the same judge who issued it review the judicial ruling again, and the judicial decision issued in this case is considered complementary in every respect to the ruling that was reviewed.

The second requirement

Procedures for reviewing a defective judicial ruling

The Iraqi law, whether in the Code of Procedure or the Implementation Law, as well as the Egyptian law, referred to certain procedures for the purpose of removing any defect in the judicial ruling, and these procedures represent the minimum for the validity of the decision that will be issued by the court regarding the removal of that defect, but the Iraqi legislator only included Procedures for removing the ambiguity and ambiguity of the judicial ruling and correcting the judicial rulings that include material or mathematical errors. While we find that the Egyptian legislator took over the regulation, in addition to the above, he referred to adjudicating the requests that the court overlooked inadvertently and unintentionally. For the purpose of covering this topic in detail, it must be divided into Three branches: In the first section we discuss the procedures for removing the ambiguity of the judicial ruling, in the second section we discuss the procedures for correcting the judicial ruling, and in the third section we discuss the procedures for adjudicating requests whose answers were overlooked, according to the following:

The first section: Procedures for removing the ambiguity of an ambiguous judicial ruling: In contrast to correcting a material error, the Iraqi legislator has undertaken to regulate the issue of the ambiguity of the judicial ruling and its interpretation in the implementation law, as Article (10) of the implementation law clarifies the procedures for interpreting the judicial ruling in order

(³⁴) Dr.. Adam Wahib Al-Nadawi , previous reference, p. 371.

to remove any defect in the ruling. Ambiguity and ambiguity in order to facilitate the implementation of the judicial ruling. Returning to the text of Article (10) of the Implementation Law, we find that the Iraqi legislator has empowered the executor to request the court that issued its ruling in the case under execution in his department for the purpose of seeking clarification from it regarding the ambiguity he finds in the ruling. Approaching the court that issued the ruling must be done through an official letter addressed to it.

As we mentioned previously, ambiguity may include the entire judicial ruling or a paragraph of it. In both cases, the request for interpretation delays the implementation of the ruling until that ambiguity or ambiguity is removed, so that it is not possible to implement any part of it until after it is removed, or the implementation of some ambiguous paragraphs is suspended until what is removed. These paragraphs were filled with ambiguity, while the remaining paragraphs subject to implementation continued to be implemented, and the court that issued the ambiguous ruling must interpret it and remove the ambiguity in the ruling in the light of the executor's letter of justice and away from prejudice to the original ruling.⁽³⁵⁾ One of the judicial applications of this case is the decision of the Baghdad/Al-Rusafa Court of Appeal and the Civil Cassation Commission No. 322/Th/2018 on 2/5/2018, which stated: "After review and deliberation, it was found that the cassation appeal was submitted within the legal period and because it included its reasons, it was decided to accept it in form. When looking at the distinguished decision, it was found that it is correct and in accordance with the law, because the just executor is obligated to implement the executed ruling in accordance with what was contained in its ruling paragraph, which was clear and free of ambiguity."⁽³⁶⁾

In the event that the court responds to the request for interpretation, the judicial executor will continue the implementation from the point at which it stopped, and in the event of refusal, he will assign the opponents in the case in order to review the court to obtain a decision that removes the ambiguity in the ruling,⁽³⁷⁾ so the judicial executor will continue to delay the implementation procedures and explain to those concerned. To be reviewed by the competent court.

The question may arise: Does the executor require a period of time to provide justice for the purpose of clarification?

Returning to Article (10) of the Implementation Law, we find that it did not include a specific time for the purpose of clarification, as this procedure is justified by the fact that the just executor may rectify the ambiguity starting from the moment the implementation begins or after he has completed one step in the implementation, and as long as the just executor has not finished the implementation procedures, he can Clarifying the ambiguity.⁽³⁸⁾

(³⁵) Dr. Yasser Bassem Thanoun , Dr. Nawaf Hazem Khaled ,Awards of the Executive File (An Analytical and Applied Comparative Study) ,research published in the Journal of the College of Law, Kirkuk University of Legal and Political Sciences, Volume One, Issue One, 2014, pp. 74 et seq.

(³⁶) resolution court Resumption Baghdad / Al-Rusafa Commission Distinctiveness Civilian No. 322 /Th /2018 dated 5/2/2018 , unpublished decision.

(³⁷) The last part of Article (10) of the Iraqi Implementation Law, which stipulates that ((.....and if required The order is issued resolution Of which I understand With Relationship By reviewing it Without Breach By implementing what he Clear from Judgment the duty implementation.((

(³⁸) Dr. Abdel Moneim Abdel Wahab Al-Amer , previous reference, article available at the following link: https://jilrc.com/archives/15352#_ftn12

As for Egyptian law, the Civil and Commercial Procedure Code includes procedures for removing the ambiguity of a judicial ruling, as Article (192) clarifies the procedures that must be followed for the purpose of interpreting a judicial ruling. In the case where a judicial ruling is issued and that ruling is ambiguous and needs interpretation, the Egyptian legislator allows the opponents to ask the court that issued the ambiguous ruling to explain it, without the need to appeal that ruling due to ambiguity, as this only requires submitting a request for interpretation⁽³⁹⁾. Submitting the request is through a petition submitted to the court that issued the ambiguous ruling. As is the case in Iraqi law, the Egyptian legislator did not specify a date for requesting interpretation, so it is permissible to submit the request for interpretation as long as the ruling whose ambiguity is requested to be removed has not been dropped⁽⁴⁰⁾. The decision issued for interpretation shall be subject to the same methods of appeal applicable to the interpreted ruling, given that the decision to interpret the ambiguous ruling is complementary and complementary to the original ruling⁽⁴¹⁾.

What is noted about the legal organization for interpreting an ambiguous ruling is that the Egyptian legislator used the word “interpretation,” while the Iraqi legislator used the word “clarification,” and there are different meanings and different effects between the two words. What we support in this aspect is the use of the word “interpretation” because of its connotations that are appropriate to the topic of removing the ambiguity of the judicial ruling.

Second Section: Correction of the Judicial Judgment.

Article (167) of the Iraqi Code of Procedure, with its three paragraphs, includes procedures for correcting any clerical or arithmetical errors in the judicial ruling without the need to resort to normal methods of appeal, as Paragraph (1) stipulates that ((No Affects health Judgment What happened in it from mistakes Materialism Purely Written or Arithmetic But He should revision this The error from before The court building on to request Both parties or one of them)) In a decision of the Court of Cassation, it states: “It is not permissible to correct a material error in the court’s decision except at the request of the two parties or one of them, or after listening to their statements Based on this text, we find that the Iraqi legislator considered that material errors do not affect the validity of the judicial ruling. Rather, the ruling must be corrected by submitting a request from both parties to the dispute, or one of them, to the court that issued the ruling, regardless of whether it is the court of first instance, personal status, or court of appeal, etc., and submitting the request is not a condition, and according to what is clear from the text, whether the applicant won or lost the case, as the text It came in general, and the request submitted to the court does not take the form of a lawsuit, but rather through a written request and does not take any form, as the court issues its decision in the consultation room, and this is what the Karkh Federal Court of Appeal confirmed in its discriminatory capacity in its decision No. (574/2014 on 12/4/2014).) which was stated in it ((count Audit And deliberation is found that Appeal Discriminatory Presenter in Its duration Legal And included on His reasons Decide Accept it In

⁽³⁹⁾ Dr.. Ahmed Hindi, Law of Civil and Commercial Procedures, New University House, Alexandria, 2003, p. 954.

⁽⁴⁰⁾ Dr.. Ahmed Abu Al-Wafa, previous reference, p. 712.

⁽⁴¹⁾ The last part of the text of Article (192) of the Egyptian Civil and Commercial Procedures Law, which states that ((...and it is considered... Judgment Outgoing By interpretation Complete from all Faces To judge that He explains it , and it applies on him what It applies on this Judgment from the rules Private In ways Appeal Regular And other Regular.((

form And at look on Judgment Distinguished Dated 11/19/2014 found That he correct And I agree For the law For reasons And the reasons that Lean back to her so that revision The error Physical The result in Judgment Outgoing in The suit No. 124/ expropriation /2007 completed on road presentation to request Editorial to The court Competent by this The special According to For procedures that I drew it Provisions Article 167 of Law Pleadings Civil No. 83 of 1969 , amended And not on road Accommodation Lawsuit Independent by this connection on him Decide ratification the decision rose Appeal And download Distinguished fee Discrimination And it was issued the decision By agreement 11 /Safar /1436 AH Corresponding to 12/4/2014 AD)) .⁽⁴²⁾

After the request is submitted by either or both parties to the dispute, the court must invite both parties to attend, set a date for them to take the legal action, and record their statements or the statements of those who attended in a special report and attach it to the minutes of pleadings for the case .⁽⁴³⁾ If the court confirms that there is a material written or mathematical error, it decides to approve the correction procedure. However, if it becomes clear to the court that the request submitted to it did not include a real request to correct a material error, but rather to change the conviction reached by the court, then it will reject the request on the basis that this matter relates to a judicial decision. It will affect the ruling that the court reached in advance, that is, it affects the operative part of the ruling.⁽⁴⁴⁾

After the court makes its decision regarding the correction, Paragraph (3) of Article (167) of the Iraqi Code of Procedure obligates the court to record a summary of the facts of correcting the material error in the ruling and what the court decided to do so at the bottom of the ruling paper, and this summary is marked in the notes field of the judgment record. The third paragraph of the above article stipulates that “the correction decision shall be recorded in a footnote to the issued ruling, recorded in the judgment register, and notified to both parties”. As for the Egyptian legislator, he also saw that there are some cases that are considered among the material errors and which do not require following the methods of appeal. Rather, it is possible to refer to the same court that issued the ruling that included the defect of the material error in order to remove that error. However, what distinguishes the Egyptian legislative treatment of the case The material error in the ruling is that it gave the court the right, on its own initiative, to correct the material error in its ruling on its own initiative, without making it dependent on the request of the two parties to the case ,⁽⁴⁵⁾ as Article (191) of the Egyptian Civil and Commercial Procedures Law stipulates that ((it shall undertake The court revision what Located in Her rule from mistakes Materialism Purely In writing or Arithmetic And that By decision You issue it from On your own itself or building on to request Sunday Adversaries from not pleading And being writer The court this Correction on Copy Judgment Original And he signs it he And the president Session . It is permissible Appeal in the decision Outgoing With correction if I exceeded The court in it Her

(⁴²) The decision of the Baghdad / Al-Karkh Court of Appeal in its cassation capacity in its decision No .(574/2014 on 12/4/2014) is published at the following link:

<https://www.sirwanlawyer.com/index.php/342/01212/az3d/3282-b6>

Access date: 12/31/2023.

(⁴³) Paragraph (2) of Article (167) of the Iraqi Code of Procedure, see Judge Medhat Al-Mahmoud, previous reference, p. 224.

(⁴⁴) the judge Haider honest Haider , to explain Law Pleadings Civilian , library Al-Sanhouri , Baghdad , 2011 ,s .250

(⁴⁵) and this is on Reverse what We found it on him Processing in Law Pleadings The Iraqi Which Comment revision The error Physical building on to request My end Conflict.

right stipulated on him in Paragraph Previous And that In ways Appeal the prize in Judgment Theme Correction As for the decision that Issued With refusal Correction No Permissible Appeal in it on Independence)) . In all cases, when the court considers the correction request, it will not exceed the authority granted to it by law. It is obligated to correct errors only without this leading to changing the wording of the original ruling, otherwise its action will be subject to appeal through the methods of appeal established by the law.

Section Three: Procedures for reviewing the court to decide on requests that it overlooked: The amended Iraqi Code of Procedure No. (83) of 1969 did not include permission to request that the court that neglected to decide on some requests reconsider them, as the Iraqi Code of Procedure considered failure to decide on some requests. A reason for appeal in accordance with the provisions of Paragraph (5) of Article (203), which stipulates that ((..... 5- If a fundamental error occurred in the ruling and it is considered... The error substantially if mistake Judgment in to understand Facts or Ignore the chapter in Side from destinations The suit or Season in something did not Let with it Adversaries or spent With more Than They asked for it or spent on dispute what he Fixed in record The suit or on dispute indication Papers And bonds the introduction from Adversaries or He was Spoken Judgment Contrary Some of it For some or He was Judgment not Mosque On his terms Legal))). It is clear from the text that the Iraqi legislator has exhausted its mandate, after the court issued a ruling on the lawsuit - even if it did not respond to all the requests - and therefore it has no right to reconsider the subject matter of the dispute, including requests that were ignored. Rather, the parties can resort to methods of appeal, so that there is no The court has to take measures aimed at prolonging the dispute by exploiting this right by the parties to ^{the lawsuit} 46 .

However, what we see is granting the court the right to consider requests that were inadvertently overlooked, as the court has come a long way in the case brought before it, and therefore granting it the right to reconsider requests that have not been decided upon is not a reason to prolong the dispute, as there are many requests. It does not require investigation or re-investigation, such as setting attorney's fees or setting fees or expenses...etc. In addition to the above, granting the court the right to reconsider requests that it overlooked is also a guarantee that the opponents will not miss a level of litigation , ⁽⁴⁷⁾ as appealing issues that have not been decided a priori leads us to say that the opponent has missed the level. The first level of litigation is regarding matters that have not been decided at all.

With regard to deciding on requests that the court neglected to decide, the Egyptian legislator referred in the Civil and Commercial Procedures Law No. (13) of ,1968 as amended, explicitly in Article (193), which stipulates ((If I overlooked The court Judgment in some Requests Objectivity jazz For a friend The matter that Announce His opponent With a newspaper To attend In front of her To look this the demand And the ruling in it)) . We see that the Egyptian legislator excluded the court's omission to decide on requests from the cases that are considered a reason for appeal and allowed the opposing party to submit a request to the court that neglected to

(⁴⁶) Dr. His turn Hummel Al-Ajili, authority The court Review Judgment Without Methods Appeal Assigned, study Comparison, research published in the Imam Jaafar al-Sadiq (peace be upon him) University Journal for Legal Studies, Issue 1, 2021, p. 100.

(⁴⁷) sword professional honest slave The horse, Archaeology Procedural To judge Judicial civil ,First edition, National Center for Legal Publications, Cairo - Egypt, 2012 , p. 247 .

decide on some requests and inform the other party to appear before it for the purpose of looking into what the court neglected to decide, in the case in which a substantive request is presented to the court. The court took over the matter and neglected to decide on an issue related to this subject. It is permissible for anyone who has an interest to order the opponent to appear before the same court to consider the request and decide on it, and this matter is not restricted by any of the legally specified dates for appealing the rulings .⁽⁴⁸⁾ Among the judicial applications of the text of Article (193) of the Egyptian Civil and Commercial Procedures Law is a decision of the Egyptian Court of Cassation, which states: "If the appellants have requested before the Court of Appeal a ruling for them in the amount of three hundred and ten thousand pounds and its legal interest from the date of the claim, but the appealed ruling is devoid of any A reference, whether in its reasons or in its wording, to a request for benefits, then he has neglected to decide on this request, and therefore it is not a valid reason for an appeal in cassation, and denouncing him in this manner is unacceptable"⁽⁴⁹⁾

Conclusion

The flawed judicial ruling, according to what we discussed in our research, is that ruling that was attached to it with a description that made it a ruling that is not easy to implement, which necessitated the removal of that defect in order for proper implementation to occur. Accordingly, we arrived at a set of results accompanied by a set of recommendations so that we can face a research study. We may have succeeded in giving him his right, according to the following:

First: the results

Among the results we reached in our research are the following:

Reviewing judicial rulings is a subject of considerable importance, if we find a legislative text in Iraqi law. Although it included only two cases - clarifying the ambiguous ruling and correcting errors in the rulings - this is considered a sound approach by the Iraqi legislator, and we hope that it includes the third case. Similar to what is stated in the Egyptian Civil and Commercial Procedures Law.

Omission to decide on some requests was considered by the Iraqi legislator in Paragraph (5) of Article (203) of the Iraqi Code of Procedure No. (83) of 1969 as amended as a reason for appeal, while the Egyptian legislator in Article (193) of the Code of Civil and Commercial Procedure The amended Egyptian No. (13) of 1968 did not consider it a reason for appeal, but rather allowed the opponents to submit the application before the court that neglected to decide on it for the purpose of reconsideration.

The Iraqi legislator addressed the issue of interpreting the judicial ruling in Article (10) of the amended Iraqi Implementation Law No. (45) of 1980. As for correcting material errors in the rulings, he addressed them in Article (168) of the Iraqi Code of Procedure, while the Egyptian law dealt with the three cases. In its procedural law and serial articles.

(⁴⁸) sword professional honest slave Al-Jawad , previous reference, p. 248. See the same topic: Dr. Ahmed Samir Mohammed Yassin, previous reference, p. 285.

(⁴⁹) Appeal No. 20222 of Judicial Year 84, Civil Circuits - Session 12/26/2020, published at the following link:
<https://lawyeregyp.net>

Date of entry:
.2023/12/31

The Iraqi legislator suspended the submission of a request by the two parties to the dispute to explain the ambiguous ruling on filing a lawsuit by them in the event that the justice executor was unable to obtain clarification from the party that issued the ambiguous ruling.

The Iraqi legislator used the word clarification without using the word interpretation, and the latter has a different meaning than the meaning of clarification.

Consideration of defects in judgments that require reconsideration does not require that they be examined by the same judge who first issued the judgment. Rather, submitting it for reconsideration must be to the court to which the judge belongs, without the requirement that it be reviewed by the same judge.

Second: Recommendations

Based on the above results, we make the following recommendations:

We recommend that the Iraqi legislator address the cases that require reconsideration of the defective judicial ruling in the Iraqi Code of Procedure by abolishing Article Ten of the Implementation Law and placing a text similar to it in the Code of Procedure in a special chapter to review judicial rulings and their interpretation, since the text of Article Ten is purely procedural.

We recommend that the Iraqi legislator amend the use of the term interpretation instead of the term clarification, and reformulate the text of Article (10) after transferring its content to the Iraqi Code of Procedure to be in accordance with the following: ((The parties, without prejudice to the text of the ruling, may request that the court that issued the ruling explain what occurred in the text of the ruling. The ruling is free from ambiguity or ambiguity, provided that the request is submitted according to the usual procedures for filing a lawsuit, and the interpretation issued by the court is complementary and complementary to the original ruling, and is subject to the provisions regarding ordinary and extraordinary methods of appeal).

We recommend that the Iraqi legislator abolish what is related to the omission of adjudicating some requests from Paragraph (5) of Article (203) of the Iraqi Code of Procedure, and formulate it with a new article and add it among the cases in which the parties to the dispute have the right to review the court to reconsider it, and the text shall be as follows ((in case If the court neglects to decide on some substantive requests, anyone who has an interest may review the court for the purpose of reconsidering what was overlooked after inviting the other party to appear before it and consider the request and decide on it.

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