

## **Ways to Force the Debtor not to Split the Fulfillment**

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### **Abstract**

*In principle, the creditor requests the total fulfillment of the obligation, as he invites the debtor to fulfill his obligation imposed on him according to the contract or any other source, and that the fulfillment is total, unless there are exceptions to the contrary, as there may be exceptions to the agreement on the fragmentation of the fulfillment or legal, whether they are in the law Civil or in other laws, as well as there may be an agreement that the fulfillment is partial at the creation of the contract or after the creation of the contract, so the creditor accepts that he has a partial fulfillment by the debtor due to the circumstances that may make the full fulfillment of the obligation unavailable, but in some cases the debtor may be intransigent He is procrastinating in executing his obligation without there being any circumstances, such as the implementation being cumbersome or impossible, but rather the debtor does not want to fulfill without a legitimate excuse, so there are options for the creditor, either to request compulsory real execution, supported by a threatening fine and other means that compel him to fulfill, so there are ways that can By forcing the debtor to fulfill the total and indivisible.*

**Keywords:** *Methods, force, debtor, rule, partition, fulfillment.*

### **Introduction**

First - the essence of the subject of the study-:

The principle is that the debtor makes the payment voluntarily and with his consent, that is, without the need to take legal measures to force him to do so. If he finds it intransigent, the creditor resorts to compulsory real execution and other means of threatening fine.

Secondly, the importance of the study-:

The theoretical importance of the study is highlighted by what we will present regarding the position of the texts of the laws under comparison and the opinions of jurisprudence with reference to the rulings of the judiciary, in addition to the absence of a thorough study on this subject, which allows opening the way for future studies. Mercy of the debtor when he is intransigent about fulfilling his obligation despite the implementation that is neither impossible nor difficult for him, so compulsory real execution is the solution to compel the debtor to fulfill the entirety without fragmentation with the rest of the other means that pave the way for implementation.

Third - the problem of the study-:

The issue of methods of forcing the debtor not to divide the fulfillment raises many problems, including, when can it be said that the fulfillment cannot be divided? What are

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the ways to force the debtor not to partition? What is the consequence of the debtor's refusal to pay in full?

Fourth - study methodology:-

Studying the topic of the research requires that we adopt a comparative analysis approach, by presenting and analyzing the legal texts in the Iraqi civil law and comparing them with the Egyptian civil law, the Jordanian civil law and the French civil law.

Fifth - Study Structure:-

We will deal with this study in two requirements, the first requirement will be devoted to the study of forced real execution, and as for the second requirement, we will deal with the threatening fine and imprisonment of the debtor, then we conclude our research with a conclusion that includes the most important findings and proposals that we reached.

## **First branch**

### **Forced implementation**

Forced real execution is defined as “enabling the creditor to obtain the same performance that the debtor has committed to”().

The basic rule in fulfillment is the fulfillment of the same thing and everything in its time that, accordingly, the specific implementation of the obligation is the origin, and we add here that it is a right for both the creditor and the debtor, meaning that neither of them can deviate from it alone and request implementation by means of compensation, so forcing the debtor to implement his obligation As an inevitable result of his responsibility to fulfill his debt, the debtor is forced to implement the obligation in kind whenever possible, but if the implementation in kind is burdensome for the debtor, then he may limit himself to paying cash compensation if that does not cause serious harm to the creditor(), and that the mere presence of tools Effective in law, it represents compulsory execution. It will push the debtor to execution. The French legislator was keen in the rules of compulsory real execution in the law of July 9, 1991 that the creditor has the right to use his right and all means to obtain his right. The first article of the aforementioned law stipulated that (every A creditor can, under the conditions prescribed by law, force his defaulting debtor to implement his obligations towards him) The judgment is in favor of the creditor, and the debtor must fulfill his obligation( ).

However, in order for the debtor to be compelled to implement his obligation in kind, certain conditions must be met, and we talk about the following about the conditions for real execution:

#### 1- The real implementation is possible

In order for the obligation to be implemented in kind by force on the debtor, this implementation must be possible, so if the implementation of the obligation in kind is impossible, there is no longer any point in claiming it, so there is no claim for the impossible, but the fate of the obligation is determined according to the reason for the impossibility. The hand of the debtor in which the obligation has expired( ), but if the impossibility is due to the debtor's fault, then the debtor's obligation also expires, but he is obligated to compensate( ).

The impossibility of implementing the obligation in kind from the debtor is imagined in all obligations except for the obligation to pay money, which cannot be imagined as impossible to implement( ).

In this direction, the Court of Cassation proceeded in its decision whose legal principle came (if the specific implementation is possible and not impossible, then the debtor is forced to implement it, and compensation is not sought, in accordance with the provision

of Article 246 of the Civil Code), and the Federal Court of Cassation decided according to the following principle (The court, before obliging the defendant to implement the remainder of his obligation, must verify whether the specific implementation of this obligation is still possible or not).

2- The real execution should not be burdensome for the debtor.

Onerous real execution is a possible implementation in itself, but it causes serious harm to the debtor, and the principle was that this exhaustion should not be considered in implementation of the traditional principles that give the creditor with a civil obligation the right to force his debtor to fulfill it, but considerations of justice and the application of the idea of inadmissibility of arbitrary use The right has led the legislator to allow the debtor to substitute real execution in this case by paying compensation to the creditor as long as this replacement will not cause serious harm to the latter, and it is obvious that estimating the extent of exhaustion is one of the issues of reality that fall within the discretionary power of the subject court, And that depends on the circumstances that surround the debtor, so the court of the subject matter must take into account that it does not include in the meaning of exhaustion that prevents the implementation in kind, merely the difficulty or the increase in costs as a result of high prices, fees or taxes, but rather it means the extreme difficulty or the extraordinary loss That the debtor will incur due to the implementation of the obligation, as if it were the result of general or special circumstances that would make the benefit that will accrue to the creditor from the specific implementation, disproportionate to the damage that will befall the debtor from it.

3-If the renunciation of it causes serious harm to the creditor

It is not enough for the debtor not to be overburdened by the specific implementation, but also the creditor must not suffer serious harm as a result of the non-implementation in kind. A balance here is required between the conflicting interests, i.e. the interests of the debtor and the interests of the creditor. If it is possible to avoid overburdening the debtor, even with a minor damage to the creditor, it is permissible for the monetary compensation to replace the real execution, but if the real execution does not result in severe exhaustion for the debtor, or this exhaustion results in him, but the reversal of it to compensation causes the creditor serious harm, then it is necessary to refer to the original It is the obligation to implement in kind without compensation, and among the many examples that occur in practical life is the case of someone who trespasses on his neighbor's land in good faith and builds on part of it a building for him, and if this transgression does not cause serious harm to the neighbor, meaning that the encroached area does not affect the use of this land The transgressor may pay compensation for this transgression, but if this transgression disrupts the use of the land for the creditor, the transgression must be removed.

4-The compulsory real execution shall not prejudice the debtor's personal freedom:-

The debtor's personality may be considered in some forms of commitment to work, and then the mere refusal of the debtor to perform the execution despite his ability and not exhausting him, is in fact a kind of impossibility that deprives the creditor of the ability to insist on the request for specific execution, because in such a procedure In this case, the debtor's personal freedom is confiscated, in addition to that he will not perform the work required of him as expected.

5- Warning the debtor

Excusing the debtor is obligatory in the specific execution if it is intended that the execution be compulsory, but if the debtor performs the specific execution voluntarily and not under compulsion, then there is no need for a warning, and it should be noted that the meaning of the warning here is different, in the event that the debtor warns the creditor when he refuses to accept the payment, then the warning In this case, the creditor

issues a directive to the debtor, and its indication is that the creditor announces to the debtor that he adheres to claiming his right to implement the existing obligation in the debtor's financial responsibility ( ). If these conditions are met, the debtor can be compelled to perform the obligation in kind.

## Section two

### Threatening fine and imprisonment of the debtor

The Iraqi legislator made there are means for the creditor through which he can put pressure on the debtor to implement the compulsory in kind, and among these means are the threatening fine and the imprisonment of the debtor, we will discuss them as follows:

#### 1- Threatening fine

A means of pressure on the debtor to compel him to implement his obligation that he refrained from, which is a specific amount of money determined by the judge in a decision based on the request of the creditor in order for the debtor to implement his obligation or to completely refrain from breaching the obligation( ).

The purpose of the threatening fine is to compel the debtor to fully implement his obligation, and it does not revolve with damage, whether or not ( )and the court may not pass a threatening fine on its own, that is, without a request from the creditor.( )

The Iraqi and Egyptian legislators dealt with the threatening fine in the civil law, as it stipulated that if the implementation of the obligation in kind is possible or inappropriate unless it was done by the debtor himself, the creditor may request the court to impose a threatening fine on the debtor who is still reluctant to implement his obligation( ).

As for the Jordanian legislator, it was stipulated in Article (360) of the Jordanian Civil Code, which stipulated that (if the real execution takes place or the debtor insists on refusing the execution, the court determines the amount of the guarantee that It is obligated by the debtor, taking into account the damage that befell the creditor and the intransigence that appeared on the part of the debtor). The Jordanian legislator did not follow the example of the Egyptian legislator, but rather mentioned only the last part of the text of Article (214) of the Egyptian Civil Code, while the Egyptian legislator stipulated the provisions of the threatening fine more clearly and this is shown through texts Articles (213, 214) of the Egyptian Civil Code.

However, the Jordanian legislator took other means that force the debtor to fully implement his obligation to fulfill the creditor, such as a travel ban or placing a precautionary attachment on his money.( )

As for the position of the French legislator on the right of the creditor to use the means that compel the debtor to implement his obligation, if he is obstinate in the implementation of his obligation, then he took the right of the creditor to use the compulsory implementation on the debtor to implement his obligation. Effective rules that will prompt the debtor to fulfill his obligation automatically.( )

And that the French legislator took some means to compel the debtor to implement his obligation in kind and compulsorily by imposing a threatening fine, travel ban and seizure of the debtor's money, and he also set conditions similar to other legislations. The French legislation regulated the threatening fine in Law 626/72 of 5 7/1972, through which he seeks to push the debtor to fulfill his obligation as soon as he becomes aware of the fine that the judge will impose on him( ).

And through the aforementioned texts, the threatening fine has become a means of coercion that compels the debtor to implement his obligation for fear of a fine to be added to his obligation. The Egyptian Court of Cassation has ruled His supporter is that the

threatening fine is a means of pressure on the debtor to force him to implement his obligation in kind whenever possible, and therefore it is not a compensation to be paid to the creditor, but the amount of money is estimated for each unit of time in which he delays the implementation of this obligation, it is for each time he breaches it, so it is not an estimated amount. One payment until the meaning of the threat is fulfilled, and it is decided only by the judge's ruling at the request of the creditor. (.)

And with the conditions set by the Iraqi legislator to impose the threatening fine, the real implementation would be possible and it would not be an amount of money.

## 2- Imprisonment of the debtor (physical coercion)

It is the imprisonment of the debtor who refuses to implement his obligation in kind at the request of the creditor. Imprisoning the debtor or threatening him with imprisonment sometimes may force him to implement his obligation to avoid the consequences of imprisonment. Given the predominance of the material nature of the commitment theory, modern laws have abandoned this idea, which is considered a remnant of the remnants of the old laws that a relationship is established between the obligation and the person or body of the debtor so that the creditor can enslave his debtor if he does not fulfill the debt, then the obligation is transferred from the body to the money and the creditor no longer has anything but the right to execute on the money of his debtor, and we do not find this idea an effect in civil law, but it has some applications in Execution Law. The debtor may be imprisoned if he refuses to pay the debt or to fulfill the obligation despite his ability to do so. (.)

With regard to debts due to the government, such as taxes, fees, advances, consideration for the services it performs, and the inclusion decisions issued by the Minister of Finance, or from the entities that have the right to issue them, and a fee such as usufruct in land and real estate owned by the state and any other sums payable to the government, Article Twelve of the Government Debt Collection Law No. ( 56) for the year 1977 permitted the imprisonment of the debtor who is procrastinating in accordance with the provisions of the Execution Law by the just executor at the request of the head of the department authorized to apply the provisions of this law ( ) and that the imprisonment of the debtor is only done once for the same debt. (.)

Hence, it is not among the principles of civil law to resort to the imprisonment of the debtor. If the debtor is insolvent, then it is not permissible to imprison him. However, if the debtor is solvent and his funds are apparent, then it is permissible to legally seize them and sell them in accordance with the provisions of the implementation law. Lock him up.

## **Conclusion**

In conclusion, in our research, we reached a number of results and proposals that we summarize as follows:

### First- Results:-

1. We concluded that the compulsory real execution is the first way to force the debtor to fully implement his obligation without fragmentation, when the real execution is possible and not impossible for the debtor and not a massive exhaustion, so the real execution is a must-have way to achieve the rule of indivisibility of fulfillment.
2. It became clear to us that the threatening fine is the indirect method that the creditor can adhere to in order to force the debtor to fully implement his obligation without delay or fragmentation, so the purpose of imposing it is not to collect it as much as to force the debtor to implement it, as it does not rotate with damage.

3. We concluded that the imprisonment of the debtor is considered the traditional way to force the debtor to fulfill his obligation, but we find applications for it in the execution law and the government debt collection law, unlike the civil law.

Second - Proposals: -

1. We suggest that the Iraqi legislator address the issue of fragmentation of the payment when initiating the compulsory real execution when there is one debtor and several creditors, whenever the performance is divisible and the creditors are not joint, so that each one of them has the right to force the debtor to fulfill a part of what he is obligated to in the direction of .

2. We suggest to the Iraqi legislator to amend Article (13) of the Government Debt Collection Law No. 56 of 1977, so that it is limited to seizing the debtor's money instead of seizing him unless the procrastinating debtor does not have movable and immovable funds.

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