
Procedures for Executive Seizure of Movable Funds with the Debtor

PH. D Iman Tariq Al-Shukri¹, Waseem Jabbar Ibrahim AL-shammary²

¹College of Law University of Babylon, Private Law Branch
Law.eman.tariq@uobabylon.edu.iq

²Department of Community Health, Health and Medical Techniques College of Kufa, Al_Furat
Al_Awsat Technical University(31003), Al-Kufa, Iraq.
wasaym.jamil.chm@atu.edu.iq

Abstract

Attachment in its general sense is a means of coercing the debtor to fulfill, according to which execution is carried out by the public authority on the debtor's funds on which the law permits execution, where the rights of creditors are seized, sold and paid for by their establishment¹. (Dr. Saeed Mubarak, 2011)

Keywords: movable funds, executive seizure, debtor

1. Introduction:

Seizure is of two types, a pre-trial seizure carried out by the judiciary and the scope of which is the Code of Procedure. An executive seizure carried out by the competent authorities for implementation and the scope of which is the law of implementation. (Abbas al-Abboudi, 2000).²

The seizure of the debtor's funds in the executive sense is to place the assets owned by the debtor that are movable from them and real estate under the hands of the Directorate of Execution, and prevent him from disposing of them by sale, gift or other legal acts except with their consent and after ensuring the payment of debts, and prevent him from smuggling them with the intention of harming the creditor³. (Medhat Al-Mahmoud, 1992).

It follows from this that an executive attachment of the movable to the debtor is that of a creditor in possession of an executive bond on the physical movable owned by the debtor, which are in his possession with a view to selling them and satisfying the creditor's right from their price. The Enforcement Law on the basis of Article 56 thereof does not require ,

2. Literature:

In view of the importance of the procedures of executive seizure of the debtor's movable funds, especially with regard to how these funds are seized with their diverse nature and the necessity of this nature of following certain procedures in seizure and sale, the legislator singled out both the seizure of movable funds and their sale by certain procedures that would be able to achieve a balance between the interest of the creditor in obtaining his right, and the interest of the debtor not to be taken from his funds or not to infringe on his liberty unlawfully, taking into account humanitarian considerations. The social and economic of the debtor. In order to follow up the approach of the legislator in dealing with these procedures, it is required of us to divide the study of this subject into two sections, the first of which is devoted to the procedures of seizure of the debtor's movable funds⁴, and the second to the procedures for the sale of the debtor's movable funds, and if this is discussed we reach a conclusion that we guarantee the most important results we reach.

3. Methodology:

Section I/Procedures for the seizure of the debtor's movable funds

-
1. Dr. Saeed Mubarak, Provisions of the Implementation Law No. 45 of 1980, 4th Edition, Baghdad, Legal Library Distribution, 2011, p. 135.
 2. See Dr. Abbas al-Abboudi, Commentary on the Provisions of the Code of Civil Procedure, Mosul, Dar al-Kutub for Printing and Publishing, Mosul, 2000, p. 315.
 3. Medhat Al-Mahmoud, Explanation of the Provisions of the Implementation Law, No. 45 of 1980 and its Practical Applications, Baghdad, Publications of the Legal Department of the Ministry of Justice, 1992, p. 176;

The imposition of an executive seizure of money movable to the debtor in order to satisfy the creditor's debt from its price, requires following the procedures established by the legislator for the seizure procedures in the first section of chapter III of Part one of the Execution Law, and in articles 63-70 thereof, and this requires consideration of the decision of seizure, the mechanism of its execution, the manner in which the seizure is carried out and the provision of damage, disposal and use of the reserved. We will allocate to each of these a separate requirement.

The first requirement/The decision of seizure and the mechanism of its implementation

Compulsory execution shall be initiated at the request of the creditor and by a decision of the notary executor on the basis of Article 55 of the Execution Law, which stipulates that it shall be ((seizure, lifting and sale of the debtor's money at the request of the creditor and a decision of the notary executor))⁵, However, the mere fact that a reservation decision is issued does not make the reservation a reality⁶. The executor of justice, after issuing the seizure decision, shall execute it himself or appoint an employee of the Directorate of Execution to do so. The execution of the seizure decision requires, in accordance with the provisions of the seizure contained in article 65 of the Execution Law, the following:

1 - The movable of the executor of justice or the official in charge of this to the place where the money is located for the purpose of making a seizure.

2 - The presence of the district administrator of the locality, whether he is present or two witnesses, has nothing to do with or related to the employee in charge of the reservation, nor to one of the parties. if the legislator stipulates in article 65 of the Execution Law that there is no relationship or kinship between witnesses and the detainee and the one party, in order to deny the suspicion of collusion and to ensure their impartiality, he has not specified the nature of the relationship or the degree of kinship.⁷, Thus, jurisprudence specifies that what is meant by the relationship preventing the attendance of the seizure proceedings is not merely friendship but the benefit that exists between the parties⁸.(Ali Muzaffar Hafez,1974). The intention of the prohibitive kinship in the text of the article referred to is absolute kinship without specifying to include close kinship and distant kinship because the text came absolute and absolute is being launched.⁹ (Dr. Adam Wahib Al-Nadawi,2011)

3. The custodian shall organize a record in which he shall record the gender, types, amount and value of the seized funds, by an expert if necessary, and indicate the place where they were kept and how to guard them, and he and those present shall sign that report and submit it to the executor of justice.¹⁰

Since the seizure of the record is in force unless proven otherwise, in this case care must be taken to organize it in such a way that there is no scratching or deletion, and if it is necessary to correct a mistake contained therein, it is written off in a fine font and this is stated in the footnote.¹¹ (Dr . Saeed Mubarak,2011)

The execution of the seizure decision may require the payment of expenses such as a means of transport, additional work wages to the employee in custody, experience wages, guard wages or advertisements in newspapers, and the person responsible for paying them in accordance with article 60 of the Execution Law shall be the creditor, as the creditor pays in advance all expenses that should be

4. Article 2 of the Execution Law.

5. Under Article 353 of the Egyptian Code of Civil and Commercial Procedure, a seizure is void if it is not made and its minutes are drawn up in the place where the objects to be seized are located.

6. See Article 63 of the Execution Law.

7. The Egyptian legislator did not stipulate what was referred to in Clause 2 above, and that is what is benefited from Article 353 of the Procedure Code

8. Ali Muzaffar Hafez, Explanation of the Execution Law, Baghdad, Al-Ani Press, 1974, pp. 225-226

9. Dr. Adam Wahib Al-Nadawi, previous source, p. 163.

10. This is what the Iraqi judiciary went to in one of its decisions / Decision No. 45 / T. T / 2010 issued by the Nineveh Court of Appeal / the Cassation Commission.

11. See Dr . Saeed Mubarak, a previous source, p. 180.

disbursed for the purpose of seizure and sale, provided that they are subsequently collected from the debtor.

If the creditor is unable to pay the said expenses or if he apologizes for paying them in whole or in part and the detainee refuses to pay them, the execution is delayed until the expenses are paid.¹² (Ali Muzaffar Hafez,1974)

The original, when executing seizure decisions, is to take place in the presence of both the creditor and the debtor. The execution of the seizure decision may require the presence of the creditor to prepare the means of transport or assist the seizure holder in determining the location of the money to be seized and guiding it to him, and the presence of the debtor may be important due to the objections he may make that have an impact on the implementation of the seizure decision or not, such as claiming the return of the seized money to another person. If the presence of the creditor or debtor is often necessary, it is not a condition for the validity of the seizure proceedings, as the Iraqi legislator authorized in article 64 of the Execution Law that the seizure proceedings be conducted in the absence of the parties or one of them.¹³

Second requirement/ How to make a reservation

The employee executing the seizure decision shall verify before the seizure is made, that the funds to be seized belong to the debtor and not including what may not be legally seized, and then he must reserve enough to meet the creditor's debt, expenses and interest without exceeding this limit or else be considered arbitrary in the use of the right, unless the seizure decision has specified the funds to be seized¹⁴, (Adam Wahib Al-Nadawi,2005), then the seizure holder must abide by what is stated in the seizure decision without being He has the power to reserve part of these funds without the other part even if it turns out that the debtor's money is to be seized exceeds the value of the debt. Nor may he seize other funds not specified in the seizure decision, even if it is found that they are not sufficient to repay the debt.¹⁵

Before placing the seizure, the holder of the reservation must verify whether or not the place of residence of the debtor is the place of residence of the debtor on the basis of articles 67 and 68.¹⁶, From the Enforcement Law, here you must distinguish between two impositions:

The first imposition / execution of the seizure in the place of residence of the debtor.

According to article 67 of the Execution Law, if the seizure is executed in the debtor's place of residence, and it is found that he is the seizure of the funds to be seized, the placement of his hand shall be a presumption of his possession of it and the validity of its seizure, and shall not pay attention to the objections made by the debtor or third parties in excluding some or all of the funds that may be seized from the seizure, and this objection shall not lead to a delay in execution, unless the objector submits a

12. See Ali Muzaffar Hafez, previous source, pp. 224-225.

13. Article 64 of the Execution Law. The legislator specified in Article 62 of the Execution Law the funds that may not be seized. See also Articles 305-309 of the Egyptian Code of Procedure.

14. Adam Wahib Al-Nadawi, previous source, p. 166.

15. See also Article 362 of the Egyptian Code of Procedure.

16. Medhat Al-Mahmoud, previous source, p. 224

17. This is what the Iraqi judiciary went to in one of its decisions, including Resolution No. 0543/implementation/2015 on 12-22-2015 issued by the Presidency of the Baghdad Appeal Court /

18. Article 68 of the Execution Law.

19. See d. Ahmed Abu Al-Wafa, Execution Procedures in Civil and Commercial Matters, Alexandria, Al-Wafa Legal Library, 2015, pg. 458

fixed-date editor or a decision issued by a court competent to delay execution. If the objector proves by a fixed-date editor that this money belongs to him as if the wife of the person whose funds are to be seized showed a list of the purchase of the funds to be seized from an official body, then the person in custody refrains from seizing those funds, and proves this in a record.¹⁷

If the bonds submitted are not fixed in date, the notary executor may not decide on the return of those funds because it is the prerogative of the courts to decide on the same, which value the supporting bonds and assess the ownership of the funds or not for the person who claimed ownership of them.¹⁸

The second imposition / execution of the seizure in a place that is not the place of residence of the debtor.

If the employee who carries out the seizure finds that the place to be seized is not the place of residence of the debtor, or finds other persons residing with him other than members of his family, he must verify the return of the funds¹⁹, (Ahmed Abu Al-Wafa, 2015), if the investigation finds that the person to be seized belongs to the debtor, he must proceed with the seizure procedures. The debtor, his residence, his business or any other place.²⁰

If, on the other hand, the employee carrying out the seizure decision verifies that the existing physical movable belong to a person other than the debtor, he shall not execute the seizure decision, and shall draw up a record thereof to be submitted to the executor of justice, who may decide to annul the seizure decision or continue to execute it, in which case, the third party may review the competent court.²¹

Whatever the place of execution of the attachment is the domicile of the debtor or a place not of residence of the debtor and the return of the funds to be seized to the debtor has been proven, the holder of the seizure shall observe the provisions of the seizure of movable funds provided for in articles 65 and 66 of the Execution Law.²². They are:

1- The custodian shall movable the seized money, if it is a valuable thing, to the Directorate and deposit it in the place for keeping the trusts. If, however, the detainee is otherwise detained, he shall be kept according to his nature, whether by sealing his whereabouts, by transferring him to a place where he forgets, by placing him in the hands of a justice, or by establishing a guard over him, in return for a fee to be assessed by the executor and approved by the executor of justice.²³

2. If the officer in custody finds that the funds to be seized have been previously seized on the other hand, he shall place the seal of the Directorate on the place of their seizure, or alert the judicial guard to whom the seized funds are deposited, of the occurrence of a second seizure thereof, and shall organize a record signed by him, the relevant person and the Judicial Guard, and shall inform the detaining authority thereof..²⁴, and the money seized shall be deemed to be reserved by both debts. If the person making the reservation does not find what may be seized or does not find anything to book, he must prove this in the record of the reservation.²⁵ (Dr. Adam Wahib Al-Nadawi, 2015)

Third requirement /Damage to the detainee and its disposal contrary to the orders of the Directorate of Execution

The debtor's wish on how to preserve the movable funds seized and to appoint the person with whom they will be deposited should be taken into account to preserve them as much as possible. It refers to the agreement of the creditor and the debtor to appoint the person with whom the funds reserved for preservation will be deposited as a guard or a hand of justice, in the event of their disagreement, the seizure holder is obliged to appoint him and preferably one of those to whom the creditor and the debtor have not objected. (Dr. Ahmed Abu Al-Wafa, 2015)²⁶

20. See Article 68 of the Execution Law.

21. See also Articles 357 and beyond of the Egyptian Code of Procedure.

22. See Adam Wahib Al-Nadawi, a previous source, p. 165.

23. See Dr. Saeed Mubarak, a previous source, p. 179.

24. See Dr. Ahmed Abu Al-Wafa, a previous source, pg. 471.

25. Review Dr. Adam Wahib Al-Nadawi, previous source, p. 168.

26. See Dr. Ahmed Abu Al-Wafa, a previous source, pg. 480.

In the event that the detainee is damaged by the guard or justice appointed or disposed of by them contrary to the orders of the Directorate of Implementation, a distinction must be made in this case between the following two assumptions:

The first imposition: - Damage to the detainee during the reservation without infringement or default.

- 1- If the seizure is damaged during the seizure without infringement or default, it is damaged from the debtor's money because the mere placement of the attachment does not move the ownership of the seizure from the debtor
- 2- Only when it is sold and the price is delivered to the creditor, and that the seizure is made at the request of the creditor, is carried out under legal procedures that do not give the creditor any liability²⁷(Dr.Saeed Mubarak,2011)
- 3- in application of the rule of legal permissibility is contrary to the security.²⁸ (Dr. Adam Wahib Al-Nadawi,2016)

The second assumption: damage to the detainee by distance or default.

If the detainee is damaged by the departure or negligence of the guard or justice, or if either of them refrains from handing over the detainee, handing him over to the debtor or disposing of it contrary to the orders of the Directorate of Execution, in this imposition we find two directions -

The first direction goes to collect the amount of security for the value of the money seized from the custodian or justice without the need for a judgment from the competent court, on the basis of determining the liability of the custodian based on articles 75 and 78 of the Execution Law, which determine the liability of the third person who has seized funds belonging to the debtor. ²⁹(Dr. Adam Wahib Al-Nadawi,2011).

The second direction: This trend goes on determining the responsibility of the justice or the custodian on the basis of the guarantee, and that requires the adoption of the content of the pledge by the justice or the guard, if the content of the pledge is to maintain and deliver only, then to return the amount of the guarantee for the value of the seized money, obtain a judgment from the competent court. If, however, the content of the pledge of preservation and delivery is accompanied by the undertaking to pay the estimated value upon non-delivery, it shall be binding on the value of the guarantee without the need for a judgment from the competent court.³⁰

The second assumption: damage to the detainee by distance or default.

If the detainee is damaged by the departure or negligence of the guard or justice, or if either of them refrains from handing over the detainee, handing him over to the debtor or disposing of it contrary to the orders of the Directorate of Execution, in this imposition we find two directions -

The first direction goes to collect the amount of security for the value of the money seized from the custodian or justice without the need for a judgment from the competent court³¹,(Dr.Adam Wahib Al-Nadawi,2011), on the basis of determining the liability of the custodian based on articles 75 and 78 of the Execution Law, which determine the liability of the third person who has seized funds belonging to the debtor.³² (Dr. Abbas Al-Aboudi,2000)

The second direction: This trend goes on determining the responsibility of the justice or the custodian on the basis of the guarantee, and that requires the adoption of the content of the pledge by the justice or the guard, if the content of the pledge is to maintain and deliver only, then to return the amount of the guarantee for the value of the seized money, obtain a judgment from the competent court. If, however, the content of the pledge of preservation and delivery is accompanied by the undertaking to pay the estimated value upon non-delivery, it shall be binding on the value of the guarantee without the need for a judgment from the competent court.³³

27. Dr.Saeed Mubarak, a previous source, p. 181

28. Dr. Adam Wahib Al-Nadawi, previous source, p. 168.

29. See in that Ali Muzaffar Hafez, previous source, 250-252.

30. Unlike the Egyptian legislator, which stipulates in Article 368 of the Egyptian Code of Procedure that the detained can use the seized items, provided that he is the custodian of them,

31. Dr.Adam Wahib Al-Nadawi, previous source, pp. 169-170.

32. Dr. Abbas Al-Aboudi, previous source, p. 109.

The second section /Procedures for the sale of seized movable funds

The Iraqi legislator specified the legal procedures to be taken when selling the movable funds seized in the second section of Chapter III of Part One of the Implementation Law.³⁴

By announcing the sale of the seized funds and selling by auction, however, it is not possible to initiate the procedures for the sale of the movable funds according to the original unless the debtor is informed of the news of the seizure and the expiry of the period granted to him by law³⁵, (Dr.Saeed Mubarak,2011), so the research into the procedures for the sale of movable funds requires dividing this section into three demands, the first of which is devoted to the news of the reservation, the second to announce the sale of the movable funds seized and the third to the sale of movable funds seized by auction.

The first requirement /Booking News

If the purpose of the attachment is to secure the creditor's right, the prevailing principle regarding the execution of the attachment is that the debtor must be protected and kind, and that the debtor must be informed of the news of the seizure and that the seized money movable may not be sold before the expiry of the news period as originally notified.³⁶

According to article 69 of the Execution Law, the Iraqi legislator distinguished in the news of the seizure between two assumptions:

First: If the seizure is made in the presence of the debtor, the employee in custody shall understand the necessity of executing the judgment or the editor within three days from the day following the seizure of the seizure, otherwise the seized funds shall be sold, in accordance with the provisions of this Law.

Second: If the seizure is made in the absence of the debtor, the executor of justice shall inform him of the summary of the record, and that if he does not initiate the execution of the judgment or the editor within three days from the day following his notification, the seized funds shall be sold, in accordance with the provisions of this Law.

If the rule established in this regard stipulates that it is not permissible to sell the seized person before the expiry of the notice period, the legislator has excluded in article 70 of the Execution Law from the provision of this rule a case if the seized person is one of the substances that spoil and damage quickly.

³⁷In these two cases, there is no need to inform the debtor of the news of the seizure because it is not useful, but it is necessary to sell the reservation by public auction, and it is advisable not to hand over the prices to the barrier before the end of the three days as of the day following the date of seizure because of the possibility of submitting an objection to the reservation. The fair executor does not have the discretion to order whether or not to sell it, but is obliged to do so by virtue of the law.³⁸

Second requirement / Announcement of the sale of reserved funds

After the expiry of the period granted to the debtor to repay the debt, the sale of movable funds seized in two widely circulated local newspapers shall be announced and advertisements shall be hung in the place of the funds, the place of sale and the barrier department, in accordance with the first paragraph of Article 71 of the amended Execution Law.³⁹ (Medhat al-Mahmoud,1992). However, under paragraph II of this article, the legislator has authorized only the suspension of advertisements without publication in the event that the value of the seized funds does not bear the expenses of publication.

33. Articles 71-74 of the Execution Law.

34. Article 69 of the Execution Law. And see Article 376 of the Egyptian Code of Procedure.

35. Dr.Saeed Mubarak, a previous source, p. 185.

36. Article 70 of the Execution Law.

37. look at that dr. Adam Wahib Al-Nadawi, a previous source, p. 167.

38. The first paragraph of Article 71 of the Execution Law.

39. See Medhat al-Mahmoud, a previous source, p. 229.

40. See d. Abbas Al-Aboudi, a previous source, p. 111.

41. See Medhat al-Mahmoud, a previous source, p. 229.

Whether the advertisement consists of publication and suspension in the legally specified places or requires suspension only, under the text of article 71, paragraph III, of the Execution Law, the declaration must include the sex, type, amount, estimated value, place of auction and the day and hour of its sale. The auction shall be on the tenth day of the day following publication in local newspapers.⁴⁰

The executor of justice shall organize a record of the above-mentioned procedures and shall keep a copy of the local newspapers and the declaration paper in the executive document.⁴¹

Third requirement /Sale of funds withheld by bidding

Public bidding is a special system of execution and the purpose of this sale, is to create competition between applicants for purchase and raise the price to the maximum extent possible, which brings with it the benefit of the barrier and the reserved, as the sale by bidding achieves equality between all those who are entitled to participate in the auction.⁴²

In accordance with the provisions of Article 72 of the Execution Law⁴³, the auction shall be held in the nearest commercial center from the place of custody of the reserved, and the notary may designate another place for sale, as required by the nature of those funds, as in the case of the sale of the seized vehicles, the place of the auction can be in the places of sale of the reserved, even if the place of its presence is another place, as it is movable to the place or exhibition for its sale on time.⁴⁴

The authority to transfer money to the alternative place of the mall closer to the preservation of the seized money is entrusted to the condition that it does not harm others, otherwise the sale of money in the nearest mall will be carried out on the date specified for the auction.⁴⁵

In order to participate in the auction of the seized movable money, the following two conditions are required:

1- To deposit insurances of not less than 10% of the estimated value of the money, the intention of which is to secure the satisfaction of possible damages caused by the buyer's refusal to buy the seized money. If the barrier creditor or the debtor's partner wishes to participate in the auction of the seized movable, he is not charged with paying the deposit of the insurance unless his debt or share is less than 10% of the estimated value of the seized money, and then he must provide what complements his debt or share to the percentage Required of insurances.⁴⁶ (Medhat al-Mahmoud,1992)

2- Not to be prohibited from participating in the auction legally, and those who are prohibited from participating in it are:

A- The incapacitated such as the undistinguished, crazy and demented little one.⁴⁷ (Dr.Adam Wahib Al-Nadawi,2005)

(b) The detainee, because the Execution Department, when it sells the debtor's funds, acts as its agent and the bidder may not be the seller and the buyer at the same time.⁴⁸

42. See Medhat al-Mahmoud, a previous source, p. 229.

43. See d. Abbas Al-Aboudi, a previous source, p. 111.

44. See also Article 377 of the Egyptian Code of Procedure.

45. See d. Saeed Mubarak, a previous source, p. 187.

46. See Medhat al-Mahmoud, a previous source, p. 230.

47. Dr.Adam Wahib Al-Nadawi, a previous source, p. 173.

48. See Articles 93-94 of the Iraqi Civil Code.

49. See d. Abbas Al-Aboudi, a previous source, p. 112.

50. Article 72/Third of the Execution Law.

51. See Ali Muzaffar Hafez, previous source, pp. 216-217

52. See Medhat al-Mahmoud, a previous source, p. 233

(c) The executor of justice, the members of his directorate, their spouses, in-laws and relatives up to the fourth degree directly or by means of their own account or for the account of others.(Abbas Al-Aboudi⁴⁹ 2000).

Judges and employees of the Ministry of Justice in order to preserve their reputation and integrity. ⁵⁰

(e) Persons prohibited from purchasing under Articles 589-592 of the Iraqi Civil Code, namely the trustee, trustee, judge, agent, director of the company and the like, bankruptcy agents, liquidated guards, liquidators of companies, estates, brokers and experts⁵¹.(Ali Muzaffar Hafez,1974)

In accordance with the provisions of the paragraph of Article 73 of the Execution Law, the money seized in the place designated for it shall be sold by one of the signifiers, and the auction shall be opened at least sixty percent of the estimated value, and the money sold shall be delivered to the person on whom the auction has been awarded the last allowance, after paying the price, and the offer that passes five minutes shall be considered, and shall not be increased by the end of the auction.

If the paragraph referred to specified the time of delivery of the money sold to the person on whom the auction was awarded after payment of the price and did not specify the time of payment of the price, the nature of the movable money sold requires immediate payment of the price and then delivery of the sale. The immediacy of payment of the price has been customary and is included in the majority of advertisements published about the sale of movable funds..⁵² (Medhat al-Mahmoud,1992)

In the absence of an explicit provision in the Execution Law requiring immediate payment of the price, some believe that this does not preclude the buyer from giving a short period of time to pay the price at which the auction was awarded.⁵³

The second paragraph of article 73 dealt with the issue of the allowance not reaching the legally prescribed percentage, i.e. if the allowance did not reach the result of the auction 70% seventy percent of the estimated value, then the movable money seized would be re-estimated and a new auction would be announced, and the assignment would not take place, unless the allowance amounted to 70% seventy percent of the estimated value, otherwise the sale procedures would be repeated again. In any case, the money is not sold if the allowance does not reach 70% seventy percent of the value of the last estimate, and the Directorate of Implementation must seriously examine the reasons why the auction allowance does not reach 70% of the estimated value of the money reserved in terms of the declaration, the extent of knowledge of it, the date of the auction and the place of the auction, such as if the auction took place on a day when a public event makes it impossible for the participants to attend the auction or that the auction took place in an inappropriate market to sell reserved money⁵⁴(Ali Muzaffar Hafez,1974)

In the case of the negligence of the person on whom the auction is awarded for the purchase, we find that article 74 of the Execution Law obliges the money to be placed in the auction again, and then the Execution Directorate obtains from the eater the difference between the two allowances with expenses, and if no one wishes to buy after the repudiation, the insurance is considered to belong to the debtor and is handed over to the creditor calculated on his debt, and the value of the money is re-estimated, and it is announced that it will be sold again.⁵⁵ (Dr. Adam Wahib Al-Nadawi,2011)

At the end of the research, we concluded with a number of conclusions and suggestions that we show as follows:

Results

53. See Medhat al-Mahmoud, a previous source, p. 233

54. Ali Muzaffar Hafez, previous source, p. 250.

55. See Dr. Adam Wahib Al-Nadawi, a previous source, pp. 174-175.

1. It shall not be considered an executive attachment of movable held by the debtor, unless the movable to be seized is a movable owned by the debtor, in his possession, and the creditor has an executive bond at the commencement of the seizure proceedings.
2. The legislator dealt with the executive attachment of the movable to the debtor, with provisions consistent with its nature, both in terms of seizure procedures and in terms of sales procedures, contained in articles 65-75 of the Execution Law, and if the legislator had regulated the decision of seizure, the mechanism of its execution, the news of the seizure and the announcement of the sale of the seized movable funds and their sale by auction, but did not expressly provide for the invalidity of the seizure procedures in case of violation, although this invalidity entails the violation of the relevant text. Public order or achieving a balance between the interest of the parties or the maintenance of their rights and not to harm them or related to the place of seizure or its purpose.
- 4- The Execution Law does not include a provision dealing with the damage of the detainee in the hands of the guard or justice during the period of detention.
- 5- The legislator did not stipulate in the Execution Law that the seized person may or may not use the seized money or use it during the seizure.
- 6- The legislator specified, in Article 73 / I of the Execution Law, the time of delivery of the sale, but did not specify the time of payment of the price.

Proposals:

- 1- Amend the text of Article 69 of the Execution Law with regard to the time limit granted to the debtor by the news note and make it ten days instead of three days, based on the principle of protection and kindness to the debtor and avoid taking compulsory measures against him in the event of payment of the debt within the period granted to him by law.
- 2- Stipulating the invalidity of the seizure in case of violation of the provisions contained in articles 65-75 related to the place of seizure, its purpose, public order, maintenance of the rights of the parties, protection and non-harm to them.
- 3- Mention a provision that includes obliging the guard or justice by a decision of the executor of justice to pay the amount of security for the value of the seized money in case of damage or disposal contrary to the Directorate of Implementation.
- 4- Referring to a text that prohibits the confiscated from benefiting from the confiscated item during the confinement period, unless the usage is within the limits of what it was allotted for, provided that this usage does not result in harm to the confiscator.
- 5- A text specifying the period in which the price must be paid after the end of the auction, provided that this period is a short period starting from the day following the end of the auction.

References

1. First, legal books
2. Dr. Ahmed Abu Al-Wafa, Execution Procedures in Civil and Commercial Matters,
3. Alexandria, Al-Wafa Legal Library, 2015.
4. Dr. Saeed Mubarak, Provisions of the Execution Law No. 45 of 1980, 4th floor, Baghdad,
5. Legal Library Distribution, 2011.
6. Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Civil Procedures Law, Mosul, Dar
7. Al-Kutub for Printing and Publishing, Mosul, 2000.
8. Ali Muzaffar Hafez, Explanation of the Execution Law, Baghdad, Al-Ani Press, 1974
9. Dr. Mahmoud Al-Sayed Omar Al-Tahwi, Detention Procedures and its General Effects in the Civil and Commercial Procedures Law, Menoufia University, 2000-2001.
10. Medhat Al-Mahmoud, Explanation of the Provisions of the Execution Law, No. 45 of 1980 and its practical applications, Baghdad, Publications of the Legal Department of the Ministry of Justice, 1992.
11. Second: Judicial decisions
12. Decision No. 45/T.T/2010 issued by the Nineveh Court of Appeals / Cassation Commission <https://iraqlid.hjc.iq/VerdictsTextResults.aspx>
13. Decision No. 0 543 / Implementation / 2015 on 12-22-2015 issued by the Presidency of the
14. Baghdad Court of Appeal / Karkh Federal in its discriminatory capacity
15. <https://iraqlid.hjc.iq/VerdictsTextResults.aspx>
16. Third: Websites
17. <https://iraqlid.hjc.iq/VerdictsTextResults.aspx>
18. Fourth: the laws
19. Iraqi Civil Law No. (40) of 1951
20. Iraqi Execution Law No. (45) of 1980

21. The Egyptian Civil and Commercial Procedures Law (13) of 1986
22. Law No. (25) of 2007 Law of the Fifth Amendment to the Iraqi Execution Law