

The Situation of the Jordanian Legislator from the Interpretation of the Judicial Judgment

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Abstract

Study aims to discuss regulating the provisions of judicial judgments interpretation in Jordanian law regarding the practical necessity in making the ambiguous judgments issued by the court enforceable. As well as the provision in the execution law obliges the chief executive officer to request clarification from the court (issued the judgment) due to its ambiguity, which does not replace the importance of regulating this issue in the Jordanian Code of Civil Procedure. The researcher concluded that the regulation of the provisions of judicial judgments interpretation in Jordanian Civil Code, which is tainted with ambiguity, must include granting the right to request interpretation to the litigants and to the court (issued the judgment). It shall also include provisions of the ruling interpretation and grant the right to the litigants and the court in requesting the interpretation. So that the court shall always be competent to request the interpretation, if it has to comply with the interpretation regulations in order not to abuse the authority in interpreting in a way that makes its judgment subject to appeal. The researcher also discusses the importance of determining the procedures that shall be followed to submit the interpretation request; moreover, the researcher concludes the impact of appealing the original judgment issued by the court.

Keywords: Interpretation, judicial, judgments, ambiguity, court, clarification.

Introduction

Judicial judgments aim to expose the truth of the conflict submitted to the court and to determine the owners' rights, as well as the judgments seek to make the main objective of the litigants in their defense is to end the conflict through a

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judicial judgment that stabilizes the legal positions. The Interpretation of a judicial judgment is not needed unless the sentence of the court is ambiguous, so that it is not possible to understand the judgment meaning contained therein (Abu Al-Basal), as a result, all the judgments may be interpreted in case the ambiguity is contained in the operative part of them. In addition, if there is ambiguity in the circumstances of the case related to the operative part of the judgment therefore, they are considered an integral part of such operative part, in this situation, it may be requested to interpret it. However, if there is no ambiguity in the operative part, the interpretation must be rejected (Al-Khlaefe, 2024). However, it prevents the achievement of oversight of those rulings due to a lack of understanding of them. Since this matter, i.e. the issuance of judicial rulings that are tainted with ambiguity, is conceivable in practical reality due to the diversity of concepts and mental perceptions, it was necessary for the legislator to intervene by finding a means that would remove the ambiguity that could taint the ruling, by allowing the opponents to request its interpretation in a way that would make it enforceable. This means was represented by granting the court issuing the ruling that is tainted with ambiguity the authority to interpret it based on the request of the opponents in accordance with procedures specified by the legislation that gave the court issuing the ruling this authority (Al-Tikriti, 2017). Early on, the Jordanian legislator realized, the importance of addressing ambiguity in judicial rulings. It established rules and guidelines containing legal texts aimed at guiding judges and legal specialists to interpret rulings in a way that enhances their implementation and reduces disputes arising from them. These efforts come within the ensuring respect for the rights of individuals and the rights of the state alike (Abdul Rahman, 2020). It is necessary to mention the role of the Jordanian legislator in clarifying the problems that may arise from the ambiguity of the provisions, and this is through periodic legal reforms with the aim of keeping pace with economic and social changes. These reforms come from the perspective of giving importance to clarifying these problems and developing the legal system and improving the judicial work environment to keep pace with the changes (Al-Tarawneh, 2021).

Literature Review

There are number of studies that dealt with the provisions of the interpretation of judicial judgments in the Civil Code, including: The ambiguous judicial ruling and the problems of its interpretation during implementation (Al-Takriti, 2016).

The judicial ruling is one of the most important executive documents that legislation has given special importance based on the trust granted to the judiciary, as the judicial ruling is not issued except after long procedures carried out through pleadings in which all legal guarantees were considered and through which the opponents were confronted and the claims were confronted with defences and evidence and documents were presented. The principle is that if the judicial ruling is issued correctly and soundly and free of defects, it is deposited with the authority responsible for implementing judicial rulings for the purpose of implementing it, but the ambiguity of the judicial ruling may prevent the possibility of implementing it in whole or in part. There are many problems raised by the process of removing the ambiguity of the judicial ruling, which were discussed in this book, including the problems represented by the conflict between the interpretation of the ambiguous judicial ruling by the court that issued it and the principle of not affecting the legal authority of judicial rulings, as well as the principle of exhausting the court's jurisdiction. The procedures followed in the process of removing the ambiguity of the judicial ruling in Iraqi legislation may raise other problems that were sought to be found and tried to be addressed by comparing those procedures with those adopted in comparative legislation.

The study of Skafi (2022), dealt with the importance of the judicial ruling, similar to comparative legislation and Islamic jurisprudence, as the study focused on the effects of the judicial ruling from the legal and jurisprudential aspect, and the study concluded that the importance of having controls for interpretation prevents the abuse of authority, and the importance of having procedures for submitting a request for interpretation.

Al- Mansour's Study, Mansour (2015) discussed the importance of the Jordanian legislator's regulation in the interpretation of judicial judgments just as the comparative legislation. In addition, such study focused on the fact that just the text in the execution law requires that the Chief executive officer shall seek clarification and interpretation from the court that issued the ruling. Finally, the study concluded that the existence of interpretation controls prevents the abuse of authority, as well as it focused on the importance of the procedures for submitting an interpretation request.

Abd-Almon'em (2017) study showed that the Constitutional Court is devoid of a text that regulates the requests for judgments' interpretation issued in constitutional actions. Therefore, according to Articles (28) and (51) of the High Constitutional Court Law, the provisions related to this action in the Code of Civil and Commercial Procedure, shall be applied, especially Article (192) thereof, which stipulates that: 'The parties may have the right to ask the court that issued the judgment to interpret any ambiguity or illusion that has been occurred, and such request is submitted in the standard procedures to bring a lawsuit. The judgment issued by the interpretation is considered completely complementary to the judgment that it interprets, as well as the rules relating to usual and unusual appeal methods shall be applied to such judgment'. In addition, the study showed that defining the interpretation action related to the judgments issued by the Constitutional Court shall not be considered as an appealing method against the judgments, also it does not affect the judgments' validity, but rather it aims to clarify what happened in the operative part of the judgment that is required to be interpreted.

Research objectives

- 1- Understand the importance of the Jordanian legislator's organization of the interpretation of the judicial ruling?
- 2- Explain the extent to which the court undertakes to interpret the judicial ruling on its own initiative or upon the request of the parties.
- 3- Study the extent of the court's authority to interpret.
- 4- Provide an image of the extent to which the Jordanian Court of Cassation monitors the judge's authority to interpret.

Research questions

1. What is the importance of regulating the interpretation of the judicial judgment by the Jordanian legislator?
2. Does the court deal with the interpretation of the judicial judgment on its own or at the request of the Litigants?
3. What is the extent of court authority in the interpretation?
4. To what extent does the Jordanian Court of Cassation monitor the judge's authority in the interpretation?
5. What procedures shall be followed to interpret the judicial judgment?
6. How does the decision issued regarding interpretation subject to appeal?

Results

Although the Jordanian legislator granted the chief executive officer the right to request clarification from the court that issued the judgment, but it did not regulate the provisions of this interpretation, whether it is related to how the interpretation is requested, i.e. its procedures, or what is related to the authority of the court, as well as, it did not regulate the jurisdiction or the limits of this interpretation, and the legal impact resulting from abusing the authority of interpretation by the court.

Whereas the court shall be responsible for the availability of the ambiguity conditions, but it also shall be subject to the supervision of the Court of Cassation. As well as the interpreting court shall clarify in its interpretation any ambiguity or equivocation in the operative part of the judgment, so that the interpretation is not used as a pretext to amend the judgments after they are issued. There are several conditions that must be met to interpret a judicial ruling, namely that the ruling requested to be interpreted must have the force of *res judicata*, and that the ruling's text must be ambiguous or ambiguous.

The availability of the ambiguity condition is a matter that is left to the discretion of the court, and it is subject to the supervision of the Court of Cassation. The interpreting court must indicate in its interpretation any ambiguity or vagueness in the ruling, so that the interpretation is not used as a pretext to amend rulings after they are issued.

The jurisdiction to interpret an ambiguous ruling is transferred in the event of an appeal against the ruling to the Court of Appeal. If the Court of Appeal issues a ruling that includes upholding the ruling of the court of first instance, it becomes competent to interpret the ambiguity in that ruling. However, if it cancels or amends the ruling in a way that removes the ambiguity, there is no need to interpret it. However, if it amends or cancels the decision and issues a ruling on the subject and the ruling issued by it is ambiguous, it becomes competent to interpret it in accordance with the general rule.

Discussion and Analysis

The nature of the judicial judgment

The judicial judgment represents the desirable goal of resorting to the judiciary, so the action does not end until the judgment is issued. The term judicial judgment is used by jurists to indicate two objectives:

The first objective is the broad one that includes all decisions issued by judicial authorities, whereas the another objective is a narrow one which is represented by the decisions issued by judicial authorities according to methods, procedures and stages specified by the articles and texts of the law.

The first requirement: judicial judgment definition

The majority of legal scholars tended to follow the narrow objective in defining the judicial judgment, as they believe that the judicial judgment is the judgment issued by the judicial authority that is formed in a manner consistent with the law and with a conflict presented before it. In addition, the judicial judgment has to be issued in accordance with the Code of Civil Procedure whether in terms of the external form of the judgment or its membership and composition, in order to end the unsolved conflict between the parties (Abu Al-Wafa, 2015). As for the Jordanian legislator, it adopted the narrow objective regarding the definition of the judicial judgment, as it stated in the Code of Civil Procedure No. (24) of (1988) and its amendments, specifically in Article No. (160) thereof, the following:

The judgment has to state the court, date and place of its issuance, and the names of the judges who filed a complaint against the judgment and who attended its pronouncement, as well as the full names of the parties, their presence or absence, and the names of their representatives. In addition, the judgment also has to include a general presentation of the facts of the case, the parties' requests, a brief summary of their proofs and essential defence, as well as the reasons for the judgment and its operative part". (Al Hindi, 2005). The researcher concludes: The Jordanian legislator has narrowed the scope of the judicial judgment in that issued in the manner indicated by the above- mentioned article.

The second requirement: Characteristics of the judicial judgment

The judicial judgment has a set of characteristics and features that differ from other decisions and orders issued by various judicial authorities. The researcher can summarize these characteristics as:

Section One: The issuance of the judgment by a court with jurisdiction.
Section two: Judgment in an existing and ongoing conflict.

Section One: The issuance of the judgment by a court with jurisdiction

One of the most important characteristics that distinguishes the judicial judgment is that itches to be issued by court which has jurisdiction to consider the case and has the authority in the disposition of such case. According to this characteristic and in order to adopt it and to consider that the court has the jurisdiction to issue the judgment, some fundamentals have to be applied, which are (Abu Haif, 2000): **First:** The authority that issued the judgment has to be a court that is affiliated with a judicial authority, such as administrative, civil, commercial, or other courts. **Second:** such court must prove its legal jurisdiction in the disposition of conflicts before it. But if the court has no jurisdiction to do so, and despite that, it issued a decisive judgment regards the case, then its judgment

in that case shall be considered null and void. Wherefore, the court shall be competent means that it shall have all aspects of jurisdiction, whether valuable, qualitative, spatial, or other aspects of jurisdiction.

Third: The court that issued the judgment shall be constituted in accordance with the law. That is, the number of the court's members shall be compatible with the number required by law for its constitution and this varies from one court to another, which requires referring to the legal formation set by the law for each court to determine the correctness of its constitution when issuing the judgment (Al-Zoubi, 2011).

Fourth: The judge who issued the judgment shall have the authority and jurisdiction to issue such judgments (Talaba, 1993). This means that the judgment shall be issued by those to whom the state has granted the direct status of a judicial function and entrusted them with issuing judgments.

Section two: Judgment in an existing and on-going conflict.

This means that the conflict shall have already occurred and that it shall be before the judiciary. As well as all parties shall have had contact with it, whether this contact is actual or virtual, i.e. the claim statement has been announced to the parties (the defendants), or the parties have appeared before the court during the case hearings. Moreover, the parties in the case (plaintiff and defendant) shall have the legal capacity that allows them to be parties in it (the condition of capacity and interest).

The researcher concludes: If the conflict does not meet the conditions for convening, then the ruling issued therein is null and void.

Interpretation of the judicial judgment in Jordanian legislation

The Jordanian legislator did not define the meaning of interpreting a judicial judgment, and the reason is not because the definition is not stipulated in the Code of Civil Procedure, Considering that the legislator has implicitly referred to it in Article (17) of the Implementation Law, rather the matter is due to the fact that the legislator has left the task of conceptualization of legal terms to jurisprudence, and among these definitions is what some jurists have defined as: "eliminating the ambiguity or confusion in the judicial judgment, by clarifying the intended meaning of the operative phrases of these judgments, so that the intended meaning is easy to understand, its scope is defined, and the possibility of more than one meaning is eliminated."

The first requirement: The interpretation of the judicial judgment and the rectification of the court's ignorance in deciding some substantive requests

Article (168/3) of the Jordanian Code of Civil Procedure stipulates that: "If the court ignores the decision in some substantive requests, it shall, upon the request of one of the litigants, decide on the requests that it announced after informing the other litigant, and this judgment is subject to the rules of appeal that shall be applied to the original judgment." According to this provision, the researcher believes that the Jordanian legislator explained how to deal with the court's ignorance to decide on one of the substantive requests submitted by the litigant by granting the litigant the right to submit a request to the same court to decide on such request. On the other hand, the Court of Appeal has no right to decide on the ignored request due to the lack of judicial judgment. Note that the legislator's determination of the redress means does not preclude the litigant's right to file a new case to decide on the ignored request (Al-Abdullah, 2009). Moreover, the Jordanian legislator did not specify a deadline to the litigant in order to submit a redress request, which would give the litigant the right to file this request at any time until the case expires (Mansour, 2011).

The second requirement: The importance of legal regulation for the interpretation of judicial judgment

Any judgment that is ambiguous, or needs presumption is not suitable as a judicial review for the Cassation Court (Hindi, 2010). In this regard, the Cassation Court ruled that: "It is required that the judgment shall be completely clear in its meaning and that the concerned party shall not need to precept or perform a mathematical operation to reach the conclusion reached by the judgment. Thus, the judgment shall be subject of scrutiny by the Cassation Court."

Moreover, the Cassation Court ruled that: "If the Court of Appeal included in its judgment's paragraph the following phrase: "A judgment on duly legal interest on the compensation amounts in accordance with Article (149) of the acquisition ordinance no. (12) of (1987). Therefore, this part of the decision is tainted with ambiguity, as it is the court's duty to clarify what is meant by the phrase "duly legal interest" that it mentioned.

As well as the court shall clarify the result of applying the provisions of Article (14) of the acquisition ordinance, to which it referred, by clarifying the interest rate and the duration of its validity; if it is in accordance with the provisions of the law, the judgment shall be of interest, and if it is not, its decision shall be annulled.

The third requirement: The conditions of judgment interpretation

Some jurists (23), who dealt with explaining the provisions of the Jordanian Code of Civil Procedures, said that the conditions of the provisions' interpretation shall be the same stipulated for requesting correction; However, this opinion cannot be accepted since the provisions for interpreting a judicial judgment has not been regulated by the Jordanian legislator, in addition, the provisions for interpreting a judicial judgment differ from the correction provisions, according to what was previously mentioned (Faraj, 2010).

Referring to the legislations that regulated the provisions for interpreting a judicial judgment, the researcher believes that there are several conditions that shall be met for such interpretation, as: the judgment to be interpreted shall be authoritative and the operative part of the judgment shall be ambiguous or incomprehensible.

In order to examine such conditions, this requirement is divided into two sections as follows:

Section one: The judgment to be interpreted shall have the authority of the judged thing

The judgment to be interpreted shall be a definitive judgment, that is, it shall be one of the judgments that resolves the conflict as a whole or in part, i.e. it shall be one of the judgments that the court cannot revoke. However, if the court has the right to revoke such judgment, as the preliminary or preparatory judgments, then the request for interpretation will not be rejected, as it can be completely cancelled by issuing others without any need for interpretation if the judgment is ambiguous or incomprehensible (Tahmaz, 2016).

It is believed that the request for interpretation of a judicial judgment will extend to include definitive and non-definitive judgment, given that the reason for requesting the interpretation is available in both judgments. In addition, non-definitive rulings may be changed in many instances, which may have negative effects in the cases on which the definitive judgment is based.

Section two: Ambiguity and equivocation The operative part of the judgment (Al-Ashmawy, Abdul-Wahab, Ahmad, Ashraf, & Muhammad, 2015) shall contain ambiguity or equivocation or it may have more than one meaning, so it is not possible to determine the true intention of the court decision. Besides, the operative part of the judgment is considered ambiguous if it is impossible to understand the intended meaning of its phrases. However, if the operative part of the judgment is explicit and clear, then, the request for interpretation is ineligible, so that the interpretation does not become a pretext for reversing the judgment and affecting its validity.

Procedures for the interpretation of judicial judgment

The explanation of the procedures that shall be regulated in the Civil Procedure Code regarding the request for judicial judgment interpretation requires dealing with it through the request for judicial judgment interpretation by the researcher (the first section), and the deadline and fees of judicial interpretation decision (the second section).

The first requirement: request for interpretation

The procedures for the interpretation of a judicial judgment begin by submitting a request to the court that issued the judgment by the concerned parties to explain any ambiguity or equivocation that occurred in the operative part, provided that the request is submitted according to the standard procedures for filing a lawsuit (Fouda, 2002), and this is what the Egyptian legislator stipulated, as Article (192) of the Code of Procedures stipulates that: "The litigants shall have the right to request the court that issued the judgment to explain any ambiguity or equivocation that occurred in the operative part of the judgment, as well as the request shall be submitted in the standard procedures for filing a lawsuit..."

It is also possible for the Jordanian Court of Cassation to issue an ambiguous judgment. Although it is considered a court of law - as appropriate -, it is considered an exceptionally a trial court in two cases:

The first case: If the court reverses the contested judgment and it is suitable for adjudication. This case is stipulated in Article (197/4) of the Code of Civil Procedure, which states: "The Court of Cassation shall have the right to rule on the case without returning it to its source if it is valid for judgment. Thus, this judgment is not subject to any objection or review."

The second case: If the Court of Appeal issues a judgment that was deficient before the Court of Cassation, then the legislator has authorized the Court of Cassation to rule on the case without returning it to the Court of Appeal (Dahir, 1991), in accordance with Article (202) of the Code of Civil Procedure.

The second requirement: the deadline, fees and effects of requesting an interpretation of a judicial judgment

Submitting a request to interpret the judgment shall not actually constitute a new case, but rather it is complementary to the original action case (Al-Qudah, 2013), for which the prescribed judicial fees have been paid in full for all substantive requests included in the case. Therefore, it is fair not to impose fees on the interpretation request, within the scope of the elements that constitute the judgment, and separated from the intention and will of the judge who issued it. Moreover, submitting the interpretation request shall not constitute a new case, but rather is complementary to the original action case.

In addition, as for the Jordanian legislator, the head of execution has granted the authority to request clarification from the court that issued the judgment regarding any ambiguity therein. However, the head of execution did not regulate the provisions of this interpretation, whether related to interpretation request, i.e. its procedures, or related to the authority of the court issued the judgment, as well as, the head of execution did not regulate the scope of this authority, the limits of this interpretation and the legal effect resulting from the court exceeding its authority in interpretation (Al-Mashhadani, 1994).

Section one: The jurisdiction of the interpretation of ambiguous judgment

In the event of a judgment being appealed, the jurisdiction to interpret the ambiguous judgment is transferred to the Court of Appeal. Thus, if the Court issues a judgment that includes a confirmation of the judgment of the court of first instance, it becomes liable for the interpretation of the ambiguity. However, if such court cancels or amends the judgment in a way that revokes the ambiguity, so there is no need to interpret it. But, if it amends or cancels the decision and issues a judgment that contains ambiguity, then it shall have the jurisdiction to interpret it in accordance with the general rule.

Section Two: The period for requesting an interpretation of a judicial judgment

The Submission of request to interpret a judicial judgment shall not be restricted to a specific time period, as well as it shall not require paying any fees (Al Hammadi, 2003). In addition, the judgment issued by interpretation is considered complementary to the judgment it interprets, and therefore the same rules regarding ordinary and extraordinary procedures of appeal shall be applied on the original ambiguous judgment as well as the interpreted ambiguous one.

Conclusion

Given that the provisions of interpreting judicial judgment in the Jordanian Code of Civil Procedure represent a practical necessity in making the ambiguous judgment issued by the court naggable. Moreover, the Chief Executive Officer is obliged – according to the execution law- to request clarification from the court (issued the judgment) about the ambiguity. But this shall not replace the importance of the provisions for interpreting and regulating the judicial judgment in the civil law.

The researcher concluded that the legal regulation of interpretation provisions regards a judgment tainted with ambiguity shall include granting the right to request interpretation to the parties and to the court issued the judgment, and that the court shall always have the jurisdiction to request interpretation, with the necessity of complying with interpretation provisions that prevent it from exceeding its powers in interpretation, to the extent of amending the judgment issued by the court.

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