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**CONDITIONS OF COMPULSORY
SALE AND THE RIGHT TO BE
COLLECTING**

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Abstract

The large number of daily transactions of individuals among themselves entails the emergence of indebtedness relations, as the original obliges the debtor to fulfill his debt as soon as it matures if the debt is due to be performed, but in the event that the debtor refrains from paying his debt in satisfaction, the creditor has the right to resort to the judiciary to require his right forcibly and this is called forced execution, as its procedures are not initiated except in the event of failure of amicable implementation by the debtor's refusal to perform his obligation, as the law distinguished the forced sale of the property from Forced sale of movables, where the forced sale of the property is characterized by several procedures and formalities compared to the movable, due to the importance of the property and the need to preserve it, as the creditor with the right to fulfill his right starting from the debtor's money represented by his movables, if his movables are not sufficient to meet the debt, it is executed on the debtor's property. The initiation of forced sale procedures for funds, whether real estate or movables, requires the existence of certain conditions in

those funds in order to be sold through public auction, converted into money, and distributed the proceeds to creditors to fulfill their rights through them and according to the rank of each debt.

Keywords: *Forced sale, Attachment, Ownership, Money, Creditor, Debtor*

INTRODUCTION

If the debtor refrains from doing so, he is forced to perform it with the intervention of the public authority that has been authorized by law to force the debtor to fulfill what he owes in order to achieve the right and administer justice, as it is not possible for a person in a state that complies with the law to impose his right in his own hands, without taking into account what was taken by the texts and laws of that state, so the owner of the right He needs to resort to the judicial authority in order to obtain a judgment proving his right to confront his debtor and also need an authority competent to implement this judgment, as these authorities, at the request of the creditor, carry out several procedures in order to put the debtor's sufficient funds to pay his debts under penalty of the law by seizing them and selling them through public auction to ensure that they are sold at the highest possible price and not to exploit the debtor's financial situation and take his money at a low price that does not suit its value, as these procedures are applied With certain conditions determined by the law may not be violated, as the law prohibited the seizure of certain funds taking into account the public interest or private interest related to the debtor, whether these funds are real estate or movables, and if these conditions are met, the creditor can under the supervision of the judiciary to implement the debtor's funds, sell them, convert them into money and obtain his money from rights through them.

The importance of the subject lies in knowing the most important conditions that must be met in the money to be executed, whether it is real estate or movables, and knowing the money that the law prevented seizure and

implementation of and the reason for that prohibition, as well as the most important legal texts that showed these conditions in Iraqi law and comparing them with what was stipulated by French laws and Egyptian and Jordanian laws and employing these conditions on the ground in knowing the role of the judiciary in dealing with this issue.

The problem of the study lies in the research in the statement of the legal conditions that must be met in the real estate and movable in order to be implemented and forced sale, because of the great importance of this subject at the practical level in the courts for the large number of borrowing and indebtedness at the present time, which makes the creditor resort to requesting seizure and forced sale of debtor funds, to fulfill his right of value after a series of legal procedures to refrain the debtor from fulfilling his obligation consensually.

Research Objectives:

The research aims to:

- 1- Statement of Definition of Forced Sale
- 2- A statement of the most important conditions that must be met in the debtor's funds, whether real estate or movables, in order to seize and sell them in the public auction for the purpose of converting them into money so that the creditor can fulfill his right through them.
- 3- Statement of the most important conditions of the right to be required in forced sale
- 4- Statement of the funds prohibited from seizure and the reason for the prohibition
- 5- Explaining how to apply legal texts at the practical level by clarifying the most important judicial decisions and court orientations.
- 6- Shedding light on the position of the Iraqi legislator and comparing it with the position of the French, Egyptian and Jordanian legislators.

Research Methodology:

In this study, the researcher followed the descriptive approach by analyzing the legal texts regulating the implementation and forced sale with regard to real estate and movable and the provisions of the judiciary regarding the subject of research and comparing them in Iraqi law with French law and Egyptian and Jordanian law in the places that require us to compare this, and what those laws have directed and the similarities and differences between them and Iraqi law.

Research Plan:

The first topic: the conditions of forced sale

The second topic: the conditions of the right to be required

THE FIRST TOPIC: THE CONDITIONS OF FORCED SALE

Forced sale The process of selling money through public auction¹ in order to liquidate the reserved money to fulfill the owners of rights in the executive transaction and the distribution of the proceeds resulting from the sale process among them², and the forced sale is carried out in accordance with certain conditions stipulated by law³, and the importance of forced sale in practical life we must learn about these conditions, as the forced sale of funds, whether real estate or movables, requires a set of conditions that we will address in the following demands:

¹ Dr. Gamal Ahmed Heikal (2018) Forced execution in the law of civil and commercial procedures (a comparative study) Dar Al-Fikr University, Alexandria

² Dr. Al-jubouri·Ahmed Samir Muhammad Yassin (2014)· The Legal Regulation of Forced Sale in the Execution Law(A comparative study)· Research published in the Journal of the Faculty of Law·Kirkuk University·Issue 11

³ Al-Saady Dr. jalil Hassan Bashat, M. M. Nawras Abbas Mohsen Al-Aboudi (2018), Cases of Forced Real the arab center implementation within the scope of defective implementation of contractual obligation. <https://democraticac.de/?p=52867>

THE FIRST REQUIREMENT: THAT THE SALE BE A FINANCIAL RIGHT

If the debtor buys an amount of grain of an unspecified amount and has the right to receive these grains from the seller without having a financial right to own them, the debtor's right to receive it is considered just a legal bond between the debtor and the seller, without being a right on the thing and therefore it is not subject to forced sale⁴.

Money can be real estate or movables related to the debtor and owned by him, and what is meant by money in the law is every eye or right has a material value in dealing, the implementation leads to the expropriation of these rights from its owner for the benefit of the positive party (creditor), whether the right in kind, the right to lease for the commercial shop is one of the financial elements that may be disposed of and therefore may be seized⁵, as well as the matter for the commercial shop with its material and moral elements (fame and trade name)

On the other hand, non-financial rights should be excluded from the Department of Enforcement and Forced Sale, so it is not permissible to seize the rights attached to the person of the debtor, such as copyright, and it is not permissible to seize the right to name, private letters, patents or trademark⁶.

⁴ Dr. Ben Amer, Gatekeeper, Lectures on Methods of Implementation, Faculty of Law and Political Science, p. 48, research published on the website <https://Moodle.Niv-medea.dz>
Date of visit 13/5/1923

⁵ Al-Kalabi Prof. Dr. Hussein Abdullah Abdul Redha, M.M. Parwin Mahmoud Muhammad (2021), Revocation of the contract, tikrit University Journal of law, Sunnah (6), volume (6), Issue (1), part (2), Research. <https://www.iasj.net/iasj/download/166c7b0af60ba854>

⁶ Dr. Wali, Fathy, (1964), Forced Execution in Civil and Commercial Matters, Modern Cairo Library, Faculty of Law, Cairo University, Egypt, p. 159.

THE SECOND REQUIREMENT: THAT THE MONEY BE SEIZED

Attachment means putting movable or immovable money under the hands of the judiciary ⁷ with specific procedures to refrain from its owner from disposing of it, either by waiting for the result of the lawsuit or to sell it according to the type of attachment so that the barrier can fulfill his right⁸ and the reason for the seizure is the debtor's refusal of what he voluntarily ⁹ committed to, which leads the creditor to review the Execution Department and request the requirement of the obligation forcibly for the debtor, so we are in front of the case of executive attachment signed by the Execution Department and it alone has the right to inflict it, which is the competent reference in settling each dispute. It is related to its legality and procedures, but if the creditor does not have an executive bond, it is necessary to review the judiciary to establish his right and obtain a judgment on it, and this may be prolonged, which makes the legislator

allow, before obtaining the executive bond, to cast a precautionary attachment on the movable and real estate funds of his debtor, and through him freezes these funds and prevents the debtor from disposing of them in a way that would harm the creditor's right. Pretrial attachment shall be converted into executive attachment after placing the judgment issued in the Execution Department when the provisional attachment is turned into executive attachment by virtue of the judicial decision¹⁰.

⁷ Dr. aleabuwdi eabaas (2022) Explanation of the provisions of the amended implementation law By Law No (13for a year2019 (A comparative study)Al-Sanhouri Library, Beirut,p.174

⁸ basaam saeid jirijir(2011) Rules for distinguishing between a penal condition and a threatening fine, Master's thesis submitted to the Faculty of Law, Middle East University,p.23

⁹ Dr. alkhalidi hamid sultan,luyi stam hamud, The discretionary power of the judge to grant a judicial deadline in an enforcement cas, Journal of Legal Sciences, University of Baghdad Dol:<https://doi.org/10.35246/jols.v34i5.307>

¹⁰ Almuhami Al-Hajjar, Helmy Mohammed, (2003), The Origins of Forced Execution (A Comparative Study), 2nd Edition, Al-Halabi Human Rights Publications, Lebanon, p. 491.

But if the creditor has an executive bond, he can resort to executive attachment on the movable and immovable debtor funds except what the law exempted by a legal text, and sells these funds to fulfill his fixed right to the executive bond of the price of what has been sold, and the legislator has set special provisions for implementation on the debtor's funds according to the type of movable or real estate money¹¹.

Iraqi law stipulates that the seizure of the debtor's funds is an executive seizure and the executive attachment is defined as the seizure signed by the creditor who possesses an executive bond on the money owned by the debtor in order to put this money under the hands of the judiciary in preparation for its sale and the creditor's payment of his right from its price¹² and the executive reservations prescribed in the Execution Law are the following reservations:

- 1- Seizure and sale of movable property
- 2- Attachment of the debtor's property with third parties
- 3- Withholding salaries and allowances Booking and selling the property

The person in charge of the reservation before placing the executive attachment must verify that the place of attachment is the place of residence of the debtor and that the funds required to be seized are his property and not among them money may not be seized, it is not permissible to implement the attachment if it is supported by a paper certified by a notary public selling the attachment before placing the attachment or if it is proven by the official documents that the seized money does not belong to the debtor, and it is worth noting that if the seizure transaction was made in the debtor's place of residence and it was found that he was seizing the money to be seized, his hand was considered A sufficient argument on the ownership of these funds and the validity of the attachment and does not consider in this case what may be supplied by the debtor or others of

¹¹ Meknes, Jamal Al-Din, (2018), *Principles of Implementation*, Syrian Virtual University Publications, Damascus, p. 91

¹² Al-Nadawi Adam Wahib (1984) *Provisions of the Implementation Law*, first edition, Baghdad University Press

objections in order to exclude some or all of the funds from the attachment and the objection if it occurs is a reason for delaying the attachment unless the debtor or third party provides a fixed date or a decision issued by a competent court to delay the implementation, and the person in charge of attachment when implementing the decision of attachment is satisfied with the seizure of funds whose value is paid debt, expenses and interest on The seizure of part of the seized funds shall not be lifted until after the completion of the sale process and the sufficiency of the value of the sold section to pay the debt and its accessories, and the debtor may appeal to the executor of justice and request the lifting of the attachment of the funds that do not need to be seized, and this is what the Iraqi legislator referred to in the Implementation Law No. (45) of 1980¹³. Article (60) of the same law has indicated that "the creditor shall pay in advance all the expenses that should be disbursed for the sake of seizure and sale, provided that they are collected for him later. If the applicant for attachment is unable to pay the said expenses or apologizes for paying them in whole or in part, or the debtor also refrains from paying them and it is not possible to delay the expenses until the result of selling the apparent funds to be seized, the execution shall be delayed until the expenses are paid¹⁴.

Article (39) of the Jordanian Execution Law No. 25 of 2007 "The garnishee has in all cases to deduct from the debtor's money the amount of expenses he spent at the discretion of the president."

The executive seizure aims to achieve two purposes: The first / determine the money that will be sold forcibly because all the debtor's money is considered a

¹³ Article (56) Iraqi Execution Law No. 45 of 1980, where it stipulates that "if the debtor's funds are multiple, sufficient amounts shall be seized from them to meet the debt and expenses."

¹⁴ Prof. Dr. Mubarak, Saeed, (2017), Provisions of the Implementation Law No. (45) of 1980, Legal Library, Baghdad, p. 184.

guarantee for the creditor and can be implemented and this is the general rule¹⁵, but the forced sale is on a specific money and the task of seizure is to determine that money, either the second purpose is to restrict the authority of the debtor that he has on this money so that the creditor can fulfill his right from it and requires the rhythm of the executive seizure the availability of several conditions, including the deposit of the execution bond to the competent authority for forced sale Submit a request to seize the property and the money must be owned by the debtor¹⁶.

The seizure is also initiated at the request of the creditor and by a decision of the executor of justice, but the mere issuance of the decision does not make the seizure an actual reality, but it must be implemented by one of the employees of the Execution Department in order for the concerned parties to know about it and the provisions of the attachment are applied against him, otherwise there is no judgment or benefit for an imminent seizure decision¹⁷.

The executor of justice, after issuing the seizure decision, may implement it or appoint one of the employees of the Execution Directorate to do so¹⁸.

As for the reason for preventing persons who have a relationship or kinship with one of the parties from attending during the seizure, it is for the purpose of not

¹⁵ Al-Khalidi Dr. Hamid Sultan, Prof. Dr. Louay Sattam Hammoud (2019), The judges discretionary Power in determining the judicial period in the enforcement case, journal sciences volume 34, Issue5.

DOI: <https://doi.org/10.35246/jols.v34i52019>. Research published on the website.

¹⁶ Al-Halfi, Ali Jassim Mohammed, (2021), Forced sale of real estate (a comparative study), Master's thesis submitted to the Faculty of Law, University of Babylon, p. 35

¹⁷ Article (63) of the Iraqi Execution Law

¹⁷ Al-Khalidi Dr. Hamid Sultan, Prof. Dr. Louay Sattam Hammoud (2019), The judges discretionary Power to grant a judicial deadline in an execution lawsuit, research published in the journal of the college of law, university of Baghdad on the website

DOI: <https://doi.org/10.35246/jols.v34i5.307>

¹⁸ Article (28) of the Iraqi Execution Law article (29).

helping the seized person to smuggle his money and to avoid the expected damage caused by the presence of the concerned parties during the seizure transaction¹⁹.

If the seizure of his funds is required from the military, the employee in charge of the seizure must inform the commander of the site where the military works before the execution of the seizure, and the commander must send one of the militaries with him to implement the decision.

The executing officer may visit the nearest police station to pay resistance or violation during the performance of his duties or to use force when necessary to terminate the executive transactions and the official at the police station shall comply with his request and otherwise shall be punished by law.²⁰

It should also be noted that the executing officer must refrain from everything that would cause damage to the money to be seized, as is the case if the bailiff breaks the doors or uses the excessive force that leads to damage to the debtor's money, and this is what the Egyptian legislator took in the Civil and Commercial Procedures Law²¹ . and the Jordanian legislator in the Execution Law²² .

With regard to the minutes of attachment, the person in charge of the seizure must organize a record in which the place of attachment, its date, the names of the persons who attended and the manner in which the seizure was summoned on his property, gender, type and amount in a manner that prevents its replacement and denies ignorance.

As well as he must record in the record the procedures taken by him to save these funds, maintenance and guarding and the place of preservation and the name of the person who pledged to maintain them and his address, this must be

¹⁹ Brikh Nasira (2021) Executive seizure procedures in accordance with Algerian legislation, Master's thesis submitted to the Faculty of Law and Political Science, Abderrahmane Mira University ,p.6

²⁰ Article (356) of the Egyptian Civil and Commercial Procedures Law No. 13 of 1968,

²¹ Article (43) of the Jordanian Execution Law

²² Eid Rahim (2018), The privilege of the seller of movable property in Iraqi law, research published in Al-Muhaqqiq Journal for Political and Legal Sciences, third issue, tenth year

the minutes of seizure on a degree of care in a way that is not scratching or writing off and if necessary written off in thin line and shows it in the footnote, but if the need arises to add something to it, it writes it and signs it attendees, and this is shown by the Egyptian legislator within the provisions of the Civil and Commercial Procedures Law ²³.

work that is in favor of the employer have direct recourse to him with their rights owed by the original contractor and they also have in the event of attachment by one of them on what is under the hands of the employer or the original contractor a privilege on the amounts due to the original contractor or the second contractor at the time of signing Reservation²⁴, but this privilege is also for each of them in proportion to his right and may pay these amounts to them directly, and the rights of the second contractor and the workers mentioned above, be ahead of the rights of the contractor waives his right before the employer, but there is another case not provided for by Arab laws, which is (serial subcontractor) and stipulated by Article (2) of the French law (1975), where it says: ((The subcontractor is considered a basic contractor towards his subcontractors)) ²⁵ however the Arab jurisprudence dealt with this situation as we believe in the French text, where they argued that the second subcontractor in the serial contracting has the right to file a direct lawsuit, but it is not filed against the original employer, so there is no recourse against the latter, but it is filed against the original contractor as the employer of the first subcontractor:

The French Execution Law has regulated seizure and its conditions in Articles (50 to 55) of Law 650 of 1991 as well as in Articles (81 to 133) of Decree 755 of 1992 issued on June 31, 1992, where the French legislator made improvements to

²³ Article (328) of the Egyptian Civil and Commercial Procedures Law, Article (353) of the same law.

²⁴ Al-Wasif Aya, Introduction to Franchise Rights According to Civil Law, research published on the website, date of visit 13/8/2023 <https://www.mohamad.net>

²⁵ Ahmed, Ikhlas Rasoul, (2015), The Executive Sale of the Movable (A Comparative Study), Egyptian House of Books, Egypt - UAE, p. 68.

these articles to the seizure procedures to ensure the speed and effectiveness of the seizure and at a lower cost²⁶.

It is worth noting that attachment procedures in French law are characterized by flexible and short procedures aimed at accelerating and not postponing the creditor's access to his right, unlike other laws under study, where they are complex and prolonged. The Jordanian legislator has clarified the conditions of the minutes of attachment and what can be included, including the mention of the executive bond and the place of attachment and the procedures carried out by the bailiff²⁷, and it should also be noted here that the original when placing the attachment is the presence of both the creditor and the debtor because.

the creditor is the one who guides the person who attaches to the money to be seized²⁸, and the debtor often has some objections made when attachment may affect the execution decision, but the legislator often authorized the implementation in the absence of the two parties or one of them if it is not possible to bring them during the seizure, or for the possibility of undesirable results such as the attempt of the barrier to degrade the dignity of the garnishee on his money or the latter's attempt to take revenge on the barrier and this is what is shown in Article (64) of the Iraqi Execution Law, where it stipulates that "execution may be carried out in the absence of the seizure applicant, or the person who is seized on his funds."²⁹

Among the most prominent effects of seizure of funds, whether real estate or movables, are the following:

²⁶ Dr. Mahmoud Mukhtar Abdel Mugheeth Muhammad, *Modern Trends in the New French Implementation Law According to its Latest Amendments*, Helwan Law Journal for Legal and Economic Studies, Alexandria, p. 185

²⁷ Article (45) of the Jordanian Execution Law

²⁸ Al-Kalabi Prof. Dr. Hussein Abdullah Abdul Redha, M.M. Parwin Mahmoud Muhammad (2021), *Revocation of the contract*, tikrit University Journal of law, Sunnah (6), volume (6), Issue (1), part (2), Research. <https://www.iasj.net/iasj/download/166c7b0af60ba854>

²⁹ Al-Tahwi, Mahmoud Al-Sayyid Omar (2001), *Forced Sale of Real Estate and Administrative Seizure*, University Press House, Egypt. p. 110.

First: The attachment does not remove the debtor's ownership of the seized funds³⁰, and therefore they remain his property, despite the attachment on them and until they are sold.

Accordingly, the debtor shall take all necessary measures and measures to preserve his property, such as filing a lawsuit for recovery of possession, and in the event of selling the seized money and distributing its price to the creditors, what is increased from it belongs to the garnishee.

Second: The attachment and the imposition of custody would be to remove the possession of the debtor from the seized money that belongs to the dis trainer and to all creditors participating in the attachment and this possession is exercised on behalf of these receiver who cannot be considered a possessor, because the intention of the

receivership, which is a material procedure, is to prevent the disposal of the seized money or its smuggling³¹.

Third: The debtor whose funds are seized shall be entitled to benefit from the proceeds of the seized money within the limits of what is sufficient to sustain him and the subsistence of those who are legally charged with spending on it for a month, while the rest shall be reserved for the benefit of the dis trainer creditors.

Fourth: Since the attachment does not expropriate the property of the garnishee, but restricts his disposal of it, if the judicial receiver disposes of it or perishes in his hands, the dis trainer may demand the seizure again on other funds of the garnishee until he fulfills his right, even if the previously seized funds are sufficient to pay the debt or exceed it³².

³⁰ Lawyer Marwa Abu Al-Ela, a brief study on the distribution of funds obtained from executive seizure in accordance with Egyptian law, research published on the website. [https:// w.w.w.mohamad.net](https://w.w.w.mohamad.net) Date of visit 9/8/2023

³¹ Lawyer Al-Rubaie Juma Saadoun, Guide to the Provisions of Eliminating Communism, Legal Library, Baghdad, p. 26

³² Meknes, Jamal al-Din, op. cit., p. 164.

THE THIRD REQUIREMENT: THE MONEY MUST BE OWNED BY THE DEBTOR

The reason for this condition is that the debtor must ensure the performance of his obligations with his money and not with the money of others³³. In addition to the fact that the implementation on the money of others is an assault on his right, where the Directorate of Implementation is committed to ensure the debtor's ownership of the money to be seized and sold before taking the decision to seize this money and in order to work this rule, the directorates of implementation used to put a precautionary condition in the decision of seizure that they issue, and for example, if the Directorate of Execution or the competent authorities decide to put the seizure on a car and at the request of the creditor, they notify the competent traffic directorate to put the seizure on the registration of the car Whether it is registered in the name of the debtor or not, and this is what the judiciary went to³⁴, as the Baghdad Court of Appeal decided in one of its decisions that "upon scrutiny and deliberation, it was found that the discriminatory appeal was submitted within the legal period, so it decided to accept it in form and upon consideration of the distinguished decision that includes placing the executive attachment on the car numbered 41682 / Baghdad taxi. Ratification of the distinguished decision and the dismissal of discriminatory appeals, and the discharge of the distinguished fee of cassation³⁵ .

The same is the case for real estate where if the creditor requests the reservation of a property on the pretext that it belongs to the debtor and this

³³ Dr. Al-Bashir Muhammad Taha, Dr. Ghani Hassoun Taha (2016) *Subsidiary Real Rights*, Beirut, Dar Al-Sanhouri

³⁴ Dr. Abdul Rahman Hoda Muhammad (2023), *Rights and Obligations of the Parties to a Partnership Contract*, Journal of Legal Sciences, Volume 38, First Issue, College of Law, University of Baghdad [Dol:https://doi.org/10.35246/jols.v38.1](https://doi.org/10.35246/jols.v38.1)

³⁵ Discriminatory Decision No. 848/Execution/1988, issued by the Baghdad Court of Appeal on 1/11/1988, quoted by Judge Al-Mahmoud, Medhat, (1992), *Explanation of the Execution Law No. (45) of 1980*, Legal Library, Baghdad, p. 123.

property does not belong entirely to the debtor, but he owns common shares in it, these shares are the ones that must be seized and not the entire property³⁶

- 1- This is what the Baghdad Court of Appeal went to in its discriminatory decision, which stipulated that "upon scrutiny and deliberation, it was found that the correction request was submitted within the legal period, so it decided to accept it in form, and upon consideration of its subject, it was found that it requires the correction of the discriminatory decision based on the provisions of Article (219) of the Civil Procedure Law, after the applicant stated that the plot of land subject to executive seizure had been registered before the seizure was imposed on it by the Execution Directorate in the name of a person other than the debtor. It is necessary to investigate that payment decided to accept the correction of the discriminatory decision issued by the court No. 79 / implementation / 1989 dated 3/12/1988 and the return of the file to conduct an investigation into the belonging of the plot and to know the date of attachment and the date of transfer of ownership and the application of the provisions Article (55) of the Execution Law, which may seize the debtor's money and not the money of others, provided that the cassation fee remains dependent on the result "

Thus, it is permissible to seize the funds owned by the debtor unless they are funds excluded by the legislator by a special text³⁷ According to the provisions of Article (62) of the Iraqi Implementation Law No. 45 of 1980, where it stipulates that "it is not permissible to seize or sell the funds described below in exchange for debt: First, state funds and the socialist sector, second, funds and objects properly endowed, third, sufficient for the debtor's livelihood and his dependents from his imports. Fourth, household furniture necessary for the debtor with his family members, unless the debt arises from its price. Fifth: Machinery and tools necessary for the debtor to practice his craft or profession, unless the debt is

³⁶ Dr. Hashish Ahmed Muhammad (1998) Elements of coercive executive power in the Code of Civil Procedure, Dar Al-Nahda Al-Arabi, Egypt, page 294.

³⁷ Dr. Ahmed Khalil (2006) Forced Execution, Al-Halabi Legal Publications, Faculty of Law at the Universities of Alexandria and Beirut, page 469.

arising from its price Sixth, the necessary provisions for the subsistence of the debtor and his family members for one month Seventh, books on the debtor's profession Eighth, the number of tools of the farmer and farmer for agriculture necessary to practice his work, the seeds he saves for planting, the fertilizer prepared for the repair of the land, the animals used in agriculture, and what is sufficient for his living with his family from his land crops and the materials necessary for his livelihood for one month Ninth, fruiting, vegetables and land crops before they have a material value Tenth more than one fifth of Salary and allowances, including cost of living allowances, received by the employee, the soldier, the policeman, the worker, the worker and anyone who receives a salary or wages from the state Eleventh Sveti, order bonds and other negotiable commercial papers Twelfth Author effects, pictures, maps and other paintings before printing.

But if the effect is intended to be offered for sale in its condition set by the author, it may be reserved thirteenth distinctive mark, commercial address, patent and industrial model fourteenth the debtor's home or his dependents after his death and is considered an allowance for the sale of the house or an allowance for its acquisition for the public benefit by virtue of the dwelling, and the common share of the dwelling and the land prepared for the establishment of a dwelling on it by virtue of the dwelling is also considered However, if the dwelling is mortgaged or the debt arises from its price, it is permissible Attachment to pay the mortgage allowance or the fifteenth price of the debtor's property who lives from his revenues that do not exceed his need and the need of those he supported after his death. If the property is mortgaged or the debt arises from its price, it is permissible to seize and sell it to meet the mortgage or price allowance.

Sixteenth real estate by allocation except according to the property to which it was allocated Seventeenth - housing unit allowance or the amount of compensation disbursed to the families of the martyr in accordance with the Martyrs Foundation Law No. 2 of 2016 if it is allocated for housing and the

beneficiary does not have a residence on the face of independence, eighteenth - funds of foreign embassies and diplomatic bodies, nineteenth - social protection salary "

Thus, the Iraqi legislator showed funds that may not be seized despite the debtor's ownership of them, and this is contrary to the general rule, where the creditor may seize whatever he wants from the debtor's funds, and thus it is practically not enough for the possibility of seizure that the money to be seized is owned by the debtor³⁸, but in addition to that, it must be permissible for the legislator to seize it because the legislator may prevent the seizure of these funds, either taking into account a private interest or a public interest ³⁹.

The existence of the text preventing the attachment is not on the debtor's shoulders because this is a legal issue that is aware of the affairs of the judge, but it is on the debtor to prove that the required seizure of the funds that the legislator has prevented the implementation of and this rule is excluded from the principle established in the Civil Law and the judge as (the debtor's funds are all guarantors to meet his debts) Also, the cases of inadmissibility of attachment are contained in the law exclusively, and therefore the will of the debtor to prevent the seizure of some of his funds is not considered unless the law so approves it, the law is the origin of prevention and the will of the debtor is not enough alone to decide that if not recognized by the legislator because the original permissibility of seizure of all funds owned by the debtor. It follows from the foregoing that if it is proved to the executor of justice from the evidence presented to him by the objecting debtor that the seized funds are funds that cannot be seized, he must decide to lift the attachment thereof.

³⁸ Al-Amine Charfi Mohamed (2020) Forced Execution of Movables, Master's Thesis Submitted to Abdelhamid Ben Badis University, Faculty of Law, Algeria, p. 84

³⁹ Dr. Al-Ansari Hassan Nidani (2009) State actions in forced execution between the execution judge and the execution department, New University House, Abha University, Alexandria, p. 204

It is noted that paragraphs (19,18,17) of Article (62) of the Iraqi Implementation Law have been introduced and added to the funds that may not be seized under Article 10 of Law No. 13 of 2019, the sixth amendment to the Implementation Law No. 45 of 1980, which added three paragraphs to the provisions of Article (62) of the Implementation Law.

French law has also stipulated the seizure of funds that are owned by the debtor, where the ownership of the money to be seized must belong to the debtor for the purpose of selling it by public auction⁴⁰ because the seizure of funds not owned by him makes the attachment invalid and others can file a claim of entitlement⁴¹. The Egyptian legislator has also indicated that it is not permissible to seize certain funds taking into account the public and private interest related to the debtor and society, within the provisions of the Egyptian Civil and Commercial Procedures Law. However, at the same time, the competent authority for execution and forced sale may not consider the return of the funds if the attachment of the seized property is lifted based on a reconciliation that has been made between the parties in the event of a dispute and dispute⁴² the return of the funds if the attachment of the seized property is lifted based on a reconciliation that has been made between the parties in the event of a dispute and dispute(1) over the ownership of that property, because in this case the decision in this regard is within the jurisdiction of the courts. Where the Baghdad Court of Appeal ruled in its discriminatory capacity⁴³.

⁴⁰ Règlement Intérieur National de la profession d'avocat - RIN ' 1440-Saisie immobiliere.qxp:INC document - Conso.net

⁴¹ Muhammad Rasul, lkhas-previous sours- p.64

⁴² Al-Sawy, Sayyed Ahmed (2005) Implementing Al-Jabri in Civil and Commercial Matters, Dar Al-Nahda Al-Arabiya, Egypt, Cairo.

⁴³ Article 305, Article 306, Article 307 of the Egyptian Civil and Commercial Law of Procedure. This is also what the Jordanian legislator has adopted¹ within the provisions of the Implementation Law No. (25) of 2007 (1) Article (27) of the Jordanian Implementation Law, Article (28) of the same law

- 1- "that the distinguished decision is contrary to the law because the Execution Directorate has taken its decision to place the attachment of the debtor's funds at the request of the creditor, and since the creditor has attended before the Execution Directorate and requested the lifting of the executive attachment, the Directorate had to take a decision to lift the attachment without entering into the details of the furniture belonging, and if there is a dispute over the ownership of the furniture, the relevant parties can review the competent court to prove what they claim and the Execution Directorate does not intervene as a party to this dispute Accordingly, the court decided to overturn the decision and return the file to the Directorate of Execution for action in accordance with the foregoing, "It is also not permissible to place attachment on a property belonging to the debtor's heir under the pretext of the existence of a share of the debtor in that property as long as this share has not yet been registered in his name in the Directorate of Real Estate Registration and as long as there is a dispute taking place regarding it and it is still before the courts, and it is also not permissible to seize the amount of compensation awarded to the debtor's heirs due to the death of their heirs in a car accident because the amount of compensation awarded It is for the heirs of the debtor is not
- 2- considered from the debtor's estate, but it is a reparation for the material and moral damage suffered by the heirs as a result of their loss to the debtor. Thus, we see that there are funds owned by the debtor, but it is prohibited by the legislator to seize them for the requirements of the public interest or for a private interest, and this prohibition has been stipulated by different laws as we have seen previously. This reference must be placed if the property is owned by the debtor, whether it is owned by a benefit or a neck, as is the case in some agricultural lands whose neck belongs to the state and the right of benefit in it to persons, but if the property to be seized does not belong to the debtor, the Directorate of Real Estate Registration refrains from placing the attachment sign on it⁴⁴ and this is what

⁴⁴ Al-Halfi, Ali Jassim Muhammad, previous source, p. 32

Article (54) of the Iraqi Implementation Law referred to "The judgment or the executive editor shall be executed by handing over a certain amount or something by virtue of the debt by reserving enough to pay it from The debtor's money with expenses and fees and then sell it in accordance with the provisions of this law."⁴⁵

Also, the Egyptian legislator has stipulated that the seizure of the funds owned by the debtor and thus may not be seized if they are owned by a non-debtor and must be the debtor's ownership of the money at the start of implementation⁽²⁾, if the money enters the debtor's custody during the forced sale procedures, the attachment is invalid.⁴⁶

In Jordan, Article (58) of the Jordanian Execution Law indicated, "The bailiff shall seize the debtor's funds wherever they are found after verifying his ownership of them equivalent to the value of the debt, its interest and expenses, even if it appears that the place where the objects are to be seized is not the place of residence of the debtor or it becomes clear to him that others other than his children reside therein, and if it appears to the bailiff that these things belong to a person other than the debtor, he shall refrain from seizing them and he must organize a record of the situation to be submitted to the president."

Thus, the money must be owned by the debtor at the time of the executive seizure procedure and not at the time of the creation of the debt or the filing of the lawsuit, as for the money if it is a property, it may not be seized unless it is registered in the competent department, if it is not, the seizure is invalid and the basis for this is that the ownership of the property is transferred by registration

⁴⁵ Alwan Kawthar Abdul Hussein (2021), *Guarantee in Forced Sales (Comparative Study)*, Master's Thesis Submitted to the College of Law, University of Babylon, p. 7

⁴⁶ Article 305, Article 306, Article 307 of the Egyptian Civil and Commercial Law of Procedure. This is also what the Jordanian legislator has adopted within the provisions of the Implementation Law No. (25) of 2007 (Article (27) of the Jordanian Implementation Law, Article (28) of the same law).

and before that the property is considered the property of the seller, so the debtor's ownership condition is not achieved⁴⁷.

THE SECOND TOPIC: THE CONDITIONS OF THE RIGHT TO BE REQUIRED

Article (13) of the Iraqi Execution Law stipulates that "the right to the executive editor must be known, due and not pending on the condition and was not contrary to public order and morals," and the French legislator has taken in Article (322-5) of the Forced Execution Law the need for the creditor to possess an executive bond that proves the right of the investigator of existence and the state of performance and free of conflict, as the creditor must possess an executive bond in which all of the above is proved, and the execution judge must make sure On his own accord, but it is not permissible for him to raise on his own the issue of the prescription of the right of fixed execution in favor of those who initiate the execution procedures⁴⁸.

The Egyptian Civil and Commercial Procedures Law has stipulated in Article (325) thereof that "every creditor with a debt verified existence upon performance may seize what is for his debtor"⁴⁹

⁴⁷ Dr. Mohamed Abu Talib, Hamed, (2005), *Forced Execution*, without name for the publisher or the name of the printing press, Cairo, p. 127.

⁴⁸ Dr. Mohamed, Mahmoud Mokhtar Abdel Moghith, (2021), *Recent trends in the new French implementation law according to its latest amendments issued by Law No. \Economic Studies, Egypt*, p 202

⁴⁹ These conditions are stipulated by the Kuwaiti legislator in Article 190 of the Civil and Commercial Procedures Law No. (38) of 1980, and the UAE legislator in Article 225 of the Civil Procedure Law No. (11) of 1992 - and the French jurisprudence requires these conditions, which are implicitly deduced from Article 2213 of the Civil Law and Article 551 of the French Law of Procedure (Azmi Abdel Fattah Attia - *Rules of Forced Execution - Dar Al-Nahda Al-Arabiya*, 4th Edition, Kuwait, 1984, p. 160), see Article (VIII/1) of the Palestinian Execution Law No. 23 of 2005

As stipulated by the Jordanian legislator in Article VI of the Jordanian Implementation Law No. 25 of 2007 "may not be executed except by an executive bond as a requirement for the right of the investigator of existence and a certain amount and the status of performance and includes executive bonds the following"

It is clear in these texts that the right to be required requires the availability of several conditions and must include a legal confirmation of a specific right and in a specific form⁵⁰, and the assessment of the availability of these conditions falls within the limits of the authority of the Court of First Instance when its judiciary is based on permissible reasons and these executive conditions should be available in the same executive bond and if the executive bond is a provision it is possible to extract these conditions from the operative part of the provision⁵¹.

and address them in four sections, the requirement is that the right is realized, the second requirement is that the right be of a certain amount, the third requirement requires that the right be upon performance, and the fourth requirement requires that the right not be contrary to public order and morals.

THE FIRST REQUIREMENT: THAT THE TRUTH BE REALIZED

The right is verified if this right is certain and not disputed, if the existence of the right is not certain, it is not the investigator of existence and may not be implemented forcibly, for example, to be pending on a standing condition that has not yet been achieved or the right prescribed in the bond is a temporary right that is not final or be a probabilistic right, and if the right is disputed it is not achieved existence, and we do not mean the absence of the right to dispute the absence of

⁵⁰ Okasha, Abdel Hakim, (1998), forced execution in civil and commercial matters, part 1, Dar Al-Nahda Al-Arabiya, 1st Edition, Faculty of Law Beni Suf - Cairo University, p 3.

⁵¹ Dr. Hindi, Ahmed (2007), the origins of forced execution New University House Alexandria, p 15.

the debtor's dispute in the right, but we mean Thus, the right is not disputed in the existence of a serious dispute, and that the creditor has the present evidence for it, but if the creditor's right is the subject of a serious dispute from the debtor, it is not the verifier of existence, and since the forced sale is under an executive deed that often includes the confirmation of the right to the creditor, it is on the debtor if he wants to avoid implementation under the pretext that the creditor's right is uncertain to prove this so that the dispute in the right is a serious dispute that prevents implementation, and thus it should be The right is fixed in existence, so it is not permissible to execute the bond if there is a serious dispute regarding the existence of the right and the determination of the seriousness of this dispute belongs to the court and not to the director of execution⁵².

THE SECOND REQUIREMENT: THAT THE RIGHT BE OF A CERTAIN AMOUNT

On the other hand, if the sale is by seizing the debtor's funds⁵³, the required amount must be known because the person responsible for implementation stops the sale of the money if it results in an amount sufficient to meet the attachment for him, fees and expenses, and the right is considered The amount is specified if it relates to a known amount of money or a known amount of certain things of its kind or to a specific thing and if the appointment in these funds is not disputed by the debtor, and the requirement to determine the amount is based on the fact that the debtor has the right to avoid execution procedures by performing what is required of him and that execution by attachment requires the sale of the debtor's

¹ Shosari, Salah al-Din, (2009), *Forced Execution in Civil, Commercial and Sharia Matters*, Dar Al-Thaqafa for Publishing and Distribution, p. 131

⁵³ Al-Ahmad Muhammad Salman, Tahseen Hamad Sumail, Commitment to what is necessary as an idea to embody the element of ethics in law, *Journal of Legal Sciences*, Volume 37, Issue 2, 2022, research published on the website DOI: www.doi.org/10.35246/jols.v37i2

property in an amount sufficient to perform his obligation and to stop selling if his proceeds reach enough to pay the debt of the dis trainer. Accordingly, it is not permissible to implement the judgment that requires the official to compensate if the amount of compensation is not specified, unless it is determined later through the agreement of the parties, and judicial expenses may not be implemented if they are not specified in the judgment and specified in it, and the interested party must review the court to determine the amount of these expenses. Thus, it is important that the right to the executive editor is precisely and clearly appointed to ambiguity, and if it is not known, it is not permissible to implement it⁵⁴.

THE THIRD REQUIREMENT: THAT THE RIGHT BE UPON PERFORMANCE

The legislator required to conduct a forced sale that the creditor's right in the event of performance any due must be fulfilled, if it is pending on a condition or added to the term, it is not permissible to demand its implementation unless the condition is achieved or the term is resolved, and this is due to the fact that the debtor's claim to fulfill his obligation and force him to fulfill this payment is only if the creditor's right is due to performance, but if the creditor's right is deferred, that is, if the right of the debtor's obligation is associated with a term, it may not be forced On execution in accordance with the civil law, unless the deadline comes, the term, whatever its source, prevents forced execution and prevents the infliction of attachment⁵⁵.

As is the case in the bonds of the bill of exchange that mature either on a certain date mentioned in the same bond or due upon claim, if they are submitted before the due date, they do not accept implementation and if they are accepted,

⁵⁴ Dr. Bakr, Esmat Abdel Majeed, (2019), *Explanation of the provisions of the implementation law in the light of the opinions of jurisprudence and judicial rulings*, Sanhoury Library, Lebanon, Beirut, p. 79.

⁵⁵ Alqadhi Al-Mahmoud, Medhat (1992), *Explanation of the Implementation Law No. 45 of 1980*, Legal Library, Baghdad, p 29

the executive measures taken to fulfill the right contained therein are invalid because the initiation of these procedures before the maturity of the term would entail serious effects that harm the debtor and affect his reputation and financial and social status without issuing anything from him that violates the implementation of his obligation⁵⁶, but if Mentioned in the bond two dates for the fulfillment of the first letters and the second in numbers, the lesson is what was written in letters and not in numbers, and this is what the Baghdad Court of Appeal ruled in its decision, where it ruled that "when looking at the distinctive decision, it was found that the point to be solved lies in the answer to the following question: If it is mentioned in the bond for the order (bill of exchange) that the first performance in numbers and the second in letters, then who is the lesson ... Upon reference to the Trade Law No. (30) of 1984, it was found that he did not address this with an explicit text, but rather dealt with a measurable point, which is stipulated in Article (45) first, which includes the following: "If the amount of the transfer is written in letters and numbers together, the lesson is when the difference is what was written in letters" and for the foregoing, and since the date of performance in the two executed bonds has been written once in numbers, which is 10/5/1990 and once in letters, which is when the request, and since the Directorate of Implementation has proceeded in its distinctive decision other than Therefore, he decided to revoke it"⁵⁷ However, it is permissible to execute despite the existence of the deadline in two cases:

First: The term shall be in the interest of the debtor and he shall waive it.

Second: The debtor loses his right to the term for one of the following reasons:

- 1- If the debtor is adjudicated bankrupt or insolvent.
- 2- If he does not provide the agreed insurances.

⁵⁶ Dr. Wali, Fathi, previous source, p. 28.

⁵⁷ Discriminatory decision No. 583/Execution/1990 issued by the Baghdad Court of Appeal on 15/8/1990, quoted by Judge Al-Mahmoud, Medhat, previous source, p. 30

- 3- If the debt insurance is reduced by doing so or he does not take the initiative to supplement them"⁵⁸.

FOURTH REQUIREMENT: THAT THE RIGHT IS NOT CONTRARY TO PUBLIC ORDER AND MORALS

This condition is a natural result of the provisions of Articles (184, 130, 75) of the Iraqi Civil Law No. 40 of 1951, the first of which states: "It is correct to respond to the contract on anything else that is not prohibited or contrary to public order or morals."

Article 130 stipulates that "1. The object of the obligation must not be prohibited by law or contrary to public order or morals, otherwise the contract is null and void. 2. The provisions related to personal status such as eligibility, inheritance, provisions relating to transfer, procedures for the disposal of the interdicted property, endowment money, state money, forced pricing laws and other laws issued for the need of consumers in exceptional circumstances shall be considered public order in particular."

As for the unilateral will, Article (184) of the Iraqi Civil Law stipulates in its second paragraph that "and applies to the provisions applicable to the contract, except for those related to the need for two identical wills to establish the obligation" It is noted that these conditions must be available when starting to initiate the forced sale, where the existence of the objective right must be available and determine its amount and performance solutions when starting to take executive measures, and the availability of these conditions is not required when forming the executive bond, and therefore if the bond is implemented before Debt maturity solutions and the Execution Department has started the procedures,

⁵⁸ Shusari, Salahuddin, *op. cit.*, p. 132

the implementation is invalid, and is not corrected by the maturity after that during the implementation procedures, but the lack of these conditions when requesting implementation would not affect the validity of the request as long as they have been available before taking any decision to implement⁵⁹ In practical application, the execution manager makes sure when submitting the application for execution to register the executive file of the availability of these conditions and refuses to register the application in the event that they are not available and the obligation The availability of these conditions in the executive bond itself, where it must prove the existence of the substantive right and determine its amount and solutions for its performance in the same executive document. It is also not possible to claim the penalty clause agreed upon in the executive bond without a provision proving the debtor's failure to perform the obligation because the source of the obligation to compensate is not the condition, but the debtor's fault represented by his failure to perform and the damage suffered by the creditor as a result of this failure and there must be a provision to prove that.

However, it is noted that the right is considered a certain amount and due in the same executive bond if the proof of appointment or solutions only needs a simple calculation, and accordingly if the judgment obliges the debtor to the debt after four months or obliges him to interest five percent of the value of the debt specified in the judgment, the solutions of performance or determination of the amount is considered fixed in the judgment, even if it requires calculating the date to know the maturity of the debt or requires a calculation to set the amount.

It can be noted that the executive bond can be supplemented by another bond if the executive bond refers to it explicitly⁶⁰, and accordingly if there is a judicial dispute over a sale contract in which the buyer is late in paying the price

⁵⁹ Mubarak, Saeed, (1989), Provisions of the Implementation Law No. (45) of 1980, Legal Library, Baghdad, p. 65.

⁶⁰ Dr. Hindi, Ahmed, previous source, p. 15.

installments and the interest due⁶¹ for the delay and fixed in it and then a reconciliation contract between the parties was established in the minutes of the session and ratified by the court and the composition indicated that the seller retains all his rights prescribed in the sales contract, the sale contract is considered part of the reconciliation contract and the benefits are considered stipulated in the provision stipulated in the composition contract and therefore the minutes of composition shall be considered an executive document for its requirement. It is worth noting that the Iraqi legislator has stipulated, in addition to the foregoing, and under Article 1 of Law No. 32 of 1998, the Third Amendment Law to the Implementation Law No. 45 of 1980, which added paragraph IV to Article 14, that the debtor should not be outside Iraq or unknown place of residence or was deceased during the period of notification of implementation if the executed bond is one of the ordinary bonds. For the implementation of negotiable commercial papers because the return to the appearance and the collection of the bond amount from it depends on special procedures set by the Trade Law and within legal periods that give rise to disputes that may lead to objection to the executed commercial paper and thus lead to the suspension of executive procedures and the return of the bond to the creditor. It is worth noting that the Execution Law in force allowed the execution on the commercial paper of the guarantor, unlike the canceled Execution Law No. (30) of 1957, which did not allow this because the guarantor is considered jointly with the debtor by virtue of the law, and this is what was taken by Article (1030) of the Iraqi Civil Law, where it stipulated that

"1- There shall be no solidarity between the guarantor and the debtor unless so stipulated in the guarantee contract or in a separate contract.

2 - As for the judicial, legal and commercial guarantee, the guarantors are jointly and jointly with the debtor, and that the guarantor is responsible for paying the

⁶¹ Al-Aboudi Nawras Abbas (2022) The Privacy of Forced Execution in English Law, Journal of Legal Sciences, Volume 38, First Issue, College of Law, University of Baghdad, research published on the website DOI: www.doi.org/10.35246/jols.v37i1

amount of the commercial paper, whether the original debtor is insolvent or insolvent, the creditor has the option if he wants to implement it on the debtor or on the guarantor, but the law required informing the debtor if the paper was implemented on the guarantor to find out what he has of objections and this is what was taken by Article (14 / II) of the Implementation Law, where it stipulated that "the commercial paper is required The debtor shall not be a guarantor and if the execution is required against him as a guarantor, the debtor shall be notified to find out his objections." This is what the Duhok Court of Appeal ruled in its discriminatory capacity, "The decision of the executor of justice to bring the guarantor of the guarantor forcibly for the debtor's breach of payment of installments is correct and in accordance with the law, because the guarantor executive guarantor is obligated to pay the debt on the side of the debtor"⁶².

CONCLUSION

At the end of our research, we reached a number of results and proposals, which are as follows:

First: Results

- 1- The principle is that the debtor performs his obligation by consent without exercising any legal means against him to force him, and if he refrains, he is forced to perform it forcibly.
- 2- Forced sale is defined as the process of selling money through public auction in order to liquidate the money seized to fulfill the rights holders in the executive transaction and distribute the proceeds resulting from the sale process among them.

⁶² Decision No. 29 / Executive Body / 2011, quoted by Dr. Bakr, Ismat Abdel Majeed (2019), Explanation of the provisions of the Implementation Law, Sanhoury Library, Dar Al-Sanhoury, Beirut, p. 85.

- 3- Forced sale requires conditions that the sale must be a financial right, that money must be seized, and that it must be owned by the debtor.
- 4- Execution shall be limited to the financial right contained in the thing and shall not be enforced on the legal bond that has nothing in place.
- 5- Attachment means placing movable or immovable property under the hands of the judiciary by specific procedures to prevent its owner from disposing of it.
- 6- The Iraqi legislator and the legislation in question clarified the existence of funds prohibited from seizure, as it is not permissible to seize these funds either because of a private interest or a public interest.
- 7- The executive attachment aims to achieve two purposes: first, to determine the money that will be forcibly sold, and the second purpose is to restrict the debtor's authority over this money.
- 8- The right to the executive editor must be the verifier of existence, the amount and the state of performance, and it must not be contrary to the system and public morals.

Second: Proposals

We suggest setting a specific period for sale so that the attachment does not remain a sword hanging over the debtor's neck, such as if the term is set at three or six months, if the sale is not made within this period, the attachment falls and is considered if it was not.

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