



Entitled 'Issues in the Enforcement of Administrative Court Judgments and Decisions'.

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Abstract:

The topic of difficulties in enforcing administrative court judgements against the administration is important because it raises complex and sensitive legal and judicial issues. This is because the administration infringes individuals' rights and freedoms due to its special public authority prerogatives. Through these prerogatives, it can avoid enforcing court judgements, especially administrative ones. Consequently, the principle of *res judicata* (the binding force of a final judgment) is undermined, despite administrative court rulings possessing this principle. This creates a significant discrepancy between litigants' trust in administrative courts and the practical obstacles that prevent judgements from being enforced.

This situation poses a serious threat to the prestige of the administrative judiciary by undermining individuals' expectations that it will provide a safe refuge against the administration's arbitrariness. We address the enforcement of administrative judicial decisions issued against the administration, relying on our own experience, whether legislative or judicial, because the administration often refuses to execute these judgements and ignores its legal obligations.

Keywords: enforcement issues, administrative judge, judicial judgements.

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Introduction

Enforcing court judgements is essential to the judiciary's authority, giving it practical meaning and real effectiveness in society. Law has no value without enforcement, and judicial rulings have no value without implementation. Similarly, the principle of legality in the state is meaningless unless accompanied by the principle of respecting court judgements and enforcing them. Otherwise, what benefit is there in the administrative judge's efforts to find innovative and effective solutions that protect rights, freedoms and legality if those judgements are ultimately destined to remain idle?

This study focuses on the difficulties involved in enforcing administrative court judgments and decisions issued against the administration, because the administration often refuses to enforce them and disregards its legal obligations. This refusal has become a real concern for the litigant, who finds no option other than waiting until the administration gives in and enforces what is required by the judgments issued against it.

The importance of enforcement issues in administrative court judgements can be seen from several angles. Firstly, it is not the judge's role to interfere in the administration's work, compel it to execute the judgment or carry out that execution in its place. Secondly, the legislator provides the judge with tools for direct enforcement against public administration officials. Thirdly, the issue also highlights the vulnerability of the individual in whose favour the judgment was issued (the successful party) when dealing with the administration.

However, the administration often resorts to delaying tactics, which can even amount to a complete refusal to enforce the judgments and decisions issued against it.

By failing to enforce administrative judgements and decisions, the administration makes a mistake that causes harm to the party concerned, damaging their legal position and society as a whole while violating a legal rule designed to ensure stability in social life. The administration's refusal to enforce affects society as a whole, not just the individual litigant.

On this basis, the central questions are:

What difficulties obstruct the administration's enforcement of administrative judgements and decisions, and what judicial and legislative remedies are available to address these difficulties?

This study is summarised in two sections:

Section One: The issues raised in the enforcement of administrative judgements against the administration.

Section Two: The means available to address difficulties in enforcing administrative judgements, both judicially and legislatively.

Section One: Difficulties in the Enforcement of Administrative Judgments Against the Administration

The enforcement of court judgements and decisions issued against the administration hinges on the extent to which the administration complies with the law automatically, and on the obligation to execute judgements delivered 'in the name of the people'¹. However, in certain cases — if not most — the administration may contradict this obligation. It may do so on legal grounds (Requirement One) or on practical justifications (Requirement Two). These grounds are imposed by the reality of the administration during execution.

The administration seeks to delay or even avoid enforcing the judicial decision by making excuses and providing justifications.

Requirement One: Legal grounds on which the administration relies for not enforcing administrative judgments

In Algeria, despite significant legislative developments in administrative justice since the adoption of the 1989 Constitution, the establishment of the Council of State to review administrative acts and amendments to the Code of Civil and Administrative Procedure², enforcing administrative judgments remains a major obstacle to achieving justice for litigants.

Successful parties often encounter procrastination and implicit or explicit refusal by public administrations to execute court rulings. To this end, administrations adopt several bases. The most important are: Administrative authority's immunity against the use of enforcement measures (Subsection One); and the second basis, which lies in the principle of the administration's independence from the administrative judge and the separation of powers (Subsection Two).

Subsection One: The Immunity of the Administrative Authority Against Enforcement Measures

Enforcing court judgements issued against the administration is one of the most important issues to have faced multiple obstacles, which has had a negative effect on the credibility of the judiciary. This is largely due to the legislator's reluctance to address such problems.

The concept of 'administrative authority immunity' means that standard enforcement measures cannot be applied to the administration, such as precautionary attachment, enforcement against movables,

¹- Abdelhalim Bouchkioua, The Extent of the Effectiveness of Administrative Justice in Protecting Fundamental Freedoms in Light of the Administration's Refusal to Implement Judicial Decisions, Third International Seminar on The Role of the Administrative Judge in Protecting Rights and Fundamental Freedoms, University Center of El Oued, Algeria, 09–10 March 2009, p. 2.

²- The last amendment to the Code of Civil and Administrative Procedure was made by Law No. 22-13, dated 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), which amends and supplements Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008).

attachment of the debtor's assets held by third parties or real estate attachment. These measures are not applied to the state or any of its entities when the obligation is to pay a sum of money. This is justified by the principle prohibiting the use of coercive enforcement measures and the attachment of public administration funds.

In Algeria, various legal provisions explicitly state that creditors may not use coercive enforcement measures against the administration to recover debts, particularly under Article 606 of the Civil and Administrative Procedure Code³.

This is also reflected in Article 4 of Law No. 90-30 relating to public property⁴. Moreover, a review of case law reveals that attachment of state funds or funds belonging to state-affiliated entities is not recognised. Consequently, it upholds the principle that coercive enforcement is impermissible against persons governed by public law.

General civil law principles confirm this. For instance, Article 629 stipulates that state funds cannot be seized or transferred through prescription (acquisitive limitation). Importantly, the text does not distinguish between public and private state funds.

Several decisions can be cited to reinforce this principle. One such decision, issued by the Administrative Chamber of the Supreme Court, held that state property is not subject to acquisition by prescription or possession. Therefore, by implication, it is also not subject to attachment. Similar reasoning was confirmed again by the Civil Chamber of the Supreme Court when it held that:

'...It is established by law that state funds may not be disposed of, attached, or acquired by prescription; nor may the disposal carried out by the municipality relating to funds incorporated into its financial assets through land/real estate provisions be challenged...'⁵.

Subsection Two: The Independence of the Administrative Authority from the Administrative Judge and the Separation of Powers

The principles of independence and separation of powers form the core foundation upon which public authorities in a modern democratic state are organised⁶.

The administration is a strong party in the dispute. It also enjoys administrative independence from the judiciary due to the functional jurisdiction assigned to the administrative judge. This limits the administrative judge's role vis-à-vis the administration, even when executing his own judgements. This limitation represented a weakness in Algerian administrative justice because it was based on an incorrect understanding of the difference between administrative and judicial functions⁷.

As a general rule, administrative judicial judgements, like other judgements, become effective against all parties when they are served with an enforceable formula⁸. However, the administrative judge cannot do more than annul an unlawful administrative decision, reject the claim or assess the unlawfulness of the act

³- Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008), containing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued on 23 April 2008.

⁴- Law No. 90-30, dated 1 December 1990, containing the Law on National Property, Official Gazette No. 52, issued on 2 December 1990; amended and supplemented by Law No. 08-14, dated 20 July 2008, Official Gazette No. 44, issued on 3 August 2008.

⁵- A decision of the Civil Chamber of the Supreme Court, file no. 100370, issued on 27 January 1993, Judicial Journal, issue no. 1, Algeria, 1995, pp. 107–110.

⁶- Salima Masrati, 'The Independence of the Judiciary as the Most Important Guarantee of the Right to Litigate: Algeria's Constitution of 1996 as a Model', Journal of Judicial Jurisprudence, Issue Nine, Mohamed Khider University of Biskra, 2013, p. 90.

⁷- Ibrahim Oufayda, Implementing the Administrative Judgment Against the Administration, a comparative study, Master's thesis in Administrative Management and Public Finance, Institute of Administrative Legal Sciences, University of Algiers, 1986, p. 69.

⁸- Chafika Ben Saouala, 'The Problem of the Administration's Implementation of Administrative Judicial Decisions', comparative study, 2nd edition, Dar Houma, Algeria, 2012, p. 23.

without being able to order the administration to take specific action. Moreover, he cannot replace the administration by issuing any decision required for the execution of the judgment. Therefore, the execution of annulment judgements against administrative decisions depends mainly on the administration's good faith and willingness to comply with the court's judgement⁹.

This principle also appears, on the one hand, in the administration's insistence on the separation of powers, which leads the administrative judge to withdraw from his role in enforcing the judgment.

Despite that, it must be noted that the Algerian legislator adopted the idea of a flexible separation between the judicial and administrative powers. Indeed, it can be observed that it enshrines cooperation and complementarity between the two authorities on more than one occasion, including:

The preamble to the 2020 Algerian Constitution (Paragraph 13)¹⁰ enshrines the principle of flexible separation of powers, stating that: '...The Constitution guarantees the separation of powers and balance between them.'

- Through Article 601 of the Civil and Administrative Procedure Code, the legislator obliges the administrative judicial authority to include an explicit order to execute in the enforceable formula of administrative judgments and decisions addressed to the administration.

- The legislator recognises cooperation between the two authorities where the administrative judge assists the administration in performing its duty to maintain public order or the general interest, as set out in Article 911 of the Civil and Administrative Procedure Code¹¹.

- Prior to the amendment, Articles 913 and 915 of the Civil and Administrative Procedure Code allow¹² the administrative judge at the level of the Council of State to suspend the execution of an administrative judgment at the request of the appealing administration, in order to preserve public order.

For these reasons, the independence of the judiciary from the administration is based on mutual support aimed at protecting individuals' freedoms and property.

In other words, the judiciary cannot compel the administration to comply with its orders and judgements in light of the separation between the administration and the judiciary — i.e. the separation of powers — on which Algerian courts often rely as justification for not issuing orders to the administration¹³.

Subsection Three: The absence of a specific legislative framework for the enforcement of administrative judgments

Administrative disputes are brought before administrative courts as the court of first instance (Article 800 of the Civil and Administrative Procedure Code, as amended). Judgments issued by these courts are then appealed to the Administrative Court of Appeal, with cassation filed before the Council of State. These amendments have been reflected in the most recent updates to the Civil and Administrative Procedure Code¹⁴.

⁹- Abdelkader Oudo, *Guarantees for the Implementation of Administrative Judgments Against the Public Administration*, 7th edition, Dar Houma, Algeria, 2017, p. 12.

¹⁰- Presidential Decree No. 20-442, dated 15 Jumada El-Oula 1442 (corresponding to 30 December 2020), concerning the issuance of the constitutional amendment approved by the 1 November 2020 referendum, published in the Official Gazette of the People's Democratic Republic of Algeria.

¹¹- Law No. 22-13, dated 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), amending and supplementing Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008), issued on 17 July 2022.

¹²- Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008), contains the Code of Civil and Administrative Procedure.

¹³- Mohend Amkran Bouchir, 'On the Absence of Judicial Authority in Algeria', PhD thesis in Law, Faculty of Law, Mouloud Mammeri University of Tizi Ouzou, Academic Year 2005–2006, p. 309.

¹⁴- Law No. 22-13, dated 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), amending and supplementing Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008), Official Gazette No. 48, issued on 17 July 2022.

Judgments rendered by administrative courts in these disputes are enforced under the rules of the same code, unless another law provides otherwise.

However, up to now, the Civil and Administrative Procedure Code has not included the means to compel the administration to enforce administrative judgments issued against it once they have acquired the force of *res judicata*. The absence of such legislation clearly impacts the issue of enforcement, since the method of enforcing administrative judgments differs from that of ordinary judgments.

Subsection Four: The absence of an administrative execution judge

There is no administrative execution court or administrative execution judge in the Algerian judicial system. Therefore, the enforcement of administrative judgments is carried out by the general enforcement judge¹⁵.

This judge applies the same rules, deadlines and procedures used for enforcing ordinary judgements. However, these procedures are not sufficient. Consequently, enforcement often stalls, especially when the administration exploits this absence to delay or refuse enforcement, claiming that it is protecting public order¹⁶.

By contrast, the legislatures of France and Egypt moved towards activating the advisory role of the Council of State to resolve issues arising from the enforcement of administrative judicial decisions, particularly when enforcement is directed against the administration.

The introduction of an execution judge for administrative matters would mean establishing an independent and separate court, whose competences would be determined by law and not shared by any other court. Such an 'execution court' would comprise a single judge, and the procedures before it would generally follow those applied before the ordinary first-instance administrative court, unless the law provides otherwise. Additionally, depending on the number of first-instance administrative courts, there could be multiple execution courts.

Subsection Five: Ambiguity in the Ruling's Dispositive Part (Operative Section)

Ambiguity in the operative part of an administrative judgment — through unclear wording, imprecise terms and meanings, or even contradictions in the reasoning may delay its enforcement. This ambiguity can enable the administration to claim that execution is impossible or excessively difficult. It may also lead to multiple interpretations and conflicting approaches when executing the judgment. This, in turn, opens the door to enforcement challenges and brings the parties back to court. Consequently, enforcement is postponed and the dispute continues for longer.

For these reasons, administrative judgements should specify all the consequences that the administration must implement, in order to prevent it from exercising its discretion in arranging these consequences at the expense of individuals' rights and legal positions. Ambiguity may also result in delays or refusals to execute¹⁷.

The Civil and Administrative Procedure Code emphasises the need for judgements to include accurate substantive conditions. It also extends the administrative judge's role beyond issuing the judgment to ensure its enforcement by imposing coercive mechanisms, such as penalty payments (financial coercion), against administrations that refuse to execute in order to overcome their obstinacy. The judge may also

¹⁵- Ben Abdelkader Abdel Rahman, *Problems Concerning the Administration's Implementation of Administrative Judgments*, a dissertation to obtain a Master's degree in Law, Maghnia University Centre, Department of Law, Academic Year 2018/2019, p. 15.

¹⁶- Maleh, S. (2025). 'The Intervention of the Administrative Judge in Implementing His Judgments Against the Administration'. *Journal of Algerian and Comparative Public Law*, 11(1), p.500.

¹⁷- Ibrahim Oufayda, *Implementing the Administrative Judgment Against the Administration*, *ibid.*, p. 78.

order specific enforcement measures and set deadlines to prevent the administration from evading responsibility or delaying enforcement of judgments against it¹⁸.

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Section Two: Realistic Justifications the Administration May Invoke for Not Enforcing Administrative Court Judgments

The administrative judge's role is limited to resolving disputes. It is not the judge's role to execute the judgment they issue because enforcement is considered part of the administration's function²⁰. If the judge were to intervene, this would effectively be taking over the administration's duty. In principle, administrative judgements and decisions served with an enforceable formula are voluntarily executed by the administration.

In practice, however, the administration often resorts to 'obstacles' that may hinder enforcement or lead to refusal, as a way to avoid its obligations. This may involve raising an enforcement challenge and claiming that execution is prevented by difficulties, or invoking the legally established suspension of enforcement. Whether or not the reasons are genuine, such conduct violates the binding authority of final judgements (*res judicata*).

Section One: The Negative Stance of the Administration

Failure to carry out administrative decisions is often the result of the administration's negative attitude. The administration may create legal or material obstacles to avoid enforcing a judgment issued against it, either by avoiding enforcement completely, enforcing it only partially, enforcing it defectively, or implementing it in a delayed and reluctant manner.

In this context, the administration's delay in executing a judicial decision against itself, without any legal justification, constitutes negative behaviour that leads to liability on the part of the administration²¹. This is because it refuses to implement a final and conclusive judicial decision (*res judicata*)²².

The Algerian legislator has established legal rules for the execution of judicial judgements. Referring to the Algerian Code of Civil and Administrative Procedure, we see that it allows the administrative judge to determine the deadline for implementing the measures imposed on the administration when necessary.

¹⁸- This is set out in Article 980 of Law No. 08-09, and the article has remained in force without amendment through Law No. 22-13, which amends and supplements Law No. 08-09 containing the Code of Civil and Administrative Procedure (Official Gazette No. 48).

¹⁹- This is set out in Article 978 of Law No. 08-09, which contains the Code of Civil and Administrative Procedure. It also remained unchanged through Law No. 22-13.

²⁰- Safaa Ben Achour, 'The Intervention of the Administrative Judge in Implementing His Administrative Decisions Against the Administration: Its Justifications and Limits*', 2nd edition, Dar Houma, Algeria, p. 169.

²¹- Khaled Bendjellali, 'The Problem of Implementing Judicial Decisions Issued Against the Algerian Administration', article published in *Dafatir al-Siyasa wa al-Qanoun* (Notebooks of Politics and Law), Volume 14, Issue 03, 2022, p. 179.

²²- Articles 978 and 979 of Law No. 08-09 containing the Code of Civil and Administrative Procedure.

Section Two: Reasons of Public Order and Public Interest

The administration may refuse to enforce a judgement, either permanently or temporarily, in order to protect public order. This may occur if enforcing the judgment would undermine public security, public health or housing provision.

Even though the concept of 'public interest' is unclear, this does not prevent the administration from withholding execution on these grounds. If the administration does so, the person affected by the non-execution may be entitled to claim compensation based on risk (liability despite the absence of fault)²³.

Section Three: The Independent Financial Provision for Executing Judgments

The administration may delay the execution of an administrative judgment issued against it without intending wrongdoing. This may be due to real practical difficulties, namely the absence of a separate, independent financial provision within its budget to fund the execution of judicial decisions issued against it.

Furthermore, in the absence of compulsory enforcement of public funds in such cases, the administration often tries to avoid its obligations by claiming that there are no financial appropriations, presenting this as strong justification.

Nevertheless, this obstacle is only temporary because the administration is obliged to provide the necessary financial appropriation for execution within the same or the following fiscal year²⁴.

Section Two: Means to Address Problems of Executing Administrative Judgments, Judicially and Legislatively

If it is proven that the administration does not execute administrative judgements and decisions despite them having become final and binding (*res judicata*), it is necessary to find judicial and legislative solutions to address this issue.

Request One: Judicial Solutions to Problems in Executing Administrative Judgments

Judicial solutions may vary when there is an obstacle to executing administrative judgments or when the administration delays or obstructs execution for any reason. In this regard, we will address some of these solutions, including: (1) coercive/penalty fines (Section One); (2) an action for annulment (Section Two); and (3) raising the legal liability of the administration (Section Three) due to abuse of power and failure to comply with execution.

Section One: Coercive/Threatening Fines (Penal Fine)

A coercive or 'threatening' fine is one of the most significant deterrents granted to judges by law. It is imposed by a subsequent judgement on the same decision intended for execution²⁵.

It is a financial penalty imposed on the party obliged to comply — here, the administration that refuses to execute — until it complies and carries out the obligation imposed on it²⁶. This occurs after the judgment or decision has been served and stamped with the enforceable formula.

This fine is also recorded as a debt owed by the administration.

The amount of the fine varies from one judgment to another. It is determined for each day of delay and is based on the circumstances of each case and the conditions of the dispute. The importance of imposing a

²³- Khaled Bendjellali, same reference, p. 181.

²⁴- Ben Abou Afif, 'The Problem of Implementing Administrative Judicial Decisions in Algerian Legislation', PhD thesis in Public Law, University of Oran 2 Mohamed Ben Ahmed, Faculty of Law and Political Science, 2020/21, pp. 198.

²⁵- Vincent Jean, *Voix d'exécution et procédure de distribution*, 19th edition, Dalloz, 1999, p. 25.

²⁶- Chafiq Ben Saouala, 'The Problem of the Administration's Implementation of Administrative Judicial Decisions', *ibid.*, p. 287.

coercive fine is particularly evident in cases where other measures are insufficient to compel the administration to comply²⁷.

In that situation, the judge resorts to it after concluding that the administration has no intention of executing the judgment. The purpose of coercive fines is to compel the administration to implement court judgements and enforcement orders clearly and precisely, leaving no room for evasion, circumvention or refusal of execution.

Under the Algerian Code of Civil and Administrative Procedure, the Algerian legislator granted the court authority to order coercive fines against the administration to enforce compliance. This is set out in Article 980 of the Code²⁸.

From the wording of the article, it is clear that the Algerian legislator gave the judge considerable discretion when ordering coercive fines by using the word 'may' (i.e. it is optional). The legislator also granted the judge the authority to determine the amount of the coercive fine, which has no fixed upper limit. However, the purpose of the fine is the only limiting factor — namely, to compel the administration to execute the judgments issued against it.

Furthermore, the judge is not required to consider whether damage has actually occurred to the party entitled to enforcement. Even if no damage has occurred, the judge may still order the coercive fine.

Section Two: An Action for Annulment (Appeal for Annulment)

When trying to avoid the enforcement of an administrative judgment, the administration may make decisions designed to justify its delay or refusal to enforce the judgment. The most effective way to compel the administration to comply is to challenge these decisions through an action for annulment, so that it ultimately carries out the judgment.

This is because the administration's refusal to execute a court judgment issued against it is unlawful and violates the *res judicata* principle (the binding force of a final judgment)²⁹.

Accordingly, the person against whom the obligation was imposed (the judgment debtor) or the party concerned is entitled to file a new lawsuit to annul the administration's negative decision, according to the required legal procedures, in order to enforce execution on the grounds that the administration has exceeded its powers.

This type of claim is an important guarantee of respect for the binding force of *res judicata*, and pushes the administration to execute the administrative court judgment issued against it. The judgment creditor can challenge unlawful decisions resulting from a departure from the requirements of *res judicata* by having them annulled through a new annulment action.

In this sense, such a new annulment action is the original and sole means of annulling decisions of this kind. In this way, it protects legality, preserves the legal order of the state and enhances individuals' trust in the legal system.

Furthermore, filing this lawsuit demonstrates the judgment creditor's commitment to ensuring the judgment is enforced and their refusal to accept the administration's defiance of the judiciary.

²⁷- Abdelkader Oudo, 'Guarantees for the Implementation of Administrative Judgments Against the Public Administration', *ibid.*, p. 175.

²⁸- Article 980 of Law No. 08-09, which contains the Code of Civil Procedure, states the following: 'The administrative judicial authority requested to issue an order for execution in accordance with Articles 978 and 979 above may order a periodic coercive fine, specifying the date on which it takes effect.'

²⁹- Abdelkader Oudo, *ibid.*, p. 231.

Judgments issued by the administrative judge that annul unlawful decisions often include harsh wording as a form of moral or coercive pressure on the administration³⁰.

Section Three: Raising Legal Liability in Its Various Forms

Refusing to execute a judgement, or executing it incorrectly, can trigger the civil liability of a public official.

Algerian law also recognises the possibility of holding an employee or administrative authority accountable for refusing to execute a judicial decision³¹, especially if their bad faith or stubbornness is proven, based on tort liability³².

According to the provisions of the article, the civil liability of a public official who violates their obligation to execute an administrative court judgment means that the official is responsible for compensating for any resulting damage caused by their mistake or conduct leading to non-execution or defective execution. Liability also requires proving a causal link between the official's fault and the resulting harm.

Accordingly, in this context, the civil liability of the public official is based on their personal fault, provided that their bad faith is proven.

However, the official's personal fault overlaps with the administration's vicarious/organisational fault to such an extent that it is difficult to distinguish between the two. This is because the administration is considered to have committed the fault directly, regardless of who the individual perpetrator is, and is therefore attributed with the negligence or misconduct³³.

Request Two: Legislative Confrontation (Legislative Solutions)

The main problem with executing administrative judgements is the lack of effective legal rules to compel the administration to do so.

In fact, the Code of Civil and Administrative Procedure does not provide the necessary mechanisms to enforce judicial decisions that have acquired the authority of *res judicata* (finality and binding force).

Although failure to execute *res judicata* is always considered an error — because the administration's refusal amounts to a violation of the fundamental legal principle of respecting the binding force of *res judicata* — it nonetheless leads to instability if it continues.

This principle provides reassurance and stability to legal situations and protects the judiciary within a framework of safeguards. Therefore, the administration's refusal to execute a final, binding judgment constitutes a clear and flagrant violation of both the basic law (the Constitution) and public order.

As it is unacceptable for a government in a civilised state to refuse to enforce final judgements without legal justification, since such a serious breach would cause chaos and undermine trust in the supremacy of the law, these issues should be addressed as follows:

Section One: Enacting a Special Law to Regulate Administrative Lawsuits

This includes the procedures for executing judgments issued by administrative courts.

To date, the Algerian legislator has not enacted specific provisions dealing with the execution of administrative judgements and decisions. Consequently, the issue of judicial execution is subject to the general rules applicable to the execution of judgments in civil matters.

Procedurally, however, administrative execution differs from civil execution in terms of the parties involved. In administrative cases, the state or one of its branches is a party. Furthermore, the

³⁰- Ben Abou Afif, 'The Problem of Implementing Administrative Judicial Decisions in Algerian Legislation', *ibid.*, p. 255.

³¹- Abdelkader Oudo, *ibid.*, pp. 219–220.

³²- Article 124 of the Algerian Civil Code.

³³- Ben Abou Afif, 'The Problem of Implementing Administrative Judicial Decisions in Algerian Legislation', *ibid.*, pp. 388–389.

administration enjoys certain privileges, one of the most significant of which is its right to enforce its decisions directly against individuals. Execution of an administrative decision against the administration is therefore presumed to be voluntary; it is the administration's responsibility to take the necessary steps to execute the judgments and decisions issued against it³⁴.

Additionally, while the Algerian Code of Civil and Administrative Procedure (before amendment) stated that an appeal against administrative judgements at first instance did not suspend execution, Article 900 bis 2 (after amendment) states that:³⁵

'An appeal has a suspensive effect on the dispute and suspends the execution of the judgment.'

This is because the legislator established courts of appeal as a second level of jurisdiction, whereas previously there were only administrative courts and the Council of State.

The same Code also provides, in Article 908, that:

'An appeal before the Council of State has a suspensive effect on the dispute and suspends the execution of the judgment.'

Section Two: Activating the Civil Liability of the Employee Who Refuses Execution

Algerian law recognises the possibility of holding an employee — or administrative official — who refuses to execute a court judgment accountable, especially when their stubbornness or bad faith is proven.

However, in practice, this mechanism is limited in its effectiveness for the following reasons:

- The lack of detailed provisions that specify how to activate this liability; and
- The fact that the public prosecutor generally does not act automatically in most cases.
- Difficulty in distinguishing deliberate refusal from legitimate administrative or financial obstacles.
- Difficulty in proving bad faith, because it is a subjective matter and good faith is presumed for the employee.

Section Three: Activating the supervisory role of the Council of State as a supreme administrative court

The Council of State plays an important role in unifying administrative judicial jurisprudence and is assumed to supervise the execution of administrative judgements. However, in practice:

- There are no explicit powers allowing it to oversee the execution of judgements.
- It does not issue enforcement orders; in some cases, it merely refers the case back to the lower court (first instance).

Conclusion

The principle of the binding force of *res judicata* requires that all parties—especially the administration—execute administrative judicial judgments and decisions. To make this objective effective, all Algerian laws and constitutions that have followed one another have affirmed the obligation to execute administrative court judgments and decisions once they become final and acquire the authority of *res judicata*. These judgments and decisions contain an enforceable obligation directed at the administration.

After the decision is served with the enforceable formula (enforcement stamp), it is then incumbent upon the judgment creditor to initiate execution by notifying the administration using the legally prescribed method in the Algerian Code of Civil and Administrative Procedure, in accordance with Article 600 of the

³⁴- Law No. 08-09 containing the Code of Civil and Administrative Procedure.

³⁵- Law No. 22-13, dated 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), amending and supplementing Law No. 08-09, dated 18 Safar 1429 (corresponding to 25 February 2008), Official Gazette No. 48.

Code after the amendment. This states that execution by coercive means is not permitted except on the basis of an enforceable instrument, which includes (among others):

'7. Judgments of administrative courts and decisions of administrative appeal courts and the Council of State'.

Previously, Article 600 of the former text referred differently to the judgments of administrative courts and Council of State decisions through its paragraph 7. This amendment thus introduces a specific enforcement formula for administrative judgements and decisions that differs from that used for civil judgements, particularly as coercive execution against the administration and the use of public force are not permitted in the same way.

It is also important to note that the latest amendment to the Code of Civil and Administrative Procedure (Law No. 22-13) introduces several significant changes relevant to this topic. Notably, the law now stipulates that:

- Administrative courts of first instance hear administrative disputes at first level (Article 800);
- Their decisions are appealed before administrative appeal courts (Article 900);

Further challenges are brought before the Council of State by cassation (Articles 901, 902 and 903).

Previously, administrative courts decided cases at first instance, while the Council of State dealt with appeals and cassation depending on the cases provided for in Articles 901, 902 and 903 of the former version of the Code (Law No. 09-08).

Despite these significant amendments, executing administrative judgments in Algeria remains a complex problem. This reflects an underlying conflict between the traditional approach, characterised by an 'administrative privilege' culture, and the new approach based on the principle of the rule of law. This is not merely a technical or legal issue; fundamentally, it is a matter of political will and institutional culture.

While the current legal framework has some shortcomings, it provides tools that could be effective if all stakeholders were genuinely committed: the judiciary would need to shift from merely issuing judgements to actively supervising their execution; the administration would need to adopt a service-oriented culture and commit to complying with the law; and the political authorities would need to provide the necessary support and apply sanctions against those who refuse to comply.

Justice is not achieved by issuing a judgment alone, but by executing it. The longer a judicial decision is left to be executed, the more citizens' trust in the state's institutions as a whole is shaken. Therefore, it is urgent that this issue is addressed in order to strengthen the rule of law and institutions, and to build a foundation of trust between the administration and citizens — an essential basis for any real development.

Results of the research

The administration avoids executing administrative judgements and decisions by either explicitly refusing to do so or implicitly delaying or procrastinating.

One of the main reasons why judgment creditors cannot obtain their established rights is the lack of effective powers for judges to issue binding enforcement orders against the administration, which contributes to non-compliance with execution.

Recommendations

- Enact special legislation that clarifies the possibility of directing the judiciary to issue enforcement orders against the administration, in order to prevent the authority of the courts from being undermined and to ensure that judgments can be enforced against all parties.
- Strengthen the application of coercive/'threatening' fines to compel the administration to execute judgements and prevent abuse and unjustified delay.

- Create a separate chapter in the Code of Civil and Administrative Procedure dedicated to the rules for executing judgments issued by administrative courts.

Activate the oversight role of the Council of State as an administrative body responsible for monitoring compliance with the law and ensuring that administrative judgements and decisions are executed.

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