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The specificity of judgment in enforcement issues in Algerian law: Between provisional and summary justice

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Abstract---This study deals with the issue of the specificity of the ruling that resolves enforcement issues. It goes without saying that the judge considering requests to challenge a judgment is examining the question of whether to continue enforcement or not, and does not decide on the substance of the dispute, i.e. the origin of the right, and considering that the status of the urgent justice is available to the president of the court and sometimes to the judge considering the request, and in the absence of an enforcement justice system in our country, we address this specificity.

Keywords---Problem, Implimentation, Urgency, Origin of right, Temporary judjment.

Introduction

If the right is every material or moral interest recognized and protected by the law, it must have the intervention of the legislator to activate it, starting with the mere assault on a legally protected rule and this is the legislative protection, but legislative protection is not sufficient. The litigants seek to obtain a court ruling that is enforceable and this is the judicial protection, but the judicial remains a dead letter on paper that is taken out of the practical reality to actually recover rights, and this is the executive protection.

Execution litigation requires balancing between two competing interests, the interest of the creditor who wants to appear strong and sad and take revenge on his debtor who dragged him behind the scenes of the courts, and the interest of the debtor who wants to appear insolvent to prevent his creditor from collecting his right, so Sharaf works to find substantive or procedural legal rules to achieve this balance beyond the requirements of execution.

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The basis or cause of execution in the formal sense is addressed by the legislator in Article 600 of the Code of Civil and Administrative Procedure, and upon the scientific application of these bonds, issues of both kinds appear to us, either substantive disputes in execution, that is, in its fairness, or temporal issues, that is, legal obstacles that arise to execution, which require judicial intervention to resolve the matter. There are many issues or disputes of execution, some of which arise before the commencement of its procedures, some of which affect the stage of execution, and some of which go beyond it after its completion, especially in light of what procedural jurisprudence calls the possibility of submitting objections to execution.

Since enforcement disputes are considered urgent disputes, and since it is the urgent judge who decides them, he is bound by the restrictions that limit his authority when deciding other urgent cases, as he decides them by a temporary judgment or order until the subject matter of the dispute is resolved, which is the basis of the dispute: How did the Algerian legislator regulate the issue of the specificity of judgment in enforcement disputes between the interim and urgent judiciary?

which in fact raises several sub-questions, the most important of which are:
- What is the difference between the temporary and urgent judiciary?
- How does the judge assess the urgency of the request? What are the conditions he must observe when issuing his ruling? - Does this ruling have absolute or relative authority? Through these sub-questions, we try to examine the topic by following two basic approaches, the first is the descriptive approach when describing these conditions and the legal nature of the ruling challenged, as well as our use of the analytical approach as a legal science approach that aims to analyse and explain legal texts and sometimes compare them with case law.
Thus, we will address in this topic.

1. The legal nature of the judgment resolving enforcement issues
2. The authenticity of the order issued in execution disputes

1. The legal nature of the judgment resolving enforcement disputes:
When adjudicating urgent matters, the judge bears a dual responsibility: first, to verify the existence of urgency as a factual and legal element that justifies recourse to summary proceedings; and second, to ensure that the requested measure does not entail any infringement upon the substantive right in dispute. The assessment of urgency requires the judge to determine whether the circumstances reveal an imminent danger or potential harm that cannot be adequately remedied through ordinary judicial channels. However, when the matter concerns disputes arising during the enforcement of judicial decisions, the scope of the judge's examination becomes more restricted. In such cases, the law presumes the existence of urgency by the very nature of enforcement proceedings, since any delay may undermine the effectiveness of the judgment and prejudice the rights already established therein. Consequently, the enforcement judge is primarily tasked with verifying compliance with the condition of non-infringement of the right, ensuring that interim measures taken during enforcement do not alter or negate the substance of the judicial decision being executed.
We first discuss the urgent action and its relationship to interim justice (1.1) and then refer to the special nature of the urgent nature of the execution dispute provisions (1.2):

1.1. Execution justice between urgent and interim justice:
Both the urgent judiciary and the temporary judiciary share a common characteristic in that they are both concerned with situations requiring swift judicial intervention to prevent imminent harm or preserve a threatened right. Despite this similarity in the element of urgency and the necessity for immediate action, both jurisdictions are bound by a fundamental limitation: they may not, under any circumstances, infringe upon or prejudge the substance of the underlying right in dispute. Their role is confined to issuing provisional or precautionary measures that maintain the existing situation or prevent irreparable damage pending resolution of the substantive case by the competent court.

In accordance with Algerian legislation, particularly the provisions of the Code of Civil and Administrative Procedure, the judge responsible for urgent and temporary matters holds an urgent jurisdictional character

This function is vested in the President of the Cour, who acts in a summary capacity to issue orders aimed at ensuring the prompt and effective protection of rights. Thus, both the urgent and temporary judiciary embody a preventive judicial mechanism designed to guarantee the efficacy of justice by reconciling the need for immediacy with the obligation to preserve the integrity of the substantive right.[1]

However, in reality there are several differences between them, which we will mention in turn:
- In terms of their nature: The urgent judiciary protects rights and legal positions temporarily from the threat of delay in granting substantive protection, and this protection is based on the likelihood of the existence of a right on the side of one of the parties and not on the confirmation of the existence of this right. It is a judicial act and not an administrative or jurisdictional act, while the interim judiciary has a jurisdictional function, which is closer to the administration than to the judiciary, and therefore the action issued by the judge is by way of assistance and not by way of adjudication and adjudication, as the inadequacy of individual wills in such cases requires judicial intervention to monitor these wills or to complete the deficiency in them and provide them with the necessary force to produce their legal effects[2].

In terms of what they are: A judge of urgent matters within the district of the city in which the court of first instance is located is a judge who is assigned from among the judges of the court of first instance to rule temporarily and without prejudice to the right in urgent matters that are in danger of losing time, while outside the district of the city in which the court of first instance is located, he is an emergency judge.

As for the judge of temporal matters in the court of first instance, he is the president of the court or whoever is in his place or whoever is assigned to it from among its judges.
- In terms of the procedures for resorting to each of them: As for the urgent matters judge, the procedures followed before him are the usual procedures for filing a lawsuit with a newspaper that is deposited in the court clerk's office and announced to the defendant, and a session is set to hear the case and issue a ruling.

As for the temporal affairs judge, it is in accordance with the procedures for orders on petitions, i.e. by submitting a request on a petition in two copies, the judge issues his order on one of the two copies without informing the person against whom the order is requested of the request, without his presence or confrontation, and without enabling him to present any defines, defences or documents, and the judge issues an order and does not issue a judgment.
- In terms of the extent to which each may be resorted to: The temporal affairs judge's jurisdiction to issue orders on petitions is limited to the cases in which the law authorizes the opponent to resort to this system, as it is contained in the law as a matter of exclusivity.

However, recourse to the judge of urgent matters is not limited to instances expressly provided for by law. Rather, it extends to all situations in which urgency objectively exists, and there is a legitimate fear that the right in question may be exposed to imminent danger or irreparable harm as a result of delaying the grant of substantive judicial protection. The rationale behind this principle lies in the preventive nature of urgent proceedings, which aim to safeguard the effectiveness of judicial protection by allowing provisional intervention before the substantive right is irretrievably compromised. Thus, the jurisdiction of the urgent matters judge is not confined to specific statutory cases but may be invoked whenever the conditions of urgency and non-infringement of the substantive right are met, regardless of whether the law explicitly mentions the case at hand.

In terms of the exhaustion of the judge's jurisdiction, it should be emphasized that the urgent matters judge exercises a limited and temporary authority that ends once the circumstances of urgency cease or when the substantive court renders its final decision. The urgent judge does not rule on the essence of the right nor create new legal situations; rather, his decisions are provisional and subject to modification or cancellation if circumstances change. Once the urgent matter has been resolved or the danger has been averted, the judge's jurisdiction is deemed exhausted, and he can no longer revisit the case unless new elements arise that restore the state of urgency. This doctrinal approach ensures the delicate balance between the need for prompt judicial intervention and the principle of separation between provisional and substantive jurisdiction, as enshrined in Algerian procedural law.
A ruling issued by a summary judge exhausts the judge's jurisdiction with regard to the urgent matter on which he ruled, so he may not revise his ruling or compromise it, even if he realizes that the ruling is invalid or based on invalid procedures.

However, an order issued by a judge does not exhaust the judge's jurisdiction; the judge who issued the order has the authority to modify it or issue a new order contrary to the previous order, provided that the new order is justified.
- In terms of the enforceability of the decision: A judgment issued in an urgent matter shall be subject to expedited enforcement by force of law, regardless of whether the judgment is issued by the judge of urgent matters, the enforcement judge, or the trial court, whether it is a court of first instance, a magistrate's court, or an appeal court, and whether the request on which the judgment was issued was originally filed with the court or was an ancillary request to the substantive request. Whether it was issued in a civil, commercial or personal status matter. The summary judgment is covered by expedited enforcement, even if the deadline for appeal has not expired, and even if an appeal has already been filed. The filing of an appeal does not lead to the suspension of the execution of the summary judgment by force of law, but it is necessary for its execution to be suspended if the appellant requests the Court of Appeal to suspend the execution of the summary judgment, and the court responds to the request and actually rules to suspend the execution.

Similarly, orders on petitions are considered expeditiously enforceable by the force of law, meaning that the person in whose favor the order on the petition was issued can immediately enforce it despite the appeal, and there is no need for the judge to include his order on the petition in the enforcement of the order, as enforcement is derived from the text of the law.

2.1. The special nature of execution dispute rulings:
The issue of the specificity or special nature of the ruling in execution disputes raises the necessity of meeting the legally required elements, as the judge will not issue his order in the form of an urgent execution dispute unless its elements, which are mainly represented by general conditions and special conditions, are met on the one hand (a) and that the resolution of temporal execution disputes is distributed between two types of judiciary (b):
A- The special conditions of the interim issue of execution:
- General conditions that the judge observes: There are conditions that must be met by the applicant to challenge the challenged judgment, which are as follows:
- The parties to the executive litigation must have standing: Whoever requests a suspension, annulment or limitation of the effects of the execution, or a deposit or offer with an allocation of the sums of money necessary for fulfilment, must have standing in the dispute, as well as for third parties, such as those who file a subsidiary claim of entitlement or a claim of recovery if the execution is carried out, his property returns to him.
- The parties to an enforcement dispute must have an interest: The interest is the benefit or advantage sought by the plaintiff or plaintiff that there is a problem in the implementation[3] and is a necessary and basic condition for considering any dispute whatever, not only implementation disputes, and there is nothing to prevent the fact that the interest exists before or after the completion of implementation as long as there is a legislative provision stipulating it, examples of which are the original lawsuit to nullify

the decision to enforce the sale of the property or the nullity of the decision to distribute the proceeds of implementation However, if there is no interest, the challenge is not accepted, and the judiciary is satisfied with the existing or potential dispute, while another opinion holds that the condition of the interest in the urgent case requires that it should not be existing and current[4], but should be a potential interest, because it is a preventive case, whose purpose is to prevent potential damage, which is applicable to the temporal challenge[5].

- There must be no previous ruling on the same issue: According to the general rules and in view of the stability of transactions and the principle of executive justice, an order or judgment should not have already been issued to resolve an issue, as here the judgment is immunized and takes precedence for the fact, and from it the same judgment must not have been previously decided in the same judgment that is questioned with the unity of the cause, subject matter or parties, but if the facts are subsequent to that judgment, an appeal may be requested here, for example a judgment was issued to invalidate the seizure, so a new dispute based on defending its validity is not accepted, and vice versa[6].
- Conditions specific to the challenged judgment: In addition to the general conditions mentioned above, the judge checks in a second stage whether the conditions related to the challenge itself are met:
- There must be an element of urgency: The nature that governs enforcement disputes inevitably indicates the urgency of the case.

The Algerian legislator has included urgency provisions in the Code of Civil and Administrative Procedure in Section II, Chapter V of Title VIII of Book I, under the title Urgency and Urgent Orders in Articles 299 to 305 of the Code of Civil and Administrative Procedure[7], which some have defined as: " The real danger threatening the right to be preserved, which needs to be prevented with a speed that is not usually in the normal litigation, even if its dates are shortened[8].

Urgency exists in every case in which the delay in the temporary procedure leads to the loss of interest and the loss of the right as well as the disappearance of the landmarks.

There are those who say that urgency is the need to obtain urgent legal protection that is not realized from following the normal procedures for litigation as a result of the existence of circumstances that represent a danger to the rights of the opponent or include damage that may not be possible to remedy and repair.

Most of the definitions advanced in legal doctrine tend to associate urgency with danger, often treating the two as synonymous or interchangeable concepts. However, this approach is imprecise and conceptually unsound, as it creates a confusion between cause and effect. In reality, danger constitutes the cause that gives rise to the state of urgency, whereas urgency represents the legal consequence or manifestation of that danger within the judicial context. In other words, the existence of a real and imminent danger threatening a right or legal situation is what generates the necessity for swift judicial intervention—hence, urgency emerges as a procedural response to a substantive risk.

Therefore, defining urgency merely as danger oversimplifies the legal analysis and obscures the distinction between the factual element (danger) and its procedural implication (urgency). The correct doctrinal understanding is that urgency reflects the objective need for immediate judicial action to prevent harm that may result from the persistence of danger or from the delay inherent in ordinary proceedings. This analytical separation is essential for the proper application of urgent procedures, as it enables the judge to assess not only the existence of a threatening situation but also the degree to which the passage of time could render judicial protection ineffective.

Urgency is a legal condition that arises from the danger resulting from the delay or loss of time, before obtaining substantive judicial protection, and the danger generates the urgent need for urgent judicial protection to avoid damage to the rights or legal positions that are to be preserved.

- The origin of the right must not be jeopardized: This means that the judge should not deal with the subject matter of the dispute on which the dispute is based[9], such as ruling that the debtor is discharged

or that the debt is extinguished by set-off, or ruling that the seizure is invalid because the debtor does not own the money or that the seizure is not permissible.
It also requires that the emergency judge does not have access to the litigants' documents related to the origin of the right in order to base his judgment on them, but may only consult them as a matter of information to ascertain whether the conditions of jurisdiction are met and the validity of the objection presented by the complainant.

This does not mean that the emergency judge is prohibited from all research related to the origin of the right and related documents, as this would paralyze his function, so he can conduct a superficial research on the subject matter of the dispute to inform him when deciding the issue before him or the interim measure requested of him.
It is worth noting here that the origin of the right or the subject matter of the dispute, which the emergency judge is prohibited from dealing with, does not only refer to the dispute over the right of execution, but also means the right of execution, which includes the right of execution as a prerequisite and its formalities[10], so the emergency judge may not rule that the debtor is discharged from the executed debt as a prerequisite or rule that the execution is null and void due to the nullity of its formalities.

In many cases, if the judge finds from his examination of the appearance of the documents that the response of the litigants requires an interpretation of the judgment, he has the right to reject the challenge, and the same rule applies in the case where the judge finds himself obliged to compromise the authority of the contested judgment in order to rule on the challenge before him.
- The request must be limited to a temporary measure: A request for an enforcement issue is considered temporary whenever its purpose is one of two things, either the request is limited to a stay of execution or its continuation until the original dispute is resolved. Judges can also intervene to amend the judicial request, such as filing a request to clear the debtor's discharge, including canceling the seizure, here the judge intervenes and concludes that it is a request for a stay of execution[11].

B- Jurisdiction to consider enforcement issues:
Reading Article 631 of the Code of Civil and Administrative Procedure and linking it to the text of Article 36 of the same law, it is clear that the judge entrusted with adjudicating enforcement disputes is the urgency court, and the urgency court is divided between two types of judiciary:
- The president of the court is an emergency judge for interim enforcement matters in his own right:
The president of the court is considered under Article 631 of the Code of Civil and Administrative Procedure: " ... This is his exclusive jurisdiction, and since the specific jurisdiction is of public order, no other judge may, as a general rule, unless there is a legal provision stipulating otherwise, address it, nor may the parties themselves agree otherwise.
- The president of the court is an emergency judge for substantive enforcement issues: Departing from the general rule that substantive enforcement disputes should be decided by the trial judge, the Algerian legislature has granted jurisdiction to the urgent judiciary as an exception, such as the claim of recovery under Article 717 of the Code of Civil and Administrative Procedure, the claim of entitlement under Article 772 of the same law, and the claim of annulment of the seizure procedures under Article 643 of the Code of Civil and Administrative Procedure, all based on the text of Article 300 of the same law: " The urgency judge shall also be competent in matters that the law expressly stipulates are within his jurisdiction, and in the event of a decision on the subject matter, the order issued therein shall have the force of res judicata.

2. The authenticity of the order issued in enforcement matters:
The question remains in the field of the execution ruling, as they are specialized orders, and the question is what authority this order acquires, so we examine the question of the legal nature of the issued ruling (1.2) and then refer to the possibility of appealing it or not (2.2):

1.2. The nature of the judgment rendered in enforcement proceedings: A favorable ruling in enforcement disputes is an order that temporarily suspends or continues enforcement until the merits of the dispute are resolved before the trial court, which is a temporary order that depends on the circumstances in which it was issued, as long as the circumstances in which the order was issued remain the same, the authority of the order remains, but if they change, the matter may be submitted again to the emergency judge to re-examine the dispute with an order that may differ from the first order.
If the emergency judge orders a temporary stay of execution based on the debtor's objection that the execution is invalid, the creditor may resort to filing a substantive dispute before the trial judge, and there is nothing to prevent him, after examining and investigating the origin of the dispute, from requesting an order validating the execution and continuing it, as the emergency judge's ruling on the objection, like all other emergency orders, is a temporary order that does not have the force of a ruling on the subject of the dispute.

However, the parties to an enforcement dispute brought before the emergency judge are not permitted to institute a new action concerning the same dispute before that same judge with the aim of obtaining a modified or more favourable order, unless there has been a material or legal change in the circumstances of the case or in the status of one of the litigants. This restriction stems from the principle that the jurisdiction of the emergency judge is exhausted once a provisional order has been rendered on the basis of the facts and legal situation as they existed at the time of the decision. Consequently, in the absence of new facts or a change in the legal framework, any subsequent request would amount to an impermissible attempt to reopen the same matter, thereby undermining the authority and stability of judicial decisions.

The underlying rationale for this limitation lies in the temporary and exceptional nature of urgent jurisdiction. While the emergency judge retains the power to amend or revoke his prior order if new circumstances arise that alter the balance of interests or the risk assessment, he cannot, in principle, reconsider the same dispute on identical grounds. This ensures respect for the principle of legal certainty and prevents the misuse of urgent procedures as a means of circumventing final or previously adjudicated matters. Accordingly, the emergence of new material facts—such as a change in the factual situation—or a legal development—such as the enactment of a new law or judicial interpretation—constitutes the only legitimate basis for re-seizing the emergency judge in the same enforcement dispute.

2.2. Challenging an order resolving enforcement issues: With regard to challenging orders related to interim enforcement disputes, we address the position of jurisprudence, legislation and the judiciary on the issue:
-Jurisprudence: Some
jurisprudence believes that a distinction should be made between an urgent request and a temporary request[12]. If the ruling is temporary but issued in a non-urgent matter, it is not always subject to appeal, but it is subject to appeal in accordance with the general rules, such as a ruling ordering a stay of execution in a second recovery suit despite the filing of a first recovery suit or a ruling issued in an appeal against an order on a petition[13].
- Legislation: Article 633 of the Code of Civil and Administrative Procedure contains a number of provisions:
- That the injunction issued by the president of the court regarding the request to resolve the temporary dispute is not subject to any appeal,
- That this injunction is temporary and does not affect the original right of course, as its effect is limited to the period of time during which the enforcement proceedings are initiated,
- That this injunction is not the role of interpreting the first judgment about which there is a dispute, but this remains the competence of the issuing judge in accordance with the provisions of Article 285 of the Code of Civil and Administrative Procedure, in accordance with the provisions of the Code of Civil and Administrative Procedure.

- Jurisprudence:

Following the promulgation of the Algerian Code of Civil and Administrative Procedure, the legal framework governing enforcement disputes underwent a profound transformation, particularly with respect to the possibility of challenging orders rendered on temporary or provisional matters. The current procedural regime, as consolidated by Article 633 of the Code, has effectively eliminated any judicial recourse for contesting the validity of an order issued by the enforcement or emergency judge in such matters. As a result, a prevailing view in legal doctrine holds that these orders are not subject to any of the ordinary or extraordinary means of appeal provided for in Articles 313 et seq. of the same Code.

This situation has been described by many scholars as an anomalous procedural configuration, unparalleled in comparable legal systems, particularly those influenced by French civil procedure. The Algerian legislature, in drafting Article 633, deliberately sought to ensure the finality and expediency of enforcement-related decisions, thereby prioritizing procedural efficiency over appellate review. Consequently, by closing the door to jurisprudential interpretation and judicial oversight, the legislature has restricted both the litigants' right to challenge enforcement orders and the Supreme Court's supervisory function in standardizing judicial practice and harmonizing legal principles.

This legislative approach reflects a policy choice aimed at strengthening the authority and effectiveness of enforcement proceedings, yet it raises significant concerns regarding the balance between judicial efficiency and procedural justice. By excluding the possibility of appeal, the Algerian system departs from the general principles of procedural law that safeguard the right to judicial review, thus creating a unique and controversial exception within the broader framework of administrative and civil justice[14].

Conclusion

Following our descriptive analytical study on the subject of the specificity of the judgment in enforcement matters between the interim and urgent judiciary, we reach a set of conclusions as follows: The Code of Civil and Administrative Procedure lacks the system of the enforcement judge, which is applied in many countries:

- The Code of Civil and Administrative Procedure lacks the system of the execution judge, which is used in many countries and has advantages that save time and effort.
- The Code of Civil and Administrative Procedure has restricted the decision on temporary enforcement issues to the president of the court, while the competence to adjudicate substantive enforcement issues is divided between the president of the court and the trial judge.
- That there are exclusive procedures and conditions for requesting a ruling in an executive complaint that represent the special nature of this type of complaint, in addition to the general conditions, there must be special conditions.
- That the order issued by the president of the court in an execution dispute is temporary and may not be challenged by any means of appeal, despite the fact that it is a judicial and not a jurisdictional act and despite the fact that it contains an element of reasoning and does not interpret the executive deed.
- The order issued in interim enforcement matters - as opposed to substantive ones - cannot be submitted after the completion of the enforcement proceedings.

As an extension of the above, we refer to the following suggestions:

- The legislature should create a system of enforcement justice to replace the scattered texts and jurisdictions scattered here and there.
- An appeal mechanism should be included in the request to challenge the execution, since it is a reasoned judicial act.
- The maximum fine should be set for those whose application is rejected.

- It should be stipulated that the defendant or a third party must file the substantive lawsuit in the appeal within a certain period of time after the issuance of the interim judgment in the appeal, so that the execution is not suspended indefinitely.
- Remove the ambiguity and contradiction in Article 634(03) of the Code of Civil and Administrative Procedure regarding the civil fine (the Arabic text makes it mandatory, while the French text says it is permissive).

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