

## The Newly Introduced Authorities of the Administrative Judge under Law No. 22-13

### السلطات المستحدثة للقاضي الإداري في ظل القانون 22-13

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#### abstract:

When the administration refuses to execute an administrative judicial decision annulling a disciplinary administrative act, the Code of Civil and Administrative Procedures provide mechanisms enabling the litigant to compel the administration to comply. However, reliance on the classical principle of separation of powers to prevent issuing orders against the administration in cases of non-execution has become outdated. The contemporary understanding emphasizes cooperation and complementarity between authorities to ensure enforcement and proper application of the law. Accordingly, the administration's departure from the bounds of legality and failure to respect the authority of res judicata constitutes an excess of its legal function. The judiciary is therefore obliged to guarantee the effectiveness of judicial decisions by ensuring their execution, which represents the final stage of litigation. The administration's persistence in refusing to enforce judgments issued against it prompted the legislator to adopt financial mechanisms affecting the administration's assets, thereby exerting significant pressure and compelling it to reconsider before refusing execution. To this end, the judge may resort to coercive measures such as the astreinte (penalty payment), in addition to the criminal liability established by the legislator for public officials who refuse to enforce administrative judicial decisions.

**Keywords:** Administrative Judge, Astreinte (Coercive Fine), Judicial Substitution, Newly Introduced Judicial Powers

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#### المخلص:

ان امتناع الإدارة عن تنفيذ القرار القضائي الإداري والقاضي بإبطال القرار الإداري العقابي، فإن قانون الإجراءات المدنية والإدارية وضع ما يمكن للمتقاضي من حمل الإدارة على تنفيذه، إلا أن التمسك بمبدأ الفصل بين السلطات للحد من توجيه أوامر ضد الإدارة في حالة مخالفتها للتنفيذ قد تجاوزه الزمن بحيث أصبح له مفهوما حديث مفاده التعاون والتكامل للوصول إلى التنفيذ وتطبيق القانون على وجه

سليم ، و من ثم فإن خروج الإدارة عن حدود الشرعية وعدم احترام مبدأ قوة الشيء المقضي فيه يعد خروجاً عن حدود وظيفتها، لذا القضاء ملزم بإضفاء الفاعلية على الأحكام القضائية من خلال ضمان التنفيذ الذي يعد نهاية للخصومة، وإن تعنت الإدارة و امتناعها عن تنفيذ الأحكام القضائية الصادرة ضدها، دفع بالمشروع إيجاد آليات ذات طابع مالي تمس بالذمة المالية للإدارة الأمر الذي يشكل بالنسبة لها ضغطاً كبيراً عليها و بالتالي فإنه على الإدارة التفكير ملياً قبل أن تبدي عدم رغبتها في التنفيذ، وفي سبيل ذلك أن يلجأ القاضي إلى وسيلة الضغط والإكراه والمتمثلة في الغرامة التهديدية، بإضافة إلى ما أقره المشروع من مسؤولية جزائية للموظف الممتنع عن تنفيذ القرارات القضائية الإدارية.

**الكلمات المفتاحية:** القاضي الإداري، الغرامة التهديدية، حلول القاضي، السلطات المُستحدثة

### Introduction:

Administrative decisions represent one of the principal instruments through which the public administration exercises its functions, operating under legal rules that diverge from those applicable in private law most notably, the principle of immediate enforceability. In return for this authority or privilege conferred upon the administration, grounded in the “presumption of legality and validity,” the Algerian legislator has empowered individuals to challenge administrative decisions through an action for annulment whenever they are affected by a defect of legality.<sup>1</sup>

As the litigant seeks the issuance of a judicial judgment or decision, the mere attainment of a ruling recognizing his right does not, in itself, guarantee protection. Accordingly, the litigant must pursue execution procedures in order to obtain effective protection, since judicial judgments and decisions lose their legal and practical value in cases of non-execution.<sup>2</sup>

It has often been stated that the strength of the State lies in the strength of its judiciary; and the true strength of the judiciary, as a sovereign institution, lies in the enforcement of its judgments and decisions. What benefit is there in granting individuals a constitutional right to access the courts and bring actions against various administrative bodies whether central, local, or public establishments if, after the administrative judge resolves the dispute and grants relief by annulling the contested administrative act, the administration nonetheless refrains from executing the judgment? In response to this challenge, the Algerian legislator sought to empower the judiciary with mechanisms designed to secure the execution of judicial decisions, thereby limiting this phenomenon. To this end, a dedicated section in Law No. 08-09, as amended and supplemented by Law No. 22-13 relating to the Code of Civil and Administrative Procedures, sets forth the rules governing the enforcement of administrative judgments against the administration and the means available in cases of non-execution.

to examine the extent to which the newly introduced authorities of the administrative judge are effective, the following research question is raised:

**Have the mechanisms newly granted to the administrative judge achieved effectiveness in ensuring the execution of judicial decisions issued against the administration?**

The analysis of this research and the response to these questions required the adoption of both the descriptive and analytical methods, as they constitute the most appropriate approaches for examining this topic. The practical importance of this study lies in its contribution to fostering a broad and comprehensive dynamic in the field of judicial enforcement, by exploring the mechanisms of execution and the authorities granted to the judge. This subject also represents a contemporary and timely legal issue, given its significance, relevance, and novelty within the legal landscape.

In order to adequately address the subject, we deemed it appropriate to divide the study into two parts. The first section is entitled “**The Authorities of the Annulment Judge in Confronting the Administration’s Refusal to Execute Judgments,**” while the second section is entitled “**Mechanisms for Implementing Judicial Decisions.**”

### **I. Section One: The Authorities of the Annulment Judge in Addressing the Administration’s Refusal to Execute Judgments**

The success of administrative justice is measured by the degree to which its judgments are executed; therefore, genuine protection must be afforded to the party in whose favor judgment is rendered. This necessity arises in light of the privileges conferred upon the administration by law, particularly its authority to issue unilateral administrative decisions that are binding on individuals without requiring their consent, and without the need to resort to the judiciary to confirm such authority. Moreover, the administration enjoys institutional independence from the administrative judiciary, ensuring that the latter cannot intervene in its affairs or compel it to act against its will. These factors place the administration in a position of superiority in its relations and dealings with individuals, which underscores the importance of examining the role played by the administrative judge as the guarantor against administrative abuse of power.

#### **➤ Subsection One: The Principle of the Judge Substituting the Administration**

Substitution is considered an administrative oversight mechanism exercised by a superior over a subordinate pursuant to an explicit legal provision. For its application, it is required that the individual be integrated within the administrative structure rather than external to it. Since the judge is external to the administration whether in terms of institutional affiliation or functional role and performs functions that differ in nature from those of the administration, the substitution principle cannot apply to him.

#### **❖ Paragraph One: The Limitations Imposed on the Annulment Judge in Substituting the Administration**

The administrative judge does not possess hierarchical authority over the administration; therefore, he cannot substitute himself for it, nor may he intervene in the administration’s actual operations. Under Law No. 08-09, the

legislator granted the judge the power to order the administration to act, without providing for the possibility of judicial substitution in cases where the administration refuses to execute judicial decisions issued against it.

The principle prohibiting the judge from substituting the administration is founded on two bases. The first is the independence of the administrative function vis-à-vis the judicial function, which constitutes a theoretical foundation. The second foundation lies in the nature of the judge's role and his jurisdiction, which is limited to adjudicating disputes<sup>3</sup>, with his mission ending upon issuing the judgment. This reflects the functional separation of powers<sup>4</sup>. In full-jurisdiction litigation, the judge is confined to ordering the administration to pay compensation, whereas in annulment proceedings for abuse of power, the judge is restricted to the annulment of the contested administrative act without exceeding that boundary

The administrative judiciary may not exceed its review of legality and propriety over administrative acts by substituting itself for the administration, such as by issuing administrative decisions in its place or modifying those already issued. If the administrative judge were to do so, he would be intruding into the core of administrative functions and departing from his role as a judge of legality. When the judge annuls<sup>5</sup> an administrative decision due to its illegality, he is not empowered to issue a new decision in its place or amend the annulled decision. The issuance or modification of administrative decisions lies exclusively within the competence of the administration. This limitation prevents the judge from undermining the independence of the public administration or interfering with its actions by reinterpretation.<sup>6</sup> Accordingly, although the judge theoretically possesses powers that might suggest substitution, he remains bound by restrictions that prevent him from replacing the administration.<sup>7</sup>

#### ❖ **Paragraph Two: Exceptions to the Principle of Substitution**

##### ▪ **First: Partial Annulment:**

Partial annulment refers to the separability of the components of an administrative decision, such that the unlawful element can be isolated from the remaining elements. In other words, the administrative decision must be divisible; otherwise, the administrative judge cannot rule on partial annulment. This applies, for example, to decisions of land-consolidation committees concerning the complete ownership of a single proprietor, or to a building permit, which is considered an indivisible administrative act.

In such cases, the administrative judge may substitute the administration when requested by the claimant, or when such substitution appears feasible. Through partial annulment, the judge exercises a form of authority to correct the administrative decision, as he modifies the original act despite not adding any new elements or altering its essential content. In reality, partial annulment represents the furthest extent to which the judge may go in exercising his

powers, as it effectively amounts to the judge “re-creating the administrative decision.”

▪ **Second: Judicial Substitution:**

This refers to the judge substituting the legal basis of the administrative decision, as well as substituting its stated grounds:

**A. Substitution of the Legal Basis:**

The competent authority may issue a decision in full compliance with the mandatory procedural requirements, yet base that decision on an incorrect legal text that does not grant it the authority to act. In such a case, the judge substitutes the correct legal basis for the improperly invoked legal provision. An example is the judge substituting the Law of 26 June 1941 which prohibits the combination of practicing law with holding a public office in place of the legislative decree of 29 October 1936 as the legal foundation for the Minister of Agriculture’s decision requiring an employee at an agricultural school to resign from the legal profession.<sup>8</sup>

**B. Substitution of Grounds:**

If the administration relies on incorrect reasons when issuing an administrative decision, the judge normally annuls that decision and may not substitute those defective grounds with correct ones. However, where the administration is legally obligated to issue the contested decision, the judge may substitute the correct grounds in place of the erroneous ones, thus providing a lawful foundation for the decision.<sup>9</sup>

**C. Judicial Substitution in Tax Disputes:**

The judge enjoys the power of substitution in tax disputes. This authority includes annulling unlawful taxes, modifying the tax rate imposed by the administration by reducing it, and annulling decisions of the competent minister determining the taxable base for a particular tax. Thus, when the judge establishes that a tax imposed upon the claimant is unlawful, he may annul it or reduce the amount previously set by the administration. All of these powers fall within the scope of judicial substitution for administrative decisions in tax matters.

➤ **Subsection Two: The Authority of the Administrative Judge to Issue Orders to the Administration**

The independence of the administrative judiciary from the administration aims to prevent the administration from acting as both litigant and judge at the same time, which would lead to arbitrariness. The purpose of the administration’s independence, in turn, is to enable it to fulfill its functions without the administrative judge becoming its hierarchical superior. Nevertheless, the term “order” must remain confined to situations in which the judge merely directs instructions to the administration, without substituting himself in its place, since such an order does not constitute an administrative

decision but rather a procedural measure intended to reinforce the judgment issued. Indeed, although the general principle is that the administration should not receive orders from the administrative judge, there is no explicit legal basis affirming this prohibition.

❖ **Paragraph One: Orders in Algerian Legislation**

An “order” refers to a directive issued by the administrative judge to one of the parties to the dispute, requiring the adoption of a specific conduct either to perform an act, to refrain from performing it, or to refrain from completing it if it is still in preparation. This order is issued during the course of the proceedings. This is established in Article 978 of the Code of Civil and Administrative Procedure, which provides: “When the judgment or decision requires compelling one of the public legal persons or a body whose disputes fall within the jurisdiction of the administrative courts to take specific enforcement measures, the administrative court seized of the matter orders, within the same judicial decision<sup>10</sup>, the required measures and sets a time-limit for execution, where necessary.” This same provision will be examined both prior to and following the enactment of Law 08-09.

**A- Before the Enactment of Law 08/09:**

Upon examining the provisions of the Code of Procedure<sup>11</sup> issued pursuant to Ordinance No. 66–154 of 08 June 1966, applicable to both ordinary and administrative disputes, we did not find any explicit provision authorizing, prohibiting, or forbidding the judge from issuing orders to the administration<sup>12</sup>. This ambiguity gave rise to a doctrinal and procedural dilemma, stemming from the interpretation of the provisions of the Civil Procedure Code.

However, when referring to judicial precedents, we find that the Algerian administrative judge was not empowered to issue orders to the administration, as evidenced by numerous decisions rendered in this regard:

**Decision of the Council of State<sup>13</sup> issued on 15/07/2002, which stated: “The judge cannot issue orders or instructions to the administration, as he cannot compel it to perform an act.”**

The Algerian administrative judge relied on Article 168 of the Civil Procedure<sup>14</sup> Code in rejecting the issuance of orders to the administration, as this provision prohibits the application of the order for payment procedure against public authorities. Referring to Articles 174 and 182 of the Civil Procedure Code<sup>15</sup>, the order for payment pertains to monetary debts established in writing, which the debtor is obliged to settle. Such orders are therefore unrelated to the enforcement of judicial decisions. The legislator excluded the administration from the application of the order for payment procedure, unlike private parties, because the collection of public debts is governed by a special legal regime that regulates State expenditures. Moreover, the order for payment requires enforcement within 15 days; if the debtor fails to comply within that

period, coercive enforcement mechanisms, including compulsory execution, may be applied mechanisms that are inapplicable against the administration. Accordingly, the exclusion of the order for payment procedure against the administration does not imply the exclusion of all judicial orders, particularly those related to the enforcement of judicial decisions issued against the administration<sup>16</sup>. In this sense, the order for payment constitutes an exception to the general rule. In other words, the administrative judge may issue orders to the administration, except in cases involving orders for payment.<sup>17</sup>

Some scholars believe that the Algerian legislator has mitigated the prohibition by virtue of Article 171 bis of Ordinance No. 66–154, by granting the judge the power to suspend the execution of administrative decisions in cases of urgency and necessity.

However, in principle, the administrative judge in Algeria is prohibited from issuing orders to the administration in application of the principle of separation of powers, whereby the administrative judge exercises his function of adjudicating disputes brought before him, while the administration issues its decisions freely. This is also based on the notion that the administrative judge adjudicates but does not administer. Nevertheless, as previously mentioned, there is no explicit legal provision that expressly prohibits him from doing so.<sup>18</sup>

What we conclude is:<sup>19</sup> that the Algerian administrative judge has chosen to define the scope of his own powers, despite the absence of any provision preventing him from exercising the authority to issue orders. In fact, in the absence of an explicit legal text, it would have been incumbent upon him to affirm his authority to direct orders to the administration when it fails to comply with judicial decisions, given his interpretative and jurisprudential role.

#### **B-Following the enactment of Law No. 08-09 and Law No. 22-13:**

Pursuant to Law No. 08-09 on the Code of Civil and Administrative Procedure, the Algerian legislator expressly regulated the issuance of judicial orders to the administration in certain circumstances where the judge considers such measures necessary to achieve justice. The authority to direct orders to the administration is provided for under Articles 987, 988, and 989, as well as Articles 980 through 989, whereby jurisdiction lies with the administrative court that previously adjudicated the case namely, the Administrative Court or the Council of State.<sup>20</sup>

Pursuant to Articles 978, 979, 980, and 981 of the Code of Civil and Administrative Procedure, the administrative judge may issue an order to a public legal person or a private entity entrusted with the management of a public service, whether such order is included in the original judgment or issued subsequently<sup>21</sup>, in order to ensure the enforcement of administrative decisions. Based on Articles 978 and 979, the legislator requires the administrative judge, when exercising his authority to issue enforcement orders, to clearly and explicitly specify the measure required:

This means that the judge cannot exercise his authority to issue enforcement orders directly and on his own initiative. This is in accordance with the procedural rule that “the judge may not rule beyond what the parties request.” The requests are divided into two types: requests made prior to the issuance of the judicial decision and requests made thereafter. Accordingly, enforcement orders either form part of the operative section of the judgment when issued concurrently with it in which case they share its binding force or they may be issued independently by the judge once the judgment has been rendered and the administration has refused to execute it.<sup>22</sup>

❖ **Paragraph Two: Conditions for Issuing Orders**

The administrative judge issues the requested orders only in two cases:

**First: The first case is an order requiring the adoption of a specific measure necessary for the execution of the judgment.**

When the judge adjudicates the dispute and annuls the administrative decision issued by the administration, he then carefully examines the legal consequences arising from that decision, to the extent that such consequences are legally possible and necessary. In such cases, the judge expressly and directly orders the administration to take the measure imposed upon it, as he deems appropriate, while setting a time limit for execution where necessary.<sup>23</sup>

**Second: The first case is Ordering the administration to conduct an investigation, decide on the matter, and issue a new decision.**

In this context, the judge also adjudicates the dispute and annuls the administrative decision, and the administration is then required to adopt specific enforcement measures, even if such measures were not requested in the initial proceedings. The authority of the administrative judge in this case remains limited.<sup>24</sup>

It is well-established that administrative litigation, like all other judicial disputes, must culminate in a judgment or administrative judicial decision that settles the merits of the case. Such a decision may either favor the administration or favor the individual challenging the decision.

Our concern here is the second scenario, as it is the one that generates difficulties, particularly at the enforcement stage, specifically when the administration refuses to execute the administrative judicial decision that does not serve its interests or objectives.

II. **Section Two: Mechanisms for the Enforcement of Judicial Decisions**

The authority of *res judicata* imposes two types of obligations on the administration: a negative obligation, which consists of refraining from undertaking any action that contradicts the judicial ruling, and a positive obligation, which consists of taking the necessary measures to execute it. The Algerian legislator has therefore introduced the *astreinte* (penalty payment) as a mechanism to ensure the enforcement of judgments issued against the administration (Section One). However, it has been demonstrated that this

measure alone is insufficient, particularly in cases where the judgment imposes a specific obligation to act, since the administration may still refuse to execute the ruling even when it includes an *astreinte*. In order to safeguard the litigant's rights, the legislator has also provided for criminal proceedings and sanctions against State officials (Section Two).

➤ **Subsection One: The Civil Mechanism *Astreinte* (Penalty Payment)**

The *astreinte* (penalty payment) represents a qualitative shift and an effective guarantee in the enforcement of judicial rulings and administrative decisions issued against the administration. It constitutes an indirect means of compelling the administration to comply with judgments. The administrative judge imposes it without thereby intervening in the administration's functions or substituting himself for it, and without infringing the principle of separation of powers. Rather, it serves as a formal reminder to the administration of its fundamental obligation to respect the content of the judgment, reinforced by an official warning in the form of the threat of a financial sanction.

❖ **Paragraph One: Distinguishing the *Astreinte* from Similar Measures**

Given the similarity between the *astreinte* (penalty payment) and certain other legal mechanisms, it is necessary to distinguish it from a sanction, first; and second, there is often confusion between the *astreinte* and compensation<sup>25</sup>, although there is a significant difference between them, which we shall clarify.

**First: Distinction Between the *Astreinte* and a Sanction**

The *astreinte* is not a sanction, even though it resembles one. The key difference lies in the fact that a sanction is final and must be executed as pronounced, whereas the *astreinte* is provisional in nature.<sup>26</sup>

Both Algerian and French legislation use the term "financial coercion" to denote the *astreinte* system, in order to avoid any confusion with a punitive sanction<sup>27</sup>. This contrasts with Algerian judicial practice, which continues to use the term *astreinte* despite the criticisms directed at it.<sup>28</sup>

With the issuance of the Algerian Council of State's decision on 08-04-2003, which held that: "**The *astreinte* constitutes an obligation pronounced by the judge as a sanction, and therefore it should be subject to the principle of legality of offenses and penalties,**"<sup>29</sup> an issue arises.

If the *astreinte* is considered a sanction, as the Council of State suggested, then it becomes necessary to identify the criminal provision that establishes it and the provision criminalizing the conduct associated with it.

Returning to the principle of legality, as stipulated in Article 1 of the Penal Code "No crime and no penalty without a legal provision" it is evident that no criminal text establishes the *astreinte* as a sanction, nor is refusal to execute a judgment classified as an offense punishable by law.

A sanction is final and must be executed as pronounced, whereas the *astreinte* is provisional and is only enforced if it is converted into compensation.<sup>30</sup> Moreover, it is not recorded in the offender's criminal record,

since the *astreinte* does not constitute criminal prosecution but rather a response to non-execution. A sanction primarily affects personal freedom as a consequence of violating legal rules that safeguard public order, while the *astreinte* serves as a coercive mechanism intended to compel compliance and overcome resistance by pressuring the debtor to fulfill their obligation.

### **Second: Distinguishing the *Astreinte* from Compensation**

The *astreinte* is independent from compensation and differs from it in several respects. While the *astreinte* does not seek to punish the administration for past conduct, it serves to compel compliance with judicial orders. In contrast, compensation aims to redress and repair the damage suffered. Article 982 of Law No. 22-13, which forms part of the Civil and Administrative Procedures Code, expressly states that “the *astreinte* shall be independent from compensation.”

The *astreinte* does not constitute compensation, and the aforementioned provision expressly affirms its independence from damages. It is therefore clearly and explicitly distinct from compensation. When a judge awards damages, he is bound by statutory rules requiring consideration of both the loss incurred and the profit foregone by the claimant. In contrast, the *astreinte* is discretionary in nature and is not subject to such compensatory criteria.

In certain cases, the amount of compensation may coincide with the *astreinte*, particularly when the debtor persists in obstinately refusing to fulfill his obligation. The financial constraint may also transform into compensation at the stage of liquidation of the *astreinte*<sup>31</sup>. Nevertheless, it preserves its effectiveness as a coercive and deterrent measure.

The *astreinte* serves solely to secure the enforcement of a judicial decision.<sup>32</sup> It is discretionary in nature, and the judge enjoys broad authority when imposing it. This distinguishes it entirely from compensation, confirming its complete independence from it.<sup>33</sup>

#### **❖ Paragraph Two: Conditions for Imposing the *Astreinte* (Penalty Payment)**

The imposition of an *astreinte* requires the existence of specific measures ordered for the execution of the judgment or judicial decision. This implies that the *astreinte* cannot be applied unless the competent judicial authority has previously ordered execution measures. Accordingly, the conditions are as follows:

1. The administration must fail to comply with the obligation imposed upon it.<sup>34</sup>
2. The imposition of an *astreinte* does not require a request from the concerned party. The wording of Articles 980 and 981 suggests that the court may impose it *ex officio* whenever it deems it necessary to compel the administration to take the measures required to execute the judicial order, judgment, or decision. This reflects the intent of the drafters of the Civil and Administrative Procedures

Code to assign an active role to the administrative judge in administrative litigation, by granting him wide discretionary authority in assessing the necessity of the *astreinte*.

Pursuant to Article 987, no request may be submitted to the Administrative Court to exercise its authority to order enforcement of a final judgment, nor to impose an *astreinte* to compel the administration to comply, unless the administration has refused to execute the judgment and a period of three (03) months has elapsed from the date of official notification of the administrative court's judgment.<sup>35</sup>

❖ **Paragraph three:** The Legal Basis for the *Astreinte* (Penalty Payment) For a long period, the French Council of State refrained from issuing orders accompanied by an *astreinte*, on the basis that directing such orders to the administration constituted interference in the management of public services.<sup>36</sup> Although Article 471 of the former Civil Procedure Code authorized the imposition of an *astreinte* on a debtor who refused to execute a judgment, without distinguishing between private-law and public-law persons, the administrative judiciary nevertheless refrained from applying such penalties, considering them applicable exclusively to civil judgments.

Article 981 expressly authorizes the administrative judiciary to impose an *astreinte* where administrative legal persons fail to execute a judicial decision. The purpose of imposing the *astreinte* is to exert pressure on administrative bodies to comply with the judgment, and this measure operates as a form of financial coercion.<sup>37</sup>

As a general rule, judicial decisions are executed voluntarily; however, the party against whom judgment is rendered may refrain from complying voluntarily, necessitating enforcement by coercive means. The *astreinte* constitutes the most significant mechanism of compulsory execution of judicial rulings. The Civil and Administrative Procedures Code regulates the *astreinte* in Articles 980 to 988, assigning jurisdiction to the administrative judicial authority that rendered the decision namely, the Administrative Court of Appeal and the Council of State<sup>38</sup> which is vested with the following powers:

- a. Determining the amount of the *astreinte* and the date from which it shall take effect.
- b. Liquidating the *astreinte* where the public administration fails to execute the judgment within a period of three (03) months from the date of official notification.
- c. Reducing the *astreinte* or cancelling it entirely where circumstances so warrant.

The Algerian constitutional framer provided, under Article 141 of the 1996 Constitution, that judicial decisions are rendered in the name of the people, thereby conferring upon them enforceability and binding authority. To reinforce the authority of judicial rulings and ensure their proper execution,

Article 145 of the 1996 Constitution obliges all competent State bodies, at all times, in all places, and under all circumstances, to execute judicial decisions. Article 145 of the Constitution thus guarantees the proper enforcement of judicial decisions, whether in administrative or ordinary matters. It prohibits any State body from encroaching upon judicial rulings or refusing to execute them, or from delaying their execution under any pretext, as long as such decisions are issued in the name of the people.<sup>39</sup>

This demonstrates the commitment of the Algerian constitutional drafter to consolidating the rule of law, judicial independence, and the authority of judicial decisions.

However, the legislative adoption of the *astreinte* in Algeria was initially marked by ambiguity, as evidenced by the general wording of Article 471 of the former Civil Procedure Code, which provided that “judicial bodies may, upon request of the parties, issue judgments including financial threats.<sup>40</sup>” The use of the term “judicial bodies” suggested that the provision applied to all courts without distinction.

The breadth of this term led administrative courts to hesitate in applying the *astreinte*. However, with the enactment of Law 08-09 on Civil and Administrative Procedures, the Algerian legislature removed the ambiguity that had surrounded Article 471 of the former Code. It explicitly authorized administrative courts to impose an *astreinte*, as confirmed by Article 980 of the Civil and Administrative Procedures Code, which provides: “The administrative judicial authorities, upon whom a request for an enforcement order is made in accordance with Articles 978–979 above, may order an *astreinte* and determine the date from which it shall take effect.”

The judge enjoys full discretion in determining the amount of the *astreinte*, irrespective of the damage suffered by the creditor. The amount may exceed the value of the harm in order to compel the administration to comply. The judge has the authority to impose or refrain from imposing the *astreinte*<sup>41</sup>, guided solely by the degree he deems effective in achieving its purpose namely, compelling the party against whom judgment is rendered to fulfill its obligation.<sup>42</sup> Accordingly, the competent judge may adjust the amount of the *astreinte* whenever circumstances so require.<sup>43</sup>

The judge’s discretion in imposing the *astreinte* is manifested through:

1. His authority to accept or reject the request of the prevailing party for the imposition of a financial coercive measure, without the requirement that the amount be proportionate to the harm suffered. In fact, the existence of damage is not a prerequisite for the imposition of an *astreinte*.
2. His authority to determine the time limit he considers appropriate for execution.

3. His authority to increase the amount of the astreinte if he finds that the amount initially imposed is insufficient to compel the party against whom judgment was rendered to comply.<sup>44</sup>

➤ **Subsection Two:** Establishing the Liability of the Public Official for Failure to Execute Judicial Decisions

The refusal of competent public officials to execute judicial decisions constitutes a criminal offense punishable by law, and in such a case, the prevailing party has the right to initiate criminal proceedings.<sup>45</sup>

An examination of the practice of the administrative chambers and the Council of State in addressing these issues clearly reveals significant efforts to develop appropriate mechanisms to compel the administration to enforce administrative judicial decisions issued against it. Among these mechanisms is the establishment of the personal liability of public officials for failure to execute administrative judicial rulings.

Accordingly, the establishment of the personal liability of the public official constitutes one of the most effective means available to compel and oblige the official to execute administrative judicial decisions issued against the administration, as well as judicial rulings in general.

Thus, a public official who refuses to execute an annulment judgment exposes himself to criminal sanctions pursuant to the provisions of the Penal Code.<sup>46</sup>

This is because the act of refusal to execute may constitute both a personal fault and a service-related fault simultaneously. Accordingly, in addition to holding the administration liable for its failure to supervise and control its employees<sup>47</sup>, there is no impediment to establishing the personal liability of the official for his fault. Likewise, the person harmed by the refusal to execute a judicial decision issued in his favor may combine, in a single action, both the liability of the administration and the liability of its employees.

Administrative jurisprudence has held that a public official who refuses to execute judicial judgments or decisions, persists in such refusal, or declines to assist in their execution, violates the principle of *res judicata*. The official may therefore be held personally liable for his refusal or failure to implement judicial rulings, as such conduct constitutes a personal fault committed during or in connection with the performance of his duties, thereby engaging the liability of the administrative authority to which he belongs.<sup>48</sup>

❖ **Paragraph One:** Criminal Liability

As a rule, liability is personal in the offense of refusal to execute judicial decisions. Where a public official deliberately refrains from executing judicial rulings and decisions, the establishment of liability requires that the official possess criminal capacity, meaning a legally recognized will that motivates the official to refuse execution. This intent is subject to the same requirements governing criminal responsibility.<sup>49</sup>

Criminal liability of the public official in the context of executing administrative judicial decisions constitutes one of the most effective punitive mechanisms when refusal to execute is established. Its application results in the deprivation of the official's liberty through imprisonment and his removal from office. Such a sanction compels the official to respect his legal obligations, comply with the content of the judicial decision, and pursue its full implementation.<sup>50</sup>

The Algerian legislator, in Article 138 bis of the Penal Code, provides: "Any public official who abuses the authority of his office to suspend the execution of a judicial judgment, or who deliberately refuses, opposes, or obstructs its execution, shall be punished with imprisonment from six (06) months to three (03) years and a fine ranging from 5,000 DZD to 50,000 DZD."

This offense is committed when a public official willfully exploits the authority of his office in any manner to halt the execution of a judicial ruling, such as by intervening with subordinates and directing them verbally or in writing to ignore the execution of the judgment.<sup>51</sup>

From the wording of this provision, it is clear that intentionally suspending execution without legal justification, or deliberately refusing, opposing, or obstructing execution, constitutes a misdemeanor of abuse of authority against the public interest.

The legislator prescribes imprisonment from six months to three years, coupled with a fine between 5,000 and 50,000 DZD as principal penalties. Furthermore, Article 139 of the Penal Code authorizes additional penalties, stating: "The offender may also be deprived of one or more of the rights listed in Article 14 for a period of not less than five years and not more than ten years, and may be barred from exercising any public office or performing any public service for a period not exceeding ten years."

#### **A. Elements of the Offense of Refusal to Execute an Administrative Judicial Decision.**

Referring to Article 138 bis of Law No. 01-09 of 26 June 2001 amending the Penal Code, which provides that: "Any public official who abuses the authority of his position to halt the execution of a judicial ruling, or who deliberately refuses, opposes, or obstructs its execution, shall be punished with imprisonment from six (06) months to three (03) years and a fine ranging from 5,000 to 50,000 DZD," it follows that the constituent elements<sup>52</sup> of the offense of refusal to execute are as follows:

##### **1. The Presumed Element: *Official Capacity* ("Status").**

The accused must be a public servant. Article 4 of Law No. 06-01 defines a public official as "any agent appointed to a permanent public position and formally classified in a rank within the administrative hierarchy." This includes any individual who performs duties within public institutions and administrative bodies, namely: public institutions, central government

administrations, decentralized state services, local authorities, public administrative institutions, public institutions of a scientific, cultural, or professional nature, and public institutions of a scientific and technological nature.<sup>53</sup>

Although the Penal Code does not provide a specific definition of a public official<sup>54</sup>, reference may be made to the Anti-Corruption Law<sup>55</sup>, which constitutes a special law. Paragraph (b) of Article 2 of that law provides the following definition: “For the purposes of this law, the following terms shall mean: ...”

### **B. Public Official:**

Any person who occupies a legislative, executive, administrative, or judicial position, or serves in one of the elected local popular assemblies, whether appointed or elected, permanent or temporary, paid or unpaid, regardless of rank or seniority.

Dr. Abdel-Moneim Abdel-Azim Giza defined him as: “every individual affiliated with the State or with one of the public-law entities by a functional relationship that grants him authority enabling him to refrain from executing a judgment or to suspend its execution.”<sup>56</sup>

### **2. Condition of Jurisdiction (Competence):**

Jurisdiction is an essential requirement dictated by the legality of executing any act. Therefore, the offense of refusing to execute a judicial ruling cannot, under any circumstances, be attributed to an employee who is not originally responsible for executing the decision, even if the employee exercises authority over the official entrusted with enforcement. The mere silence of the administrative superior regarding non-execution by the competent subordinate does not constitute the offense of abstaining from execution, unless the superior takes a positive act to prevent or halt the execution. It is not required that the employee be responsible for all enforcement measures; it is sufficient that one enforcement step falls within their competence. This applies particularly when execution involves multiple officials, with each employee bearing responsibility within the scope of their functions.<sup>57</sup>

### **3) Material Element:**

This consists of the public employee’s use of his official authority to stop, hinder, or obstruct the execution of a judgment in any manner, either by taking a positive action or through a negative act such as explicitly or implicitly refusing to execute it. It includes exploiting his official authority in any form to suspend the execution of a judicial ruling, for example by intervening with subordinates responsible for enforcement and preventing them from carrying out the execution, whether verbally or in writing.<sup>58</sup>

### **4) Criminal Intent: Intentional Conduct:**

The offense is completed when the criminal intent of the employee is established, meaning that the employee deliberately refrained from executing the judgment, with the intention of achieving a specific outcome preventing execution without lawful justification. Therefore, the offense does not exist if it is proven that the employee did not intend to achieve that result, such as when genuine practical difficulties prevented the employee responsible for execution from carrying out the act.

### **Conclusion:**

The authorities of the annulment judge in Algeria have expanded as a result of the procedural reform of 2008, reinforced by the 2023 amendment. The judge's role is no longer limited to annulling unlawful administrative decisions, but now extends to their execution as well. Like the ordinary judge, the administrative judge now possesses tools that enable the effective fulfillment of this function. The privileges traditionally enjoyed by the public administration no longer constitute a barrier to its subjection to the *astreinte* (penalty payment), placing the administration on equal footing with individuals both at the adjudication and enforcement stages, where its options are restricted to execution with payment or execution without payment.

Moreover, through the issuance of executive orders, the judge clarifies the procedures and measures required to implement the judgment within a specified timeframe. This prevents the administration from evading execution by claiming ambiguity or alleging an inability to determine the proper means of implementation. Thus, the annulment judgment has evolved into a process of "demolition" followed by a process of "reconstruction."

**Based on this study, we reached the following findings and recommendations:**

### **Findings:**

- This reform restores the authority and status of administrative judicial rulings, granting them special respect and protection, thereby reinforcing the fundamental principles of the rule of law and institutional governance.
- A notable shortcoming lies in the legislator's failure to allow the *astreinte* to be determined within the judgment resolving the dispute independently of confirming non-execution, as this would ensure swift execution and relieve litigants from returning to court again to request the imposition of the *astreinte* in the event of administrative non-compliance.

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<sup>1</sup> Adel Mestari, The Action for Suspending the Execution of Administrative Decisions: "Conditions and Effects" under Law 08/09, Legal Forum Journal, Issue No. 7, Faculty of Law and Political Sciences, Mohamed Khider University – Biskra, Algeria, p. 157.

<sup>2</sup> Farida Meziani & Ali Kassir, The Role of the Coercive Fine in Achieving Judicial Security, Paper presented at the National Symposium on Legal Security, Faculty of Law, Kasdi Merbah University – Ouargla, Algeria, December 2012, p. 1.

<sup>3</sup> Sami Jamal El-Din, The Mediator in the Action for Annulment of Administrative Decisions, Al-Maaref Establishment, Alexandria, Egypt, 2004, pp. 54–55.

<sup>4</sup> This idea originated in France from the Law of 16–24 August 1790, whereby the administrative judge was no longer considered an administrative official, and the Council of State ceased to act as the supreme administrative authority following the enactment of the Law of 24 May 1872.

<sup>5</sup> Baïa Skakni, The Role of the Administrative Judge in Protecting Fundamental Rights and Freedoms, Doctoral Thesis, Faculty of Law, Mouloud Mammeri University of Tizi Ouzou, Algeria, 2010/2011, p. 215.

<sup>6</sup> Farida Meziani & Amina Soltani, The Principle Prohibiting the Administrative Judge from Directing Orders to the Administration and its Exceptions under the Code of Civil and Administrative Procedure, Al-Mufakir Journal, Issue 7, Year (not specified), p. 123.

<sup>7</sup> Ammar Aouabdi, The Principle of the Hierarchy of Administrative Authority, National Publishing and Printing Organization, Algeria, 1984, p. 175.

<sup>8</sup> Lahcen Ben Sheikh At Mellouya, *Ibid.*, p. 435 and thereafter.

<sup>9</sup> Faiza Brahimi, previously cited reference, p. 18.

<sup>10</sup> It is the same Article L911-1 of the Code of Administrative Justice, which states: “Where its ruling necessarily implies that a legal person governed by public law or a private-law body entrusted with the management of a public service must take an enforcement measure in a specific direction, the court, when seised of such a claim, shall order that measure in the same decision, possibly setting a time limit for its execution.”

<sup>11</sup> Ordinance No. 66-154 of June 8, 1968 establishing the Civil Procedure Code, repealed by Law No. 08-09 of February 25, 2008.

<sup>12</sup> This prohibition in Algerian administrative justice is primarily based on constitutional provisions affirming the independence of the judicial authority from the executive branch, and its exclusive function of adjudication, pursuant to Articles 146 and 138 of the 1996 constitutional amendment. It also relies on Article 168 of the former Civil Procedure Code, which bars the application of the order for payment procedure concerning written monetary debts, not judgments—against the administration; however, such reliance is misplaced.

<sup>13</sup> Decision No. 5638, published in the Journal of the Council of State, Issue No. 3, 2003, p. 161.

<sup>14</sup> Article 168 of the Civil Procedure Code states: “The provisions of this section of Book III and the provisions of Book IV shall apply before the Court of Appeal, which rules on administrative matters, to the extent that they do not conflict with the provisions of this section. Articles 174 and 182 concerning orders for payment shall not apply.”

<sup>15</sup> Article 174 of the Civil Procedure Code states: “By way of exception to the general rules for bringing actions before competent courts, the provisions of this section may be followed when claiming a written, due, and liquidated monetary debt.”

<sup>16</sup> Elham Fadil, previously cited reference, p. 11.

<sup>17</sup> Farida Meziani & Amina Soltani, previously cited reference, p. 124.

<sup>18</sup> Amal Yaïch Tamam, previously cited reference, p. 34.

<sup>19</sup> Elham Fadil, previously cited reference, p. 12.

<sup>20</sup> Mohamed Essaghir Baali, The Mediator in Administrative Litigation, previously cited reference, p. 392.

<sup>21</sup> Farida Meziani & Amina Soltani, previously cited reference, p. 134.

<sup>22</sup> Elham Fadil, previously cited reference, p. 12.

<sup>23</sup> See Article 978 of the Code of Civil and Administrative Procedure.

<sup>24</sup> Article 979 of Law No. 09-08 on the Code of Civil and Administrative Procedure provides: “When the order, judgment, or decision requires compelling one of the parties to take a specific measure requested in the previous proceedings, the competent administrative court shall order the issuance of a new administrative decision within a specified time period.”

<sup>25</sup> Faiza Brahimi, *The Financial Impact of Non-Execution of Administrative Judicial Rulings*, Master’s Thesis, Faculty of Law, M’hamed Bougara University of Boumerdes, Algeria, 2011/2012, p. 75.

<sup>26</sup> Abd Al-Razzaq Al-Sanhouri, previously cited reference, p. 815.

<sup>27</sup> Faiza Brahimi, previously cited reference, p. 75.

<sup>28</sup> Ezzedine Merdassi, previously cited reference, p. 16.

<sup>29</sup> Decision No. 014989, Council of State Journal, Issue No. 4, 2003, p. 145.

<sup>30</sup> Abd Al-Razzaq Al-Sanhouri, previously cited reference, p. 816.

<sup>31</sup> Abd Al-Razzaq Al-Sanhouri, previously cited reference, p. 822.

<sup>32</sup> Chafika Ben Saoula, *The Problematic of Administrative Enforcement of Administrative Judicial Decisions – A Comparative Study*, Houma Publishing, Algeria, 2010, p. 278.

<sup>33</sup> Faiza Brahimi, previously cited reference, p. 82.

<sup>34</sup> Lahcen Ben Cheikh At Mellouia, previously cited reference, p. 494.

<sup>35</sup> Abdelkader Addou, previously cited reference, p. 18.

<sup>36</sup> “While it is within the judge’s authority to ascertain the reciprocal rights and obligations of the parties and to determine the damages to which they may be entitled, he may not intervene in the management of the public service by issuing injunctions—under threat of pecuniary sanctions—either to the administration or to those who have contracted with it, over whom it has the necessary powers to ensure the performance of said service.” Amkhand Boubchir, previously cited reference, p. 09.

<sup>37</sup> Mostafa Goudri, *The Astreinte under the Provisions of Civil Law and the Code of Civil and Administrative Procedure*, Supreme Court Journal, Issue 1, 2012, p. 47.

<sup>38</sup> Mohamed Essaghir Baali, *Concise Treatise on Administrative Litigation*, Dar Al-Uloom for Publishing and Distribution, Annaba, Algeria, p. 391.

<sup>39</sup> Ammar Boudayef, *Annulment Action in the Code of Civil and Administrative Procedure*, previously cited reference, p. 212.

<sup>40</sup> The ruling imposing an astreinte does not constitute a form of compensation... see Mostafa Goudri, *The Astreinte under the Provisions of Civil Law and the Code of Civil and Administrative Procedure*, Supreme Court Journal, Issue 1, 2012, p. 52.

<sup>41</sup> Farida Meziani & Ali Ksir, previously cited reference, p. 4.

<sup>42</sup> Abd Al-Razzaq Al-Sanhouri, *Al-Wasit in the Explanation of the New Civil Code – General Theory of Obligations*, Vol. II, 3rd Edition, Al-Halabi Legal Publications, Beirut, Lebanon, 1998, p. 813.

<sup>43</sup> Mostafa Goudri, previously cited reference, p. 56.

<sup>44</sup> Wafa Boualchaour, previously cited reference, p. 128.

<sup>45</sup> Karim Khamees Khasbak, *Problems of Enforcing Judgments Issued by Administrative Courts and Proposed Solutions*, Second Conference of Presidents of Administrative Courts in Arab States, held in the United Arab Emirates, 11–12 September 2012, p. 6.

<sup>46</sup> Chafika Ben Saoula, *The Problematic of Administrative Enforcement of Administrative Judicial Decisions*, previously cited reference, p. 321 et seq.

<sup>47</sup> Zine El-Abidine Belmahdi, *Legal Mechanisms to Ensure the Execution of Administrative Judicial Decisions*, Master’s Thesis, Faculty of Law, Abou Bekr Belkaid University of Tlemcen, Algeria, 2007/2008, pp. 115–116.

<sup>48</sup> Hassina Cherroun, Liability for Refusal to Execute Administrative Judicial Decisions and the Resulting Sanctions, *Al-Mufakkir Journal*, Issue 4, p. 183.

<sup>49</sup> Nawaf Kanaan, previously cited reference, p. 391.

<sup>50</sup> Zine El-Abidine Belmahdi, previously cited reference, p. 117.

<sup>51</sup> Karim Khamees Khasbak, previously cited reference, p. 06.

<sup>52</sup> Chafika Ben Saoula, previously cited reference, p. 293.

<sup>53</sup> Article 2, paragraph 2, of the General Civil Service Statute.

<sup>54</sup> Zine El-Abidine Belmahdi, previously cited reference, p. 119.

<sup>55</sup> Law No. 06-01 of 20 February 2006 on the Prevention and Fight Against Corruption, *Official Gazette* No. 14, 08 March 2006.

<sup>56</sup> Wafa Boualchaour, previously cited reference, p. 136.

<sup>57</sup> Wafa Boualchaour, same reference, p. 136.

<sup>58</sup> Karim Khamees Khasbak, previously cited reference, p. 06.