



## Call For The Introduction Of The Execution Judge System

**MAKHLOUF Hichem**

University Center of Barika, Institute of law, Algeria.

Email: [Hichem.makhlouf@cu-barika.dz](mailto:Hichem.makhlouf@cu-barika.dz)

**GAFFAF Fatma**

Faculty of law, University of Oran 2, Algeria.

Email: [fatma.gaffaf@cu-barika.dz](mailto:fatma.gaffaf@cu-barika.dz)

### **Abstract:**

*This study examines the civil enforcement system through analytical and comparative approaches, focusing on the practical difficulties it continues to pose. Enforcement issues, whether temporal or substantive, are governed by provisions scattered across the Civil Code, the Enforcement Procedures Code, and the Law Regulating the Profession of Judicial Officers. Jurisdictional questions also vary between the trial judge and the presiding court authority. These discrepancies raise concerns regarding the system's coherence and highlight the necessity of adopting the Enforcement Judge system, widely implemented in many countries, as a practical solution to ensure the efficiency and stability of enforcement procedures.*

**Keywords :** Enforcement – Procedures – Judgments – Enforcement Judge – Judicial Jurisdiction.

### **Résumé :**

*Cette étude examine le système d'exécution civile à travers des approches analytiques et comparatives, en mettant l'accent sur les difficultés pratiques qu'il continue de poser. Les questions d'exécution, qu'elles soient temporelles ou*

*substantielles, sont régies par des dispositions dispersées dans le Code civil, le Code des procédures d'exécution et la loi réglementant la profession d'huissier de justice. Les questions de compétence varient également entre le juge du fond et l'autorité judiciaire présidant le tribunal. Ces divergences soulèvent des inquiétudes quant à la cohérence du système et mettent en évidence la nécessité d'adopter le système du juge de l'exécution, largement mis en œuvre dans de nombreux pays, comme solution pratique pour garantir l'efficacité et la stabilité des procédures d'exécution.*

**Mots clés :** Exécution – Procédures – Jugements – Juge de l'exécution – Compétence judiciaire.



## **Introduction:**

From a legal perspective, a right is a power granted by the legislator to a specific individual, enabling them to claim or exercise control, whether against another person or over a particular object, either in a specific instance or in general. This right necessitates multi-level legal protection to ensure its existence and effectiveness. Accordingly, the substance and practical impact of a right are closely linked to the mechanism of its enforcement, as a right cannot be effectively realized without an operative means of execution.

Enforcement, whether considered from its substantive aspect—viewed as the means through which public authority compels a debtor to fulfill their obligations under an enforceable instrument and ensures the practical realization of the rights it establishes—or from its procedural aspect, which consists of the legal rules governing the steps that competent authorities must follow to implement a confirmed right, from the filing of an enforcement request to the completion, suspension, or termination of the process, ultimately aims to uphold justice by enabling rights holders to recover their entitlements effectively and tangibly.

The parties involved in enforcement disputes are multiple. They are not limited to the original parties—the claimant and the judgment debtor—but may extend to their legal or private successors. These parties may be represented by agents under legal or contractual authorization. Other participants, such as a surety, whether personal or real, may also become involved depending on the nature of the debt or the enforceable instrument. Additionally, other actors play a

central role in enforcement proceedings, most notably public authorities represented by the presiding judge and the judicial officer, who is pivotal to the execution of judgments, while third parties such as custodians or the holder of seized property may also be involved when required.

The role of the state in this framework extends to the exercise of its powers, particularly the judicial authority, which bears the responsibility of supervising enforcement procedures and ensuring their legality. The strength and effectiveness of the state are often measured by the efficiency and integrity of its judiciary. This is in line with a fundamental principle of legal procedure, which prohibits individuals from executing their rights on their own, necessitating that enforcement be entrusted to the competent judiciary from the initiation of procedures until their completion, thereby ensuring compliance with the law and the realization of justice.

In light of the foregoing, we raise a central issue, namely: **To what extent does the current system in Algerian law address enforcement issues?**

Based on the foregoing issue, we divide the study plan into two main sections as follows:

## **1. An examination of the current enforcement system in Algerian legislation**

### **Second section:**

The necessity of establishing a judicial authority specialized in resolving all enforcement issues.

### **1.1. An examination of the current enforcement system in Algerian legislation**

We divide this section into two main parts: the first relates to the subject of enforcement itself, and the second



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addresses enforcement-related issues and the manner in which they are resolved under the current legislative system

First: Concerning the General Theory of Enforcement in Algerian Legislation  
Second: Concerning Enforcement-Related Issues in Algerian Legislation

First: Concerning the General Theory of Enforcement in Algerian Legislation Pursuant to the provisions of Algerian legislation, enforcement is divided into two types: voluntary (amicable) enforcement and compulsory (coercive or mandatory) enforcement

01- Voluntary Enforcement: Voluntary enforcement is carried out by the debtor of his own free will, without the intervention of public authorities to compel him to do so. Through such enforcement, the obligation imposed on the debtor is extinguished without resorting to compulsory enforcement procedures, and no enforcement dispute arises (Al-Nimr, 1982, p. 397)

02- Compulsory Enforcement: Voluntary enforcement may fail on the part of the debtor. When the debtor insists on non-performance, the creditor's recovery of his right requires compelling the debtor to perform the obligation he has undertaken. Such enforcement is not carried out by the creditor personally –pursuant to the principle that “no person may enforce his own rights by himself” –but rather through recourse to the public authority, which executes enforcement under judicial supervision. This requires the fulfillment of certain specific conditions relating to the enforceable instrument, the person entitled to enforce it, and the assets that may be subject to enforcement. Compulsory

enforcement is carried out in two ways: direct enforcement or attachment (seizure) proceedings (Fahmy, 1973, p. 340)

A. Direct (Specific) Enforcement: Under this type of enforcement, the creditor obtains the very object that the debtor undertook to provide, whatever its nature or subject matter may be—whether the debtor’s obligation consists of delivering a specific item, performing an act, or refraining from an act. For example, the enforcement of the debtor’s obligation to deliver a movable property or a specific object is carried out by compelling the debtor to deliver that very movable or object to the creditor. If the obligation is to construct a building, enforcement is achieved by erecting the agreed-upon structure. Enforcement of an obligation not to build on a certain plot of land is carried out by demolishing what has been constructed. Enforcement of an obligation to vacate a specific property is achieved by vacating the premises and evicting the debtor (Seif, 1968, p. 202) If specific performance becomes impossible for a reason not attributable to the debtor—for instance, the destruction of the item the debtor is obliged to deliver—the debtor’s obligation is converted into an obligation to pay monetary compensation.

B. Indirect Enforcement: This type of enforcement arises only in cases where the obligation consists of paying a sum of money, whether the original obligation was to pay such a sum, or whether the obligation was transformed into a monetary one by way of compensation due to the impossibility of direct performance. This impossibility may result from a material obstacle, such as the destruction of the item to be delivered or the occurrence of the act the debtor was obliged to refrain from performing. In indirect enforcement, the creditor does not obtain the



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subject matter of his right directly. Instead, he seizes any of the debtor's assets and satisfies the debt from the seized property after its sale, thereby converting it into money from which the creditor recovers his right.

**Pre-Enforcement Procedures:** Pre-enforcement procedures are not considered part of the enforcement process nor do they form any component of it, as enforcement begins with the initiation of attachment (seizure) measures against the debtor's property, not with the completion of preliminary steps. This leads to several consequences:

- Enforcement, along with the effects it produces, is not deemed to have commenced merely by fulfilling the pre-enforcement procedures. As a rule, enforcement begins on movables located in the debtor's possession through attachment, and on immovable property through the registration of the attachment order (Al-Saadi, 2019, p. 277).

- Pre-enforcement procedures need not be repeated. If the creditor holds a single enforceable instrument and has completed the required preliminary steps, he may carry out multiple concurrent or successive enforcement actions on the debtor's assets.

- Pre-enforcement procedures are the same for all types of enforcement; they do not vary according to the nature of the enforcement nor the types of property to be seized.

- The invalidity of enforcement procedures does not necessarily entail the invalidity of the pre-enforcement procedures, provided that these preliminary steps have met the legal requirements. **Definition of Pre-Enforcement Procedures :** These are the legal acts that the law requires to be fulfilled before the commencement of judicial

enforcement. They are acts that precede enforcement, do not constitute part of it, and are not considered elements of the enforcement process, yet are legally required for its initiation and validity.

Once pre-enforcement procedures are completed, the enforceable instrument acquires its procedural enforceability, and it becomes permissible to initiate enforcement attachment measures based on it. Pre-Enforcement Procedures include: - Service of the enforceable instrument and notice to comply. - The creditor's request for enforcement.

- Service of the Enforceable Instrument and Notice to Comply :

- Service of the instrument (notification procedures): Service of the enforceable instrument refers to informing the debtor of the executory copy of the instrument through a judicial officer and granting him a period of fifteen (15) days to pay, pursuant to Article 612 of the Code of Civil and Administrative Procedure.

The purpose of this step and this time period is twofold: The debtor should not be taken by surprise through immediate notification and enforcement, since an essential principle of litigation is the adversarial principle, meaning that the party against whom a measure is taken must be made aware of it so that he can prepare accordingly.

There is also the possibility that the debtor may comply amicably upon mere service of the enforceable instrument, which would spare both parties the compulsory enforcement procedures and the associated costs, effort, and time. Notice to comply:

Although notice to comply is often included at the end of the instrument's service report, it nevertheless constitutes an



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independent procedural act in its own right. Accordingly, the enforceable instrument may be served separately, followed by a distinct notice to comply. The formal service of the notice to comply must follow the provisions of Articles 406 and 416 of the Code of Civil and Administrative Procedure (CCAP), whether service is made to the person against whom the judgment was issued, to his domicile (actual or elected), by registered mail with acknowledgment of receipt, by posting, or through diplomatic channels if he resides abroad (Omar, 2019, p. 189)

The 15-day period stipulated in Article 612 CCAP is subject to the rules of Article 405 CCAP concerning its computation: the day of service and the last day of the period are not counted, and if the last day coincides with an official holiday, the period is extended to the next working day.

It should be noted that this period constitutes a grace period granted to the debtor to comply within its duration. It is not a time limit for serving the enforceable instrument. For this reason, procedural doctrine refers to it as a standstill period, during which no enforcement measures may lawfully be taken before its expiry. Content and Required Elements of the Notice to Comply:

Given the legal effects arising from service of the notice to comply on the person against whom enforcement is sought – most importantly:

The commencement of compulsory enforcement procedures through attachment of the debtor's assets in case of monetary enforcement, or the use of public force in case of specific (direct) enforcement—the legislator, under Article 613 of the CCAP, has required the inclusion of a number of

elements to avoid uncertainty or ambiguity. Violation of the requirements applicable to the notice to comply entails two consequences:

01- The right to request the annulment of the notice to comply before the summary judge within a period not exceeding fifteen (15) days from the date of its official service; the judge must rule on the request within a maximum of fifteen (15) days from the date the action is filed.

02- The annulment is established solely for the benefit of the party against whom enforcement is sought; therefore, the court may not raise it ex officio. In the event that the notice to comply is annulled due to negligence on the part of the judicial officer, the officer bears civil liability and may be required to provide compensation if the party seeking enforcement brings a lawsuit for damages, and a causal link is established between the damage suffered and the officer's fault. The judicial officer cannot initiate enforcement on his own; he must act upon a request from the creditor or their legal or contractual representative, in accordance with Article 611 of the Code of Civil and Administrative Procedure (CCAP). This request is considered one of the pre-enforcement procedures, as it is a prerequisite for enforcement. If enforcement begins without such a request from the creditor, it is considered null and void (Al-Wafa, 2015, p. 671).

Procedural doctrine unanimously agrees that the necessity of requesting enforcement is based on two main considerations:

01- The protection of the creditor's right: Enforcement protects a private interest, which depends on the will of the



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right-holder. Forcing enforcement against the will of the creditor contradicts the very idea of a protected right.

02- The principle of judicial recourse: Judicial activity is conditional and distinguished from other state activities in that it is not imposed on those concerned; its exercise is contingent upon a request submitted by the interested party. The judiciary intervenes only upon request. The legislator does not require a specific form for the request; it may be made orally or in writing to the judicial officer. In all cases, the request must be accompanied by the enforceable instrument. If the applicant is a successor to the creditor (whether general or specific) and the enforceable instrument is not in their name, they must attach proof of their succession; otherwise, their entitlement to enforcement is not established. Furthermore, the right to enforcement may be conditional, such as when expedited enforcement is subject to the provision of a guarantee. The creditor alone has the authority to determine the time to commence enforcement, provided it is not delayed beyond fifteen (15) years, pursuant to Article 630 CCAP. Consideration must also be given to the type of enforceable instrument: A writ of payment within one year, according to Article 309 CCAP; A petition order within three months, according to Article 311 CCAP. Cases in which enforcement may proceed without pre-enforcement procedures are listed in Article 614 CCAP, namely: Urgent orders;

Enforcement based on a judgment subject to expedited enforcement It is evident from the text of Article 614 of the Code of Civil and Administrative Procedure (CCAP) that the exception relates to the time period and does not exempt the party from the procedure itself. Enforcement in both

cases does not relieve the applicant from the requirement of formally serving the enforceable instrument, but they may initiate compulsory enforcement measures on the same day without waiting for the 15-day period to elapse (Wali, 2019, p. 134). The rationale for these exceptions stems from the urgent nature of the dispute , which necessitates the protection of apparent rights and situations of necessity that require expedited enforcement to safeguard legal rights and positions at risk. Any delay in enforcement would inevitably cause harm that could be difficult to remedy in the future, especially if enforcement were conducted according to general rules. The possibility of initiating compulsory enforcement without formal service of the enforceable instrument and notice to comply, without waiting for a specific period, is not explicitly provided by the legislator. However, it may be inferred from the nature of urgent orders enforced based on the original copy of the order, as provided for in Article 303, paragraph 2 of the CCAP. In such cases, enforcement is carried out without the executory formula and without a notice to comply, in consideration of the extreme urgency of the situation.

## **1.2.Enforcement Issues in Algerian Legislation**

Since enforcement issues are considered urgent disputes, and the summary judge is competent to rule on them, the judge must adhere to the limitations that restrict their authority in other urgent matters. The judge issues a judgment or interlocutory order pending resolution of the substantive dispute, which constitutes the basis of the enforcement issue. Accordingly, this discussion will address two points:

01- How the judge rules on enforcement disputes.



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02- The binding effect of such judgments or orders and the available means of appeal.

01- Ruling on Substantive Enforcement Disputes when ruling on urgent cases, the summary judge must ensure the existence of urgency and refrain from affecting the underlying right. However, regarding rulings on enforcement disputes, the judge is only required to ensure the protection of the underlying right, since the urgency requirement is presumed by law. "Protection of the underlying right" means that the summary judge cannot decide on the substance of the dispute underlying the enforcement issue. For example, the judge may not issue a ruling absolving the debtor of liability, declare the debt extinguished by set-off, or annul the seizure on the grounds that the debtor does not own the property or that the seizure is impermissible. The principle of protecting the right also requires that the summary judge does not examine the parties' documents related to the substance of the right for the purpose of basing his ruling on them. The judge may only review them for orientation purposes, to verify jurisdictional requirements and the validity of the enforcement dispute raised by the applicant (Omar H. B., 2012, p. 364). However, protection of the right does not prevent the summary judge from superficially examining the substance of the dispute and related documents, as this is necessary to be properly informed when ruling on the enforcement issue or issuing the required interlocutory order. It should be noted that the "substance of the right" or "dispute subject matter" that the summary judge is prohibited from adjudicating does not only refer to the right on which enforcement is based. It also includes the right to

enforce, which encompasses the enforceable right itself, the claim arising from it, and its procedural formalities. Consequently, the summary judge cannot rule to absolve the debtor from the debt enforceable against them or declare the enforcement invalid due to procedural defects. In many cases, it becomes apparent to the judge from reviewing the documents that the parties' claims require interpretation of the judgment. In such cases, the judge has the right to dismiss the enforcement dispute. The same principle applies if the judge finds it necessary to examine the validity of the contested judgment to issue a ruling on the dispute before him.

02- Binding Effect of the Order Issued in Substantive Enforcement Disputes and Appeals The ruling on enforcement disputes is issued as an order that either suspends or maintains enforcement temporarily pending a decision on the substance of the dispute before the competent court. Therefore, the order is temporary and conditional on the circumstances in which it was issued. As long as those circumstances remain, the order retains its binding effect. If circumstances change, the matter may be re-submitted to the summary judge, who may issue a different order.

If the summary judge suspends enforcement temporarily based on a dispute raised by the debtor claiming that enforcement is invalid, the creditor may bring a substantive dispute before the competent court. After examining and establishing the underlying dispute, the creditor may request the court to confirm the validity of enforcement and allow it to continue. The ruling of the summary judge in an enforcement dispute, like other interlocutory orders, is temporary and does not have *res judicata* effect regarding



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the substance of the dispute (Omar Z. , Procedures for Forced Execution, 2019, p. 196). However, the parties to the dispute concerning an enforcement issue brought before the summary judge cannot file another action on the same dispute before that judge with the purpose of obtaining a modified or adjusted order, unless there is a material or legal change in the parties' positions. Regarding appeals against orders related to enforcement disputes, Article 190 of the Algerian Code of Civil Procedure provides that: Appeals may be filed in the cases permitted by law within fifteen (15) days from the date of notification of the order. Accordingly, orders relating to enforcement disputes may be appealed within fifteen (15) days from the date of their notification. The appellate authority is required to adjudicate the appeal as promptly as possible Referring to Article 188 of the same Code; an appeal does not suspend the provisional enforcement of an order related to an enforcement dispute. The enforceability of the order does not affect the admissibility of the appeal, because the provisional enforceability granted to an enforcement dispute order is mandated by law, just like other interlocutory orders, in accordance with Article 188 cited above. Furthermore, these types of orders cannot be contested by opposition. A party who fails to appear at the hearing on the enforcement dispute cannot appeal the order by way of opposition, since Article 188 stipulates: Orders issued in urgent matters are provisionally enforceable, with or without a security. They are neither subject to opposition nor to objection against provisional enforcement. In exceptional cases, the presiding judge may, even before registering the order, direct enforcement based on the original draft of the order”.

## **2. The Necessity of Establishing a Judicial Authority Specializing in Adjudicating All Enforcement Disputes:**

The need for a specialized judicial authority to handle all enforcement disputes arises from several considerations, both practical and legal, aiming to ensure the effectiveness, fairness, and uniformity of enforcement procedures. This axis can be divided into two main sections:

First: Justifications for Establishing a Specialized Enforcement Judge Enforcement disputes often involve urgent matters, complex procedural issues, and the need to balance the creditor's right to obtain their dues with the protection of the debtor's rights. The current legal framework in Algeria shows that enforcement disputes are presently submitted to the judge competent for urgent orders, whose powers are limited by temporal and procedural constraints. This has led to recurring challenges, including:

01- Fragmentation of judicial authority: Different judges may interpret procedural rules in varying ways, resulting in inconsistent rulings in similar enforcement disputes (Abdelkhalek, 1977, p. 22). 02- Delays in adjudication: Enforcement disputes often require immediate decisions to prevent irreparable harm to creditors. Ordinary courts may not provide sufficient speed due to formal procedural requirements.

03- Legal uncertainty: Debtors and creditors may face ambiguity regarding the enforceability of decisions, the validity of interim measures, and the interpretation of enforcement rules. These challenges highlight the need for a dedicated judicial authority capable of handling enforcement disputes rapidly, consistently, and formally.



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## Second: Benefits of Establishing a Specialized Enforcement Judge

01- Uniform application of the law : A specialized judge ensures consistent interpretation and application of enforcement provisions, reducing contradictions and limiting legal uncertainty. 02- Efficiency in urgent matters: By centralizing enforcement disputes under a single judicial authority, procedures can be expedited, protecting the creditor's rights without unjustifiably infringing on the debtor's rights.

03- Expertise in enforcement law: The specialized judge develops specific expertise in enforcement issues, allowing for precise and legally sound decisions, particularly regarding:

- Procedural violations
- Validity of interim measures
- Interpretation of enforceable documents
- Assessment of exceptions raised by debtors

04- Reduction of litigation costs: Quick and consistent decisions reduce the need for prolonged legal battles, thereby lowering costs and administrative burdens for all parties.

05- Enhanced protection of creditors: Creditors are ensured effective and timely protection of their rights while respecting the procedural safeguards afforded to debtors.

Third: Legal and Procedural Framework for a Specialized Enforcement Judicial Authority Establishing such a specialized judicial authority requires the following (Al-Saadi, The Clear in the Explanation of Jabri Execution, 2019, p. 320):

01- Legislative amendments: Amending the Algerian Code of Civil and Administrative Procedure to define the powers and jurisdiction of the specialized enforcement judge.

02- Defining judicial competence: Setting clear boundaries for the cases under the authority of this judge, including all matters related to enforcement disputes, interim measures, and procedural objections.

03- Procedural guidelines: Establishing specific rules to regulate hearings, the submission of evidence, appeal mechanisms, and timeframes for decision-making.

04- Integration with existing courts: Implementing mechanisms for coordination with ordinary courts and judges handling urgent matters to avoid conflicts of jurisdiction while maintaining the specialized authority's priority in enforcement disputes.

## **Conclusion:**

To ensure the effectiveness of this specialized judicial authority, the following measures may be proposed:

- Establishing a dedicated judicial division or an independent court responsible for all enforcement disputes.
- Appointing judges with expertise in enforcement law and civil procedures.
- Developing clear procedural regulations to expedite the resolution of disputes.
- Defining mechanisms for filing appeals and objections that ensure prompt adjudication without infringing on the rights of the parties.



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- Implementing training programs to enhance judges' expertise in enforcement matters.
- Monitoring recent legislation and judicial trends to ensure that rulings align with contemporary legal standards.
- Adopting digital systems for case management and tracking the stages of enforcement.
- Facilitating communication between the parties and the judiciary to ensure the swift completion of procedures.
- Coordinating the work of specialized judges with ordinary courts and enforcement divisions to avoid jurisdictional conflicts.
- Establishing clear mechanisms for referring cases to the specialized judiciary when necessary.
- Standardizing the application of the law in enforcement matters.
- Reducing administrative and judicial costs.
- Specific legislation, precise procedures, and coordination with existing courts constitute the foundation for the success of any specialized judicial authority.
- Establishing a specialized judicial authority for enforcement represents a necessary step toward modernizing the judicial system in Algeria and ensuring efficiency, fairness, and transparency in the resolution of enforcement disputes.
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## Bibliography

- Abdelkhalek, M. (1977). *Principles of Implementation*. Egypt: Arab Renaissance House.
- Al-Nimr, A. M. (1982). *Rules of Pleadings*. Egypt: Mansha'at Al-Maarif.
- Al-Saadi, M. S. (2019). *The Clear in the Explanation of Jabri Execution*. Algeria: Dar Al-Huda.
- Al-Saadi, M. S. (2019). *The Clear in the Explanation of Jabri Execution*. Algeria: Dar Al-Huda.
- Al-Wafa, A. A. (2015). *Execution Procedures in Civil and Commercial Articles*. Egypt: Al-Wafa Library.
- Fahmy, W. R. (1973). *The General Theory of Judicial Enforcement in the Code of Civil and Commercial Procedure*. Egypt: Dar Al-Fikr Al-Arabi.
- Omar, H. B. (2012). *Methods of enforcement according to Law No. 08-09 of February 25, 2008* . Algeria: Dar Houma.
- Omar, Z. (2019). *Procedures for Forced Execution*. Algeria: Dar Homa.
- Omar, Z. (2019). *Procedures for Forced Execution*. Algeria: Dar Homa.
- Seif, R. (1968). *Rules of Enforcement of Judgments and Notarized Documents in the Law of Pleadings*. Egypt: Arab Renaissance House.
- Wali, F. (2019). *Forced Execution in Civil and Commercial Matters*. Egypt: Arab Renaissance House.