

# MANIFESTATIONS OF INEQUALITY BEFORE THE ADMINISTRATIVE JUDICIARY IN ALGERIA AND THEIR IMPLICATIONS FOR THE INDIVIDUAL AND SOCIETY

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**Abstract** - Equality before the judiciary is a constitutional principle enshrined by the Algerian legislator. However, the practical reality of administrative justice reveals significant shortcomings that undermine this principle. These include difficulties in accessing justice and disparities in resources between citizens and administrative bodies, which result in indirect discrimination in the application of justice. Such imbalances exacerbate social inequality and promote reliance on informal mediation rather than legal recourse, thereby weakening public confidence in the judiciary and threatening societal stability. This situation calls for a comprehensive review of the legal framework and the activation of oversight and enforcement mechanisms to ensure effective equality before the administrative judiciary.

**Keywords:** *Equality; Administrative Judiciary; Social Disparities; Enforcement Against the Administration.*

## INTRODUCTION

The Algerian constitutional legislator has enshrined the principle of equality before the judiciary as one of the fundamental pillars upon which the judicial system is based. This commitment is evident across the various constitutions adopted since the country's independence. Article 158 of the 1996 Constitution explicitly states that "the foundations of the judiciary are the principles of legality and equality," and Article 165 of the same Constitution—reaffirmed in its 2020 amendment—reiterates this principle, underscoring the constitutional commitment to embedding equality as a fundamental guarantee for achieving justice.

Given this principle's elevated position at the top of the constitutional hierarchy, it obliges the legislature to respect it when enacting laws and the judiciary to uphold it when applying them. Any conflict with or disregard for this principle would compromise the impartiality and credibility of the judiciary and erode public trust in the justice system. Nevertheless, the legislative and practical realities in Algeria reveal tangible discrepancies in the extent to which this principle is respected, particularly within the field of administrative justice, which is expected to serve as the primary mechanism for balancing the relationship between the administration and the citizen.

In this context, the present study aims to shed light on the manifestations of inequality before the administrative judiciary in Algerian legislation, whether at the level of statutory provisions or procedural practices. It focuses especially on the obstacles to accessing administrative justice and on the challenges related to enforcing judicial decisions against the administration. Furthermore, the study offers a diagnostic and analytical exploration of the disparities between citizens and administrative authorities as opposing parties in administrative litigation, while proposing practical solutions to address these imbalances. Such efforts aim to strengthen the effectiveness of the equality principle, enhance judicial independence, and serve the public interest.

These manifestations also reveal deeper social dimensions, reflected in the widening of class disparities and the prevalence of informal mediation over the rule of law. This phenomenon threatens societal stability and weakens the legitimacy of the judiciary. It calls for a thorough reassessment of the legal and procedural framework and the activation of oversight and enforcement mechanisms to establish genuine equality before the administrative judiciary and to entrench the principle of social justice. This highlights the urgent need to revise certain legislative texts and activate regulatory and enforcement

tools to ensure actual equality before administrative justice and uphold the rule of law over all parties without exception.

The central research problem explored in this study concerns the analysis of the manifestations of inequality before the administrative judiciary and their impact on social cohesion and public trust in justice. It also raises key sub-questions: What are the main forms of inequality in the judicial procedures applied within administrative litigation? And how do these disparities affect individuals and society at large?

To answer these questions, the study adopts a descriptive and analytical approach to examine the legislative and practical framework, complemented by a comparative method in certain aspects. The research is structured around two main sections: the first addresses the conceptual framework of the principle of equality before the judiciary, while the second focuses on the manifestations of inequality before the administrative judiciary in the Algerian legal system.

## 1. The Conceptual Framework of the Principle of Equality Before the Judiciary

Equality before the judiciary refers to enabling all individuals to access justice on an equal footing, through a public and fair trial conducted by a unified, impartial, and independent judicial authority. In such a setting, litigants enjoy, without discrimination, all rights of defense, either personally or through legal representation. This principle aims to redress injustices inflicted upon holders of rights and freedoms and to provide redress against those who have violated them. Its significance lies in being one of the clearest manifestations of the broader principle of equality before the law. This equality is practically embodied, for example, in the ability of a modest employee to sue a powerful administrative body before the administrative judiciary, where the court is obliged to provide him with the same rights and legal guarantees enjoyed by the opposing party, ensuring a fair trial untainted by social status or authority.

### 1.1: Definition of the Principle of Equality Before the Judiciary

The principle of equality before the judiciary is one of the core principles underpinning the rule of law. It reflects the commitment of the judicial authority to apply justice without bias or discrimination, and fundamentally expresses respect for human dignity and the right to equal legal protection. To fully grasp the legal dimensions of this principle, one must first explore its linguistic and terminological meanings. This requires deconstructing the term into its essential components to understand its implications and areas of application. Accordingly, this section addresses both the linguistic and terminological definitions of the principle of equality before the judiciary.

#### 1.1.1: Linguistic Definition

Linguistically, the term “equality” (in Arabic: المساواة) derives from the root word “سأوى,” which connotes “to make equal,” “to level,” or “to equate.”<sup>1</sup> According to Ibn Manzur, equality can occur between entities that are either different or similar in kind, as equality implies equivalence in measure—neither exceeding nor lacking in quantity.<sup>2</sup>

As for the term “judicial” (al-Qaeda’) in Arabic, it refers to an authority entrusted with adjudicating disputes in accordance with the law. The term “judges” or “judiciary body” denotes the institution of justice mandated to examine conflicts and resolve them based on legal principles.<sup>3</sup>

**1.1.2: Terminological Definition** In its abstract form, equality refers to the absence of discrimination among individuals based on origin, language, creed, or gender, as all human beings are equal in their obligations, public burdens, rights, and fundamental freedoms.<sup>4</sup>

<sup>1</sup> Al-Maany Comprehensive Arabic-Arabic Dictionary, Al-Maany.com, accessed December 12, 2024, <https://www.almaany.com/ar/dict/ar-ar>.

<sup>2</sup> Ibn Manzur, *Lisan al-Arab*, vol. 14 (Beirut: Dar Sadir, 2003), 18.

<sup>3</sup> Al-Maany Comprehensive Arabic-Arabic Dictionary, Al-Maany.com, accessed December 12, 2024, <https://www.almaany.com/ar/dict/ar-ar>.

<sup>4</sup> Mohamed El-Metwally El-Sayed, *The Principle of Equality Before Public Services: Applied to the Distribution of Health Services in Egypt* (PhD diss., Faculty of Law, Ain Shams University, Cairo, 1997), 1.

All public rights and freedoms are governed by the principle of equality, which truly constitutes a foundational pillar of any democratic system concerned with guaranteeing human rights and freedoms. Democracy, in its genuine sense, cannot be conceived without the coupling of liberty and equality, as these two elements are complementary. Together, they form the foundation upon which the balance between the individual and the state is built, as well as the assurance of equal opportunities among all citizens without discrimination.<sup>1</sup>

Equality before the judiciary is among the most significant manifestations of the principle of equality before the law.<sup>2</sup> It entails that all individuals, without discrimination, are subject to the same judicial authorities and legal procedures, regardless of the level or jurisdiction of the court. This form of equality requires that no distinction be made between litigants—whether in the appointment of the judge hearing the case or in the content of the judgment issued—so long as the facts are similar and the cases share the same cause and subject matter.

Moreover, equality before the judiciary requires the equal opportunity for defense among the parties, by granting each side the same tools and procedures, and guaranteeing their full right to present their arguments and respond to those of their opponents, within a framework of impartiality and fairness, without any discrimination in the availability of legal means.

The existence of specialized courts does not constitute a breach of the principle of equality, provided that the jurisdiction of such courts is defined based on objective criteria related to the nature of the offense or the personality of the accused, and that their purpose is to enhance the effectiveness of criminal justice without infringing on the right to defense or denying litigants their natural judge.<sup>3</sup>

## **1.2: Characteristics of the Principle of Equality and Its Relationship with Other Concepts**

The principle of equality possesses a set of distinctive features that give it both a comprehensive and flexible natures. To accurately define its content, it is necessary to explore its most important characteristics and to determine its relationship with closely related concepts such as liberty and the rule of law. These concepts often intersect and influence the practical application of this principle within the judicial system. This will be addressed in the following subsections:

### **1.2.1: Characteristics of the Principle of Equality**

The principle of equality is among the fundamental principles that distinguish the democratic legal system. It is characterized by three essential attributes:<sup>4</sup> first, it is a fundamental human right; second, it holds supreme constitutional value; and third, it is classified among the general principles of law. This principle has been enshrined in major international human rights instruments, such as the French Declaration of the Rights of Man and of the Citizen of 1789 (Article 6), the U.S. Civil Rights Act of 1866, the Universal Declaration of Human Rights of 1948, and the International Covenant on Civil and Political Rights of 1966. As such, it is considered a universal principle recognized across various legal systems.

At the constitutional level, the French Constitutional Council affirmed the constitutional value of this principle through its recognition in the preamble of the 1958 Constitution, which refers back to the 1789 Declaration. As the preamble is an integral part of the constitutional text, the principles it contains—including equality—acquire the same constitutional status. Moreover, the Constitutional Council frequently invokes Article 6 of the 1789 Declaration as a foundational source of this principle when reviewing the constitutionality of legislation. Similarly, in the American legal system, the constitutional value of equality is established in the Fourteenth Amendment to the U.S. Constitution, which serves as

<sup>1</sup> Saleh Ahmed Al-Farjani, "The Principle of Equality Before the Law and Its Applications in Libyan Law," *Journal of Legal and Sharia Sciences*, Faculty of Law, University of Zawiyah (December 2013), 197.

<sup>2</sup> Abdelaziz Mohamed Salman, "A General Overview of the Constitutional Protection of the Principles of Equality and Equal Opportunity," *Manshurat Qanuniya*, published November 6, 2023, accessed December 12, 2024, <https://manshurat.org/content>.

<sup>3</sup> Ahmed Fathi Sorour, *The Constitutional Protection of Rights and Freedoms*, 2nd ed. (Cairo: Dar Al-Shorouk, 2000), 714.

<sup>4</sup> Ahmed Fathi Sorour, "The Principle of Equality before the Constitutional Judiciary," article published on the website of Professor Alber Ansy, February 20, 2024, accessed December 26, 2024, available at: <https://alberonsy.com>.



the basis for prohibiting discrimination under the law. Most European constitutions also explicitly recognize this principle in their texts.

### 1.2.2: The Relationship Between Equality and Freedom

The principle of equality is closely linked to the concept of freedom. Dean Duguit expressed this relationship by stating that freedom can only be understood through equality among individuals. He cited the example of ancient Greek democracy, which applied general rules to everyone without distinction—even when such rules were authoritarian or arbitrary in nature. Similarly, the jurist Ripert described equality as "the soul of democracy, without which the very meaning of freedom collapses."

From this standpoint, the principle of equality occupies a central position within the international human rights framework, as one of the fundamental pillars underpinning justice and the protection of rights. This is reflected in most modern constitutions, which explicitly enshrine the principle to ensure non-discrimination among individuals on any grounds—be it origin, language, gender, religion, belief, or ideology—whether in the enjoyment of rights and freedoms or in the bearing of obligations and duties.

Some constitutions have even granted this principle a status superior to other constitutional provisions, as exemplified by the Spanish Constitution of 1978, which regards equality as a supraconstitutional norm that prevails over all other legal texts. This clearly highlights the critical importance of the principle in the construction of the rule-of-law state.<sup>1</sup>

Hence, equality and freedom are two interdependent elements, one of which cannot be fully realized without the other. Equality constitutes the essence and spirit of the democratic ideal. Without it, democracy loses its true meaning, and the values of freedom dissipate.<sup>2</sup> In fact, the principle of equality among human beings is not solely a product of modern legal thought, but a foundational concept predating positive laws, having been upheld by divine religions as a cornerstone of justice and human dignity.<sup>3</sup>

### 1.2.3: The Relationship Between Equality and the Rule of Law

Aristotle championed the rule of law as the genuine guarantor of justice and equality among individuals. According to him, equality can only be achieved through universal submission to abstract legal rules applied without discrimination, and free from the whims of rulers.<sup>4</sup>

Nonetheless, while Aristotle affirmed this general framework, he did not overlook what he termed "special justice" or equity, which refers to justice that considers cases not covered by written laws, or those requiring a flexible legal approach due to their specific nature. This is to prevent formal equality from becoming a source of real injustice. He thus linked true equality to flexible justice, asserting that adherence to the rule of law should not be rigid, but must at times go beyond the literal text to fulfill the substance and purpose of equality—not merely its form.

This highlights the complementary nature of the relationship between the rule of law and the principle of equality in constructing the modern legal state. The principle of equality, with its constitutional and moral content, forms a fundamental pillar for ensuring that all individuals are subject to the law without distinction. At its core, this embodies the rule of law as the supremacy of legal norms over both rulers and the ruled.

Accordingly, any violation of the principle of equality—whether in legislation or administrative practice—constitutes a direct breach of the rule of law and undermines the foundations of justice. Judicial practice, especially in administrative courts, has demonstrated how the protection of equality serves as

<sup>1</sup> Khalid Lafta Al-Zubaidi and Bassam Mohammad Abu Armileh, *The Role of the Jordanian Administrative Judiciary in Protecting the Principle of Equality*, *Jordanian Journal of Law and Political Science*, Vol. 12, No. 2 (2020), accepted on 15 December 2019, pp. 127–168, at 133.

<sup>2</sup> Abdul Wahhab Al-Shishani, *Human Rights and Fundamental Freedoms in the Islamic System and Contemporary Systems*, Royal Scientific Society Press, Saudi Arabia, 1st ed., 1980, p. 175.

<sup>3</sup> Saleh Ahmed Al-Farjani, *op. cit.*, at 197.

<sup>4</sup> Samir Tanagho, *General Theory of Law*, Al-Maaref Establishment - Jalal Hazzi & Co., Alexandria, [no publication year], p. 153.



a tangible expression of upholding the rule of law through effective judicial oversight over the legality of administrative decisions.

Thus, equality is not to be understood as a standalone principle, but rather as an integral component of the legal state. The rule of law cannot be truly realized without ensuring equality among all individuals in rights and obligations before the law.<sup>1</sup>

### 1.3: Conditions for Achieving Equality Before the Judiciary

Equality before the judiciary is a fundamental pillar upon which any just and sound legal system is built. This principle embodies a core rule that guarantees everyone's right to access the judiciary and to be treated equally under the law, without discrimination. In this context, equality means that the right to litigation is guaranteed to all individuals, and that judicial procedures must be uniformly applied to all parties, regardless of their background or affiliations.

The Algerian legislator explicitly enshrined this principle in Article 165 of the 1996 Constitution, as amended in 2020,<sup>2</sup> which states: "Justice is based on the principles of legality and equality. Justice is accessible to all." This clear text reflects the state's commitment to ensuring accessible and fair justice for all citizens, irrespective of race, gender, language, opinion, or any other personal attribute.

In addition to constitutional entrenchment, the legislator reaffirmed this principle within the introductory provisions of the Civil and Administrative Procedures Code, considering it one of the general principles governing judicial organization in Algeria. This underscores its importance in regulating judicial functions and ensuring impartiality and transparency.<sup>3</sup>

However, the effective implementation of this principle cannot be achieved without fulfilling a set of essential conditions,<sup>4</sup> including: the uniformity of procedural and substantive legal standards, the uniformity of competent judicial authorities, enabling all parties to exercise the right of defense, and ensuring the enforcement of judgments without discrimination. Without these conditions, equality before the judiciary risks becoming a theoretical slogan with no real impact in the judicial arena.

#### 1.3.1: Uniformity of Applicable Legal Standards

The uniformity of applicable legal standards is among the clearest manifestations of equality before the judiciary. It requires that all litigating parties be treated according to the same legal rules and procedures without any form of discrimination or bias, throughout all stages of litigation—from filing the case, through the trial phase, to the enforcement of judgments. This entails applying the same legal texts and adhering to the same procedural and substantive steps, whether the litigant is an individual or an administrative body, whether wealthy or poor, citizen or foreigner. The absence of such uniform treatment may violate the principle of equality and result in an imbalance between the parties in administrative litigation,<sup>5</sup> undermining public trust in the judiciary and its neutrality. Furthermore, the uniformity of standards ensures that judicial rulings are not subject to influence by the social standing or power of the parties, but are enforced with the same mechanisms and seriousness.

#### 1.3.2: Uniformity of Competent Judicial Authorities

Uniformity in the jurisdiction of competent judicial authorities is a further expression of the principle of equality before the judiciary. Judicial jurisdiction should be determined based on the subject matter of the dispute, not the identity or status of the litigants. In other words, cases must be adjudicated based on their legal nature—whether administrative, civil, commercial, or criminal—without regard to whether one of the parties is a public entity or a private individual, an official or an ordinary citizen. This principle

<sup>1</sup> Khalid Lafta Al-Zubaidi and Bassam Mohammad Abu Armileh, op. cit., at 139.

<sup>2</sup> Constitution of the People's Democratic Republic of Algeria, issued on 30 December 2020, Official Gazette No. 82.

<sup>3</sup> See Article 03 of the Algerian Code of Civil and Administrative Procedure.

<sup>4</sup> Kadoush, Samira. "Equality Among Litigants as a Pillar of Social Justice," *Al-Mi'yar Journal*, No. 13, June 2014, University Center of Tissemsilt, published on 31 December 2014, p. 234.

<sup>5</sup> Khaled Lafta Al-Zubaidi, Bassam Mohammad Abu Armeileh, op. cit., p. 142.



should apply not only to the adjudicative body but also to the entity responsible for enforcing judgments, which must follow the same legal path, free from discrimination or procedural privilege.

This principle does not conflict with the existence of multiple courts or judicial bodies based on the type of dispute or nature of the offense, as long as this plurality is founded on objective and impartial criteria, not on distinctions between the litigants.<sup>1</sup> The existence of administrative courts for administrative disputes, criminal courts for criminal cases, and civil courts for civil litigation is a natural feature of the judicial system, provided that all litigants have equal access to justice and benefit from the same guarantees, without favoritism or bias.

Violations of this principle—such as assigning specific courts to handle disputes involving a particular class, or granting one party preferential enforcement rights—undermine judicial impartiality and disrupt the principle of equality, eroding public confidence in the judicial system. Hence, respecting the uniform jurisdiction of competent courts based on fair and unified legal criteria is a fundamental condition for ensuring genuine and effective justice.

### 1.3.3: Uniformity of Applicable Law

This principle requires that all litigants entering the judicial system be treated under the same legal framework,<sup>2</sup> both in terms of procedural rules and the substantive laws applicable to the dispute. The same set of laws should apply before the same court whenever the nature of the dispute is similar, regardless of the identity, social status, or institutional affiliation of the parties—whether a private individual or a public body.

Under this principle, judges are prohibited from subjecting one party to a specific law or exceptional procedure not applicable to others. It also forbids granting certain litigants, legal advantages or procedural exemptions that undermine the principle of equal opportunity among parties. Any deviation from the uniform application of law opens the door to discrimination and threatens the neutrality and independence of the judiciary.

However, this principle does not negate the objective differences between types of disputes, as the applicable legal rules may vary depending on whether the case is civil, administrative, or criminal. The key is that such distinctions must be based on objective legal grounds and consistent criteria, not on the personal characteristics of the litigants.

Therefore, ensuring the uniformity of applicable law is a fundamental condition for achieving fair justice that promotes equality among all parties and enhances the credibility of the judiciary as the sole authority for resolving disputes within a unified and equitable legal framework.

## 2. Manifestations of Inequality Before the Judiciary of Algeria

Although the principle of equality before the judiciary is one of the fundamental constitutional principles enshrined by the Algerian legislator, its application within the realm of administrative justice is not without exceptions. These exceptions are primarily dictated by the specific nature of the relationship between the administration and the citizen, given that the administration enjoys a distinct legal status derived from the privileges of public authority.

Such exceptions are particularly evident at two critical stages: first, during the litigation process, where imbalance may emerge through discrepancies in deadlines, the burden of proof, or special procedural rules, often placing the administration in a preferential position to the detriment of the weaker party; and second, at the stage of enforcing administrative court rulings—one of the most significant areas where the principle of equality is undermined—due to the administration's relative discretion in executing judgments and the lack of effective mechanisms to compel immediate enforcement.

<sup>1</sup> Atika Belhabel, *ibid.*, p. 161.

<sup>2</sup> Nabila Djimawi and Wasila Ebada, "The Principle of Equality Before the Administrative Judiciary in Algeria Between Text and Guarantees," *Academic Journal of Legal and Political Research*, Ammar Telidji University of Laghouat, vol. 7, no. 1, 2023, published on March 19, 2023, pp. 3582–3598, p. 3584.

## 2.1: Litigation Procedures

The procedural system in Algerian administrative courts reveals evident signs of preferential treatment in favor of the administration, undermining the balance and stripping the principle of its practical content. This is particularly evident in the exemption granted to the administration from court fees, contrary to individuals who are required to pay such fees when initiating litigation—a financial barrier that may deter vulnerable groups from exercising their right to legal recourse.<sup>1</sup>

Additionally, while the administration is not obligated to be represented by a lawyer, individuals are required to engage legal representation before administrative courts. This increases both the financial and procedural burdens on citizens and weakens their ability to face a powerful opponent backed by professional legal and institutional capacities.

These two rules constitute major procedural disparities between individuals and the administration, allowing the latter to engage in litigation under more favorable conditions, while individuals face constraints that may hinder their effective access to justice. Therefore, revisiting these exceptions is essential to restore the necessary balance within a state governed by the rule of law.

### 2.1.1: Exemption from Court Fees

Article 64 of the Finance Act of 1999, enacted under Law No. 98-12 dated December 31, 1998, amended Article 124 of Law No. 90-37 of December 31, 1990 (Finance Act of 1991). This amendment exempts the state, local authorities, and public administration institutions, when represented by their legal representatives, from paying legal fees and posting bond in all cases where they are either debtors or creditors.

This exemption includes all legal fees related to initiating a lawsuit, such as filing fees, ordinary and appellate appeal fees, issuance of documents or enforceable copies, and procedures related to legal notices and the execution of court decisions.<sup>2</sup>

The justification behind this exemption is that legal fees are paid to and from the public treasury; thus, obligating the administration to pay them would be a purely formal measure with no real financial impact. Rather, it would burden administrative bodies with complex accounting and budgetary procedures, such as maintaining ledgers and allocating funds from the state budget. However, even if this is a formal measure, not exempting the administration could help monitor its judicial activity, especially in defending public property—making it a tool of accountability.

This exemption, granted to the administration (i.e., The state, local authorities, and public administration institutions), constitutes a breach of the principle of equality before the judiciary. It grants one party in a judicial dispute a privilege that others cannot enjoy. Despite arguments portraying this exemption as a formal process without financial effect, its practical implications raise several concerns. On one hand, it imposes a financial burden on ordinary litigants that may deter them from taking legal action against the administration, undermining procedural balance and restricting the right to litigate. On the other hand, this privilege weakens public oversight over the administration's judicial performance and creates a perception of unequal access to justice. Such perceptions risk undermining trust in the judiciary and the legitimacy of the legal system.

Therefore, maintaining this disparity doesn't only contradict the principle of equality but also threatens to widen the gap between citizens and state institutions. It necessitates reconsideration—perhaps limiting the fee exemptions to frivolous or abusive claims only—to support the rights of genuine victims of administrative actions.

### 2.1.2: Legal Representation Before Administrative Courts: Obligation vs. Discretion

Undoubtedly, the mandatory legal representation in administrative disputes adds another layer of complexity for individuals, despite efforts to bring administrative justice closer to litigants. The Algerian

<sup>1</sup> See Article 64 of the Finance Law for the year 1999, Law No. 98-12 dated 13 Ramadan 1419 AH, corresponding to December 31, 1998.

<sup>2</sup> See Article 64 of the Finance Law for the year 1999, Law No. 98-12 dated 13 Ramadan 1419 AH, corresponding to December 31, 1998.

legislator has expanded the network of administrative courts, now totaling 48 across the national territory, according to Executive Decree No. 11-195 of May 20, 2011, amending and supplementing Decree No. 98-356. This is part of a broader policy to bring justice closer to citizens.

The legislator has also simplified procedural steps, such as abolishing the requirement for prior administrative complaints, making them optional rather than mandatory—an important step in easing procedural burdens on litigants.<sup>1</sup>

However, these positive measures were counterbalanced by imposing a mandatory requirement on individuals to be represented by a lawyer before administrative courts, as per Article 827 of the Civil and Administrative Procedure Code. Conversely, this same article grants an explicit exemption to certain legal entities enumerated in Article 800, most notably the state, local authorities, and public administration institutions.

This exemption is justified by the administration's internal legal capacities—staff and officers competent enough to handle disputes without external legal counsel.<sup>2</sup> Yet this rationale is flawed, as society includes legally competent individuals, some of whom the administration itself employs when dealing with their own personal disputes.

Such procedural disparities between individuals and the administration constitute a clear violation of the principle of equality before the judiciary, as enshrined in the Constitution. It fails to account for the substantial differences in legal and financial resources between the parties. Although the legislator attempted to mitigate this impact through legal aid mechanisms, these systems have proven insufficient in keeping pace with socio-economic changes—especially due to administrative complications in accessing them and their limited coverage of litigation expenses.

Moreover, requiring legal representation in administrative courts loses much of its justification when considering the proactive role played by administrative judges, compared to their counterparts in ordinary courts. Administrative judges possess the authority to guide proceedings, set deadlines, initiate investigations, and ensure enforcement of judgments against the administration—broad powers that make them a genuine constitutional safeguard for the principle of legality. These powers arguably reduce the need to mandate legal counsel, at least for individuals with limited means.

This requirement has serious negative consequences for individuals. It burdens litigants with financial and procedural obstacles that may prevent them from seeking justice—especially vulnerable or low-income groups—leading to a practical erosion of the constitutional right to litigation. Additionally, it fosters a sense of unequal opportunity before the judiciary and undermines public confidence in the fairness of the judicial system, especially as the administration is exempted from the same obligation under the pretext of possessing internal legal expertise.

At the societal level, this situation entrenches disparities between the administration and citizens and weakens the role of administrative courts as effective tools of oversight and accountability. As a result, large segments of the population are unable to challenge administrative violations through judicial means, paving the way for a culture of impunity and eroding societal trust in the rule of law.

## 2.2: On the Stage of Executing Administrative Judicial Decisions

The stage of executing administrative, judicial decisions constitutes the true litmus test for the efficiency and effectiveness of the judiciary. Legal protection offered by statutes and the rulings issued by judicial bodies is of little value if they are not translated into tangible realities that enable the rights-holder to fully enjoy their entitlements. In the administrative domain, this stage presents unique challenges due to the specific nature of the administration as a litigating party, and because execution often involves public funds and concerns the public interest.

The execution of administrative judgments serves as a benchmark for assessing the state's commitment to the principle of equality before the judiciary. The dilution or delay in executing such rulings may

<sup>1</sup> See Article 830 of the Code of Civil and Administrative Procedure.

<sup>2</sup> Massoud Mentouri, *The Effects of Mandatory Legal Representation Before Judicial Councils and Administrative Courts on the Exercise of the Right to Litigate*, *Journal of Judicial Jurisprudence*, Vol. 06, Issue 9, Published on March 1, 2013, p. 178.



result in a breach of this principle, leading to real disparities between the parties involved in the dispute, particularly in light of the privileges enjoyed by administrative bodies that may place them in a stronger position than the ordinary litigant. Accordingly, several manifestations clearly indicate violations of the principle of equality during the execution phase, as outlined in the following points:

### 2.2.1: Differences in the Executing Authority

The judicial bailiff is the only individual legally empowered by the state to carry out the execution of judicial rulings.<sup>1</sup> However, the procedural rules set forth in the Civil and Administrative Procedure Code delegate the authority to execute judgments against the administration to certain public law figures—namely, the minister, governor (wali), president of the municipal assembly, or director—especially in cases where the judgment includes a specific enforcement clause.<sup>2</sup>

This practice constitutes a breach of the principle of equality before the judiciary and contradicts several foundational legal principles, including:

The delegation<sup>3</sup> of judicial enforcement tasks to the bailiff by public authority is a legally specific delegation, which entails a direct obligation on the delegating authority not to exercise the delegated powers, nor to grant the same powers to another entity, in order to preserve the financial balance of the contract—an essential principle consistently upheld in administrative jurisprudence based on the general rules governing administrative contracts.<sup>4</sup>

This delegation is characterized by a hybrid nature, combining various elements of different forms of delegation.<sup>5</sup> On one hand, it bears the features of administrative delegation, whether it concerns delegation of signature or delegation of authority; on the other hand, it closely resembles functional delegation (*délégation de service public*), as in concession contracts or unilateral delegations.

This overlap raises a delicate legal issue regarding the permissibility of delegating tasks falling within the jurisdiction of a sovereign public service such as the judiciary.<sup>6</sup> Indeed, the well-established principle in public law prohibits the delegation of sovereign public services, such as the judiciary or national defense. Thus, assigning the enforcement of court rulings against public administration officials from the very administrative entity being sued raises serious concerns about impartiality and effectiveness in the enforcement phase. The State, being a party to the dispute, may have a vested interest in delaying or obstructing enforcement.

This underscores the significance of the judicial bailiff, who is legally empowered by public authority to carry out enforcement duties, enjoys professional independence, and operates under judicial oversight. This makes the bailiff a vital guarantee for balancing the rights of the litigant with the requirements of public service continuity.

Furthermore, questions arise concerning the limits of the State's delegation to the bailiff, especially given the particular nature of enforcement disputes, in which the judiciary itself—being the supervising

<sup>1</sup> Law No. 06-03 dated 20/02/2006 concerning the Regulation of the Judicial Bailiff Profession, as amended and supplemented, Official Gazette No. 14, published on 08/03/2006.

<sup>2</sup> See Article 601 of the Code of Civil and Administrative Procedure.

<sup>3</sup> The Algerian legislator did not specify the type of delegation, nor did it define the delegating authority, merely using the term "public authority" without clarifying its designation. Consequently, the judicial bailiff finds himself in a dual relationship between the executive and judicial branches. This delegation is thus characterized by a mixture of features: some derived from administrative delegation—both delegation of authority and delegation of signature—in terms of subject matter and supervisory control, and others drawn from public service delegation, such as concession contracts and unilateral delegation, considering that the bailiff performs a public service for litigants in return for predetermined fees

<sup>4</sup> Abbas Mohammed Nasrallah, *Special Administrative Law*, Zain Legal Publications, Beirut, Lebanon, 1st ed., 2016, p. 43.

<sup>5</sup> Boumediene Tayeb and Djatti Kheira, "The Legal Nature of the Judicial Bailiff's Delegation," *Journal of Judicial Jurisprudence*, Vol. 14, Issue No. 29, March 2022, Mohamed Khider University, published on 30 March 2022, p. 509.

<sup>6</sup> See Article 02 of Executive Decree No. 19-199 dated 20 Dhu al-Qi'dah 1439 AH corresponding to 2 August 2018, on the Delegation of Public Service, Official Gazette of the People's Democratic Republic of Algeria, No. 48, issued on 23 Dhu al-Qi'dah 1439 AH corresponding to 5 August 2018.



authority—may be questioned on its neutrality and efficiency. Therefore, enabling the bailiff to perform his duties independently, and ensuring that he is equipped with the necessary legal and administrative means to exercise his authority, is critical to the effective implementation of the principle of equality before the law and the restoration of trust in the judiciary as a neutral and fair institution—particularly in disputes involving public Authorities.

This delegation is of a mixed legal nature, combining features from multiple types of delegation. On one hand, it bears the characteristics of administrative delegation, whether in the form of signature or jurisdiction. On the other hand, it resembles public service delegation, such as in concession contracts or unilateral delegations.

Assigning the enforcement of judicial decisions to unqualified or unauthorized bodies undermines the principle of the continuous and regular operation of public services—an essential principle that requires the uninterrupted delivery of public functions without delay or disruption. This violation directly results from associating enforcement with personal responsibility imposed on the delegate, which exposes public authorities to criticism and accusations of incapacity or negligence. This is particularly evident when a litigant, despite obtaining a final judicial ruling, is forced to re-enter a complex maze of procedures just to have their right enforced.

In this context, the judicial bailiff represents one of the most effective safeguards for enforcing judgments against the administration, due to the legal nature of his duties and his institutional independence. Empowering the bailiff with the legal mechanisms at his disposal—particularly those enabling coercive execution—makes him an effective instrument in compelling the administration to respect and implement the authority of judicial rulings.

Furthermore, entrusting the enforcement of administrative judgments to government officials—such as the relevant minister, governor, or director—instead of the judicial bailiff legally authorized to perform such tasks, constitutes a serious breach of the principle of equality before the law. It also deviates from the requirements of impartiality and justice at the enforcement stage. Such procedural discrimination grants the administration, as a party to the dispute, the authority to control the execution of judgments issued against it. This undermines the legal guarantees afforded to individual litigants and entrenches procedural inequality between the parties.

This situation erodes public confidence in the effectiveness of the judiciary—especially when citizens perceive that the same administration acting as a litigant is also responsible for enforcing the judgment. This contradicts the most basic standards of judicial neutrality. Moreover, the impact of such imbalance extends beyond individual concerns and threatens the foundations of the rule of law by weakening the authority of the judiciary as an independent power and impeding judicial oversight over administrative actions.

The absence of a neutral and independent body for enforcement negatively affects the investment climate, as investors lose trust in the ability to enforce their rights against the state—posing a real obstacle to attracting investment and securing legal certainty. Therefore, insulating the administration from executing rulings issued against it, and enabling judicial bailiffs to perform their duties independently, is the most crucial guarantee for upholding justice, strengthening the rule of law, and ensuring trust in the judicial system.

### **2.2.2: The Inalienability of Public Funds.**

Article 636 of the Code of Civil and Administrative Procedure stipulates that public property owned by the State, local authorities, or public administration institutions is not subject to seizure unless otherwise provided by law. This constitutes an exception to the general principle of debt guarantee due to its association with the public interest and the continuity of public service.

The inalienability of public funds is also justified by the presumed financial<sup>1</sup> solvency of the State—it is not conceivable that the State could be insolvent or unable to meet its obligations to individuals.<sup>2</sup> Public funds are defined as all assets, movable or immovable, owned by the State or any public legal entity<sup>3</sup>, which are allocated to public use either in fact or by law. Based on this, two conditions must be met for a fund to be considered public:<sup>4</sup>

- It must be owned by the State or a public legal entity.
- It must be allocated for public use, either in fact or by legal provision.

This raises a pertinent question: Are there any public funds that fall outside of these two conditions?

Legal scholars and some legislations distinguish between public and private funds owned by the State or public entities, and offer several criteria to differentiate between them:<sup>5</sup>

- The criterion of allocation for public use.
- The nature of the fund or its designation for public use.
- Allocation to serve public utilities.

Thus, not all public funds are absolutely inalienable, and their seizure does not necessarily affect the function or stability of public services. Therefore, such assets can be subject to enforcement, especially given the reality that public administration facilities often contain unused assets that have become obsolete over time.

Additionally, judicial officers operate under court supervision, which ensures the protection of rights and public interest. Courts oversee whether assets can be seized and whether they are essential to the operation of public services.

Seizing certain administrative assets may also prompt responsible officials to ensure proper functioning of public services to avoid judicial rulings and asset seizures. This contributes to enhancing public service quality and preserving public institutions. Execution against the treasury remains a last resort, only after proving that no sizable assets are available without disrupting public service.

Allowing seizure of certain public assets—within limits that do not impact the continuity of public service—represents a qualitative shift toward justice and equality before the law. It provides a real guarantee for enforcing judgments against public administrations and instills in litigants a sense of judicial effectiveness. It also helps restore the balance between the individual and the administration, which traditionally enjoyed near-absolute immunity during enforcement phases.

At the societal level, the ability to seize some administrative assets reinforces the principle that the administration is subject to the rule of law. It compels it to manage its affairs efficiently and responsibly to avoid seizure or litigation. This also sends a strong message to investors that the State is not an untouchable adversary, but a party accountable before the judiciary. It contributes to a stable and investment-friendly legal environment. Thus, lawfully seizing non-essential assets owned by the administration marks a significant step toward legal security and balancing the protection of public funds to individuals' rights to enforce judicial rulings.

### 2.2.3: Differences in the Law Governing the Enforcement of Administrative Judgments

The enforcement of administrative judicial rulings is one of the key indicators of the effectiveness of the judicial system, particularly regarding judgments issued against public administration. The core issue lies in the fact that such rulings are not enforced under the same rules applies to private individuals.

<sup>1</sup> Saeed Abdulrazzaq Bakhabeera, The Extent of the Permissibility of Seizure of Public Funds, The Arab Journal of Scientific Publishing, Issue 38, 2 December 2021, Aden, Yemen, p. 158.

<sup>2</sup> Samer Hameed Safar, Administrative Law: An Analytical Study on the Organization and Activities of Public Administration, Zein Al-Halabi Publications, 1st ed., 2020, p. 286.

<sup>3</sup> Algerian Civil Code, Article 688: Defines legal persons as including the State, administrative authorities, public institutions or institutions of an administrative nature, socialist institutions, self-managed units, and cooperatives involved in the Agrarian Revolution.

<sup>4</sup> Saeed Abdulrazzaq Bakhabeera, *supra* note 1, p. 150.

<sup>5</sup> *Ibid.*, p. 151 et seq.

When a judgment is issued against a private party, the Civil and Administrative Procedure Code applies—specifically Article 611 and the provisions that follow—which regulate procedures such as seizure, sale, and collection.

However, when the judgment concerns a public entity (the State, local authorities, or administrative public institutions), enforcement is subject to special rules based on the protection of public funds and the need to ensure the continuity of public services.

In this context, Law No. 91-02 of January 8, 1991, was introduced to specify the special rules for enforcing certain judicial rulings against the administration. It required respect for specific timeframes before initiating enforcement and restricted the possibility of direct coercive execution against the administration. This reflects a balance between respecting court decisions and maintaining the operation of public services.

Recently, amendments to the Code of Civil and Administrative Procedure<sup>1</sup> introduced new provisions concerning the enforcement of judgments against the administration. These amendments aim to address previous issues related to administrative delays in enforcement by imposing strict deadlines and clear follow-up mechanisms. Thus, the Algerian legislator consolidated enforcement procedures against both private and public legal persons within a single legal framework. However, it's important to note that this amendment mostly involved transposing existing legal texts without introducing substantial changes to the essence of enforcement against the administration.

Consequently, the difference in the legal Framework governing the enforcement of administrative rulings highlights a duality in enforcement systems between public authorities and individuals. This undermines the principle of equality before the law, as individuals may feel unfairly treated due to the difficulty in enforcing judgments against the administration compared to private parties. This could weaken public confidence in the judiciary and discourage recourse to the courts. On the other hand, the legal protection afforded to the administration provides operational flexibility, but may be exploited as a means of evading responsibility.

At the societal level, this disparity impacts the image of justice and underscores the need for reforms to ensure a fair balance between protecting individual rights and maintaining public fund integrity and service continuity.

## CONCLUSION

As a result of the foregoing, it can be concluded that the principle of equality, in its broad sense, cannot be achieved in an absolute manner, given its close connection to the public interest, which sometimes requires granting preferential treatment to the administration in order to ensure the continuity of public services. Nevertheless, the manifestations of inequality among litigants before the administrative judiciary can be mitigated by limiting unjustified discrimination and eliminating procedures or privileges that neither serve the public interest nor effectively impact the functioning of public utilities. Accordingly, the following recommendations are proposed:

The legislature should intervene to abolish the exemption from judicial fees granted to the administration under Article 64 of the 1999 Finance Law. This exemption undermines mechanisms of judicial oversight over administrative activity and conflicts with the principle of equitable sharing of litigation costs among the parties. Activating the principle of equality before the judiciary is not merely a theoretical demand, but a practical necessity with tangible effects at both the individual and societal levels. The elimination of such exemptions would represent a significant step toward achieving fairness in judicial burdens and would enhance the individual's perception of real and balanced justice.

The mandatory representation by a lawyer before the administrative courts should be reconsidered, making such representation optional. This would help protect the principle of access to justice and

<sup>1</sup> Law No. 22-13 of 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), amending and supplementing Law No. 08-09 of 18 Safar 1429 (corresponding to 25 February 2008) on the Civil and Administrative Procedure Code, Official Gazette of the People's Democratic Republic of Algeria, No. 48, published on 17 July 2022.



facilitate legal procedures, particularly for low-income individuals and those familiar with basic legal processes.

The legislature should explicitly allow enforcement against certain non-essential assets owned by the State, which are not directly tied to the operation of public services. This should be subject to judicial oversight by the administrative judge to ensure enforcement of judicial rulings and support the effectiveness of execution procedures against the administration—thus reinforcing the rule of law.

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