

## **Physical Coercion between Algerian National Legislation and International Treaties**

**Dr. Fatiha BENNAMANE**

**Faculty of Law and Political Sciences**

**Mouloud Mammeri University of Tizi-ouzou**

**E-mail: fatiha.bennamane@ummtto.dz**

**Dr. Nadia MOUMOU**

**Faculty of Law and Political Sciences**

**Mouloud Mammeri University of Tizi-ouzou**

**E-mail: nadia.moumou@ummtto.dz**

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### **Abstract**

Physical coercion is a legal mechanism used to pressure debtors into fulfilling their financial obligations toward creditors, regardless of the type of debt or the debtor's status. It constitutes an exception to the general rule regarding debt settlement, according to which civil obligations are enforced against the debtor's assets rather than their person. However, refusal of voluntary compliance may prompt creditors to compel debtors through the intervention of public authorities. Given that this measure restricts personal freedom, the Algerian legislature has regulated its application, making it enforceable exclusively concerning noncontractual obligations. Furthermore, ratified international human rights instruments have established specific limitations and controls, particularly the International Covenant on Civil and Political Rights (ICCPR).

**Keywords:** Physical coercion, compulsory enforcement, human rights, International Covenant on Civil and Political Rights (ICCPR), right.

## **Introduction**

States strive to achieve justice through their internal legislation aligned with their international obligations in respecting human rights and fundamental freedoms, particularly the right to liberty and limiting individual rights, especially when states ratify international human rights conventions. Consequently, human rights have gained significant importance at national and global levels.

Practical reality highlights a problematic issue that might conflict with the principle of protection, mainly when a creditor obtains an enforceable instrument and seeks its execution but encounters the debtor's obstinacy, procrastination, or outright refusal to execute the obligations stipulated in that instrument. Therefore, all legal systems worldwide strive to establish legal mechanisms for enforcing final judicial decisions by compelling the debtor to fulfil obligations forcibly. Among these mechanisms is physical coercion, which activates the compulsory execution system after the failure of voluntary execution.

Execution against a debtor's assets represents an advanced stage in enforcing obligations, evolving from an older practice where execution targets the debtor's person if unable to fulfil obligations. Historically, this approach extended even to selling or killing the debtor, as responsibility encompassed both personal and property liability. Such practices contradict fundamental human rights, particularly liberty and life. Consequently, legal systems abandoned this method and shifted towards enforcement against the debtor's property, granting creditors the option of requesting debtor imprisonment, thus transforming coercion into its mitigated form recognised in positive law today.

Attempting to enforce judicial instruments through physical coercion constitutes an infringement on human rights. It violates the provisions outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Consequently, physical coercion raises practical problems by shifting the creditor's legal recourse from civil to criminal jurisdiction. This shift occurs due to the debtor's refusal to fulfil obligations in good faith, as required by the foundational

principle underlying civil commitments. This refusal prompts creditors to resort to methods permitted by law to compel enforcement, aiming to prevent debtors from maliciously hiding assets from a guarantee, which would harm creditors. Simultaneously, the law seeks to avoid causing bodily harm to debtors and refrains from depriving them entirely of their property, thus protecting humanitarian considerations.

In line with human rights protection considerations, national legislations generally do not adopt the principle of imprisoning debtors as a means of coercion for civil debts in adherence to their commitments under international human rights agreements. Exceptionally, however, physical coercion can compel debtors to fulfil their obligations toward creditors. This is justified primarily by the ineffectiveness of judicial enforcement methods when creditors reach the final stage of enforcement without success. Consequently, physical coercion is restricted in some legislation and, more broadly, in others. The Algerian legislature, notably, restricted the application of physical coercion under Order No. 66--155, including the amended and supplemented Code of Criminal Procedure, stipulated explicitly in Chapter III from Article 597--Article 611, to align with Algeria's international obligations.<sup>1</sup>

To address this subject, we propose the following research question:

**To what extent is Algerian legislation consistent with international treaties regarding the regulation of physical coercion?**

We attempt to answer this question by examining the binding nature of human rights treaties (Section One) and the stance of human rights treaties on physical coercion (Section Two).

## **Section One**

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<sup>1</sup> See Ordinance No. 66-155 of 18 Safar 1386 (corresponding to June 8, 1966), on the Code of Criminal Procedure, as amended and supplemented, *Official Gazette* No. 48, published on June 10, 1966.

## **Enforcement Against the Person of Debtor Under the Code of the Criminal Procedure**

Physical coercion, known in French as *la contrainte par corps*, is considered one of the oldest methods for enforcing obligations, dating back to Roman law. However, contemporary jurists favour voluntary compliance by the debtor (First Subsection). If the debtor refuses, the creditor is entitled to enforce payment compulsorily against the debtor's property, initially by seizure of movable assets, followed by immovable property, with the additional possibility of enforcement through physical coercion under specified rules and conditions (Second Subsection).

### **First Subsection**

#### **The Conceptual Framework of Physical Coercion**

Historically, enforcement against the debtor's person was regarded as the primary method of fulfilling obligations without any restrictions or controls. However, legal evolution has transformed physical coercion into an alternative mechanism for enforcing judicial decisions. Thus, a debtor now fulfils obligations voluntarily; if the debtor refuses, the creditor may employ legal measures for debt recovery through various seizure procedures. This evolution necessitates defining this enforcement system (First Branch) and clarifying its legal nature (Second Branch).

### **First Branch**

#### **Definition of Physical Coercion**

The Algerian legislature has affirmed the right of recourse to judicial remedies under all previous constitutions, including the constitutional amendment of 2020, specifically Article 177, which states that litigants have the right to seek judicial protection of their rights before competent courts<sup>2</sup>. In parallel, the legislator has established measures

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<sup>2</sup> Presidential Decree No. 20-442 of 15 Jumada al-Awwal 1442 (corresponding to December 30, 2020), on the Constitutional Amendment, *Official Gazette* No. 82, published in 2020.

enabling creditors—natural or legal—to pursue their financial rights when debtors refuse to pay through a procedure known as "physical coercion" (*al-ikrah al-badani*).

French jurisprudence defines physical coercion as an enforcement method through which the creditor acquires the right to pursue the debtor personally, compelling performance through imprisonment<sup>3</sup>. Others have characterised it as an indirect enforcement measure employed against debtors lacking visible assets eligible for seizure to satisfy obligations<sup>4</sup>.

Thus, physical coercion can be described as a measure that affects a person's ability to pressure debtors into fulfilling financial obligations, particularly those relating to family debts—such as alimony, rent, and civil compensation—or those due to the state, including judicially imposed fines or legal expenses<sup>5</sup>.

Referring to Algerian civil law, physical coercion (*al-ikrah al-badani*) is a threat of action or omission that may cause harm to the debtor, either financially or personally<sup>6</sup>. According to criminal law provisions, physical coercion refers to pressures a creditor exerts upon the debtor to comply with the creditor's demands. Concerning judicial interpretation, reference must be given to the decisions of the Criminal Chamber of the French judiciary, which has characterised physical coercion as a method of enforcement rather than punishment. Notably, French courts have not provided an explicit definition but have instead differentiated between physical coercion and criminal penalties. The Algerian Supreme Court adopted a similar stance in Decision No. 09621, dated July 8, 2020, between the appellant and the Judicial Treasury Representative, holding that the restriction of liberty under physical coercion procedures does not constitute provisional detention.<sup>7</sup>

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<sup>3</sup> Marie-Hélène Renaud, "La contrainte par corps, Une voie d'exécution civile à coloris pénal," *Revue de Science Criminelle et de Droit Pénal Comparé*, no. 4 (October–December 2002): 791.

<sup>4</sup> Charles César-Bru, *Théorie et pratique de voies d'exécution*. Paris: Éditions Rousseau, 1927, p. 458

<sup>5</sup> Belhaj, Al-Arabi. *Provisions of Obligations in Light of Islamic Law (Comparative Study)*. Amman: Publishing and Distribution House, 2012, p. 89.

<sup>6</sup> Belhaj, Al-Arabi. *Ibid.*, p. 86.

<sup>7</sup> Supreme Court Decision. Available at: <https://www.coursupreme.dz>.

Physical coercion can thus be defined as the temporary imprisonment of a debtor based on a criminal judicial ruling involving the deprivation of personal liberty to pressure the debtor into fulfilling its financial obligations towards the creditor, regardless of whether the creditor is an individual or a public authority. However, imprisonment does not constitute payment itself; instead, it serves solely as a pressure mechanism for enforcement and not as a punitive measure. Furthermore, imposing physical coercion on the judgment debtor does not extinguish the creditor's right to collect the debt subsequently. This characteristic differentiates physical coercion from the periodic penalty payment system (*austenite*), which functions as a sanction, as outlined in Article 305 of the Code of Civil and Administrative Procedure, which authorises the summary proceedings judge to impose such penalties. It also differs distinctly from provisional detention, an exceptional measure subject to minimum and maximum duration limits. The duration of physical coercion varies according to the amount of debt claimed. Hence, these systems and imprisonment serve as punitive rather than enforcement mechanisms. Despite this, the Algerian legislature allows physical coercion as a measure against judgment debtors who fail to fulfil their financial obligations, distinguishing this from criminal penalties, which cannot be imposed twice upon the same person for the same offence.<sup>8</sup>.

The French legislator adopted the same stance in the Code of Criminal Procedure, further reinforced by Law No. 2004--204 dated March 9, 2004, specifically in Article 271 of the Tax Procedure Code. This article explicitly states that the failure to pay taxes grants competent authorities the right to enforce physical coercion according to procedures established by the Code of Criminal Procedure<sup>9</sup>.

## **Second Branch**

### **Conditions for Implementing Physical Coercion**

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<sup>8</sup> Najimi, Jamal. *Algerian Code of Criminal Procedure in Light of Judicial Precedents, Article by Article, Volume II*. 4th ed. Algeria: Dar Houma, 2018, p. 391.

<sup>9</sup> See *Livre des procédures fiscales: Contrainte par corps*, available at: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006069583/LEGISCTA000006180088/2004-10-09](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069583/LEGISCTA000006180088/2004-10-09).

Owing to the exceptional nature of physical coercion as a procedure for compelling debtors to fulfil their financial obligations, the Algerian legislature established specific conditions initially provided under Orders No. 66----- 154 concerning the Civil Procedure Code, specifically Articles 407- 412. These provisions were subsequently repealed by Law No. 08--February 9 February 25, 2008, which introduced the Code of Civil and Administrative Procedure<sup>10</sup>, in alignment with Algeria's international commitments. This change reflects Algeria's ratification of the International Covenant on Civil and Political Rights (ICCPR) through Presidential Decree No. 89--67, Article 11, which explicitly stipulates that no person shall be imprisoned solely owing to their inability to fulfil a contractual obligation. The Algerian legislature accordingly regulated the application of physical coercion within Articles 599 to 611 of the Code of Criminal Procedure.<sup>11</sup>

Under Algerian law, imposing physical coercion requires obtaining an order, judgment, or decision with the *res judicata* effect. Moreover, any judgment related to the associated civil claim must be final to qualify as an enforceable instrument. Only the civil party involved is authorised to initiate physical coercion proceedings; public prosecution may not initiate these procedures, adhering to the principle of societal representation. Furthermore, physical coercion may not, under any circumstances, be directed against a judgment debtor without first serving a formal notification demanding fulfilment of the obligation, as stipulated explicitly in Article 604/1 of the Code of Criminal Procedure.<sup>12</sup>

The measure must explicitly appear within the criminal judgment to enforce physical coercion. If the judgment lacks this explicit provision, the creditor may obtain authorisation using an order upon petition (*the reluctance sur requête*) issued by the same judicial authority that rendered the original judgment. Additionally, physical coercion may only be executed in matters related to felonies and misdemeanours, explicitly

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<sup>10</sup> Law No. 08-09 of February 25, 2008, on the Code of Civil and Administrative Procedure. *Official Gazette* No. 21, published in 2008.

<sup>11</sup> The addition of Article 599, which allows for the enforcement of judgments related to fines, civil compensation, and judicial costs in misdemeanours and felonies through physical coercion, was made under Law No. 18-06 of June 10, 2018, amending and supplementing the Code of Criminal Procedure—*Official Gazette* No. 34, published on June 10, 2018.

<sup>12</sup> All enforcement procedures against the debtor subject to execution must be exhausted before requesting the application of physical coercion.

excluding contraventions—unlike the previous legislation, which permitted physical coercion in all criminal issues without exception. Furthermore, physical coercion cannot be imposed if the judgment debtor has lodged a cassation appeal, which suspends execution under Article 599/3 of the Code of Criminal Procedure.

The legislature has clearly defined the nature of the person subject to physical coercion, explicitly excluding legal persons (corporate entities) owing to the inherent impossibility of imposing bodily punishment upon them, which is logically consistent. Additionally, specific social categories are exempt from physical coercion under Articles 600/1 and 601 of the Code of Criminal Procedure. Specifically, the person subject to enforcement must have been at least 18 years of age when the offence was committed and must not have reached the age of 65. Furthermore, physical coercion cannot be applied to persons sentenced to death or life imprisonment or to those convicted of political offences. The legislator also exempts the debtor's spouse, ascendants, descendants, brothers and sisters, uncles and aunts, nephews and nieces, or relatives-in-law of the same degree. Moreover, simultaneous physical coercion against spouses is prohibited according to Article 601 of the Code of Criminal Procedure.

Judgments involving fines or financial penalties equal to or exceeding 20,000 Algerian dinars (DZD) may be settled through physical coercion. Conversely, by logical inference (*a contrarian*), amounts less than this threshold cannot prompt the creditor to request enforcement by the public prosecution through physical coercion, as explicitly stated in Article 602 of the Code of Criminal Procedure. Additionally, the law requires a judicial decision convicting the person targeted for enforcement, and the creditor must adhere strictly to the applicable statutes of limitations.

Implementing physical coercion is subject to a set of procedures that must be strictly followed. It begins by submitting a request to the Public Prosecution Office to enforce an order, judgment, or decision imposing physical coercion. Upon receiving this request, the Public Prosecution issues a formal notice demanding payment, granting the debtor a period not exceeding ten days. This notification is sent directly to the actual residence of the judgment debtor, who must effectively reside within the Algerian territory. If the

debtor fails to respond, the Public Prosecutor, represented by the Republic's Prosecutor, will order the public authorities to apprehend the debtor by Article 604 of the Code of Criminal Procedure.

The Algerian legislature differentiates between insolvent debtors and those deliberately refusing to fulfil obligations. If the debtor demonstrates insolvency, public prosecution may not apply physical coercion against them, as stipulated explicitly in Article 603 of the Code of Criminal Procedure. In such cases, the Public Prosecutor has two alternatives: either dismissing the physical coercion procedure altogether if the debtor sufficiently proves insolvency or postponing payment, provided the civil party consents to the postponement if the matter pertains specifically to civil rights and compensation rather than fines or judicial costs.

The debtor may prove insolvency through various methods. Previously, insolvency was established either by obtaining a certificate of poverty issued by the President of the Municipal People's Council or by a certificate of tax exemption provided by the competent tax officer at the debtor's residence. However, under Law No. 18--06, the Algerian legislature has expanded the scope of acceptable evidence, explicitly employing the phrase "by any available means", as stipulated in Article 603 of the law above. An important exception applies to individuals convicted of economic felonies or misdemeanours, terrorist acts, sabotage, transnational crimes, and misdemeanours and felonies committed against minors.

Notably, Algerian law mandates that physical coercion must be ordered exclusively by a criminal judge with subject matter and territorial jurisdiction. Consequently, a civil judge cannot impose physical coercion, thus aligning Algerian legislation with international obligations—notably Article 11 of the International Covenant on Civil and Political Rights (ICCPR), which explicitly prohibits imprisonment solely because of the inability to fulfil a contractual obligation.

## **Second Subsection**

## **Implementation of Physical Coercion**

Implementing physical coercion procedures is governed by rules derived from the Code of Criminal Procedure and the Law on Prison Administration and Reintegration (First Branch). Its execution also entails significant legal effects on the parties involved (Second Branch).

### **First Branch**

#### **Procedures for Executing Physical Coercion**

The Algerian legislature seeks to recover financial penalties, judicial costs, and compensation imposed by Algerian judges when adjudicating criminal cases, whether the penalties involve restitution, payment of fines and expenses, or civil compensation. Entities legally authorised to initiate enforcement under Article 597 of the Code of Criminal Procedure include the Public Prosecution and the Financial Administration, specifically responsible for collecting fines and judicial expenses. Furthermore, tax authorities and the State Property Administration, upon request from the Public Prosecutor or Republic's Prosecutor, are empowered to collect fines or execute confiscation measures after the Public Prosecution requires public force assistance, as stipulated explicitly in Chapter Two of the Law on Prison Administration and the Reintegration of Prisoners.

Article 597 bis of the amended and supplemented Code of Criminal Procedure stipulates that competent authorities should collect fines and judicial expenses via procedures set forth by the financial administration. This responsibility is specifically assigned to the judicial authorities' collection services under Executive Decree No. 17--120<sup>13</sup>, which outlines the procedures for recovering fines and judicial expenses.

Regarding financial penalties in customs-related matters, Law No. 79--07, which includes the amended and supplemented Customs Code, specifies in Article 299 that any person

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<sup>13</sup> Executive Decree No. 17-120 of March 22, 2017, specifies the conditions and procedures for judicial authorities to collect fines and judicial costs—*official Gazette* No. 19, published on March 26, 2017.

convicted of smuggling shall remain imprisoned until full payment of financial penalties, regardless of appeal or cassation proceedings—bearing in mind that cassation ordinarily suspends enforcement in other criminal matters. Nevertheless, under applicable legislation, the imprisonment period must not exceed the duration specified for physical coercion. The competent authority for implementing this provision is the customs administration, as stipulated explicitly in Article 259 of the same law<sup>14</sup>.

The request to impose physical coercion against the judgment debtor, aiming to enforce the contents of a judgment, order, or decision obligating payment of financial sums, must be submitted to the Republic's Prosecutor at the debtor's place of residence. This request must accompany a copy of the relevant judgment, order, or decision mandating physical coercion. Upon receipt, the Republic's Prosecutor examines the request and its attachments and subsequently seeks a financial record document from the sentence-enforcement authority. This document details judicial expenses, acceptable amounts, registration fees, the debtor's identity, and the description of the offence. The Prosecutor then issues a formal notice for payment to the debtor. If the debtor responds and pays within thirty days, they benefit from a 10% reduction in the acceptable amount.

Additionally, the debtor may submit a request for instalment payments. However, compulsory collection measures—including physical coercion—will be initiated if the debtor refuses payment. The territorially competent Republic's Prosecutor issues an order to the public authorities for the debtor's apprehension. Once apprehended, the debtor's intent to comply is evaluated. If the creditor withdraws their enforcement request, the debtor is immediately released. Conversely, if the debtor agrees to pay, the owed amounts are collected in exchange for a receipt, and the debtor is released. The debtor also has the right to request, in writing, an additional period for payment, during which the debtor may file an objection. If the debtor ultimately refuses payment, they are committed to prison for the duration legally specified. Payment may be made simultaneously, and upon full debt settlement, the debtor is promptly released.

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<sup>14</sup> Law No. 79-07 of July 21, 1979, on the Customs Code. *Official Gazette* No. 30, published on July 24, 1979.

The Algerian legislature precisely determined the duration of physical coercion. Initially, the amounts enforceable through physical coercion started at 5,000 Algerian dinars (DZD). However, under Law No. 18--06, relating to the Code of Criminal Procedure, the legislature doubled this threshold, setting the current minimum enforceable amount at 20,000 DZD while maintaining the previous duration of imprisonment, now ranging from two to ten days. Furthermore, the legislature abolished the previously established duration for physical coercion of two to five years, replacing it with a maximum duration of two years applicable to all fines and judgments exceeding 10,000,000 DZD.<sup>15</sup>

## **Second Branch**

### **Effects of Implementing Physical Coercion**

Physical coercion is a compulsory enforcement measure against the debtor to compel them to fulfil their financial obligations. However, it is not a punishment, as its application does not extinguish the debt. Instead, the debtor's obligation remains legally valid and enforceable toward the creditor and does not cease upon the judiciary's execution of physical coercion. Consequently, applying physical coercion does not release the debtor from the amounts owed, as explicitly stated in Article 599(2) of the Code of Criminal Procedure. Therefore, the obligation remains in force.

Moreover, the creditor retains the right to pursue subsequent enforcement measures through ordinary execution procedures provided in the Code of Civil and Administrative Procedure, such as asset seizures. However, this is subject to the condition that the financial penalties imposed have not expired owing to the statute of limitations and that the creditor has discovered the debtor's financial solvency.

A person imprisoned due to physical coercion is subject to the same regulatory framework as those convicted under other criminal judgments. This is explicitly

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<sup>15</sup> See Article 602 of Law No. 18-06 of 25 Ramadan 1439 (corresponding to June 10, 2018), amending and supplementing Ordinance No. 66-155 of 18 Safar 1386 (corresponding to June 8, 1966), on the Code of Criminal Procedure—*Official Gazette* No. 34, published on June 10, 2018.

confirmed by Article 4 of Ministerial Circular No. 25, dated December 31, 1989<sup>16</sup>, which pertains to the internal regulations of penal institutions. The same classification is reaffirmed in Article 7 of Law No. 05--04 on the Organisation of Prisons and the Social Reintegration of Prisoners<sup>17</sup>.

Subsequent enforcement proceedings may be pursued through ordinary execution procedures<sup>18</sup>, as stipulated in Article 599 of the Code of Criminal Procedure. On the other hand, physical coercion may not be imposed on the judgment debtor twice for the same debt by Article 611 of the Code of Criminal Procedure. However, physical coercion may be enforced a second time if the debtor refuses to fulfil the remaining financial obligation that initially led to suspending the physical coercion measure.

Article 611 of the Code of Criminal Procedure addresses the issue of imposing physical coercion following a prior physical coercion measure. Suppose that the financial amounts specified in subsequent judgments require a longer duration than the initial period of imprisonment already served under the first physical coercion measure. In that case, the duration of the first imprisonment is deducted from the second coercion measure. Additionally, a second physical coercion may be imposed if the initial coercion was suspended due to the debtor's voluntary compliance. Still, the debtor failed to fulfil the obligation, leading to the suspension of the enforcement. In such cases, physical coercion may be re-executed for the remaining outstanding amount by Articles 610 and 611 of the Code of Criminal Procedure.

However, if physical coercion is terminated due to debt remission, such as the creditor's waiver or the debtor's insolvency, a second physical coercion measure cannot be imposed. Article 603 of the Code of Criminal Procedure explicitly confirms this. Furthermore, enforcement by physical coercion does not preclude asset-based

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<sup>16</sup> Article 4 of Ministerial Circular No. 25, dated December 31, 1989, regarding the Internal Regulations of Penal Institutions, states: *"For the purposes of this law, the following are considered prisoners: the person held in preventive detention, the convicted prisoner, the juvenile sentenced to a custodial sentence, and the person subjected to physical coercion."*

<sup>17</sup> See Article 7 of Law No. 05-04 of February 6, 2005, on the Law on the Organisation of Prisons and the Social Reintegration of Prisoners. *Official Gazette* No. 12, published on February 13, 2005.

<sup>18</sup> Barsh, Suleiman. *Explanation of the Civil and Administrative Procedure Code: Enforcement Methods, Volume II*. Dar Al-Huda, Algeria, 2006, p. 394.

enforcement measures, as stipulated in Article 599 of Law No. 18--06, related to the Code of Criminal Procedure, as previously mentioned.

Physical coercion and all its effects against the judgment debtor are extinguished upon full settlement of the financial obligation owed to the creditor, whether through direct payment to the creditor or via the enforcement officer, such as the collection service within judicial authorities, the Customs Administration, or other relevant entities. In return, the debtor is issued a clearance receipt, which must be submitted to the Public Prosecution to close the case file and terminate enforcement proceedings related to the debt.

## **Section Two**

### **Position of Human Rights Treaties on Physical Coercion**

Human rights and fundamental freedoms are legal principles aimed at ensuring justice and equality among all members of society. International instruments have enshrined and safeguarded these principles, prohibiting any violations against them. Notably, the Universal Declaration of Human Rights, the two International Covenants on Civil, Political, Economic, and Social Rights, along with other international legal texts ratified by Algeria, have become an integral part of its domestic legal framework owing to the peremptory nature of human rights norms (*First Subsection*). Consequently, international human rights conventions explicitly exclude the application of physical coercion as an enforcement measure (*Second Subsection*).

#### **First Subsection**

##### **The Peremptory Nature of Human Rights Norms**

Fundamental human rights, such as the right to life, liberty, freedom of movement, and freedom of expression, are legally protected rights. As a universal concept, human rights are safeguarded by international declarations, conventions, and treaties, including the Universal Declaration of Human Rights, the two International Covenants on Civil and

Political Rights and Economic, Social, and Cultural Rights, along with their Optional Protocols. The 1993 Vienna Declaration on Human Rights and various specialised international and regional agreements further reinforced human rights protection. As a result, human rights norms possess a distinct legal nature (*First Branch*) and binding force (*Second Branch*).

## **First Branch**

### **The Supremacy of Human Rights Norms**

International human rights norms fall within *peremptory norms (jus cogens)*, which cannot be derogated by agreement. They also impose universal obligations on all states (*erga omnes*). This principle was affirmed by the International Court of Justice (ICJ) in its ruling on the *Barcelona Traction* case on February 5, 1970<sup>19</sup>.

The extent to which a state upholds human rights is a key indicator of its legal and institutional progress<sup>20</sup>. Given Algeria's ratification of international human rights treaties, it is essential to examine the supremacy of these adopted norms by assessing their position within the Algerian constitutional framework.

Since gaining independence, Algeria has adopted several constitutions. The first, enacted in 1963, contained no provisions clarifying the relationship between international obligations and national law. In contrast, the 1976 Constitution introduced Article 153, which affirmed that ratified treaties acquire the force of law. However, it does not explicitly clarify the hierarchical status of international commitments to domestic law.

A significant shift occurred with the 1989 Constitution, which unequivocally established in Article 123 that international treaties take precedence over national law once ratified, provided they meet the constitutional conditions. This development coincided with Algeria's ratification of the International Covenant on Civil and Political Rights

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<sup>19</sup> The judgment is available on the following website: [www.cij-cij.org](http://www.cij-cij.org).

<sup>20</sup> Al-Leidi, Ibrahim Mahmoud. *Human Rights Guarantees Before Criminal Courts*. Dar Al-Kutub Al-Qanuniya, Cairo, 2010, p. 13.

(ICCPR). The 1996 Constitution retained the same principle, which was subsequently reinforced by the constitutional amendments of 2016 and 2020, further consolidating the supremacy of international legal norms over domestic law.

Since human rights treaties concern individuals, the Algerian Constitution requires explicit approval from both chambers of Parliament after ratification by the President of the Republic. Once published in the *official gazette*, these treaties become legally binding domestically and internationally, taking precedence over any conflicting domestic law.

The ratification of the International Covenant on Civil and Political Rights (ICCPR) implicitly abolished physical coercion in contractual obligations by Article 11 of the ICCPR, which prohibits imprisonment for failure to fulfil contractual obligations. Consequently, the Algerian legislature excluded the application of physical coercion in civil contracts, necessitating an amendment to the Code of Civil Procedure and repealing provisions that previously governed physical coercion. However, it was retained in the enforcement of criminal judgments, in alignment with the provisions of the ICCPR and its compatibility with criminal enforcement procedures.

## **Second Branch**

### **The Binding Nature of Human Rights Norms**

Human rights norms serve as a framework for justice and equality, aligning closely with ethical and religious principles that reject discrimination based on race, religion, social status, or class. These rights are codified in a set of legal principles that define individuals' duties and guarantees, thereby determining the state's role in ensuring the protection of these rights across various domains. The Universal Declaration of Human Rights (UDHR) is the foundational document enshrining human rights. However, some legal scholars argue that it is merely a declaratory document with moral significance

rather than a legally binding instrument. This view is based on the fact that the UDHR does not contain explicit provisions outlining enforcement mechanisms, as its provisions are broadly framed. Furthermore, the UDHR was not subject to formal ratification by member states.<sup>21</sup> Nevertheless, the International Court of Justice (ICJ) has affirmed its legal significance, reinforcing its role in international human rights norms.

Human rights norms are universal values derived from international legal principles. They are recognised under public international law and enshrined in international treaties and instruments, such as the Universal Declaration of Human Rights, the two International Covenants (ICCPR and ICESCR), and their Optional Protocols. Additionally, several specialised conventions, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Suppression of Trafficking in Persons, aim to protect human rights across various dimensions—social, economic, and political.

Given the unique legal nature of human rights norms, states must uphold them unconditionally, meaning that they cannot be subject to negotiation or compromise. Furthermore, the principle of reciprocity cannot be invoked concerning human rights obligations, as their enforcement is an absolute legal duty incumbent upon all states.<sup>22</sup>

Fundamental human rights norms are inherently binding upon states. A state cannot invoke domestic laws to justify failing to implement human rights obligations. This principle is explicitly affirmed in Article 27 of the 1969 Vienna Convention on the Law of Treaties,<sup>23</sup> This principle establishes that international legal norms precede national

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<sup>21</sup> Al-Shafi'i, Muhammad Bashir. *Human Rights Law*. Mansha'at Al-Ma'arif, Egypt, 2009, pp. 27–28.

<sup>22</sup> Abu Al-Wafa, Ahmed. *International Protection of Human Rights*. Dar Al-Nahda Al-Arabiya, Egypt, 2000, p. 99.

<sup>23</sup> Article 27 of the Vienna Convention on the Law of Treaties (1969) states that no party may invoke the provisions of its internal law as a justification for failing to perform an international treaty. Algeria acceded to the Vienna Convention on the Law of Treaties with reservations under Presidential Decree No. 87-222, dated October 13, 1987, corresponding to 20 Safar 1408. It was published in Official Gazette No. 42 on October 14, 1987.

laws, particularly regarding human rights. It is widely accepted across global legal systems.<sup>24</sup>

Algeria has adopted this approach, as reflected in Article 154 of the 2020 constitutional amendment<sup>25</sup>, which highlights the supremacy of international treaties over domestic law. Any violation of international commitments may subject the state to accountability before international bodies.

Moreover, states cannot issue reservations to fundamental human rights provisions, a principle reaffirmed by the International Court of Justice (ICJ) in its 1951 advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide<sup>26</sup>.

Thus, human rights norms constitute peremptory (*jus cogens*) and binding rules, limiting absolute state sovereignty and prevailing over national legal provisions, ensuring their priority in domestic legal application.

## **Second Subsection**

### **Prohibition of physical coercion in human rights treaties**

International conventions serve as the fundamental legal instruments for protecting human rights at national and global levels. When examining the issue of physical coercion, reference must be made directly to the International Covenant on Civil and Political Rights (ICCPR), which explicitly and unequivocally prohibits it (*First Branch*), and national legislators are bound by its provisions (*Second Branch*).

### **First Branch**

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<sup>24</sup> Marek, Krystyna. "Les rapports entre le droit international et le droit interne à la lumière de la jurisprudence de la Cour de Justice Internationale." *Revue Générale de Droit International Public* (RGDIP), 1962, p. 2600.

<sup>25</sup> See Article 154 of the 2020 Constitutional Amendment.

<sup>26</sup> Qassila, Saleh Zaid. *Guarantees of International Criminal Protection of Human Rights*. Dar Al-Nahda Al-Arabiya, Egypt, 2009, p. 225.

## Prohibition of Physical Coercion in the International Covenant on Civil and Political Rights (ICCPR)

The ICCPR clearly and explicitly prohibits physical coercion, ensuring the protection of personal liberty for debtors. Article 11 of the Covenant explicitly prohibits the imprisonment of any individual solely for failing to fulfil contractual financial obligations.

In contrast, if the debt in question does not originate from a contractual obligation, it falls outside the scope of Article 11 of the ICCPR. This implies that debts resulting from civil obligations arising from a criminal offence may be subject to physical coercion. Algeria ratified the ICCPR in 1989 under a presidential decree<sup>27</sup>.

The concept of inability to pay is broad and does not require the debtor to be formally declared insolvent or bankrupt. Instead, it suffices that the debtor is financially incapable of fulfilling the obligation due to personal circumstances.<sup>28</sup>

The enshrinement of the principle of the supremacy of international treaties over domestic laws, as stipulated in Article 154 of the Algerian Constitution, affirms that international treaties become an integral part of the national legal system and hold the same binding force as any enforceable domestic law.

This principle necessitates an examination of the legal implications of Algeria's accession to the International Covenant on Civil and Political Rights (ICCPR), particularly concerning the prohibition of physical coercion.

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<sup>27</sup> The International Covenant on Civil and Political Rights was adopted on December 16, 1966. Algeria acceded to it through Presidential Decree No. 89-67, dated May 16, 1989. The treaty was published in Official Gazette No. 20 on May 17, 1989, and the text was published in Official Gazette No. 11 on February 26, 1997.

<sup>28</sup> Braunschweig, André. "Contrainte par corps, Insolvabilité du condamné." *Revue de Science Criminelle (RSC)*, 1990, p. 807.

Article 11 of the International Covenant on Civil and Political Rights (ICCPR) states, "*No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.*" This provision categorically prohibits using physical coercion to enforce when a judgment debtor cannot fulfil a civil obligation of contractual origin.

This principle conflicted with Articles 407 to 412 of the Algerian Code of Civil Procedure, which previously permitted physical coercion in civil enforcement. In response, the Algerian legislature took a different approach by enacting Law No. 08--09, which introduced the Code of Civil and Administrative Procedure. This law abolished the provisions above because they were incompatible with Article 11 of the ICCPR following Algeria's ratification of the Covenant.

However, physical coercion was retained for noncontractual obligations, aligning Algerian legislation with global legal practices, such as those in Egypt and France. Accordingly, the legal framework governing physical coercion was transferred to the Code of Criminal Procedure, where its application is strictly limited to financial obligations arising from criminal judgments—specifically, felonies and misdemeanours—as they constitute noncontractual debts.

## **Second Branch**

### **The Compatibility between National Provisions and International Conventions**

Algeria acceded to the International Covenant on Civil and Political Rights (ICCPR) under Presidential Decree No. 89--67, thereby adopting the provisions of the Covenant as subsequent and supreme law by constitutional requirements. The presidential decree was published in the official gazette, making its provisions legally binding. Consequently, Article 11 of the ICCPR directly contradicted Articles 407--412 of the Code of Civil Procedure. As a result, the law was amended through Law No. 08--09, and Article 407 was implicitly repealed.

Article 11 of the ICCPR is a public order norm, meaning that any enforcement of physical coercion for contractual obligations is null and void. Consequently, the

concerned party may invoke its non-enforceability, and the Public Prosecution may also raise this objection.

However, regarding noncontractual obligations, such as the enforcement of a judgment awarding compensation in a civil lawsuit ancillary to a criminal case, where the source of the compensation arises from a noncontractual obligation (e.g., an unlawful act), physical coercion may be applied if the debtor's movable and immovable assets are insufficient to cover the debt. This insufficiency is a conclusive legal presumption of the debtor's inability to pay.

Applying physical coercion based on a criminal judgement, as stipulated in the Code of Criminal Procedure for a misdemeanour or felony by the provisions above, does not conflict with Article 11 of the ICCPR, as such cases fall outside the scope of contractual obligations.

Thus, Algeria's national legislative provisions are compatible with its international obligations under the International Covenant on Civil and Political Rights (ICCPR).

On the other hand, Article 18 of the Arab Charter on Human Rights<sup>29</sup> Reaffirms the principle established in Article 11 of the ICCPR, which explicitly prohibits the imprisonment of any person who has been proven insolvent and unable to fulfil a debt arising from a contractual obligation. However, Article 18 requires that insolvency be judicially established, implying that traders (merchants) are excluded, as they remain subject to bankruptcy laws.

Thus, Article 11 of the ICCPR is broader in scope, as it also applies to merchants, making it a more comprehensive legal safeguard against physical coercion for contractual debts.

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<sup>29</sup> The Arab Charter on Human Rights was adopted at the Arab League Summit in 2004 and entered into force on March 16, 2008. Ten Arab countries ratified it, including Algeria, Jordan, Bahrain, Saudi Arabia, the United Arab Emirates, Yemen, Qatar, Syria, Palestine, and Libya.

Thus, national legislation and international obligations regarding civil obligations are compatible. The same rule applies to contractual and commercial commitments, given that commercial debt arises from a contractual obligation.

However, in cases where commercial debt stems from a noncontractual obligation, such as compensation resulting from an unfair competition lawsuit, which falls outside the scope of contractual obligations, would it be subject to the same enforcement provisions after exhausting all legal procedures for execution against the debtor's assets?

Article 11 of the ICCPR does not explicitly address this specific case or expressly exclude it from the general prohibition of physical coercion. This omission creates a legal gap, as the legislator's failure to define this situation explicitly results in a potential inconsistency between national and international legal provisions regarding enforcing financial rights. Such debts constitute noncontractual obligations, so their legal treatment remains ambiguous under the ICCPR.

However, there is general harmony between national law and international human rights conventions regarding debtors' imprisonment. Algerian law prohibits physical coercion for contractual civil debts and permits it only for debts arising from criminal offences, which are classified as noncontractual obligations.

## **Conclusion**

The general principle of enforcement is that it is carried out against the debtor's assets, whereas physical coercion remains an exceptional measure. It is a pressure mechanism to compel the debtor to fulfil financial obligations, provided that they arise from noncontractual liabilities. This is achieved through temporary deprivation of liberty, which restricts the debtor's freedom to pressure them into disclosing their assets and fulfilling their obligations. However, physical coercion does not substitute for the actual payment of the debt.

The Algerian legislature has strictly limited the conditions for applying physical coercion, allowing debtors more significant opportunities to secure funds for repayment. This

approach aligns with French legislation, which restricts physical coercion exclusively to noncontractual financial obligations, explicitly excluding contractual civil and commercial debts in compliance with international commitments, particularly the ICCPR and the Arab Charter on Human Rights.

However, a legal gap remains, as the law does not address noncontractual commercial obligations arising from unlawful acts, such as illegal speculation. This omission leaves uncertainty in the legal framework regarding the enforceability of such obligations through physical coercion.

The Algerian legislature has authorised the imprisonment of debtors until they fulfil their financial obligations arising from criminal judgments in misdemeanours and felonies, explicitly excluding judgments issued by the minor offences court (*Section des Contraventions*). This measure is intended to pressure the debtor into payment through public authority enforcement, initiated by public prosecution upon the creditor's request. Thus, physical coercion remains an exceptional measure used to recover the rights of victims of crimes, subject to strictly defined conditions. Consequently, it is not considered a criminal penalty but a means of enforcement.

Given the practical challenges creditors face in recovering their financial rights, the Algerian legislature has addressed the regulation of physical coercion in the Code of Criminal Procedure by broadening the scope of evidence for proving a debtor's insolvency and increasing financial penalties. Furthermore, paying half of the outstanding amount suspends the enforcement of physical coercion, which protects human liberty.

However, despite the harmony between national and international legal texts, specific legal gaps require further legislative refinement. Therefore, we propose the following recommendations:

- Amend the Algerian Code of Civil and Administrative Procedure to introduce a new provision permitting the enforcement of physical coercion in commercial matters for debts arising from noncontractual obligations.

- Expand the scope of physical coercion by allowing its application in cases of minor offences (contraventions).

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