

The legal responsibility of judicial police officers in the light of the principle of judicial privilege in Algerian legislation

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Abstract:

The law establishes the possibility of the liability of judicial police officers, which is counterbalanced by the principle of judicial privilege that they enjoy under the law. However, upon examination, it appears that they are subject to liability, whether civil, disciplinary, personal or criminal, if they commit acts attributed to them, acts considered by the law as a violation of legal principles, whether in the Penal Code or in its complementary laws. In view of the rule of judicial privilege, they are subject to special procedures, both in the investigation phase and in the prosecution phase.

Keywords: Judicial police, rule of judicial privilege, liability, procedure, prosecution.

Introduction:

The principle of judicial privilege dates back to the post-independence period, within the framework of the continued application of French legislation, except for what is incompatible with the national sovereignty and public order of the Algerian State, according to the text of Article 1 of Ordinance No. 157-62 of 31 December 1962.

This is what the Algerian legislator adopted in the Code of Criminal Procedure, by virtue of Ordinance No. 155-66 of 8 June 1966, in its eighth chapter, which lays down the special procedures for prosecuting certain members of the executive and judicial apparatus.

Several amendments have been made to the privilege of litigation, in which these persons, namely the judicial police officers, are subject to the establishment of their liability when they have committed acts contrary to the law and are subject to special procedures in the prosecution, in accordance with the rule of the privilege of litigation.

The Code of Criminal Procedure has established the general framework and controls for the work of the Judicial Police and has set up mechanisms to monitor their actions and conduct, through the supervisory and management authority linked to the Public Prosecutor's Office and the control of the Indictment Chamber, in order to deal with the various transgressions that occur in the performance of their duties.

We have adopted an analytical and descriptive approach to the study of our subject, in order to cover the aspects of the subject whose importance is revealed by the transition to the general principle of the rule or principle of judicial privilege, to certain persons to whom the law has granted this privilege, while at the same time subjecting them to controls and restrictions.

The problem of the issue revolves around:

What is the legal framework for establishing the responsibility of judicial police officers in the face of the principle of judicial privilege?

We will answer this problem by dividing the subject into:

First: A conceptual and legal introduction to the principle of judicial privilege.

Secondly, the definition of the responsibility of the elements of the judicial police.

First - A conceptual and legal introduction to the principle of judicial immunity

The question of immunity from prosecution in the absence of a supreme court of the state competent for a certain type of crime is considered.

The principle of immunity from prosecution is the granting of a special law or special procedures in the prosecution and trial of a category of state officials when they commit a crime or misdemeanour in the exercise of their profession. This privilege, which some have called “exceptional jurisdiction” or “special rules of jurisdiction”.

Procedural judicial privilege: This is linked to the executive power in Algeria and can be divided, from a constitutional point of view, into

The judicial privilege specific to the President of the Republic and the Prime Minister: The trial of the President of the Republic for “high treason” or for crimes and misdemeanours committed by the Prime Minister in the exercise of his functions is organised by an organic law in accordance with Article 177, paragraph 2, of the 2016 Constitution. (Official Gazette No. 46 of 2016)

Crimes and misdemeanours committed by members of the Government, judges and some employees (the procedures provided for in Book Five, entitled “On Certain Special Procedures”, Chapter Eight, Articles 581-571 of the Code of Criminal Procedure) are organised by an ordinary law in accordance with Article 140, paragraph 07 of the Constitution. (Decree no. 155-66 of 8 June 1966 adopting the Algerian Code of Criminal Procedure).

Development of the principle of legal privilege:

The Algerian legislator derived the system of legal privilege from the French legislator and it has undergone several amendments in the Code of Criminal Procedure since 1966.

Litigation privilege under Order No. 155-66:

This decree was the first piece of legislation to regulate criminal proceedings in the Algerian legal system following the expiry of the provisions of Decree No. 157-62, which ensured the continuity of the application of French law, except for what was incompatible with national sovereignty. It established the judicial privilege in chapter eight, entitled “Crimes and misdemeanours committed by members of the judiciary and certain public officials”.

Categories covered by judicial privilege:

Article 573 of the Code of Criminal Procedure No. 155-66 defines them as follows:

- Members of the judiciary in the Supreme Council.
- Provincial Wali (Governor).
- President of the Council.
- Public Prosecutor in the Council.

This procedure was limited to members of the then judiciary and provincial officials, with no reference to members of the Revolutionary Council.

Litigation privilege under the amended and supplemented Decree No. 01-81 of the Code of Criminal Procedure:

The amendment dealt with litigation privilege in Chapter Eight under the title “Crimes and Misdemeanours Committed by Members of the Central Committee, Members of the Government, Members of the Judiciary and Certain Officials”.

The additional categories under this amended and supplemented regulation were

- Members of the Party Central Committee.
- Members of the government. (Merzoughi, 2013, p.58)

Litigation privilege under Law 02_85 amending and supplementing Decree No. 155-66:

This amendment did not affect the categories covered by litigation, but rather focused on the prosecution procedure through articles 574 and 578 of the Code of Criminal Procedure.

Litigation privilege under Law 24-90 amending Decree No. 155-66:

This law introduced significant changes in the cases of prosecution and trial, which were regulated in Chapter Eight under the title:”Crimes and Misdemeanours Committed by Members of the Government, Judges and Certain Public Officials”. (Decree No. 02-15, Official Gazette of 2015)

5-The privilege of litigation in the amendment of the Code of Criminal Procedure, because under the Code of Criminal Procedure, according to Order No. 155-66, as amended and supplemented, and in the most recent amendments such as 2016, 2017 and 2018, Article 573 established the privilege of litigation and limited the categories entitled to this procedure to the following categories:

- Members of the government.
- One of the judges of the Supreme Court.
- The governors.
- The President of one of the Judicial Councils or the Attorney General of the Judicial Council. (Madah, 2020, pp. 363-382)

The text of article 573 of the Code of Criminal Procedure did not include the President of the Republic and the Prime Minister, while it referred to members of the Government and some

public officials, given that the Supreme Court of the State was provided for in the 2016 Constitution, and the latter provided for the establishment of a judicial body for this purpose, called the Supreme Court of the State, according to article 177. To date, however, this court has not been established, creating a legal vacuum. With regard to members of the government and some public officials, the text of Article 573 of the Code of Criminal Procedure did not specify the competent judicial body to decide the case. (Ben Maki, 2014, p.25)

4-Procedures relating to the privilege of jurisdiction:

The investigative authorities are subject to special rules due to the position of the accused, and among these rules is what is known as the privilege of litigation, where some individuals enjoy a privilege in litigation and their criminal accountability and investigation are subject to special procedures.

The President of the Republic and the Prime Minister:

The Algerian Constitution grants the President of the Republic and the Prime Minister special privileges in legal proceedings. Article 177 of the Constitution (2016 Constitution) provides for the establishment of a special judicial body, the Supreme State Court, which has jurisdiction to try the President of the Republic for the crime of high treason.

It is also competent to try the Prime Minister for treason and offences committed in the exercise of his functions.

Members of the Government, judges of the Supreme Court, walis (governors), heads of councils, public prosecutors in councils.

According to article 573 of the Code of Criminal Procedure, the Public Prosecutor, having been informed of the offence, must forward the file through the proper channels to the Prosecutor General of the Supreme Court, who will submit it to the First President of the Supreme Court. The First President of the Supreme Court has the power to appoint a Supreme Court judge to conduct the investigation.

Council judges, court presidents and public prosecutors:

Article 575 of the Algerian Penal Code stipulates that the public prosecutor who has been notified of the case must refer the file amicably to the Attorney General of the Supreme Court, who will in turn refer it to the President of the Supreme Court. The President of the Supreme Court may then appoint an investigating magistrate from outside the jurisdiction in which the magistrate being prosecuted works. (Decree no. 156-66 of 8 June 1966 containing the amended and supplemented Algerian Penal Code)

Judges and judicial police officers:

Articles 576 and 577 of the Code of Criminal Procedure provide that the Public Prosecutor shall forward the file to the General Prosecutor of the Council of the Judiciary, who shall submit it to the President of the Council of the Judiciary, who shall order the opening of an investigation into the case and appoint an investigating judge outside the jurisdiction of the court in which the accused judge or judicial police officer works.

Military offences:

The military court has exclusive jurisdiction to investigate crimes committed by military personnel, provided that the crime was committed within the military institution or in the course of military service. Military courts have jurisdiction over military offences listed in Articles 254 to 336 of the Code of Military Justice, including desertion from military service, espionage and military conspiracy, disobedience and abuse of authority, and violation of military orders. (Law No. 18-14, Official Gazette 47, 2018)

Second - Establishing the responsibility of the judicial police elements

While the law has provided for the protection of the elements of the judicial police, it has also established their responsibility for any negligence or error they commit in the performance of their duties or in relation to them. The nature of the penalty depends on the type of error committed. The error may be administrative, requiring a disciplinary sanction; it may be civil, resulting in civil liability; or it may rise to the level of a criminal offence, resulting in criminal liability. It should be noted that the rules of liability apply to all members of the judicial police, regardless of their rank, and that civil liability may also be established against them.

Disciplinary sanctions for members of the judicial police

In the course of their duties, members of the Judicial Police may commit administrative errors of a serious nature, resulting in penalties that vary according to the error committed. Given that the judicial police apparatus is subject to dual functional and hierarchical supervision, the member may be held accountable for errors committed in the performance of his duties, depending on the authority to which he originally belongs, such as the police, the gendarmerie and other bodies with judicial police status. It is not necessary for the offence to have been committed intentionally or unintentionally; mere negligence or dereliction of duty in the performance of the duties entrusted to that officer is sufficient to hold them responsible for their shortcomings or for failing to comply with their official duties and requirements.

These penalties are graded according to the nature and seriousness of the error committed, ranging from a warning or reprimand to temporary or permanent suspension from duty. (Hanouni, 2009, p.53)

With regard to the sanctions imposed on officers belonging to the national security services, these are laid down in the legislative and regulatory texts governing this body, in particular Decree No. 524-91. The sanctions are divided into three levels, as follows:

The first level includes: oral and written warnings, reprimands and temporary suspension from work for one to three days.

The second level includes: suspension for four to eight days.

The third level includes: compulsory transfer, reduction in rank, dismissal with notice and compensation, and dismissal without notice and compensation.

The member may also be subject to further disciplinary accountability by the Indictment Chamber, which is the supervisory authority over the actions of officers. This may result in their

suspension from their police duties at local or national level, or the temporary or permanent removal of their status as a police officer. In addition, the Attorney General and the Public Prosecutor may make observations, as they are the supervisory and administrative authorities.

2-Civil liability of judicial police officers

Errors committed by judicial police officers in the performance of their duties may give rise to liability, which may be financial if it results from material and moral damage.

The members of the Judicial Police are civilly liable for the material and moral damage caused by their actions outside the limits of procedural legality, in accordance with the provisions of article 47 of the Code of Criminal Procedure. This entails the right of the victim to bring an action before the courts for compensation for the damage suffered (Decree No. 75-58, 1975), regardless of whether the damage was caused by a crime, misdemeanour or offence. The decisive factor is that the damage was caused by the offence (Ordinance No. 66-155). The law also allows the victim to initiate both civil and criminal proceedings at the same time and before the same judicial authority (Roger, VITU, 1980, p. 917).

However, the State may be held responsible for errors committed by the judicial police elements in the exercise of their duties, since they are representatives of the public authority within the limits of their function and capacity.

As for the basis of the State's liability to compensate for the actions of the judicial police, it is the fault. The ordinary judiciary is competent to decide on cases of compensation, and the rules of civil liability apply, according to which any error that causes damage to others obliges the perpetrator to compensate the victim (Hannouni, 2009, p. 117).

Since the errors committed by members of the judicial police occurred during the performance of their duties, the responsibility for compensation falls on the entity to which they belong, i.e. the State is liable for the damage caused by its employee - the member of the judicial police - due to the unlawful act, if this error occurred during or because of the performance of his duties. The relationship of subordination exists even if the superior (the State) did not have the freedom to choose the subordinate, as long as it had the actual authority to supervise and direct. The absence of fault negates liability, and in the case of proven damage caused by the fault of a member of the police force, the joint and several liability of the State is established, since the judicial police carry out their duties only through police officers, who are considered as their means of carrying out investigative procedures.

The State is liable for damages if the following conditions are met:

1. The error was committed by police elements during or on the occasion of the performance of their duties.
2. The damage is the result of an error committed by a police officer.
3. There is a causal link between the occurrence of the damage and the error.

However, the liability of the State does not negate the liability of the member, so there must be solidarity with the State in bearing the resulting damage, and the State has the right to recourse against the member for the compensation it has paid, if it proves its responsibility for the occurrence of that act. The aim is to limit the unlawful actions of members of the judicial police..(Judicial law .order 66-156)

3-Criminal liability of judicial police elements

Elements of the judicial police may commit mistakes that amount to criminal offences according to the Criminal Code and its complementary laws, which means that their liability becomes criminal liability.

By criminal liability, we mean the imposition of legal sanctions on a member of the judicial police as a result of his or her unlawful actions, whereby a criminalised and punishable act is committed, whether it is an omission or an act, provided that the elements of knowledge, free administration, bad faith and intent are met.

The crimes of abuse of authority have multiplied due to the diversity of the acts carried out by the judicial police elements. These include the crimes of torture, violation of the sanctity of the home and the crime of arbitrary detention.

1-The crime of torture:

Constitutions and legislation in various countries, as well as international charters, seek to prohibit the use by the judicial police and investigative apparatus of means of violence that affect the management of suspects. This includes what was recommended by the Rome Conference (Twelfth International Congress on Penal Law held in Rome in 1953), which called for a ban on the use of force and pressure as a means of obtaining confessions, and what was recommended by the Hamburg Conference, which banned torture methods because they are degrading and a violation of human rights. The United Nations General Assembly has also called for the adoption of a law prohibiting all means of torture (Twelfth International Congress on Penal Law, 1979). International conventions have also sought to criminalise and prohibit the use of violence and torture methods that degrade human dignity (Qadi, 2010, p.169).

Despite all this, we often observe that elements of the judicial police resort to the use of violence and coercion against suspects in order to obtain their confessions to certain facts. Some have interpreted this behaviour as a result of their ignorance of the practical rules of investigation and inquiry, as they resort to these means in order to achieve results that prove their efficiency in their work before their superiors (Al-Mala, n.d., p.53).

Referring to Article 110 bis/2 of the Algerian Penal Code, we find that it considers the use of judicial police elements of torture methods to obtain confessions as a criminal act punishable by imprisonment from six months to three years (Haqas Ali, 2017, p.37).

2-Violation of the sanctity of the home:

Everyone has the right to preserve his or her private life in the home in which he or she resides, whether permanently or temporarily. Article 47 of the Algerian Constitution grants individuals immunity within their homes. If we look at article 50, we see that it has allowed the search of

homes in accordance with the provisions of the law, i.e. the legislator has allowed the search of homes, but has regulated it with certain, specific and strict procedures, the violation of which constitutes a criminal offence called violation of the sanctity of the home. Article 48 of the Code of Criminal Procedure has prescribed the punishment of the official who has carried out this procedure according to his function, especially if his entry was without the consent of the homeowner (Yaqout, 1997, p.111).

3-The crime of arbitrary detention:

Everyone has the right to personal integrity, which includes the right not to be arrested or detained except in accordance with the law. However, if an individual is deprived of his or her liberty by judicial police officers without lawful justification, the officers may be liable to punishment for their actions. The inviolability of the individual and his right to the protection of his private life and personal freedom from usurpation and restriction are established principles that cannot be violated or restricted except with the authorisation of the competent authority, as established by law. (PINATEL, p.1179)

In the event that a member of the judicial police commits a criminal act, the Code of Criminal Procedure has established special procedures to be followed during the investigation, which differ from the general procedures (Ouhaybia, p.153). According to articles 576 and 577 of the Code of Criminal Procedure, the Judicial Council has the power to bring charges against a member of the judicial police. As soon as the Public Prosecutor's Office is informed that a member of the judicial police has committed an offence punishable under the Penal Code or its complementary legislation, it forwards the file to the Prosecutor General of the Judicial Council. If the Attorney General deems it appropriate to prosecute, the file is submitted to the President of the Council, who orders the appointment of an investigating magistrate who, within the limits of his competence, will act outside the jurisdiction in which the Member who has committed the offence is domiciled. At the end of the investigation, if the case is considered prosecutable, it is referred to the competent court or, depending on the circumstances, to the prosecution chamber within this Council. (Ouhaybia, 2018, p.555)

'The person who has been subjected to unjustified (arbitrary) temporary detention may claim compensation if a final decision of acquittal or a decision of no grounds for prosecution has been issued against him, and he has suffered damage as a result of his detention.' (Ouhaibia, 2017, p. 970)

Accordingly, the Public Prosecutor's Office supervises the activities of judicial police officers while they carry out the duties that the law authorises them to perform, under the supervision of the Attorney General, within the jurisdiction of each judicial council. The latter ensures that these officers carry out their duties properly. The reports drawn up by these officers play a crucial role, as they are official documents that attest to the legality of all the procedures they have carried out. Judicial police officers are bound by these reports and cannot deviate from them when searching for evidence. However, these officers are not authorised to dispose of the reports, which must be handed over to the Public Prosecutor's Office, which has the right to deal with them. The Indictment Chamber supervises the activities of the judicial police officers. If it finds that a member has committed an error or exceeded the limits of his competence, he will be held accountable and may be subject to disciplinary sanctions, and the proceedings he

has conducted may be declared null and void. If the member causes material or moral damage, he/she is subject to civil liability, which may escalate to criminal liability if his/her act constitutes an offence under the Penal Code and its complementary laws.

Personal responsibility:

The law establishes the personal responsibility of judicial police officers and their assistants by holding them personally responsible for their mistakes, if the degree of seriousness is legally recognised. This means that they are held responsible for any personal errors they may commit in the course of their duties in the judicial police. The nature of the penalty depends on the type and nature of the error. It may be a civil error, which only gives rise to civil liability under Article 124 of the Civil Code. The civil liability resulting from the officer's error may also be based on the provisions of the Code of Criminal Procedure, in accordance with articles 2 and 72 et seq. of the Code of Criminal Procedure, due to the dual nature of the error. It is a civil error subject to the provisions of Article 124 of the Civil Code (Order No. 518-75 of 26 September 1975 amending the Civil Code). It may also be a criminal error, in which case the provisions of the Code of Criminal Procedure may be applied if a civil action is brought before the criminal court. Thus, the liability of judicial police officers may be double, both civil and criminal. The liability may be multiple if the conditions and cases for its establishment are met. The error may be intentional, giving rise to disciplinary or voluntary liability, or it may rise to the level of a criminal error, constituting an offence under the Penal Code, which would establish the criminal liability of the judicial police officers.

Even if the regulations on the supervision of the members of the Judicial Police by the Indictment Chamber have not been universally applied, where the officers are always mentioned, the rules of personal responsibility established for the Judicial Police officers also extend to the Judicial Police assistants and apply to the personnel of the Corps in their various categories and ranks. This can be deduced from article 206 of the Code of Criminal Procedure, which states that "The indictment chamber shall supervise the activities of the judicial police officers and of the officials and assistants entrusted with certain judicial police duties, who shall exercise them under the conditions set out in article 21 and the following articles of this law". This was also confirmed by the recommendations of the National Commission for the Reform of the Judiciary: "The keeping of files by the Prosecutor General on judicial police officers and assistants in connection with the performance of judicial police duties is an aid to ensuring effective supervision of the competent judicial police, and this should be provided for in the Code of Criminal Procedure". "The Prosecutor General's evaluation of the level of judicial police activity performed by the members of the judicial police shall be sent to their immediate superiors to be taken into account in the development of their professional careers." (Ramas, Al-Hashemi, 2017, p. 20)

Discussion of the results

From the above, we can draw the following conclusions:

The principle of jurisdictional privilege is a constitutional principle that is legally, jurisprudentially and judicially established.

The establishment of a Supreme Constitutional Court depends on the existence of legal mechanisms that provide for the trial of the President of the Republic and the Prime Minister.

The judicial police officers will be held accountable for the extent to which they exceed their powers during the stages of detection and investigation of crimes.

Conclusion:

The Algerian legislator has worked to achieve a kind of balance between the constitutional principle established in Article 32 of the Constitution, which stipulates that all citizens are equal before the law, and the principle of judicial privilege, which grants special procedures for the prosecution of certain individuals.

We make the following recommendations:

The rule of jurisdictional privilege for judicial police officers is a criterion for the application of criminal law to them during the performance of their duties and when they exceed the limits of their function.

The extent to which judicial police officers can be held accountable for the arbitrary detention of the arrested person or for arbitrary searches depends on the extent to which they are associated with the Code of Criminal Procedure.

Judicial police officers are subject to the authority of the public prosecutor within the limits of their jurisdiction.

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