

## Physical Coercion as a Means of Ensuring the Enforcement of Obligations under Algerian Legislation

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### Abstract

Physical coercion is a means of exerting pressure on the debtor to fulfill his obligation through physical restraint, by imprisoning him for a period proportionate to the amount of the debt. The Algerian legislator expressly provided for this measure in the former Civil Procedure Code, enacted by Order No. 66-156, prior to its repeal. This enabled the creditor to recover his funds in cases where other enforcement methods proved ineffective. However, following Algeria's signature and ratification of the International Covenant on Civil and Political Rights, and its subsequent accession to the United Nations General Assembly, the country became bound by the Covenant's principles—particularly Article 11, which states: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.” The publication of the Covenant in the Official Gazette in 1997 resulted in the suspension of the provisions on physical coercion contained in the repealed Civil Procedure Code, pending the enactment of the new Civil and Administrative Procedure Code. These provisions were retained, with amendments, in the Criminal Procedure Code. Consequently, creditors have faced significant difficulties in securing their rights due to debtors' evasion of obligation enforcement through the concealment of assets.

**Keywords:** Physical coercion, means of guarantee, enforcement of obligations, judgment debtor.

### Introduction

Physical coercion is an exceptional measure to which a creditor may resort once all other debt recovery procedures have been exhausted. It constitutes one of the means of guarantee and pressure against a defaulting debtor who fails to perform his obligation. This mechanism aims, on the one hand, to protect the creditor's rights and, on the other, to compel the debtor to fulfill his commitment by threatening him with physical detention for a specific period commensurate with the amount of the debt.

The Algerian legislator, in the former Civil Procedure Code (repealed), issued pursuant to Order No. 66-154 dated 18 Safar 1386 H corresponding to 8 June 1966 (Official Gazette No. 47, 1966), regulated physical coercion under Articles 407 to 412, restricting its application to commercial matters and monetary loans.

Following Algeria's signature and ratification of the International Covenant on Civil and Political Rights in 1968, and its accession to the United Nations General Assembly in 1989, the accession to the Covenant was published in the Official Gazette by Presidential Decree No. 89/67 dated 16 May 1989 (Official Gazette No. 20, 1989, p. 531). Consequently, Algeria was required to comply with the Covenant's principles, especially Article 11, which provides that “No one shall be

imprisoned merely on the ground of inability to fulfil a contractual obligation.” Due to the delay in publishing the full text of the Covenant, Algerian courts continued to apply the rules of physical coercion set forth in the Civil Procedure Code until its publication in 1997 (Official Gazette No. 11, 1997, p. 27). The Covenant—formally adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 2200 (XXI) of 16 December 1966, and entered into force on 23 March 1976 in accordance with Article 49—was thus given effect. As a result, the relevant provisions in civil matters were frozen and were ultimately repealed in 2008 upon the promulgation of the Civil and Administrative Procedure Code, while being retained, with modifications, in the Criminal Procedure Code.

The significance of the topic of physical coercion lies in its character as a means of enforcement rather than a penalty, in line with the general principles that link punishment to criminal guilt. The individual subjected to physical coercion is deprived of his liberty through imprisonment not as punishment, but solely to compel him to fulfill his obligation. Today, physical coercion survives only in criminal matters. In other words, the debtor is no longer personally liable for the performance of his debts with his own body; instead, his assets have become the sole guarantee. This situation creates a clear injustice to the creditor, who may himself fall into insolvency due to his inability to recover what is owed to him by his debtor—particularly when he is himself indebted to third parties and unable to settle his obligations because of the non-recovery of his own claims.

Accordingly, the question arises as to the legal scope for activating physical coercion as a means of pressuring the debtor to perform his obligation, especially since the Algerian legislator seeks to protect the creditor from the debtor’s default in fulfilling his commitments.

To address this question, the present study examines the issue of physical coercion through two main axes:

- Physical coercion prior to Algeria’s ratification of the International Covenant on Civil and Political Rights.
- Physical coercion following ratification of the International Covenant on Civil and Political Rights.

## **1. Physical Coercion Prior to Ratification of the International Covenant on Civil and Political Rights (1966–1989)**

Upon the promulgation of the Civil Procedure Code on 8 June 1966, the Algerian legislator considered physical coercion a legitimate means of exerting pressure on the debtor with a view to ensuring the performance of his obligation and safeguarding creditors’ rights. The Code defined the scope and conditions for its application, as well as the procedures for its implementation, prior to Algeria’s ratification of the International Covenant on Civil and Political Rights.

### **1.1. Physical Coercion under the Former Civil Procedure Code**

The repealed Civil Procedure Code regulated the rules governing physical coercion, specifying its field of application, conditions, and enforcement procedures as follows:

#### **1.1.1. Scope of Application of Physical Coercion under the Former Civil Procedure Code**

Article 407 of the repealed Civil Procedure Code provided as follows: “In commercial matters and monetary loans, orders and judgments having the force of *res judicata* that order the payment of a principal sum exceeding five hundred dinars may be enforced by means of physical coercion.”

From the wording of this article, it is clear that physical coercion under the former Civil Procedure Code—enacted before Algeria’s ratification of the International Covenant on Civil and Political Rights and even before its accession to the United Nations General Assembly—was restricted in civil matters to two specific fields: commercial transactions and monetary loans.

This provision enabled the creditor to request the enforcement of orders and final judgments ordering the payment of a principal amount exceeding five hundred dinars through physical coercion, provided that the debt arose from a commercial matter. Such a matter could be commercial by its nature, by its form, or by virtue of its connection to commercial acts, in accordance with Articles 2 to 4 of the Commercial Code (Order No. 75-59 of 1975).

Similarly, a lender—whether the loan was granted between individuals, as a consumer loan, or as a bank loan—was entitled to seek enforcement by physical coercion, on the condition that the loan consisted of money. Consequently, this measure could not be applied to loans of fungible goods other than money.

Article 450 of the Civil Code defines a consumer loan as “a contract whereby the lender undertakes to transfer to the borrower ownership of a sum of money or any other fungible thing, on the condition that the borrower shall return to him at the end of the loan an equivalent in kind, quantity, and quality.”

Legal doctrine has defined a bank loan as “the trust placed by a bank in a person by making available to him a sum of money for a specified period, with the borrower undertaking, at the end of that period, to fulfill his obligation in return for a certain return charged by the bank, known as interest, commissions, and expenses” (Salah El-Din Hassan Al-Sassi, 1998, p. 111).

Based on these provisions, a monetary loan may be defined as a contract whereby the debtor acknowledges having received from the creditor a sum of money as a loan, in exchange for his commitment to repay it upon the maturity date agreed upon in the contract.

### **1.1.2. Conditions for the Application of Physical Coercion under the Former Civil Procedure Code**

Articles 407, 408, and 409 of the repealed Civil Procedure Code established the conditions for applying physical coercion as follows:

- Physical coercion may be imposed in commercial matters and monetary loans involving a judgment for the payment of a sum exceeding five hundred Algerian dinars.
- The enforcement of physical coercion is limited to orders and judgments that have acquired the force of *res judicata*.
- The applicant for physical coercion must have exhausted all means of enforcement against the debtor’s assets, which serve as the primary guarantee for the debt, as provided for in the Civil Procedure Code, including formal demands for voluntary performance and compulsory execution measures.
- The enforcement seeker must prove that the debtor has a genuine domicile on Algerian territory.
- The right to request physical coercion lapses after three years from the date the judgment acquires the force of *res judicata*. Accordingly, the creditor must apply for the imposition of physical coercion within this period; otherwise, the right shall be extinguished.

### **1.1.3. Procedures for Enforcing Physical Coercion under the Repealed Civil Procedure Code**

Articles 410, 411, and 412 of the repealed Civil Procedure Code regulated the procedures for enforcing physical coercion, which were carried out in two stages: the stage of application before the civil judiciary and the stage of execution through the Public Prosecutor's Office.

#### **A. Stage of the Creditor's Application for the Imposition of Physical Coercion before the Civil Court**

Articles 410 and 411 of the repealed Civil Procedure Code specified the procedures that the creditor must follow to obtain an order for physical coercion against the debtor, as follows:

- The creditor shall submit an urgent application to the President of the judicial authority within whose jurisdiction the place of enforcement is located. This application must be accompanied by a copy of the judgment or order having the force of *res judicata*, a record of the debtor's refusal to execute the judgment or order, and supporting documents proving that all other enforcement measures have been exhausted.
- The debtor must be personally served with notice that the creditor has applied for the imposition of physical coercion due to the debtor's failure to fulfill his obligation.
- The President of the competent judicial authority shall rule on the urgent application after examining the submitted documents and verifying that all legal requirements regarding other enforcement methods have been satisfied. The President may then order the imposition of physical coercion on the defaulting debtor. However, if the judge finds that the debtor is in good faith, insolvent, and willing to settle the debt but unable to do so immediately, the judge may grant him a grace period not exceeding one year for payment, provided that the obligation does not arise from matters involving bills of exchange.

#### **B. Stage of Enforcement of Physical Coercion through the Public Prosecutor's Office**

Article 412 of the repealed Civil Procedure Code referred the actual implementation of physical coercion to the Criminal Procedure Code once the President of the competent judicial authority had issued an order imposing physical coercion on the defaulting debtor.

Pursuant to Article 604 of the Criminal Procedure Code, the enforcement stage begins as follows:

- The creditor submits a request to the Public Prosecutor within whose territorial jurisdiction the debtor's domicile is located. This request must be accompanied by a file documenting the debtor's failure to perform his obligation despite having been formally notified to pay at least ten days earlier, with the period commencing from the date the debtor received the notice of demand.
- After reviewing the creditor's request, verifying the formal notice served on the debtor, and confirming the urgent order imposing physical coercion—which has acquired the force of *res judicata*—the Public Prosecutor shall issue instructions to the public forces to arrest the debtor and detain him in accordance with the prescribed conditions.
- If the debtor is already imprisoned for any other reason, the creditor may object to his release by requesting the Public Prosecutor's Office to obtain an order addressed to the director of the penal institution to keep the debtor in custody.

## **2. Physical Coercion after Ratification of the International Covenant on Civil and Political Rights**

This axis addresses two main periods. The first concerns physical coercion after Algeria's ratification of the International Covenant on Civil and Political Rights and before the repeal of the Civil Procedure Code (1989–2008). The second period covers physical coercion following the repeal of the former Civil Procedure Code and the promulgation of the Civil and Administrative Procedure Code in 2008.

### **2.1. Physical Coercion after Ratification of the International Covenant on Civil and Political Rights and before the Repeal of the Civil Procedure Code (1989–2008)**

Since independence, Algeria has adopted several constitutions. The 1963 Constitution did not address the application of international treaties and agreements on national territory. However, the 1976 Constitution, in Article 153, stipulated that international treaties ratified by the President of the Republic acquire the force of law. This was followed by the 1989 Constitution, which provided in Article 123 that “treaties ratified by the President of the Republic in accordance with the conditions stipulated in the Constitution shall prevail over ordinary legislation.” This principle was maintained in subsequent constitutional amendments, corresponding to Article 132 of the 1996 Constitution and Article 154 of the 2020 Constitution.

Furthermore, the Constitution requires the President of the Republic, prior to ratifying treaties, agreements, alliances, or unions, to obtain the explicit approval of both chambers of Parliament so that such instruments may prevail over domestic laws. This is in accordance with Article 153 of the 2020 Constitution, which corresponds to Article 131 of the 1996 Constitution.

In the case of armistice agreements and peace treaties, the President must first seek the opinion of the Constitutional Court and then submit the instruments to both chambers of Parliament for explicit approval, as provided under Article 102 of the 2020 Constitution (corresponding to Article 97 of the 1996 Constitution, with the term “Constitutional Council” replaced by “Constitutional Court”).

In light of the above, the question arises whether the Algerian legislator, following the President's ratification of the International Covenant on Civil and Political Rights, amended the Civil Procedure Code—which permitted the application of physical coercion against debtors in commercial matters and loan contracts—and exempted insolvent debtors of good faith from such coercion after granting them a reasonable time to fulfill their obligations. This issue will be clarified in the following points of this axis:

#### **2.1.1. The Conflict between the Provisions on Physical Coercion in the Civil Procedure Code and the International Covenant on Civil and Political Rights**

Algeria approved the International Covenant on Civil and Political Rights and published its approval in the Official Gazette pursuant to Law No. 89-08 dated 25 April 1989. It then acceded to the Covenant in 1989, with the accession published by Presidential Decree No. 89-67 dated 16 May 1989. The full content of the Covenant was not published until 1997—approximately eight years later.

According to Article 27 of the Vienna Convention on the Law of Treaties: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

Algeria's ratification of the Covenant binds it to apply its principles and provisions, which prevail over domestic law. Consequently, the legislator was required to amend the relevant provisions of the Civil Procedure Code to bring them into conformity with Article 11 of the Covenant.

Nevertheless, the Algerian legislator failed to amend the Civil Procedure Code. Algerian courts continued to apply the rules of physical coercion as set out in that Code. This prompted the United

Nations Human Rights Committee, in accordance with Article 40 of the Covenant—which requires States Parties to submit reports on the measures adopted to give effect to the recognized rights and on the progress made in the enjoyment of those rights—to express regret during its 91st session held in Geneva from 15 October to 2 November 2007. Having examined Algeria’s third periodic report submitted on 4 October 2007, the Committee noted with concern the continued application of domestic legislation incompatible with the rights protected by the Covenant, as well as the insufficient publication of the Covenant, which hindered its regular invocation before courts and administrative authorities (Hayat Yahiaoui, 2017–2018, p. 29).

### **2.1.2. Application of the Provisions of the Civil Procedure Code prior to the Publication of the International Covenant on Civil and Political Rights in the Official Gazette**

Algerian courts continued to apply the provisions of the Civil Procedure Code and to enforce physical coercion in commercial matters and loan contracts for which final judgments having the force of *res judicata* had been rendered, after all other enforcement measures had been exhausted and a grace period had been granted to the insolvent debtor. This persistence was largely due to the fact that the full text of the Covenant had not yet been published in the Official Gazette. Among the judicial decisions issued in this regard is the following:

The ruling of the Sétif Court of Appeal (Civil Chamber) dated 13 November 1999, which upheld the urgent order issued on 16 August 1999 imposing physical coercion on the debtor for a period of two years due to his refusal to repay the loan owed. The debtor appealed this decision before the Supreme Court, relying on a single ground based on violation and misapplication of the law. He argued that the judges of the Court of Appeal had disregarded Article 409 of the Civil Procedure Code, which requires that the right to physical coercion lapses after three years from the date of the final judgment; in this case, the judgment sought to be enforced had been rendered on 3 July 1995. The Supreme Court upheld the debtor’s appeal, reasoning that the contested decision showed that the appellant had raised before the Court of Appeal the issue of the lapse of the right due to prescription under Article 409 of the Civil Procedure Code. However, the judges failed to address, discuss, or examine this plea to determine its validity, thereby rendering their decision deficient in reasoning and subject to cassation (Supreme Court Decision No. 245028, 2000, p. 125).

### **2.1.3. Suspension of the Application of the Provisions on Physical Coercion in the Civil Procedure Code following the Publication of the International Covenant on Civil and Political Rights in the Official Gazette**

Following the publication of the International Covenant on Civil and Political Rights in the Official Gazette—particularly Article 11—judicial practice shifted. Courts suspended the application of the rules on physical coercion contained in the Civil Procedure Code to contractual obligations, while continuing to apply it to obligations arising from tortious acts, in accordance with Article 11 of the Covenant, which limits its prohibition to contractual obligations.

In this context, the Supreme Court ruling dated 22 July 2010 held that the Court of Appeal’s interpretation of Article 11 of the Covenant—namely, that a debtor may not be imprisoned for failure to fulfill his obligation—was erroneous. The Court explained that the wording of the article carries a different meaning and produces different legal effects from those suggested by the lower court. Since the sums awarded in the judgment of 15 February 2000 did not stem from a contractual obligation but rather from a tortious act, the request for physical coercion was legally well-founded (Supreme Court Decision No. 575899, 2010).

In another ruling dated 11 December 2002, the Supreme Court quashed the decision of the Batna Court of Appeal, which had ordered the imposition of physical coercion on the debtor for two years due to his refusal to settle a commercial debt. The Court of Appeal had based its decision on the view that the provisions of Article 11 of the Covenant applied only to civil rights and not to commercial rights. However, the Supreme Court clarified that Article 11 makes no distinction between commercial and non-commercial contractual obligations. It is sufficient that the obligation be contractual—whether its subject matter is a civil or commercial transaction—for the enforcement of that obligation by means of physical coercion to be prohibited. Any contrary judicial decision constitutes a violation of Article 11 of the International Covenant on Civil and Political Rights (Supreme Court Decision No. 288587, 2002).

Thus, it is evident that, after the publication of the Covenant in the Official Gazette and before the repeal of the Civil Procedure Code, the provisions of the Covenant were effectively implemented, resulting in the suspension of the rules on physical coercion contained in the Civil Procedure Code.

## **2.2. Physical Coercion after Ratification of the International Covenant on Civil and Political Rights and after the Repeal of the Civil Procedure Code and the Enactment of the Civil and Administrative Procedure Code in 2008**

Following the promulgation of Law No. 08-09 dated 25 February 2008, containing the Civil and Administrative Procedure Code, all provisions relating to physical coercion were deleted. This reform was undertaken in line with the International Covenant on Civil and Political Rights, to which Algeria had acceded and whose content was published in 1997—particularly Article 11, which states: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

Article 11 of the Covenant clearly prohibits recourse to enforcement by physical coercion in cases where a judgment debtor is unable to fulfill a contractual obligation. This provision conflicted with the rules previously contained in Articles 407 to 412 of the repealed Civil Procedure Code, especially Article 411, which stated: “The President of the competent judicial authority may grant the insolvent debtor of good faith a grace period for payment, with the exception of matters involving bills of exchange. Such period shall not exceed one year.” This incompatibility was one of the main reasons for the deletion of these articles.

Furthermore, since the actual enforcement of physical coercion is carried out by criminal judicial authorities, which hold the relevant competence, it was more appropriate for such provisions to be regulated within the Criminal Procedure Code.

Finally, the legislator did not abolish the rules on physical coercion from the Criminal Procedure Code. Instead, they were retained in Articles 597 to 611. This retention can be explained by the safeguards introduced in Articles 600 and 601, which exclude certain persons and situations from the application of physical coercion. In particular, Article 603 took into account the financial hardship or inability of the convicted person. Prior to its amendment, the article provided: “The enforcement of physical coercion shall be suspended in favour of convicted persons who prove to the Public Prosecutor’s Office their financial insolvency by submitting, specifically for this purpose, a certificate of poverty issued by the President of the Municipal People’s Assembly, or a certificate of tax exemption issued by the tax officer of the locality in which they reside.” This article was later amended by Law No. 18-06 dated 10 June 2018 (Law No. 18-06, 2018, p. 4) to read as follows: “The enforcement of physical coercion shall be suspended in favour of the convicted person who proves to the Public Prosecutor’s Office his financial insolvency by any means. However, the provisions of the

first paragraph shall not benefit a person convicted of a felony or an economic misdemeanor, acts of terrorism or sabotage, transnational crime, or felonies and misdemeanors committed against minors.” This amendment aligns with the spirit of Article 11 of the Covenant, which requires due regard to the inability of the individual.

### **2.2.1. Scope of Application of Physical Coercion in Civil Matters under the Criminal Procedure Code**

Article 599 of the Criminal Procedure Code, as amended by Law No. 18-06, provides as follows: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.” Wait, correction based on the text: “Judgments imposing fines, orders for restitution, civil damages, and judicial costs in felonies and misdemeanors may be enforced by means of physical coercion, regardless of any proceedings against the debtor’s assets as provided for in Article 597 of this Code. The enforcement of physical coercion shall be effected by the imprisonment of the convicted debtor. In no case shall physical coercion extinguish the obligation in respect of which subsequent enforcement proceedings may be pursued through ordinary means. An appeal on points of law shall suspend the enforcement of physical coercion.”

The first paragraph was amended by Law No. 18-06 through the addition of the term “judicial.”

From the foregoing, physical coercion constitutes a means of exerting pressure on the convicted debtor to ensure the performance of his obligation, rather than a method of enforcement in the strict sense (Muhammad Husaynayn, 2008, p. 23). Its implementation is achieved by compelling the convicted person to pay the fine, make restitution, compensate for damages, and cover judicial costs through the imposition of a corporal sanction.

Consequently, physical coercion may be applied in civil matters only when the civil action is ancillary to a criminal proceeding, in accordance with the provisions of Article 599 of the Criminal Procedure Code. Its application is limited to two cases: restitution and civil damages.

#### **A. Restitution**

Restitution refers to the demand addressed to the accused debtor to return the property in his possession that constitutes the proceeds or object of the crime committed, to the civil party (Sulayman Abd al-Munim, 2003, p. 564). It arises only when the civil action is linked to the criminal proceedings that seek to restore the situation to its pre-crime state. Examples include a judgment ordering the return of stolen money or property held by the accused debtor that was received from the victim in connection with certain contracts, such as the crime of breach of trust under Article 376 of the Penal Code, or the crime of swindling and fraud under Article 372 of the same Code.

#### **B. Civil Damages**

Civil damages refer to compensation awarded to the civil party who brings his civil action as ancillary to the public prosecution, as a result of material or moral harm suffered from a felony or misdemeanor.

The distinction between restitution and civil damages lies in the fact that restitution represents the recovery of the specific thing itself, whereas civil damages correspond to the material or moral harm sustained. Moreover, restitution may be accompanied by compensation (for loss of use or disposal) when the recovery does not fully cover the damage incurred. If, however, compensation is awarded alone in cases where restitution is impossible, it shall cover the equivalent of the thing to be restituted in addition to any further damage.

### **2.2.2. Conditions for the Enforcement of Physical Coercion under the Criminal Procedure Code**

The enforcement of physical coercion against a defaulting debtor requires the fulfillment of the following conditions:

- The issuance of a final criminal judgment of conviction having the force of *res judicata*.
- The duration of physical coercion must be specified in accordance with the provisions of Article 602 of the Criminal Procedure Code.
- The convicted person must be formally notified to pay.
- A request for the imprisonment of the convicted person must be submitted.

#### **A. Issuance of a Final Criminal Judgment of Conviction Having the Force of *res judicata***

The second paragraph of Article 597 of the Criminal Procedure Code states: “An extract of the judgment imposing the penalty shall be considered a writ authorizing the recovery of the sum due by all legal means from the convicted person’s assets, and payment shall be due as soon as the conviction judgment acquires the force of *res judicata*.”

The determination of whether a judgment is criminal or otherwise depends on its operative part and purpose, not on its cause or the authority that issued it. Accordingly, a judgment is criminal insofar as it involves conviction or acquittal. While a crime is always the basis for a criminal judgment, it may also give rise to a civil judgment awarding compensation. The decisive factor for enforcement is the judgment that has acquired the force of *res judicata* and against which all ordinary remedies have been exhausted.

#### **B. Specification of the Duration of Physical Coercion in Accordance with Article 602 of the Criminal Procedure Code**

Article 602 of the Criminal Procedure Code requires trial judges to expressly stipulate physical coercion and determine its duration within the same judgment that pronounces the conviction. If the judge omits to specify the duration, this procedural defect may be corrected by means of an order on petition issued by the President of the judicial authority that rendered the judgment.

The article also clarifies that the duration of physical coercion is determined according to the amount of the fine or the debt. It ranges from two days to two years, depending on the sum for which the accused has been held liable.

It is worth noting that the legislator, through Law No. 18-06, amended the Criminal Procedure Code with respect to physical coercion by reducing the maximum period of imprisonment to two (2) years instead of five (5) years. The legislator also raised the minimum financial threshold for its application to no less than 20,000 Algerian dinars, limiting its use to felonies and misdemeanors only, and excluding minor offences. The aim was to narrow the scope of this measure in view of its serious impact on personal liberty.

#### **C. Notification of the Convicted Person to Pay (Article 604 of the Criminal Procedure Code)**

The arrest and imprisonment of a person subject to physical coercion is not permitted without first serving him with a formal notice to pay, allowing him a period exceeding ten days to enable voluntary performance and thereby avoid imprisonment.

The term “notice” here means “a threatening notification sent by the creditor to the debtor who refuses to settle the debt, urging him to regularize his financial situation vis-à-vis the entitled party.” It represents a transitional stage from amicable pressure to coercive threat. Through this notice, the

debtor realizes the seriousness of his situation and is compelled either to arrange payment of the owed amount or to seek an amicable settlement with the creditor and obtain a waiver. The primary purpose of the notice is to provide one of the fundamental legal guarantees afforded to the debtor subject to coercion. The existence of such notice eliminates the element of surprise and prevents any claim of ignorance regarding the gravity of the situation (Hayat Yahiaoui, 2017–2018, p. 194).

#### **D. Submission of a Request for the Imprisonment of the Convicted Person**

The civil party (creditor) in whose favor a judgment awarding civil damages or restitution has been rendered may submit a request for the imprisonment of the convicted person in order to coerce and compel him to pay what is due.

##### **2.2.3. Barriers to Resorting to Physical Coercion and Its Extinction**

Article 600 of the Criminal Procedure Code provides as follows: "... However, it shall not be permissible to impose or enforce physical coercion in the following cases:

- Cases involving political offences,
- Where the sentence imposed is the death penalty or life imprisonment,
- If the offender was under eighteen years of age at the time the offence was committed,
- If the convicted person has reached sixty-five years of age,
- Against a debtor in favour of his spouse, ascendants, descendants, brothers, sisters, paternal or maternal uncles or aunts, or their children, or relatives by marriage of the same degree."

Article 601 of the same Code further adds: "It shall not be permissible to request the application of physical coercion against both spouses simultaneously, even if this is intended to cover the payment of amounts relating to different judgments."

Accordingly, resort to physical coercion is prohibited for reasons that are self-evident: when the penalty imposed on the offender is the death penalty or life imprisonment; when the person subject to coercion possesses certain personal characteristics (such as being an ascendant, descendant, spouse, or other close relative of the applicant for coercion); when the convicted person is sixty-five years of age or older, or was under eighteen years of age at the time of the offence; or when the crime committed is a political offence.

##### **2.2.4. Conditions for Suspending the Enforcement of Physical Coercion**

These conditions are set out in the first paragraph of Article 603 of the Criminal Procedure Code, which states: "The enforcement of physical coercion shall be suspended in favour of the convicted person who proves to the Public Prosecutor's Office his financial insolvency by any means."

The suspension of physical coercion requires the following:

- The convicted debtor must prove his financial insolvency by any means. Following the amendment, the legislator no longer restricted the means of proof to a certificate of poverty issued by the President of the Municipal People's Assembly or a tax exemption certificate issued by the local tax officer, as was previously required. Instead, the debtor may now prove insolvency by any method he chooses. In return, the Public Prosecutor's Office must assess the seriousness and reliability of the evidence presented and decide whether to accept or reject it.
- Article 609 of the Criminal Procedure Code allows the debtor to suspend the enforcement of physical coercion by paying an amount equivalent to at least half of the sum for which he has

been held liable as a minimum portion of the civil damages and judicial costs, while undertaking to pay the remainder in full or in instalments within the time limits determined by the Public Prosecutor after obtaining the consent of the applicant for physical coercion. This represents a change from the pre-amendment version of Article 609, which did not specify a minimum amount and merely required the payment of a sufficient sum to settle the debts, leaving the proportion to the discretionary power of the Public Prosecutor.

- An appeal on points of law shall suspend the enforcement of physical coercion.

## Conclusion

In concluding this study, we present the following recommendations concerning the content of the International Covenant on Civil and Political Rights, particularly Article 11, as well as recommendations addressed to the Civil and Administrative Procedure Code:

### ***First: Regarding Article 11 of the International Covenant on Civil and Political Rights***

- The primary objective of the Covenant is to protect civil rights. However, how can it justly protect the rights of a creditor who may himself become insolvent due to the debtor's failure to fulfil his obligation, especially when the creditor is also indebted to others and awaits recovery of his own claims in order to settle his debts?
- The Covenant aims to protect the weaker party. In doing so, however, it may create an injustice against the creditor. The inability to compel the debtor to pay what is owed may exacerbate the creditor's own insolvency and could even lead to his imprisonment if he has issued promissory notes or acknowledgments of debt to his own creditors.
- The purpose of imposing physical coercion on a defaulting debtor is to compel him to pay what he owes, applying the standard of the diligent person. Therefore, if amendments to the conditions of physical coercion are to be considered, it would be more appropriate to grant the debtor a grace period to settle his debt before imposing physical coercion. This would encourage him to fulfil his obligation rather than protecting and exempting him at the expense of the creditor.
- Article 11 requires the debtor's inability to pay. Yet a debtor may not actually be insolvent but may instead be evading payment by concealing or dissipating his assets, making it difficult for the creditor to locate and prove their existence. Reintroducing physical coercion in civil matters would reduce such evasion and encourage debtors to fulfil their obligations.
- Article 11 limits the prohibition to inability to fulfil a *contractual* obligation. Why did it not extend this protection consistently to both contractual and non-contractual obligations? Such a distinction does not fully align with the Covenant's stated objectives.

### ***Second: Regarding the Civil and Administrative Procedure Code***

- Since Article 11 of the Covenant focuses on the debtor's insolvency, it would have been more appropriate to retain the provisions on physical coercion in the Civil and Administrative Procedure Code in cases where the debtor is not insolvent and the creditor is unable to identify, locate, or prove the concealment or dissipation of the debtor's assets.
- Article 11 addresses only inability to fulfil contractual obligations. It should therefore have been possible to apply physical coercion when the debtor fails to perform a non-contractual obligation.

- By restricting physical coercion under the former Civil Procedure Code to commercial matters and loan contracts only, the legislator deprived creditors of the ability to recover their rights in other types of contracts and obligations.
- The non-application of physical coercion in civil matters reduces the effectiveness of many judicial judgments that cannot be enforced due to the debtor's concealment or dissipation of assets and the creditor's inability to identify them.
- Limiting physical coercion exclusively to civil claims that are ancillary to criminal proceedings undermines a significant portion of creditors' rights in cases that do not warrant the initiation of criminal proceedings.

In conclusion, the abolition of physical coercion in civil matters exposes society to the spread of corruption and weakens the creditor's right to recover what is owed, particularly when the debtor conceals assets while being shielded from physical coercion. Article 11 of the Covenant prohibits the application of physical coercion only against those who are genuinely unable to pay. Since the burden of proving insolvency lies with the debtor rather than the creditor, retaining this mechanism would facilitate enforcement for the creditor and relieve him of the difficult task of searching for and proving the existence of the debtor's hidden assets.

## References

### *Constitutions*

The Algerian Constitution.,1963; 1996; 2020.

### *International Treaties*

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2200 (XXI) of 16 December 1966, entered into force on 23 March 1976 in accordance with Article 49 (Official Gazette No. 11 of 26 February 1997, p. 27).

### *Legislation*

Repealed Civil Procedure Code, enacted by Order No. 66-154 dated 18 Safar 1386 H corresponding to 8 June 1966 (Official Gazette No. 47 of 9 June 1966).

Commercial Code, enacted by Order No. 75-59 dated 20 Ramadan 1395 H corresponding to 26 September 1975 (Official Gazette No. 101 of 19 December 1975).

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